

No consultation process without mining suspension first! Legal actions underway to suspend Solway Investment Group's illegal mining operation in Guatemala

By Gremial de Pescadores Artesanales de El Estor, June 2021

<https://mailchi.mp/rightsaction/no-consultation-process-without-suspension-of-solway-group-mine>

Solway Investment Group, a Swiss company, and its Guatemalan subsidiary CGN (Compania Guatemalteca de Niquel), continue to illegally operate the "Fenix" mine in Mayan Q'eqchi' territories of eastern Guatemala, despite a court ordered suspension order.

The Guatemalan government is doing nothing to oblige Solway/CGN to comply with the court orders.



And while the Fenix mine continues to operate, Solway/CGN and the government are rushing to impose a "community consultation" process on Q'eqchi' communities impacted negatively by the Fenix mine, in order to get the people's "approval" to continue operating the mine.

Background: Skye Resources and Hudbay Minerals

Since February 2018, Q'eqchi' members of the Gremial de Pescadores Artesanales de El Estor initiated a legal process against the granting of the Fenix mining license that the government improperly granted to CGN when it was owned by Canadian companies Skye Resources (2004-2008) and Hudbay Minerals (2008-2011).

This legal process was initiated in the Supreme Court of Justice against the Ministry of Energy and Mines. The fishermen and fisherwomen were challenging the legality of the license based

on the absence, from the beginning, of the right to consultation with the Indigenous peoples affected by the mining project.

Initially, the Supreme Court denied the provisional injunction requested by the Gremial, allowing the mining project to continue operating. This decision was appealed to the Constitutional Court which granted the appeal in July 2019, suspending the mining operation while the amparo was being processed.

Despite the decision and suspension order of the Constitutional Court, Solway/CGN continued to operate with impunity, without the Ministry of Energy and Mines ordering the cessation of operations.



Carlos Maaz, Q'eqchi' fisherman and member of the Gremial, shot and killed in May 2017 by Guatemalan police while peacefully protesting Solway/CGN's illegal and harmful mining operation.

Ruling of the Supreme Court of Justice

In January 2019, the Supreme Court of Justice also ordered the carrying out of the consultation process with the Indigenous peoples of El Estor and three other municipalities of Alta Verapaz, but decided that the company could continue to operate while the consultation process was being developed.

The Gremial did not agree with this decision, which is why they appealed the decision before the Constitutional Court.

Landmark ruling of the Constitutional Court

The Constitutional Court heard the parties in a public appeal hearing on July 25, 2019.

On July 18, 2020, the Court issued its ruling, granting the appeal filed by the Gremial, ordering the carrying out of the consultation process, and ordering suspension of the Fenix mine.

Moreover, the Court reduced the mining area from 247.99 square kilometers (improperly granted years ago to Skye Resources and Hudbay Minerals) to 6.29 square kilometers.

This ruling is a legal precedent never before seen in Guatemala. Not only was the right to consultation of the Indigenous peoples protected, but the Constitutional Court also found a violation of Guatemalan laws due to the absence of an environmental impact study for the entire extension of the original license, and reaffirmed the suspension of the Fenix mine.

Despite the final ruling, the Solway/CGN industrial plant continued to operate ... and continues to operate today, with impunity.



Juan Carlos Velasquez, Nahomy Lara, Angel de Leon, students from the Universidad del Valle, killed in March 2012 by Solway/CGN employees, on “Fenix” mine property during an official student visit to the mining operation.

Administrative Suspension of Fenix Mine

In February 2021, the Ministry of Energy and Mines finally acted, and announced the suspension of the Fenix mine, as ordered by the Constitutional Court. Despite this resolution by the Ministry of Energy and Mines, the Solway/CGN mine continues to operate.

Legal actions to enforce the ruling and the suspension of operations

La Gremial started, a few years ago, these legal actions with no financial support from any national or international organization, except for small supports from an NGO in Canada/USA. They had only the support of lawyers Rafael Maldonado and Aníbal Maquín.

Since the court order to suspend the mining operation, several actors have begun to get involved with other local actors in El Estor to try and dominate the consultation process ordered by the Constitutional Court.

However none of these actors have expressed any interest in calling on the Guatemalan government to order the suspension of the mining operation as ordered by the Constitutional Court.

Ever more legal actions

Now, the Gremial is initiating ever more legal actions to try oblige government entities to follow the law and suspend the mining operation.

An administrative process will be initiated to force the Ministry of Energy and Mines to explain why, in spite of the Constitutional Court ruling, they are allowing the Fenix mine to operate.

A legal action will be initiated before the Constitutional Court to take actions to order the due execution of the sentence ordering the cessation of mining operations.

Separately, but importantly, an administrative process will be initiated before the Ministry of Energy and Mines to oblige the Ministry to stop excluding the Gremial from the pre-consultation and consultation 'tables' that have been established.

More information

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Archives - Hudbay Minerals (INCO, Skye Resources, Solway Investment Group)

<https://rightsaction.org/hudbay-minerals-archives>

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