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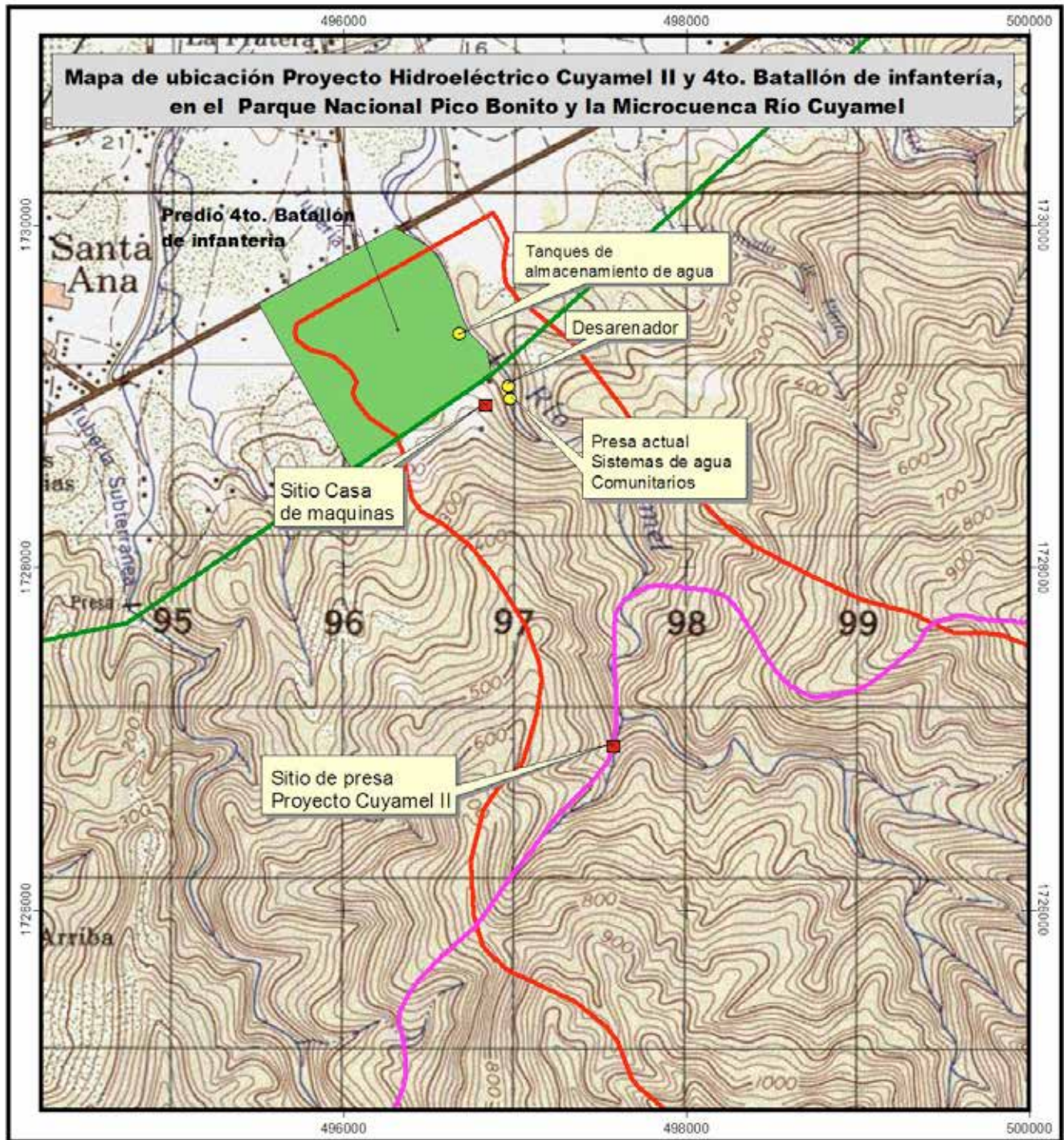


