

SECURING INDIGENOUS

PEOPLES' RIGHTS TO FREEDOM

OF EXPRESSION AND FREE,

PRIOR AND INFORMED CONSENT

IN GUATEMALA.

Cultural  Survival



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# INTRODUCTION

Indigenous Peoples in Guatemala face many challenges to their rights as corporate interests and other forces such as multinationals and/or corporations align with the government in flagrant disregard of the rights and interests of their communities and seek economic interests. The natural wealth contained in Indigenous Peoples' territories is attractive for these companies and makes Indigenous communities prime targets for exploitation and extraction. The most threatened rights of Indigenous Peoples are the right to determine how natural resources are used on their lands; the basic right to freedom of expression; and communities' right to own and operate their own media. These rights are frequently violated despite the obligation that the State has to consult Indigenous Peoples about any project happening in Indigenous territories that might affect them.

Since the beginning of 2000, there has been an increase in the extractive activities in Indigenous territories in Guatemala. Guatemala is a party to International Labour Organization Convention 169, which states that Indigenous Peoples have the right to self-determination over their political, social, cultural, and economic development. Nevertheless, the extractive activities that have an economic benefit for these industries have not obtained consent from Indigenous communities, and communities' right to Free, Prior and Informed Consent has been manipulated to benefit the economic elites of the country. Indigenous Peoples in Guatemala continue to fight for their rights to their territories and the economic development rooted in their ancestral resources, which they have stewarded for millennia.

Since the end of the Civil War in Guatemala in 1996, dozens of Indigenous communities have exercised their right to establish local community radio stations to broadcast local information in local languages. These radio stations cover a wide range of topics, including discussion of how their communities' lands and waters are under threat from the development of mining projects. Local Indigenous authorities are often at the forefront of communities' efforts to protect their natural resources. The Guatemalan government has failed in its obligation to make broadcast licenses available to Indigenous community radio stations and has raided stations, confiscated equipment, and detained and jailed people. Indigenous community radio stations and local Indigenous authorities are often confronting similar challenges and can provide mutual support to each other.

As part of the follow-up process to the decision from the Inter-American Court of Human Rights in *Caso Pueblos Indígenas Maya Kaqchikel de Sumpango y otros vs. Guatemala*, which relates to the rights to freedom of expression and cultural rights of Indigenous Peoples as well as their rights to have their own media, especially community radio, Cultural Survival, along with lawyers from the Human Rights and Indigenous Peoples Clinic at Suffolk University and two Maya lawyers, Sobrevivencia Cultural, and First Peoples Worldwide held a meeting with community radio stations and Indigenous ancestral authorities in July 2022 in Panajachel, Guatemala.



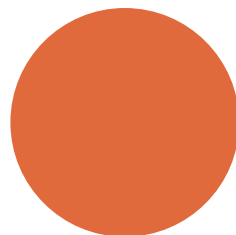
The objective of the meeting was to inform the attendees about the responsibilities of the State of Guatemala after the Court's decision and to learn about the experiences of Indigenous Peoples in regard to consultation and the implementation of their right to Free, Prior and Informed Consent. It was important to start these discussions, since the government of Guatemala has been ordered to perform a consultation with Indigenous Peoples about reforming the legislation that regulates telecommunications to include the category of Indigenous community radio within the law, ensuring that Indigenous Peoples have access to radio frequencies to execute their right to freedom of expression.

More than 100 people attended the meeting, 70 of whom were representatives of ancestral authorities and representatives from Indigenous community radio stations. This gathering made possible the exchange of experiences of consultation in different territories. Attendees had the chance to deliver valuable recommendations for drafting a roadmap for the community radio movement, for legitimate Indigenous authorities, and for the lawyers representing the community radio stations in this case.

Thanks to the resistance and the organized efforts of different Peoples, it has been possible to advance in areas such as land defense and freedom of expression, and it is in these kinds of actions where the potential to expand the dialogue about consultation resides. Additionally, instruments such as ILO Convention 169 and the United Nations Declaration on the Rights of Indigenous Peoples establish how consultations should be performed.

With the aim of distilling the results of the working groups that we had during the event, we have divided this document into sections and have included the most relevant comments from the participants. This material will be helpful for radio representatives and ancestral authorities when the moment of demanding the implementation of the sentence from the Court arrives.

The first part of this report gives an overview of the extractive industries in the country to understand the level of threat that the territories and the lives of Indigenous Peoples, as well as the population in general, face in Guatemala. Subsequently, we highlight the results from the dialogues that Indigenous authorities, radio representatives, and the team of lawyers held about their experiences in implementing the right to Free, Prior and Informed Consent.



# 1. INDIGENOUS PEOPLES AND EXTRACTIVE INDUSTRIES IN GUATEMALA

Mining activities have significantly increased in Guatemala in the last several years due to the exploitation of natural resources for the benefit of economic elites, putting Indigenous communities in a vulnerable situation. Indigenous Peoples in Guatemala survive mainly from agriculture, fishing, and collection of fruits and vegetables. These activities depend on reciprocity with Mother Earth. The destruction that mining causes affects the capacity of these communities to keep and practice their traditional livelihoods.

