

BANKTRACK

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SUBJECT:
FMO DECISION TO FINANCE THE AGUA ZARCA DAM PROJECT IN HONDURAS AND NEXT STEPS

20 DECEMBER 2013

Dear Mr Van Leeuwen,

We would like to follow up to our meeting on FMO's role in the Agua Zarca dam project, held at your office on November 26, 2013. We want to thank you for the extensive time you made available to discuss the project with us. Meanwhile, we have discussed the main conclusions of FMO on the project with our colleagues in Honduras. This letter reflects our joint feedback on your findings.

We understand from the meeting that FMO considers the project and its project sponsor DESA sufficiently in compliance with your policies for you to proceed with financing the project, albeit with a number of conditions attached. We understand that you are currently preparing the loan documentation but that the final contracts with DESA have not yet been signed.

We wish to share with you our deep disappointment on that FMO has come to this decision. Your conclusion that the project is in compliance with your policies contradicts the reality on the ground in Río Blanco, as we aim to illustrate with this letter.

Moreover, we think that the methodology of your October 14-19 site visit, which led you to this conclusion, is deeply questionable. We understood from you that during this trip you did not talk with one single opponent of the project --despite the fact that the Lenca people of Río Blanco have been very vocal and visible in their resistance to the dam. We fail to see how you could have taken their point of view into account then.

We also understood that your site visit, including most meetings with local communities, was organized by the company DESA and that the 'independent' Environmental and Social Consultant hired by FMO



took part in the same journey. Not only did the site visit therefore lack independence, certainly in the eyes of local community members, but this seriously questions the professional capacity of the consultant to act as an independent expert.

We consider it a major flaw in your decision making process that apparently you did not wait for our comments on your findings, before approving financing for the project, thus depriving yourself of an opportunity to strengthen your due diligence on this sensitive project. This is especially surprising to us since the Agua Zarca project has become a repetition of all the mistakes conducted in the Barro Blanco project in Panama in which you are also involved, now deeply affecting the Ngäbe Bugle indigenous communities there.

In the remainder of this letter we want to put on record our observations on the ‘conclusions’ you shared with us, this in case the project proceeds and leads to further harm to, or violation of the legitimate rights of the Lenca communities in the Rio Blanco region during the construction and operation phase of the project. If after taking note of our observations you decide to proceed with your support we will hold you fully accountable for any such harm that may occur.

OUR OBSERVATIONS ON YOUR CONCLUSIONS

According to your presentation of the findings of your site visit you have come to a number of conclusions that allow you to proceed with the project. We wish to respond to these conclusions in some detail:

1) “FPIC HAS BEEN OBTAINED BY DESA”

FMO claims that DESA has obtained the Free Prior and Informed Consent of the Lenca indigenous communities to proceed with the project, as required by Honduran law as a result of its ratification of ILO Convention 169 on Indigenous Rights in 1995, as well as according to the UN Declaration on the Rights of Indigenous Peoples and the IFC Performance Standards / Equator Principles to which you adhere.

FPIC should include, as the name suggests, that the indigenous peoples have provided their consent for a project affecting them after having been fully informed; agreeing on a voluntarily basis; and prior to or "before adopting and implementing legislative or administrative measures that may affect them".¹

¹ http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf.



None of those three aspects have been fulfilled for the Indigenous Lenca people of Río Blanco in the case of the Agua Zarca dam.

DESA was founded in 2008 solely for the project Agua Zarca, and took part in the public contract "Licitación Nº 100-1293/2009" placed by the coup government in 2009, when the government of Honduras was not recognized by the international community because of the military coup. DESA then received the concession in 2010. DESA started with the 'socialization', meaning informing the local communities about the project, in Río Blanco in 2011 – long after the project had been planned and the concession given, depriving the communities of the opportunity to provide or withhold consent '*prior*' to the project taking off.

In 2011, DESA held meetings with people in Río Blanco about the project. The overwhelming majority of the indigenous people of Río Blanco vocally expressed their opposition to the project on these occasions. On April 11 and October 1, 2011, when the Mayor of Intibuca came to Río Blanco, the Indigenous people of Río Blanco vocally and flatly rejected the project. Instead of respecting their rejection, on October 1, the Mayor then left the meeting and, together with DESA representatives and a few supporters, went to the home of a private individual where documents were signed falsely stating that the people had voted in favor of the project.² Numerous of the signatures of community members that accompany this document have been shown to be falsified, with some 'signatures' appearing from people who cannot even write their own name.³

Despite the continued opposition to the project and drawing on methods like the falsification of signatures, DESA started to build their infrastructure in the project zone, and proceeded using methods such as intimidation, death threats, militarization of the indigenous territory, shots fired by their security guards, arbitrary house searches, and the buying off of opponents or their criminalization, to weaken the ongoing resistance of the Indigenous Lenca people. If now, after years of such intimidation and repression, several people have been silenced and authorities have been corrupted, this is exactly the contrary of what the principle of FPIC seeks to ensure.