# Endangered Protected Areas and Water Resources in Honduras

## The Cuyamel II Hydroelectric Project in San Francisco, Atlántida

EXECUTIVE SUMMARY





LEYENDA	INFORMACIÓN GENERAL	
<ul style="list-style-type: none"> <li><span style="color: red;">■</span> Puntos Hidroeléctrica Cuyamel II</li> <li><span style="color: yellow;">●</span> Puntos Sistema de agua</li> <li><span style="border: 2px solid magenta; display: inline-block; width: 15px; height: 10px;"></span> Limite zona núcleo</li> <li><span style="border: 2px solid green; display: inline-block; width: 15px; height: 10px;"></span> Limite zona de amortiguamiento</li> <li><span style="border: 2px solid red; display: inline-block; width: 15px; height: 10px;"></span> Mic. Río Cuyamel</li> <li><span style="background-color: lightgreen; display: inline-block; width: 15px; height: 10px;"></span> Predio 4to. Batallón</li> </ul>	<p>Ubicación: Municipio San Francisco, Atlántida Parque Nacional Pico Bonito Fuente: Hojas Cartográficas del IGN, No. 1604, levantamiento de campo con GPS. Elaborado por: Ing. Jehovany Cruz FUPNAPIB, 29/03/2017</p> <p><b>DESCRIPTOR CARTOGRÁFICO</b> Proyección: Universal Transversa de Mercator (UTM). Datum: WGS84 Esferoide de Clarke 1866</p>	<p>Esc.: 1:30,000</p> <p>400 0 400 800 Meters</p>

# INTRODUCTION

The San Francisco Energy Company S.A. (CONERSA) plans to build a three-megawatt run-of-the river hydroelectric dam on the Cuyamel River, the main source of drinking water for six communities living in the Municipality of San Francisco, Atlántida. Referred to as the Cuyamel II Hydroelectric Project, the dam could potentially impact the lives of more than 7,000 people and would be built in the protected areas of the the Cuyamel River micro-basin and the Pico Bonito National Park, the second largest park in Honduras (107,090 hectares). The Pico Bonito National Park is part of the Mesoamerican Biological Corridor and includes the most eco-diverse mountain range in Honduras, which is rich in endemic species and home to species of fauna and flora that are threatened with extinction. The Cuyamel II Project jeopardizes the entire wealth of this highly efficient water-producing ecosystem.

The approval process for the Cuyamel II Project started in 2001, and the National Congress approved the project in 2014. However its construction has been delayed, seemingly because of the conditions created by the local population's resistance to the project, the presence of the Fourth Infantry Battalion since 2013, and the lack of investors.

Since its inception, the project has entailed violations of the rights of the people of San Francisco, in particular of the right to water, which was compounded by violations of the right of access to information and to citizen participation, as well as the right to an effective remedy. The current report analyses past, current and possible future violations ensuing from the Cuyamel II Project.

The Cuyamel II Project case is important because it is representative of the national and regional context. The growing number of hydroelectric plants in Honduras and Central America is part of an energy supply transformation framework, justified by the fight against climate change, characterized by regional energy integration ambitions, and driven by international investment among other. Moreover, despite some progress in recent years, the national context continues to be marked by weak rule of law and by considerable violence against human rights defenders<sup>1</sup> which includes assassinations, criminalization and defamation campaigns, particularly against activists who denounce violations linked to investment projects.

## METHODOLOGY

The current human rights impact assessment (HRIA) was conducted using an adapted version of the *Getting it Right* methodology, which is based on active local community participation<sup>2</sup>. This analysis is based on international human rights law and considers the legal, environmental and social aspects of the conflict. It reflects the views of all stakeholders, gathered through a quantitative survey of 280 households, interviews and focus groups, as well as field visits, round table discussions, and written exchanges. All stakeholders were given the opportunity to comment on the draft report before its publication, and their comments were integrated in the most objective way possible<sup>3</sup>.

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1. *Honduras: Human rights defenders between a rock and a hard place*, December 2016, Observatory for the Protection of Human Rights Defenders, FIDH and OMCT, accessible on <https://www.fidh.org/en/issues/human-rights-defenders/honduras-human-rights-defenders-between-a-rock-and-a-hard-place>

2. See *Community-based Human Rights Impact Assessments*, available on <https://www.fidh.org/en/issues/globalisation-human-rights/business-and-human-rights/community-based-human-rights-impact-assessments>

