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Chixoy Dam Legacies: The Struggle to Secure Reparation and the Right to Remedy in Guatemala

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ABSTRACT: The World Commission on Dams brought global attention to the adverse costs of large dam development, including the disproportionate displacement of indigenous peoples and ethnic minorities and the extreme impoverishment of development refugees. The WCD recommended that governments, industry and financial institutions accept responsibility for flawed development and make proper reparation, including remedial activities such as the restoration of livelihood and land compensation for relocated communities. One exemplary case cited is Guatemala's Chixoy dam. Completed in 1982, this internationally financed dam was built during a time when military dictatorships deployed policies of state-sponsored violence against a Mayan citizenry. Construction occurred without a resettlement plan, and forced displacement occurred through violence and massacre. This paper describes an attempt to implement WCD reparation recommendations in a context where no political will existed. To clarify events, abuses and meaningful remedy, an independent assessment process was established in 2003, auditing the development record, assessing consequential damages and facilitating the community articulation of histories and needs. The resulting 2005 study played a key role in reparation negotiations. The Chixoy case illustrates some of the more profound impacts of the WCD review. The WCD served as a catalyst in social movement formation and a force that expanded rights-protective space for dam-affected communities to negotiate an equitable involvement in development.

KEYWORDS: Chixoy dam development, resettlement, human rights, reparations, Guatemala

INTRODUCTION

In its regional consultations, thematic studies and issuance of a final report, the World Commission on Dams (WCD) brought global attention to the social and environmental costs of large dam development, costs that often involved the forced displacement of indigenous peoples and ethnic minorities, ethnocide and ecocide. While dams created many economic benefits for some, many large dams failed to meet projected energy and economic goals. For instance, siltation and sedimentation reduced their operating life, while environmental impacts included the endangerment or extinction of 30% of the world's freshwater fish. Furthermore, the building of some 45,000 large dams caused displacement and severe poverty for a conservatively estimated 40 to 80 million people, the majority of whom were indigenous peoples and ethnic minorities (WCD, 2000; see also Adams, 2000; Bartolome et al., 2000; Colchester, 2000).

Hydro-engineering generates both immediate and long-term societal costs for host communities. The WCD recognised these costs and assessed the project-specific performance of 200 large dams, finding that efforts to mitigate the human environmental costs of large dam development had, in too many instances, failed. Thus, the WCD called for governments, industry and financial institutions to accept responsibility for outstanding social issues associated with existing large dams and develop mechanisms and processes with affected communities to remedy them, including reparation, restitution, the restoration of livelihoods and land compensation for relocated communities. These recommendations reflect the WCD recognition that hydro-development has, at times, involved the abuse of fundamental human rights, thus generating an international obligation to provide just

compensation, reparation and the right to remedy (WCD, 2000; Johnston, 2000).

The WCD report provided an important foundation for addressing the legacy issues associated with existing dams, including recognising a right to remedy and reparations. These recommendations contributed to efforts in Guatemala to investigate methods for redress relating to communities affected by the Chixoy dam; hence, we quote from the WCD report at length. Specifically, the WCD observed:

In all its public consultations, dam-affected communities told the Commission about the ongoing problems, broken promises, and human rights abuses associated with the involuntary resettlement and environmental impacts from dams. The WCD Knowledge Base includes significant evidence of uncompensated losses, non-fulfillment of promised rehabilitation entitlements, and non-compliance with contractual obligations and national and international laws. While the Commission is not in a position to adjudicate on these issues, it has suggested ways to redress past and ongoing problems associated with existing dams. Existing international laws have articulated a legal premise for a right to remedy or reparations, which is also reflected in the national legislative frameworks of many countries...

In order to address reparation issues, the government should appoint an independent committee with the participation of legal experts, the dam owner, affected people and other stakeholders. The committee should develop criteria for assessing meritorious claims assess the situation and identify individuals, families and communities fulfilling the criteria for meritorious claims and enable joint negotiations involving adversely affected people for developing mutually agreed and legally enforceable reparation provisions...

Affected peoples must be defined according to actual experience of impacts... and not by the limited definition in original project documents and contracts. Further, damage from dams may require assessment on a catchment basis extending upstream and downstream. Damage assessments should include non-monetary losses. Reparation should be based on community identification and prioritisation of needs, and community participation in developing compensatory and remedial strategies...

