

Agua Zarca Hydroelectric Project



INDEPENDENT FACT FINDING MISSION: Report and Recommendations

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List of acronyms

CABEI	Central American Bank for Economic Integration
COPINH	<i>Consejo Cívico de Organizaciones Populares e Indígenas de Honduras</i> (Civic Council of Popular and Indigenous Organizations of Honduras)
DESA	Desarrollos Energeticos S.A., the owner developer of the Project
DINAFROH	Dirección de Pueblos Indígenas y Afrohondureños
ESAP	Environmental and Social Action Plan
FinnFund	Finnish Fund for Industrial Cooperation
FMO	Nederlandse Financierings Maatschappij voor Ontwikkelingslanden
FPIC	Free, prior and informed consent
GAI	Gerencia Ambiental Internacional
IFC	International Finance Corporation
ILO	International Labour Organisation
ILO 169	Indigenous and Tribal Peoples Convention, C169
MFC	Monkey Forest Consulting
Mission	Independent Fact-Finding Assessment
NGO	Non-Governmental Organisation
OAS	Organisation of America States
Project	Agua Zarca Hydroelectric Project
PS	Performance Standard
SERNA	Secretaria de Recursos Naturales y Ambiente
SP	Document “Socialization: Compliance with ILO Convention 169 on Indigenous and Tribal Peoples in Independent Countries - Agua Zarca Hydroelectric Project”
ToR	Terms of Reference
UN	United Nations

Executive summary

The present report is the result of a Mission to evaluate the social, environmental and human rights impacts on local communities of the Agua Zarca Project in Honduras. The Mission was undertaken at the request of FMO, one of the funders of the development. A visit was made by members of the Mission to inspect the Project and hold interviews with key stakeholders between 23 and 28 May 2016. A draft report in English and Spanish was made available to all stakeholders in August 2016. Consultations were held in The Hague and in Honduras during the week of 22 August 2016 and all interested parties were invited to make comments orally or in writing. The members of the Mission thank all stakeholders for the information provided and where appropriate, have amended the report accordingly.

The report notes the high level of violence associated with the Project since its inception in 2011. The Project gained international attention when Berta Caceres, the Director of COPINH, the principal opponent of the Project and well-known environmental campaigner, was assassinated in March 2016. At the time of writing no one has been found guilty of the assassination of Berta Caceres. However, five individuals have been arrested, one of whom was an employee of DESA and another is a former employee of the company and of the armed forces of the country. The murder of Berta Caceres and the arrest of these individuals in the days preceding the Mission, led FMO to suspend disbursement of funds for the Project and to seek a responsible exit in the light of the escalation of violence and the possible links to DESA.

The report examines the impact of the Project on local communities and finds that there is a clear gap in perceptions between those opposing the development, principally represented by the NGO COPINH, and those in favour of the hydroelectric development. The Mission met representatives from both positions. It concludes that the development has generated divisions within the communities between those who point to the employment opportunities and other benefits from the Project and those who say the development has taken place without proper consultation. COPINH claims that the Project has acquired land that is ancestral Lenca territory, has not undertaken a good faith consultation in line with ILO 169 ratified by the country in 1995, impacts subsistence activities and violates indigenous peoples' cultural rights by using the river, which is sacred.

The report focuses its attention on key questions raised in the ToR for the Mission. The first relates to the claims made by COPINH that the land and waters are sacred indigenous territory and that proper consultation invoking the principle of FPIC was not held. This latter is also a requirement under IFC PS 7 on Indigenous Peoples, which must be implemented by the client if it is to qualify for a loan from FMO. Honduras does not have a national law on FPIC and how it should be implemented under ILO 169. The report concludes that consultations were held with the decision-making bodies of the communities in the area of influence of the Project and consent was given. The Patronato of La Tejera signed the 2011 and 2013 'convenios' or community agreements for the Project. However, subsequently COPINH called for a formal free, prior and informed consultation and this was not held, despite the community self-identifying as indigenous peoples. The report considers that FPIC with all the communities would have been appropriate before the implementation of the Project. It notes also that a FPIC consultation should have been undertaken prior to the project being committed to in order to inform and gain the understanding and support of the community and address their concerns. Such a consultation is the responsibility of the State of Honduras.

Another question of concern to the investigating Mission was the impact of the Project on the livelihoods, environment, culture and way of life of the communities in the area of influence of the Project. The report reviews the evolution of the Project, noting the difficulties in the earlier phases due to poor communication with the communities, the damage done to crops and cattle, the closing off of access to the river and the protests and road

blocks that deteriorated into violent altercations with loss of life. The Project as it is today is considerably different from that commenced in 2011. To accommodate the concerns of those opposing the Project, the operation has been moved from the side of the river close to La Tejera to the other side of the river; the original project design to build a dam has been changed to a 5 meter weir with no backing up of water, and a parallel channel taking part of the river flow to turbines and then back into the river. The Project requires no displacement of the communities, no flooding of cultural sites and no significant interruption of the normal flow of the river. Access to the river by the communities is unaffected. The earth-moving work in connection with the canal and tunnel is 80% completed and an estimated 15% of the Project is finished. The Project includes an approved rehabilitation programme of hillside stabilization and tree replanting, which remains partially completed due to lack of funding.

The report finds that the Project was largely implemented in accordance with national laws and IFC Performance Standards. Land acquired for the Project was bought in accordance with Honduran law, and the relevant environmental and social assessments were made as part of the project approval process. The Mission was informed by a representative of the Ministry of Environment that it carried out regular monitoring of the Project. Further monitoring of social and environmental impact management plans, and their implementation, was undertaken by consultants engaged jointly by the lenders and DESA. While DESA was sometimes slow in implementing the recommendations made by the consultants, the Mission considers that FMO made every effort to assist the client with the fulfillment of its due diligence and the application of the IFC Performance Standards.

The withdrawal of FMO from the Project following the death of Berta Caceres and subsequent arrests, as well as international condemnation of the conflict and violence surrounding the Project, raises a further question concerning the broader political and economic context and the rule of law in the country. The report recognizes that the conditions in which the Project was operating were challenging. Honduras has high levels of poverty, with indigenous and mestizo communities such as those in the Project area, largely neglected by successive governments and urgently needing and wanting improved infrastructure and the provision of basic needs. The country is also deficient in energy and needs to move from expensive fossil fuel powered thermal energy to clean energy. Investment, as the Mayor of La Esperanza told the Mission, is urgently needed to help raise living standards.

Honduras is also notable for being among the most corrupt and violent countries in the region. It has a weak justice system, with some 80% of crimes going unpunished. Opposition parties and civil society, including COPINH, challenge the legitimacy of the government following a coup in 2009. Under such conditions, none of the crimes from land thefts, attacks and murders perpetrated against members of the communities in the area of influence of the Project, were properly investigated – for either those in favour or those against the Project. In requiring the Mission to draw some lessons learned from the Project for FMO, the first must necessarily be about the additional conditions on a loan provided in such an environment over and above the implementation of the IFC Performance Standards. The report recommends that in such cases, there needs to be enhanced internal requirements, especially with regard to community engagement and consultation, as well as a willingness to engage with the national and local authorities in the event of a conflict emerging at an early stage.

The report considers that the decision by FMO to withdraw from the Project creates potential negative impacts if no other funding is found and the Project is left abandoned. Social and economic development projects will cease, the expected income from energy production to the municipalities will not be forthcoming, potential jobs will be lost, and resentments will continue to fuel division amongst the communities in the area of influence of the Project. The report recommends that FMO engage with the communities to explain its decision and consult with them to see how some of the expected local projects can be honoured.

Chapter 1: Background

Purpose and scope of the Mission

Following the assassination of the environmental activist Berta Caceres¹ on 3 March 2016, FMO invited experts to undertake a review of the Agua Zarca Project on the Gualcarque River, Honduras. Julian Burger (UK), Margarita Escartin (Australia), Nataly Ponce (Peru) and Leo Valladares Lanza (Honduras) conducted the Mission², carried out from 23 to 28 May 2016. During this time, the Mission met with relevant stakeholders, including the local communities in the Project area.³

FMO has provided a facility for the Project, in conjunction with the B Lender FinnFund, of USD 15 million. CABEI has provided a facility of USD 24 million. As a result of the assassination, FMO suspended its activities in Honduras, pending a review of each of the projects in its Honduran portfolio, including their environmental and social impacts and issues relating to indigenous peoples' land rights. Funding to these projects has since been restored. Five individuals have now been arrested and charged in connection with the death of Berta Caceres, one of whom is a senior employee of DESA. On 9 May 2016, FMO took the decision to withdraw funds from the Project and seek a responsible and legal exit strategy.

The Mission was asked by FMO to gain a better understanding of the local communities' dynamics prior to the Project as well as evaluate the impact of the Project to date regarding security, FPIC, community engagement, the environment and human rights. The Mission was also asked to consider whether the relevant IFC Performance Standards had been implemented, and assess DESA's community engagement practices from Project development through to construction. The Mission was required to provide FMO with any lessons learned. Finally, the Mission was requested to provide comments and recommendations for a responsible exit strategy. In relation to these requests, the Mission was asked to consider the situation of the communities and pay particular attention to impact on women.⁴

General background

The Republic of Honduras is located in Central America. It borders Nicaragua, El Salvador, and Guatemala and has access to the Pacific Ocean and the Caribbean Sea. The territory is very rugged consisting of high chains of mountains, deep valleys, high fertile plains crossed with numerous rivers. The country is rich in biodiversity and it is estimated that there exist some 8,000 species of plants, around 250 reptiles and amphibians, more than 700 species of birds and 110 species of mammals in the different ecological regions.

The population of Honduras exceeds 8.7 million. It is a multi-ethnic society composed of whites or mestizos which is the majority and indigenous peoples (Lencas, Miskitos, Tolupanes, Nahua, Chortis, Pech and Tawahkas), Garifuna (afro-Hondurans) and English-speaking creoles.

¹ Berta Caceres was the director of the NGO COPINH which has opposed the Project and organized protests against it since 2013.

² A biography of the Mission members is attached as **Annex 1**.

³ The Mission also held meetings with representatives of the local and national authorities (the mayor, local police and representatives of the Ministry of Environment and Energy and the Secretariat for Ethnicities), the owners and staff of DESA, and the United Nations. The full programme of meetings is available as **Annex 2**.

⁴ For the ToR see **Annex 4**.

Political context

The Constitution of Honduras establishes a form of government, which is “republican, democratic and representative”.⁵ Legislative Power is held by an elected Congress of Deputies and the Executive position is held by a President with a term of 4 years and is non-renewable.⁶ The Supreme Court of the country is composed of 15 judges elected by Congress.

Honduras faces major challenges in building a functioning state.⁷ Several neighbouring countries have experienced civil wars, although Honduras has been spared any major internal conflict. On the other hand, Honduras has high levels of violence and a free flow of arms to sustain low intensity conflict. Honduras has the highest per capita homicide rate in the world and a state policy that has given law enforcement authorities freedom to act with a firm hand (“mano dura”) to deal with criminals.⁸ Such high levels of violence are attributed to ongoing drug trafficking, the inefficient justice system, corruption, impunity and poverty. The victims of violence are human rights defenders, indigenous peoples, women, children, youth, trade unionists, journalists, and other vulnerable groups.⁹ According to official 2013 figures, 80% of murders go unsolved. A consequence of the violence has been the increased role of the armed forces in security, often through special units. This practice has often worsened security for citizens as these units employ a disproportionate use of force. They have also been accused of serious crimes, summary executions, and being infiltrated by corruption.¹⁰

In 2005, the left-leaning Manuel Zelaya representing the Liberal Party of Honduras (PLH) was elected President on a programme of reform and greater transparency. In 2009, he proposed that a referendum be held to establish a Constituent Assembly to review and rewrite the 1982 Constitution, which opened the possibility that the President could run for a second term, outlawed by the current Constitution. The Supreme Court judged the referendum unconstitutional. Civil society, including the COPINH, actively supported the proposed Constituent Assembly. In the event, the military intervened, deposed the President and deported him. The UN and OAS and many national NGOs including COPINH considered the coup illegitimate.¹¹ The Head of Congress became President and elections were held with a new President inaugurated in 2010. The current President Juan Orlando Hernandez, who took office in January 2014, represents the conservative National Party of Honduras (PNH) as did his predecessor. The elections brought two new parties to the fore, breaking a century-long tradition of exchanges in office between the National and Liberal Parties. The Liberty and Refoundation Party (Libre) won nearly 29% of the vote and the Anti-Corruption Party (PAC) won 13% making them together the principal opposition in the country.

⁵ Article 4 of the Constitution of 1982.

⁶ In June 2016, the Supreme Court declared that the relevant article was not legally binding thus opening up the possibility that the present President could stand for a second term. The decision has caused controversy.

