

10 October 2014

To: Ms. Victoria Tauli-Corpuz, UN Special Rapporteur on the Rights of Indigenous Peoples

CC: John Knox, UN Independent Expert on Human Rights and the Environment
Commissioner Rose Marie Belle Antoine, Rapporteur on the Rights of Indigenous Peoples, Inter-American Commission on Human Rights
Commissioner Paulo Vannuchi, Head of Unit on Economic, Social and Cultural Rights, Inter-American Commission on Human Rights (IACHR)
Hugh Sealy, Chair of the Executive Board, Clean Development Mechanism

Via: indigenous@ohchr.org; ieenvironment@ohchr.org; cidhdenuncias@oas.org; pcorominas@oas.org; ncolledani@oas.org; hughsealy@yahoo.com

Re: Request to conduct formal investigation of Santa Rita Hydroelectric Dam in Guatemala, approved by the Clean Development Mechanism

Dear Special Rapporteur Tauli-Corpuz:

The undersigned organizations respectfully write to you to bring your attention to the Santa Rita hydroelectric dam in Guatemala. The dam was registered as a project under the Clean Development Mechanism (CDM) – established under the UN's Kyoto Protocol – in June 2014¹. Numerous violations against the indigenous Q'eqchi' and Poqomchi' communities have been reported prior to and since project approval, most recently in violent incidents from 14 to 16 August 2014 resulting in several injuries and deaths.

We respectfully request that you use your mandate as the UN Special Rapporteur on the Rights of Indigenous Peoples to support the indigenous peoples threatened with imminent and serious harm by this project. We ask that you urgently call on (1) the Government of Guatemala to provide information regarding present and future plans for this project and the appropriate measures being undertaken to address serious threats of harm to indigenous peoples impacted by the project; and (2) the Board of the Clean Development Mechanism to put necessary measures in place to conduct an investigation and, upon a finding of non-compliance with applicable laws and standards, withdraw its registration of the Santa Rita project. We would be happy to provide any information, research or factual analysis that would assist your office in formulating appropriate recommendations and proposals to prevent imminent harm, and to provide guidance on actions to prevent and remedy further violations of the rights of indigenous peoples impacted by this project.

Since 2010, numerous communities that will be impacted by the project have expressed their opposition to the development of the hydroelectric dam in their territory. Many of the affected people were never consulted in accordance with the requirements as set forth in the CDM

¹ UNFCCC, *Project 9713: Santa Rita Hydroelectric Plant*, available at <http://cdm.unfccc.int/Projects/DB/ICONTEC1375474606.31/view>.

Modalities and Procedures² and the Guatemalan Agreement on Identity and Rights of Indigenous Peoples.³ The latter states that,

“recognizing the special importance which their relationship to the land has for the indigenous communities, and in order to strengthen the exercise of their collective rights to the land and its natural resources, the Government undertakes to adopt directly, when that is within its competence, and to promote, when that is within the competence of the legislative organ or the municipal authorities, the following measures, inter alia, which shall be implemented in consultation and coordination with the indigenous communities concerned.”⁴

The project developer has failed to comply with the above mentioned requirements in several ways. In the first communities meetings held in 2009, only some communities members inclined to support the project were invited and they were carried out as negotiations. Despite strong opposition and a formal complaint submitted by the Q’eqchies’ concerned community to the departmental and municipal government, they neither replied nor followed up. Moreover, the company attempted to start construction in February 2012, without addressing community concerns or fully consulting the affected communities as required by the CDM.

In August 2013, the situation further escalated when the national police attempted to illegally detain one of the community rights defenders. That same month, two children of Monte Olivo were shot and killed by a gunman, during the visit of the Inter-American Commission on Human Rights’ (IACHR) Rapporteur on the Rights of Indigenous Peoples.⁵

International bodies have recognized the gravity of the situation in Guatemala. The UN High Commissioner for Human Rights noted the murders of these two children from the community opposed to the Santa Rita project in reporting that approval of mining and energy projects has continued to generate conflict in Guatemala.⁶ Also, after her visit to Guatemala last year, the IACHR’s Rapporteur on indigenous peoples’ rights recognized *“that the current licenses for mining and hydroelectric plants were granted without the State having implemented prior, free, and informed consultation with affected indigenous communities, as it is obligated to do under international treaties signed by Guatemala”*.⁷

² CDM, Decision 3/CMP.1, FCCC/KP/CMP/2005/8/Add.1, Annex: Modalities and Procedures for a Clean Development Mechanism, Para 37(b).

³ Acuerdo sobre identidad y derechos de los pueblos indígenas, available at <http://www.guatemalaun.org/bin/documents/Acuerdo%20Pueblos%20Ind%C3%ADgenas.pdf>

⁴ Ibid., para. 4

⁵ Human Rights Council, *Annual report of the United Nations High Commissioner for Human Rights, Addendum: Report of the United Nations High Commissioner for Human Rights on the activities of her office in Guatemala*, U.N. Doc. A/HRC/25/19/Add.1, available at [http://www.ohchr.org.gt/documentos/informes/InformeAnual2013\(eng\).pdf](http://www.ohchr.org.gt/documentos/informes/InformeAnual2013(eng).pdf) para. 63.

⁶ Ibid.

