

# A Responsible Exit from the Agua Zarca Project

## Summary of recommendations

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### 1. Background

- 1.1 This summary results from work done between October 10<sup>th</sup> and January 31<sup>st</sup> under contract with the Dutch Development Bank (FMO), the Finnish Fund for Industrial Cooperation (FINNFUND) and the Central American Bank for Economic Integration (CABEI) (“the Lenders”), regarding their exit from the Agua Zarca Project (“the project”), according to the terms of reference attached as Annex I. Although the terms of reference did not request for a report to be issued, this summary is prepared at the request of the Lenders and civil society organizations (CSO). It is meant to succinctly present recommendations on how to move towards a responsible exit of the Lenders from the project. Purposefully, no detail of conflicting positions about the project is provided to avoid unnecessary, additional controversy about an already complex situation and keep the focus on the way forwards. Also, since interviewees were initially informed that a full report would not be issued, this summary neither attempts to represent or describe the views of any specific person or institution interviewed nor does it provide their names.
- 1.2 Dates of visits made under contract were:
  - i. October 19<sup>th</sup> to 23<sup>rd</sup>, 2016 (Tegucigalpa)
  - ii. November 12<sup>th</sup> to 20<sup>th</sup>, 2016 (Tegucigalpa, Santa Bárbara and Intibucá)
  - iii. December 11<sup>th</sup> to 18<sup>th</sup>, 2016 (Tegucigalpa and La Esperanza)
  - iv. January 9<sup>th</sup> to 13<sup>th</sup>, 2017 (Tegucigalpa)
  - v. January 23<sup>rd</sup> to 31<sup>st</sup>, 2017 (Amsterdam and The Hague)
  - vi. February 20<sup>th</sup> to 22<sup>nd</sup> (Tegucigalpa)
  - vii. February 26<sup>th</sup> to March 1<sup>st</sup> (Helsinki)
- 1.3 One-hundred and eighty members of eleven communities in the area of influence of the project (55% men / 45% women) expressed their views. Communities visited were: La Tejera, El Barreal, Santa Ana, Plan de Encima, San Ramón, Aguacatal, La Leona, Chorrera Aspera, Valle de Angeles, Santa Fe and La Estancia. Eighty-eight community members spoke in open meetings and ninety-two shared their opinion in individual door-to-door interviews. While community representatives convened the meetings, interviews were conducted randomly in each community on the streets or at people’s houses, with no interference from any stakeholder. Since the visit to the area was not organized as a survey, quantitative findings are not provided. Interviews were also held with the Honduran Government, Desarrollos Energéticos S.A. (the “sponsor”), multilateral organisations, some of Berta Cáceres’s relatives, representatives of the Ministries of Foreign Affairs of the Netherlands and Finland, the Lenders, private sector representatives, and Honduran, Finnish and Dutch CSOs, among others.
- 1.4 Recommendations offered below are based on the outcomes of interviews and relevant international human rights norms, declarations and standards, particularly the UN Guiding Principles on Business and Human Rights, the ILO Convention 169, the UN Declaration on the Rights of Indigenous Peoples, and the UN Declaration on Human Rights Defenders. A full analysis of how the recommendations are consistent with these standards is not within the

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<sup>1</sup> This document was updated on May 30<sup>th</sup>, 2017 to number the paragraphs and add paragraph 1.4 for better reading and clarification purposes. The content of the rest of the document remains unmodified.

scope of this document. Additionally, on-going judicial processes are being carried out in Honduras to investigate the murder of Berta Cáceres and the granting of permits for various projects, including Agua Zarca. This summary of recommendations does not cover those issues in particular.

## **2. Recommendations**

- 2.1 Despite their significant differences about the project, community members living in its area of influence have expressed their wish to see an end to confrontation and live together again in peace. It is, therefore, for these communities to engage in a dialogue among themselves to determine what development options they have at hand and decide whether a hydroelectric project should be one of them or not. All options should be on the table and all opinions about the project should be represented. All other external stakeholders playing a role in this situation or following it should allow for sufficient space for the communities to have a meaningful dialogue and should commit to accepting and respecting its outcomes.
- 2.2 For such a dialogue process to take place, some enabling factors are needed:
  - 2.2.1 Whatever their position about the project may be, community members should feel free to speak their minds without intimidation and fear of retaliation. Those holding opposing views about the project have exchanged accusations of human rights abuses, including allegations of murders, forced displacement, death threats and intimidation, land grabbing, damages to crops, animals and homes, and destruction of community infrastructure, among others. Access to justice in the area has been limited so far and most of these allegations remain unaddressed. A credible international institution with the proper mandate should investigate all accusations of human rights abuses and provide the information to relevant authorities.
  - 2.2.2 A trusted convener should be able to bring all communities to the table and provide assurance of a fair dialogue process. Distrust has reached a point where convening efforts from the Government of Honduras would likely not suffice. An international institution with the proper mandate and an acceptable degree of credibility from all communities should convene and run the dialogue process. Dispute resolution professionals should assist in structuring the process and facilitating the conversation among communities. Foreign aid resources should be made available to ensure that the dialogue process is adequately suited to address a complex situation.
  - 2.2.3 Representatives of the Governments of the Netherlands and Finland, along with other members of the international community, should consider acting as guarantors of a fair process. They should also consider visiting all eleven communities in the project area and hear directly from all of them, whether they are in favour or against the project, to better understand the complexity of the situation. International civil society organisations (CSO) that have been following this case are also encouraged to consider undertaking a similar visit and supporting a dialogue process that empowers communities to make a decision about their future.
  - 2.2.4 The dialogue process needs to be seen as free from any pressure from the Lenders. As a way to reduce tensions and allow for communities to engage in a dialogue with all options on the table, the Lenders should find an amicable way to end their relationship with the sponsor as soon as possible. Subsequently, the Lenders should issue a public statement announcing that their exit has been completed and express support for a dialogue process.
  - 2.2.5 Similarly, tensions would be further reduced if the sponsor could put the project on hold and express openness to explore creative ways out of this situation, based on the outcomes of the dialogue among communities. Such a decision would demonstrate their clear commitment to resolving this issue in a peaceful and cooperative way.

