

“We were born here, we haven’t ‘come’ here”

“Aquí hemos nacido, no hemos ‘venido’”

*“Machiwar kayopá temeyum
Ira non kuxpon tara”*

PRELIMINARY OBSERVATIONS

Of the independent expert mission composed of Dr Julian Burger, Monica Feria-Tinta and Claire McGregor in relation to hydro-electric projects in the region of Jocotán and Camotán, Guatemala, affecting Chortí indigenous communities

OBSERVATIONS

Regarding the community

1. We met with Maya Chortí indigenous communities and talked with representatives of 12 Chortí communities in the region of Jocotán and Camotán in Guatemala. They are communities with their own language, and a sense of ancestral land rights and Chortí organization, in the Maya tradition. They self-identify as indigenous people and as custodians of their territory having been born and raised there, as were their great-grandparents. They said: "we were born here, we have not 'come' here".
2. The communities say their territory consists of "water, land, forests and rocks". The communities consider that the Jupilingo River is central to the ancestral heritage. It is a natural resource of the community because they subsist on agriculture and water is scarce. The construction of a dam is being proposed in this area.
3. Communities are concerned about a series of social, economic and environmental impacts, in particular:
 - a. Displacement of families, with the lack of another place to go;
 - b. Reducing the chances of subsistence;
 - c. Impact on the possibility of fishing;
 - d. Loss of access to the river for daily activities such as bathing and washing;
 - e. Worsening water shortages, and access to the only source of it in times of drought (the area is known as the "dry corridor").
4. Communities have identified the lack of consultation in relation to the different extractive and hydro-electric activities in the region. In particular, representatives have said:
 - a. They were not informed about the projects;

- b. There has not been a consultation process directly with communities;
- c. Indigenous communities are excluded from these consultation processes (they feel excluded as Chortí people with collective rights);
- d. They feel abandoned by the state.

5. For these reasons, they have organized to carry out what they describe as the defence of their territory. They identify problems as a result of this; in particular: they are treated as illegal organizations and feel criminalized and persecuted. They denounce security problems as the main concern of the representatives of 12 communities.

6. Communities have reported that the arrival of the project has already created tensions and conflicts within the community, destroying communal harmony.

7. Indigenous communities noted that the concept of development that is used in these projects is "development" for the company and not for communities. Indigenous communities have their own sense of what development is and have the right to determine their own development.

In relation to the state

8. It was noted by the mission that in talks with state representatives, both locally and nationally, there is a lack of recognition of the issue of the rights of indigenous peoples, even though these rights exist in Guatemalan law.

9. State institutions do not consider the right to consultation as an obligation. Although international human rights treaties are part of Guatemalan law and overriding according to the Guatemalan Constitution, this pre-eminence is denied.

10. At the level of the mayors (*Alcaldías*), they have commented that communities do not communicate with them and do not respond to their invitations to meetings. They lament the lack of communication and what they see as misinformation in the community. This suggests to us a lack of adequate mechanisms to facilitate dialogue between stakeholders.

11. At ministerial level, they have commented that their processes have ample opportunity to oppose projects. First, a period of 8 days to lodge opposition with the support documentation (such as a legal-technical study) following the publication by the Ministry of the request from a company for a project. The mission considers that eight days are not enough for indigenous peoples (who are a community) to consider proposals and submit technical and legal objections to these proposed reports.

12. Both at the national and local levels, the authorities understand that it is the national authorities who have the final decision on the progress of a project. The Ministry can override what local authorities (Mayor's office) have decided on a specific project.

In relation to the company

13. The representative of the company told us that:

- a. They own all the land required for the project;
- b. They are in the process of socialization of the project;
- c. They have been consulting with relevant communities through the COCODES;
- d. They already have the license from the ministry of energy and mines for the project in El Oregano (Jocotán).

14. The mission noted that the company, in its discourse, does not recognise the Chortí as an indigenous people with collective rights.

