

House Foreign Affairs Committee
Tom Lantos Human Rights Commission

Hearing
on
The Rights of Indigenous Peoples in the Americas

November 20, 2020 – 10:00 a.m.
Virtual Hearing

Statement of Leonardo A. Crippa
Senior Attorney
Indian Law Resource Center

Distinguished Members of Congress:

My name is Leonardo A. Crippa. I am a descendant of the Kolla people located in the Northwest of Argentina, and a Senior Attorney at the Indian Law Resource Center in Washington, D.C.

For almost 20 years, I have practiced law in the field of human rights and advocated for the enhancement of multilateral development banks' policies and procedures, especially those aiming at safeguarding indigenous peoples from environmental and social harm by bank-funded projects.

As the Center's Senior Attorney, I have the opportunity to provide legal counsel and representation to indigenous communities and tribes of the Western Hemisphere, as well as to seek changes to national laws and policies using international legal mechanisms, especially the Inter-American Human Rights System. I have engaged in the development of the American Declaration on the Rights of Indigenous Peoples, which was adopted by Organization of American States' General Assembly in 2016. I have also represented several indigenous communities in cases before both the Inter-American Commission on Human Rights based here in Washington, D.C. and the Inter-American Court of Human Rights based in San Jose, Costa Rica.

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My clients, including a Guatemalan native community that I work for, are people that believe in law as a means to achieve lasting changes in their lives and for future generations. The goal they seek, their number one priority, has always been the same: achieve full legal security over the lands they collectively possess in a traditional and public manner. They have a distinctive spiritual and material relationship with their lands and they hope the law will help them guarantee land security. They want to stay on their lands, not to migrate to major cities nor to the United States. This is particularly true for my current client, the Maya Q'eqchi' Agua Caliente community, and I believe it is true for all other native communities in Guatemala.

Guatemala is a country in Central America with a population of around 16 million, mostly rural. This is a country with one of the largest Indian populations in the Western Hemisphere. Official sources indicate that about 41% of that population is indigenous; other sources suggest 60%. The Maya, Xinca and Garifuna are the principal groups that make up Guatemala's Indian population.

According to the United Nations Development Programme (U.N.D.P.), Guatemala remains one of the most unequal countries in the world in terms of health, education, and income distribution. Extreme poverty is three times higher among the indigenous population than in the nonindigenous population. Guatemala is the country that is most severely affected by chronic malnutrition in the Western Hemisphere. The food and nutrition insecurity situation reaches critical levels in rural areas, mainly affecting children under 5 years old, and worsens to an alarming degree among the indigenous population. According to the United Nations Children's Fund (UNICEF), chronic malnutrition affects eight of every ten indigenous children (80%).

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The Agua Caliente community that I represent is at the forefront of a major legal fight to secure land and natural resource rights in a procedure before the Inter-American Court of Human Rights. This case demonstrates the vulnerability of Guatemala's land survey, titling and registry

agencies and procedures. This land insecurity is especially true of collectively held indigenous lands and lands subject to mining interests. This is not an isolated case. On the contrary, it reflects major problems that almost all indigenous communities face when seeking legal security over their lands.

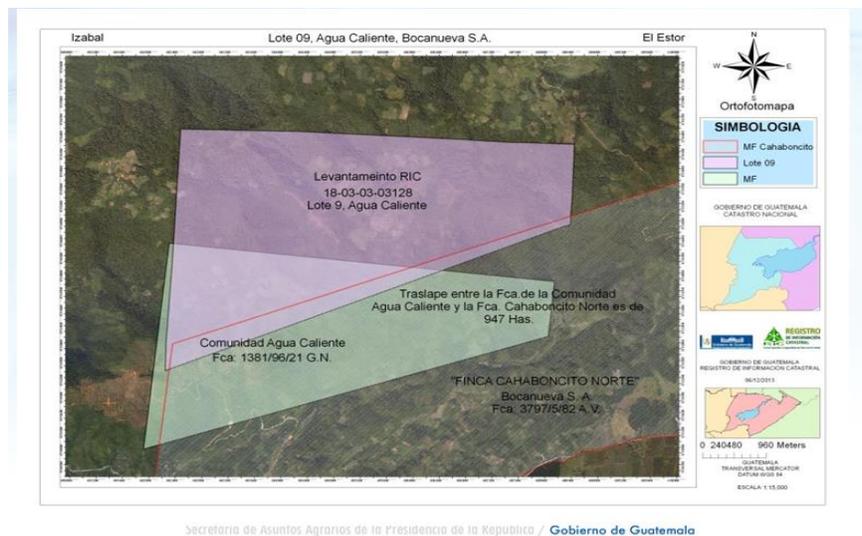
For more than 45 years, Agua Caliente has been subject to a land titling procedure that has failed to result in a land title. In 1974, the community filed a land claim asking for a state-issued land title over their collectively held lands. In 1985, the state issued a provisional land title, which would become final after a number of payments were made. In 2002, Agua Caliente completed such payments and thus fulfilled all legal requirements in order to receive a final land title. Unwarranted delays in issuing the title forced Agua Caliente to seek judicial protection in 2009. Two years later, the Constitutional Court of Guatemala issued a major decision ordering FONTIERRAS, the land titling agency, to issue without further delay the land title.