During the event with Indigenous authorities and community radio stations, Guadalupe García Prado, Coordinator of the Observatorio de Industrias Extractivas, explained how the mining and oil activities work in Guatemala and how her organization works in this matter. The Observatory is an independent research platform created to obtain, organize, and visualize data about extractive projects in Guatemala. Its purpose is to bring transparency to the mining industry since most of the companies involved do not act in good faith and their actions have a negative impact on the livelihoods and territories of the communities where they do business.

Currently, Guatemala has 286 active exploitation licenses and 641 pending requests to obtain exploration and exploitation licenses. This means that there are more license requests than licenses granted and in use—a sign of the potential expansion of mining activities in the country. García Prado explained that 50 percent of the minerals that these projects extract from the ground are used to satisfy the demand of global lifestyles without taking into consideration the negative impact that they will have on the lives and cultures of Indigenous Peoples.

Another element to consider is the distortion of the cost-benefit assessment for installing a mine. Companies devote their time and resources to promoting misleading campaigns in the media, affirming that the mining activity will be beneficial for the development and growth of the community where it will be installed. This is false speech endorsed by the government since these companies and the government become accomplices in criminalizing community leaders who oppose the projects and violating and ignoring Indigenous communities' right to consultation.

One of the Observatory's current and highest concerns is the extraction of nickel. Global demand for this mineral has exponentially increased because it is being used to produce electric cars, a burgeoning industry in the transition to so-called "green" energy. There is evidence that the increasing demand for nickel is having serious environmental effects in Guatemala, such as Lake Izabal, which has been contaminated by the Fenix Mine that operates in El Estor, Izabal.

Other negative effects of mining are water contamination and scarcity, as many companies are using clean water sources until they become dry, and contamination of natural springs, lakes, and rivers caused by the toxic material that is expelled into the environment from rock exploitation. Beyond these environmental effects, the cultures, livelihoods, and cosmovisions of Indigenous Peoples are also impacted.



The Observatory has mapped the nickel companies operating in the country in order to know what areas are under environmental threat; among the most known companies in Guatemala are Compañía Guatemalteca de Níquel (CGN) and Solway. These companies frequently operate without a license and implement complex networks of operation with the support of other actors to mask their actions. They also drive down the price of what they extract to reduce the royalties they must pay to the State of Guatemala.

To better understand the process of mining extraction and the impacts and violation of human rights that this industry causes in Guatemala, the Observatory prepared a slideshow. Some of those slides are included here:

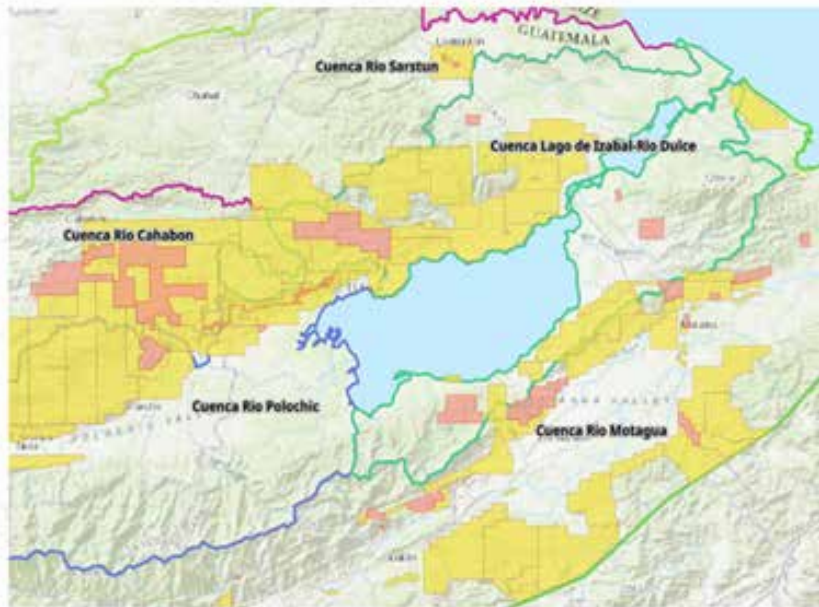




## Cuencas Afectadas

Los proyecto extractivos tienen impactos en el agua y en sus interconexiones a nivel de cuenca. En el Lago de Izabal coinciden **5 grandes cuencas hidrográficas**, por lo que la expansión de la actividad minera tiene impactos en el agua de las siguientes cuencas

- Río Cahabón
- Polochic
- Izabal- Río Dulce
- Motagua
- Sarstún





**WHAT DO CONSULTATION  
AND FREE, PRIOR  
AND INFORMED CONSENT MEAN  
TO THE PARTICIPANTS?**

**2.**



This section aims to expose what radio representatives and ancestral authorities understand by Free, Prior and Informed Consent. The objective is not to provide an in-depth explanation of what these rights mean.

They say that it means development, but for whom?

The right to Free, Prior and Informed Consent (FPIC) is a standard protected by the international law of human rights. It establishes that “all Peoples have right to self-determination” and “all Peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural, and political development.” In this sense, Indigenous Peoples have some guarantees and one of them is that these rights cannot be affected and/or impacted without them being previously consulted and without their Free, Prior and Informed Consent.

