

**COMPARATIVE TABLES OF COINCIDENCES REGARDING THE RECOGNITION OF THE OBLIGATORY, RECOGNITION AND CHARACTERISTICS OF THE PRIOR CONSULTATIONS**

Comparison. (Quotes)	Recognition of the right of consultation as a fundamental right integrated into the constitutionality block.	P.
San Rafael. (4785-2017)	Based on Article 46 of this Basic Text, the Constitutional Court has interpreted that prior consultation is “ <i>a fundamental right of a collective nature</i> ”, Fully integrated into the Guatemalan constitutional bloc.	183.
Oxec I and II. (90, 91, 92-2017)	In sum, the foothold that has gradually been built in the field of International Human Rights Law with respect to the aforementioned consultation is part of the Guatemalan constitutionality block.	46
Progreso VII Derivada. (3207 and 3344-2016)	Therefore, the recognition of this right today is indubitable and the consequent obligation of the State to guarantee and protect it or, where appropriate, repair it, unavoidable.	Cited, p.41  43-44.

Comparison. (Quotes)	Mandatory consultation for the effective intervention of indigenous peoples regarding their substantive rights and interests (according to their own development priorities).	P.
San Rafael. (4785-2017)	The consultation procedures with respect to extractive projects constitute the means by which indigenous peoples can actively contribute to the prior evaluation of the possible effects of the proposed activity on their substantive rights and interests. In addition, they are key to the search for less harmful alternatives or to the definition of mitigation measures, to reach favorable agreements on their own development priorities and strategies, and to promote the enjoyment of their human rights.	198.
Oxec I and II. (90, 91, 92-2017)	<p>Consultation well in advance is essential for indigenous communities to be able to know, understand and pronounce on the basis of their right and worldview on all the scope of the measures that they intend to adopt, as well as the benefits that they will specifically have in the framework of their right to choose their own development and according to their worldview imposed by ILO Convention 169, Articles 4, 6, 7, 8, among others.</p> <p>This includes that in the consultation procedure of this case, the benefits that will be perceived by the affected indigenous peoples and the possible compensation for environmental damage, always with their own development priorities, be reported in accordance with the above and following criteria.</p>	86  87
Exmingua. (3207 and 3344-2016)	The administrative measures that they intend to take on in territories in which they are based, can only be carried out when the consultation process that allows them to express their development priorities, be fully informed about the implications of such measures, freely deliberate on conditions of viability of these, agree on proposals consistent with all of this and, in short, dignify safeguarding their living conditions and their existence as peoples with their own identity, culture and worldview.	60

<p>Comparison. (Quotes)</p>	<p>The consultation is not identified with any phase of the administrative procedure (granting licenses) nor is it a mere formal procedure.</p>	<p>P.</p>
<p>San Rafael. (4785-2017)</p>	<p>International standards clearly establish that consultation is not a mere formality or procedure to obtain authorization or expedite the implementation of a measure.</p> <p>i) The consultation should not be understood as a mere formal procedure: The process of consultation with indigenous peoples can only be considered exhausted, when the parameters established by Convention 169 itself have been observed. The simple information or socialization activities of an administrative measure, or the gathering of the opinions that some residents may have regarding government decisions that may affect them, are not enough to take for granted that right of indigenous peoples.</p>	<p>195</p> <p>305</p>
<p>Oxec I and II. (90, 91, 92-2017)</p>	<p>Adequate compliance with the provisions of the General Electricity Law or the Mining Law and their respective Regulations does not exclude the state responsibility to put into practice the consultation established in Convention 169 of the International Labor Organization on Indigenous and Tribal Peoples in Independent Countries.</p>	<p>49</p>
<p>Progreso VII Derivada. (3207 and 3344-2016)</p>	<p>The exhaustion of this phase foreseen in the Guatemalan legal system as part of the requirements for the approval of that environmental instrument, cannot be considered, in any way, as a substitute for the obligation of the State of Guatemala to exhaust the consultation process to indigenous peoples.</p>	<p>55.</p>

Comparison. (Quotes)	On the innovation and integration function carried out by the Constitutional Court regarding the right of consultation.	P.
San Rafael. (4785-2017)	<p>In any case, when this systematicity has not yet been implemented, that is, if those mechanisms do not formally exist [as is the case in Guatemala], transitory channels must be adopted with a view to the effective exercise of consultation.</p> <p>[In the same sense, the terms of the judgment issued by this Court are found in the aforementioned file 3878-2007].</p>	313.
Oxec I and II. (90, 91, 92-2017)	<p>Only this Court is allowed to depart in "<i>innovation</i>" by virtue of the principle of progressivity of human rights.</p> <p>The correct decision is brought up for that reason in the sentence of December 21, two thousand and nine (File 3878-2007).</p>	84
Exmingua. (3207 and 3344-2016)	<p>This Court, on previous occasions, aware that the absence of internal regulation has led to the non-observance of the commitments that the State of Guatemala concerns regarding the rights of indigenous peoples, has demarcated, since its rulings, guidelines to follow to guarantee the observance of such obligations.</p> <p>[Judgment of 05/26/2017 accumulated files 90, 91 and 92-2017, judgment of 05/25/2015 accumulated files 156 and 159-2013 and Judgment 09/03/2018 file 4785-2017</p>	71