Instead of issuing the title, various government agencies have undermined the official recognition of Agua Caliente's land rights, promoted corporate exploitation of sub-surface resources on community lands, and avoided remedying the land overlap that exists with a nickel mine project. The following examples show a state that neither respects the rule of law nor extends equality before the law to indigenous peoples when there are mining interests at play:

1. First, the Guatemalan registry of deeds (Registro General de la Propiedad) allowed the removal of registry pages that proved Agua Caliente's 1985 provisional title. This page removal prevents titling from moving forward.
2. Secondly, in 2004, the Ministry of Mining and Energy awarded a permit to explore and exploit sub-surface resources located on Agua Caliente lands to the Guatemalan Nickel Company, a private company and a subsidiary of the Solway Investment Group based in Switzerland.
3. Thirdly, the land survey agency (Registro de Informacion Catastral) allowed a boundary marker to be relocated from its original and rightful location, creating a

major overlap with the nickel mining project area. The overlap affects other 15 Maya Q'eqchi' communities.

4. Last but not least, since 2002, FONTIERRAS, the land titling agency refuses not only to take actions to restore the removed registry pages (necessary to be able to issue the final land title), but also refuses to comply with the 2011 Constitutional Court decision. Last year's Civil Court of Appeals resolution confirmed the non-compliance with the court decision and ordered the agency to immediately issue the land title.



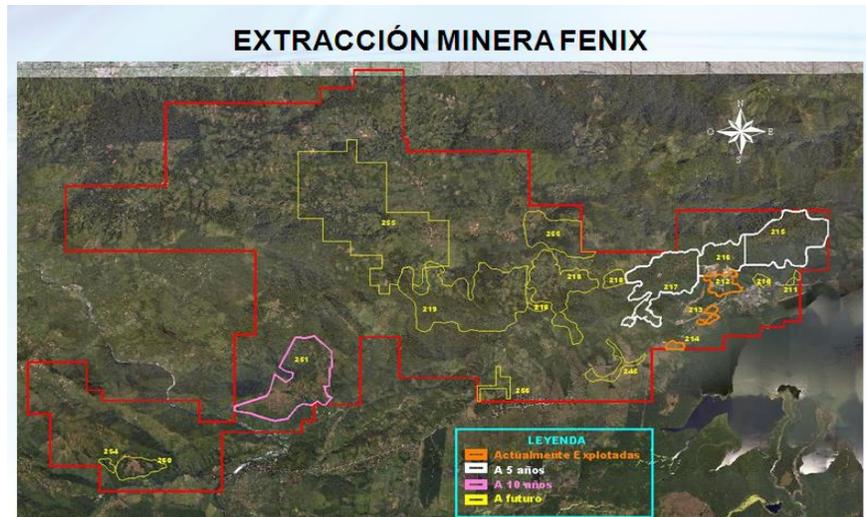
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As the former United Nations Special Rapporteur Rodolfo Stavenhagen once stated, the awarding of mining permits worsened the situation of discrimination and social exclusion of indigenous peoples in Guatemala. In his opinion, these permits "in general exclude the indigenous populations settled within or around project areas from the use of resources, do not take into account the impact on the needs of the communities, do not include solutions to such impacts and have not been consulted with the interested parties."

In Guatemala, indigenous peoples, communities and tribes are afforded no right whatsoever to the natural resources pertaining to their lands, whether they are surface or sub-surface resources. No law recognizes their right to participate in the management of their resources or benefit from their exploitation or commercial development. Other countries in the Western Hemisphere do recognize these rights by law, and even multilateral development banks have indigenous peoples' policies that mandate that borrowing countries implement safeguard measures to fulfill these rights.

As a result, indigenous peoples are being pushed away from their collectively held lands to pave the way for mining and other extractive activities. In 2018, as a result of a hearing held by the Guatemalan Congress' Transparency Commission, all the government agencies mentioned before recognized the land overlap in question. Shockingly, a year later, these same agencies proposed that the 16 affected communities be relocated as a means to remedy the overlap in favor of the mining company, which plans to start exploiting sub-surface resources located on these lands. According to the maps below, the company plans to exploit resources on Agua Caliente's (Zone No. 251) lands for a ten-year period.





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Based on the above, I respectfully recommend the following actions to ensure that indigenous peoples are afforded equality before the law in Guatemala and that they be given a fair chance to be development partners, not development casualties:

1. Provide financial support to the Inter-American Commission on Human Rights, especially to its Special Rapporteurship on the Rights of Indigenous Peoples. This is the last resort that communities, such as Agua Caliente, have when there is no rule of law in their home countries.
2. Ensure that the United States' financial contribution to multilateral development banks support land administration projects, with a focus on achieving major changes in Guatemala's program of surveying, titling and registering collectively held Indian lands.
3. In order to contribute to Guatemala's much-needed law reform, share knowledge and lessons learned from the United States' federal Indian law relating to self-government and natural resources rights.

Thank you for your time and your consideration of this urgent matter.