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GUATEMALA: THE CHIXOY DAM and MORE DAMN DAMS!

Simon Archer (sarcher@torys.com) and Tina Piper (tina.piper@gmail.com) prepared this article based on participation in a recent Rights Action activist-seminar in Guatemala, and on their on-going work related to the Chixoy Dam Reparations Campaign and to seeking legal ways of holding global actors accountable for their policies and actions that contribute to human rights violations.

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CHIXOY: BACK TO THE FUTURE

By Simon Archer and Tina Piper(1), for Rights Action, July 22, 2004

THE ANNOUNCEMENT

On the bus winding its way through the verdant hills outside Salama, we opened the July 19, 2004 edition of Prensa Libre, a Guatemalan daily. In the business section, we discovered that the recently-elected government under President Oscar Berger announced a major new initiative, the privatization and construction of three new hydro-electric dam projects, two along the Rio Negro, above and below the Pueblo-Viejo (or Chixoy) Dam.

This initiative is yet another example of a hemispheric trend in energy policy that seeks to privatize state assets and promote so called public-private partnerships in the generation, transmission and distribution of energy, a trend that in itself is fraught with problems and contradictions.

But this initiative is particularly noteworthy for another reason: the proposal literally brackets a history of violent oppression against local communities in the construction of hydro-electric projects in Guatemala.

The Government's proposal will (and should) be the focus of activism and community development struggles in the near future. It provides an excellent opportunity to highlight past injustices, the need for reparations, and for local communities to meaningfully participate in future development decisions. Whether these opportunities are realized will depend in part on the ability of activists and community workers to anticipate problems, coordinate their efforts and pursue an effective strategy for change.

A VIOLENT HISTORY OF REPRESSION OF MAYAN CULTURE AND PEOPLE

Our educational delegation (July 2004), led by a group of activists from Rights Action, focused on education about the history of the local Maya Achi communities whose geographical epicenter is Rabinal. One of the most important elements of that history is the series of massacres of the communities around Rabinal, in particular that of Rio Negro, which effectively facilitated the construction of the Chixoy Dam.

We met with Carlos Chen and Jesus Tecu Osorio, two survivors of the massacres at the Rio Negro, and now community leaders amongst the survivors. These two provided a detailed eyewitness account of the massacres and of the community's struggle for justice since 1982, and the community's efforts since then to recover, re-unite and seek reparations.

Our next meeting was with Fernando Suazo, a psycho-social counselor in the Rabinal area who has worked with the Maya Achi communities for close to 20 years. Suazo has worked with the UN Truth Commission and other organizations, and is known throughout Guatemala for his work. Suazo led a discussion on the political, economic and social factors affecting the Maya Achi communities of the Rabinal area, and Guatemala as a whole, leading up to the civil war and repression of the 70s and 80s.

In the early 1960s the Guatemalan government of the day permitted the U.S. to use Guatemala as a training centre to mount its attack on the Bay of Pigs in Cuba, in response to the revolution there in 1959. A group of

nationalist
army leaders disagreed with this policy, and formed a guerrilla
movement
with the objective of overthrowing the standing government.

In this context,(2) Mayan communities were beginning to emancipate
themselves and form groups and present demands to the standing
government.
As the military government became increasingly threatened by these
groups,
they employed more and more repressive tactics to control their growth
and
political expression, which included terrorizing civilian populations.
This
culminated in scorched earth campaigns of the countryside where Mayan
leaders were equated with guerrilla leaders.

After the outbreak of an internal armed conflict in 1962, Guatemala
faced 34
years of violence resulting in the deaths and disappearances of over
200,000
people. The massacres at Rio Negro occurred during the worst years of
state
repression – a period known as la violencia, which extended from the
late
1970s to the early 1980s. During these years, the military was aided
by
community-based organized Civil Defence Patrols (PACs), many of whom
were
forced into recruitment and were required to attack neighboring
communities
with whom they had peacefully lived for many years.

The Guatemalan government's stated intention was to fight guerrilla
groups
who were infiltrating Guatemala's rural communities. However, many
civilians
were either wrongly accused of such guerrilla activity or were only
involved
in non-violent popular education campaigns. Many people consequently
fled
to camps in Mexico, while others hid in the mountains. The tactics
used in
these campaigns were anything but selective – they often included mass
killings of women and children.

