

20 January 2015

Dear Mr. Joe Kaeser,

In this letter please find an overview of the human rights violations associated with the attempts to construct the Agua Zarca Hydroelectric Dam on the Gualcarque River in Rio Blanco, Intibuca, Honduras.

We respectfully ask that Voith Hydro withdraw from and end all involvement with the Agua Zarca Hydroelectric Project in Rio Blanco. There is a clear opportunity for Voith Hydro to withdraw given that construction has not yet begun on the dam and past attempts at building the dam have associated with serious human rights violations, even murder. Chinese company SINOHYDRO, the largest dam builder in the world, has already withdrawn from this project,¹ as has the Central American Mezzanine Investment Fund (CAMIF), which is related to the World Bank.²

In the paragraphs that follow, we seek to provide a brief outline of how the Agua Zarca Dam violates international human rights standards, especially the International Labor Organization's Convention 169 on the Rights of Indigenous Peoples, which has been ratified by the government of Honduras, the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the American Convention on Human Rights (ACHR) and the International Covenant on Civil and Political Rights (ICCPR).

1. Violation of indigenous and traditional peoples' right to free, prior, and informed consultation and consent

One of the most serious legal issues with the Agua Zarca Hydroelectric Dam is that there was no free, prior, and informed consultation of the Indigenous Lenca people about the project as mandated by ILO Convention 169, a legally binding international instrument which was ratified by Honduras in 1995.³ Article 7 of the Convention, which states "the peoples concerned shall have the right to decide their own priorities for the process of development as it affects their lives, beliefs, institutions and spiritual well-being and the lands they occupy or otherwise use, and to exercise control, to the extent possible, over their own economic, social and cultural development," as the Lenca people repeatedly expressed their opposition to the dam.⁴ In the same way, the dam violates the United Nations Declaration on the Rights of Indigenous Peoples, which requires the free, prior, and informed consent of Indigenous

¹ See Sinohydro letter to the Business & Human Rights Resource Centre: www.business-humanrights.org/Links/Repository/1023559/jump

² CAO Assessment Report regarding community concerns in relation to IFC's CAMIF project (#26590), January 2014, available at http://www.cao-ombudsman.org/cases/case_detail.aspx?id=208

³ "The Convention requires that indigenous and tribal peoples are consulted on issues that affect them. It also requires that these peoples are able to engage in free, prior and informed participation in policy and development processes that affect them." <http://www.ilo.org/indigenous/Conventions/no169/lang--en/index.htm>

⁴ There are numerous examples of this, including October 2010 Indigenous Assemblies in the region with public declarations issued opposing the dam, a denouncement of the river concessions filed with the Public Ministry also in 2010, meetings with DESA in 2011 in which the population clearly rejected the dam, protests at Honduran government agencies against the dam, and more.

Peoples.⁵ Free, prior and informed consent should include, as the name suggests, that the Indigenous peoples have provided their consent for a project affecting them after having been fully informed about the effects of the project; that they agree on a voluntarily basis; and that this consent is obtained prior to or "before adopting and implementing legislative or administrative measures that may affect them".⁶

Not only was the right to free, prior, and informed consultation/consent violated, but meetings with the Lenca people in the region after the project had already been approved by the Honduran government were manipulated by the Mayor of Intibuca, who left the meeting when the Lenca people voiced their opposition to the project and proceeded with falsified meeting minutes that are accompanied by falsified signatures.⁷ In violation of ILO Convention 169, he gave a permit for the dam project. Subsequently, Honduras' Public Ministry filed legal charges against the Mayor for abuse of authority in issuing the dam permit.⁸ The Public Ministry also filed legal charges against the Sub-Secretary for Natural Resources and Environment for issuing the environmental permit for the Agua Zarca Project without having consulted the Lenca population in the region.⁹ Both cases are in Honduran courts.

In addition to violating ILO Convention 169 and the UNDRIP, the Honduran government's concession of the Gualcarque River to DESA, via "Licitación N° 100-1293/2009," took place shortly after a military coup in Honduras that had removed the democratically-elected President by force and resulted in the country's expulsion from the Organization of American States.¹⁰ When the concession of the Gualcarque River was approved, the country was in a state of lawlessness, not recognized by the international community.