3. For more information on the research methodology and consultation to stakeholders, see Annex 1, Methodology, available in **Spanish** at [https://www.fidh.org/IMG/pdf/22052017\\_anexo\\_metodolo\\_gico\\_vfinal.pdf](https://www.fidh.org/IMG/pdf/22052017_anexo_metodolo_gico_vfinal.pdf)

# FINDINGS

## Violations of the right to water

Since 2007 the legal framework has undergone regressive reforms, followed by significant regulatory changes in particular in the wake of the 2009 coup d'état. One of the main consequences of these amendments is the issuance of environmental licenses for projects to be built in protected areas<sup>4</sup>, such as in the case of the Cuyamel II Project which obtained an environmental license on the same day that this legislative reform was enacted. In addition, following these reforms there is no longer an obligation to conduct an Environmental Impact Assessment (EIA) except for major electricity generation projects<sup>5</sup>. These reforms constitute violations of the environmental principle of prevention, as an EIA is the main prevention instrument, and of the principles of human rights and environmental protection<sup>6</sup> and the principle of progressiveness enshrined in international treaties ratified by Honduras.

The State furthermore committed several administrative irregularities. The State granted an environmental license and approved operation and water supply agreements for the Cuyamel II Project, in disregard of the technical recommendations of various state agencies. It thereby violated the environmental law applicable when the request for an environmental license was presented<sup>7</sup>. To justify these acts, the legal validity of the delimitation of the Pico Bonito National Park was called into question, which constitutes a breach of the international obligation, established in treaties ratified by Honduras, to create, protect, and manage protected areas in a sustainable manner.

In addition, in 2013, a parcel of land situated in the area of influence of the Pico Bonito National Park and the micro-basin of the Cuyamel River was confiscated and illegally transferred to the Fourth Infantry Battalion. The Army proceeded to building military installations in contravention with the national legal framework, effectively militarizing the area, and threatening the right to water. Indeed since 2013, the Army has hindered the ability of members of the San Francisco Water Board (*Junta de Agua*) to carry out their mandate to manage and maintain the water supply system. On two occasions, the army denied access to the site to national and international officials attempting to access the area in order to verify the construction of military installations in the zone and to assess their potential impact.

By neglecting to conduct an EIA and a human rights impact assessment, CONERSA has failed to meet its responsibility to respect human rights and to act with due diligence to identify, prevent and remedy any impact its activities have or could have on human rights. The company took advantage of the weakening of the regulatory framework and of administrative irregularities, in contradiction with its responsibility to respect internationally recognized human rights principles regardless of the national context, as set out in the UN Guiding Principles on Business and Human Rights.

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4. SERNA, *Acuerdo 233-2010*, 4th of February 2010, article 1.

5. First through the adoption of the *Ley de Promoción a la Generación de Energía Eléctrica con Recursos Naturales* (Decreto 70-2007), then through the *Acuerdo 189-2009* of December 31st 2009 and the *Acuerdo 1714-2010* of February 23d 2011 and more recently the *Acuerdo 008-2015* of September 14th 2015 and the *Acuerdo 016-2015* of October 6th 2015.

6. *Ley General de Ambiente*, article 5, 28A and 78 (modified by the *Ley de Simplificación Administrativa*).

7. The request for an environmental licence was originally presented by the INDECO company on the 30th of May 2007, and was reactivated by the CONERSA company in 2009 after the cessation of rights from INDECO to CONERSA and after changes to the project's characteristics but not to its geographic location.

## Violations of the rights of access to information and citizen participation

With the regressive changes to environmental regulations made notably in 2009<sup>8</sup>, NGOs and the public went from playing a decisive role to that of mere support providers in the project evaluation process conducted by state authorities before issuing an environmental license. Furthermore, contrary to the Law on Transparency and Access to Information, regulations have been adopted that unjustifiably limit access to information by preventing access to certain documents in the environmental license file, a fundamental source of information in order to understand the characteristics of a project, evaluate its potential impacts and protect the right to water.

The lack of adequate fora and information and participation mechanisms for the community made it possible to approve the project despite the administrative irregularities mentioned above. Meetings in which NGOs and the population could have exercised their participation and control role, as provided by the regulations, were not convened.