- 2.3 The Lenders and the sponsor should also inform stakeholders how they expect to complete construction of community projects (such as the drinking water project in La Estancia) that were underway and interrupted when the disbursements were suspended. Should the need arise to conduct additional works to mitigate environmental or security risks due to project interruption, the Lenders and project sponsor should publicly inform what activities will be carried out and how long it will take so that there is no doubt that project construction is not being resumed.

**Terms of Reference**

**Agua Zarca Run of the river Hydropower plant- DESA**

**Exit Strategy**

**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 (CABEL), from here on forward “the Lenders”, entered into agreements with Desarrollos Energéticos S.A. (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 would suspend all activities in Honduras, effective immediately. FMO made this announcement based on its concern regarding the on-going 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. The abovementioned project is seen to have an elevated risk in relation to security, Free, Prior and Informed Consent (FPIC) and land rights, community engagement, and environmental impacts.
4. On May 9, 2016, FMO and FINNFUND issued a public statement announcing their decision to seek a responsible exit from the Project and commissioned an independent fact finding mission to listen to local stakeholders’ concerns and needs in relation to the Project, their security, and their living environment. The mission’s independent report provided lessons learned and recommendations to the Lenders.

**B. Objective and Outcomes**

5. The Lenders seek the services of an Independent Consultant (hereinafter, “**the Facilitator**”) to conduct an inclusive consultation process to determine what a responsible exit from the Project should look like.
6. As starting principles, the Lenders believe a responsible exit is one that:
  - at least, avoids additional escalation of disputes in the area and, at best, offers a path for peaceful coexistence of communities.
  - meets some of the development needs of communities in the area, regardless of whether they’ve supported or opposed the Project.
  - respects existing contractual obligations.

7. An inclusive and consultative approach with all the Project's stakeholders, including DESA, Lenders, local communities, Honduran government, Dutch and local NGOs, and Dutch and Finnish governments is necessary.
8. The Lenders aim to reach an agreement with relevant stakeholders on their responsible exit. However, if after repeated attempts, such an agreement cannot be reached, the Lenders will make their own decision on how to exit responsibly based on the input received by stakeholders during the consultation process.

### **C. Scope of Work for the Appointment of the Facilitator**

9. The Facilitator's work will be divided in stages. Once each stage is completed, a new set of activities will be agreed with the Lenders.
10. The first stage of the Facilitator's work will be process design. After reviewing context and project documentation, the Facilitator is expected to conduct an initial round of meetings with all relevant stakeholders to discuss what a responsible exit should look like, what kind of process is needed to implement it, and what short-term actions from the Lenders would be recommended.
11. The Facilitator will make every effort to get the views of stakeholders without intermediation. The Facilitator shall have no limitation from the Lenders or any other stakeholder on who to meet with and how to conduct discussions. The Facilitator will use her/his best judgement to decide what format conversations should follow so that stakeholders are comfortable and safe to speak their minds and discuss any sensitive issues. The Facilitator will keep confidentiality where stakeholders request so.
12. The Facilitator may request a site visit to the Project and should make arrangements directly with the Company for it to happen.
13. Based on the input gathered from all relevant stakeholders, the Facilitator will assist the Lenders to agree on a proposed roadmap for a responsible exit and will design a process for its discussion with stakeholders.

### **D. Enabling conditions**

Within the framework of confidentiality duties applicable to any stakeholder:

14. The Facilitator shall have reasonable access to all public documents and records. For non-public documents, the Facilitator must obtain prior consent from the owner and cannot share/copy or quote information from these documents outside the scope of work outlined in Section C herein.
15. The Facilitator shall have access to the project sites and any other relevant locations during normal business hours and upon reasonable prior request to the Company.
16. The Facilitator shall have reasonable access to the appropriate personnel of the Company and to any outside parties engaged by the Company.
17. The Facilitator 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.

- 18 The Lenders will support the Facilitator to enable access to above documents and sites.
- 19 These Terms of Reference shall be made public and accessible to anyone who wishes to read them.

**E. Qualifications**

- 20 The Facilitator will bring proven expertise in Environmental Dispute Resolution and Policy Dialogue. A thorough understanding of community engagement and mediation is required.
- 21 The Facilitator will have proven experience in conflict prevention and resolution at a community level, as well as familiarity with investment-related environmental and social conflicts and their mediation.
- 22 The Facilitator must have thorough knowledge and/or track record regarding these subjects in Honduras and speak fluent Spanish.

**F. Deliverables**

- 23 As a result of activities conducted under the scope of work, the Facilitator will provide a process design document on or before the 31<sup>st</sup> of January 2017. The document will outline the sequence and format for discussions of the roadmap to be proposed by the Lenders, thus laying the foundation for the second stage of his/her work.