Article 19 of the UN Declaration on the Rights of Indigenous Peoples specifies: “States shall consult and cooperate in good faith with the Indigenous Peoples concerned through their own representative institutions in order to obtain their Free, Prior and Informed Consent before adopting and implementing legislative or administrative measures that may affect them.”

As a signatory of ILO 169 and the Declaration, the State of Guatemala has the obligation of securing the participation of Indigenous Peoples in the exercise of democracy, honoring their right to self-determination. ILO 169 Article 6 and UN Declaration Articles 10, 11, 19, 28, 29, and 32 mention that the governments have the obligation of consulting Indigenous Peoples about what they call “development projects” to secure that such development will not only manifest in Indigenous territories but that throughout the project, the livelihoods and rights of all the communities involved will not be affected.

Ancestral authorities understand that they have the right to be informed about projects installed in their communities and to know if these projects will benefit them in any way. They also know that by means of FPIC, the State and/or the companies are obliged to listen to their reasons of why they say yes or no to any project.

The participants said that they use the assembly as a form of community organization to collectively analyze whether or not a certain project is beneficial for them. The result derived from the assembly is the decision that they communicate to the government, and they know that the government should respect their decision. Nevertheless, all the participants agreed that when a consultation is done and the result is ‘No,’ the government does not respect it and the extractive project is installed anyway. Therefore, it is necessary to know and to use all the mechanisms available, both national and international, to raise the voices of the Indigenous Peoples whose decisions are being disrespected.

Consultation is a formal process that the government has to comply with, and the prospective company must first submit its proposed project to the community for them to make a decision. In a proper consultation, representatives from the government should first start a dialogue with the community to inform them of the interest of the company in their territory. For the consultation process to be successful in the community, it is important that the community have a strong self-government. They will need to be strong enough to face the government and the companies, who will try to divide the community to obtain an answer that aligns with the corporate interests.





A pre-consultation is an effective way for the communities to protect themselves and is also a preparatory process for the official consultation. The aim of a pre-consultation is for the communities to arrive at the consultation already strengthened and informed enough to defend their interests and rights that they hold over their territories and community.

To summarize, the collective perspective of attendees is that the consultation is the question submitted to them, and their consent, should they grant it, is the answer to said question. Prior to having the consultation, the pre-consultation is developed in advance to analyze and discuss among the community members what should be decided. Consent can be a 'yes', 'no', or 'yes with specific conditions'. For example, we grant a 'yes' when they offer to establish schools or hospitals, or when they offer new jobs, transparent processes, or a guarantee that the water will not be contaminated.

When the participants were asked what consultation does and does not mean, they responded:

What consultation does not mean:

- Assuming that consent will be granted
- When companies act on bad faith
- When the potential impacts of the project are not explained
- When the State is not neutral
- The consultation is not a fast process
- The consultation is not exclusionary
- The consultation is not only addressed to the community elites
- When the information is unclear
- When it is done under court order
- When the process is manipulated
- When the people are not the main focus of the process
- The consultation does not change the original contents of the proposal
- When it is not done in the territory
- When it is not performed in the native language of the community
- If the company performs it only to fulfill a requirement



**3.**

**THE EXPERIENCES  
OF INDIGENOUS PEOPLES  
IN GUATEMALA  
WITH THE CONSULTATION PROCESS**



Over time, Indigenous Peoples have become more familiar with the rights they hold over their lands to protect the natural resources that sustain their lives and the lives of other beings and plants, and especially to protect themselves from the threats of extractive industries that are increasingly affecting communities' lives and livelihoods. However, the exercise of the right to consultation and Free, Prior and Informed Consent has been manipulated and distorted to make invisible the local power of Indigenous communities at the expense of corporations.

During the meeting, ancestral authorities and radio representatives shared some of their local experiences with consultation processes. Participants said that the State of Guatemala does not allow the communities to prepare or get involved in the pre-consultations, which is a process and a space for them to get to know their rights. Pre-consultation is also the time to analyze and discuss at a community level the possibility of accepting a project in their territories. None of the participants had participated in a pre-consultation promoted by the State, but they did confirm that the companies that want to extend the time of their license of extraction only ask the government for that extension to keep operating, evading the requirement of performing a consultation.

To summarize: when we encounter a development project such as mining, monoculture, or hydroelectric plants, we have the right to pre-consultations and consultations.

### **Deceptive Leadership**

In regard to consultation, the overall feeling among the participants was negative; they pointed to a lack of consultations, which represents a violation of their right to self-determination. The State manipulates the communities to get Indigenous representation in their favor, so those community representatives end up voting in favor of exploratory and exploitation projects even though they threaten the communities' natural resources.

The case of El Estor is a reference to the installation and manipulation of Indigenous "pseudo-leaders" in favor of the mining industry. The Asociación de Pescadores de El Estor confirmed that the State looked for people within the community that they could get on their side, disregarding whether these people were representative of or recognized by the community.