⁷ According to Transparency International, Honduras is ranked 112 out of 168 of countries on perceptions of corruption.

⁸ The homicide rate in the country is 67 per 100,000.

⁹ A Global Witness Report notes the growing number of murders of defenders of the environment including in Honduras. See “On dangerous ground”, Global Witness, 20 June 2016.

¹⁰ See for example Alexander Main, “Anti-corruption charade”, New York Times 15 February 2016. The current President is also accused of corruption and using health care funds to pay his party’s election campaign.

¹¹ See for example the report by the Office of the UN High Commissioner for Human Rights, A/HRC/13/66 of 3 March 2010.

Economic context

Honduras is one of the poorest countries in the region. About 60% of the population lives below the poverty line and these figures are higher in rural areas.¹² The country is ranked number 10 in terms of inequality.¹³ An estimated 40% of the population is unemployed or underemployed which together with the violence has driven many to seek jobs abroad. Emigrant remittances represent 30% of the country's GDP. Since the 2008 financial crisis, the Honduran economy has improved and in 2015 had a growth rate of 3.5%. Honduras traditionally depends on agricultural exports, and coffee represents about 10% of exports. However, the economy has diversified and the manufacturing sector based on the maquilero system has grown and now textiles (cheap sweat shirts and T shirts) represent 20% of exports. Land distribution is largely unreformed, highly inequitable, and in recent years has led to seizures by landless groups.

Access to basic services is low particularly in rural areas. A 2010 World Bank report estimates that 45% of rural households have no electricity and the country is dependent on imported fossil fuels for more than 58% of its needs.¹⁴ The cost of importing energy and the great potential for solar power and hydroelectricity has led to many clean energy developments. In view of the topographical features with high rainfall and plentiful rivers focus has been on the development of hydroelectricity. In 2007 a law was passed to facilitate investment in renewable energy projects. In the energy sector, there are a plethora of laws and regulations.¹⁵

Indigenous peoples in Honduras

Approximately 9% of the population of Honduras are indigenous peoples and Afro-descendants. The largest groups are the Lenca and the Afro-Honduran Garifuna; other indigenous peoples include the Miskito, Tolupan, Chorti, Pech, Nahua and Tawahka (or Sumo). The high levels of assimilation of the indigenous population and the stigma attached to peoples of indigenous or African descent historically has meant that many self-identify as mestizo (white or mixed race) suggesting that under different circumstances, more might recognize their indigenous/Lenca ancestry.¹⁶ The Lenca language is extinct although there are attempts to revive it. Indigenous peoples are mostly landless, working in agriculture or as seasonal workers and with few other employment opportunities. An estimated 70% live below the poverty line. A number of communities have no drinking water, electricity and other basic services. According to IFAD, women who are heads of households make up about 9% of the country's smallholder farmers.¹⁷

Honduras has given little recognition of indigenous peoples' lands and there are no ongoing programmes of land demarcation. Only the Miskitos and Garifunas have recognized lands, while other peoples have the use of "ejidal" lands¹⁸ but do not have full ownership rights. Honduras ratified ILO 169 in September 1994 and voted in favour of the UNDRIP. However, the country has not yet established a regulatory mechanism for the consultation process required under ILO 169. In its concluding observations to the Government of Honduras, the UN Committee on Economic, Social and Cultural Rights expressed concern about the lack of participation of

¹²Information from the International Fund for Agricultural Development (IFAD):

<http://www.ruralpovertyportal.org/country/home/tags/honduras>

¹³ Making it the least equal country in Latin America as measured by the Gini Index.

¹⁴ "Honduras: power sector issues and options", World Bank, May 2010, p. xxvi.

¹⁵ "Legislación en la gestión ambiental de Honduras. Conocimiento y aplicación" by Dr. Mario Vallejo Larios, Ediciones Guardabarranco, Tegucigalpa, 2014 is the most comprehensive study on this matter.

¹⁶ The International Work Group on Indigenous Affairs (IWGIA), a Danish-based human rights organization, estimates that there are 1.27 million indigenous people constituting 15% of the total population of the country. See <http://www.iwgia.org/regions/latin-america/honduras>).

¹⁷ See footnote 12.

¹⁸ Formerly owned by indigenous peoples but now owned by the municipality.

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indigenous peoples in the discussions on the new regulation on FPIC, and the limited protection of indigenous peoples' lands and natural resources.¹⁹ In its report to the ILO on 6 June 2016 on the implementation of Convention 169, the representative of the government stated: “*Prior consultation provides for the possibility of asking indigenous peoples and Afro-Hondurans their views on a project so that these can be considered by the State before the project is decided upon. We hope in a short time to be able to present to Congress a draft law on this matter.*”²⁰



¹⁹ UN Committee on Economic, Social and Cultural Rights, “Concluding Observations on Honduras”, E/C.12/HND/CO/2 of 24 June 2016.

²⁰ <http://dinafroh.sedis.gob.hn/noticias/355-oit-aval%C3%BAa-satisfactoriamente-a-honduras-por-aplicaci%C3%B3n-del-convenio-169>.

Chapter 2: The Agua Zarca Hydroelectric Project

Project Design

The Project is located approximately 90km south of San Pedro Sula on the lower section of the Gualcarque River, which flows into the Uluá River approximately 10km downstream from the powerhouse site.²¹ The Project area is located within the Departments of Santa Barbara and Intibucá, and over lands historically part of the Rio Blanco land title, discussed later in this report.

The Project has a physical land footprint area of approximately 22ha, including access roads, construction camp, temporary facilities and a 16km power line.²² The stand-alone Project has a physical land footprint area of approximately 18ha. The original design of the Project was located on the right-side margin of the Gualcarque River. The communities closest to this Project design were La Tejera, El Barrial, Valle de Angeles, and San Ramón, and included approval for (but not limited to) construction of the following: (a) an on-river concrete gravity dam measuring 25m high by 93m wide with a reservoir surface area of 3.4ha; (b) a 2km tunnel; (c) a 645m penstock; and (d) a powerhouse of 3 turbines on the right side of the river.

Legal framework and environmental standards

DESA was incorporated in May 2009 for the purpose of owning, constructing and operating the Project. On 14 December 2009, the Ley General de Aguas was approved by Legislative Decree No. 181-2009.²³ The Project consists of two primary legal permits or authorities granting rights to DESA:

- (a) A permit/authority to operate in the Electrical Sector for a term of 50 years, granted under the law of the Sub-Sector of Electricity. This law establishes the grant is a “Contrato de Operacion para la Generacion, Transmision, y Comercializacion de Energia Electrica” (**Contract**), executed between DESA and SERNA. The Contract establishes the conditions upon which the concession is granted and authorizes the Project for operation in the Gualcarque River. The Contract for the original 14.4MW design was approved on 8 August 2011. ²⁴After optimisation planning, the Project increased capacity to 21.7MW, and the Contract was modified and approved for the increase on 17 January 2012.
- (b) A permit/authority for a term of 30 years for the use of hydrological resource of the country. This permit/authority was granted pursuant to the Ley General de Aguas and establishes that the document that is to be granted is a “Contrata de Aprovechamiento de Aguas Nacionales” (**Contrata de Aguas**) also between DESA and SERNA. The “Contrata de Aguas” establishes the conditions in which the permit/authority is granted. The most notable condition is the right to use the water that flows through the Gualcarque River for the development of the Project. This is also conditional upon DESA at all times respecting the ecological flow established. The Contrata de Aguas for the original 14.4MW design was approved on 8 August 2011²⁵, and later modified and approved for the 21.7MW design on 6 March 2012.

²¹ GAI, 2014.

²² GAI, 2014; MFC, 2014.

²³ This act replaced the 1927 water law and provided for the management of water resources by the State throughout the country.

²⁴ The Contract was approved by the National Congress through Legislative Decree No. 68-2011, elevating the Contract and the permit to a Special Law under the Honduran Constitution.

²⁵ The Contrata de Aguas was approved by National Congress through Legislative Decree No. 67 -2011, which elevates it to a Special Law under the Honduran Constitution.

Both of these permits/authorities establish the technical aspects of the Project. Of note is the fact that the permit relates to the use of the water of the Gualcarque River, so project design changes from the right to the left side margins did not affect the status of the authorities.

In addition, DESA required relevant environmental approvals to be granted for the Project by SERNA, which were obtained. Following the relocation of the Project from the right side margin of the Gualcarque River in response to opposition by the community of La Tejera, an “Informe de Cumplimiento de Medidas de Mitigacion” (ICMA) was submitted to SERNA. The ICMA sets out the nature of the changes to the detailed design of the Project, including additional environmental considerations, if any. This notification was a requirement of the environmental license where changes and modifications were made to the detailed design of the Project. However, as these modifications did not alter or affect the installed capacity of the plant or result in an increase in generation, it did not require an application for a new environmental license.

Finally, DESA has entered into a Power Purchase Agreement (PPA) with the State owned Empresa Nacional de Energía Eléctrica (ENEE), the national energy supplier. The PPA permits direct sales to third parties but also establishes a fixed price for sale to ENEE. DESA had planned to sell the electricity produced to ENEE, as ENEE owns and operates the national transmission and distribution lines.

Information regarding the legal framework of the grant of the relevant permits for the Project has been gathered from various due diligence reports prepared for the lenders, technical reports, environmental and social risk audits and reports, legal instruments and meetings with DESA. On the basis of this information the only conclusion that can be drawn is that the relevant permits, authority and licenses granted to DESA appear to have been legally granted and obtained.

However, what appears at issue is the grant of the permits over the Gualcarque River by the Honduran Government. Documents provided by COPINH, and various NGO reports opposing the Project maintain that: (a) as the Ley General de Aguas was passed following the military coup in Honduras, it was invalid, therefore any authorities issued under that law (like the concession for the Project) were also invalid; and (b) as the Honduran Government had ratified ILO 169, it had an obligation to consult with the Lenca People as any instruments granted under the Ley General de Aguas, and associated Environmental Licenses, arguably triggered a consultation process (see Articles 6, 7 & 15 respectively of ILO 169).

The legitimacy of the concessions granted to the Project is now under question since the vice-minister of SERPA at that time is accused of granting the permits illegally. The case is to be judged by the Corte de Apelaciones de Francisco Morazán.²⁶

In relation to environmental standards, the documents reviewed suggest that there were various environmental and technical studies completed for the Project. Regular monitoring by SERNA to assess and ensure compliance with the relevant environmental license conditions was confirmed in the meeting with the regulator. Compliance with the IFC Performance Standards is addressed below.

The consultations and FPIC

Meetings to inform the commencement of the Project were held from January 2011. The community consultation and approval process for the initial Project design was set out in a Community Benefit Agreement, certified by the Municipality of San Francisco de Ojuera and dated 25 October 2011. This was signed by representatives of the

²⁶ El Heraldo, 17 June 2016.

various communities, including the President of the Patronato of the Rio Blanco communities and members of the community of La Tejera. For reasons to be discussed later in this report, the failure of the State to address their international legal obligations regarding compliance with ILO 169 prior to the grant of the concessions in August of 2011 is what gives rise to the Mission's view that an FPIC process was not conducted for the first phase of the Project. The onus was, in our assessment, on the Honduran government to implement such a process, not DESA or the lenders. In the absence of action by the State, however, DESA under the terms of the Credit Agreement with FMO, was required to implement IFC PS 7 through good faith consultations.

According to COPINH, La Tejera rejected the Agua Zarca Project in the consultation carried out by DESA in January 2011. The organization also states that the Rio Blanco community rejected the project at the meeting held with the mayor of Intibuca on 11 April 2011. COPINH claim that when the community voted against the project, the mayor and certain individuals met in private to sign an agreement. Similar manipulations took place in the consultations with La Tejera in April 2013 according to COPINH. The Mission was unable to substantiate the claims made by COPINH in relation to the validity of the agreements.

Following opposition to the Project expressed by the community of La Tejera, and the escalation of violence in April 2013, DESA conducted further community consultations with the nine communities identified by DESA as being impacted by the Project: El Barrial, La Tejera, San Ramon, Plan de Encima, Santa Ana, La Leona, Valle de Angeles, San Bartolome and La Union.²⁷ The result of those consultations and negotiations was the 2013 'Convenio', which was signed by all the Presidents of the 'Patronatos' or elected councils, acknowledged in that document as the representatives of the indigenous communities of the Rio Blanco lands. In this 'Convenio' DESA made various additional commitments to the communities regarding the provision of Project benefits, including contributions towards education facilities, education scholarships, road maintenance, access to potable water, electrification of villages, contribution towards hospital infrastructure, agriculture community development programs and a commitment to local employment.

