

FMO Management Response to the Report and Recommendations of the Independent Fact Finding Mission on Agua Zarca

On 7 September 2016, the Independent Fact Finding Mission on Agua Zarca issued its report (available [here](#)). The mission was convened at the request of FMO, one of the funders of the Agua Zarca project.

The Agua Zarca project became world news after the brutal murder of Berta Cáceres, the leader of COPINH, the principal opponent of the project. After this shocking event, FMO suspended its activities in Honduras and called on the President of Honduras for those responsible to be held to account on the basis of a thorough investigation. Subsequently, a person associated with our client was arrested on suspicion of involvement in the murder (a court case is pending, and the outcome remains unknown). On this basis, FMO decided to seek a responsible exit from the project. FMO rejects all violence.

The main objective of the independent mission (IM) was to undertake an independent assessment of the main aspects relating to the Agua Zarca project, and draft recommendations for improvement. For FMO this is important input for determining how a responsible exit can take place. Such an exit includes the analysis of possible negative effects, for example continued or increased violence, and the impact on the social and economic development of all surrounding communities. A major part of the decision-making process on the exit will be consultation with local communities and NGO's, with minority and majority view points considered.

Although the IM finds that the project was largely implemented according to the IFC PS and other relevant standards, FMO realizes there are points for improvement in the implementation of the Agua Zarca project. We are also happy with the confirmation by the IM that we, the other lenders and our client, have valid and proper processes in place and did our utmost to minimize the possible negative effects of the project.

This said, a better stakeholder consultation process could have been undertaken. A follow-up by FMO after the murder of Thomas Garcia should have taken place. We share the IM conclusion that 'a full consultation process invoking the 'Free, Prior and Informed Consent' (FPIC) principle should have been undertaken with the community of La Tejera that self-identified as indigenous'. Generally, FMO should have monitored this side of the project more closely, while a more detailed analysis of the political situation related to the project was needed.

FMO considers this report to be balanced and well-researched. It provides valuable input for FMO to be used in our efforts for continuous improvement, particularly for high risk projects involving indigenous peoples or with significant impact on local stakeholders, through:

- better relation-building with local stakeholders, including NGO's
- increased conflict assessment in and after the due diligence phase of our projects, when there is a serious indication violent situations may occur and impact the project and local communities
- ensuring an FPIC process for indigenous peoples where needed, particularly in those situations where Governments are less involved structurally and provide little guidance on indigenous peoples' issues and means of consultation with them.

- We will add to the contract of relevant projects a crisis prevention and management plan with regard to complex situations

Below we react in more detail to some of the most important findings of the Independent Mission.

Community tensions

IM conclusion: There is a gap in perceptions between those opposing and those in favour of the project. The first group includes mainly residents of the community of La Tejera represented by the NGO COPINH. All the other communities engaged with, including those situated nearest to the project components, continue to express support for the hydroelectric development.

FMO reaction: FMO acknowledges this gap. All sides of the conflict must be included in the conversation about a responsible exit.

Project Design

IM conclusion: The report provides clarification to readers about the two separate designs of the Agua Zarca project. All project and construction activities are now at a distance from the community of La Tejera and have minimal physical impact on that community. The existing project is not a dam; the river continues to run freely and at levels consistent with historical levels for the time of year visited; and public access by all communities to the river for communal use (agriculture, bathing, fishing etc.) has not been impacted or restricted. The significant change in project design in response to local opposition is considered good practice by the IM, but the client and the lenders should have communicated better about this, particularly with the community of La Tejera.

FMO reaction: FMO will actively search for and use local stakeholder feedback in (modified) project design in similar cases.

DESA and stakeholder engagement

IM conclusion: FMO helped DESA to improve its stakeholder engagement processes, through advice and expert monitoring. Nevertheless, there continued to be shortfalls in DESA's performance in this area, which directly or indirectly led to a deterioration of the company-community relationship. FMO should have more proactive in managing the flow of funds when such shortfalls came to light.

FMO reaction: This is a lesson learned and we are considering where and how to revise new contracts in order to allow for this in a more proactive way, always within the framework of legality and contractual agreements.

Legality of the project

IM conclusion: Based on various technical reports, relevant permits, authority and licenses granted to DESA were legally granted and obtained. However, the legitimacy of the concessions granted to the project, as well as for other projects in the country, is now under question because the vice-minister of SERPA at that time is accused of granting the permits illegally.

FMO reaction: To the best of our knowledge we invested in a project on a sound legal basis, and await any further court decisions in Honduras.

Indigenous Peoples, IFC Performance Standard 7 and FPIC

IM conclusion: Getting Free, Prior and Informed Consent (FPIC) for projects on indigenous land is very complex. There is no agreed definition of an FPIC process, and interpretations vary. The report clarifies that FPIC consultation prior to granting concessions is a government responsibility. However, where this is not done, private actors such as FMO and DESA need to take responsibility for FPIC consultations with indigenous communities, which is even more challenging when government-specified means of communicating with indigenous communities are lacking.

The IM finds that FMO and DESA undertook a “consultation process that fulfilled many elements of FPIC”, referring to the ‘cabildos abiertos’ process and community-based decision-making bodies (the “patronatos”). These consultations fulfilled the requirements of IFC Performance Standards 1 and 7. However, a formal process invoking the FPIC principle should have been undertaken with the village La Tejera. This should have been done prior to construction, by FMO and the developer.

IM recommendation:

- Aim to respond positively to any desire for participation in an FPIC process by a community of indigenous peoples that experiences real or perceived impacts from a project.
- Consider a more comprehensive assessment of indigenous peoples, for example, involving subject matter experts, to have greater clarity on the issue of indigenous identity, particularly in complex areas such as these.

FMO reaction: We will broaden our understanding of the impact of a project to include the perceptions by all communities, also after a project’s design has been changed.

Security and human rights

IM conclusion: The IM concludes that both sets of stakeholders, those for and those against the project, have been accused of violence by the other party, and that there is evidence on both sides that violence has occurred.

Violence and unrest in the project area arise from various reasons, including land access issues that pre-date the project; promises on social benefits not being met on time by DESA, and tensions between local stakeholders in favour of or opposed to the project. Enforcement of law and order in the project area is poor.

IM recommendation:

- Lenders go over and above IFC PS compliance in contexts where the effectiveness of the rule of law is in question.
- FMO should critically examine the capacity of implementation of actors such as project companies, to prevent and appropriately respond to social conflicts in complex situations.

FMO reaction: We will take into account the political and social surroundings of future projects, by making more thorough assessments of instability and conflict on the projects and their stakeholders.

Project continuation

IM conclusion: FMO announced its intention to exit from the project when a person associated with our client was accused of being complicit in the murder of Berta Caceres. However, there is clear evidence that the project has a good deal of support from directly affected communities and brings substantial social benefits as well. If the project does not continue, it can be expected that the communities will return to a poverty cycle of subsistence living. Further to discussion with stakeholders, it appears unlikely that an exit from the Project will solve the conflict.

On the other hand, “during meetings with project opponents and COPINH, it became apparent [...] that if the project was not completely abandoned, this would result in the continuation of the opposition campaign.” The continuation of the opposition campaign is likely to have a negative impact, and the division between the affected communities will remain. This could also result in the re-escalation of violence.

FMO response: Our decision about the responsible exit will reflect all of the above findings. The report clearly shows the complexity of the situation. Therefore, all parties involved must be heard, including all local communities, the client, the other lenders and international NGO’s.