

SANTA RITA: CDM HYDRO DAM IN GUATEMALA

THE NEED FOR SAFEGUARDS IN CLIMATE FINANCE FLOWS



The Santa Rita Hydroelectric Plant in the Dolores River in the Alta Verapaz region in Guatemala was registered as a Clean Development Mechanism (CDM) project in June 2014.

The communities living in the Alta Verapaz region are completely dependent on the water of the river for their livelihoods. The Guatemalan Agreement on Identity and Rights of Indigenous Peoples¹ recognizes the

rights of indigenous peoples in their territory. Additionally the ILO Indigenous and Tribal Peoples Convention (169)², ratified by Guatemala in 1996, the Modalities and Procedures of the CDM³ give communities the right to be consulted before project approval decisions are made. However, these three rules were violated and peaceful protests by communities against the construction of the dam resulted in severe human harms, including the alleged deaths of seven people, amongst them two indigenous children of 11 and 13 years.

The rights of indigenous peoples to be consulted

Since 2010, numerous communities in the Alta Verapaz region that will be affected by the project, have expressed their opposition to the development of the hydroelectric dam in their territory. The communities of Monte Olivo, Paso Concepción, Sataña II, Amanecer, Chinacanguini, Rubel Yum, Santa Valeria, La Ceiba Norte, Eca Sau Chil, Cantaloc, La Ceiba Dolores and Nuevo Porvenir publicly rejected the construction of Santa Rita Hydroelectric Project as a violation of their human rights to access water, adequate food as well as freedom of movement.

In recognition of the rights of indigenous peoples, the Guatemalan Agreement on Identity and Rights of Indigenous Peoples states that

“recognizing the special importance which their relationship to the land has for 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 [...] the following measures, inter alia, which shall be implemented in consultation and coordination with the indige-

nous communities concerned”

The ILO Convention concerning Indigenous and Tribal Peoples obliges governments to respect the traditional values of tribal and indigenous peoples and to consult with them on decisions affecting their economic or social development. Moreover, the CDM Modalities and Procedures require the consultation of directly affected people as a prerequisite for project approval. However, the project was registered under the CDM despite not complying with the above mentioned requirements.