The company did not respect the rights to information and to participation of the members of the San Francisco community. Information on CONERSA is scarce and difficult to obtain, mainly because its principle shareholder, GREEN Inc., is registered in Panama and its representatives refuse to provide information about the beneficiary owners. Community representatives have described the many difficulties they have coming up with to try to obtain an informed vision of the project; furthermore, representatives of the company acknowledged in an interview that the information given to the members of the community had been insufficient. Moreover, to obtain the license, the company allegedly submitted false documents attesting to the approval of community, even though on repeated occasions since 2003 the community publicly expressed their position against the project through complaints, declarations and public demonstrations.

## Violations of the right to an effective remedy

In response to the violations described above, members of the community working with Water Boards, filed complaints before various judicial and administrative bodies. These complaints were met with a lack of adequate investigation and administrative slowdowns. Of the nine complaints that were filed before national bodies, two are still underway, three were declared unwarranted, inadmissible, or were closed, and four are still under investigation, but no significant progress has been made. The delays and difficulties of the numerous requests made by the population demonstrate a lack of effective access to justice.

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8. Through Acuerdo 189-2009 31st of December 2009 which modified the composition of the National System for Environmental Impact Assessment (*Sistema Nacional de Evaluación de Impacto Ambiental, SINEIA*)

# CHRONOLOGY OF THE CUYAMEL II DAM PROJECT

The Cuyamel River is the main source of water for six communities

## Legend

### TIMELINE OF THE PROJECT

- Protection of the river
- Progression of the dam project

### ACTORS

- Local communities
- State of Honduras
- Army of Honduras
- Company INDECO
- Company CONERSA

**1997**

► The Pico Bonito National Park was declared a "Permanent Protected Zone"

**2001**

◀ INDECO starts applying for permission to build the Cuyamel II dam inside the Pico Bonito National Park

**2003**

► San Francisco communities demonstrate against the dam for the first time

**2008**

► Cesion of the Cuyamel II dam project from INDECO to CONERSA

**2009**

► CONERSA continues the dam project, and changes certain characteristics but not its location

**4 february 2010**

► Derogation of standards banning construction in protected areas  
 ► The Ministry of Natural Resources and Environment approves the Cuyamel II dam project

**march 2010**

► The affected communities file several complaints, to have, inter alia, the environmental license revoked.

**august 2010**

► The Cuyamel II project is not approved by the Congress because of fraud allegations

**2013**

► The 4<sup>th</sup> Infantry Regiment establishes its base in the micro-basin protected zone and restricts the communities' access to their source of water

**july 2014**

► Congress approves the dam project

**between 2011 and 2012**

► Advice from experts within the Ministry of Natural Resources and Environment re-iterate the environmental risks associated with the project

