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From issue: **Consulta Previa and Investment** (Spring 2014)

■ AQ FEATURE

Two Views of Consulta Previa in Guatemala: A View from Indigenous Peoples

BY [Mash-Mash](#) and [José Guadalupe Gómez](#)

The Guatemalan state has failed in its obligations to consult Indigenous peoples.

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Guatemala is a plurinational country that 22 Maya nations, Xinka, Garifuna, and Ladino people jointly call home. The efforts to gain access to natural resources—often without the consent of the communities affected—constitute another stage in the long history of dispossession and repression of Maya peoples since colonization.

The Maya peoples' understanding of Earth stands in conflict with capitalism. To capitalists, Earth is defined as a source of raw materials that can be sold to the highest bidder. Maya people, in contrast, do not place a monetary value on our natural resources. We call Earth “Qtxutx‘Otx,”¹ or Mother Earth, because she gives us life, water, air, fire, and nourishment, and she protects us. We are part of her and she of us.²

Since the Spanish invasion in 1524, the Maya have been systematically robbed of their land and exploited. Colonialism imposed the feudal system of *encomienda* (share cropping) and dispossessed communities of their land. The repression increased under President Justo Rufino Barrios (1873–1885) in the so-called Liberal Reform, when Indigenous peoples' communal lands were divvied up among landowners and businessmen for coffee and later banana plantations.

The overthrow of President Jacobo Árbenz in 1954 unleashed over three decades of violence that directly affected and often targeted Indigenous peoples. According to data from the Comisión para el Esclarecimiento Histórico (Commission for Historical Clarification—CEH) and the Proyecto Interdiocesano de Recuperación de la Memoria Histórica (Inter-Diocesan Recovery of Historical Memory Project—REMHI), more than 1 million people were displaced, hundreds of communities destroyed, and more than 250,000 people killed or “disappeared” during the armed conflict. Other victims include 80,000 widowed women, 200,000 orphans, 700,000 people conscripted by paramilitary groups such as the Patrullas de Autodefensa Civil (Civil Self-Defense Patrols), and more than 50,000 identified and 25,000 unidentified refugees.



A protest in San Juan Sacatepéquez in July 2013. Photo: Jorge Dan Lopez/Reuters.

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A new Constitution of the Republic, established in 1985, opened certain opportunities for Indigenous peoples and marked the beginning of a transition. An end to the armed conflict came in December 29, 1996, with the signing of the Agreement on a Firm and Lasting Peace; but the accord and its commitments had been negotiated by and among established economic interests. As a

result, 17 years after its signing, less than 5 percent of its goals have been met; objectives like bilingual education and the reduction in the size of the military have fallen by the wayside.

Mining and the Maya Peoples

Today, the Maya are experiencing another stage in their history of marginalization and dispossession. A new threat comes from the exploitation of the Mesoamerican Biological Corridor—a large corridor connecting national parks and nature refuges in Mexico and Central America—by multinational corporations in alliance with local governments and oligarchies.

The exploitation violates domestic and international laws that protect the rights of Maya and other Indigenous peoples. During the peace process in 1996, Guatemala ratified International Labour Organization Convention 169 (ILO 169), committing the state to honoring the rights of Indigenous peoples, including their right to be involved and make decisions through their own representative institutions in processes affecting their land, territories and natural resources.³

After the peace accord, Guatemala turned to the development of the country's natural resources to create economic prosperity, peace and progress. However, the government ignored its obligations to respect the human rights of Indigenous peoples. We were never asked to participate in discussions on decisions about the development of resources on our lands and territories. The Congress of the

Republic passed various laws and regulations that further violated our rights—among them, the Mining Law of 1997, which sought to privatize the state’s assets, companies and resources.⁴ No Indigenous peoples were ever consulted about this law—a clear contravention of the American Convention on Human Rights,⁵ as well as ILO 1696 and Guatemala’s own constitution.

Currently, the Ministry of Energy and Mining has authorized 345 exploration and exploitation licenses for precious metals and minerals for multinationals such as Goldcorp Inc., Nichromet Extraction Inc. and Tahoe Resources Inc. In addition, the state has also granted hundreds of permits for oil production and the construction of hydroelectric plants and megaprojects such as the Northern Transversal Strip, the Dry Canal—which involves building a highway, a cargo rail line and other infrastructure in six Guatemalan departments—and the extension of an electrical grid by TRECSA to provide energy to mining and agricultural companies.

These licenses are evidence of the government’s failure to comply with its obligations to Indigenous rights over our ancestral lands and our right to self-determination.

