

March 21, 2005

GUATEMALA UPDATE: Chixoy Dam Reparations Campaign

For many years, Rights Action has worked on this Campaign, funding and working with the community-based 'Coordinator of Communities Affected by the Chixoy Dam' (founded by survivors of the Rio Negro massacres that were committed so as to forcibly displace community members to clear out the dam's flood basin). We coordinate our international efforts with: International Rivers Network, Campaign to Reform the World Bank (Italy) and COHRE, Centre on Housing Rights and Evictions.

Below, you will find a recent news article and a summary of the **petition submitted to the Inter-American Commission of Human Rights**. Our **July 9-16 Delegation-Seminar to Guatemala (& Honduras)** will take a first-hand look at this on-going Campaign for justice and reparations. For more information about the Campaign and our Delegation-Seminar: info@rightsaction.org, 416-654-2074. Please re-distribute this information. If you want on-off this elist: info@rightsaction.org

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THE CHIXOY DAM CASE: PETITIONING FOR REPARATIONS

(by Rebeca Botello, Inforpress Centroamericana, 25 de febrero de 2005, No. 1597, translated for Rights Action by Rosalind Gil)

SUMMARY

- A legal petition for reparations has been placed before the Inter-American Commission of Human Rights.
- The petition attempts to establish the liability of the World Bank and the Inter-American Development Bank, as well as the Government of Guatemala in the Chixoy dam case.
- Organizations working for reparations are carrying out actions in a climate of intimidation.

In the last few weeks, there have been a series of events that can be seen as a deliberate attempt to intimidate both representatives of communities affected by the construction of the hydro-electric Chixoy dam, as well as organizations working with the communities against this project. These events occurred at the same time that a public petition was issued to the Inter-American Commission of Human Rights requesting reparations and establishment of liability of the Government of Guatemala and of the financial backers of the project, the World Bank and the Inter-American Development Bank.

THE CHIXOY DAM CASE IS BACK IN THE NEWS

After 20 years, the controversial construction of the hydroelectric Chixoy Dam project is still causing waves. Local and international organizers met recently and re-launched the petition demanding reparations for those affected by the dam. However, thus far there has been no response.

On February 15, COHRE (Centre on Housing Rights and Evictions), which has headquarters in the United States and Brazil, announced that on August 31, 2004, it had presented a petition to the Inter-American Commission, the organization that judges eligibility for cases to be recognized by the Inter-American Court of Human Rights.

This petition is an attempt to establish the liability of the State of Guatemala, the banks that financed the Chixoy dam project (World Bank and Inter-American Bank) as well as of countries that sit on the boards of directors of these banks. The process also targets the United States, given that it has the strongest influence in decision-making in these two banks.

The criterion used by the Commission to accept a petition is based on lack of internal legal remedies. Thus, in its judicial argumentation, COHRE underlined the difficulty of access to internal legal remedies, alleging that there has been a substantial period without response (almost 30 years), as well as threats, and an economic situation that makes it difficult to begin a legal process.

Spokespersons for the WB in Guatemala say that at this time they cannot make any official statement on the matter. However, Grahame Russell, a representative of the Canadian organization, Rights Action, another group that is supporting the petition, confirms that there is proof that the bank has taken an official position, both orally and in writing. The WB claims that they were unaware of the massacres and says that they will take absolutely no responsibility for a project that has been completed. But at the same time, the Bank says that it would be prepared to support other projects, given the economic difficulties that the people in the area are experiencing. Russell told Inforpress that this is clearly an attempt by the Bank to clean up their image, an

indirect way of offering reparations.

THE LEGAL ARGUMENTS

COHRE is presenting legal arguments against the governments that sit on the Boards of Directors of banks, stating that these countries have "disproportionate voting power", that is, more than 5% of the vote. For example, Mexico has 7.8%, Venezuela 5.65% and the United States 30%-35%, as well as holding the veto.

The petition is based on legal obligations stipulated by the Inter-American Human Rights Convention, with reference to the massacres and forced evictions. It is also based on the International Covenant on Economic, Social and Cultural Rights that forbids large scale displacement of people without providing protection and compensation to those affected.

COHRE points out that States, that have members on the Boards of Directors of these banks, have found a strategy to get around the rule that prohibits them from sending funds to repressive governments - they use their voting power in international financial organizations and use these organizations as agents to implement policies that violate their respective international obligations.

