

## Guatemalan State Must Obey Constitutional Court Orders and Suspend Operations at CGN's Fenix Nickel Project

*Until free, prior and informed consent and the right to consultation of Maya Q'eqchi communities is upheld, operations must be suspended to protect indigenous communities impacted by the mine.*

Thursday, July 25, 2019

On Thursday, July 18, 2019, the Guatemalan Constitutional Court ordered the Guatemalan Nickel Company's (CGN) Fenix Mine Project to suspend its operations. The suspension is on a provisional basis and is meant to protect the rights of the Indigenous Maya Q'eqchi communities impacted by the nickel mining operations until the Constitutional Court issues a final ruling on a petition that was filed by Maya Q'eqchi human rights defenders in 2018. The petition alleges that Q'eqchi communities were not consulted and that their right to full participation in decisions that could impact them was violated when the Ministry of Energy and Mines granted an exploitation licence to CGN in April 2006. CGN is currently a subsidiary of Solway Investment Group, the world's largest privately owned nickel producer headquartered in Switzerland with global operations. At the time that the license was granted, it was owned by Canadian company Skye Resources. In 2008, Skye Resources amalgamated with Canada's Hudbay Resources, who later sold to Solway in 2011.

As a result of last week's Constitutional Court decision, petitioners and their supporters have already been subject to harassment and intimidation. Locally, the situation for the Q'eqchi petitioners is deeply concerning. In a press statement, CGN/Solway assured that the decision would "increase conflict and violence in the area" while company Manager and Military Colonel Maynor Alvarez took to national television. The mayor of El Estor, Rony Mendez, used social media to polarize local communities by promoting a similar discourse. In the days since the ruling, petitioners and their lawyers have received threatening messages via phone and social media.

Since the Ministry of Energy and Mines granted CGN/Skye the licence to operate the Fenix Project in April 2006, Indigenous communities have lost territory, land and livelihood. [Others have been murdered, raped and left seriously injured](#), and forced to leave their lands. Q'eqchi communities, human rights defenders and national and [international](#) journalists and academics have been repeatedly targeted by violence, defamation and malicious prosecution.

In an effort to divert attention from non-compliance with the consultation as required by law in order to obtain resource exploration and exploitation licenses in Guatemala, a group representing CGN/Solway service providers gave a press conference that focused on the economic impacts of the court order. Likewise, in a public statement, [Solway Investments](#) noted that it would "take all possible measures not to halt...operations to the extent that this is possible within the legal framework." The President of the Chamber of Agriculture, Commerce, Industry and Finance (CACIF), the country's most influential economic lobby, wrote in a tweet that the decision was, "terrible and irresponsible." It's important to note that since 2007, CGN (and parent companies, Skye, Hudbay and Solway) have benefited from significant tax exemptions through Ministry of the Economy Resolution #843, File #487-2007, that categorized CGN/Skye as a beneficiary of the Law for the Promotion and Development of Export and Maquila Activities. This classification has allowed

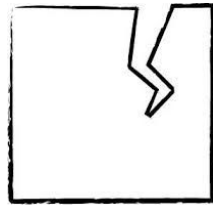
CGN (through parent companies Skye Resources, Hudbay Minerals and Solway Investments) to import materials and equipment duty-free; it also exempts CGN from paying value-added tax, which raises doubt on just how much the company is remitting to the Guatemalan state.

There is already legal precedent regarding the suspension of mining operations while consultation is carried out. In 2018, the Constitutional Court made a definitive ruling on a constitutional challenge to suspend the Escobal silver mine and Juan Bosco exploration permit, operated by Minera San Rafael (MSR), then a subsidiary of Canadian/US Tahoe Resources (recently acquired by Pan American Silver), until a consultation was completed with impacted Indigenous Xinka communities in the departments of Jalapa, Jutiapa and Santa Rosa. The MSR and CGN cases have clearly shown that the granting of mining licences represents a structural problem that has negatively affected diverse social groups and in particular, Indigenous Peoples. The Constitutional Court rulings point to the need to make structural changes to the way that exploration, exploitation and environmental licenses are granted for proposed extractive projects in Guatemala.