Our Right to Make Decisions Related to Our Lands and Resources

Since the state has failed to meet its own obligations of consultation, our communities are exercising our rights, which are also recognized by national and international laws.

The Maya, Xinka and Garifuna peoples have come together and reconstituted our own forms of self-government and ancestral organization. The Consejo Plurinacional del Pueblo Maya (Plurinational Council of Maya Peoples—CPO) is the political manifestation of Guatemala’s Indigenous peoples. Today, the Council comprises representatives of the Mam, Sipakapense, K’ichè, Kaqchiquel, Q’anjob’al, Chuj, Akateko, and Poptí peoples, among others.⁷

To date, more than 75 community consultations have been carried out in good faith. More than 1.5 million people—women, men, children, and elders have participated. They have said an overwhelming “no” to the imposition of mega construction projects and the development of their territories. The community consultations are binding because they represent the peoples’ voice and decision, and no other laws or private interests can take precedence over them. They have halted the advance of companies in Indigenous territories, obligating the government to declare a moratorium on new mining licenses. The moratorium, however, does not solve the root of the conflict.

The self-government of Maya peoples and their legal system includes consultation as one of its key principles and foundations. The goal of consultation is consensus and mutual agreement for the attainment of *tb’anil qchwinqlal*, or *el buen vivir* (life with dignity). All community members are called upon to fulfill this community norm. The *Pop u’j*—one of our sacred books—describes our traditional thinking and this ancestral legal process: “and so they sat, they came together, united their thoughts and words, and came to an agreement.”⁸

The State’s Response

The government, the oligarchy and multinational corporations have repressed Indigenous peoples who have fought for their land rights—portraying us as being against development. The repression has

increased in response to social and political conflict. Our lands have been militarized and some of our leaders have been persecuted, criminalized and assassinated.

On October 4, 2012, for example, the administration of Otto Pérez Molina mobilized the armed forces to crush a peaceful protest over constitutional and educational reforms and against increases in the electricity prices in Totonicapán, killing six citizens of the K'iché people.

In 2013, leaders of the Maya, Xinka, Garifuna, and Mestizo peoples were repressed and terrorized because of various conflicts stemming from mining, hydroelectric projects, the agro-industrial sector, petroleum prospecting, and protected areas. The list of victims is getting longer across the country. For example, in Huehuetenango, an arrest warrant was issued for Rigoberto Juárez; Rubén Herrera was jailed; and Daniel Pedro Mateo was murdered—all for speaking out against the Spanish capital-backed hydroelectric power station Hidro Santa Cruz.

Recognition of Our Rights

National and international norms and institutions have sided with us. The Constitutional Court declared in 2009 that “Indigenous peoples’ right to consultation is a fundamental right and collective in nature, through which the state is obligated to establish, in good faith, procedures that seek to determine the views and the free and informed consent of these communities whenever government actions—be they administrative or legislative—may have a direct impact on them, with the goal of establishing agreements or measures that have their welfare in mind.”⁹

However, in its decision, the Court also stated that “the consultations are not binding,” showing a clear inclination toward the interest of the oligarchy and multinational corporations.¹⁰

In contrast, Dinah Shelton, then-special rapporteur for Indigenous peoples at the Inter-American Commission on Human Rights (IACHR), emphasized, “Consultation and consent are not limited to subjects that affect Indigenous territorial rights, but also any administrative or legislative actions by states that have an impact on the rights or interests of Indigenous peoples.”¹¹

Mining Confers Few Benefits

Most of the revenue generated by mining goes to the company, and of the small fraction of taxes collected on company profits by the national government, very little flows back to the communities. At the same time, mining often brings negative effects such as the contamination of surface and subterranean waters, air pollution, harmful effects on human and animal health, death of flora and fauna, deforestation, and soil erosion. It has also generated social conflicts and divisions.

Last but not least, natural resource extraction also jeopardizes food production by using (and often polluting) land that communities rely on to feed themselves.

Our Plurinational Council, through its legal commission, filed a petition before the IACHR in defense of our territory and rights in September 2013.¹² Our peoples, acting through our legitimate authorities, filed suit against the Guatemalan state for violating our rights through the 1997 Mining Law, approved after Guatemala had already ratified ILO 169.¹³ Nonetheless, during this new B’aqtun (Maya long

count of 5,200 years) and in spite of this difficult situation, our peoples will continue exercising our rights in pursuit of a good, full life for all of humanity.

Endnotes

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