Importantly, the Commission for Historical Clarification established
through
the Accord of Oslo on June 23, 1994, found that in certain, Mayan-
dominated

regions of Guatemala, genocide was planned and carried out against different Mayan peoples by the State. As well, the CEH reported that, during the conflict, the state was responsible for 93% of human rights violations and the guerrillas for 3%.

During this period of dam construction within the political context of a civil war, the community of Rio Negro suffered a series of massacres, which resulted in the deaths of approximately half (440 out of 800) of the community's residents.(3) Several non-governmental organizations have asserted that the Rio Negro community faced violence specifically due to their resistance to displacement from the Chixoy Dam. In 1996, the US-based organization Witness for Peace released a report entitled "A People Damned", in which they concluded: "Although the massacres were attributed to the counterinsurgency war, a careful analysis of the Rio Negro events leads to the conclusion that the local residents were killed because they blocked the progress of the Chixoy project."(4)

Our group visited these communities 20 years after these events took place, and 10 years after the first mass graves of these massacres were exhumed by the Foundation for Forensic Anthropology (FAFG), a group formed to conduct official exhumations, in part as a result of the Peace Accords of 1996. We visited the FAFG offices for a discussion with the Director, Leonel Paiz on their work.

The UN Truth Commission investigated over 600 massacres occurred in Guatemala during the civil unrest, and the FAFG has performed some 350 exhumations to date. The findings of each exhumation are reviewed by both forensic and social anthropologists in order to establish an identity and a profile of the victim, including probable cause of death and circumstances surrounding the death. These reports are then filed with the Ministerio

Publico – the public prosecutor responsible for bringing charges – where they are routinely shelved. This has been a major frustration in the work of the FAFG.

The UN Truth Commission identified four "paradigmatic cases" in which the worst elements of genocide were allegedly practiced, and despite exhumations and reports by the FAFG, none has resulted in a prosecution. Only four of the 350 post-exhumation reports have led to a prosecution so far, and only against low-level actors, such as the PAC patrollers, and not against a military authority of the time.

Paiz reports that in conducting these exhumations, a climate of fear still remains as a palpable legacy of the terrorist activities of the military regimes in the 70s and 80s. The process of the exhumations unearths years of repressed emotions in the survivors, and along with them, memories and testimonies of the massacres.

THE CHIXOY DAM

The problems with big dam projects are abundant and well-documented, so much so that in May 1998 the World Commission on Dams began to study the effect and propose new means by which dams would be constructed. A current notorious example is the Narmada dam in India, so dogged with scandal and of dubious benefit to the millions of people it is displacing that even the World Bank pulled out of funding it.

There are many noted problems with big dams. They cause environmental devastation by flooding fertile river-side plains, they displace people living in the path of the dam, they rarely if ever generate as much electricity as they promise and may flood traditional indigenous lands, including sites of archaeological and religious significance. Their promised returns of regional development, job creation, and fostering an industry base with export capability rarely materialize. Dam projects have

disproportionately targeted indigenous and rural poor communities.

As the construction of the Chixoy dam demonstrates, generating huge quantities of electricity provides no assurance whatsoever that the local communities will be able to afford or access electricity (for example the community of Rio Negro does not currently have electricity). Big dams support the dominant model of development that suggests trickle-down benefits from modernization projects, while ignoring smaller, community based and developed alternatives.

The money from the Chixoy project largely went into the hands of the private contractors engaged in its construction; only one of the 11 private contractors engaged was Guatemalan.

In 1978, initial project costs for construction of the Chixoy dam were estimated at \$372.7 million. However, by July 1981, project costs had increased to \$631.8 million, due to numerous construction and design failures, including greater than expected geological shifting revealed by an earthquake on February 4, 1976 and the complex geology of the environment that led to the undermining of the main power tunnel and its partial collapse by December 1983. Repairs to the tunnel necessitated a complete shutdown of the generating plant for almost three years.