In February 2019, the Supreme Court ruled that the rights of the Maya Q'eqchi petitioners impacted by the granting of the Fenix Project had been violated and ordered the State to consult four municipalities in the departments of Alta Verapaz and Izabal that were impacted by CGN mine operations. On Thursday, July 25, a public hearing will be held at the Constitutional Court before the plenary makes a definitive decision on whether to suspend the operations while the Court-ordered consultation with Q'eqchi communities is carried out.

Therefore:

- We reiterate our support to Indigenous Maya Q'eqchi communities who are defending their legitimate right to be consulted, give consent and have their rights be protected, as outlined in the Guatemalan Constitution, Convention 169 of the International Labor Organization, the United Nations Declaration on the Rights of Indigenous Peoples and the American Convention on Human Rights;
- We denounce intimidations, threats and violence targeted at Maya Q'eqchi Indigenous rights defenders, their lawyers and the organizations that accompany them by government and business actors. We reiterate our grave concern for violence and repression that could result from campaigns to stigmatize Q'eqchi rights defenders and their lawyers as a result from the legally binding suspension of the Fenix mining operation;
- We remind the State that it has the responsibility to comply with Constitutional Court orders and immediately take action to suspend operations at the Fenix Project as ordered;
- We exhort that the Guatemalan State act on its duties to protect, respect, and establish guarantees for the realization of the rights of Indigenous peoples threatened by the interests of companies in the territories in which they live;
- We remind the company that, in accordance with the Guiding Principles on Business and Human Rights, it must act with due diligence on human rights;
- We call on the national and international community to stay alert to the situation and accompany, if possible, the public hearing on July 25 at 9:30am as a means to ensure transparency and access to justice for impacted Indigenous communities.



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## **Background:**

In 2005, Canadian mining company Skye Resources, [strongly supported](#) by the Canadian government, revived the Fenix Project. In 1965, the mining operation was originally initiated by Canadian-owned INCO mining company through its subsidiary, Exmibal, which later changed its name to the Guatemalan Niquel Company (CGN). Though trying to distance itself from INCO/Exmibal's ties to grave human rights abuses during the years of the Guatemalan genocide, Skye Resources promoted the Fenix Project alongside constant violence against the Q'eqchi communities impacted by its operations.

Just six months after the license was allegedly illegally granted, Guatemalan state security forces, at the request of CGN/Skye, forcibly evicted six Q'eqchi communities. Puerto Barrios jurisdictional courts authorized the evictions in violation of national and international law, but indigenous communities had no opportunity to challenge the ruling as their homes were destroyed immediately after notification. The National Civil Police and Guatemalan military, CGN/Skye's private security forces, and paramilitary forces with which they collaborated, directly participated in the violent and illegal evictions, during which women were raped and homes burned.

Despite these acts of repression and violence, the Indigenous Maya Q'eqchi opposition to the Fenix Project has been constant for decades. In 2009, after CGN was owned by Canadian company Hudbay Minerals, witnesses attest that Adolfo Ich Chaman, a teacher and leading voice in the demand that Q'eqchi communities be consulted in accordance with Guatemalan and international law, was shot by the CGN/Hudbay's chief of security. That same day, mine security opened fire on innocent bystanders and left German Chub paralyzed.

Years later, in 2017, after CGN was sold to Solway, Q'eqchi fisherman Carlos Maaz was killed during the brutal repression of a peaceful protest against the CGN/Solway nickel processing plant's impact on the environment and the livelihood of Q'eqchi fishermen. The brutal violence against Q'eqchi rights defenders has been constant since the license to mine the Fenix Project was granted. To date, there have been no convictions for any of these serious mining-linked crimes.

At the same time, threats and pressure by the CGN/Solway mining company has led to the criminalization of members of the Artisanal Fisher's Association and recognized Q'eqchi human rights defenders. Eduardo Bin Poou, Cristobal Pop, Tomas Che Cucul and Vicente Raxand and others have been forced to face legal proceedings after charges were brought against them by CGN/Solway. Violence and criminalization targeted at journalists and censorship of the press have also been clearly documented, including the current criminal proceedings against Carlos Ernesto Choc by CGN/Solway and the 2017 arrest and detention of Jerson Antonio Xitumul, imprisoned on trumped up charges, as reported by the Office of the United Nations High Commissioner for Human Rights, OHCHR, in Guatemala and the institution of the Human Rights Ombudsman, last May.