2. Infringement of Indigenous land and resource rights

Articles 14 and 15 of ILO Convention 169¹¹ and article 26 of the UNDRIP¹² clearly establish the rights of Indigenous People to own, use, protect, and conserve their traditional lands and natural resources. This has been clearly violated by the Agua Zarca Hydroelectric Project, as DESA has taken over traditional Indigenous lands, even destroying corn and bean harvests that the Indigenous people depend on to survive. The project also violates the Lenca people's rights to their resources, attempting to take over a section of the Gualcarque River, which is considered sacred to the Lenca people and also an important source of water for their harvests. DESA's takeover of traditional Indigenous lands, particularly of very fertile lands in the Vega del Culaton and the Vega del Achotal, is a huge part of the conflict of this project. It is also important to note that land ownership in Honduras is a very contentious issue, with multiple levels of government issuing conflicting land titles, often times for the same piece of land. For instance, DESA claims to have "purchased" land from

⁵ See for example, Article 19: "States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them."

⁶ United Nations Declaration on the Rights of Indigenous Peoples, *ibid.*
http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf

⁷ October 13, 2011 Certification by the Municipal Corporation of Intibuca and Video testimonies of Rio Blanco community members, available at <http://vimeo.com/78375391>

⁸ "Se presenta requerimiento fiscal por el delito de abuso de autoridad" filed April 15, 2013 against Martiniano Dominguez M. with the First Court of Intibuca.

⁹ "Se presenta Requerimiento Fiscal por el Delito de Abuso de Autoridad" filed August 21, 2013 against Marco Jonathan Lainez Ordoñez with Honduras' Supreme Court of Justice.

¹⁰ http://www.oas.org/en/media_center/press_release.asp?sCodigo=E-219/09

¹¹ For examples, in article 14: "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." And in article 15: "The rights of the peoples concerned to the natural resources pertaining to their lands shall be specially safeguarded. These rights include the right of these peoples to participate in the use, management and conservation of these resources."

¹² Article 26: "the indigenous population has the right to own, utilize, develop, and control the land, territories and resources they traditionally inhabit and use"

individuals, the majority non-Lenca, who were given titles to traditionally Lenca land in Rio Blanco by the Mayor of Intibuca (who as we explained above is facing legal charges) despite the existence of the Lenca people's traditional title to the land, issued in the 1890s, delimited in 1942, and documented again in the Department of Intibuca in 1984.

3. Infringements of cultural rights

According to the indigenous way of life, culture and the land are not separate entities, but rather spiritual units. The changes forced on their natural habitat, such as by the Agua Zarca Dam Project, and the corresponding loss of the land come together with changes in or the loss of cultural identity. According to international right, the cultural integrity of indigenous groups is protected in addition to the guaranteed right to their land. ILO 169 article 4 §1 commits governments to "taking special measures to protect the culture and the environment of the affected peoples." According to UNDRIP article 8, the government has to protect the indigenous population from measures "which would result in losing their cultural values or ethnic identity." The Gualcarque River is sacred for the Lenca people with spiritual significance; they believe that the spirits of children live in the river and that it must run free. In addition to being considered sacred, the area of the Gualcarque River where DESA intends to build the dam and prevented access is where the Lenca people in the area traditionally bathe as a community, engaging in communal cultural activities.

4. Right to food and water

The Agua Zarca Hydroelectric Project has already resulted in the destruction of important food sources for Lenca families in the region, prevented their access to the Gualcarque River, and if the project is constructed threatens to further destroy food sovereignty for the Lenca people. The Indigenous Lenca people depend on their corn, beans, and other crops to feed their families. It is an extremely poor population that depends on the crops they plant for their very survival. In 2012, 2013, and 2014, the dam project has resulted in the destruction of harvests for members of the Lenca community of La Tejera, Rio Blanco, in several cases destroying almost all the corn or bean harvests that families were depending on to eat until the next harvest. DESA employees have destroyed cornfields and bean plants that were ready to harvest by Lenca families, ruining valuable food sources when it was almost ready to eat. The disaster that losing one's corn or bean harvest has a Lenca family is impossible to overstate: it represents the loss of three meals a day, and is a huge obstacle for the extremely poor families of Rio Blanco that depend on their harvest to survive. DESA security guards have also blocked the Lenca people from accessing the Gualcarque River, an important source of water for irrigation of the Lenca people's corn, beans, and other subsistence crops.

The right to food and water are international human rights. Article 11 of ICESCR, Article 12 of the UN Declaration on Human Rights, Article 10 and 12 of the AMRK guarantees the right to food. Article 7 of ILO Convention 169 and articles 21 and 29 of the UNDRIP determine that the government has to guarantee food resources and the right to health for Indigenous peoples. The outright destruction of food sources and threats to the access of the water needed to irrigate those crops is a clear violation of the Lenca people's rights to food and survival.