Nevertheless, despite intense repression, death threats, the murder of a community leader, and offers of money, the majority of Indigenous Lenca people in Río Blanco continue to oppose the project, especially in La Tejera, the community most affected by the project.

² The Public Ministry has filed a case against the Mayor of Intibuca for abuse of authority for his failure to consult the Lenca people before issuing the construction permit for the project.

³ <http://vimeo.com/78375391>



We are astonished to see that FMO can come to the conclusion that FPIC has been obtained by DESA with so much manifest opposition by the Río Blanco people still in place. FPIC is nowhere to be found.

2) “COPINH IS NOT A LEGITIMATE REPRESENTATIVE BUT AN EXTERNAL ORGANIZATION”

During the meeting and in your presentation you questioned the legitimacy of COPINH to speak on behalf of the affected communities, suggesting that any opposition of COPINH to the project does not need to be taken into account. You also displayed a very odd understanding of what COPINH is and how it functions.

COPINH is the nationally and internationally widely recognized federation of hundreds of indigenous Lenca communities. The Río Blanco territory, with their Indigenous Council and the Council of Elders, as well as several Patronatos form part of COPINH.⁴ Locals define themselves as COPINH members and have been part of COPINH for years.

As an organization, COPINH has a coordination committee, elected by the communities that comprise COPINH, including Río Blanco. Berta Cáceres is currently serving as the General Coordinator. The COPINH coordination committee supports the struggles of their member communities, one of those struggles being that of the Lenca people of Río Blanco against the Agua Zarca dam.

DESA has made great efforts to sever the links between the COPINH leadership and local Lenca communities. Berta Cáceres, Aureliano Molina and Tomás Gómez, all leaders in COPINH, have been criminalized by DESA -with the collusion of the Honduran government- with the goal of silencing them from speaking out against the Agua Zarca Dam.⁵ They have not yet been found guilty of anything, but they have been prohibited from accessing the Río Blanco territory. As a result, DESA has isolated the local COPINH members of Río Blanco from the COPINH leadership, making it harder to document and expose the death threats and violence faced by the people of Río Blanco.

Furthermore, on November 20, 2013, people connected with DESA in collusion with the police, blocked an international delegation of human rights and electoral observers from reaching Río Blanco, trying to further prevent the outside world from finding out about the opposition to the dam and the severe repression the Lenca people are facing as a result of their resistance. Despite this isolation and intense pressure, many of the local communities are still clear in their opposition against the dam.

⁴ Patronatos are the municipally recognized entities but not always the indigenous authority structures – and thereby as per ILO 169 not necessarily the most important decision making body.

⁵ Amnesty International has declared that they will be prisoners of conscience if they are imprisoned.



Therefore, the COPINH leadership is a legitimate representative of the Río Blanco Lenca communities, voicing the opposition of these communities, rather than inciting locals to oppose the project.

3) "THERE IS WIDESPREAD SUPPORT FOR THE PROJECT BY ALL COMMUNITIES BUT ONE"

Your presentation stated that La Tejera is the only community that is opposing the Agua Zarca dam, with all other communities in favor of the project. We suspect that this perception is a result of you meeting only with people invited by DESA, as the conclusion you draw directly contradicts the evidence on the ground.

After several years of intimidation and bribery, there are some people in a number of communities that DESA has bought off. However, this does not necessarily reflect the majority opinion. In fact, local residents report that some people are paid 500 Lempiras (€ 20 Euros) merely to attend meetings such as the one you attended, and speak in favor of the project. DESA has concentrated on buying off the presidents of the patronatos, sometimes unbeknownst to the members of their communities. The fact that you met with people, invited by DESA, who expressed their support for the project, perhaps in exchange for money, should not have led you to naively conclude that the majority of people in that community support the project.

Furthermore, La Tejera is by far the most negatively affected community by Agua Zarca. Therefore, their opposition is extremely important to take into account, rather than dismissed. DESA's installations have been built on the communal lands of Río Blanco, destroying the corn, beans and other crops of members of La Tejera, without asking permission or compensating the communities. Being subsistence farmers, those lands and their harvests are essential for their living. Also the river is indispensable, since its water is used for irrigation of the fields, as well as for fishing and bathing.

