Felix Mine: A Violation of Human and Environmental Rights

To: Rights Action, NGO

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1. Executive Summary

A longstanding grievance of indigenous populations is the exploitation for natural resources by private companies. This problem has recently—and historically—manifested itself in Central America, namely, the Q’eqchi’ Mayan population of Guatemala. The Q’eqchi’ people are currently facing a violation of their rights to land and resources, by way of the Felix Mining Project, a thirty-year nickel-extraction process that has displaced Q’eqchi’ people from lands that have deep cultural meaning to them, and threaten the environment of Guatemala with water and soil pollution. A history of mistreatment of the indigenous populations of Guatemala, as well as weakened legislation on part of the Guatemalan government to protect from exploitative measures taken by international mining companies has incentivized a violent reaping of the land’s resources, as well as the murder and assault of many Q’eqchi’ people. The Felix mine operates in contraction to not only the public opinion of the Q’eqchi’ citizens, but the Guatemalan Constitution itself, which protects the land rights of indigenous populations.

I recommend a policy option in which Rights Action will campaign for UN support of the Q’eqchi’ cause under the jurisdiction of the UN Responsibility to Protect. Due to the violent nature of these incidences, as well as the direct violation of ILO Convention 169, the evidence should be present to garner UN support. This international level of legislation will allow for eventual changes within the Guatemalan government’s policies, with the assistance of financial compensation for the loss of the mining profits, as well as local policy renovation that will cater to the cultural and geographic specifics of different Mayan communities.

2. Statement of the Problem

The Mayan indigenous group known as the Q’eqchi’ is currently facing a variety of violent grievances stemming from the repeated efforts of Canadian mining company Hudbay Minerals to beginning a 30 year nickel-extraction process in land that is constitutionally owned and protected by the indigenous peoples. This mining project—namely the Felix mine—has catalyzed a multitude of protests to the forced evacuation of the Q’eqchi’ people, that have been met with extreme violence on the part of Hudbay Minerals. At stake is the land rights of the
Q’eqchi’ people to a land that they legally possess—which hold great cultural importance in their society—as well as the livelihood of the Guatemalan environment.

3. Background and Previous Policy Efforts

Indigenous peoples in America possess a recognized sovereignty. However, this precedent is not always upheld when it comes to issues of resources. Indigenous peoples have experienced repeated and systemic violation of the policies that protect their native land for the exploitation by mining industries such as coal, oil, gas, and metals. One of the recent victims of these repeated offenses is the Q’eqchi’ indigenous population. This group, a Mayan indigenous culture that holds the majority of the Guatemalan population, inhabits mostly the western highlands of Guatemala, and holds a distinct language and cultural practices. The Maya civilization experienced an internal armed conflict from 1985 to 1995, crafting a new movement of organizations that lobbied for indigenous rights to land, civil and cultural rights, political recognition. However, since then the Mayan population has continued to experience a series of human rights grievances, one of the major examples being the violence surrounding the nickel mining project proposed for the Q’eqchi’ Mayan village of Chichipate. This threatens the rights of indigenous peoples to their own land, as well as a series of damaging environment factors, namely the pollution of the water of Lake Izabal—the proposed source for cooling the nickel-smelting furnaces by pumping 200 liters of water per second. The instigator of this mining project and resulting violence toward the Q’eqchi’ people is the Canadian company Hudbay Minerals, a major piece of the global mining industry monopoly belonging to Canada. Hudbay Minerals began their invasion of the land, resource, and human rights of the Q’eqchi’ people in 2004, and have continued to occupy the desired area, leaving an imprint on the social, political, and environmental situation. In 2010, a series of civil suits were filed against Hudbay Minerals, on behalf of three separate injustices the Q’eqchi’ people endured—namely the killing of Adolfo Ich, a community leader who was shot and assaulted with machetes by mine company security personnel, the shooting and paralyzing of German Chub by mine security personnel, and the gang-rape of 11 women by security personnel, police, and military during the forced eviction of their villages in 2007. In 2012 the chief of security for the Felix mine company was arrested by Guatemalan authorities on charges of murder and attempted murder of Adolfo Ich and German Chub, a litigation process during which he was still employed and operating within the company. Additional policy to attempt to ameliorate the situation was the Centre for Indigenous Governance, who, in tandem with the Mathias Colomb Cree Nation, served two Stop Work Orders for the mining project. Hudbay responded by obtaining a court injunction against the representatives of the two groups, restraining them from further interfering with access to what Hudbay perceived to be company property.