Regarding civil society

15. The mission in its contacts with civil society was informed of the difficulties of implementation of indigenous rights and challenges at the country level. One of the important challenges relevant to our report is the lack of independence of the judiciary and the lack of access to justice for indigenous peoples in particular.

16. The lack of judicial independence has two impacts:

- a. Nationally, cases seeking access to the recognition of indigenous rights fail or are not dealt with despite the merits of their arguments, particularly in light of what has already been established in precedents before the inter-American human rights system. (Binding in Guatemala).
- b. At the local level, Chortí indigenous peoples appear to be criminalised for their activities in defence of their land and do not seem to enjoy due process in their cases. Meanwhile, attacks against indigenous members of the communities are not investigated or their perpetrators are not brought to justice.

17. We have been told that "Companies are untouchable" and that "there is a business culture that is stuck in another century" in Guatemala.

A full report on this mission will be issued soon and will be available for the general public.

Experts' biographical information:

Dr Julian Burger is a Visiting Professor at the Human Rights Centre of the University of Essex, and at the School of Advanced Studies in London. For more than 20 years he headed the indigenous peoples and minorities programme at the UN Office of the High Commissioner for Human Rights, working directly with indigenous peoples in the region, helping establish technical cooperation activities, training governmental officials in human rights and initiating dialogue between

governments and civil society on human rights themes. During this period, he organized the discussions on the Declaration on the Rights of Indigenous Peoples and helped launch the principle human rights mechanisms on indigenous peoples – the Special Rapporteur, Permanent Forum on Indigenous Issues and the Expert Mechanism on the Rights of Indigenous Peoples. He also helped establish inter-agency networks of UN organizations to improve integration of indigenous and minority rights into development programmes. Dr Burger has published books and articles on indigenous peoples and human rights since the 1980s and is currently working on a publication that will evaluate developments relating to indigenous peoples rights and examine current challenges. He has extensive experience of field work in Latin America, and currently teaches the optional module ‘Human Rights in Latin America’.

Monica Feria-Tinta is a barrister at 20 Essex Street, a leading international commercial set of barristers’ chambers. She specialises in public international law, including its interface with commercial matters, with a particular focus on energy and natural resource extraction as well as business and human rights. She has advised on legal issues relating to the exploration of gas in the Amazon and the development of hydro-electrical projects in Guatemala. In 2015 she led a delegation of independent experts to Guatemala to investigate the human rights situation of maya Chorti’ communities affected by hydroelectric projects. She has over 15 years’ experience working with human rights issues relating to the Latin American region having litigated landmark cases before the Inter-American Commission and Inter-American Court of Human Rights. She has appeared as counsel before UN organs, having previously worked for international tribunals in The Hague. Her litigation work received the 2006 Inge Genefke International Award and in 2007, the Gruber Justice Prize, which honours individuals who have advanced the cause of justice as delivered through the legal system.

Contact: mferia-tinta@20essexst.com T +44 20 7842 1200

Claire McGregor is a UK barrister practicing in a wide range of public and civil law. Claire has extensive experience representing claimants in complex tort cases, typically where environmental damage leads to claims for personal injury and financial loss. She is currently instructed in proceedings against Shell subsidiaries in Nigeria by local communities and fishermen for extensive oil spillage affecting their livelihoods and causing long-term damage to the environment. She is also instructed by a group of farmers in Colombia in proceedings against former subsidiaries of BP for the damage caused to their farms and livelihoods as a result of the construction of the OCENSA pipeline. Before joining the bar, she worked for three years at Leigh Day and Co solicitors where she was closely involved in the Trafigura case in which 30,000 claimants from the Ivory Coast sued oil multinational Trafigura for compensation following a toxic waste spillage in Abidjan. This became the largest group litigation case in the UK and resulted in a compensation settlement for the claimants. Claire also works on human rights cases, with a particular interest in immigration detention. She worked for a year as a legal advisor for refugees at Africa and Middle-East Refugee Assistance (AMERA), an NGO based in Cairo, Egypt, where she provided legal advice and representation to refugees from across Africa specialising in francophone countries.