



The Agua Zarca Dam and Lenca Communities in Honduras:

Transnational Investment Leads to Violence against and Criminalization of Indigenous Communities

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Summary

September 20, 2013 marked 173 days in which the Lenca indigenous communities of the Rio Blanco region of Intibuca, Honduras have blocked an access road built into the intended construction site for the Agua Zarca hydroelectric dam on the Gualcarque River. Desarrollos Energeticos, SA (DESA), plans to build the dam, and is pushing the project through with violence and intimidation, while attempting to criminalize land rights defenders with baseless charges.

On September 20 a judge in La Esperanza, Intibuca ordered the eviction of the road block and ordered that Berta Caceres, one of the most well-known indigenous land rights activists in Honduras, be held in prison pending trial. Berta, along with fellow leaders of the Lenca organization COPINH (the Civic Council of Popular and Indigenous Organizations), Tomas Gomez and Aureliano Molina, are charged with instigating, intellectual authorship of, the road block. The three have accompanied Rio Blanco communities in their struggle for recognition of their land rights. On September 13, the lawyer for the three COPINH leaders was accused of similar charges in a different land conflict.

The prosecution and imprisonment of human rights defenders and lawyers on charges of “instigation” is a chilling precedent intended to leave a population already suffering from chronic violation of their right to access to justice even more vulnerable. Even more disturbing, the criminalization of human rights defenders began around the time that the Honduran press reported that the US Ambassador to Honduras called on the Government of Honduras to prosecute those who “promote land invasions.”

The Rio Blanco communities have made a formal complaint of the usurpation of their land by DESA, a case they cannot advance without the assistance of their lawyers and human rights defenders. This is a groundbreaking case in the legal defense of indigenous land, challenging the Honduran justice system and the international community to comply with international law and guarantee the rights indigenous peoples. On September 3, leaders of the Rio Blanco community initiated charges against DESA and Honduran public officials, accusing the corporation of land usurpation and the officials of abuse of authority. Among those accused is the current Assistant Attorney General of Honduras, demonstrating the uphill battle communities face in achieving justice.

The Agua Zarca dam in Rio Blanco is one of dozens of privately owned hydroelectric dams under development in Central America. The boom in dam construction is facilitated by the World Bank and Inter-American Development Bank (IDB), and benefits transnational investors and corporations. The World Bank, IDB and international investors share responsibility for the grave human rights violations, and must act to stop them.

The wave of dam construction on Central American rivers destroys fertile flood plains that have formed the heart of indigenous territories for centuries. It pits indigenous communities against transnational corporations backed by corrupt justice systems and State security forces funded, trained and equipped by the US, Canada, World Bank, IDB, and other ‘friends’ in the international community.

Part I: Events in Rio Blanco

DESA Approaches Lenca Communities, Acquires Illegal Land Titles

According to a legal complaint filed against DESA by communities on September 5, 2013, in January 2011 representatives of the DESA Corporation appeared in the community of La Tejera in the Rio Blanco region, seeking community approval for the dam construction. The community rejected the project, and recorded their decision in their official book of acts. On April 11, 2011 the Mayor of Intibuca, Martiniano Dominguez, visited the community and attempted to convince the population to accept the dam, which it did not. On December 27, 2011, Mayor Dominguez issued a construction permit for the dam, despite opposition from the indigenous communities, an act that led to formal charges of abuse of authority.

On August 24 and December 13, 2011 DESA purchased illegal titles to tracts of land within the area of the Rio 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 Rio Blanco from neighboring Santa Barbara.

Neighbors explain the family accumulated land in Rio 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, ratified by Honduras in 1994.



The Gualcarque River.

Photo by Karen Spring

A Century of Attempted Land Grabs against Rio Blanco Lenca Communities

The actions of DESA and the Pineda Madrid family build on a century of attempts by people from the neighboring department of Santa Barbara to encroach into the Lenca territory of Rio Blanco in the department of Intibuca. Government records related to the Rio Blanco land clearly support the land rights of the Lenca communities in Rio Blanco, especially following the 1994 ratification of ILO 169.

An Act of the Secretary of State in the Dispatch of Government and Justice dated February 29, 1984 confirms that in the 1920's an attempt was made to purchase the Rio Blanco farm from Teresa Morejon de Bogran, widow of former president Luis Bogran, for the use of the residents of the neighboring department of Santa Barbara. In response, in 1925 Teresa Morejon transferred the title of the Rio Blanco farm to the municipality of Intibuca, as a donation. According to oral history in both Rio Blanco and neighboring non-Lenca communities, this donation was to protect the land rights of the Lenca communities already living on the land. Morejon was apparently attempting to protect the land rights of the communities who lived in the region.

The pretensions of neighbors from Santa Barbara to encroach into the Lenca territory continued throughout the 20th century. The same Act describes another conflict in 1942, in which residents of Santa Barbara attempted to encroach on lands in Rio Blanco. This is confirmed by Rio Blanco residents who explain that about 70 years ago Pablo Gutierrez, a Lenca man from Rio Blanco, was killed in a conflict in which Santa Barbara natives attempted to take control of the fertile Gualcarque river banks.

The same sources explain that the situation was repeated 25 or 30 years ago when two Lenca Rio Blanco residents, Jeronimo Sanchez and Reymundo Dominguez, were killed by residents of Santa Barbara intent upon encroaching into the Rio Blanco lands on the banks of the Gualcarque River. This report is again supported by the 1984 Act, when it states that the Act was created to demonstrate the legitimate rights of the "Intibucanos" to the land in Rio Blanco because "Bad Hondurans" from Santa Barbara wish to take the land from those who have legitimate rights. The date of this Act coincides with the reported arrival of the Pineda Madrid family to the area that residents estimate to have been about 30 years ago.