Second and Final Project Design

As opposition to the Project continued, DESA revisited the Project location and design during mid-2014 and early 2015. The final Project, which has been partially constructed, includes the relocation from the right-side to the left-side margin of the Gualcarque River and is further downstream from the original dam location. These changes were put in place by mid-2015.²⁸ Of note is that the Project changed from an on-river dam to a run-of-river 5m concrete intake weir incorporating an off-river regulation reservoir, located inland in a naturally occurring water catchment area. This redesign also included changing all access and construction locations from the right-side to the left-side margins of the river.²⁹

The Mission visited the Project site and was able to inspect the weir, reservoir, headrace tunnels, the improved access roads and the Bailey bridge used to access the community of Valle de Angeles. The Mission can confirm

²⁷ GAI, 2014

²⁸ Other changes were: modification of the Project dam / diversion model to a run-of-river 5m high concrete intake weir, also located on the right-side margin; substitution of a pressurized sand trap to a free surface flow sand trap; substitution of the tunnel to a series of three headrace tunnels alternating with three canals, each 3.3m high and approximately 2,600m long, operating under free surface flow circulation; a 905m penstock; and the relocation of the powerhouse 40m higher than the river, with no change to the 3 turbine design.

²⁹ The work camp was also relocated to an area around the off-river reservoir, with a temporary camp located on the right-side margin being abandoned.

that: (a) the Project is now located on the left-side margin; (b) all Project and construction activities are away from the community of La Tejera and have minimal physical impact on that community; (c) the Project is not a dam as per the original design; (d) the river continues to run freely and at levels consistent with historical levels for the time of year visited; and (e) public access by all communities to the river for communal use (agriculture, bathing, fishing etc) has not been impacted or restricted, noting that access historically has been through public access points and not private lands.

The communities closest to the revised Project are La Leona and San Ramon, which are located off the Rio Blanco lands title. In addition, there was a reduced impact on El Barrial and Valle de Angeles, and no direct impact on the community of La Tejera. DESA undertook community consultations and negotiations regarding the second and final Project design, which was reduced to the Community Benefit Agreement, dated 10 December 2014. Various representatives of the identified communities (see above) appear to have signed this agreement, but no representatives from the community of La Tejera. The Mission considers this consultation process to have occurred prior to the changes to the Project design and impacts taking effect. In that regard, consultation and consent for the purposes of the second and final Project design appears to have been given by all the communities identified (see above) but not La Tejera. These communities and their representatives expressed continued support for the Project to independent consultants reporting to the lenders and the Mission.

The 2014 Community Benefit Agreement contained important additional social commitments made by DESA, to be implemented following construction and operation. In the first year of construction, these commitments included funding for the purchase of a pipeline to take drinking water to the communities of Santa Fe, La Estancia and San Francisco de Ojuera and the donation of equipment for local schools. Following the second year of construction, the commitments included equipment for the local hospital (donated by the construction contractor, COPRECA), further road maintenance, the construction of another bailey bridge connecting Santa Ana and Plan de Encima and priority to local contracting businesses. Importantly, DESA committed to profit sharing arrangements with the Municipality of San Francisco de Ojuera following operation of the project, which funds were to be used for community development activities and projects with the local communities.

Access, use and health of river

Access to the river by the local communities has historically been through public access roads and areas along the riverbanks. It was apparently not available through privately held lands that front either side of the Gualcarque River, a status quo that continued upon purchase of these lands by DESA. There was a period when Sinohydro blocked public access to the river for communities in the La Tejera area – a point made to the Mission – but it is maintained that it was only temporary and due to health and safety concerns during the first phase of construction.³⁰ Unfortunately this information was not properly communicated to the community and led to misunderstandings and perceptions that it was permanent and the Project would take away people's rights to access the river freely.

What has been reported directly to the Mission, and is confirmed in various reports since 2012, is that roads in the area generally have been improved as a result of the Project. In addition, old municipal roads to the river have been upgraded and improved, benefiting the communities.

Nor has the Project had an apparent impact on the use of water by the communities most impacted by the final Project design. These communities indicated to the Mission that they continue to use the river as they did before

³⁰ GAI, 2014.

the Project, including for farming, crops and to grow food for household and commercial supply. The community of La Tejera claims their livelihoods have been impacted by the inability to access water and contamination of the river. The Mission was not able to test the claims regarding livelihoods or access to water for farming, and water health is addressed below.

The Mission reviewed a number of technical hydrology, environmental and biodiversity reports. From these reports it is clear that additional information was required in order to assess the impact of the Project on the health for that part of the Gualcarque River which would experience reduced flow, being the 6km from the intake weir to the power station.³¹ Further hydrological, aquatic surveys and assessments on impacts of aquatic habitats were part of the Biodiversity Management Framework established by DESA.

Impacts on other natural resources

The environmental and social reports reviewed noted that the general Project area had been impacted by small-scale agriculture and low-impact human activity. The Mission observed land in the area being used for agricultural purposes, and noted on the day of the site visit an adjoining landowner was clearing land through burning and was advised that this was a common land management practice.

Using the IFC's PS 6 habitat categories, the Project area was classified as follows: (a) a majority of the area falls under the definition of *modified habitat*, that is transformed by agriculture; (b) small areas of *natural habitat*, being the riparian and gallery forests along the streams and some parts of the Gualcarque River; and (c) localized areas of *critical habitat*, where an endangered frog was identified.

DESA developed an Environmental and Social Management System and an associated Environmental Management Plan. Generally, by January 2016 it was assessed by the Lenders' consultant that DESA was managing environmental impacts well and undertaking coordinated and comprehensive monitoring and mitigation efforts, including erosion control, replanting and rehabilitation of disturbed areas³². The Mission observed rehabilitation control of the canals using coconut netting to stabilize banks and seed indigenous vegetation. From the information available, it does not appear that the Project would impact other natural resources any more than the impact from agriculture and human activity generally. Where there were impacts owing to construction and other Project activities, mitigation measures were put in place. There was a coordinated effort to restore the landscape to a pre-Project state through reforestation and re-vegetation controls.

As Project activities have stalled, so have ongoing rehabilitation measures. The potential is for a large rain event to create an environmental concern where erosion mitigation is incomplete and rehabilitation has not stabilized steep banks. Both DESA representatives and SERNA expressed this concern.

Cultural and spiritual value of the Gualcarque River

The reports prepared by external consultants for the Lenders from early 2012 looked into possible cultural and spiritual attachments of the community to the river and found no evidence. The reports referred also to an archaeological assessment conducted by two anthropologists as part of the increased capacity amendment

³¹ GAI, 2014; MFC, 2014 & 2015.

³² MFC, 2016.

submitted to SERNA in 2011.³³ It is appropriate that the relationship of the communities to the river and land was explored in these earlier reports and that professional expertise was sought. The findings suggest that the question of spiritual attachments to the land and river were not flagged by the community at that time.

During meetings of the Mission with the communities, members of La Tejera and COPINH used the words ‘sacred’ and ‘cosmology’ as part of a general discourse of the Lenca People’s attachment to and responsibility for the environment and Mother Earth. When pressed for more detailed information regarding the sacredness of the river, there was none forthcoming. This is not to minimize or negate the strong attachment people expressed to the river and the earth generally, and it may be that culturally it is not appropriate for such matters to be discussed in an open forum.

The Mission also asked the meeting at Valle de Angeles about the cultural and spiritual values of the river. These communities also identify with a Lenca ancestry. The information provided by various individuals was that they had no stories or other cultural information passed down to them by older generations, which supported an assertion that the river was sacred. As with many colonized indigenous communities it may be that beyond the notion of water as being an essential element for supporting life and livelihoods, specific stories, ceremonies and collective memories of Lenca cultural and spiritual values have been lost.

In the meeting with DINAFROH, the assertion of the sacredness of the Gualcarque River was also raised. The observation made was that there was insufficient information to confirm the assertion.

Noting the observations already made regarding Project impacts on access to and use of the river by the Lenca people, it could be suggested that cultural uses of land will not be significantly impacted by the Project. However, there is insufficient information available to the Mission to make any determination as to whether the Project might endanger the spiritual values of the river.

Loss of livelihood

The Project has had both negative and positive impacts on the livelihoods of the communities in the area of influence of the Project. Loss of livelihoods has occurred as a result of the intra-community conflicts arising from the presence of the Project.

Of note is the positive impact that the Project has had on the livelihoods of residents of the communities. The electrification of the communities and improvement in public roads has had a positive impact on the residents of the area. In addition, community benefit programmes such as the water programme for the establishment of potable water sources, health education programmes, repairing of irrigation systems and a joint agriculture technical support programme with USAID³⁴ have the potential to improve future livelihoods for the community.

Further, the employment of local labour, reported to be approximately 400 persons during construction, and an increase in local economic activity also had a positive impact on the communities, until Project activities ceased due to the current funding issues. It was reported to the Mission that the earnings of the local community had increased during this period, improving the lives and livelihoods of many families and communities.

³³ GAI, 2012.

³⁴ DESA, 2016.

Engagement and Relationship with Local Communities

Early reports prepared by the Lenders assessed the community consultation conducted between 2009 and 2011 through the ‘cabildos abiertos’ process and held that was reasonably good and sufficient to comply with PS 1. The outcome was the 2011 Community Benefit Agreement, followed by the 2013 ‘convenio’ and the 2015 Community Benefit Agreement.

However, all of the independent environmental and social monitoring reports prepared for the lenders consistently comment that DESA had an unstructured approach to community engagement and communications generally. It is noted there was a significant improvement during 2015 with the allocation of additional resources to assist with the management and implementation of the Environmental and Social Action Plan, and improved coordination between DESA and the contractor. All the reports suggest the Company needed to improve its efforts to manage social risk issues through more strategic and integrated community engagement and a communication plan. Their inability to do so resulted in negative perceptions and understanding of DESA, the Project, its impact, and failed to communicate positive community development outcomes.

The community of La Tejera and supporters of COPINH aside, more broadly DESA appears to enjoy a good relationship with the communities in support of the Project. Although inadequate at the commencement of the Project, DESA was able to establish an effective Grievance Mechanism to address concerns voiced by the communities. Monthly reports by DESA contain detailed grievance records, including the problem encountered and the actions undertaken to resolve the grievance.

DESA addressed concerns the communities expressed regarding education for the children in the area. As part of the Community Agreement, DESA agreed to provide 7 school buildings, which had yet to be fully rolled out by the time the Project was suspended. DESA also provided student and teacher materials and hired a full-time class support person to assist children reaching Grade 7.

Implementation process

An important issue for the lenders is the assessment of the Project against the IFC Performance Standards and its compliance with international standards.

An early due diligence report for the lenders assessed that the following Performance Standards applied to the Project: PS 1: Assessment and Management of Environmental and Social Risks and Impacts; PS 2: Labour and Working Conditions; PS 3: Resource Efficiency and Pollution Prevention; PS 4: Community Health, Safety and Security; PS 6: Biodiversity Conservation and Sustainable Management of Living Natural Resources; and PS 8: Cultural Heritage.³⁵ These were confirmed by later environmental and social monitoring reports.³⁶

The application of PS 7 was specifically excluded as applying to the Project³⁷, and this was also the assessment of later consultants.³⁸ The Mission however has formed the view that PS 7 did apply to the Project, due to the application of ILO 169 and the self-identification of the Lenca people.

³⁵ GAI, 2012.

³⁶ MFC, 2014 and 2015.

³⁷ GAI, 2012.

³⁸ MFC, 2014.

In relation to the assessment of other PS from the commencement of due diligence processes to construction, the following observations are made:

PS 1 (Environmental and social risks)

The lenders' consultants identified deficits in DESA's Environmental and Social Management System, with significant work required by DESA in order to reach compliance standards. Significant improvements were made by DESA between 2012 and 2016, facilitated in part by the monitoring and capacity-building support provided by the lenders. However, social risk management continued to be an issue, particularly in the absence of a structured community engagement and communication plan. This being so, there is information, either in the environmental and social monitoring reports or DESA's monthly reports, that the requirements of PS 1 were not always being met.

PS 2, & 3 (Working conditions and pollution)

As with PS 1, earlier due diligence reports pointed to gaps between the information prepared by DESA through the environmental approval process and compliance with the PS. Again, with the support of the environmental and social monitoring consultants, DESA was able to address shortfalls, make improvements and meet standards required for compliance with the PS.

PS 4 (Community health)

The issue of security is dealt with separately in this report. In relation to community health, it appears from all the reports that DESA eventually established comprehensive systems to manage any impacts on the health of the communities associated with the Project. Of significant concern was the risk of airborne diseases associated with the water reservoir, and the information provided indicates that DESA invested in community health education programmes on this issue, amongst others.

PS 6 (Biodiversity)

As noted earlier, there were a number of issues raised regarding compliance with PS 6. From the information provided, it appears that further technical and environmental reports were required in order to properly manage the biodiversity of the Project area, particularly with respect to the health of the water, impacts on aquaculture habitats and mitigation measures. Without this additional information, it is difficult to determine continued compliance with PS 6 by DESA.