It is the State's responsibility to protect its citizens, including their right to just compensation. However, international organisations party to foreign investment agreements also have obligations and responsibilities to the rights and duties specified in the UN's declarations and instruments. The World Bank group's inspection panel and the International Finance Corporation (IFC)/Multilateral Investment Guarantee Agency (MIGA) office of the Compliance Advisor/Ombudsman acknowledge the responsibilities of the financier to comply with specific regulatory and operational policies governing its operations. In a number of instances, efforts to assign corporate responsibility for non-compliance or transgressions related to social and environmental elements of a project have led to complaints filed in a corporation's home country...

To exercise their right to seek a remedy, affected people need access to political and legal systems and the means and ability to participate in prescribed ways. Affected people should receive legal, professional and financial support to participate in the assessment, negotiation and implementation stages of the reparation process...

An independent committee should be empowered to collect, manage, and award reparations. To ensure that decisions conform to the laws of the country and to international laws, such committees should include legal representatives selected by government and affected communities. Parties contributing to the fund should be represented to ensure transparent use of their funds. Accountability of the parties responsible for reparation should be ensured through contracts and legal recourse (WCD, 2000).

AN EXEMPLARY CASE: CHIXOY DAM DEVELOPMENT

One of the cases cited by the WCD as illustrative of the outstanding social issues associated with existing large dams was that of Guatemala's Chixoy dam (known by financiers as Project Pueblo Viejo-Quixal) (WCD, 2000; Johnston, 2000; Colajacomo and Chen, 1999). Completed in 1982, the internationally financed Chixoy dam was built during a repressive civil war whereby military

dictatorships deployed a policy of state-sponsored violence against a Mayan citizenry.¹ Construction began without legal acquisition of the land supporting construction works, the dam, the hydroelectric generation facility, the reservoir or the farms needed to support resettled communities. Construction proceeded without a comprehensive census of affected peoples or a plan to address compensation, resettlement and alternative livelihoods. Community consultations occurred at a late stage, in the presence of armed soldiers, and in those few cases where compensatory agreements were achieved, formal documentation codifying communal rights was not provided. Dam development was completed without a resettlement action plan in place and river-basin communities were evicted through violent interventions and, in some instances, massacres. Civilian protest included the submission of petitions to the Guatemalan Government and the Spanish Embassy. These complaints were interpreted by the military government as evidence of insurgent influence, and as a consequence the Army declared these "resistant communities" subversive.

When the reservoir waters rose in January 1983, ten communities in the Chixoy river basin had been destroyed by massacre, including the village of Río Negro. Any survivors were hunted down in the surrounding hills, and then forcibly resettled at gunpoint. Resettlement villages were eventually built, although development project plans were discarded and a militarised guarded compound built in its place. Compensatory efforts were few and grossly inadequate to meet the basic needs of displaced communities, let alone provide redress for the full extent of lost land, property, communal resources, livelihoods and lives.

Survivors from the initial outbreak of violence filed a complaint in 1982 with the Inter-American Commission on Human Rights, but to no avail, as violence escalated into a series of massacres that, by September 1982, had resulted in the deaths of 444 of the 791 members of the Río Negro community. Persistent efforts by massacre survivors to seek accountability led to one of the first international investigations of a massacre site in Guatemala, exhuming in 1993 the remains of 107 Maya-Achi children and 70 women outside the rural village (Técu Osorio, 2002; EAFG, 1997; Sanford, 2003). In 1994, Río Negro's survivors formed The Association for the Integral Development of the Victims of the Violence of the Verapaces, Maya Achi (ADIVIMA) to encourage exhumations of other massacre sites in the surrounding communities and the prosecution of those responsible. International investigation of the events leading up to the massacre exposed further the linkages between internationally financed development, militarism and massacre (Witness for Peace, 1996; Pacenza, 1996; Holley, 1997; CEH, 1999).

Following the adoption of the 1994 Oslo Peace Accords,² a truth commission process was established, namely the United Nations-sponsored Commission on Historical Clarification (CEH), which gathered testimony and evidence over a two-year period and in 1999 concluded that at least 200,000 civilians had been massacred in Guatemala between 1960 and 1996. Of the victims, 94% were killed by Guatemalan state forces, 3% by undetermined parties and 3% by revolutionary forces. The majority of those killed were indigenous Mayan civilians whose deaths were attributed to a state-sponsored policy

¹ Facts in the Chixoy case are taken from Johnston (2005), a five-volume study reporting the findings of an independent audit of dam development, consequential damage assessment and community histories, needs and remedial vision. The Chixoy Legacy Issues Study serves as a core document in the verification of damages and reparations negotiation between representatives of the dam-affected communities, the Guatemalan government, the World Bank and the Inter-American Development Bank, facilitated by a representative of the Organization of American States.