"There are people that travel to Quiché in the Zona Reina to give out solar plants to the communities in exchange for deviating the river course, and in other areas, they collect signatures in favor of the companies in exchange for products."

"In Santa Cruz Chinautla, what the company did was a meeting with the workers of the company and they drafted an act. And that was the consultation."

"Sometimes the companies only do a meeting. They do an attendance list, and they use that list to justify that that was the consultation. They take advantage of things like this because sometimes people are illiterate."



“The State does not provide information about our rights; therefore, we are not aware of them. The State limits the consultation, establishing short periods of time to perform it. And that’s why the ‘yes’ ends up winning.”

### **Protest as a Last Resort**

Indigenous Peoples demand to be included in the decision-making processes that benefit or affect their lives and their territories, especially because of the increase in the implementation of new mining and hydroelectric projects. Hydroelectric plants use the rivers to generate and sell energy, but the people from the affected community surrounding the project do not benefit from this service. And if the service is offered to the community, the fees are excessive and families cannot afford it. Because their rights as Indigenous Peoples are violated and ignored by the State, communities feel that the only resource left is protesting.

“We have said that we do not agree, but dialogue is never promoted. We have to express ourselves through protests. The government never discusses things with us. It is important to clarify that when we assemble, the government reacts with violence and evictions. To me, consultation is when the community gathers and talks about what the project might imply, and then an agreement is reached or not.”

In many towns, the communities have organized when they realize that an extractive project will be installed or is already operating. There are two examples of communities that promoted consultations in good faith, though the Constitutional Court ruled that they are non-binding. The first example is about Canadian company GoldCorp’s Marlin Mine, which was established in Sipacapa, San Marcos, with authorization from the government. However, the Maya People of that area were never informed or consulted as per their right in ILO 169.

The community denounced the serious violation of their rights, but they did not receive a response. Based on Articles 63, 64, 65, and 66 of the Municipal Code about consultation, the Municipal Council called for community consultation in good faith on June 18, 2005, where the community had the opportunity to express whether they were in favor of or against the mining project. The majority voted against the mining project, and upon their rejection, the authorities started legal proceedings with the intent of altering the communities’ decision. On May 8, 2007, the Constitutional Court issued the file 1179-2005, by which they concluded that the initial community consultation conducted in good faith was not binding. This made it evident that the Municipality is not at the ideal level to handle extractive projects, and Guatemala lacks regulation of the consultation process.

The second case is about the company Cementos Progreso, established in San Juan Sacatepequez in 2007 with permits granted by the government for a period of 25 years. Permission was granted without consultation of the Kaqchikel people. Because of this, the Municipality was ordered to perform a community consultation in good faith. Initially, the Municipality indicated that it would comply, but a few months later it revoked its decision to call for a consultation.

The Councils of Community Development and community municipalities continued with the process and a consultation was held on May 13, 2007. The Kaqchikel people rejected the extractive project, and after the results, the municipality indicated it would ratify the decision from the people. However, there was no further action taken.

As the implementation of the extractive project continued, the Kaqchikel people promoted a writ of Amparo before the Constitutional Court due to the revocation of the consultation by the municipal authorities. The judges accepted the petition (file 3878-2007), recognizing the consultation but also recognizing it as non-binding. This decision is contradictory because it validates the consultation while denying its legitimacy.

Due to the continuous violation of their rights, the community started massive demonstrations to demand respect for their rights and the consultation process. The State replied with violence and argued that the country does not have adequate mechanisms in place to comply with ILO 169.



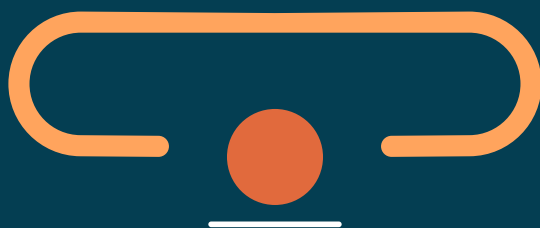
# 4. CHALLENGES IN IMPLEMENTING FPIC

Looking forward, the challenges in the implementation of consultation to legally recognize Indigenous community radio will be the same as the challenges that we have witnessed with other consultation processes. Indigenous Peoples see a need to organize themselves and get prepared at community levels to face any project that might affect their territories. Until now, many communities have had to organize in a reactive, rather than proactive, way. There are many places where companies have begun working to gain supporters prior to performing the consultation and many leaders have been co-opted or bought, or the community is already divided.

The State of Guatemala does not have any interest in promoting capacity building within the communities so they can legitimately organize. In fact, it is perceived that the State wants to perform consultations without preparing the communities, and it wants to plant the idea that by doing the consultation, consent will be granted automatically. Another challenge for the communities is the lack of financial resources needed to mobilize themselves to participate in the consultation, especially when they are located in remote rural areas or when their families are spread out in different parts of the territory.

Communities need sufficient time to prepare in advance so they can be organized and strong enough to participate effectively in the consultation. Many towns and villages already have their own methods of organization and representation, such as ancestral authorities, Indigenous municipalities, Indigenous organizations, spiritual guide councils, and councils of midwives that can serve as legitimate representatives of the people at a local level.