The petition against the IDB and the WB can only be viable if it can be proven that there was an obligation to act on the part of these organizations, that this obligation was not fulfilled, that people were damaged by this action or inaction and that there is a causal link between the failure to fulfil and resulting damage.

COHRE also points out in the petition that one of the obligations of these financial organizations is "to supervise and demonstrate due diligence" in the implementation of the project through its Office of Evaluation. This includes budgetary matters, fulfilment of clauses in the contract and protection and guarantees of the rights of the residents affected.

The petition argues that, as both banks failed to fulfil their legal responsibilities and given that they were bound to implement the project in a way that respects human rights, they are liable for "gross negligence" (intentional or non-intentional failure to fulfil responsibilities).

For COHRE, the allegation by the WB and the IDB of the unawareness of the situation cannot be seen as a legal excuse, as they were bound, through their supervision of the project, to know what was happening.

The petition underlines the fact that international violations were reported in the Inter-American Commission's Human Rights Report of 1981, before both banks proceeded with their second instalment of financing for the project (the WB did so in that same year and the IDB in 1985).

The legal immunity available to officials of these banks is invalid in cases of criminal intention or gross negligence.

INTIMIDATION OR COINCIDENCE?

On September 7, 2004, several days after the petition was presented to the Inter-American Commission on Human Rights, the Coordinating Committee of Communities Affected by the Chixoy Dam Project carried out a peaceful protest at the hydro-electric plant. Their objective was to force the authorities to pay attention to the issue of reparations.

On September 7, they came to an agreement with the National Institute of Electrification (INDE) that a high level Commission would be formed and that this commission would, in turn, receive evidence from the UN Verification Mission.

A few weeks later, on September 27, the newspaper El Periódico published an article with the title "The Hidden Side of the Chixoy Protest". The article put forth the idea that there is a terrorist sabotage network organized by campesinos and citizens of foreign countries. According to the Coordinating Committee of Affected Communities, this article forms part of a "smear campaign".

In the early morning of January 31 of this year (2005), the Rights Action office was broken into. The cash box appeared to have been opened but no money was stolen, thus the Rights Action personnel dismissed robbery as a motive. The only missing object was the computer, which they presume was taken because of the data it contained.

According to the UTD (Unidad Técnica de Derechos Humanos) this break-in falls into the category of "Attack to

Obtain Information". A UTD report says that break-ins are used to gather intelligence about an organization, its defense or beneficiaries of the organization.

As for the information taken from the Rights Action office, it is possible that the intruders were trying to gain access to the names of the members of the Coordinating Committee of Communities as well as to the content of a report that was being prepared, calculating the amount of reparations that is owed.

There is also, of course, the on-going intimidation of actions supporting the Coordinating Committee.

On February 2, seven members of the Coordinating Committee of Affected Communities were detained after INDE submitted a complaint against them to the Criminal Court of Alta Verapaz. The complaint was directed against nine people who had been involved in the protest at the Chixoy dam. They were accused of making threats, causing bodily harm, and threatening the internal security of a public facility and of the internal security of the nation. Legal analysts have stated that, given the legal inconsistencies of these charges, they cannot be sustained.

According to Antonio Vásquez Xitumul, one of the accused, detaining these people constitutes nothing less than a threat. He also says that he is surprised by the inconsistent manner in which INDE representatives have been acting. They signed an agreement with the Coordinating Committee and then submitted a criminal complaint against the very people with whom they had signed the agreement.

Human rights organizations see these detentions as just another example of the criminalization of social movements and of the violation of the right to justice. (Infopress 1595 and 1596)

According to Russell, the accusations waste both the time and money of those detained. Also, it leaves a legal threat hanging over their heads and this atmosphere can inhibit community protests for reparations and affect negotiations.

Vásquez Xitumul recognizes the gravity of the legal threat but he told Infopress that he is, nonetheless, determined to continue with the demand for reparations: If I have to go to jail to defend my brothers and sisters, there will always be someone to take my place.

RIO NEGRO: VICTIM OF THE CHIXOY DAM PROJECT

The planning of the Chixoy Dam project dates back to 1970, however, the Government of Guatemala did not initiate work on the project until 1975. At that time, the IDB, in partnership with the Government of Guatemala, granted \$105 million to the INDE; as well as another \$70 million that included financing and a clause which said that the project would "relocate communities to better living conditions". The WB granted \$72 million to the project in 1978 and then another \$45 million in 1985.