The action of Hudbay Minerals is in direct contradiction to the foundation legislation protecting the rights of the Mayan peoples. The Guatemalan constitution “mandates respect for indigenous people’s interests, requires consultation prior to granting mining concessions, and demands protection of natural land. This has been undermined in a series of ways, including a tax exemption to decrease the royalties paid per year by Hudbay for the coveted nickel deposits, allowing them to exploit and expel Q’eqchi’ agricultural communities. In addition, the nickel profits reached the millions in a handful of years, but the Guatemalan government did not receive any compensation for their loss of resources, the deterioration of their environmental health, or the deprivation of their native land. Further constitutional efforts, in the form of a 2011 ruling of
the Guatemalan constitutional court, ruled in favor of the legal ownership of lot 9—the name given to the disputed land—by the Q’eqchi’ people. However, this ruling was ignored. In an international scope, a concession was obtained by Hudbay, giving it the “right to expel the Maya Q’eqchi’’. This was met with opposition from the International Labor Organization, labeling it a violation of ILO Convention 169, an international law that requires the “free and prior consultation” with the peoples indigenous to the land in question before any resource extraction can begin. This action was also unsuccessful in stopping the Hudbay Minerals operation. With repeat offenses of ignored policy rulings as well as violations of human rights on behalf of the Q’eqchi’ peoples, this project represents a perpetuation of the mistreatment and exploitation of indigenous communities worldwide. At stake is the cultural and resource rights of minority cultures, and the necessity of breaking a pattern of violence and oppression that has plagued these peoples.

4. Analysis

The failure of past policy to protect the indigenous rights of the Q’eqchi’ people is rooted in a broad history of exploitative resource extraction and lack of regard for human rights. The geographical and historical context of the Q’eqchi’ peoples has crafted a situation ripe for corruptive development, with the Mayan population existing in an impoverished and politically disempowered state, and Guatemala’s rich endowment of nonferrous metals such as copper, gold, lead, nickel, and silver. Guatemala is a hotbed of international mining action, due in part to the Guatemalan Government’s Legislative Degree 48-97, a mining law that reduced royalties payable to the government to 1%, abolished all foreign ownership of mines, and granted all mining operations duty-free Imports. This has catalyzed a mining industry boom within Guatemala, accounting for some of the failures of past policy to protect indigenous land rights.

The Canadian mining sector has a broad reputation of past offenses regarding unjust resource extraction, its longtime presence in Guatemala tied to the historical progression of the 1954 military coup and devastating aftermath. The largest private investor in Guatemala falls within the mining sector, and the stage was set for Hudbay Minerals to exploit the Q’eqchi’ land due to a monopoly on Central America regarding nickel extraction.