**january 2012**

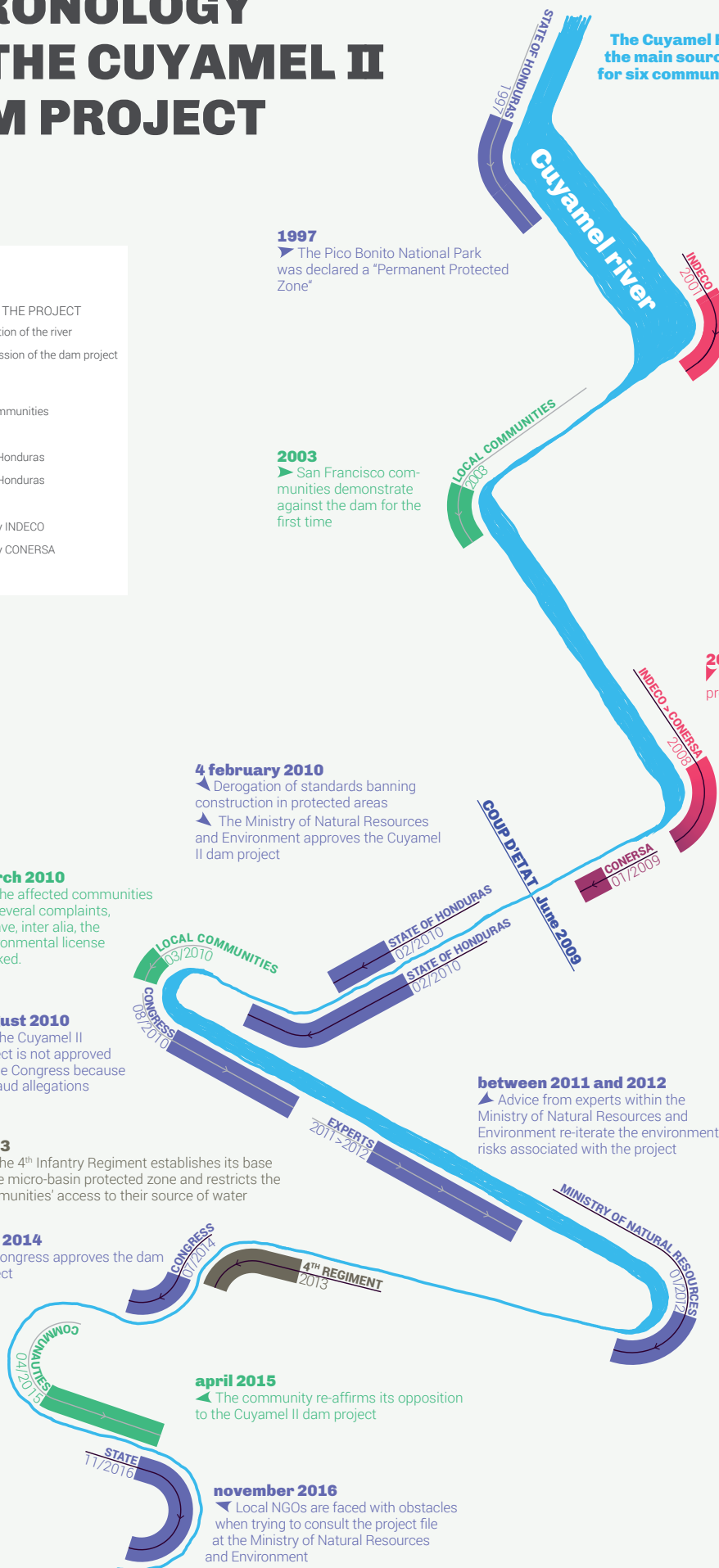
► Legal advice from the Ministry of Natural Resources and Environment considers the dam project to be legally viable

**april 2015**

◀ The community re-affirms its opposition to the Cuyamel II dam project

**november 2016**

◀ Local NGOs are faced with obstacles when trying to consult the project file at the Ministry of Natural Resources and Environment



Design : Maxime Zoffoli

## CONCLUSION

The human rights impact assessment for the Cuyamel II Hydroelectric Project brought to the fore the real and potential violations associated with the project, as well as the deficiencies of the Honduran legal framework and the structural conditions that could lead to similar human rights violations with other similar hydroelectric projects, and especially those planned in protected areas and that have already obtained environmental licenses<sup>9</sup>.

This project is a direct threat to the right to water of the members of the San Francisco community. The presence and actions of the Fourth Infantry Battalion in the protected area of the Cuyamel River micro-basin constitutes an actual infringement of the community's right to water. The population has been unable to exercise their rights to access information and to play an active role in the evaluation of a project which potentially and fundamentally affects their rights and in particular their right to water. This situation has been exacerbated by the fact that the population has not had access to speedy and effective remedy. In other similar cases, the lack of adequate participation of affected populations and the inadequate access to justice have led to situations of conflict and exacerbated violence, especially against human rights defenders.

The study also highlighted the detrimental effects of the regressive reform of the national legal framework that has been taking place since 2007. Such reforms have left protected areas vulnerable and have eroded protections for the right to water, the right of access to information and the right to citizen participation. Projects such as Cuyamel II do not comply with the international human rights framework and entail important risks. To meet its international human rights obligations and to avoid violations in other projects, the State of Honduras must take immediate measures to redress the situation.

It is essential that in all situations, companies act in accordance with the principles of human rights due diligence and respect internationally recognized human rights. In the present case, this includes conducting transparent information and participation processes, as well as objectively evaluating environmental and human rights impacts. International, regional and national financial institutions must act with enhanced due diligence and ensure that projects receiving financing do not directly or indirectly violate human rights or harm the environment. They should obtain sufficient guarantees that human rights will not be violated prior to investing.

The case of the Cuyamel II Hydroelectric Project is emblematic. It alerts on the potential human rights and environmental violations that could arise with other hydroelectric projects in the country, including those for which concessions were already obtained, and calls on all relevant actors to take urgent measures to safeguard protected areas and water resources in Honduras.