5. Right to life, security of person, and freedom of assembly

DESA and the Honduran government have moved forward with the Agua Zarca Dam against the will of the Lenca people, using death threats, intimidation, violence, militarization, police harassment, arbitrary house searches, and even murder to try to impose to the project on the Lenca people. In response to the Lenca opposition to the dam, the Honduran police and then the Honduran military were deployed to Rio Blanco, with the military living and operating out of DESA's installations. Those who actively speak out against the dam, especially members of the Rio Blanco Indigenous Council, La Tejera Community Council, and the Lenca organization COPINH live in constant fear, face death

threats, have been violently attacked, have had their homes raided by the police, their children hit by police, had soldiers point weapons at them, and been threatened by DESA employees, and more.

On July 15, 2013, a soldier stationed at DESA's installations opened fired on a Lenca protest against the dam, murdering elected community leader and dam opponent Tomas Garcia and seriously injuring his 17-year old son. The soldier fired multiple shots directly at Tomas from just a few feet away as some 200 people, including other soldiers and police, watched. 17-year old Allan Garcia was seriously injured in the chest and back but has survived.¹³ Another of the soldier's bullets grazed community member Desiderio Mendez's neck; he escaped death or serious injury by centimeters.

The Inter-American Human Rights Commission condemned the murder of Tomas Garcia and urged "the State of Honduras to ensure the physical integrity and security of leaders and members of the Lenca people, who protest against the implementation of projects in their ancestral territory." The IAHRC reiterated to the Honduran state that need to respect the right of the Lenca people to freedom of assembly to express their will, stating "demonstrations and protests are an expression of the right of association and freedom of expression, fundamental rights guaranteed in the American Convention on Human Rights and essential to the existence and functioning of a democratic society." Finally, "the Commission also reiterates that acts of violence and other attacks against human rights defenders, as is the case with indigenous leaders who defend their right to their ancestral land, not only violate their rights as individual persons, but also threaten against the fundamental role they play in society."¹⁴

Despite the Inter-American Human Rights Commission's urgings, violent repression, threats, and intimidations have continued in Rio Blanco. **Annex 1** to this letter includes just a few examples of repression, threats to life, and intimidation and violations of the freedom of expression aimed at imposing the Agua Zarca Dam. **The "right to life, liberty, and security of person" is the most fundamental of human rights**, the first right established by the UN Declaration of Human Rights.¹⁵ This right has been clearly violated as a result of the Agua Zarca Dam. The UN Declaration of Human Rights also establishes the right to freedom of assembly, which the State of Honduras has violated repeatedly in its repression of the Lenca protest against the Agua Zarca Dam.¹⁶

6. Misuse of the Justice System

Since the 2009 military coup, the Honduran justice system has become particularly corrupt and influenced by powerful and wealthy interests, frequently criminalizing human rights defenders and failing to advance cases to hold companies and wealthy elites accountable.¹⁷ In this reality, it is no surprise that the Honduran justice system has failed to move forward with legal cases and complaints against the Agua Zarca Dam but instead quickly moved to criminalize Lenca leaders for speaking out.

On May 24, 2013, the Honduran military detained Berta Caceres, Coordinator of the Indigenous Lenca organization COPINH as she was driving to Rio Blanco. She was arrested and taken to spend the night in jail. DESA and the Honduran government filed additional charges against her and two other

13 http://www.oas.org/en/iachr/media_center/PReleases/2013/052.asp

<http://www.soaw.org/about-us/equipo-sur/263-stories-from-honduras/4129-tomasgarcia>

14 "IACHR Condemns the Murder of Lenca indigenous leader and injuries to a child in Honduras Military operation," July 19, 2013, Available at www.oas.org/en/iachr/media_center/PReleases/2013/052.asp

15 United Nations Declaration of Human Rights, Article 3

16 United Nations Declaration of Human Rights, Article 20: "Everyone has the right to freedom of peaceful assembly and association."