PS 8 (Cultural heritage)

There does not appear to be sufficient available information to support the application of PS 8. Earlier studies indicated that there was no significant archaeological or other artifact material within the Project area that required consideration. The matters raised earlier in relation to cultural and spiritual significance of the water and rivers, are also referred to here. In this regard, the lenders have exercised due caution, but may have made some further determination of cultural heritage in order to assess if the PS applied to the Project.

Chapter 3: The Communities in the Project Area

The Mission heard testimonies from representatives of the communities located in the area of the Project regarding the background and impact of it in the light of the ongoing conflict, violence and decision by FMO to suspend, and later cease, financial support to the Project.³⁹ In particular, the Mission wanted to understand: (a) the indigenous/non-indigenous composition of the communities; (b) the process of consultation regarding the project; (c) the position of community members towards the project; (d) the evolution and causes of the conflict; and (e) the anticipated impacts on the community members in the event of abandonment of the project.

The Mission considered that the timeframe of the visit would not allow an in-depth analysis of these questions. However, it also believed that through open engagements with a wide number of individuals on several occasions, it would get a strong sense of the feelings of the community. It should be said that the Mission insisted at each meeting that it was independent from FMO and DESA, was multinational in character and composed of individuals with experience who had no connections with any of the parties. The Mission also had access to a number of studies undertaken by consultants hired by FMO in the course of the project development, which greatly helped deepen the understanding of the situation in the area.

It is estimated that a total of some 150 individuals attended the meetings in which some 30 individuals representing different points of view spoke. The following comments constitute our understanding of the situation on the ground.

Indigenous/non-indigenous composition

The Mission considered that understanding the ethnic composition of the communities in the area was central to its task. The conflict has arisen in large part because a group of individuals - specifically, members of the community of La Tejera - self-identify as indigenous peoples and make claims regarding rights to land, natural resources and cultural life that are, in their estimation, violated by the presence of the Project. In the various studies undertaken by the consultants prior to the Mission's visit, the question of ethnic identity was examined and in general they were unable to find evidence of a distinct indigenous culture. The studies note that there is no longer an indigenous Lenca language, there are no traditional activities that distinguish the peoples in the area from the wider culture and there are no recognized ancestral lands.

In conversations with the authorities such as the Mayor of La Esperanza and the Director at the Secretariat for Ethnicities, there was general acceptance that the people in the project area were of Lenca ancestry.⁴⁰ Furthermore, a number of representatives of the community of La Tejera, and COPINH itself, clearly and repeatedly self-identified as indigenous Lenca.

In the course of discussions with representatives of COPINH, it was asserted that the organization represented the Lenca people in the area and that those who were not its supporters were not indigenous peoples but Ladinos and assimilated into the Honduran national identity. This statement was not borne out in the discussions held, in particular, with representatives of Valle de Angeles who acknowledged their Lenca ancestry as well as identifying

³⁹ The Mission met representatives of the communities within the Project area on 4 occasions. Detailed information of these meetings is presented in **Annex 3**.

⁴⁰ The Mission considers that many indigenous peoples around the world, as a result of the colonisation they experienced, have lost their language (or forcibly been deprived of it), had their cultures denigrated to the point that many traditions have disappeared, and have no legal recognition of lands that historically were those of their forebears. Nonetheless, governments recognize them as indigenous because they self-identify as indigenous and are accepted as such by members of their community.

as Ladino and also did not accept COPINH as their representative body. This complex situation only highlights the multiple identities individuals can have in these communities where the process of integration has persisted over decades, even centuries. It leads to the conclusion that in this case the question of indigenous identity is regarded as pragmatic and related to the perceived interests of the individual and the community.

As far as the report of the Mission is concerned, it accepts that the peoples of the area are of Lenca descent and can justifiably claim to be indigenous peoples in accordance with the generally accepted practice of self-identification, or not, if that is their wish.⁴¹

The communities and the consultation process

This section is concerned with the perceptions of the community and in this case there are predominantly two views. The first was expressed at the meetings of the Mission with the community of La Tejera and COPINH. The representatives at these meetings claimed that no legitimate consultation was undertaken. DESA, they said, should have held consultations in accordance with ILO 169.⁴² COPINH also referred to the principle of FPIC which is elaborated in UNDRIP, and requires a consultation with indigenous peoples that might be impacted by a project prior to its commencement through their representative organizations. COPINH further claims that the lands acquired by DESA for the Project were obtained illegally, are rightfully ancestral indigenous peoples' territory, and that the Project violated their cultural rights as the river is sacred. The organization further claimed that the consultations that had taken place had not been adequate and had been corrupted through bribes and falsifications.

On the other hand, the perception of the representatives of the other communities in the area of influence of the Project was that the consultation process was adequate, undertaken through their community decision-making bodies and formalized in the formal registers of the community and municipality. They spoke of the benefits of the Project, specifically jobs, additional income flowing into the local economy and the various social projects to provide drinking water, electricity, improved roads and small economic activities.

The issue arises as to whether it would have been advisable or even a requirement to undertake a consultation along FPIC lines, as indicated by COPINH, with the community of La Tejera -where the brunt of the opposition to the Project is located, but also with the communities that have supported the Project since 2011. The Mission concludes that although the consultations were not held before the implementation of the Project, it involved all the communities in the area of influence of the Project, and fulfilled the other main requirements of the FPIC principle.⁴³ However, as COPINH noted, a consultation process is required by ILO 169, in the event of a project affecting indigenous peoples, and such a consultation should have been held before the Project was approved.

Honduras has ratified ILO 169, which is binding on the state. It is the responsibility of the state to ensure that consultations are held prior to the commencement of a project that may impact indigenous peoples. It is also noted that there is no regulatory arrangement in the country for the application of ILO 169 and FPIC.⁴⁴ The absence of a regulation makes the implementation of the convention more complicated for non-state actors. It was

⁴¹ "Self-identification as indigenous or tribal shall be regarded as a fundamental criterion for determining the groups to which the provisions of this Convention apply." ILO 169, 1(2).

⁴² The relevant articles of ILO 169 are 6 and 15.

⁴³ According to the Convenio de Cooperacion of 23 August 2013, an FPIC consultation was carried out by the Ministry of Natural Resources and Environment in December 2010 and in October 2011.

⁴⁴ A draft regulation is due to be presented to the President of the Republic on 9 August 2016 according to the representative of the Secretary for Ethnicities.

noted that, according to the consultants (GIA and MFC), an adequate consultation was undertaken with community-based organizations in the absence of any traditional authorities such as councils of elders and this therefore served the same purpose. It was noted also that a number of communities did not invoke FPIC and were satisfied with the consultations carried out through the community-based decision-making bodies: the “patronatos”. Notwithstanding these comments, and given the reality that a number of local people self-identified as indigenous peoples, however, the question arises whether DESA undertook a consultation that fulfills the requirements of ILO 169, IFC PS 7 and the principle of FPIC.

In the documentation provided to the Mission, DESA describes the consultations and other measures it took to comply with ILO 169 and IFC PS 7. The document notes that the responsibility for undertaking a consultation lies with the government. DESA is required as a condition of the permit from SERNA to carry out a form of consultation or “socialización”.⁴⁵ From the ensuing information provided in the document that describes this process of “socialización”, it is unclear whether this is a consultation to obtain the consent of the community or an information meeting following a *fait accompli* as the licence to proceed with the construction is already in place. It is understood that communities that favoured the Project went on to give their approval so in that sense they gave their consent. Others did not as was the case of indigenous persons the Mission met through COPINH.

ILO 169 does not require a “socialización” but rather a “consulta”. IFC PS 7 also requires a consultation in line with UNDRIP, which calls for a consultation that is free, informed and takes place prior to the implementation of a project in order to obtain the consent of the peoples concerned. “Free” carries with it the idea that those being consulted are not subject to threats or inducements and freely come to an opinion. “Informed” has the expectation that all relevant information is made available in a transparent and accessible way so that the community can weigh the benefits and disadvantages and make an informed decision. The notion of FPIC implies also that consultations take place prior to a decision being taken on a project. A consultation along these lines does not seem to have taken place in this case. Finally, the FPIC principle requires that consultations take place with indigenous peoples’ traditional authorities. This seems to have been the case as noted earlier, as there are in Lenca communities no traditional authorities in place and so use was made of existing decision-making bodies (patronatos). In a note sent to the Mission on 30 August 2016, COPINH stated that the Indigenous Council of Rio Blanco (Consejo Indigena de Rio Blanco) and the Council of Elders of Rio Blanco (Consejo de Ancianos de Rio Blanco), both traditional authorities, were members of its organization. The Mission was not informed of these bodies and did not have the opportunity to meet with them. It may be noted also that a consultation in line with ILO 169 and FPIC would be directly with the community and its decision-making authorities.

Position of Community Members regarding the Project

As noted in the previous paragraphs, the position of communities regarding the Project are split with some welcoming the benefits in terms of jobs and others, specifically those represented by COPINH, rejecting it. Where there appears to be some agreement among community members, whatever their position on the Project, is that people in the area lived harmoniously and with no conflict prior to the Project commencement. The Project has resulted in serious conflict, violence and deaths within a community that was remote, largely neglected by the government, poor, left to its own devices but at peace. The Mission has no means of knowing the state of community relations before the Project and must assume that this sense of wellbeing is a shared recollection and is in contrast to the prevailing dissension.

⁴⁵ La “Resolución Ambiental de Proyecto No. 0919-2011 emitido el 24 de marzo de 2011, manda que se debe de realizar una socialización del Proyecto con las comunidades del area de influencia directa del Proyecto y con la corporacion municipal”.

What appears to be the case is that the introduction of the Project provoked disagreements and subsequently conflicts and violence. There is some suggestion in the documentation that this was due to the errors in community engagement made by DESA and the initial contractors. We can also question the efficacy of the consultation procedures, efforts to accommodate the concerns of La Tejera supported by COPINH and commitments to community projects that took place in the first years and that apparently did not lead to reconciliation but deeper and more violent splits within the communities.

It is not uncommon for major economic projects to bring division to communities that are largely neglected by the state with some groups opposing the development and others seeing potential benefits. Projects can certainly bring benefits but they also cause inequalities among members of the community and can set off inter-community and inter-family rivalries, as has been the case in with the Project. This implies that such projects, if they are to avoid conflicts, need to invest the time needed to set out the potential advantages and disadvantages of the project, detail the potential impacts to land and communities, address the concerns expressed to them in the consultation process in good faith, and find ways to mitigate impacts where they might occur.

Root causes of the Conflict

The Mission sought to understand the underlying causes of the tensions affecting the communities. It concluded that there are issues concerning access and use of land that pre-date the arrival of the Project. Honduras has experienced a long history of dispossession of indigenous peoples' lands. The acquisition of these communal lands by force or chicanery since colonial times is a matter of record. There is evidence that incursions have been made onto Lenca lands in the Project area by outsiders, over many years prior to the arrival of the Project.⁴⁶ Historically, the land required for the Project would have been Lenca ancestral lands and COPINH, in its presentations to the Mission, referred to them as such.

Contemporary Honduran law recognizes some communal indigenous lands, but not in the area of the Project as far as we understand. Lands in the region are defined as under individual or municipal ownership. Historically, many municipal lands were originally "ejidos" - lands designated by the colonial governments as communal and in the area of the project would have been Lenca lands. Over time, these communal lands have been absorbed as municipal lands but de facto continue to be used by local communities for agricultural activities. The land dispute at the heart of the conflict concerns the acquisition by some families of land in the Rio Blanco area (around the communities of La Tejera and El Barrial) and registering it as private land at the Municipality of Intibuca. COPINH claims that these lands were coercively obtained and, as Lenca lands, should not have been privatized by the municipality.

The complexities of land use and ownership in the area over time are not the subject of this report but they are nonetheless central to our understanding of the conflict that developed with the Project and explain the hostility of members of the community opposed to the Project. Members of the Lenca people particularly on the Rio Blanco side of the river who were initially those impacted by the Project, until it was revised, considered that their communal lands had been obtained by outsiders through coercion and then registered illegally by the Municipality of Intibuca. While the law as it stands in Honduras recognizes DESA's rightful ownership of the lands they acquired in 2011 for the Project, it would certainly have been advisable to seek to understand the claims made by indigenous peoples regarding their historic attachments, use and occupation of the lands under dispute and seek to accommodate their concerns.

⁴⁶ See Bird, 2013.