DESA Invades Lenca Territory in Rio Blanco

In the beginning of 2012, community leaders in Rio Blanco report that DESA and SINOHYDRO began invading the Lenca land, including areas which had not been 'purchased' in the illegal land transfers. DESA had reportedly contracted SINOHYDRO,¹ the giant Chinese hydroelectric corporation that currently controls half of all hydroelectric resources in the world outside of China,² to construct the dam.

¹ <http://www.internationalrivers.org/blogs/233/the-bullet-that-killed-tom%C3%A1s-garcia>

² <http://www.internationalrivers.org/campaigns/sinohydro-corporation>

According to a legal complaint submitted by the Rio 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.

Rio 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.

Company employees even fenced off the only spring that meets all of the potable water needs of the community of La Tejera, intending to divert the water to serve the company's compound below the town of Barreal. When La Tejera residents tore down the fence, on November 1, 2012, Felipe Gomez, Gerardo Sanchez and Domingo Sanchez were arrested and arraigned in La Esperanza. They were required to travel 5 hours each way to La Esperanza, Intibuca, the justice administration center for Rio Blanco, every two weeks to sign in with the court as they await trial. The trip costs L350, a significant expense for the Lenca farmers.



The road block at the Oak, as community members refer to the location.

Photo by Karen Spring

Communities Begin to Block the Road, Militarization and Paramilitarization Begins

Finally, during the last week of March 2013, signs and security guards appeared that prohibited the communities from using the river, the river they used for irrigation, drinking water, washing, bathing and fishing. This pushed the communities over the tipping point, and on April 1, 2013, the community began to block the road the company had built on community land without their permission, the road that accessed the construction site, not allowing construction equipment to pass. They have maintained the roadblock ever since.

A week later, on April 7, police and the mayor of Intibuca arrived to try to convince the community to let construction equipment pass through.³ By late April, the Honduran army's 1st Battalion of Engineers began appearing in the area. On April 20 the roadblock stopped a 1st Battalion truck headed to work on the dam.⁴ By May 7th the road block had survived five evictions by security forces,⁵ as community members returned to continue the protest.

On May 17, National Police and the 1st Battalion assembled in the area, leading Rio Blanco communities to fear another eviction.⁶ This was the same day a nearby priest supportive of the struggle in Rio Blanco, Padre Candido, was arrested with 22 parishioners in nearby Campa, Santa Barbara.⁷

However there was no eviction that day, instead security forces settled in for a permanent presence based in the DESA encampment. The 1st Battalion of Engineers commanded by SOA graduate Milton Amaya Coello,⁸ set up camp in the DESA compound. It was then that the campaign of criminalization and violence began.

Soon neighbors learned that a group of masked 'sicarios,' or assassins, was operating in the area and reporting to DESA's head of security, retired Air Force Lieutenant, Douglas Geovanny Bustillo, and operating out of the DESA compound in Barreal. Area residents reported *sicarios* firing off their guns at night in the compound, and encounters with masked gunmen, in the brush between the town of La Tejera and the road block, along the river, and later even in the yards surrounding their homes.⁹

Reports of encampments of masked 'sicarios' have grown around Honduras; a recent notable incident was the July 25, 2013 kidnapping of international human rights companions in the Nueva Esperanza community of Atlantida. A group of approximately 30 gunmen wearing ski masks surrounded the home a family who had complained of harassment and intimidation by the mining company Las Victorias, which is interested in beginning a mining operation. The gunmen kidnapped the observers and forcibly

³ <http://www.copinh.org/article/copinh-comunicado-urgente-a-siete-dias-la-lucha-si/>

⁴ <http://copinhonduras.blogspot.com/2013/04/fotos.html>

⁵ <http://www.copinh.org/article/copinh-nuevas-amenazas-contra-el-pueblo-de-rio-bla/>

⁶ <http://www.copinh.org/article/alerta-urgente-el-ejercito-en-zacapa-se-amenaza-co/>

⁷ <http://rightsaction.org/action-content/illegal-arrest-priest-and-22-members-honduran-national-resistance-front>

⁸ <http://www.soaw.org/about-us/equipo-sur/263-stories-from-honduras/4121-berta>

⁹ <http://www.copinh.org/article/copinh-denuncia-urgente/> and interviews conducted in Rio Blanco August 10, 2013. The identities of interviewees are protected.

expelled them from the community. A man named Lanier Perez has represented himself as the owner of Las Victorias. Perez is the son-in-law of Miguel Facusse, owner of the Dinant palm oil corporation. It is suspected that the gunmen are employees of the Orion Security Corporation, also employed by Dinant and blamed for the killing of members of campesino land reform movements in the Aguan region.¹⁰

Criminalization and Repression of Lenca Rights Defenders Begins

On May 24, 2013 two leaders of COPINH, the Civic Council of Popular and Indigenous Organizations, Berta Caceres and Tomas Gomez, were driving along the road out from Rio Blanco when they were stopped by 15 to 20 soldiers. COPINH, the Lenca federation which had been closely supporting the Rio Blanco struggle to have their land rights respected, is well known in the region and their truck easily identifiable. Berta Caceres is a particularly well known national social movement leader. The soldiers claimed they found an unregistered handgun in the bed of the pickup she was driving. Berta was arrested, held overnight, and charged the next day with illegal weapons possession.¹¹

Berta explained the gun had been planted in the car to create the impression that COPINH was violent. On June 13, after a pre-trial hearing, the charges were conditionally dismissed, meaning that the judge did not receive sufficient evidence to proceed with a trial, but allowed prosecutors five years in which to uncover evidence. Several weeks later the Appeals Court in Santa Barbara ordered the First Circuit Court judge to reverse the sentence and continue the prosecution. It is believed the Appeals Court has received pressure to reverse the ruling. Since that time, Berta has been in preventative detention in conditional freedom; she remains out of jail but must sign into the court once a week until the trial.¹²