Participants said that some of the biggest threats that they face are intimidation, violence, persecution, criminalization, division within their communities, and the creation of illegitimate leadership structures by the State. Specifically, they said that one of the major factors affecting division within the communities is the increasing proliferation of evangelical churches, which are in opposition to the historic presence of the Catholic Church.











**5**

**CONSTITUTIONAL COURT  
HOW TO ORGANIZE  
A CONSULTATION**



Despite the lack of willingness from the State to recognize the right of self-determination of Indigenous Peoples, there are some precedents that give hope in having a legitimate process of consultation. These precedents are the rulings issued by the Constitutional Court of Guatemala.

### **Rulings from the Constitutional Court:**

Guatemala does not have a specific regulation for consultation. However, some judicial bodies such as the Supreme Court of Justice and the Constitutional Court have issued resolutions that list the violations committed by the State. The following cases are examples of Indigenous communities that have reclaimed their rights, supported by national and international laws.

#### **Ixil Peoples (accumulated files 156-2013 and 159-2013)**

The Ixil Peoples appealed the Amparo judgment (contained in the files 156-2013 and 159-2013) before the Constitutional Court, claiming that the Ministry of Energy and Mines failed to notify the Maya Ixil Community about the authorization granted to the company Transmisora de Energía Renovable, Sociedad Anónima, to use goods of public domain to provide the service of energy transmission, which represented a violation of the right of Indigenous Peoples to be consulted. The document from the Court dated March 25, 2015, acknowledges that there are many international instruments that support consultation and that despite the lack of formal law to regulate consultation processes in Guatemala, consultations must take place. It also emphasizes the importance of consulting the interested Peoples by the appropriate means and through their representing institutions.

In this case, the Court suggested that the Cabinet of Indigenous Peoples and Inter-culturalism of the Executive Body (created under the government agreement 117-2014), assumed the responsibility of implementing, coordinating, and supervising the different stages of the consultation process. It also ruled that the Cabinet had to call up, through every form of Spanish and Ixil language media available, two main representatives and two substitute representatives from: a) the Municipal Council of San Juan Cotzal; b) the Maya Ixil communities from San Juan Cotzal, by means of the Departmental Council of Urban and Rural Development of Quiché; c) the Ministry of Energy and Mines, the Ministry of Natural Resources, and the Ministry of Culture and Sports; d) the Executive Board of the Ixil linguistic community; e) the Community Councils of Development; f) Deputy or Community Majors; g) the company Transmisora de Energía Renovable, Sociedad Anónima; h) one representative and one substitute from the Office of the Human Rights Ombudsman; i) the Indigenous mayor of San Juan Cotzal; and j) representatives from the University of San Carlos de Guatemala and private universities.

Once all the called representatives are duly accredited, the stage of pre-consultation should start. All mechanisms of consultation should be defined at this time, and a schedule should be outlined. All of the above should be done in a period of no longer than six months.









### **Xinca Peoples (file 4785-2017)**

In the case of the Xinca territory, located in the departments of Santa Rosa, Jalapa, and Jutiapa, the State of Guatemala authorized many mining licenses assuming the non-existence of Indigenous Peoples in that area based on the 2002 census. This was objected to in 2017 by Centro de Acción Legal Ambiental y Social de Guatemala, who requested on behalf of the Xinca people the suspension of the mining licenses because the Ministry of Energy and Mines had violated their right to consultation by denying their existence.

After much analysis, on September 3, 2018 (file 4785.2017) the Constitutional Court resolved: 1) the existence of the Xinca Peoples in the area impacted by extractive projects, and 2) the holding of a consultation based on ILO Convention 169.

Additionally, the Ministry of Energy and Mines was ordered to perform the consultation with the Xinca Peoples specifying the participation of the following actors: a) the Municipal Council of each community in the area affected by the project; b) the Indigenous communities that live in the area affected by the project; c) the Ministry of Culture and Sports and the Ministry of Environment and Natural Resources; d) the Community Councils of Development; e) the head of Minera San Rafael S.A.; f) the Office of the Human Rights Ombudsman (as mediator); g) the Ministry of Energy and Mines (as mediator); h) The University of San Carlos of Guatemala and private universities; and i) the Presidential Commission for Dialogue.

The Court's decision stated that after concluding the accreditation process, the pre-consultation phase should start. The duration of the consultation should be established at this point, and as soon as the resolution authorizing the consultation is issued, people can request the process to begin. It was also determined that there will be civil, legal, and administrative charges filed against the Minister of Energy and Mines and any other public office responsible for failing to perform the due process of consultation.

### **Q'eqchi' Peoples of El Estor (file No. 697-2019)**

In 2006 the Ministry of Energy and Mines granted a license for mining activities for a period of 25 years to the Fenix Mine, located between the towns of El Estor-Izabal, Panzos, Chabón, and Senahú in Alta Verapaz. This was done without consulting the communities.