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9. The Santiago and Rio Perla hydroelectric projects for example, which are both based in the Pico Bonito National Park and which are majoritarily owned by GREEN Inc, and for which concessions were obtained in 2010.



# RECOMMENDATIONS

## 1 Recommendations for the Government of Honduras

### 1.1 *On the right to water*

- 1.1.1 Ensure consistency between national environmental laws and the principles of international human rights law and of environmental protection enshrined in treaties that have been ratified by Honduras;
- 1.1.2 Ensure that changes in environmental norms and standards and the simplification of licensing and contract procedures necessary for the construction and operation of hydroelectric projects do not contravene the principles of prevention and progressiveness or weaken the legal human rights protection of the local communities nor that of the environment;
- 1.1.3 Prohibit the building of all types of industrial infrastructure in protected areas;
- 1.1.4 Create a binding legal instrument whose validity cannot be ignored or challenged by private actors or authorities and that provides clear technical criteria, based on management plans, to define broadly but precisely the boundaries of protected areas;
- 1.1.5 Determine the feasibility of hydroelectric projects on the basis of actual risks (as identified by technical experts) and in accordance with the ecological characteristics of the land and with the relationship between the inhabitants and the water resources in the area, and not merely on a legal analysis of existing prohibitions;
- 1.1.6 Ensure that the Pico Bonito National Park Management Plan is renewed, in writing, to guarantee that the management of natural resources is performed in accordance with the regulations established therein;
- 1.1.7 Immediately and definitively establish legal boundaries for the core area of the Pico Bonito National Park such as they are defined in the current Management Plan and which have been recognized and accepted by local authorities, civil society organizations and communities to guarantee the protection and conservation of ecosystems that are fundamental to the production of water for human consumption, to the preservation of plant and animal diversity and to the quality of environment in general;
- 1.1.8 Respect the Declaratory of the micro-basin as a water supply for human consumption with a view to guarantee perpetually the protection and conservation of water sources;
- 1.1.9 Clearly establish the obligation to perform an EIA for all hydroelectric projects, regardless of their size or production capacity, and refrain from adopting new regulations that would provide for exemptions from the obligation to perform an EIA;
- 1.1.10 Re-integrate NGOs and the general public as essential and active participants in the National System for Environmental Impact Assessment (*Sistema Nacional de Evaluación de Impacto Ambiental, SINEIA*) to ensure that their respective interests are taken into

consideration and so that they can exercise their protection and monitoring functions every time that an environmental licence is issued;

- 1.1.11 Revoke the environmental licence issued to the Cuyamel II Project, given the real and potential violations of the San Francisco community's human rights and the potential harm to the environment;
- 1.1.12 Nullify the transfer of land by the OABI (*Oficina Administradora de Bienes Incautados*) to the Fourth Infantry Battalion;
- 1.1.13 Ensure that members of the San Francisco Water Board and state agents have free and effective access to the micro-basin of the Cuyamel river; and
- 1.1.14 Investigate promptly, exhaustively, and transparently the allegations of environmental and any other harm caused to the micro-basin by the Fourth Infantry Battalion.

## 1.2 ***On the rights of access to information and citizen participation***

- 1.2.1 Establish a clear legal framework that provides for mandatory active participation of affected populations, including non-indigenous populations, and that specifically regulates the modalities and funding for participation processes in order to ensure that all populations that could be affected or whose surroundings could be affected can effectively, significantly and transparently participate;
- 1.2.2 Continue to participate actively in the regional process with a view to create a regional implementation instrument for Principle 10 of the Rio Declaration on Environment and Development; and
- 1.2.3 Establish a legal framework whereby the public and potentially or genuinely affected communities in particular can access licensing files, especially in cases involving the use of natural resources.

## 1.3 ***On the right to an effective remedy***

- 1.3.1 Implement measures to ensure effective access to justice for all of the populations affected by abuses related to business activities;
- 1.3.2 Undertake prompt, impartial and effective investigation of complaints so as to guarantee the rights to equality before the law, to judicial protection and to an effective remedy;
- 1.3.3 Ensure that administrative and judicial cases are resolved on reasonable terms; and
- 1.3.4 Ensure that the resolution of on-going cases against MiAmbiente (Ministry of Energy, Natural Resources, Environment and Mines) and the *Ministerio Público* (Office of the Public Prosecutor) includes adequate reparation and guarantees of non-repetition.