This history has built a Guatemala that is ripe for exploitation, furthered by a deterioration of existing legislation regarding mining. The Guatemalan government, in an effort to attract foreign investment, has weakened the laws governing mining over time. These laws have swung back and forth between attempts to promote and restrict public mining, but have now reached an all-time low. This phenomenon, paired with the aforementioned increased incentives for foreign mining industry intervention, have greatly increased the resource extraction taking place. These laws not only disregard indigenous land rights, but also fail to instigate environmental protection of the land and undermine the role of community participation in decision-making. One main failure of the environmental impact portion of these mining laws is that while the law requires mining companies present an environmental impact study to the National Commission on the Environment, there are no specific guidelines to what the study must include. The studies are given a thirty-day window for review, and if the case has not been resolved within that time frame, approval is automatically granted. These details drastically decrease the measure of caution taken regarding environmental impact, and have set the stage for reckless resource extraction.
In addition to the elevated incentives of Guatemalan resources, past legislation has failed to protect the human rights of indigenous peoples, resulting in a process that exudes violence not only upon the environment, but the native people. The violence and militarization that occurred on Lot 8 was preceded by a series of vague negotiations on the part of the mining company, who refused to provide full documentation of their claim to the land. On January 9 of 2007, hundreds of Guatemalan military soldiers, national police and Hudbay private security forces arrived on the scene, demanding evacuation of the Q’eqchi’ residents within five minutes. The Q’eqchi’ refused the offer, resulting in extreme military action including tear gas, bullets, and looting and burning of Q’eqchi’ possessions. A multitude of Q’eqchi’ women were sexually assaulted by security guards and police, and the rights of the villagers were in essence, denied. Given the broader context of the resource industry, these actions reflected a systemic violation and lack of regard for indigenous rights. These mining companies operate—in the words of a Q’eqchi’ representative—out of “a lack of understanding of the culture in the fullest sense of the term,” and have even gone so far as to claim their operations are fully permitted and involve a decision-making process of “community involvement.” While their actions express violence, the words of the companies paint a picture of outreach to indigenous communities, “doing everything [they] think is possible to reach out to, educate, and dialog with, the local communities.” Further denial of their maltreatment during this process was Hudbay’s response to the filing of the three lawsuits in 2011—an immediate bailout by way of selling the Fenix mine to a company called Solway. The lack of responsibility taken by Hudbay mining reflects a history of injustices toward indigenous peoples, and a moment ripe for action by way of legislative reform protecting the land rights of citizens.

5. Policy Options

- Engagement with the UN
  For this policy option, our NGO Rights Action will call upon the UN Responsibility to Protect—a global commitment that was endorsed at the 2005 World Summit to prevent genocide, war crimes, ethnic cleansing, and crimes against humanity. This policy operates as a reframing of the situation that draws attention to the violence that has been inflicted upon the indigenous population, because this incident is a strong example of the backlash protestors are often met with when they attempt to protect lands they have cultural and legal ownership of. The indigineity of the Q’eqchi’ people furthers the need for intervention, as the land they are seeking to protect has strong cultural meaning to them. The international aspect of UN involvement will speak to the breach of international legislation—namely ILO Convention 169, and will work in a top-down manner, moving from international to national to local government action.
  - **Advantages:** This policy is built around a cultural and human rights perspective, and is compelling due to the to the severity of the grievances of the Q’eqchi’ people at the hands of Hudbay Minerals. In addition, there is a historical buildup of evidence within Guatemala regarding the mistreatment of peoples by the mining industry, and this evidentiary framework has set the scene for a catalyzing event—namely the 2007 evacuation of Lot 8.
  - **Disadvantages:** UN involvement may be difficult to obtain from the status of an NGO rather than a governmental organization. In addition, this policy does not
focus heavily on the environmental impact side of the mining project, which could be a compelling argument to make due to the process being implemented—a thirty year estimated period of nickel extraction using a high-pressure sulfuric acid-leaching process.17

- **Fortification of Protests**
  This policy is inspired by the existing activism surrounding the Felix mine, and seeks to implement a stronger presence of protestors on site. In the 2007 massacre, Lot 8 was protected predominantly by only residents of the existing village, was faced with opposition by not only security officers of the mining company and national soldiers, but representatives from the Guatemalan government itself. A way to fortify these protests would be increased involvement on the side of the protesters, namely more Guatemalan residents, as well as international intervention by way of U.S. veterans.
  - **Advantages**: As Rights Action is a United States-based NGO, it may be difficult to draw support from Guatemalan Veterans. In this case, lobbying for involvement on the part of U.S. veterans would be more accessible, and would draw national attention to the situation. In addition, the protests would likely receive a more favorable view in the eye of the media, as veteran support tends to carry strong moral implications.
  - **Disadvantages**: This option could be perceived as having an interventionist strategy, as it would involve a group of international individuals becoming involved with an issue local to Central America. In addition, it hinges on the veteran presence drawing international support for the Q’eqchi’ peoples, a potentially controversial move as the Guatemalan Government itself is playing a role as perpetrator alongside Hudbay Minerals.