In addition to the resulting increased costs, the faulty construction leaves estimates of the remaining life of the dam at only 20 to 50 years while the dam has never run at more than 70% capacity.(5) As we were told recently by the World Bank representative in Guatemala, the projected lifespan of the dam is 20 years and it will be rendered inactive within a few years due to siltification. The IDB recently had to provide the Guatemalan government with a further grant to de-siltify the Chixoy dam, an expense not anticipated by the initial project.

Roberto Balsells, the former president of INDE, told El Grafico newspaper in an interview in December 1986 that the Chixoy Dam was "a financial disaster" which "never should have been built". And in 1991, the World Bank

concluded that the Chixoy dam "had proved to be an unwise and uneconomic investment". World Bank President James D. Wolfensohn in an 18 June 1998 letter to the NGOs concerned about the Rio Negro case acknowledged that "this was a very weak project on technical and economic grounds."

By 1988, the estimated construction cost increased to \$823.1 million, a 120% increase from original estimates (excluding financing costs). Including financing costs and an additional \$57 million given by the IDB for repairs, the total cost of the project was \$955 million. This final cost represented approximately 40% of Guatemala's external debt in the late 1980s. In 1991, 45% of Guatemala's foreign debt was derived from the Chixoy dam and in 1995, 51% of INDE's revenues were used to service this debt.

The World Bank and IDB loans have been fully paid by the Guatemalan government.

THE PROPOSED DAMS

Against this background of on-going injustice and impunity of the perpetrators, the Oscar Berger Government has proposed three new dam projects.

Privatization of state assets (along with de-regulation) is part of the tired and now discredited neo-liberal vision of economic development. This vision of development, which in the past emphasized large-scale mega projects like hydroelectric dams, has been the favoured model of economic development of U.S. policy-makers and multi-national development agencies like the World Bank Group. It came, in the 1990s, to be called the Washington Consensus, after the location of the major institutions promoting its agenda.

After long-standing criticism and challenges by activists and others, the Washington Consensus eventually became questioned by its own institutions, by investigations like the World Commission on Dams, and even some

Northern governments and conservative policy wonks (for example, Francis Fukuyama recently repudiated its central tenets – see The Guardian, July, 2004). It remains, however, the dominant development model, and that informing the Berger government's proposals.

The proposals are that the Instituto Nacional de Electrificación (INDE) solicits proposals for the development of three new hydroelectric dam projects to provide a total of 905 megawatts of generation by 2008. The three projects are to be in Chulac, on the Cahabon river between Alta Verapaz and Izabal regions, in Serchil, on the Rio Negro above the Chixoy Dam and Xalala on the Rio Negro below the Chixoy Dam.(6) It is estimated that the dams will affect at least 21 river-side communities.

These dams are part of the Government's larger stated plan to reduce dependence on thermal generation of electricity (for example oil-fired generation) by replacing it with more renewable sources of electricity, namely, hydro-electric generation. La Prensa reports that, apart from generation, INDE will also seek to privatize the transmission of electricity.

INDE was formerly a government agency that was effectively privatized in the 1980s. It appears that INDE holds the power to license private corporations to generate electricity. In effect, the generation of power will be privatized by this initiative. A key lobby group in this process is likely to be the National Association of Power Generators (Asociación Nacional de Generadores).

The Berger Government (through the Minister of Energy and Mines, Roberto Gonzalez, and the INDE Director, Luis Ortiz) have proposed a four-phase privatization process. Phase one includes technical and economic feasibility studies, including environmental assessments, and is projected to be completed by February of 2005. Phase two will determine the terms of reference of the requests for proposals and the regulatory requirements

associated with the private operation of the projects. Phase two is to be completed by December, 2005. Phase three will provide a maximum of one year for financing of these projects to be put in place by the state and private actors, and phase four will be the construction of the projects themselves, both to be completed by 2008. Each of these phases provides an opportunity for intervention by activists and community members.

It is relevant to note that although the regulatory regimes differ in each jurisdiction, the privatization of electricity generation and transmission has been attempted in Canada, the U.S. and the U.K., among others countries. In each jurisdiction this process has met with difficult and sometimes disastrous results.