Perspectives of Gender and the situation of Women in the Project Area

With respect to the application of a gender perspective in the consultation process of the project, the Mission determined, from the interviews carried out and the documentation reviewed, that no specific gender focus was used.⁴⁷ Nevertheless, in interviews conducted by the Mission, women indicated that they were adequately involved in the socialization process of the Project. Furthermore, based on the documentation, the Mission found that a priority need requested by the communities during the meetings was the creation of a maternal and child health centre, and that the construction of said centre was included in the project's social action plan.⁴⁸

Women at the meeting at La Tejera expressed concern that their children were being marginalized and were being refused entry to school due to their parents being supporters of COPINH. DESA, they said, had not fulfilled its commitment to provide a school building to the community of La Tejera and this was still pending due to lack of funds to fulfil social programmes.

The women at Valle de Angeles who spoke to the Mission generally reported that women were involved in community consultations and participated in decision-making regarding the Project. In addition, the women reported general improvements to the circumstances of families with houses being built and jobs for locals. The women who spoke felt that their side of the story had been lost because of the international attention being given to COPINH. They felt that the impacts on the communities in support of the Project had not been communicated or listened to, and that if the Project was abandoned, their communities would suffer.

Expected Impacts of Project Abandonment

Those of the community who expressed support for the Project said that the suspension of funding had already led to the loss of jobs and incomes, community level projects and general infrastructural developments to the detriment of the entire region. Furthermore, the prevailing view of this group was that the conflict would continue.

The position of COPINH is that all funding of hydroelectric and mining projects in the entire country should stop and that the funders should compensate the damage done to the communities. No opinion was expressed on whether the abandonment of the Project would lead to reduced conflict. From the perspective of the Mission, it is difficult to see how COPINH and those opposing the Project would not feel vindicated for the resistance they had put up that had led to the eventual abandonment of the Project. In the absence of the Project, however, it was not clear whether an alternative development model was being proposed and how it would address the community needs for basic services and improved infrastructure.

On the other hand, with 80% of the earth moving construction work on the Project completed, and should the Project be continued under alternative funding arrangements, it is expected that DESA would continue to hire only a handful of local workers once the Project was operational. It was understood however that community projects would continue and that a part of the revenue generated by the Project would flow into the municipality for use in the communities over the lifetime of the Project. All therefore depends on the level of income that may be generated by the operational Project that can be passed on locally to support viable development activities to improve opportunities for the communities and to foster greater and more proactive involvement by the state.

⁴⁷ SP and CDP.

⁴⁸ CDP, p. 19.

Without the Project and the income it will generate, the communities will revert to the status quo ex-ante – with continuing state neglect, a subsistence economy, minimal basic services and below average incomes.

Chapter 4: Other Actors

Meetings with representatives of DESA

The technical staff of DESA confirmed to the Mission that 80% of the heavy construction and earth-moving was completed with almost no environmental impact. The original dam project had been abandoned and now there would be a weir of 5 metres with a canal and tunnel running off and parallel to the river. The change of the Project to run on the left-side of the river had been taken following opposition from COPINH and it came with added costs. It had also involved further studies including an environment and an anthropological review. The Project, they said, has the least possible impact and was a viable alternative clean energy source, which they expected to last up to 30 years. The DESA staff believed the Project was an opportunity for the local communities that were completely forgotten by the state.

As regards land acquisition, the technical staff explained that it had been bought from the previous 4 or 5 owners and was previously used for cattle and timber. DESA now owns the land on both sides of the river for about 5kms to a width of 2kms. They claimed that there was no customary land but that families could regularize their holdings on municipal land through a cadastral review. It was also stated that access to the river could still be made via the public roads and that previously there had been no roads to the river on the lands that were in private hands.

DESA, they said, is bringing benefits to the communities by offering work for probably another 2 years, by helping with the commercialization of produce, by providing villages with electricity, drinking water for 3 communities, improved roads, schools and a percentage of profits from the energy production for 20 years, which are guaranteed for the local communities. If the Project is not completed, the staff of DESA said, it would mean an end to these community development opportunities.⁴⁹

The owners and management of DESA said that the Project was intended to produce clean electricity and was a long-term investment. Until 2014 all the equity had been from DESA until the first tranche of funding was released by FMO and the other funders. They said they had never expected the Project to generate so much controversy and that they had taken every step to address the concerns of the community including through re-designing the Project from a dam to a weir and moving the development away from La Tejera to the other side of the river.

As far as the assassination of Berta Caceres is concerned, they said there was absolutely no complicity and that DESA wanted to see a rapid resolution by the authorities. They were also agreeable to independent assistance from outside the country to help the Honduran police investigation. It was not in the interest of DESA, it was stated, that such a crime was committed.

As far as the withdrawal of funding by FMO is concerned, the hope was that once the criminals were convicted, and DESA was shown not to be implicated, the funders would re-commit to the investment. The Project benefits

⁴⁹ According to the agreement with the lenders, DESA will pay 2.5% of the project's profits to the municipality of San Francisco de Ojuera once it is operational for a period of 10 years. After that 3.5% of profits will be paid to the municipality. A number of social projects are also to be undertaken by DESA during the construction phase and once operational the company will transfer them under the responsibility of the municipality.

the country and the community and does no damage to the environment, it was said. If financing was not forthcoming from FMO, it was possible that other funding could be obtained or from the government. They also said that the withdrawal of funds by FMO would have a domino effect and mean less investment from outside of the nearly 50 other clean energy projects in the pipeline.

The owners and managers of DESA renewed their commitment to strengthening consultation and the social programmes. They claimed that the violent incidents had greatly diminished in the last 14 months before the murder and relations had improved. They did admit that they had to go through a learning curve regarding the project.

Meeting with Local and National Authorities

The Mission met with the Mayor of La Esperanza, a representative of the Ministry of Environment and Natural Resources and DINAFROH. The mayor stressed the need for private investment in the area given the neglect by the state in addressing the local development needs and the reduced budgets available to the locally elected authorities. The representative of the Ministry of Environment put the Project into the context of the overall energy programme of the country, explaining the intention of the government to move towards 80% clean energy over the next years to reduce the costs and dependency on fossil fuels and also to play a part in reducing greenhouse gases. He said that regular evaluations of the Project took place to ensure the environmental commitments were being fulfilled. He did fear, if financing stopped and the project had to be abandoned, that a period of particularly heavy rainfall (these occur in ten-year cycles) would cause considerable damage to the environment as the construction site has not yet been stabilized and fully rehabilitated.

The representative of DINAFROH was familiar with the Project. He explained that while the majority of the people in the area were of Lenca ancestry some did not identify as indigenous depending on the circumstances. He explained that there are Lenca and non-Lenca both in favour and against the Project. He felt that the protests against the Project were dogmatic rather than taking into account the needs of the community for energy and development. These indigenous areas, he said, are some of the poorest parts of the country and it was not appropriate to perpetuate poverty in the name of protests against dams.

As far as representation of the Lenca people is concerned, the representative said there were at least 14 organizations claiming to represent the Lenca and that COPINH, as a national NGO, could not claim to be exclusively speaking for them.⁵⁰ Notwithstanding, the representative spoke of the need for a process of consultation in cases involving projects affecting indigenous peoples and that discussions about a regulation had been going on for years. In this regard, it was hoped that a draft proposal could be presented to the President in August 2016. On the question of indigenous identity, the representative said only 7 to 9% of Hondurans self-identified as indigenous or Afro-Honduran but this figure could be double since many do not want to be seen as belonging to these groups.

Meeting with the United Nations

The United Nations provided the Mission with background to the national political environment and the principal interests and concerns of the UN's Human Rights Office. The Special Rapporteur on indigenous peoples had

⁵⁰ COPINH states that it has members from over a hundred Lenca communities in the country.

made an official visit to the country at the end of 2015. She did not visit the Project area, but her report was due to comment on the human rights violations in the region.

Chapter 5: Security and Human Rights Issues

Allegations of Violence, Intimidation and Corruption

The Mission has established that with respect to the implementation of the Project, numerous violations of the rights of individuals have been reported, specifically offenses that go against the right to life, physical integrity, freedom of movement, private property, and access to justice, among other fundamental rights.⁵¹

As previously mentioned, in the area of the Project there are communities both for and against the Project. Local communities and stakeholders interviewed by the Mission agreed that the Project has been implemented within a context of human rights abuse that has worsened since 2013.⁵²

Based on the interviews carried out and the documentation reviewed, the Mission concludes that there is evidence that violence has occurred at different times that was presumably committed by different individuals. On the one hand, various accusations have been made to local and international authorities by members of the community of La Tejera and COPINH against DESA and the State of Honduras for various crimes and offenses, including the usurpation of land and threats to and the loss of life.⁵³ The mission heard testimonies from representatives of COPINH who claimed their lives were threatened by individuals because they opposed the Agua Zarca Project.⁵⁴

On the other hand, a number of complaints have also been lodged against members of La Tejera and COPINH by residents of communities in favour of the Project, along with staff of DESA, for damage to private property, usurpation of land, intimidation and loss of life.⁵⁵ In addition, violent incidents have occurred that have led to the loss of life within the context of protests against the Project that were repressed by the public authorities.⁵⁶ The

⁵¹ During the visit to Honduras, the Mission was informed of at least 30 reports of crimes committed in the project area since 2013.

⁵² Among the key factors that have led to the La Tejera community's rejection of the project are the non-fulfillment of the first improvement commitments made by the project and the Synohidro company's non-payment of compensation for damages.

⁵³ Other accusations include: i) a complaint filed on April 9, 2013 by the Special Prosecutor for Ethnic Groups against M.D., Mayor of Intibucá, for abuse of authority by authorizing the construction of the Agua Zarca project; ii) a complaint filed on September 3, 2013 before the Special Prosecutor for Ethnic Groups and Cultural Heritage for land usurpation, abuse of authority and other crimes, presented by J.G.B., Indigenous Coordinator for the northern sector of Intibucá, along with others, against Sinohydro, DESA and others; and iii) a complaint filed on November 9, 2014 before the Special Prosecutor for Ethnic Groups and Cultural Heritage by B.C.F. (COPINH) against the Ministry of Energy, Natural Resources and other public authorities, for abuse of authority and officials' violation of their duties.

⁵⁴ Meeting held at Utopia on 23 May 2016.

⁵⁵ Among other accusations: i) a complaint filed on September 19, 2013 before the Department of Criminal Investigation of Intibucá by S.D. against D.S., an alleged member of the La Tejera community, for threats made with a firearm; ii) a complaint filed on April 4, 2014 before the Public Prosecutor's Office of Intibucá against R.B.M. and G. S., alleged members of COPINH, for the murder of S.D. and D.G.B. for allegedly refusing to participate in a protest against the Agua Zarca project, and iii) a complaint filed on September 19, 2013 before the Criminal Investigation Department of Intibucá by A.M. against L.S., N.D. and others, allegedly of the La Tejera community, for damage to property.

⁵⁶ On July 15, 2013, Tomás García, a member of the La Tejera community who was taking part in a protest against the Project, was shot and killed by a member of the Honduran Armed Forces. This event led to the conviction for homicide of non-commissioned officer K.Y.S. of the Engineer's Battalion.

loss of life of community leaders⁵⁷ and minors⁵⁸ has exacerbated divisions and tension in the Project area, where relationships of coexistence and trust between different communities have become fragmented.

The Mission concludes that unrest and violence in the Project area are due to diverse and complex causes including: (a) the dissatisfaction of the community of La Tejera with the socialization process carried out by the Project; (b) the fear of those communities of the possible environmental impacts that the Project could have in their territory, damaging traditional economic activities; (c) the tension between the expectations of stakeholders for and against the Project; (d) the non-compliance of certain commitments made by the Project, which has generated the distrust of local communities, particularly La Tejera; (e) the insufficient capacity of the Project's managers to prevent and respond to conflicts around the implementation of the Project; and (f) issues around access to and use of land that pre-date the Project.

With respect to intimidation, violence or pressure during the socialization phase of the Project, none of the communities visited by the Mission witnessed such acts. However, members of the La Tejera community indicated that some of the signatures on agreements signed were falsified and that other signatories were paid to sign said agreements.⁵⁹ In a complaint filed by COPINH in 2013, a request was made for the verification of signatures of the minutes of meetings that had been held. However, the Mission does not know the outcome of this complaint. The Mission has not received any evidence supporting the falsification of signatures or violence or intimidation in the socialization phase of the Project; on the contrary, community members in favour of the Project denied such acts. A review of the documentation from the socialization phase of the Project did not provide evidence to suggest that such signatures had been falsified.⁶⁰

Women, Children and the Elderly

Women, children and the elderly are considered to be highly vulnerable in the communities located in the Project area. As already indicated, said communities suffer from poverty, social exclusion and geographical isolation, factors that have a greater impact on these groups, especially children.