Intimidation and threats were ongoing throughout June, and on June 29 Roque Dominguez, who participated in the road block, was assaulted by four men in favor of the dam, who hacked him with a machete. He was taken to a hospital and survived the attack.¹³

Lenca villagers who were present in the DESA compound explain that on July 15, 2013 a large group of 200 or 300 people from the Rio Blanco gathered to dialog with the company. They explain that a soldier, later identified as Sergeant Kevin Jasser Sarabia, without saying anything began firing into the air. Tomas Garcia, at the front of the crowd, spoke to the soldier, asking him not to fire, and witnesses explain that a police sub commissioner present also asked him not to fire. Jasser Sarabia did not respond, but instead lowered his M-16 rifle and shot Tomas Garcia three times at close range. Also shot was Tomas' 17 year old son, Allan Garcia. Tomas, who had been among the most outspoken opponents of the Agua Zarca dam, was killed instantly near the gate of the compound, and his son was gravely

¹⁰ <http://www.maryknollogc.org/alerts/honduras-human-rights-defenders-held-captive>

¹¹ <http://www.soaw.org/about-us/equipo-sur/263-stories-from-honduras/4121-bertha>

¹² <http://www.copinh.org/article/copinh-gracias-por-la-solidaridad-llamamos-a-redob/> and interviews with Berta Caceres conducted August 13, 2013 in La Esperanza, Intibuca.

¹³ <http://www.copinh.org/article/urgente-el-copinh-denuncia-nuevas-agresion-contra-/>

injured, though not fatally. Within minutes the crowd heard shots up the hill behind them, in the town of Barreal, and later learned that the minor, Cristian Madrid, the son of DESA employee Virigilio Madrid, had been killed.

DESA's press statements claimed the community members violently entered the company compound, leading to Tomas Garcia's killing, and that the crowd then entered Cristian Madrid's home and killed him. Milton Amaya Coello, commander of the First Battalion of Engineers, whose troops were stationed in the DESA compound, echoed the company's explanation of events. He claimed that after entering the compound three people then proceeded to attack the heavily armed soldiers with machetes, so Sergeant Jasser Sarabia fired in self-defense.¹⁴

On July 15, 2013, DESA employees left the compound in Barreal, leaving the installations occupied only by police and military forces. During an August 6 visit the only DESA employee present in the compound was DESA's head of security, Douglas Bustillo.



The DESA compound below the community of Barreal, in Rio Blanco, Intibuca.

Photo by Karen Spring

¹⁴ <http://www.elheraldo.hn/Secciones-Principales/Pais/Dos-muertos-y-un-herido-en-protesta>
<http://www.laprensa.hn/csp/mediapool/sites/LaPrensa/Sucesos/Policiales/story.csp?cid=365075&sid=951&fid=98>

On July 22 a pre-trial hearing of Sergeant Jasser Sarabia was held. He was released on a L100,000 bail, to be held as he awaited trial. He was charged with murder in self-defense, the only degree of homicide for which it is permitted to await trial in freedom. It was also reported that the defense lawyer was a public prosecutor, though Honduran law prohibits prosecutors from private practice.¹⁵

At 3am on September 5, Desiderio Mendez, a witness to the killing of Tomas Garcia who had himself been injured in the gunfire by the military, was kidnapped from his home by uniformed police officers. The police illegally entered his home at 3am, terrifying his sleeping family, including six children, threatened to torture him if he did not 'talk,' and took him to an unknown location. The police had no warrant to enter the home, and in any case Honduran law prohibits arrest and search warrants from being executed before 5am. After an international alert was released, Mendez was presented the following day in the police station in La Esperanza. Police claimed they found an unregistered weapon in his home, which community members believe was planted by police. He was arraigned and must make the 5 hour trip to La Esperanza every two weeks to sign-in.¹⁶

Later in the first week of September, a contingent of 50 police, under the command of Commissioner Martel, began operating in the Rio Blanco area,¹⁷ though police and military had maintained a constant presence in the region since May. Community members explain that in addition to the 1st Battalion, troops from the 105th Brigade, the 14th Battalion and the 2nd Artillery Battalion have been present. During an August 6th 2013 visit to the gates of the DESA compound, a military officer, Major Ballestros was identified as the commander of the security forces in the DESA compound. Though he would not identify the unit to which he was permanently assigned, he explained the security mission of approximately 40 soldiers and 10 police were a joint task force that formed part of *Operacion Libertad*.

DESA Charges Lenca Leaders with Land Usurpation, Lenca Leaders Charge DESA with Land Usurpation

On August 2, 2013, public prosecutors in Intibuca formalized charges of land usurpation, coercion and damages against COPINH leaders Berta Caceres, Tomas Gomez and Aureliano Molina, based on accusations by the company that the three had instigated the protests in Rio Blanco.¹⁸ On August 14, 2013 an arraignment was held, in which the judge determined the three were ordered to await proceedings in freedom, signing in with the court every week.

On September 3, 2013, Lenca leaders from the Rio Blanco region formally accused DESA of land usurpation, at the same time accusing government functionaries and the military of abuse of

¹⁵ <http://www.prensaindigena.org.mx/?q=content/honduras-audiencia-inicial-al-militar-que-asesin%C3%B3-al-compa%C3%B1ero-tom%C3%A1s-garc%C3%AD> and <http://www.cofadeh.hn/node/199>

¹⁶ <http://www.copin.hn/article/mas-amenazas-contra-el-pueblo-lenca-de-rio-blanco/>

¹⁷ Informant interview, by telephone, September 10, 2013.