17 Human Rights Watch 2014 World Report: Honduras chapter, www.hrw.org/world-report/2014/country-chapters/honduras, and "No justice in wave of killings over land," Human Rights Watch, <http://www.hrw.org/news/2014/02/12/honduras-no-justice-wave-killings-over-land> and "There are no Investigations Here," Human Rights Watch, <http://www.hrw.org/reports/2014/02/12/there-are-no-investigations-here>

Lenca leaders for their opposition to the Agua Zarca Dam and on September 20, 2013, a judge ordered her to jail and prohibited two other Lenca leaders from visiting Rio Blanco. Amnesty International declared Berta Caceres would be a political prisoner if she was jailed¹⁸ and numerous national and international human rights groups spoke out against the silencing of this prominent Lenca leader for her opposition to the dam.¹⁹ The state of Honduras was forced to admit her arrest was because of her work defending Indigenous rights, nevertheless, one of the cases is still pending.

The influence exerted by powerful interests over the justice system also means that it is unwilling to deal with the illegality of the Agua Zarca Hydroelectric Dam due to the lack of free, prior, and informed consent and the ongoing human rights violations caused by the attempts to force the Lenca people into accepting the Agua Zarca Dam. Legal cases against government officials for violating ILO Convention 169 simply do not advance in the court system and numerous complaints filed by the Lenca people are simply left on the shelf. The UN Special Rapporteur on the situation of Human Rights Defenders expressed concern about this during her most recent visit to Honduras.²⁰

As this letter makes clear the proposed Agua Zarca Hydroelectric Dam in Rio Blanco seriously violates the human rights of the Lenca people in the region. According to the UN Guiding Principles on Business and Human Rights, companies have the responsibility to respect and maintain all established human rights everywhere they operate.²¹ **We urge Voith Hydro to take this opportunity to uphold international human rights standards by withdrawing from the Agua Zarca Hydroelectric Project.**

Given that the construction of the Agua Zarca Dam has not yet begun and has in fact been halted for over a year and a half due to the Lenca people's opposition to the dam, there is a unique opportunity for Voith Hydro to withdraw and thereby avoid being mired in the serious human rights violations related to attempts at building the Agua Zarca dam.

The request for Voith Hydro to withdraw from the Agua Zarca Project is not without precedent. Chinese company SINOHYDRO, the largest dam builder in the world, has already withdrawn from the Agua Zarca Project precisely because of the conflict surrounding the dam. After six months of work in Rio Blanco on the project, SINOHYDRO suspended operations and withdrew all their personnel from Rio Blanco. On August 24, 2013, SINOHYDRO officially terminated its contract agreement with DESA. SINOHYDRO has publicly stated, "Right from the very beginning of our mobilization, it was noticed that there were serious interest conflicts between the Employer of the Project, i.e. DESA, and the local communities."²²

Additionally, the Central American Mezzanine Infrastructure Fund (CAMIF) cancelled a loan it had previously approved for the Agua Zarca Hydroelectric Project after Lenca organization COPINH filed a complaint about the dam's violation of ILO Convention 169 with the World Bank's Compliance Advisor Ombudsman (CAO). The CAO determined that the complaint against the Agua Zarca Dam met its

18 Honduras: Indigenous Leaders Face Unjust Charges.
<http://www.amnesty.org/en/library/asset/AMR37/012/2013/en/20e5d443-a7bb-4923-83e7-fabd1b18faa0/amr370122013en.html>

19 Honduras: Judicial persecution against 3 Indigenous Lenca leaders: <http://www.fidh.org/es/americas/honduras/honduras-hostigamiento-judicial-en-contra-de-tres-lideres-indigenas-del-14005>

20 Press release and remarks by United Nations Special Rapporteur on the situation of human rights defenders, February 14, 2012. <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=11827&LangID=E> and <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=11830&LangID=E>

21 UN-Guiding Principles on Business and Human Right Art. 11 and Art. 12

22 Sinohydro response to questions by the Business & Human Rights Resource Centre: www.business-humanrights.org/Links/Repository/1023559/jump

eligibility criteria. In January 2014, the CAO issued its assessment report and reported that neither CAMIF nor any World Bank related finance institution would fund the Agua Zarca Dam.²³

We hope Voith Hydro will similarly take into account the Agua Zarca Dam's clear violation of ILO Convention 169 as well as other human rights violations associated with the project and withdraw any involvement in the Agua Zarca Hydroelectric Project.

Thank you for your consideration,

Monti Aguirre, **International Rivers**

Jagoda Munic, Chairperson, **Friends of the Earth International**

Andrea Lammers, **Ökumenisches Büro für Frieden und Gerechtigkeit e.V., München**

²³ CAO Assessment Report regarding community concerns in relation to IFC's CAMIF project (#26590), January 2014, available at http://www.cao-ombudsman.org/cases/case_detail.aspx?id=208