With regard to the situation of these vulnerable groups and acts of violence and intimidation, the Mission noted that women play an important leadership role in the communities and indicated that they feared being killed or losing their families due to the threats they receive. While the women of La Tejera reported having been victims of threats for opposing the Project, women who supported the Project have indicated their fear of attacks on their families, i.e. their partners, children and grandchildren, given that they have provided facilities for the Project.⁶¹ When asked by whom and how they had been threatened, some women mentioned specific names, while others reported that persons unknown had sent them threats via members of their communities. Furthermore, while the main concern of the women of La Tejera was the Project, as they believe it will detrimentally affect the agricultural activities they undertake to support their families, women in the communities that support the Project view it as the only opportunity for improvement and development in terms of their children and grandchildren.

⁵⁷ The deaths of community leaders Tomás García and Berta Cáceres.

⁵⁸ The loss of life of the minor C.A.M. from the El Barrial community.

⁵⁹ At the meeting with the La Tejera community, it was stated that the project had paid up to 200 lempiras to members of other communities to sign the minutes of meetings that had taken place within the socialization process.

⁶⁰ The Mission has reviewed the document "Socialization: Compliance with ILO Convention 169 on Indigenous and Tribal Peoples in Independent Countries - Agua Zarca Hydroelectric Project" (SP), along with videos, scanned copies of minutes and letters from communities requesting the continuation of the project.

⁶¹ Sale of portions of land surrounding the river to the Project and transit easement for machinery and project staff.

Furthermore, the Mission was informed of threats against a social worker with DESA who is now receiving company protection. The aforementioned professional has stated that they have been subjected to threats against their life because of their working on the Project. The documentation that the Mission reviewed included a complaint lodged by a public official when trying to enter the La Tejera community in 2013.⁶²

In the interviews undertaken, the Mission was informed that some protests against the Project have involved the mobilization of women with children. The Mission verified that in said communities there were a significant number of children, many under 10 years old. The Mission also ascertained that there are a significant number of older adults in the community, particularly older women, who have been affected by the conflicts that have been generated.

Berta Cáceres

The murder of human rights defender and COPINH leader, Berta Cáceres, was a breaking point in the local conflict over the construction of the Agua Zarca Project. On this issue, all of the stakeholders interviewed by the Mission agreed that clarification of this case is key both in terms of when project construction is to be resumed, or if the Project is definitely cancelled, as this is an issue considered to be central to the healing of relations between communities.

The arrest on suspicion and subsequent formal criminal charges made against a DESA worker for this crime has exacerbated tensions, especially given the accusations that the murder victim and COPINH made before national and international authorities for alleged acts of intimidation by the company. For their part, representatives of DESA interviewed by the Mission denied having any connection with the murder of Berta Cáceres, stating that the arrest of a member of their staff was a complete surprise to everyone.

Members of communities against and in favour of the Project, members of COPINH, and authorities of the various institutions interviewed in Tegucigalpa and DESA staff have all stated that the murder of Berta Cáceres should be clarified as soon as possible, along with the identification of the intellectual and material authors of the crime.

Investigation into Allegations within a context of Impunity

Impunity is a serious problem in Honduras and is evident in the limited results obtained by judicial institutions addressing crimes, particularly in terms of their investigation and punishment.⁶³ In this context, all of the stakeholders interviewed indicated that impunity prevails both for serious crimes such as killings and threats, and less serious offences such as damage to property and land usurpation. While there have been some accusations in which those responsible have been identified and punished,⁶⁴ the vast majority of complaints have not been

⁶² Complaint lodged on September 19, 2013 before the Criminal Investigation Department of Intibucá filed by N.D.E., an official of the Ministry of Agriculture and Livestock, against F.J.S. and others for threats made while working in the socialization process of the Project.

⁶³ On January 19, 2016, the Government of Honduras and the Organization of American States signed an agreement for the creation of a Support Mission against Corruption and Impunity in Honduras (MACCIH). This document indicates that Honduran society calls for more action in the fight against corruption and impunity, and that there is a need to decisively and urgently address these issues through a comprehensive system based on unconditional dialogue with the different social sectors in Honduras.
<http://www.oas.org/documents/spa/press/convenio-MACCIH-1.19.16.pdf>

⁶⁴ For example, the case of the death of Tomás García, in which a soldier was tried and convicted, although the judicial process took more than three years.

brought to justice. In this regard, one community representative stated: *"My report of threats and usurpation of land, which I filed on October 14, 2013, has never been addressed. That's one of the reasons people are no longer reporting the abuses... Another disadvantage is that people make just enough to get by, and to get to La Esperanza it costs 500 lempiras just for a bus ticket, and those people who can't afford it have to undertake an 8 -10 hour walk, find somewhere to stay and make the return trip the next day ...".*⁶⁵

The Mission found that the Project area presents difficult geographic conditions that limit access by road. The state's presence in the Project area is minimal. The offices of the police, public prosecutor and judiciary are located far from the communities and require several hours of transportation in order to reach them. The police have no permanent presence in the Project area. Although they respond to protests, criminal investigation is critical considering the remoteness of communities and the insufficient information that is presented in some of the accusations.

The impunity associated with the accusations made has seriously affected the confidence of the population in the Project area with respect to the state and its institutions, a situation that may contribute to further crimes being carried out against life, personal safety, liberty and property.

FMO's Policies and Processes (PS 4: Safety and Security)

One requirement of FMO for the Mission is to establish whether its policies and procedures to prevent conflicts and mitigate escalating violence in complex contexts have been sufficient and adequate. Based on the documentation that the Mission reviewed, it was determined that FMO developed two mechanisms to prevent conflict and violence within the framework of the Project's implementation. On the one hand, the loan contract to execute the Project includes an Environmental and Social Action Plan (ESAP), which establishes PS, actions and indicators to prevent and respond to conflicts that may arise at the site.⁶⁶ Among the measures listed in that part of the contract are the development by DESA of a community consultation plan, social and environmental plan, conflict resolution plan, training plan, complaint mechanisms, and a safety and emergency plan. According to the contract, these plans should be designed and implemented before, during and after Project funding, following a timetable that also forms part of the contract. Specifically, the conflict resolution plan was to address, among other aspects, issues of security, respect for human rights, and conflict prevention and resolution.

The second mechanism implemented by FMO to prevent conflict and violence has been the hiring of independent consultants external to the Project for the regular monitoring of DESA's implementation of the actions and tasks outlined in the contract. The companies MFC and GAI produced periodic monitoring reports on social risks, community relations and security, the findings, conclusions and recommendations of which were communicated in a timely manner to DESA.

Regarding the above, the Mission concludes that the policies and procedures of FMO to prevent conflicts in the field were relevant and timely. However, the Mission found that FMO did not include within their contract, policy mechanisms to guarantee that those who implement such contracts have the full capacity to prevent and appropriately respond to social conflicts in complex situations. In this regard, reports from independent consultants warned of weaknesses in the capacities of DESA, particularly in terms of strategic planning of community relations in the Project zone⁶⁷ and this despite the commitment made to the community by its Project

⁶⁵ Interview carried out with communities in the project area on May 25, 2016.

⁶⁶ Credit Agreement among DESA, FMO, CABEI and Deutsche Bank Trust Company Americas.

⁶⁷ Quarterly Monitoring Report Desarrollos Energéticos, S.A. – Agua Zarca Project, Forest Consulting, January 2015, p. 10.

managers and technical staff.⁶⁸ Regarding this, the Project didn't include a crisis prevention and management plan as to complex situations in the ESAP associated with the contracts.⁶⁹

Chapter 6: Conclusions and Lessons Learned

The Project was largely implemented in accordance with IFC Performance Standards. However, at the early stages of the development, DESA was not sufficiently engaged in a consistent manner with local communities, particularly with the community of La Tejera that rejected the Project. It did not explain its activities well and address concerns in a timely way. It also made promises that could not be fulfilled and did not give sufficient coverage of the social investment programmes that were meant to bring benefits to the local communities. These concerns were repeatedly raised in the consultant's evaluation reports required by the funder FMO. FMO, in line with its mandate to ensure that its clients respected IFC guidelines, held back funding until it was satisfied that these requirements were fulfilled.

In relation to IFC PS 7 on indigenous peoples and FPIC, it is the view of the Mission that a full consultation process invoking the FPIC principle should have been undertaken with the community of La Tejera that self-identified as indigenous when it was requested. Honduras has ratified ILO 169, which is binding on the state. It is the responsibility of the state to ensure that consultations are held prior to the commencement of a project that may impact indigenous peoples. It is noted that there is no regulatory arrangement in Honduras for the application of ILO 169 and FPIC, making implementation more complicated for non-state actors. It was not felt that the meetings held on December 2010 and October 2011 constituted a consultation as foreseen in ILO 169 and they were not recognized as such by the NGO COPINH speaking on behalf of the community of La Tejera.

The Mission did consider that the consultations held with other communities and carried out through the 'cabildos abiertos' process and community-based decision-making bodies (the "patronatos") fulfilled the requirements of PS 1 and 7, as these communities did not invoke a consultation in line with the principle of FPIC. Furthermore, documentation concerning these consultations was made available and members of the community confirmed their satisfaction with the procedures.

The Mission notes that two standards relating to indigenous peoples are in play. The first concerns the obligation of the state as a signatory of ILO 169 to undertake consultations with indigenous peoples' decision-making bodies prior to approving a project that may have impacts on their lives, cultures and well-being. The second concerns the obligations of the private contractors and lenders under IFC PS 7, which requires a consultation with indigenous peoples with the purpose of obtaining their free, prior and informed consent to a project.

While issues of the legality of the land acquired by the company was raised by COPINH on the grounds that the previous owners had obtained the land fraudulently and/or that the area of the hydropower development was ancestral Lenca lands, Honduran law as it stands does not recognize any indigenous title and the acquisition of the lands by the company followed existing procedures.

DESA and the funders took appropriate steps to address the concerns raised by COPINH by moving the Project from the side of the river where La Tejera is situated, modifying the design from the original dam structure to a

⁶⁸ Final Report for MFC Initial Social Site Assessment Agua Zarca Run-of-River Hydroelectric Project for FMO and DESA, Monkey Forest Consulting, June 2014, p. 6.

⁶⁹ The crisis management manual for the project was designed in July 2015.

small run of river hydropower development with a 5m weir, ensuring there was no displacement and that the river could flow uninterrupted. Access to the river, it was confirmed, remains unaffected. These modifications that added to the overall costs of the Project should be recognized as efforts to accommodate the concerns raised.

Notwithstanding these comments, the Project generated divisions in the community, conflict and violence. The death of Berta Caceres led to the suspension of all activities in Honduras and a communication that FMO would withdraw from the Project if a credible connection between one of its clients and an act of murder were to be established. Accusations concerning the sources of many manifestations of violence are split, some community members accuse DESA and others COPINH, but responsibility must also fall upon the authorities for overreacting early on in the conflict with disproportionate force, and not investigating the crimes and mediating between the communities. This prevailing environment of impunity could have led some to taking the law into their own hands.

With regard to the effect on the community of the withdrawal of funds and the suspension of the Project, the Mission heard testimonies that the decision had already had a negative impact on some of the communities in the Project area. Without the Project, these communities have experienced a significant downturn and closure of businesses, which was observed directly. If no alternative funding is found, it can be expected that there will continue to be a direct negative impact on those communities, as the benefits committed to in the 2011, 2013 and 2015 agreements will not be able to be fulfilled by DESA. If the state, as has happened in the past, takes no initiative to invest in development projects in the area, it will result in the continuing marginalization and abandonment of these communities.

Further to discussions with stakeholders, it appears unlikely that an exit from the Project will solve the conflict. While the Project is the central cause of the confrontation between the communities, now the conflict has complex levels. Those in favour of the Project were concerned that if FMO exited, it would be a positive response to acts of violence committed against them and validate the approach taken to stop the Project. In addition, it is believed that those who are benefiting from the Project may feel strong resentment towards COPINH, as the NGO responsible for pressuring FMO to withdraw. On the other hand, COPINH has stated that it considers FMO responsible for the human rights violations that have affected their members.

The view of the Mission is that there will not be an impact on national development per se as there are a large number of different clean energy projects being developed around the country. However, the cessation of the Project and its potential abandonment is likely to have an impact on local development and the environment. On this latter point, the representative of the Ministry of Environment feared that a period of particularly heavy rainfall occurring in ten-year cycles would cause considerable damage to the environment as the construction site has not yet been stabilized and fully rehabilitated. The mayor of La Esperanza stressed the need for private investment in the area given the neglect by the state in addressing the development needs locally and the reduced budgets available to the local elected authorities.