¹⁸ <http://www.proceso.hn/2013/08/02/Nacionales/Presentan.requerimiento.fiscal/72794.html>

authority.¹⁹ Rio Blanco residents are outraged that State security forces are at the service of big business, assisting corporations in the violation of the rights of the population. Among the functionaries implicated in the complaint is Rigoberto Cuellar. As Minister of Natural Resources and the Environment, Cuellar granted environmental permits for the dam without fulfilling studies and consultations required by law. On September 3, Cuellar was named Assistant Attorney General of Honduras.²⁰ Leaders also presented separate charges of abuse of authority against the prosecuting attorney in charge of the prosecution of the three COPINH leaders.

On September 5, 2013 a second charge of land usurpation and damages was formalized against the COPINH leaders by Intibuca public prosecutors.²¹

Also on September 5, Honduran government agencies began mobilizing authorities from Intibuca, including the mayor of Intibuca, representatives of Lenca organizations created as parallels to COPINH, and individuals from Rio Blanco communities, including a former president of the La Tejera development Committee (Patronato) who had been removed from his charge in an assembly of the community after neighbors learned he had become close to DESA. On September 7 the group signed an act in the Presidential Palace, convoked by the recently formed Secretariat of Indigenous and Afro-descendent Peoples (SEDINAFRO), claiming they represented Rio Blanco communities and accepting the dam.²² The act seemed a clear response to the charges presented by the Indigenous Council on September 3, an attempt to demonstrate that a consultation with indigenous authorities had occurred.

On September 12 and 13 a pre-trial hearing of three leaders of the Lenca indigenous organization COPINH, Berta Caceres, Tomas Gomez and Aureliano Molina, took place. Hundreds of supporters accompanied the accused outside of the La Esperanza court house.

During the first day of the audience, September 12, Rio Blanco resident William Jacobo Rodríguez was arrested. He was held overnight and charged the following day with threatening a DESA employee. He was released on condition that he report weekly to the court in La Esperanza until the pre-trial hearing takes place.

During the second day of the audience, September 13, Victor Fernandez, the lawyer representing the three accused leaders of COPINH, learned the mining company Las Victorias had lodged a complaint against him and a fellow lawyer, Martin Fernandez, an accusation similar to those being advanced against the three COPINH leaders, but related to the land conflict in Nueva Esperanza, Tela, Atlantida. Victor Fernandez and Martin Fernandez are accused of intellectual authorship of a road block in the campesino community of Nueva Esperanza in Tela. The lawyers are the legal representatives of residents of Nueva Esperanza, assisting the campesinos in both presenting charges against the company for acts of violence intended to intimidate residents into selling lands associated with mineral deposits,

¹⁹ September 11, 2013 telephone interview with a COPINH legal advisor.

²⁰ <http://www.tiempo.hn/portada/noticias/denuncian-ante-el-mp-al-nuevo-fiscal-adjunto>

²¹ Informant interview by telephone, September 10, 2013

²² <http://www.latribuna.hn/2013/09/07/lencas-de-acuerdo-con-construccion-de-represa/>

and defending community members against accusations by the company resulting from a gate area residents installed at the entrance to their community.

COPINH reports that the evidence presented in the September 12 and 13 hearing demonstrated the three were opposed to the dam, but failed to show any acts which could constitute incitement to block the road. Further, COPINH presented evidence demonstrating that the communities in Rio Blanco held legitimate rights to the land DESA has appropriated. Despite the lack of evidence, on September 20, the judge resolved that prosecution of the charges will continue to trial.

In the same resolution, the judge ordered that Berta Caceres will go to prison to await trial, as Honduran law does not permit a person to await trial in conditions of freedom related two separate formal indictments at the same time. This is the case with Berta as she was granted conditional freedom on the charges of illegal weapons possession. The judge ordered that Aureliana and Tomas await trial in liberty. She also ordered the eviction of the road block. However, the decision is being appealed, and under Honduran law the eviction cannot be carried out while the case is being appealed.



Protesters outside of the courthouse in La Esperanza await the ruling on August 14. Photo Karen Spring

Part II: Context

US Ambassador Encourages Prosecution of Land Rights Defenders

The Honduran Public Prosecutors office formalized charges against the three internationally recognized leaders of the Lenca organization COPINH, on August 2, 2013, marking what appears to be the first time that leaders of an organization have been charged with the intellectual authorship or instigation of a protest action. The investigation that led to the charges was launched around the same time that Honduran newspaper reports circulated on June 28, 2013 claimed that US Ambassador to Honduras, Lisa Kubiske, had called on the Honduran government to prosecute those who promote land occupations, stating that “the government should guarantee a functional justice system to proceed against those who encourage campesinos to invade lands.”²³

The judicial system in Honduras has long been biased and misused, contributing to violations against human rights defenders, particularly indigenous and land rights activists. This can be seen in the cases of the Lenca community of Montana Verde in Lempira, where land rights defenders Marcelino and Leonardo Miranda were charged without basis with murder in 2004 and held in prison three years until Amnesty International declared them prisoners of conscience and the Supreme Court reviewed their case, releasing them.²⁴ In the Garifuna community of Triunfo de la Cruz, land rights defender Alfredo Lopez was held for seven years in prison without trial until the Inter American Court ordered Honduras to release him.

Among the longstanding violations of indigenous and campesino communities’ rights has been a lack of access to the justice system. While indigenous communities and campesinos have been subject to false accusations and harassment, crimes committed against them, including violence and fraud have consistently not been investigated by state authorities. This has permitted the consistent use of coercion as a means of obtaining possession of land and at times title transfers. Civil and penal processes to annul illegal titles are out of reach of marginalized communities due both to the high cost of legal representation and the harassment and violence directed against lawyers who represent indigenous and campesino communities.