ENRON was able to manipulate the private market for the generation of power to create vast profits at the expense of consumers. The actual causes of the blackout in the Northeastern U.S. and Canada in 2003 are not yet clear, but it appears to be the result of a lack of monitoring and maintenance by private power generation and transmission companies. Privatization of electricity utilities in Canada has been accompanied by massive corruption and scandal (for example Ontario Hydro).

LEGAL ACTION AND INACTION

The issue of impunity looms large in Guatemalan society. Two separate national cases are being brought against Rios Montt and Lucas Garcia for atrocities and genocide, and include the massacres at Rio Negro. These cases are officially being conducted by the Ministerio Publico, the government body responsible for the prosecution of crimes. However, in reality, they are being pushed forward by the Centro de Accion Legal en Derechos Humanos (CALDH). Fernando Lopez, the lawyer responsible for the file at CALDH, reports that the prosecutions are moving at the slowest possible pace, but that he remains optimistic that they have a winning case if it goes forward.

However, impunity still remains a pressing issue as can be seen by the fact that the Constitutional Court allowed former army general and intellectual author of the genocide, Efraim Rios Montt, to run in the 2003 presidential elections. The Supreme Court was of the opinion that the 1985 Constitution, which prohibits former dictators from running for office, did not apply to Rios Montt.

The topicality and importance of the announcements of the new dam projects – indeed as a major new initiative of the Berger Government – is highlighted by the fact that an NGO, the Center for Housing Rights and Evictions (COHRE), is currently preparing a petition to the Inter-American Commission on Human Rights (IACHR), seeking damages from the Government of Guatemala via INDE, the World Bank and the Inter-American Development Bank for the human rights violations occasioned by the construction of the initial Chixoy Dam.

COHRE is attempting, in this petition, to make the case that the state actors and in particular, the international financial institutions and the U.S., are complicit in the human rights violations in Chixoy by virtue of their funding of the project, even after they became aware, or ought to have been aware, of the massacres occurring in the Rabinal area. While states have from time to time been found responsible for human rights violations like those in the Chixoy case, to date the World Bank and other international financial institutions, who have financially supported many of these governments (and had their loans paid back), have never been held accountable for their role. In fact, the World Bank and IDB (also known as International Financial Institutions or IFIs) require member states to enact legislation granting them immunity from prosecution in that state. This

requirement, along with other immunities they have granted themselves in their Articles of Agreement, place these institutions effectively above the law in the countries they loan money to.

This is a terrible contradiction, because these very IFIs insist upon conditions for their loans that include privatization, de-regulation, and most particularly, enforcing a "rule of law" through improvements to "legal institutions of the market economy".

In other words, these IFIs insist that borrowing nations improve their legal systems to accommodate private capital, but refuse to submit themselves to that same rule of law.

Privately, officials in these institutions acknowledge this contradiction and even sympathize with victims of the projects they have funded. They have never, however, committed to full accountability either through the courts or some other process. This makes their support of these projects specious at best. When damages and appropriate reparations for dam-related human rights violations is only effectively being pursued over 20 years after the initial events, this raises questions as to whether new dams should in fact be constructed. If they are, the new dams also raise the question of how the benefits of the dams will be distributed. Recent Guatemalan governments have been privatizing state owned utilities, such as Empresa Electrica, an electricity distributor and Telgua, a telecommunications operation. Recent reports suggest that the profits from these privatizations have been allocated to various uses including the financing of Fontierra (the land redistribution scheme put in place by the Peace Accords, received Q75M) to less democratic initiatives, such as capitalizing the Banco de Ejercito (Q150M) and to demobilizing certain portions of the army (Q360M).

RECOMMENDATIONS FOR RESEARCH AND ACTION

The Berger Government's proposals are an opportunity to organize. As each of the four projected phases of the dam initiative is rolled out, there will be opportunities to intervene in the process and attempt to influence its outcomes.

-- Work with the communities. From the perspective of the affected communities, one option is to link the benefits of the new dams to the outstanding injustices of the Chixoy Dam project, and to incorporate compensation for the past injustices into the terms of reference of the proposed dam constructions. Other resource development projects have at times established a compensation fund controlled by the communities, or a negotiated form of profit-sharing with those communities.