⁷ IACHR. “Office of the Rapporteur on the Rights of Indigenous Peoples Conducted Working Visit to Guatemala” http://www.oas.org/en/iachr/media_center/PReleases/2013/066.asp

1. Guatemala has not only failed to meet its obligations to protect the Q'eqchi' communities from human rights abuses but also has taken affirmative actions that have caused abuses

Rather than ameliorating the process, the government has increased the oppression of the opposition. Since November 2013, the departmental government initiated a process in which community members were encouraged to reveal the names of the communities and the individuals opposed to the hydroelectric dam.

In the months leading up to and following the CDM's project approval, violence has erupted. In April 2014, the land owner and his security staff opened fire on the 'Nueve de Febrero' community (for the second time) while families were gathered to participate in a Mayan ceremony asking the earth for permission to plant their crops.

From 14-16 August 2014, the Ministry of Interior initiated a repressive operation against the Q'eqchi' communities of Cobán, Chisec and Raxruhá. More than 1500 police officers descended on the region, provoking terror within the civilian population and dismantling the peaceful blockade of about 200 indigenous families. Three women and two men were allegedly illegally captured and humiliated. Children, women and elders, who were blocking the street to call for peaceful dialogue, were assaulted with tear gas. They are still suffering the physical and emotional effects of the attack, and have yet to receive adequate treatment.

The police invaded and occupied individual properties and communal lands for more than a day, forcing families to take refuge in the mountains. Security forces violently entered homes, stealing animals, food, money, traditional clothing, electronics and books.

Three pregnant women experienced health complications due to the shock suffered during the attack. One woman gave birth, but her daughter is in a critical condition at the hospital for fetal distress during birth. Three other people from Samococh were murdered and evidence suggests they were extra-judicial killings.

In summary, over the past years, the opposition of local communities against the construction of the hydroelectric dam resulted in:

- 7 people killed, including two children 11 and 13 years of age
- 70 civilians injured, 30 illegally arrested, and more than 40 people with warrant restricting their rights
- 30 houses burned to the ground
- Employees of the hydroelectric dam intimidating local families with machetes and firearms
- State aggression against the communities, including tear gas bombs fired at children, women and the elderly
- Persecution of community leaders and Q'eqchi' farmers
- Invasion and occupation of communities' lands, forcing families to seek refuge in the mountains

In light of the events described above, Guatemala has not fulfilled its national and international obligations with respect to the:

- 1) Right to free, prior and informed consultation and consent of indigenous communities who will be affected by development projects;

- 2) Right to defend land, territory, and natural resources;
- 3) Right to security (protection from state-sponsored violence); and
- 4) Right to life.

2. Executive Board of the UN's Clean Development Mechanism has failed to meet its international obligations (including human rights obligations)

In addition, the CDM Executive Board has not fulfilled its obligations to ensure that projects registered under the CDM comply with the relevant rules and procedures and are consistent with international law. The CDM approved the project despite repeated concerns and continued letters providing evidence about violations of the local stakeholder consultation requirements.

In justifying its decision to approve the Santa Rita project, the CDM Board stated that *"the board has registered the aforementioned project as, after careful assessment, it was considered to be in compliance with the applicable CDM requirements, including the local stakeholder consultation process. Further, the designated national authority of Guatemala issued the required letter of approval, and also assured the Board, in the course of review of the project, that the local stakeholder consultation process was followed."*

Yet, the approval decision by the CDM Board was made without any investigation and was based solely on correspondence with officials associated with the project. However, the statements by the project developers and the State of Guatemala are in stark contrast to the reports by the Q'eqchi' and Poqomchi' indigenous people who continue to suffer from repression due to the imposition of the Santa Rita hydroelectric dam in their territories. For these reasons, we ask that the Special Rapporteur call on the CDM to put the necessary measures in place to conduct an investigation and, upon a finding of non-compliance with applicable laws and standards, withdraw its registration of the Santa Rita project.

We urge you to take these issues into serious consideration and take appropriate actions to protect the rights and curtail further threats to the indigenous communities of Guatemala.

If you have any questions or would like additional information, or wish to schedule a meeting, please contact Maximo Ba Tiul, ajpop2004@yahoo.com, (502) 5041 2542.

Respectfully,

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SUPPORTING INTERNATIONAL ORGANISATIONS

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- American Friends Service Committee, United States. Contact: Fabiola Flores Munoz, FFlores@afsc.org



- Associació d' Amistat amb el Poble de Guatemala, Spain. Contact: Ignacio Barroso, ignaciobarroso@telefonica.net



- Both Ends, The Netherlands. Contact: Anouk Franck, af@bothends.org



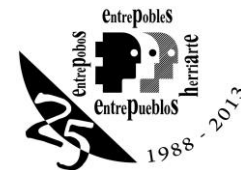
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- Carbon Market Watch, Belgium. Contact: Eva Filzmoser, eva.filzmoser@carbonmarketwatch.org



- Center for International Environmental Law, United States.
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- MISEREOR, Germany. Contact person: Anika Schroeder,
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- Missionary Oblate of Mary Immaculate, United States. Contact: Fr. Seamus Finn, seamus@omiusa.org



- Presbyterian Peace Fellowship, United States. Contact: Rev. Shannan R. Vance-Ocampo, svanceocampo@gmail.com



- Salva la Selva/ Rainforest Rescue, Germany. Contact: Guadalupe Rodríguez, guadalupe@regenwald.org



- Sisters of Mercy of the Americas - Institute Justice Team, United States. Contact: Jean Stokan, jstokan@sistersofmercy.org



- United Church of Christ, Justice and Witness Ministries, United States. Contact: Rev. Michael Neuroth, neurothm@ucc.org



- Urgewald, Germany. Contact: Knud Voecking, knud@urgewald.org