Furthermore, attempts were made to privatize water sources in La Tejera, necessary for drinking water, washing clothes, etc., in order to supply the construction site with water. A road was built in Indigenous territory despite efforts by residents to stop it, a hill was torn down and used as a quarry, and in March 2013, the necessary access to the river was being prohibited by security guards and signs, prompting the Lenca people of Río Blanco to start blocking the newly built road to prevent further construction of the project.

La Tejera is also part of Río Blanco, where collective decision making bodies – such as the Indigenous Council and Council of Elders - are part of their communal decision-making process and collective Indigenous identity. Many of the other communities that form part of Río Blanco opposed the dam from the start and continue to support the struggle against the dam.



We understood from your briefing that DESA organized the meeting for FMO in the community of El Barreal. Most of the inhabitants of El Barreal who are supporting the Agua Zarca project are not native to Río Blanco and do not identify themselves as indigenous. In fact, they have been in conflict with other Río Blanco communities because of their violent grabbing of indigenous land (as detailed below). DESA has further caused conflict in the zone by turning people in El Barreal and the neighboring community of Santa Ana (which is not part of Río Blanco and not very affected by the project) against those in La Tejera who oppose the project. There are reports that within El Barreal, people are offering large sums of money for the murder of leaders in La Tejera.

4) "THE LAND HAS BEEN OBTAINED VOLUNTARILY"

Your presentation states that the "land title land belonged to the municipality of Intibucá and was never a community land".

The land in question belongs to the Río Blanco Indigenous communities. It is part of their historic and ancestral Indigenous territory. In the late 19th century, the legal title to the land in Río Blanco was in the hands of Honduran President Luis Bogran. In 1925, his widow donated this land title to the "municipality of the people of Intibucá" to protect the land rights of the Lenca people of Río Blanco, Intibucá, in the face of attempts by non-Indigenous neighbors from Santa Bárbara to invade or purchase this land. The document specifically makes reference to the agricultural use of this land by the Lenca people and subsequent documentation shows Teresa Bogran gave this land to be "ejidos of the people" to prevent private interests from purchasing it.

We were astonished to hear that FMO used the ejidal nature of this land title to suggest that the Mayor of Intibucá has the right to sell this land, when in fact the land belongs to the people of the municipality. According to ILO Convention 169, the municipality would have to seek free, prior, and informed consent of the Indigenous communities of Río Blanco prior to selling this land.

There has been a long history of non-Indigenous people from the neighboring department of Santa Bárbara encroaching or invading the land in Río Blanco. DESA has built on that situation to illegally secure land for the project. A September 20, 2013 Rights Action report details DESA's illegal acquisition of land⁶:

⁶ http://rightsaction.org/sites/default/files/Rpt_131001_RioBlanco_Final.pdf



"On August 24 and December 13, 2011 DESA purchased illegal titles to tracts of land within the area of the Río Blanco communal indigenous territory. These titles had been created through illegal titling processes carried out by the Mayor of Intibuca. The titles had been granted to a non Lenca family, the Pineda Madrid family, who moved into Río Blanco from neighboring Santa Barbara. Neighbors explain the family accumulated land in Río Blanco through coercion and intimidation. The Honduran State was complicit in the forcible land purchases by this family as police and other officials never responded to complaints of the abuses. The granting of titles under these conditions constituted a violation of the Municipal Law of 1990 and the International Labor Organizations' Convention 169 [...]

In the beginning of 2012, community leaders in Río Blanco report that DESA and SINOHYDRO began invading the Lenca land, including areas which had not been 'purchased' in the illegal land transfers. [...] According to a legal complaint submitted by the Río Blanco communities to the public prosecutor's office in Intibuca, the companies destroyed coffee, orange, banana, corn and bean plantations. They tore down a mountain to make gravel for the construction of the road into the proposed dam construction site, a road built without community permission. Company tractors destroyed a solar energy generation plant that served the communities.

Río Blanco residents who farm the fertile river banks that are expected to be flooded out by the dam reported constant harassment by the Pineda Madrid family over several years. The practice was to release cattle into the crops planted by the community just before harvest, destroying months of labor and the source of the families' food and income for the coming months. In 2012 when members of the Pineda Madrid family had apparently already become employees of DESA, cattle were released into riverbank crops. Victims explain that as on many prior occasions those affected reported the incidents to police, but no investigation occurred. The understood objective was to coerce families into selling river bank lands."

The land that DESA is utilizing in Río Blanco has not been obtained voluntarily at all and there are significant legal questions about the land purchases that did occur. As you explained you had 'independent' lawyers looking at the land issue we would like to hear the results of your investigation into the matter.