In this context agrarian legislation and practice have long allowed for, even encouraged, the occupation of land when there is evidence that the land was acquired illegally, as a first step in recovering land rights, which in most cases has been the only option available to many communities. Occupations,

²³“el Gobierno debe garantizar el funcionamiento del sistema de justicia para proceder contra personas que alientan a los campesinos a invadir tierras”.

http://www.laprensa.hn/csp/mediapool/sites/LaPrensa/Honduras/Tegucigalpa/story.csp?cid=333246&sid=275&fid=98#.Uc2l_-uhBwl

²⁴ <http://www.amnesty.org/es/library/asset/AMR37/014/2004/es/88f282ff-d54f-11dd-8a23-d58a49c0d652/amr370142004en.html>

particularly when carried out within the framework of the agrarian reform program, force government authorities to examine the title history.

In March of 2013 the State Department announced it had issued guidelines related to the protection of human rights defenders, which begin, “Protecting and supporting human rights defenders is a key priority of U.S. foreign policy. Because human rights defenders seek to hold their governments accountable to protect universally recognized human rights, defenders are often harassed, detained, interrogated, imprisoned, tortured, and even killed for doing their work.”²⁵

Land Conflicts Grow Following 2009 Coup

Land conflicts in Honduras have grown exponentially over the past few years, as the government ushered in by the June 28, 2009 military coup has granted a large number of hydroelectric dam concessions; 40 concessions were granted in just one law passed in September 2010.²⁶ This occurred without prior consultation with any of the communities impacted by the dams. Also after the coup, legal obstacles to exploiting mining concessions were lifted and processes underway to find negotiated resolutions to longstanding land disputes related to agribusiness interests were ended.

Most nations in the region had suspended formal recognition of the Honduran government following the 2009 coup, this was still the case at the time these concessions were passed. Further, in post-coup Honduras, it has become clear to the international community, particularly through the findings of two truth commissions related to the coup, that the justice system in Honduras is broken, and has displayed a growing pattern of participation in grave human rights abuses, abuses ranging from participation in the coup to illegal detentions and extrajudicial killings.

The massive concession of hydroelectric dams occurred after two decades of intense, illegal land grabbing of indigenous territory, with the complicity of government functionaries. Legal challenges by the communities were not an option both due to corruption in the justice system and the de facto exclusion of poor communities from civil processes. Lawsuits challenging the validity of title transfers can take decades and entail extraordinary expense, impossible for agrarian communities whose lives and food security depend on the land.

World Bank and IDB Structural Adjustment Laws from the 1990s Promote Grabbing of Indigenous Land

Honduras has a long history of large landholders or politically influential individuals taking possession of land through violence and fraud, often land belonging to indigenous and campesino communities. Complaints of abuses have been ignored by the state, allowing land grabbers to accumulate land

²⁵ <http://www.humanrights.gov/2013/03/08/u-s-support-for-human-rights-defenders/>

²⁶ <http://old.latribuna.hn/2010/09/03/aprobados-los-contratos-de-energia-renovable/>

through force with the complicity of the government. Particularly affected are indigenous communities who were, and are, subject to discrimination in the administration of government services generally

However, a significant percentage of land in Honduras is considered either national lands or ejidal lands, which prior to 1990 protected it from private titling. National lands or fiscal lands are the property of the national government. Ejidal lands were lands which were held in collective titles, some with their origin in colonial times. Though private contracts between buyers and sellers were often drafted, sometimes witnessed by the local mayor, the parcels remained judicially inferior to the collective title.

The names in which the ejidal titles are extended vary; at times they are in the name of the people of a specific municipality, sometimes in the name of the municipality, sometimes in the name of the indigenous people of the region. In many cases of land titled to municipalities upon examination of the historical record of the conditions surrounding the titling process it becomes clear that the intended stewards of the land were the indigenous communities already living in the region. In many regions 50 or 80 years ago the municipal government was an indigenous authority structure as non-indigenous populations had not yet moved into the area.

In 1990 as a condition of the structural adjustment program promoted by the World Bank and IDB, a new law regulating municipalities, replacing the previous 1927 law, was passed. In Article 70 of this law, municipal governments were granted the authority to sell ejidal lands.²⁷ The directive to sell off ejidal lands was repeated in the Law for Modernization of the Agricultural Sector of 1992, also closely related to the structural adjustment program.

The 1990 Municipalities Law and the 1992 Agricultural Sector Modernization accelerated encroachment into indigenous lands. Government functionaries across Honduras extended titles to outsiders to the indigenous communities.

In 1994 the State of Honduras ratified the International Labor Organization's Indigenous and Tribal Peoples Convention 169, which specifically mandates governments to protect the rights of indigenous people to the land they occupy, prohibiting forced displacement, protecting their rights over natural resources in their territories. Particularly relevant to Rio Blanco are provisions in Article 14 of ILO 169:

1. The rights of ownership and possession of the peoples concerned over the lands which they traditionally occupy shall be recognised. In addition, measures shall be taken in appropriate cases to safeguard the right of the peoples concerned to use lands not exclusively occupied by them, but to which they have traditionally had access for their subsistence and traditional activities. Particular attention shall be paid to the situation of nomadic peoples and shifting cultivators in this respect.

2. Governments shall take steps as necessary to identify the lands which the peoples concerned traditionally occupy, and to guarantee effective protection of their rights of ownership and possession.

²⁷ http://pdba.georgetown.edu/Decen/Honduras/ho_leydemunicipalidades90.pdf

3. Adequate procedures shall be established within the national legal system to resolve land claims by the peoples concerned.

and in Article 17:

“1. Procedures established by the peoples concerned for the transmission of land rights among members of these peoples shall be respected.

2. The peoples concerned shall be consulted whenever consideration is being given to their capacity to alienate their lands or otherwise transmit their rights outside their own community.

3. Persons not belonging to these peoples shall be prevented from taking advantage of their customs or of lack of understanding of the laws on the part of their members to secure the ownership, possession or use of land belonging to them.”

Though the Municipalities Law and Agricultural Sector Modernization Law from 1990 and 1992 respectively were passed before the ILO Convention 169 was ratified by Honduras, most of the land transfers these laws facilitated on indigenous territory occurred after ILO 169's ratification. Judicial hierarchy in Honduras clearly gives priority to ratified international treaties over law decrees. This is even directly stated in Article 66 of the Municipalities Law.