Claims by persons opposing the Project, the residents of La Tejera and COPINH, that the Project has impacted indigenous rights to land and water use, and preservation of customary responsibility to Mother Earth, require consideration. If, as affirmed by DESA, it owns land to a width of 2 kms on both sides of the Gualcarque River, this potentially limits access to indigenous peoples on the right side of the river, including the residents of La Tejera, who consider that the land was fraudulently obtained and should revert to indigenous use and ownership. Although as noted earlier, access to the river prior to the Project had been through public access points, which remain unaffected. On the other hand, the entire Project has moved away from the right side of the river thereby ensuring there are no direct impacts affecting communities on the right side of the river resulting from the Project itself. Presumably, if these lands are not needed for the Project and can be accessed as was the case prior to the

arrival of the Project, the capacity of the Lenca people to exercise customary rights over their ancestral lands, to use natural resources and to continue land use activities would not be affected.

In relation to non-indigenous land rights, some families, particularly in the community of El Barrial, have been impacted by intra-community conflict as a result of a systematic forced removal and seizure of lands by opponents of the Project. This was reported by residents of El Barrial and other communities, as well as by DESA representatives, during open interviews and without direct questioning. In addition, written records and reports to police that were seen by the Mission also supported this information. Without access to their lands, families have been left unable to pursue agricultural activities and left without an ability to derive a livelihood through the tending of livestock and cropping.

In addition, it is suggested that PS 7 has been narrowly assessed, particularly with respect to the direct and indirect social and economic impacts of the Project. As early as 2011 persons in the affected communities self-identified and claimed ancestral lands, and this should have been taken into consideration in social impact assessments. The mere presence of the Project in the area had impacts on the affected communities, as described in this report, triggering the application of PS 7. Moving forward, the lenders should take care to assess the potential impacts on indigenous communities, and where those communities articulate an indigenous identity and desire to participate in an FPIC process. The lenders should also consider a more comprehensive assessment of indigenous people, as undertaken by subject matter experts, in order to have more clarity on the issue of indigenous identity, particularly in complex areas such as these.

The lenders exercised a risk adverse and conservative approach in the assessment of the Project, but it could have perhaps been more proactive in managing the flow of funds where gaps in compliance were identified by their consultants. It may be that earlier intervention may have aided DESA to improve systems where required and address the elevated risk issues. The lenders could also have insisted on a more strategic and comprehensive communication management by DESA when opposition to the Project started to gain traction in the international domain. The failure by DESA to adequately and comprehensively manage information about the Project has allowed opponents to gain traction with their campaign, garner significant international support and open access to networks of resources. This has had a corollary negative reputational impact on the lenders.

Regarding the above, the Mission concludes that the policies and procedures of FMO to prevent conflicts in the field were relevant and timely. However, the Mission also believes it would be appropriate for FMO to include within their contract policies mechanisms to guarantee that those who implement such contracts have the full capacity to prevent and appropriately respond to social conflicts in complex situations. In this regard, the reports from the independent consultants warned of weaknesses in the capacity of DESA, particularly in terms of strategic planning of community relations in the project zone. This is despite the commitment made to the community by its project managers and technical staff. For this reason, the Mission also considers it appropriate for FMO to add a crisis prevention and management plan with regard to complex situations associated with the contracts.

Chapter 7: Recommendations

Exit by FMO with continuation of the Project

Since the suspension of the Project, DESA has maintained a presence in the Project area, with community relations staff still based in the town of San Francisco de Ojuera, engaging and communicating with the affected communities and continuing scaled-back development programmes. Where DESA has capacity to source alternative funding for the Project, it has indicated that it will recommence construction activities and the implementation of the complete suite of community investment and development programmes referred to in earlier sections. In the immediate and short-term, this will also have direct beneficial impacts on the affected communities through re-employment and associated increased economic activity in the surrounding towns generally.

In the longer term, DESA has confirmed its commitment to the application of the Reform to the Renewable Energy Law of 2007 (Decreto 139-2013) (Reform Law) in the 2013 ‘convenio’. This earmarks 10% of income taxes from renewable energy projects for municipal governments, with the Company committing to paying taxes equally to the Municipalities of San Francisco de Ojuera and Intibuca from 2025 to fund social projects for the affected communities.⁷⁰ In addition, in the 2015 ‘convenio’, DESA committed to additional profit-sharing arrangements with the Municipality of San Francisco de Ojuera upon operation, which funds are to be used for the benefit of local communities.

During meetings with Project opponents and COPINH, it became apparent to the Mission that if the Project was not completely abandoned, this would result in the continuation of the opposition campaign. To date, this campaign has been very effective and has received significant international support through a network of prominent and influential NGOs concerned about the violence and human rights violations arising in connection with the Project. Continuation of the opposition campaign is likely to have a negative impact and the division between the affected communities will be maintained. This could also result in a re-escalation of violence. All communities expressed a desire for all violent conflict directed at them to cease. However, where acts of violence are not investigated, and the perception of an environment of sustained impunity, it may be that the conflictual environment experienced in the past is escalated in the short term. The Mission notes that, while the majority of communities in the Project area appear to favour continuation of the development, those who oppose do need to have their concerns addressed in good faith and measures taken to respond to grievances and rebuild trust.

Recent developments also warrant commentary. The investigation into the legality of the license given for the Agua Zarca project by SERPA is still to be heard as this report goes to press. How the court decides that matter may have a consequential impact on how the Project continues, by either DESA or other actors. If the concessions are found to be invalid, it is likely that additional consultation processes with the affected communities will be required for compliance with relevant standards, and in the event that a re-grant of the concessions is sought. The impact of this on the affected communities, how decisions will be made, and the outcome of any process are difficult to determine. However, a re-engagement process could have the unintended consequence of raising intra-community tensions through the re-articulation by the communities of their position regarding the Project. Without comprehensive and strategic management of any additional consultation process, the already vulnerable communities could be placed in situations where they will be exposed to the possibility of further conflict. In any event, these possible scenarios will be beyond the influence and control of the lenders.

⁷⁰ (GAI, 2014).

Exit by FMO without continuation of the Project

The Mission heard testimonies that following the withdrawal of funds by FMO and the suspension of the Project, there was a direct negative impact. Losses of approximately 400 jobs during construction, most held by members of the local communities, suspension of some community development programmes, in addition to a downturn in the local economy, had resulted in a considerable impact to local households and families. Most were waiting with hope that the Project would recommence to allow heads of households to regain employment and start earning. In an area where the average income is approximately USD10.00 a month, it is not surprising that regular employment and wages were making a difference to the livelihoods of families in the area.

If the Project does not continue, it can be expected that the communities will return to a poverty cycle of subsistence living. Community representatives directly reported to the Mission that they were most concerned they would again end up with nothing. If the State, as has happened in the past, takes no initiative to invest in development projects in the area, it will result in the continuing marginalization of these communities.

In the light of these comments, it is recommended that FMO:

- Communicate with the communities in the Project area to explain the reasons for withdrawal and consider ways and means of providing financial support to ensure that some of the community investment projects underway can be completed.
- Prepare a communication strategy explaining the background, reasons for withdrawal and measures taken to mitigate impacts.
- Consider developing updated and more detailed guidelines for projects that may have impacts on indigenous peoples, and review existing projects in the light of these guidelines. These enhanced guidelines and requirements for loans would be particularly important in countries with weak institutions, high levels of corruption and where the rule of law is not well established. Include within the contracts with companies or the state a requirement that policies and qualified staff able to respond appropriately to social conflicts in complex situations are in place.

The participation of indigenous peoples in their development is necessarily an important aspect of any project development affecting indigenous peoples' lands and livelihoods, whether in the extractive or renewable energy sectors or for infrastructure. How participation is to occur is also a matter for indigenous communities that may be impacted directly or indirectly by a project, and must be informed by those persons in accordance with their traditional laws and customs. In that regard, there cannot be a one-size-fits-all approach when considering the application of principles such as FPIC, and each context must be approached on a case-by-case basis. Whilst a general framework and guide for best practice is appropriate, it should be understood and acknowledged that indigenous peoples around the developed and developing world are inherently different, have been impacted differently by history and may have different needs and aspirations. It is incumbent on all actors in project development to engage in respectful and meaningful dialogue in order to generate a better understanding of issues facing indigenous people so that development can occur for the mutual benefit of all parties.

Annex 1 – Biographies

DR JULIAN BURGER

Dr Julian Burger is currently Visiting Professor at the Human Rights Centre at the University of Essex and a fellow of the Human Rights Consortium, School of Advanced Study, University of London. Dr Burger worked at the United Nations Office of the High Commissioner for Human Rights for more than 20 years, during which time he headed the programme on indigenous peoples and minorities. During this period, he organized the discussions on the Declaration on the Rights of Indigenous Peoples and helped launch the principle international human rights mechanisms on indigenous peoples. He has visited indigenous and minority communities in many parts of the world and published books and articles on indigenous peoples and human rights since the 1980s. He has undertaken numerous on-site investigations looking at the impacts of development projects on indigenous peoples.

MARGARITA ESCARTIN

Margarita Escartin is the Director and Lead Consultant of Red Cliff Project Consultants, a specialist community engagement and social performance consultancy. For over a decade, Margarita has been working with resource developers and communities of impact, predominantly indigenous communities, on major mining, oil and gas and infrastructure projects. The focus of Margarita's work has been securing land access for projects through the negotiation of project agreements; cultural heritage mitigation and awareness; community economic participation and sustainable development for both project developers and communities. At the core of this work has been regulatory compliance through respectful and inclusive engagement. A qualified lawyer, Margarita is also completing a Masters in Community Relations in Mining at the University of Queensland, and brings a cross-disciplinary approach to her work, finding innovative solutions for project development that are aligned with business goals and community aspirations.

NATALY PONCE CHAUCA

Nataly Ponce Chauca is a Peruvian attorney with a Masters in Latin American Studies. She has international experience in public policy, technical assistance and academic research on human rights, justice and citizen security. In Peru, she has been a senior advisor of the Ministry of Interior's Commissioner of the Ombudsman Office for Human Rights, and member of the Special Investigations Unit of the Truth and Reconciliation Commission. Internationally, she has been a consultant for several organizations such as the Justice Studies Center for the Americas of the Organization of American Studies in Chile, Open Society Justice Initiative in Mexico, and Tetra Tech DPK from the United States. She has several studies and publications on justice, human rights and public security in Latin American countries that include gender and vulnerable groups' perspectives. Her recent publications include a thorough study of illegal logging, illegal mining and other environmental crimes in Peru, and studies of organized crime that emphasize the economic perspective of this global phenomenon. She is Director of the Center for Development of Justice and Public Security (CERJUSC).

LEO VALLADARES LANZA

Dr Leo Valladares Lanza is a Honduran lawyer and Notary Public, and holds a Doctorate in Law and Human Rights from the Universidad Complutense de Madrid. He taught law for 45 years at the University of Honduras. Dr Valladares Lanza was formerly the Ombudsman of Honduras, and the first representative of the Commission of Human Rights in Honduras where he worked for 10 years (until 2002). He also held the position of President, Inter-American Commission of Human Rights. Currently he is the director of the Asociación para una Ciudadanía Participativa that defends human rights in Honduras. His life has been threatened because of his work defending human rights.

Annex 2 – List of Meetings / Interviews

Date	Meetings / Interviews / Site Visits	Participants
23 May 2016	Meeting with Municipality of La Esperanza	Miguel Antonio Fajardo, Mayor Manfredo Villanueva, Deputy Mayor
	Interview with community members Meeting with COPINH and members of the community of La Tejera, Utopia	
24 May 2016	Meeting with community of La Tejera and COPINH members	Approximately 70 persons Representatives of COPINH
	Meeting with members of the community of El Barrial	Various
	Meeting with Police Officer from Santa Barbara	
	Meeting with Complaints Officer, HHRR	Keylin Majano
25 May 2016	Meeting with members of various communities at Valle de Angeles	Approximately 80 persons from the communities of El Barrial, Valle de Angeles, San Ramon, Santa Fe, La Estancia and Las Leonas, including the Patronatos from various of those communities
	Meeting with representatives from DESA and site visit, San Francisco de Ojuera	Raul Pineda, Mayor of San Francisco de Ojuera Juan Antonio Pages, DESA Project Engineer Jose Manuel Reyes, DESA Head of Security Ramon Rivera, DESA Community Liaison Claudia Erazo, DESA Project Supervisor Nelson Reyes, DESA Advisor Indigenous Peoples
26 May 2016	Meeting with representatives from DESA, Tegucigalpa	David Castillo, DESA GM Daniel Atala, DESA CFO Jacob Atala, DESA CEO Eduardo Atala, Project Partner Carolina Castillo, Project Partner Tania Romero Baca, Lawyer for DESA
	Meeting with Office of the High Commissioner, United Nations Human Rights	Silvia Lavagnoli, Representative Luis Rodriguez Piñero, Official
27 May 2016	Meeting with DINA FROH	Dr. Tulio Mariano Gonzales, National Director

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		Candido Martinez, Toulupanes Representative
	Meeting with Ministry of Environment and Natural Resources	Rene Soto, National Director, Energy
28 May 2016	Interview with FMO	Patricia Nicolau, Environmental and Social Officer, Energy Departmenet
	Interview with Monkey Forest Consulting	Carol Odell, Senior Manager

Annex 3 – Methodology and Documents Reviewed

Methodology

Information for this report has been gathered from a wide variety of sources including a comprehensive document review, desktop research, direct observation, interviews and community meetings.