- **Mineral Mining and the Environment**
  This policy is centered on the environmental effects of the Felix mining project, referencing the ineffectiveness of existing Guatemalan legislation regarding the protection of lands targeted by mineral mining projects. Specifically, this policy will utilize the Environmental Protection Agency’s Mineral Mining and Processing Effluent Guidelines to point out problems within Guatemala’s resource policies, and tighten the rules that have now reached their lowest level of intervention. Through the EPA’s Mineral Mining Regulations, a clearer picture can be constructed of the problems inherent to the existing system in Q’eqchi’ territory.
  - **Advantages**: There is strong evidence for an environmentally centered campaign for justice due to the relaxed guidelines for environmental safety. The lack of specifics required in the study submitted to the National Commission on the Environment is a powerful incentive for policy renovation, as well as a clear example of carelessness toward the environmental impact of mineral mining. In addition, environmental rights groups have a strong presence in the protest of projects such as these, providing a foundation upon which this argument can be constructed.
  - **Disadvantages**: This policy can be seen as outdated in some aspects, as the most recent amendment to the EPA’s Mineral Mining and Processing Effluent Guidelines was made in 1979. However, seeing as the existing policy in
Guatemala has also not been recently updated, these guidelines should still be effectively implemented toward the more modern mining technique of high-pressure sulfuric acid-leaching nickel extraction.18

6. Recommendation

I recommend that Rights Action follow policy option 1: Engagement with the UN. This option is a good choice because it hinges on a popular contemporary cause: awareness and assistance to instances of human rights violations toward indigenous populations. Due to the severity of the violence, this option rhetorically appeals to humanity and creates a compelling story that should easily draw support both locally and globally. In addition, this option acknowledges the cultural rights of the people, and benefits from the involvement of law specific to indigenous populations, rather than environmental law that does not take into account minority or indigenous rights. This policy option benefits from the existing coverage of the situation, which tends focus on the human rights violations on the part of Hudbay Minerals and the Guatemalan government, rather than environmental grievances.

Though this can be viewed as having an interventionist viewpoint, it is more realistic than campaigning for global support by way of veterans, as it is supported by internationally recognized legislation. Involvement by the UN will be a fitting response to the violation of ILO Convention 169, as it is a foundation piece of indigenous rights law, thus meriting a response from a large international organization. The U.N. will also provide the necessary power to respond to grievances that are not just at the hands of a mining company with monetary interests, but the government of Guatemala itself.

7. Implementation and Follow-up

This policy option function in a top-down manner, drawing international support by way of the UN first, and then maneuvering policy changes into the Government of Guatemala first nationally, and then locally, to pinpoint the diverse array of problematic mining projects that have resulted from Guatemala’s abundance of natural resources. First, Rights Action will begin campaigning for involvement by way of the UN by presenting the historical decline of Guatemalan protective legislation, focusing on the breaking of ILO Convention 169, and presenting evidence of the inhumane actions of Hudbay Minerals by way of details of the three court cases against the company, the conviction of the chief of security of murder, and the devastating events of January 9th, 2007.19 These claims will be communicated in the light of the UN Right to Protect, incentivizing UN involvement due to the severity of the protest responses.

After garnering UN support, Rights Action will present a case for the UN to begin a process of legislative improvement, keeping open communication with both the indigenous groups and the Guatemalan government. Financial support will be provided by the UN based on the severity of Q’eqchi’ grievances, and will provide financial incentive to the Guatemalan government, as the main cause of relaxed mining legislation has been monetary. In order to counteract the economic losses that will result from the mining project’s stoppage, Rights Action and the UN will lobby for an advancement of indigenous agricultural involvement—a section of the economy that has been damaged by the presence of surface and underground mining. Once the Guatemalan national government is convinced of these changes, policy alterations can reach
a more local scale, catering the cultural and environmental specifics of different Mayan populations. At stake is the upholding of environmental and cultural rights for indigenous groups, as well as a missed opportunity to break the cycle of aggression towards indigenous populations, finally granting them the empowerment they deserve.

8. Sources

4. Ibid. “A Legacy”
6. Ibid. “A Legacy”
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11. Ibid. “Canadian Mining”
15. Ibid. “Central America’s”
16. Ibid. “A Legacy”
17. Ibid. “Civil Opposition”
18. Ibid. “Civil Opposition”
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