Encroachment into indigenous land was almost always facilitated by corruption, violence, intimidation, and criminalization of land rights defenders in the criminal justice system. This can be seen in the cases of Marcelino and Leonardo Miranda of the Lenca community of Montana Verde, and Alfredo Lopez of the Garifuna community of Triunfo de la Cruz.

These communities had experienced land grabs by politically influential businessmen. During this time many other indigenous communities lost significant areas of land through similar land grabs accompanied by violence, intimidation and criminalization by corrupt justice system functionaries. This is the situation of the land DESA claims to own for construction of the Agua Zarca dam.

Corporate Law Enforces Impunity While Indigenous Communities Are Violently Attacked

DESA, a Honduran corporation created in 2009, holds the concession to the Agua Zarca dam on the Gualcarque River between the departments of Intibuca and Santa Barbara. Hydroelectric concession holders, like DESA, are granted rights to the use of the river from the national government. However, they must obtain land rights from those in the area of the project, a process which seems designed to promote violence, fraud and coercion, exactly what has occurred in Rio Blanco since DESA came to Rio Blanco.

The statement from the US Ambassador to Honduras encouraging the prosecution of those who encourage land invasions would seem to indicate that US financial interests are at stake in the

hydroelectric and mining concessions, and expansive African palm plantations. However, given the structure of corporate law in Honduras, and in most of the world, it is very difficult if not impossible to discover who the actual owners or investors in a corporation are or the origin of their capital.

Corporate law insures anonymity to corporations, which helps to enforce impunity for abuses, whether those abuses are violence committed against indigenous communities in order to access their resources or money laundering. In Honduras, it is widely suspected that assets gained through illegal activities are being invested in dams and mines.²⁸ Regardless of whether DESA itself is involved in illegal activities, it does benefit from the same corporate protections used for laundering.

The WB and UNDOC launched the Stolen Assets Recovery Program which recently released a study analyzing how corporate structures have been used to launder billions of dollars in illegally obtained assets,²⁹ yet no real measures are undertaken to implement greater corporate accountability and transparency. Major banks like Wells Fargo, Citibank and Bank of America have been recently embroiled in scandals related to money laundering accusations, yet consequences have been very lenient.

This is a sad contrast to the dire, sometimes deadly, consequences of US drug policy experienced by communities in the path of drug trafficking. The contrast between the violence experienced by indigenous communities in drug routes and the lenient treatment received by bankers who knowingly greatly profited from trafficking is stark.

DESA Owns the Agua Zarca Concession, Who Owns DESA?

DESA claims to be Honduran capital, and in a sense it is, it is a Honduran corporation, created by two companies which may also have been incorporated in Honduras. However, there is no way for the public to know the nationality of the investors in those corporations.

DESA was founded by two corporations, Inversiones Las Jacarandas SA, which provided two thirds of the initial capital (L33,350,000), represented by Jose Eduardo Atala, and Potencia y Energia de Mesoamerica (PEMSA), which provided the remaining third (L16,650,000). PEMSA was represented in the transaction by a Gerardo Carrasco Escobar.

However since its creation, DESA may have received more than double its original capital from later investors, investors whose identity is not part of the public record. This compounds the fact that no public information is available relating to the identity of the owners of Las Jacarandas and PEMSA.

²⁸ Lending credence to this popular perception, on September 19, 2013, the Treasury Department designated 5 Honduran businesses, including one apparent mining corporation Minera Mi Esperanza, S.A. under the Kingpin Act. <http://www.treasury.gov/press-center/press-releases/Pages/jl2168.aspx>

²⁹ <http://blog.transparency.org/2011/10/24/how-can-we-stop-the-corrupt-from-gaming-the-system-more-transparency/>

Jose Eduardo Atala Zeblah acted as the representative of Inversiones Las Jacarandas to carry out the original investment in DESA, while he and his brothers Jacobo Atala Zeblah and Pedro Atala Zeblah are on the Board of Directors. The Atala family was broadly denounced in Honduras as key participants or backers of the June 28, 2009 military coup, which facilitated the massive concession of hydroelectric dams, particularly Camilo Atala, Vice President of FICOSAH Bank and a cousin of the Atala Zeblah brothers.

The Atala family is best known as owners and directors of the FICOSAH Bank. Though it is unclear if the Atala Zeblah branch of the family holds an interest in FICOSAH, Jacobo Atala Zeblah is the president of the Honduran operations of the growing transnational Banco de America Central (BAC).³⁰ Initially it was reported that Agua Zarca was funded by FICOHSA Bank, which had received funding from the World Bank, but the World Bank denied FICOHSA involvement in Agua Zarca. Reports of FICOHSA funding from Agua Zarca may have derived from the Atala family investment in DESA.

Jose Eduardo Atala was elected Vice President of the Association of American Chambers of Commerce in Latin America headquartered in Washington, DC in 2011.³¹ He has also served as the Representative of Honduras to the Central American Bank for Economic Integration, CABEL,³² experience which likely helped DESA coordinate a \$24.4 million loan from the CABEL, approved in 2012.

Following the resistance to the Agua Zarca dam by Rio Blanco villages, the region has been militarized by both police and military, not surprising given that DESA's board apparently has influence with the security forces in Honduras. The President of the Board, David Castillo Mejia, was Minister of Governance under former President Ricardo Maduro, while DESA's Secretary, Roberto Pacheco Reyes, is a Honduran Military Intelligence officer.³³

Pacheco is also well connected in the energy sector as he was named as the Coordinator of Development for the Honduran National Electric Company, EENE, in 2008.³⁴ EENE remains the only State owned-energy company in Central America which has not been significantly privatized, at least in the sector of energy distribution, but for several years there has been intense pressure to do so.