The communities have since reported the contamination of Lake Izabal and violations of their human rights. After many appeals, on June 18, 2020, the Constitutional Court reviewed the ruling of the Supreme Court of Justice issued on January 9, 2019, within the Amparo 405-2018, and issued a second-degree sentence within the file No. 697-2019 ordering the closure of the mine due to the violation of the rights of Indigenous Peoples to participate in the formulation, application, and evaluation of plans and programs of economic, social, and cultural development that affect them directly. It was also established that the Ministry of Energy and Mines had to do the pre-consultation and consultation process within a period of 18 months and that the territorial area of the license shall be delimited to the 6.29 square kilometers where the Environmental Impact Assessment was performed, instead of the 247,247.9978 square kilometers that had been authorized.



For this process, the following actors, substitutes, and institutions shall be summoned: a) the Municipal Council from each of the communities affected by the project; b) the Indigenous communities that live in the area affected by the project; c) the Ministry of Culture and Sports and the Ministry of Environment and Natural Resources; d) the Community Council of Development; e) the Head of Guatemala de Niquel, Sociedad Anónima CGN; f) the Office of the Human Rights Ombudsman (as mediator); g) the Ministry of Energy and Mines (as mediator); h) The University of San Carlos of Guatemala and private universities; and i) the Presidential Commission for Dialogue (as the facilitator, mediator, or conciliator).

Once the participants have been called and accredited, the pre-consultation shall start, outlining the duration, mechanisms, stages, and agreements that are reached. There shall also be a follow-up process in order to guarantee compliance.

The outcomes of these three cases have not been positive. In the case of the Ixil Peoples, dialogues between the community representatives, institutions, and the Cabinet of Indigenous Peoples (representing the government) were moving forward when the President overturned governmental agreement No. 117-2014, which protected and secured the operations of the Cabinet of Indigenous Peoples, consequently bringing the process to a halt. The Xinca Peoples were moving forward with the dialogue between interested parties and calling the community to the consultation. However, it was revealed that although the community rejected the mining project, the government issued a statement invalidating the results of the consultation.

In the case of the Q'eqchi' Peoples of El Estor, the Ministry of Environment and Natural Resources, along with the Municipality and the mining company, manipulated the process, ignoring the participation of the legitimate representatives of the community and producing a result in favor of the company. The community reported the violation of the consultation process and the Constitutional Court invalidated the consultation, ruling that by ignoring the petition from the legitimate community authorities, the Ministry of Energy and Mines was not in compliance with ILO Convention 169.

## **6. ILO Convention 169 and the State being solely allowed to do the consultation**

There is no doubt that the intervention of Francisco Calí, Special Rapporteur for the Rights of Indigenous Peoples, at the end of our session was the ideal closure for a day of hard work and discussions around consultation. During his intervention, Calí reiterated that ILO Convention 169 is the reference for consultation processes and that this convention enshrines the rights of Indigenous Peoples, including the right to be consulted.

Calí highlighted that the State is the only institution that can perform the consultation, as clearly stated in Article 6: "1. In applying the provisions of this Convention, governments shall: (a) consult the Peoples concerned, through appropriate procedures and in particular through their representative institutions, whenever consideration is being given to legislative or administrative measures which may affect them directly."





Indigenous Peoples frequently conduct internal processes to discuss topics or reach agreements in matters of collective importance. However, it is important to understand that these processes are not consultations. They are pre-consultations, which are a valuable democratic exercise and serve as preparation for the formal consultation—but they are not to be considered consultations. The consultation is a direct obligation that rests in the hands of the State toward the Peoples. In order for the process to be a true consultation, it has to be promoted by the State and adhere to what is enshrined in the final paragraph of Article 6: “2. The consultations carried out in application of this Convention shall be undertaken, in good faith and in a form appropriate to the circumstances, with the objective of achieving agreement or consent to the proposed measures.”

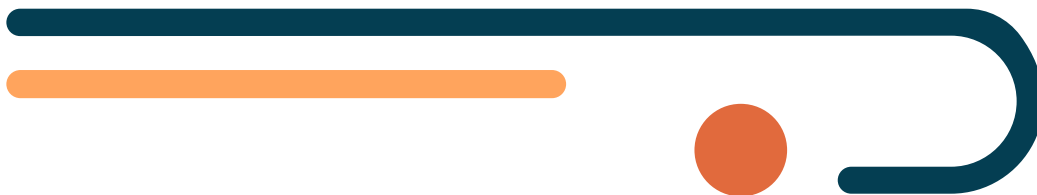
Guatemala, like the rest of the signatories of ILO 169, is obliged to respect its contents and to perform the consultation as indicated. Calí reinforced to the participants that the consultation is a process that has to be done in a free, prior, and informed way so the consulted people can fully exercise their right to decide what is best for them, including if that means rejecting the project that is being proposed by the government.

The Special Rapporteur also remarked that Peoples, Nations, and Tribes are the only ones that can be consulted, not the villages or certain sectors or nonprofit organizations. He reaffirmed that the subjects of law are the affected Peoples.

He concluded by stating that the experience with consultations in Guatemala has not been favorable, and they are not a precedent to be used as a foundation for future processes. Nevertheless, there is one international instrument, ILO Convention 169, that outlines the steps to follow to do a consultation, and the essence of it is respecting Indigenous Peoples. Therefore, we should aim to strengthen and promote the rights of Indigenous Peoples and a process that allows them to freely exercise their right to be consulted.