-- Develop an understanding of the available tools. From an NGO perspective, there may be an opportunity to work with affected communities to ensure that the lessons of the past have been internalized and form part of the process in the implementation of these new projects. For example, the World Commission on Dams issued a comprehensive report on the proper incorporations of all actors and all rights into the development process, and it could serve as a set of standards to ensure a participatory process is used. In addition, where there are indigenous communities affected, Guatemala is a signatory to ILO 169, a set of non-binding prescriptions on the proper process for consultation (among other things) with indigenous groups where development projects may affect their rights.

-- Get to know the players. Activists and NGOs will also want to monitor the parties involved in this privatization scheme in order to expose conflicts of interest and prevent problems before they manifest themselves in bad development outcomes. In a privatization this will include the government ministries in charge of the privatization, their legal teams and any special legislation required to privatize a public asset. Legislation may require committee hearings. Private companies will bid on these projects, and although those processes are usually confidential, leaks occur. Some aspects ought not to be private, and should be

transparent. NGOs may also consider pooling their strengths by creating an NGO coalition to coordinate efforts.

-- Understand the financing. Tracking those public officials and private companies involved in the dam bidding and construction, and their forms of financing, is important so that interventions can be made in a timely manner. It is our experience that private capital in such ventures is most effectively influenced by education and information of the true risks before it has been invested. If quasi-public sources of financing are used, it is useful to monitor those processes and where possible, use the public interest or public accountability of public moneys to influence the conditions of the project and the distribution of the benefits. If a particular process appears to be corrupt, attempting to expose this at the financing stage may be an effective way to influence the process. In particular with large infrastructure projects, up-front financing can be a serious barrier for private firms because it requires an outlay of a significant investment before any profits begin to flow. Firms may try to raise this money from financiers and public markets, which provides an opportunity to share information about the risks of such a project.

-- Monitor the processes and challenge those that are a sham. Phase one will certainly require an environmental and social impact assessment under Guatemalan environmental laws. In our experience these impact assessments are very weak processes that will not result in, for instance, the termination of a bad project (for example, the recent Bacongo case in Belize, or the San Miguel mining project in Izabal). However, the process does provide two opportunities: the first, to expose the poor process itself, and attempt to challenge it. The second is to use this process as a negotiating tool in order to require better distribution of benefits to the affected communities. Learning from other experience and models (e.g., the Cree Nation and the dam projects in Canada) may help in forming appropriate demands.

-- Keep records. One of the lessons of the Chixoy Case is that good reports, good record keeping, whether testimonies or community visits and delegations or land titles or meeting minutes or interviews with company officials, are all invaluable in the advocacy and activism procedures at later dates. Records save hundreds of hours of work.

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FOOTNOTES:

1- This is a preliminary report on the July, 2004 Rights Action Human Rights delegation to Rabinal, Baja Verapaz, Guatemala. The authors participated in the delegation's visit to Rabinal, the largest community in proximity to the Chixoy dam and the village of Rio Negro. The authors welcome and solicit any comments, reports, updates or other information on the issues raised in this report, particularly information about the implementation of the new dam projects. They can be reached at sarcher@torys.com and tina.piper@gmail.com.

2- Several other factors were influencing events. The Second Vatican Council had endorsed "liberation theology", and local clergy were supporting self-determination and preaching the "preferential share". Mayans were participating in this process. The abolition of the debt peonage system a generation earlier (in the 1940s) had permitted some Mayans to own businesses and slowly increased Mayan economic independence. President Kennedy had launched the Alliance for Progress in the 1960s in response to the Cuban Revolution, and resistance movements were growing throughout Latin America.

3- These numbers have been disputed, however, as an approximation, they are valid.

4- Witness for Peace, "A People Damned", 1996, p.18.

5- Interview with INDE representatives, November 2, 2000

6- We use the Rio Negro for convenience, the watercourses are in fact a series of tributaries from the mountainous region into basins, which at certain points, can be dammed.

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International Rivers Network: <http://www.irn.org/index.html>

Centre for International Environmental Law: <http://www.ciel.org/>

World Commission on Dams: <http://www.dams.org>

United Nations Environment Program, Dams in Development:

<http://www.unep-dams.org>

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