The violent history of the Santa Rita hydro dam

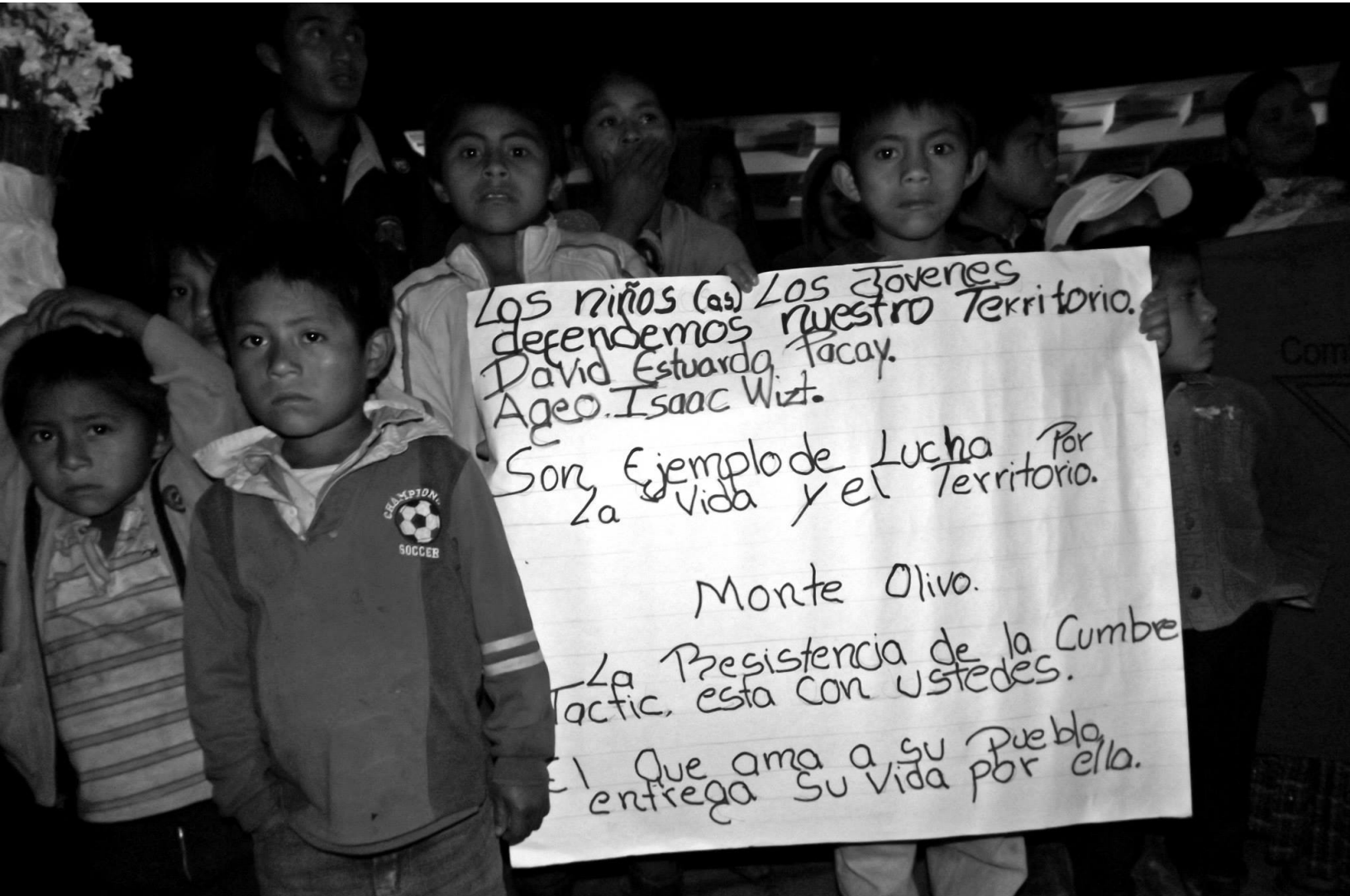
Despite strong opposition and a formal complaint submitted by the Q'eqchiés' concerned community to the departmental and municipal government, they neither replied nor followed up. Moreover, the company attempted to start construction in February 2012, without addressing community concerns or fully consulting the affected communities as required by the CDM.

In August 2013, the 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 Peoples⁴. Rather than ameliorating the process, the government has increased the oppression of the opposition.

Just two months after the project approval decision by the CDM Board, fire was opened on the 'Nueve de Febrero' community in August 2014 while families were gathered to participate in a Mayan ceremony asking the earth for permission to plant their crops. From 14-16 August 2014, a repressive operation against the Q'eqchié communities of Cobán, Chisec and Raxruhá was initiated. More than 1500 police officers descended on the region, provoking terror within the civilian population and di-



smantling a peaceful blockade of about 200 indigenous families. Three women and two men were allegedly illegally captured and humiliated. 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. The shock suffered during the attack caused health problems to three pregnant women. Three other people from Samococh were murdered and evidence suggests these were extra-judicial killings.



International human rights bodies acknowledge the situation

At the end of October 2014, the Compliance Advisor Ombudsman (CAO) acknowledged a formal complaint⁵ made by civil society organizations on behalf of local communities requesting an investigation of the situa-

tion regarding Santa Rita project taking into account the concerns of communities in terms of safety, access to food, water and human rights.

International financial institutions have pledged support

The Santa Rita dam construction was assigned in 2008 to the Hidroeléctrica Santa Rita S.A. company by the Guatemalan Ministerio de Energía y Minas (MEM). The Hidroeléctrica Santa Rita S.A. is part of a Mega-project run by the Energía Limpia de Guatemala (ELG) company, which in turn belongs to the Grupo Finco de Guatemala⁶. The private equity fund that supports the construction of the Santa Rita Hydroelectric Plant is the Latin Renewables Infrastructure Fund (LRIF). The Fund is managed by REAL Infrastructure Capital Partners, led by Juan Paez and Stephen Pearlman, based in New York.

The German development finance institution (DEG), the Netherlands Development Finance Company (FMO), the World Bank through the International Finance Corporation (IFC)⁷, the Spanish Agency for International Cooperation (AECID)⁸ and the Swiss Investment Fund for Emerging Markets (SIFEM)⁹ are investors in the fund. The latter states its commitment to the fund is approximately USD 7mln while the IFC's investment accounts for USD 15mln.