5) "THERE ARE ONLY SMALL IMPACTS ON THE COMMUNITIES" AND "THERE WILL BE VERY LITTLE IMPACT ON LA TEJERA."

Your presentation states that "the actual impact that the company will have on the communities are very small" and "there will be no project impact on la Tejera".



This has been another deeply disturbing conclusion directly contradicted by the reality on the ground. As noted above, in La Tejera the company has already destroyed harvests that community members depend on to sustain themselves, as well as a solar plant. In La Tejera there were also attempts to fence off a water source for use by the company, on top of the issue of restricting access to the river, which is a major source of water to irrigate their harvests (addressed in point 6 below). These impacts are not included in the chart in your presentation, in which you elaborate on the supposed impacts of the project on communities.

The chart on negative physical impacts in the Río Blanco communities does acknowledge that the dam will negatively impact La Tejera through a tunnel and the reservoir (which still have not been built) but it does not include the impact of the quarry, even though your map in the same presentation shows a quarry right next to La Tejera. Furthermore, the chart leaves out the negative impact of the dam site, camp site, and roads on the people of La Tejera, given that DESA's installations have been built on their ancestral land and a road was carved right through the territory where the Lenca people have their harvests.

Proper acknowledgement of these impacts on your chart would make La Tejera the community by far most affected by the dam, which is exactly the reason why La Tejera is the community that most strongly opposes the dam.

Finally, you do not include cultural or spiritual impacts in your overall assessment, since you claimed during the meeting that the “the Lenca population does not have any cultural and spiritual relation to the river”. It does not surprise us that you could not find out about those aspects on your brief field trip organized by DESA. If you had had the opportunity for in depth genuine conversation with local people, especially with women, you would have learned that there are indeed strong spiritual ties to the river, and that there is a belief with them that spirits live in the river, which might die or be disrupted in their flow if the river is dammed.

6) “THERE IS FREE ACCESS TO THE RIVER”

The current free access to the river, observed when the FMO representative visited the site in October 2013, is the direct result of the blockade of the DESA access road to the river by the Lenca people of Río Blanco since April 1, 2013, precisely to be able to regain access to the river. They have prevented the construction of the project in order to have river access. In fact, their blockade of DESA's access road started immediately after DESA in late March 2013 installed signs and deployed security guards to prohibit members of the Río Blanco community to access the Gualcarque River.



We do not disagree that there is free access to the river at the time of writing but we are concerned that the access to the river will again be restricted if construction of the dam proceeds.

7) "THERE IS NO REPRESSION AND MILITARISATION, QUITE THE CONTRARY, SECURITY"

In our meeting you stated that “using Honduran military police is part of the culture in Honduras” and therefore normal and acceptable. Most Hondurans, and especially the Río Blanco inhabitants, would not agree that military and police are culturally accepted and that they provide security. Just to quote Peter Mayer in his official CRS Report for the US-American Congress, “68% of Hondurans report little or no confidence in the armed forces”, and “78% [] in the police force since both are known to be directly linked to corruption and criminal activities”.⁷

It is important to note that there is a clear collusion between the police/military forces and DESA with the aim of eliminating the Lenca people's resistance to the dam. The police and military cannot be considered a neutral force in the area. Eye witnesses explain that the military and police are directly cooperating with DESA's private security and the military has been living, eating, and sleeping at DESA's installations since May. The number of police and military deployed to the zone varies, but it has frequently been much higher than the number you were told.

Police and military forces were deployed to Río Blanco specifically in reaction to the Lenca people's peaceful defense of their territory in April 2013. During April and May, police forces arrived on at least five occasions to evict the Lenca people from their resistance to the dam.

For instance, on April 7, 2013, 7 police patrols with anti-riot gear evicted the peaceful action of the Lenca people, taking away cameras, dumping out containers of drinking water, and searching people's belongings. They showed no eviction order. On May 17, 2013, the military was deployed and forcibly ended the actions by the people of Zacapa against the dam and began to operate out of DESA's installations in Río Blanco. On May 24, 2013, 15-20 soldiers were waiting for Berta Cáceres and Tomás Gómez of COPINH as they traveled to Río Blanco, searched their vehicle multiple times, and sent Cáceres to jail alleging illegal possession of weapons. A judge dismissed the charges for complete lack of evidence until more powerful government forces intervened to continue the criminalization campaign on fabricated charges. Military and police frequently arrived at the site of the Lenca community's

⁷ Meyer, Peter (2013): Honduran-U.S. Relations. CRS Report for Congress.
<http://www.fas.org/sgp/crs/row/RL34027.pdf>



roadblock with DESA and SINOHYDRO employees, and on at least one occasion attempted to force their way to the dam site, threatening the Indigenous women and children who were resisting the dam.