## **7. Legitimate Representation of Indigenous Peoples**

Part of the Indigenous resistance against colonization is preserving their own ways of organization. Self-governments were eliminated during the colonial era, but they were not fully destroyed. The sense of community, solidarity, consensus, mutual responsibility, and organizational systems based on Indigenous cosmovisions, values, and cultures have prevailed to this day. Some of the organization and representation systems can operate at the local, regional, or national levels, while others are independent and separate from the State political system. The legitimacy of each method is decided by the community that it serves. The authorities that hold legitimacy will be the representatives of the people and will hold the dialogues during the pre-consultation and consultation, and in the implementation of the results.



Several examples of community representation were demonstrated during the event:

- Nebaj is an Indigenous municipality integrated by representatives from the community. The Indigenous municipalities were established during the Spanish colonial era to maintain control over Indigenous Peoples, by Indigenous Peoples. They were in charge of collecting taxes, finding the workforce to serve the landowners, and imparting justice. Hundreds of years later, such municipalities still exist, but they are much weaker. Most of them do not receive public funds, but they still share space with the mestizo municipality.
- Some communities have consejos de principales, which are local traditional authorities, generally associated with a specific village or canton. Others have two systems of legitimate representation, such as in Xenacoj, where there is an Indigenous municipality and ancestral authorities at the same time.
- The leadership in Tonicapán is held by the 48 cantones, which is an example of local government equivalent to the municipal authority. The 48 cantones are an organization that has existed since the last century and is led by representatives of each canton. Their function is to protect the natural resources of the Maya K'iche people in their territory.
- The ancestral authorities, who work ad honorem, have been strengthened in the last few years and have been legitimated by their own communities. In El Estor and Comalapa, the ancestral authorities have implemented their own decision-making, operation, and election methods.

The participants commented that the Development Councils known as COCODES (Consejos de Desarrollo) are not community representatives because they are assigned by the municipal government. However, it has come to public attention in the case of Nimlajacoc, a village in Cobán, that they have adapted ancestral community functions, methods for decision-making, and election of leadership within the Development Council system.

## **8. Recommendations to the State of Guatemala about the Consultation Process**

The participating Indigenous authorities have a clear position regarding their governance rights and territorial rights. The collective rights of the Peoples must be respected by customary law, by population representativeness, and by the international conventions that Guatemala has signed. The following recommendations are a reiteration of what the authorities have stressed in other spaces and against the extractive industries.

- Recognize and respect the autonomy that Indigenous Peoples have over their territories, which are represented by legitimate Indigenous authorities. The type of representation varies from community to community, and there might be more than one form of local legitimate representation co-existing, such as Indigenous municipalities, ancestral authorities, midwives councils, councils of spiritual guides, etc.
- Respect Indigenous Peoples' consultation protocols. One such protocol is the right of communities to be consulted according to their language and cultures, honoring their Maya

cosmovision, uses, and traditions. "Uses and traditions" also refers to abiding by the timeline established by the communities, not the one established by the companies.

- Consultations must be performed in the territory of the affected communities, not outside of them.
- When the legitimate leaderships are unclear or there is no leadership system in place, develop community assemblies as a mechanism to make community and collective decisions.
- Development Councils and regular municipalities do not represent Indigenous communities.
- The State must promote studies of the environmental impact made by independent institutions on any development project that might affect Indigenous Peoples' territories.
- During the consultation, State institutions must participate as observers only.
- A pre-consultation is mandatory.

## **9. Recommendations to Communities and Organizations that Serve Indigenous Peoples**

Maya and Xinka Indigenous Peoples, represented by their legitimate authorities, share some recommendations:

- Promote processes of historical and contextual education addressed to youth and children to talk about the threats to their territories and the rights they have to have their own media. Indigenous community media shall create informative and analytical content about the importance of consultations in good faith.
- Strengthen their own ways of community organization, including ancestral and new forms of organization, or create hybrid organization forms. The most important thing is to have the endorsement from the communities to perform these leaderships.
- Due to the non-existence of ancestral authorities in some regions, it is important to identify leaders who work to protect the communities' rights and are willing to serve their people even if they are not currently enrolled in the community organization structure. In that case, it is important to talk with them and ask them about their interest in representing the community once the consultation is carried out.
- Indigenous communities should strengthen their own consultation protocols.
- Communities and their leaders need to stay alert and ensure that the consultation is not done with NGOs or people unilaterally appointed by the State or the interested companies.





## 10. In Gratitude

We opened and closed the event about the community radio case and the experiences of consultation with the blessing of the sacred fire, the four corners of time, and the strength of each one of the participants. At the end of the two days, the Cultural Survival team received authorization from Indigenous authorities and sacred rod carriers, to continue supporting these processes of collaboration, organization, and learning at the community and national levels. We hope to continue contributing in the legal, technical, and lobbying areas.