State Security Forces Act on Behalf of Big Business, Collaborate with Private Security and *Sicarios*

Reports of the operation of masked gunmen out of the DESA compound, an area entirely under the control of state security forces, is concerning, but unfortunately such reports are not unusual in

³⁰ <http://archivo.elheraldo.hn/content/view/full/414641>

³¹ <http://old.latribuna.hn/2011/10/30/eduardo-atala-elegido-vicepresidente-de-la-aaccla/>

³² <http://old.latribuna.hn/2011/10/30/eduardo-atala-elegido-vicepresidente-de-la-aaccla/>

³³ <http://www.tsc.gob.hn/Denuncia%20Ciudadana/2009/066-2009-DCSD.pdf>

³⁴ <http://www.tsc.gob.hn/Denuncia%20Ciudadana/2009/066-2009-DCSD.pdf>

Honduras today. In other regions of the country, *sicarios*, or paid assassins, are known to operate in coordination or as employees of private security companies.

This occurs across Honduras as the international community, spearheaded by the US State Department and the Inter-American Development Bank, are funding a massive security initiative in Central America, following the tradition of Plan Colombia and the Merida Initiative in Mexico, the Central America Regional Security Strategy.³⁵

Public Funds to Help Transnational Investors Benefit from Stolen Indigenous Land through CAMIF

The CABEL is a multilateral bank owned by the governments of Central America, but with capital investment from the US government, including USAID, and other nations from outside the region. According to the CABEL's 2012 Annual Report, its loan to DESA for the Agua Zarca hydroelectric project was "co-structured" by the Central American Mezzanine Infrastructure Fund (CAMIF), and the Dutch FMO development bank, also an investor in CAMIF, indicating an investment by CAMIF and FMO.³⁶

In the mid 2000's, the IDB promoted the Plan Puebla Panama (PPP), a mega infrastructure development project running from Oaxaca, Mexico to Panama. The IDB and other multilateral development banks supporting the PPP provided loans to the governments involved for seven core infrastructure initiatives. This was the infrastructure needed to maximize the private investment potential opened up through the legal framework set in place through the Central American Free Trade Agreement (CAFTA), which was fully ratified in 2007 and took effect January 1, 2009.

One of the seven core projects was the Central American Country's Energy Interconnection System / Sistema de Interconexion Energetica de los Paises de America Central (SIEPAC), which began construction in 2006 and became operational in the fall of 2011.³⁷ SIEPAC is an energy transportation system, a circuit of 1800 kilometers of 230kV lines that run from Panama, where it connects to Colombia's grid, through Central America to Guatemala, where it connects to Mexico's grid. The principal stated goal of SIEPAC, in addition to the physical infrastructure, is to support the formation and consolidation of the Regional Energy Market that facilitates the participation of the private sector in electrical generation.³⁸

The public resources invested in SIEPAC made billions of dollars of private investment in energy generation possible. Prior to the 1990s all energy generation in Central America was conducted by state owned electrical companies, but in the 1990's most Central American nations changed their laws to

³⁵ <http://upsidedownworld.org/main/international-archives-60/3347-feeding-the-monster-militarization-and-privatized-security-in-central-america>

³⁶ <http://www.bcie.org/uploaded/content/category/1905796452.pdf>

³⁷ <http://elmundo.com.sv/el-siepac-inicia-operaciones-en-septiembre>

³⁸ http://www.eprsiepac.com/descripcion_siepac_transmision_costa_rica.htm

allow private energy investment, with heavy pressure from the structural adjustment loans promoted by the World Bank and IDB. After privatization, electricity cost to consumers skyrocketed. Privatization schemes have advanced much more slowly in Honduras than in neighboring countries like El Salvador and Guatemala, and has the lowest energy cost to consumers in the 'Northern Triangle.'

The US based Enron Power Corporation led the way in privatization of energy generation in the early 1990's with offshore barges housing thermoelectric generators. At the time former Col. James Steele was Enron Power's Vice President, who was intimately familiar with Central America as he served with the US Military Group in El Salvador during the 1980s.³⁹ Steele more recently has been implicated in creating death squads in Iraq.

CAMIF was created in 2006 as part of the MDB's promotion of "public- private partnerships." It is an investment fund, founded with seed capital lent by the MDB's, which funds private companies to build privately owned infrastructure in Central America, dams, highways, ports, mines and more, all made possible by the core infrastructure projects in the PPP.

CAMIF is a private equity fund launched in 2009 and managed by then Washington based EMP Global. MDB's, or banks owned by several states, including the World Bank's International Financial Corporation,⁴⁰ the Inter-American Development Bank's International Investment Corporation and CABEL,⁴¹ Fondo de Fondos created by four Mexican banks, the Dutch development bank FMO and the Finfund of Finland, all pooled seed capital to loan to CAMIF. The public loans were then met with private investment, and in 2009 the fund began investing in privately owned infrastructure projects in Central America. In 2008 EMP Global, with CAMIF, was acquired by the BMB Group of Brunei,⁴² which specializes in managing the capital of the royal families of Brunei, Saudi Arabia and the Arab Emirates.⁴³

World Bank and IDB: Ignoring the Law, Bypassing Bank Safeguard Policies

Mixed public and private investment platforms like CAMIF have been strongly criticized by multilateral development bank watchers as they appear to be a mechanism to evade the multilateral bank's internal safeguard policies. Indeed there is no readily available public information regarding the CAMIF financing of Agua Zarca other than what was published by CABEL, also violating multilateral bank policies regarding access to information.

