



INDIAN LAW RESOURCE CENTER

CENTRO DE RECURSOS JURÍDICOS PARA LOS PUEBLOS INDÍGENAS

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After a 40-year battle against powerful mining interests and a government known for violent responses to Indigenous protests, Guatemala's Maya Q'eqchi' people win case in human rights court

Ruling could offer new legal tools to mining-affected communities across Latin America, as demand for “green minerals” heats up, with thousands of mines expected to muscle onto Indigenous territories worldwide to serve demand

SAN JOSÉ, COSTA RICA--(15 December 2023) With [today's ruling](#) by the [Inter-American Court of Human Rights](#) a Maya Q'eqchi' community prevailed against the Guatemalan government, after a 40-year battle to banish from their lands a dirty open-pit nickel mine, possibly setting a precedent for Indigenous communities across Latin America.

The nickel mine and processing plant are now controlled by subsidiaries of the Solway Investment group, a Swiss-based Russian enterprise that has been operating in Guatemala since 2011. Mining for nickel, copper, lithium and cobalt and other metals and minerals is a growing source of conflict with Indigenous Peoples and local communities; worldwide, [more than half](#) of all existing and planned mining for metals and minerals to serve the market for renewable technologies are on or near the territories of communities like the Maya Q'eqchi' of Agua Caliente.

“We got everything we asked for,” said Leonardo Crippa, an attorney with the [Indian Law Resource Center](#) and a member of the plaintiff's legal team. “[The Court has ruled](#) for the first time that the government must make changes in the law to recognize the collective land ownership rights of Indigenous Peoples and to remove all discriminatory laws from their books and to recognize these communities as distinct legal, social and political entities.”

“This will affect all of the Indigenous Peoples of Guatemala,” Crippa added, “granting them the right to communal land ownership, consultation before any decision is made that would affect their territories and their resources, and the authority to decide on the exploitation or not of any resources on their lands—with no outside interference.”

The court also directed the Guatemalan government to order studies of the impact of proposed mining projects on human rights, before approving new projects, and to pay the costs and expenses

for the government's 40-year delay in issuing collective title for Agua Caliente's lands provide monetary compensation for "the non-pecuniary damage" the government's actions have caused the community.

The Maya Q'eqchi' of Agua Caliente have been patient during their 40-year battle for title to their lands, often confronting the threat of violence and bureaucratic obstacles, but always choosing not to react to provocations.

"We have always believed in the legal solution," said [Goldman Prize](#) winner Rodrigo Tot, a leader of Agua Caliente who resisted engaging in angry protests that could have put his community's life and liberty at risk. "The law takes a lot of patience and time, but we have always believed we would prevail, with God's help and with the help of our community."

"We are delighted that the human rights court's decision will cover not only all 16 Maya Q'eqchi' peoples affected by the mine, but all Indigenous communities of the country."

The court directed the government to make a payment in reparations for the ongoing death threats against Rodrigo Tot and his family who have been highly visible in resisting the mining project. Mr. Tot's sons, Edin Leonel Tot and Wilfredo Rodrigo Tot were attacked and shot. Edin Tot died from the gunshot wounds; Wilfredo Tot survived but needed extensive medical care. The attack took place in front of Edin Leonel Tot's nine-year-old son, Enrique Rodrigo Tot Ical, who underwent a year of psychological care to deal with his trauma.

The ruling of the human rights court, often the forum of last resort for Latin America's Indigenous and other marginalized communities, could cripple the country's access to financing for development projects, said Crippa, who delivered oral arguments before the court in February 2022.

"Multilateral development banks will have to respect the court's decision, and we expect it to guide where banks invest and what terms they set for both public and private sector borrowers," Crippa said. "The global economic sector does not like uncertainty and unnecessary risk. By supporting the demands of the Maya Q'eqchi' peoples of El Estor, the court ruling can help quiet fears of rising climate change and reputational risk associated with meeting growing demand for minerals, particularly 'green minerals' like nickel."

Addressing the global climate conference in Dubai in early December, the [UN Secretary General](#) noted that the demand for such minerals is set to increase fourfold by 2030, but added, "The extraction of critical minerals for the clean energy revolution – from wind farms to solar panels and battery manufacturing – must be done in a sustainable, fair and just way."

"The respect for nature is fundamental to the character of Agua Caliente and to many Indigenous Peoples of Guatemala," said Carlos Pop, a Guatemalan attorney and member of the legal team presenting today at the human rights court.

"They have persevered against all the obstacles they have confronted," Pop added. "These are rooted in Guatemala's colonial history of discrimination and violence toward its Indigenous Peoples. By obliging the recognition of rights under national and international norms, this ruling will change a dynamic that has always favored the powerful. And that is transformational."

In their brief to the human rights court, the plaintiffs had argued the government had engaged in a pattern of deception that included the refusal to replace missing pages in a registry that documented Agua Caliente's long-time struggle for title.

Their legal team also cited the U.N. and O.A.S. Declarations on the Rights of Indigenous Peoples and the socio-environmental safeguard policies of multilateral development banks, arguing that they establish an obligation to obtain the consent of Indigenous communities before a project is introduced onto their lands.

"The Court should establish this obligation as a guarantee of protection of the property rights of Indigenous peoples over their lands, territories and natural resources," the plaintiffs argued. They hope that by doing so, the court would influence the behavior of extractive companies wanting to do business in the region.

The plaintiffs showed that the community was forced to identify its members as "landless peasants" as a requirement for obtaining title to their communal territory. The government then used the process to expand the nickel mining project, while failing to comply with the domestic court's order that the government issue Agua Caliente collective title.

"They expanded the mine onto the territories of Agua Caliente, allowing the exploration of subsoil resources on territories under traditional possession," Crippa said. "Their next step was to open the lands to exploitation, with the goal of increasing the area of the 'Fenix' mining project."

The court's ruling today is supported by the evidence and the historic context," Crippa said.

"We now have a powerful new legal tool for securing Indigenous rights and for fighting the environmental damage that fuels climate change," Crippa added. "We still have a lot of work to do to bring about the changes demanded by the court and to remove existing impediments to the land titling procedure that block efforts to title indigenous lands in a prompt and effective manner. But this is a transcendent moment, for the Indigenous Peoples of Guatemala and for a global public that is demanding an end to investments – by companies, multilateral banks, governments and other investors – that harm the planet and violate human rights."

After the human rights court had begun its deliberations in February 2022, the government succeeded in obtaining a hearing for two dissident members of the Maya Q'eqchi' community, while asking that they testify as community leaders. In response, the plaintiffs argued that their entire community, including the dissidents, had been victims of a "divide and conquer" scheme, referencing the release of leaked documents [released](#) by journalists in March 2022.

The letters, memos and emails seemed to suggest that mining company operatives had been bribing the dissident community members, allegedly acting on behalf of the Compania Guatemalteca de Niquel (CGN), Compania Procesadora de Niquel (ProNiCo), and Mayaniquel, subsidiaries of Solway, the Russian mining conglomerate.

Eight months later, the [US Treasury Department](#), announced its decision to sanction the two officials representing the companies, “The leader of Solway’s mining operations in Guatemala, Russian national Dmitry Kudryakov, along with Belarusian national Iryna Litviniuk, allegedly led multiple bribery schemes over several years involving politicians, judges, and government officials” according to a statement released by the US agency.

Rodrigo Tot remains cool-headed in describing next steps for his community in standing up to powerful economic and political actors. “Our job will be to make sure the government does what the court directed,” he said.

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