The field research was conducted through: formal key-informant interviews; informal key-informant interviews and meetings; and direct observation.

Interviews and meetings were arranged with persons identified by stakeholders as being key informants, with the Mission receiving lists of possible interviewees from the lenders, DESA and COPINH, as well as being contacted directly through the local Mission members. Mostly interviews and meetings were conducted as informally as possible to create an environment where persons felt they could speak openly and frankly.

Documents reviewed included background Project documents (legal and technical), previous social and environmental assessments by consultants working for the lenders, documents supplied by DESA, documents provided by COPINH and information in the public domain. A list of the documents reviewed is listed below.

The information received and obtained has been carefully analysed and weighted through a process of triangulation with statements, documents, reports and legal instruments received from across the spectrum of identified stakeholders. This process has been used as the basis upon which the Mission has formed their views about the context, and in conjunction with their knowledge and expertise, the conclusions reached in this report.

Documents Reviewed

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Complaint filed by the Special Prosecutor for Ethnic Groups and Cultural Heritage against M.D., Mayor of Intibucá, 9 April 2013

Complaint filed before the Special Prosecutor for Ethnic Groups and Cultural Heritage presented by J.G.B. against Sinohydro, DESA and others, 3 September 2013

Complaint filed before the Department of Criminal Investigation of Intibucá by A.M. against L.S., N.D. and others, 19 September 2013

Complaint filed before the Department of Criminal Investigation of Intibucá by S.D. against D.S., 19 September 2013

Complaint lodged before the Department of Criminal of Intibucá filed by N.D.E., an official of the Ministry of Agriculture and Livestock, against F.J.S. and others, 19 September 2013

Complaint filed before the Public Prosecutor's Office of Intibucá against R.B.M. and G. S., for the murder of S.D. and D.G.B., 4 April 2014

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COPINH, *Cronología de la Llegada del Proyecto Hidroeléctrico Agua Zarca a Rio Blanco*, undated

COPINH, *Email to Independent Mission*, 27 May 2016

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- FMO, *Letter to BankTrack and Associated Organisations*, 3 February 2014
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- Gerencia Ambiental Internacional (**GAI**), *Environmental and Social Appraisal: Agua Zarca Hydroelectric Project*, 28 June 2012
- GAI, *Follow-up Social Due Diligence: Agua Zarca Hydroelectric Project*, 4 February 2014
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- MFC, *Quarterly Monitoring Report, Desarrollos Energéticos S.A. – Agua Zarca Project*, January 2015
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- MFC, *Report to FMO on Training under Capacity Development Project for Desarrollos Energéticos S.A. – Agua Zarca Project*, June 2015
- MFC, *Quarterly Monitoring Report, Desarrollos Energéticos S.A. – Agua Zarca Project*, September 2015
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Valle de Angeles Intibucá, Comunicado, febrero 2016

Annex 4 – Terms of Reference

Terms of Reference

Agua Zarca Run of the river Hydropower plant- DESA

Independent Fact Finding Assessment

A. Background

1. The Nederlandse Financierings Maatschappij voor Ontwikkelingslanden N.V. (FMO), The Finnish Fund For Industrial Cooperation Ltd. (FINNFUND) and the Central American Bank for Economic Integration (CABEI), from here on forward "the Lenders", have entered into an agreement on the 27th of February 2014 with DESA, from here on forward "the Company", to finance the construction and operation of a 21.3 MW run-of-river hydropower plant, from here on forward "the Project", in Honduras.
2. On 16 March 2016, FMO announced that it will suspend all activities in Honduras, effective immediately. FMO made this announcement based on its concern regarding the ongoing violence in Honduras. FMO's responsibility towards the Human Rights situation in Honduras is limited to the sphere of influence it has in relation to the specific circumstances related to a project, in line with the UN Guiding Principles on Business and Human Rights and the IFC Performance Standards.
3. On 9th May 2016, FMO announced that it will seek a responsible and legal exit of the project given the criminal charges against an employee of DESA in relation to its alleged involvement in the Berta Caceres murder.

The project

4. The project is a small run of the river hydropower plan with a 5m weir, situated in the Gualcarque river, in Santa Barbara Province, - Honduras.
5. The abovementioned project is seen to have caused an elevated risk in relation to security, Free, Prior and Informed Consent (FPIC) and land rights, community engagement, and environmental impacts with human rights consequences.
6. Given the context of an exit from FMO and Finnfund and the current reports on elevated risks mentioned in paragraph 5, an independent assessment is required for the project. This assessment will be undertaken by a group of at least 4 independent expert consultants (the "Independent Consultant").
7. The main objective of the independent consultants is to undertake an independent assessment of the relevant stakeholders past and present concerns and needs in relation to the project and in light of a responsible exit and draw lessons learnt and recommendations for FMO.

B. Enabling conditions

8. The Independent Consultant shall have reasonable access to all public documents and records. For non-public documents, the Independent Consultant must obtain prior consent from the owner and cannot share/copy or quote information from these documents outside the scope of this assessment or in any report that will become public.
9. The Independent Consultant shall have access to the project sites and any other relevant locations during normal business hours and upon reasonable prior request to the Company.

10. The Independent Consultant shall have reasonable access to the appropriate personnel of the Company and to any outside parties engaged by the Company.
11. The Independent Consultant shall have reasonable access to the appropriate personnel of the Lenders and to all relevant documents held by the Lenders in relation to the Project and the Company.
12. FMO and FINNFUND will support the consultants to enable access to above documents.
13. The Independent Consultants will be accompanied by security personnel.
14. The Independent Consultants will receive a contact in Honduras that is independent from the lenders, or other directly involved and interested stakeholders, to help set up meetings and deal with logistics.

C. Outcomes

15. It is expected that the Independent Consultants will
 - Gain a better understanding of the local communities' dynamics prior to the project
 - Gain a better understanding of the project's impact in the various communities from its inception to the current status of construction and with a particular focus on the issues mentioned in paragraph 5.
 - Assess the project's implementation against FMO's processes and international requirements (IFC Performance Standards) from its due diligence phase to the current exit, and
 - Gain a better understanding of the various stakeholders concerns in relation to the project from its concession to current status, security issues and environment.
 - Assess the impact of an exit of the financial institutions linked to the project in terms of scenarios and likelihoods (particularly in relation to escalation of violence and the impact on the development of the communities in terms of their livelihood and safety); and on its contribution to the national development.
 - Formulate recommendations for a responsible exit of the project based on the do no harm principle.

These recommendations do not need to be limited to financial institutions but can be applicable to a wider group of stakeholders (civil society, aid agencies, government).

16. The assessment will have two major outcomes. The first outcome is related to project's actions and will provide a better understanding of the root causes of the conflicts in the project area through the following questions:

In relation to Human rights, security, intimidation or bribery:

- a. In line with the IFC Performance Standards, which refers to ILO Convention 169, answer the following questions: Did this project trigger the requirement for a) the Honduran State to obtain FPIC from indigenous peoples, and b) the Company to obtain FPIC from Affected Communities? Does FPIC and/or majority consent currently exist? Was it obtained by the State before and/or after the concession was granted to the Company? Was FPIC and/or majority consent obtained by the Company before it started construction activities onsite? Is FPIC obtained properly including from a gender perspective, not under duress/intimidation or through other inappropriate means? Is FPIC subject to falsification? Does this violence disproportionately affect women or other minority/vulnerable groups
- b. Assess the company's efforts throughout project existence in community engagement including communities opposing the project
- c. Assess the reported issues related to intimidation, criminalization or instigation of violence by the Company (including its security personnel)? Assess the adequacy of the processes used by the company to prevent and/or mitigate community confrontation and opposition;
- d. Assess the reported issues related to intimidation, criminalization or instigation of violence by Honduran authorities in relation to the Project?
- e. Assess the reported issues related to intimidation, criminalization or instigation of violence by local communities, related NGOs or others not further defined?

- f. Does any of the intimidation, criminalization or instigation of violence mentioned above disproportionately affect women
- g. Are there credible issues related to increased conflict and confrontation between communities or within communities (defined in para 14.c)? Can the cause be determined, and if so, what is the cause?

In relation to socio-economic, cultural and heritage issues:

- h. Is the project adversely impacting indigenous and non-indigenous land rights;
- i. Does the project have impacts on access to the river, use of water and the health of the river?
- j. Does the project have impacts on other natural resources (forest, biodiversity and soil)?
- k. Does the project endanger the cultural or spiritual value of the Rio Blanco and/or Gualcarque river, and if so, which values are endangered, for whom and how?
- l. Will the project result in flooding and loss of communal land?
- m. Will the project result in loss of livelihood?

Other:

- n. Has the project adequately addressed voiced concerns by affected communities, including those of women?

- 17. Apart from the specific questions discussed above, the assessment mission should listen to any other concerns voiced by stakeholders and opponents, including those operating outside the affected communities, and explore opportunities for the Company and/or the Lenders to address those concerns. These issues can be related to the social, political and economic context that determine the position and security of the affected communities.
- 18. The second outcome is related to FMO's actions and will focus on three main concerns:
 - a. Was FMO compliant to its international standards (IFC performance requirements) including monitoring of client's actions
 - b. Are FMO's policies and processes sufficiently adequate to support clients in preventing conflicts and mitigating escalation of violence in such complex contexts.
 - c. How can FMO realize an exit with minimal negative consequences for the local population

In order for this, the independent consultants will:

- Assess the adequacy of the information received by FMO by FMO, and identify reasons for its inadequacy if so identified.
 - Assess the adequacy of FMO's process to monitor the company's actions.
 - Assess the adequacy of FMO's ESAP and recommendations to the company in dealing with paragraph 5 related issues
 - Map local stakeholders' concerns and future outlooks.
- 19. On the basis of the assessment of the two outcomes, the consultants will provide recommendations and lessons learnt to the Lenders on the way forward and considering the various scenarios and lender's leverage positions:
 - a. Exit by the Lenders from the Project with continuation of project by DESA;
 - b. Exit by the Lenders from the Project with continuation of project by another actors such as company/Government/Aid agencies/others;
 - c. Exit by the Lenders from the Project without continuation of the project.

In particular, the Lenders would like to know the consequences of these exit scenarios in relation to the negative consequences of the exit, how these can impact current local disputes between communities and further escalation of violence and how they can impact communities who supported the project.

D. Scope of Work for the Appointment of the Independent Consultant

20. The Consultant will perform a site visit which should include, as a minimum, the following:
 - a. Discussions with the Company or other applicable personnel (e.g., relevant suppliers, service providers, sub-contractors, etc.);
 - b. Review of relevant on-site information, files, monitoring data, etc.;
 - c. Visit to particular project-related sites where relevant environmental, social, and health and safety activities and/or concerns exist (this includes but is not limited to the communities of: El Barrial, Santa Ana, La Tejera, La Leona, Valle del Angeles, San Ramon and Plan d' Encima).
 - d. Discussions, as necessary and feasible, with local residents near the Project site, and with all other relevant stakeholders including applicable governmental, religious and non-governmental organizations.
 - e. Discussions with the Lenders and their respective legal counsels
21. Prior to the site visit, the Consultant will make arrangements with the Company for the project-site visit and any required meetings.
22. The consultant may at its own discretion decide not to inform the Company nor the Lenders of the timings of its investigations in the surrounding communities or with NGOs.
23. Upon request within the scope of the current assignment, the Consultant will provide additional information/ review pertaining to the project.

E. Qualifications

24. The independent consultant will bring proven expertise in Environmental Law and Human Rights Law, in particular the area of Indigenous Rights and Land Rights. A thorough understanding of FPIC and relevant international standards (relevant UN declarations and treaties, ILO conventions and IFC Performance Standards) is required.
25. The independent consultant will have proven experience in fact finding missions at a community level, as well as familiarity with investment-related environmental and social conflicts and their mediation
26. The independent consultant must have thorough knowledge and/or track-record regarding these subjects in Honduras, and speak fluent Spanish.

F. Deliverables

27. The independent Consultant will provide its conclusions to the Lenders through an initial verbal and written debrief no later than a week after the site visit and the write up of a more comprehensive report three weeks after the site visit.
28. Relevant parts of the draft report, where interviewees' views are represented or quoted, will first be shared and discussed with interviewees for comments and corrections, before the final report is delivered.
29. The report of the Independent Assessment will be published.