Among the Bank's internal "safeguards" are policies specifying that indigenous communities have the right to free, prior and informed consultation regarding projects in their territories. However, the UN

³⁹ http://premierespeakers.com/jim_steele/bio

⁴⁰ <http://ifcext.ifc.org/ifcext/spiwebsite1.nsf/0/688B9122C3914B8F852576BA000E2B0A>

⁴¹ http://www.iadb.org/en/projects/project-description-title,1303.html?id=rg-l1004#.Ui80hD__jTg

⁴² <http://www.professionalspensions.com/professional-pensions/news/1442456/bmb-group-buys-emp-global>

⁴³ <http://thebmbgroup.com/>

Declaration on the Rights of Indigenous Peoples (UNDRIP) mandates free, prior and informed consent by indigenous communities for projects that impact their territories, a stronger measure than the World Bank, as a specialized agency of the United Nations, is required to treat as a directive.

Since the Bank safeguard policies generally reflect, in much weaker terms, existing international human rights law, if international human rights agreements were enforced as the body of international law they in fact are, 'safeguard' policies would not be necessary. But the World Bank and IDB have long argued that they are exempt from all courts in the world, and rely on internal compliance mechanisms, such as the Inspection Panel and the Compliance Advisor Ombudsman in the World Bank, to enforce their operational directives, which include safeguard policies. The World Bank currently has its safeguard policies under review, scheduled to be modified in 2014; some bank-watchers fear the policies will be weakened.

As negative as a weakening of the safeguards would be, experience has shown that MDB's do not comply with them. The compliance mechanisms act too late to stop abuses, and in some cases their findings are not mandatory. The communities of Rio Blanco were not consulted by the MDB or the Honduran government prior to the entrance of the Agua Zarca dam. Aware of their rights under international law, Lenca communities affected by the Agua Zarca dam conducted consultations, and rejected the project.

Since the entry of DESA into the Rio Blanco region, a concerted effort to divide, intimidate and criminally prosecute the Lenca communities has been under way. This is the reason international law mandates prior consent for such projects. Once set in motion, large 'development' projects can tear communities apart.

Conclusions

Conclusion 1: The administration of justice surrounding the conflict in Rio Blanco has been applied in a tendentious manner. Police and public prosecutors have demonstrated a pattern of ignoring complaints from Lenca communities in Rio Blanco, denying them access to justice for violations ranging from violence to land usurpation. Further, the Honduran State has not implemented the obligations it acquired in the 1994 ratification of ILO 169, including specific measures for the protection of the land rights of indigenous communities. The conflict in Rio Blanco escalated as a direct result of the State's failure to comply with its obligation to investigate crimes committed against Lenca communities and protect their land rights, forcing communities to take actions to protect their legitimate rights.

Conclusion 2: The public prosecutor's office and the judiciary have aggressively and tendentiously prosecuted accusations against Lenca community members, and the human rights activists who support them. The state has subjected human rights defenders to penal processes for actions which are no the legitimate defense of the rights of indigenous communities. This has led to the impending imprisonment of one of Honduras' most recognized indigenous rights activists, Berta Caceres.

Conclusion 3: Honduran state security forces are acting to advance the interests of the corporations involved in the construction of the Agua Zarca dam, assisting in the usurpation of land from indigenous communities, even as national and international law supports the land rights of the Lenca communities opposing the dam. Honduran security forces are funded and trained by the US and the coalition of nations and multilateral institutions supporting the Central America Regional Security Strategy.

Conclusion 4: The director of security for DESA resides in a compound with Honduran security forces, and it is alleged by area residents that he coordinates with an irregular security force of masked gunmen who do not wear uniforms. This report is similar to reports from other communities involved in land rights disputes with corporations, such as the Nueva Esperanza community. It is concerning that the Honduran state security forces do not appear to have verified the identity of these masked gunmen or have determined if they are indeed associated with a private security company. If they are the gunmen would be required by law to wear the registered uniforms for the company.

Conclusion 5: The US embassy in Honduras has been actively and publicly engaged with the justice system reform efforts in Honduras. While aware of the corruption in the justice system, the Embassy has made statements that aggravate the danger faced by land rights defenders, contrary to State Department policies to protect human rights defenders.

Conclusion 6: The World Bank and IDB promoted Honduran legislation as part of structural adjustment policies in the 1990s which have facilitated illegal land grabs against Rio Blanco communal lands and other indigenous communities in Honduras.

Conclusion 7: The legal framework that governs corporations in Honduras facilitates impunity for crimes committed against Rio Blanco communities and obscures the origin of capital invested in the hydroelectric project, a mechanism for impunity.

Conclusion 8: Public funds facilitated by MDB's private sector funding agencies, including the World Bank's International Finance Corporation and the IDB's International Investment Corporation, appear to be funding the Agua Zarca dam through CAMIF, an investment fund that in reality does not respond to the safeguard policies of the MDB's, even though it may be obligated to. These investments generate wealth for transnational investors at the expense of the Lenca communities of Rio Blanco. These funding agencies and investors share responsibility for the human rights abuses in Rio Blanco.

Conclusion 9: The violence and other abuses committed against the Lenca communities of Rio Blanco are also the responsibility of the public sector lending agencies of the IDB, World Bank and other MDB's. The IDB financed and promoted the construction of SIEPAC, while the World Bank and other MDBs financed related projects designed to facilitate private sector investment in energy generation in Central America. Yet as this investment occurred, legal systems to protect the land rights of vulnerable communities, including campesino and indigenous communities, affected by the proposed energy generation projects did not and do not exist, leaving them vulnerable to violence and criminalization enacted with the objective of depriving communities of their legitimate land rights.

Conclusion 10: International bodies charged with protecting human rights have failed the Lenca communities of Rio Blanco. Though the concession for the construction of the Agua Zarca dam was extended by a government not recognized by most nations in the region, and the international community is abundantly aware that the police and judiciary in Honduras are engaged in grave abuses making it clear that a human rights protective framework does not exist in Honduras, no effective measures have been undertaken by to ensure the protection of human rights especially in areas where international investment is occurring, a responsibility of the international community.