² The Procedure for the Establishment of a Firm and Lasting Peace in Central America (The 'Esquipulas II' Accord) was signed in Guatemala City by the five Central American presidents on 7th August 1987. National reconciliation under this agreement failed. The Basic Agreement on the Search for Peace by Political Means (the 'Oslo Agreement') was signed on 30th March 1990, establishing a mechanism for negotiation. Lasting agreements were not achieved until United Nations-facilitated negotiations in Oslo occurred in 1994, producing: The Agreement on a Timetable for Negotiations on a Firm and Lasting Peace in Guatemala, The Comprehensive Human Rights Agreement, The Agreement on the Resettlement of Population Groups Uprooted by the Armed Conflict and The Agreement for the Establishment of the Commission to Clarify Past Human Rights Violations and Acts of Violence that have Caused the Guatemalan Population to Suffer. See Chronology of Peace Talks, Conciliation Resources, online document: www.c-r.org/our-work/accord/guatemala/chronology.php

of violence against the civilian population – violence which constituted genocide. The Río Negro massacres were cited by the CEH as a key exemplary case. Evidence of the Guatemalan Army's intent to destroy the community through a genocidal campaign includes four massacres, arbitrary executions of other community members before and after massacres and harsh living conditions due to flight from massacres and forced resettlement from dam construction (CEH, 1999: Volume 1, Annex 1, Chapter VI: Exemplary Case No. 10).

Reparation for this and other massacres was stipulated in the 1996 Peace Accord agreement for The Law of National Reconciliation, which recognises the reparation rights of victims. A World Bank mission in 1996 to explore remaining obligations in the Chixoy project concluded that bank responsibilities had been met, but acknowledged problems with local implementation of the social programme, and so produced a very modest plan to assist some of the dam-affected population by acquiring additional farmland (World Bank, 1996). However, this agreement was flawed in its reliance on an inadequate and incomplete census of the dam-affected community and its failure to provide assistance to the widows and surviving children of the massacred. Moreover, the plan was never fully implemented.³ In the ensuing years, continued complaints, coupled with the gravity of social programme failures, prompted occasional World Bank-funded assistance to resettled communities. In 1998, the electrical distribution grid was privatised, which allowed World Bank and Inter-American Development Bank loans to be repaid, with interest, in full. It also resulted in the closure of the Chixoy dam resettlement office and the loss of a local complaint mechanism.

In 1999, when massacre survivor Carlos Chen testified at a WCD regional consultation in São Paulo, Brazil, no meaningful reparation for the violence, nor for the broader array of damages associated with the human rights violations accompanying dam construction, had materialised. Dam releases occurred with no warning and resulting flash floods destroyed crops, drowned livestock and sometimes killed people. Upstream communities had seen part of their agricultural land flooded, and lost access to land, roads and regional markets. Displaced communities lived in profound poverty, but because the utility was privatised and loans repaid in full, no mechanism within the utility or with international financiers existed for affected people to complain or negotiate assistance. Efforts to pursue justice through the court of public opinion, advocacy and media attention to that advocacy resulted (and still result in) in death threats and occasional acts of violence (Colajacomo and Chen, 1999).

WCD recommendations for reparations, as outlined above, assume a rights-protective space exists to make complaints, a viable legal system exists to hear those complaints and the political will exists to acknowledge injury and provide meaningful remedy.⁴ Such conditions did not exist in 2003, when a

