

Constitutional Court of Guatemala re-affirms that Solway Investment Group mining operation is illegal

<https://mailchi.mp/rightsaction/solway-investment-group-mining-operation-is-illegal>

"The community consultation carried out by the Guatemalan Ministry of Energy and Mines was carried out illegally."

(Rafael Maldonado, lawyer for Maya Q'eqchi' complainants)

Constitutional Court suspends legality of consultation process at Solway Investment Group's mine in El Estor, Guatemala The Constitutional Court has ordered the Supreme Court to reverse its decision regarding the community consultation

By Héctor Silva Ávalos & Juan Calles, Prensa Comunitaria, April 27, 2022

<https://www.prensacomunitaria.org/2022/04/corte-de-constitucionalidad-vuelve-a-dejar-en-suspenso-legalidad-de-consulta-sobre-la-mina-de-el-estor/>

The Constitutional Court (CC) has reiterated what it already ruled in 2020, that the mining operation of the Solway Investment Group (company Suisa) and its subsidiary Compañía Guatemalteca de Níquel (CGN) in El Estor, Izabal, is illegal.

It remains illegal despite the fact that, at the end of last year, the Ministry of Energy and Mines (MEM) approved a consultation was carried out in the midst of a military state of siege imposed by the government of Alejandro Giammattei.

The CC resolved that the Supreme Court of Justice (CSJ) had not responded to the petition made by community authorities and fishermen of El Estor to suspend the operation of the mine because it had not carried out a prior consultation with those affected, as required by Convention 169 of the International Labor Organization (ILO) and as ordered by the Constitutional Court itself.

In a first ruling, in January 2019, the CSJ ordered the community consultation, as requested by the complainants, but allowed Solway Investment Group/CGN to

continue with nickel mining in El Estor. The plaintiffs appealed this second part of the resolution, but the CSJ never responded.

In 2020, the Constitutional Court ruled that the mine should stop operating until the consultation was carried out. With the complicity of the Giammattei government, the mine continued to operate despite the CC's order.

On April 26, 2021, the CC resolved an *ocurso*, a judicial remedy such that a plaintiff, in this case the complainants of El Estor, can ask a higher court to resolve a matter not resolved by another judicial authority, in this case the Supreme Court of Justice, which had refused to review matters concerning the operation of the mine without prior consultation.

Ignoring the CC's decision, the mine continued to operate. At the end of 2021, the Ministry of Energy and Mines (MEM), which is the authority sued by the Maya Q'eqchi' plaintiffs, initiated the consultation process.

Furthermore, the MEM left out of the consultation more than 90 communities that opposed the operation of the mine because of the environmental damage it was causing in Lake Izabal.

In October 2021, Q'eqchi' leaders, including some of the plaintiffs, initiated a peaceful protest to demand the closure of the mining operation, which consisted of blocking the passage of trucks loaded with the coal that the mine needs for its operation.

From the 22nd to the 24th of that month, when coal reserves were already at their limit, the Giammattei government sent a contingent of hundreds of police and soldiers to clear the way and repress the protesters.

A day after the police intervention, Giammattei decreed a military state of siege that enabled the MEM and Solway Investment Group/CGN to carry out the consultation, ... amid a militarized atmosphere that allowed them to fragment and divide the opposition and criminalize those who led the protests and opposed the illegal mining operation.

By the end of December, the MEM announced that the consultation was concluded, which, on paper, restored legality to the mining operation.

On April 26, 2021, the CC had reversed everything that had been done ordering, due to the lack of response from the CSJ to the initial petition of the Q'eqchi' community members, the suspension of nickel mining until there was a consultation.

Everything that has been done since the petitioners requested the CC in July 2021 to force the CSJ to respond to the petition to suspend the mining operation, including the December 2021 consultation during a military state of siege, should be reversed.

"In very simple terms, it means that the consultation carried out by the MEM with the indigenous peoples was carried out illegally. The amparistas went to the court (CSJ) pointing out all the irregularities committed by the MEM and the court decided to ignore all the actions that had been presented", explained Rafael Maldonado, a lawyer for the complainants.



Rafael Maldonado. Credit Benjamin Thuau. Radio France

Maldonado considers that, as determined by the CC, all that has been done since July 2021 is illegal. "Based on what the CC says, it should be understood that the consultation lacks validity," he said in a talk with Prensa Comunitaria.

For now, Maldonado said, the complainants will wait for the CSJ to be notified and then to respond on what has been done to make a decision on the legal strategy to follow.

An illegal mine and a State in collusion

The Fénix Mining Project, as the Solway Investment Group/CGN mine in El Estor, Izabal is known, has operated illegally with the complicity of the State of Guatemala since the first ruling of the Constitutional Court in 2020.

Complicity has included, in addition to the use of police and military force, bribes to at least one local judicial operator in Puerto Barrios, who ruled in favor of the mine, and in the persecution and criminalization of Q'eqchi' land defenders who have opposed the mine.

Forbidden Stories - Mining Secrets

In March 2022, an international journalistic consortium (<https://forbiddenstories.org/>) published investigations around the world, revealing the extent of complicity between the government of Alejandro Giammattei and the Swiss (Russian) miners.

Based on leaked internal documents and months of fieldwork in El Estor, investigators determined, among other things, that the National Civil Police have regularly received monies from a foundation funded by Solway Investment Group/CGN, and that this money was used in part to carry out repressive actions against those who oppose the mine.

Another revelation is that the mine has profiled, persecuted and criminalized its opponents, and that the Guatemalan State, through the Public Prosecutor's Office, the PNC and its intelligence systems, has supported these actions.

The governments of Giammattei and his predecessor, Jimmy Morales, decreed military states of siege whenever representatives of the mine requested it.

The internal documents also reveal that the mine made plans to mitigate the damage to its reputation due to the contamination caused in Lake Izabal. Water and air samples taken by the company itself, and analyzed by the media

consortium, show that the concentration levels of toxic minerals in Lake Izabal exceed several international standards.

In an investigation published by The Store Project -a member of the consortium- and elPeriódico, it was revealed that Mayaníquel, a company investigated for giving a bribe to Giammattei, has deep commercial ties with Solway Investment Group/CGN both in El Estor and in the Port Santo Tomás de Castilla, from where the nickel is exported to various destinations around the world.

But it is the connivance of the MEM in carrying out an irregular consultation in the midst of a military state of siege that is one of the complicities that most favored the mining company.

Today, with the recent resolution of the Constitutional Court, the legitimacy of this consultation and the operation of the mine are once again in question.

Forbidden Stories – Mining Secrets archive

Articles published about the corruption, violence and harms of Solway Investment Group's "Fenix" mine, operated in partnership with the corrupt, repressive U.S. and Canadian-backed Guatemalan regime

<https://forbiddenstories.org/kiosk/mining-secrets-all-the-articles/>

Since the publication of the "Mining Secrets" project, the hacking collective "Guacamaya" has published its [own media release](#) and a [video tutorial](#) about its hack.

TESTIMONIO: Canadian Mining in the Aftermath of Genocides in Guatemala

The Forbidden Stories about Solway Investment Group re-confirm and add to what is published in our book Testimonio that addresses four community defense/ mining resistance struggles in Guatemala.

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