The project had an initial estimated cost of \$300 million but ended up costing \$1,000 million. The dam, which blocks the flow of the Chixoy River, was supposed to increase the generation of electric energy in the country but in reality, it would supply energy to companies located in the Northern part of the country.

Two years after the project was initiated, communities were told that they had to leave their homes, as 50 km of the valley was soon to be flooded. The strongest opposition to the project came from the village of Río Negro, but this was immediately repressed. In 1980, the first murders committed by the Mobile Military Police (Policía Militar Ambulante). Trucks from the Chixoy project were used for the displacement.

In 1982, four massacres were carried out by the Civil Defense Patrol (Patrulla de Autodefensa Civil) and the National Army. In Río Negro, 444 people were killed.

Shortly afterwards, the valley was flooded and most of the local people were resettled in the village of Pacux, one of the so-called "model villages" created by the Military. The survivors who were relocated were paid Q50 per acre for their former lands.

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COHRE - Centre on Housing and Human Rights

Media Release - 17 September 2004

World Bank and Inter-American Development Bank liable for Chixoy Dam atrocities and mass evictions, says a

petition to the Inter-American Commission on Human Rights.

The World Bank and the Inter-American Development Bank (IDB), as well as the Guatemalan Government, are liable to pay reparations for a series of massacres and human rights violations that occurred in the early 1980s in Guatemala, says a petition submitted to the Inter-American Commission on Human Rights today.

The Centre on Housing Rights and Evictions (COHRE) submitted the petition on behalf of the survivors of Rio Negro, Guatemala - a community forcibly evicted in the early 1980s to make way for the construction of the Chixoy hydroelectric dam.

The petition to the Inter-American Human Rights Commission comes at a time when hundreds of people displaced by the Chixoy Dam occupied the facility last week, calling upon the Guatemalan Government to ensure that their demands for land and other reparations are met.

Between 1980 and 1982, some 444 people resisting the construction of the dam were murdered in a series of massacres that wiped out half the population of the small rural community of Rio Negro. The massacres were the principal means used to forcibly evict the community from their homes and lands so that construction of the dam could get underway.

COHRE's legal counsel, Bret Thiele said, "the aim of the petition is to hold not only the Guatemalan Government accountable for killing people opposed to forced evictions, but to also hold the World Bank and the IDB accountable for their roles in these human rights violations."

The petition states that the two Banks, which were the principal funders of the Chixoy Dam Project, continued to finance and supervise the project despite being aware of the murder of 444 people from the Rio Negro community by the Guatemalan Government.

"By channelling US\$350 million to the US-backed military regime, notorious for its appalling human rights record throughout the 1970s and 1980s, and by promoting and continuing with the project during the worst years of state terrorism and genocide, the World Bank and the IDB effectively legitimised the repression of the Guatemalan Government," added Thiele. The World Bank alone has financially supported development projects leading to the forced eviction of tens of millions of people during recent decades.

According to COHRE's petition, the Banks' disregard for the brutal massacres and forced evictions resulting from a project they were directly supervising, and their failure to protect the people of Rio Negro, clearly demonstrates their reckless disregard of the rights of the Rio Negro residents.

"Impunity for human rights violations by such entities unfortunately seems to be the rule, as States simply violate their respective human rights obligations through the formation of corporations or inter-governmental organizations that then are used as agents of those States to carry out policies and practices that violate their respective international and domestic legal obligations," Thiele added.

"Such impunity is further entrenched when attempts are made to block victims of those violations from accessing remedies such as those provided by the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights. With this petition, COHRE hopes to bring an end to such impunity," he said.

The survivors of the Rio Negro massacres have only received meagre compensation from the Guatemalan Government and live in extreme poverty.

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To support the community development and re-building work of the "Coordinator of Communities Affected by the Chixoy Dam", make tax-deductible check payable to "Rights Action" (write "Chixoy campaign" on the memo line) and mail to:

UNITED STATES: 1830 Connecticut Av, NW, Washington DC, 20009.

CANADA: 509 St. Clair Ave W, box73527, Toronto ON, M6C-1C0.

Donate on line: www.rightsaction.org. Wire donations to Rights Action in Canada and the USA: info@rightsaction.org, 416-654-2074.

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