## ANNEX 1

### PARTICIPANT LIST ANCESTRAL AUTHORITIES

1. Santos Alvarado, Indigenous Authorities of Chuarrancho
2. Mario Pic, Council of the Ancestral Authority of Santiago Sacatepéquez
3. Rigoberto Ruyan, Ancestral Authority of San Juan Comalapa
4. Benito Ovalle, Cofradía Ancestral Poaquil
5. Luis Ajpop, Council of the Authority of Uspantán
6. Julio Perez, Indigenous Municipality of Valle de Palajunoj
7. Lyssannia Chanax, Maya K'iche' Council of Quetzaltenango
8. Felix Pablo, Ancestral Authority of Todos Santos
9. Saturnino Figueroa, Ancestral Plurinational Council of Q'anjob'al, Popti', Chuj
10. Antonio García, Indigenous Authority Maya Ch'orti' of Olopa and Quezaltepeque
11. Amilcar Calel, Unión Verapacense de Organizaciones Campesinas
12. Rosa Yalibat, Association Maíz de Vida
13. Abelino Chub, Association Maíz de Vida
14. Zoila Caal, Indigenous Authorities of Chisec
15. Bilia Chen, Indigenous Authorities of Chisec
16. Axel Morales Aceituno, Asociación Estoreña para el Desarrollo de los Pueblos Indígenas
17. German Quinich, Asociación de Pescadores de El Estor
18. Esperanza Chacón, Indigenous Poqomam Authority
19. Juan Gerónimo, Indigenous Poqomam Authority
20. Juan Lázaro, Indigenous Poqomam Authority
21. Isabel Pum, Indigenous Authorities of Xenacoj
22. Abel Tepaz, Santa Catarina Ixtahuacán
23. Feliciano Herrera, Ancestral Authority of Nebaj
24. Magdalena Bernal, Ancestral Authority of Nebaj
25. Rafael Ortiz, Council of Maya Mam Elders, Spiritual Guides, Midwives and Healers
26. Marvin Norales, Ancestral Garífuna Authority
27. José Sánchez, Custodios del Bosque
28. Roberto Pérez, Indigenous Municipality of Sololá
29. Maria Luisa Terraza, Consejo de Principales Ixil
30. Carlos Xicará, Authority of Palajunoj
31. Emy Gomez, Parlamento Pueblo Xinca
32. Juan Osvaldo Pérez, Indigenous Authority of San Miguel Chicaj
33. Rolando Lopez, Mam Council



## REPRESENTATIVES FROM INDIGENOUS COMMUNITY RADIO STATIONS

34. Gilberto Cucul, Radio K'amalb'e
35. Antonio Valle, Radio Junajpu
36. Lesly Chiquitó, Radio Ixchel
37. Rosa Puac, Radio Jornalera
38. Santos Bal, Stereo San Juan
39. Silvia Tzirin, Radio Sinakan
40. Olga Ajcalón, Radio Juventud
41. Isabel Victoria Tzaj, Radio Racantacaj
42. Estela Margos, Radio SX
43. Antonio Perez, Radio Nan Pix
44. Anacleto Ramirez, Radio Xob'il Yol Qman Txun
45. Domingo Misael, Radio Jolom Konob
46. Francisca Canahui, Radio Uqul Tinamit
47. Gaspar Ical, Radio Aj Akwinel
48. Francisco Saboy, Radio Aj Akwinel
49. Filadelfo Ico, Radio Estrella
50. Carlos Urrutia, Radio Nimlajacoc
51. Manuel Tuil, Autoridades de Nimlajacoc
52. Ana Chen, Radio Xyaab' Tzuultaq'a
53. Evelyn Rivas, Radio Yurumein
54. Elda Aguaré, Radio Victoria
55. Miriam Figueroa, Nuevo Sol Rebelde
56. Anastacio Oxom, Radio San Fernando
57. Fidel Coroy, Radio Hunapu
58. Fernando Morales Cac, Radio La Reyna
59. Pascual Bernabe, Radio Kab Tzin
60. Leonardo Vail, Radio La Voz del Pueblo
61. Francisco Chavez, Radio Voz Popular
62. Roelio Fuentes, Radio San Jose
63. Marisela Navarro, Radio San Jose
64. Héctor Lucio Reyes, Radio Uqul Tinamit
65. Rosa Imelda Xitumul, Radio Uqul Tinamit





## SPECIAL GUESTS

66. Francisco Calí, Special Rapporteur for the Rights of Indigenous Peoples
67. Guadalupe García Prado, Observatorio de Industrias Extractivas
68. Cecilia Cobar, Observatorio de Industrias Extractivas
69. Alfredo Rax Coc, Red Centroamericana de Radios Comunitarias
70. Rosa Castillo, Red Mesoamericana de Radios Comunitarias, Indígenas y Garífunas
71. Juan Diego Ajtzip, AMARC-Guatemala
72. Hector Ovidio, Organización Nuevo Día
73. Anselmo Xunic, Asociación Sobrevivencia Cultural
74. Kate Finn, First Peoples Worldwide
75. Amy Van-Zyl Chavarro, Lawyer from Suffolk University
76. Nicole Friederichs, Lawyer from Suffolk University
77. Cristian Otzin, Asociación de Abogados Mayas de Guatemala
78. Adriana Sunún, Asociación de Abogados Mayas de Guatemala



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