The military and police have carried out a systematic campaign of the intimidation of the indigenous population that opposes the dam, for example by shooting into the air on various occasions when people who oppose the dam walk by or are working in their fields, or at night arbitrarily entering and searching the homes of locals opposed to the dam, through detentions without warrants, by threatening people with arresting them, shoving a gun into the chest of a child, and many other forms of harassment and intimidation, leading to a permanent atmosphere of fear and repression.

On July 15, 2013, a soldier shot and murdered an elected community leader of La Tejera and local COPINH leader, Tomás García, during a demonstration against the dam. Eyewitnesses report the soldier was shooting into the air when he then lowered his gun and shot several times at close range directly at Tomás García, instantly killing him and severely injuring his 17-year old son. We were astonished to hear that during our meeting FMO blindly repeated the story told by the military to excuse this brutal murder, without bothering to do any further investigation. A legal case against the soldier who murdered Tomás García is currently pending in the Honduran courts.

Most recently, heavily armed and masked police men entered several houses in Río Blanco, targeting a woman holding a child, hitting a 16 year old with a gun, and threatening to have an order to perpetrate a bloodbath.⁸

In light of all of the above we do not understand how FMO could come to the conclusion that there is no repression by the military, police, as well as private security from DESA in Río Blanco.

8) “THERE ARE MANY BENEFITS FOR THE COMMUNITIES”

FMO tries to justify its decision to finance the project on the claim that the communities in the area will benefit from electricity, new roads, and employment.

While this may make sense from the perspective of FMO, this argument is irrelevant. It is not our job nor yours to determine if the supposed benefits to the communities would outweigh the destruction of their fertile lands for growing corn, beans, oranges, bananas, coffee, having limited access to their river, and other negative impacts. That is up to them. They have the right to reject the project if they choose, and have numerous reasons for doing so. Their decision should be respected, not cause them to become the

⁸ See for example: <http://www.youtube.com/watch?v=KNj0FeGFhos>



targets of police and military repression, hitmen, death threats, intimidation, manipulation and violence to try to force the project upon them.

We find it distressing that DESA has used promises of benefits to communities whose land is not significantly impacted by construction of the dam, such as Santa Ana and Plan de Encima, in order to create inter-community conflict and turn these communities against the people in La Tejera, whose land for growing food to feed their children is impacted by DESA. Similarly, with El Barreal, DESA has worked closely with non-Indigenous residents with a history of usurping land in Río Blanco, creating further conflict. The use of promises to turn communities against each other and foment violence between communities should not be condoned.

Even beyond this, many of the so-called benefits promised by DESA have not materialized. According to community members, DESA said it would build 7 school classrooms in Río Blanco before starting work on the dam. This never occurred. The number of jobs that DESA promised the communities in the area is greatly inflated from the number of jobs it would actually create according to documents DESA itself filed with the Honduran government and many are short term.

While DESA may have convinced the FMO with its promises of benefits, the Lenca people of La Tejera are not convinced. Rather than benefits, the people of La Tejera can list off a litany of harms that DESA has caused them and their families. They continue to reject the Agua Zarca project in their ancestral Indigenous territory and their decision should be respected, both because of your stated commitment to ILO Convention 169 and because it is the right thing to do.

Río Blanco community members have repeatedly stated that the so-called ‘development’ promised by DESA is not the development they seek.

TO CONCLUDE

FMO is about to support a project that to our deepest conviction poses a sincere threat to the interests and human rights of the local Río Blanco communities. We think that such a project is unworthy of support from the ‘Dutch Development Bank’ and have therefore once more invested considerable resources in assisting you with your due diligence process, leading to this lengthy rebuttal of your ‘conclusions’.

We also would like to call to your attention that the Agua Zarca case is now being examined by both the United Nations Special Rapporteur on Indigenous Rights, and the Compliance Advisory Ombudsman of



the International Finance Corporation.⁹ We strongly urge you to await statements and conclusions from those agencies before proceeding with the finalization of a loan contract.

We sincerely hope that the observations shared with you in this letter will lead you to reconsider the possible involvement of FMO in this project. We would appreciate it if you could inform us before January 20th 2014 on how the involvement of FMO with the project will proceed.

If after taking note of our observations you nevertheless decide to proceed with your support we will hold you fully accountable for the harms already occurred and any future harm that may occur. Rest assured that our organizations will continue to closely monitor the project and will do what we think is necessary to help defend the rights of the Lenca communities in the Rio Blanco region.

Yours sincerely

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⁹ http://www.cao-ombudsman.org/cases/case_detail.aspx?id=208