## COMPARATIVE TABLE OF COINCIDENCES IN THE ORDERED INDIGENOUS PEOPLE CONSULTATION SCHEME.

Jurisprudential design of the consultation guidelines. Verbatim of all sentences.	Oxex I and II. (90, 91, 92-2017)	San Rafael. (4785-2017)	Progreso VII Derivada (3344-2016)	Niquegua Norte and Minera Fénix. (697-2019)
Sentence pages.	92-96	514-519	72-76	263-268.
<p>The Ministry of Environment and Natural Resources must transfer to the Ministry of Energy and Mines the administrative file formed by request for approval of the corresponding Environmental Impact Assessment Study (... omissis...) with detailed report specifying (... omissis...) the environmental repercussions of the project, operation or activity in question and, in general, whatever information is pertinent to allow a later comprehensive and objective balance of the way and degree of its incidence, as well as the area in which it would occur, produce or produce</p>				
<p>Once the related documentation has been received, the Ministry of Energy and Mines must make a call by all means of dissemination and communication with coverage.</p>				
<p>The aforementioned ministry must summon, at least, the following people and institutions, in order to designate two (2) regular representatives and two (2) alternates to carry out a preparatory phase (omissis)</p> <ul style="list-style-type: none"> <li>• To the municipal council</li> <li>• To the indigenous communities directly affected. Its representatives must be appointed according to their own customs, institutions and traditions.</li> <li>• To the Ministries of Culture and Sports, and of Environment and Natural Resources.</li> <li>• To the board of directors of the language community. This call must be made through the</li> <li>• Academy of Mayan Languages of Guatemala.</li> <li>• To the Community Development Council (s) operating in the area of influence.</li> </ul>				

- To the legal persons on whom the authorization for the exploitation of public domain assets has fallen.
- To a representative of the Human Rights Ombudsman.
- To the representatives of the Universities that make up the Departmental Development Council.
- (In some cases to two representatives of the presidential dialogue commission)

Once the respective representatives of the subjects summoned in the institution that makes the call have been accredited, the indicated pre-consultation stage must be carried out (the participants will decide its duration), in which the suitable people and institutions, according to their scope of competence or field of knowledge, will make an initial presentation, providing objective, truthful and pertinent information on the implications of the authorization to use public domain goods (omissis) in order to establish the basis for weighing the way and degree of its incidence in the living conditions of the indigenous communities directly affected.

Next, it is necessary to propose and define the mechanisms by which the consultation should be carried out; all the summoned subjects will jointly decide on their design. Within their flexibility, they must contain, as a minimum:

- Procedures that can be carried out in good faith and that proactively tend to seek consensus and agreements between the main actors in the process,
- Effective means of transmitting the information of the authorization to use public domain assets (omissis) in an accessible and easily understandable way, to the communities (omissis) The same duty corresponds to the latter, through their representatives, about the information related to its institutions, customary practices and values.
- Appointment, by indigenous peoples, of advisers belonging to specialized academic entities who will accompany them during the consultation process.
- The indigenous people, through their representatives, must present, also in an accessible and understandable way, information about their traditional way of life, their cultural identity, their social structure, their economic system, their customs, their beliefs, their distinctive traditions. and other points that it deems pertinent to express.
- Way of solving the disagreements that may arise between those involved in the development of the consultation.
- Scheduling of consultation procedures, designed in accordance with reasonable deadlines for their performance, in which at least aspects such as: i) specific determination of opportunities to comment on the proposals made by the actors directly involved in the consultation are included; ii) probable dates of materialization of pre-agreements; and iii) form of systematization of the agreements reached and of follow-up to promote their fulfillment.

Once the pre-consultation has been carried out, within a peremptory period that must have been set in the first meeting, the consultation itself will be opened, in which the main actors of the process will dialogue in order to reach agreements to through consensus, through their respective representatives. At the request of any of them, the representative of the Human Rights Ombudsman can act as facilitator, mediator or conciliator. The rest of the subjects summoned for the pre-consultation also intervene at this stage, but without their pronouncements directly linking the main actors.

Finally, once the agreements have been reached, the competent governmental and municipal authorities must define and, where appropriate, authorize, the forms and requirements aimed at guaranteeing compliance with them.

The foregoing must be done within a period of no more than twelve months (in some cases "immediately").