## 1.4 **General Recommendations**

- 1.4.1 Improve the effectiveness of the prevention, investigation and prosecution of all forms of aggression against human rights defenders and recognize the legitimacy of their work;
- 1.4.2 Allocate sufficient resources to the application of the Law on the Protection of Human Rights Defenders, Journalists, Social Communicators and Justice Operators, and take measures to improve the autonomy and effectiveness of the Protection System, in collaboration with civil society; and
- 1.4.3 Address and investigate exhaustively allegations of corruption linked to extractive industries, including through collaboration with the Anti-Corruption and Impunity Support Mission to Honduras (MACCIH).

## 2 **Recommendations to CONERSA and other companies**

### 2.1 **General Recommendations**

- 2.1.1 Fulfil its responsibility to respect all internationally recognized human rights, including in situations where international human rights requirements are incompatible with national law;
- 2.1.2 Conduct human rights due diligence, which includes the adoption of measures and processes that enable the identification, prevention and mitigation of real and potential adverse impacts linked to its business relations, operations, products or services, even when they have not directly contributed to these. Businesses must be accountable for how they address and manage adverse effects and must repair or contribute to redressing impairments to human rights;
- 2.1.3 Comply with, in all circumstances, the highest environmental and human rights standards, regardless of regressive modifications in national standards;
- 2.1.4 Carry out an EIA to determine, using technical criteria and a participatory and inclusive process, the environmental and human rights risks associated with a project and to establish appropriate mitigation measures;
- 2.1.5 Comply with the decisions of administrative authorities and in particular with the technical opinions they issue, although they may be contrary to the interests of the company; and
- 2.1.6 Consult legitimately, effectively and transparently with all rights holders affected or potentially affected by business activities.

### **3 Recommendations to investment institutions and other agencies that finance energy sector projects in Central America**

- 3.1 Refrain from financing projects in protected areas;
- 3.2 Conduct human rights due diligence to ensure that clients comply with international human rights and environmental standards prior to granting any type of funding. This could entail refraining from financing a hydroelectric project until sufficient guarantees are obtained that such financing would not directly or indirectly contribute to human rights violations or harming the environment; and
- 3.3 Refrain from supporting legislative reforms that impair the protection of communities' human rights.



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## FUPNAPIB

The Pico Bonito National Park Foundation (FUPNAPIB) is a non-governmental and non-profit environmental organization legally registered in 1993. It is made up of women, men and young people who are committed to improving people's lives in a sustainable manner. We intend that the inhabitants of the Pico Bonito National Park (PNPB) protect and manage their territories for their rational use from a comprehensive management approach.

## CEHPRODEC

The Honduran Center for the Promotion of Community Development (CEHPRODEC) is a non-governmental organization that monitors compliance with Economic, Social, Cultural and Environmental Rights in Honduras. To this end, it promotes development alternatives in the communities through the strengthening of individual and collective capacities to generate their own apprehension of reality, and to elaborate and manage their objectives. CEHPRODEC carries out training actions on human rights and accompanies defenders of the land and of territories who are threatened and persecuted for their role of territorial defense. It also coordinates the National Coalition of Environmental Networks and Organizations of Honduras (CONROA).

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## CONTACT US

FIDH

International Federation for Human Rights

17, passage de la Main d'Or

75011 Paris - France

Tel: (33-1) 43 55 25 18

[www.fidh.org](http://www.fidh.org)

Twitter: @fidh\_en / fidh\_fr / fidh\_es

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FIDH takes action for the protection of victims of human rights violations, for the prevention of violations and to bring perpetrators to justice.

### **A broad mandate**

FIDH works for the respect of all the rights set out in the Universal Declaration of Human Rights: civil and political rights, as well as economic, social and cultural rights.

### **A universal movement**

FIDH was established in 1922, and today unites 184 member organisations in 120 countries around the world. FIDH coordinates and supports their activities and provides them with a voice at the international level.

### **An independent organisation**

Like its member organisations, FIDH is not linked to any party or religion and is independent of all governments.

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