World Bank's Compliance Advisory Ombudsman takes action

On 27 of October 2014, representatives of the Consejo the Pueblos de Tezulutlán and Colectivo MadreSelva filed an official complaint to the IFC vice-president Osvaldo Gratacós through the Compliance Advisor Ombudsman (CAO)¹⁰, an independent recourse mechanism for the International Finance Corporation (IFC) and Multilateral Investment Guarantee Agency (MIGA) that responds to complaints from project-affected communities, with the goal of enhancing social and environmental outcomes on the ground.

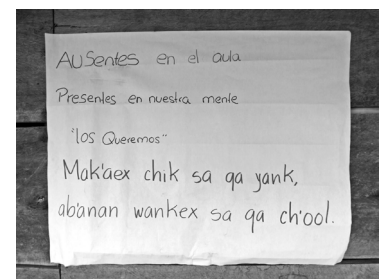
The complaint letter provided a description of the project specifics, showing how the followed procedure was clearly inconsistent with several International Finance Corporation Performance Standards relative to the Indigenous Populations, agreed by the OHCHR in 2012.¹¹

- The complaint highlighted these following key concerns:

- The lack of a proper public consultation;
- The criminalization campaign the Guatemalan government carried out against project opponents;
- The breakdown of social cohesion as a consequence of the hydro project

The complainants demanded the IFC Performance Standards compliance with the OHCHR agreements and requested, inter alia, to:

- Stop of the arrest warrants against project opponents;
- Assure the freedom of movement in the dam area to local communities;
- Move away from the current approach of the dialogues roundtables, asking for a clearer, better-defined public participation in the project;



The Barro Blanco Case

In a recent landmark decision, Panama's National Environmental Authority (ANAM) temporarily suspended the construction of the Barro Blanco hydroelectric dam over non-compliance with its Environmental Impact Assessment (EIA).

The dam was approved by the UN Clean Development Mechanism (CDM) despite risks of flooding to the territory of the indigenous Ngäbe Bugle communities.



Countries pledge to coordinate human rights and climate change objectives

It is well recognized—by the UN Human Rights Council and others—that climate change and certain actions being taken to address climate change interfere with the enjoyment of human rights protected under international law. For this reason, in 2010, the Parties to the UNFCCC agreed that “Parties should, in all climate change-related actions, fully respect human rights”. We regard this recognition of existing obligations as critical for a range of aspects, including the safeguard and accountability for all climate actions, full and effective participation and support for poorer countries, whose capacities to protect their citizens’ human rights are strained by climate change impacts.

Ahead of the Geneva climate talks in February 2015, more than 260 organisations worldwide have called on Parties to the UN’s Framework

Convention on Climate Change (UNFCCC) to introduce a human-rights-based approach¹² in the 2015 climate agreement. The draft negotiation text adopted in Geneva includes now clear language that all Parties shall in all climate change related actions, respect, protect, promote, and fulfil human rights for all. In addition, 18 countries - including France, Sweden and Ireland - have supported the “Geneva Pledge” - an initiative to better understand the connection between human rights and climate change, and many more are expected to join this initiative in the course of 2015.

The experience made by local communities affected by the Santa Rita hydro dam shows that urgent action is needed to respect, protect, promote, and fulfil human rights in all climate actions.

Recommendations

Given the urgent and imminent threats to the indigenous peoples, we call for an immediate investigation and, upon a finding of non-compliance with applicable laws and standards, for the withdrawal from the decision to finance the project. We consequently demand the immediate cancellation of the project registration under the UN’s Clean Development Mechanism.

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2. C169 - Indigenous and Tribal Peoples Convention, 1989 (No. 169) http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_ILO_CODE:C169
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4. 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
5. CAO Ombudsman, “Guatemala / Real LRIF-01/Coban” http://http://www.cao-ombudsman.org/cases/case_detail.aspx?id=227
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7. IFC: Real IFC, Summary of Investment information: <http://ifcext.ifc.org/ifcext/spiwebsite1.nsf/ProjectDisplay/SII31458>
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