³ In 1996, while investigating social and economic conditions in the country, the World Bank found that resettlement villages had not been built according to plans prepared with the 1977 Inter-American Development Bank technical assistance grant. In many instances promised housing still had yet to be built, suitable lands for cultivation for all of the displaced families had yet to be located, title to previously acquired lands had yet to be secured (thus excluding farmers from agricultural development programmes) and the promised provision of electricity and water had yet to be provided. Brief consultations with the government and INDE resulted in a new World Bank agreement for all parties to provide the previously promised entitlements (World Bank, 1996). In 2005, when the Chixoy Legacy Issues Study was completed, the majority of the 1996 complaints remained unresolved. In their *Involuntary Resettlement Casebook* the World Bank offered an over-simplified and distorted view of the issues raised by the displaced communities in the Chixoy case, citing bank involvement as an example of 'success' because of their role in facilitating consultations that "help avoid unnecessary and costly development of options that people do not want". This comment is followed by the singular casebook reference to the Chixoy case: "In Guatemala, the Chixoy Hydroelectric Project (Ln1605) built houses in closely spaced rows, neglecting to leave room for gardens. The Dps [*displaced peoples*] refused to move into the houses, and the project was compelled to offer alternative housing with room for gardens" (World Bank, 2004). In fact, people were forced to move into the "houses in closely spaced rows" (Pacux), where they lived subsequently under armed military guard.

⁴ I use the term 'rights-protective space' to suggest the sociopolitical conditions and forums where people can exercise their fundamental human rights and freedoms, including their civil and political rights to protest or complain, without threat of reprisal, repression or discrimination. In contexts where the rule of law is weak, such space is often generated through informal political networks, international pressure and social documentation processes such as those described in the case of Chixoy Dam reparations.

reparations study was initiated at the request of affected communities and their advocates in local, national and international civil society. Thus, this paper describes both the methods and findings from a social documentation effort designed to 'make the case' in ways that encourage rights-protective space and the political will to hear and respond to complaints from affected communities (Johnston, 2005).

DOCUMENTING DAMAGES AND ESTABLISHING THE NEED FOR REPARATIONS

In August 1999, Carlos Chen shared his experiences of the Chixoy dam development through a WCD regional consultation. Chen, an indigenous Maya-Achí, described how 400 members of his community were massacred because of their opposition to the construction of the Chixoy dam. Among the victims were his wife and children. His testimony about this internationally financed dam was poignant and intense, as one observer describes: "The government took their money [World Bank, Inter-American Development Bank] to build the dam and used it to kill my people" (Aguirre, 2004).

After the WCD consultation, Chen and other Mayan community representatives returned to Guatemala and began an outreach campaign to identify more fully dam-affected communities and develop the capacity to pursue their right to reparation and remedy. Río Negro massacre survivors contacted and held community meetings with upstream, adjacent and displaced communities throughout the Chixoy dam region, including villages where massacres had taken place. In 2001, the *Asociación para el Desarrollo Integral Nueva Unión Maya Achi* was formed to pursue development for communities in the Chixoy dam region. As outreach expanded, it became clear that many, many villages had been affected adversely by dam construction and hydro-management, and suffered greatly from the lack of compensation or remedial attention.

In 2003, men and women from villages from three Guatemalan departments (Baja Verapaz, Alta Verapaz and Quiché) met to form an assembly of dam-affected communities, which comprised an elected leadership and the goal of pursuing just compensation and reparation. This meeting, hosted by Río Negro survivors living in the resettlement villages of Pacux, Rabinal and Baja Verapaz, took place to discuss a plan for documenting community concerns and developing a formal strategy to pursue reparations. Also in attendance were representatives from Rights Action Guatemala, International Rivers, and Reform the World Bank, Italy – advocacy groups that had assisted the Río Negro massacre survivors in attendance and made a contribution to the World Commission on Dams (Colajacomo and Chen, 1999). I attended the Pacux meeting at the request of community leaders. As a human rights and environment researcher from the Center for Political Ecology, I was asked to give advice on how to document the development's history and 'make the case' for reparations in ways that might encourage culpable parties to form and participate in a remedial negotiations process.⁵ Community delegates discussed suggestions, and also worked to map out and share their own histories in relation to the dam and the broader violence that occurred in the region. Outcomes from the Pacux meeting include an

⁵ In preparation for this meeting I sent a briefing derived from the WCD 'Reparations and the Right to Remedy' summation of the Chixoy case (Johnston, 2000) to colleagues, including social scientists who served as staff or consultants for the World Bank and Inter-American Bank on the Chixoy Dam project, and asked these colleagues to help locate archived project documents, to serve in a peer review capacity, and to identify key report recipients. To ensure that the proposed study would be conducted and received as an independent scientific investigation, the American Anthropological Association (AAA) and the American Association for the Advancement of Science (AAAS) named me their rapporteur for the reparations meeting, and agreed to support the study through their respective human rights committees. To encourage access to archival materials pertaining to dam resettlement plans and implementation, the President of the AAA wrote letters to Guatemala-based officers and Washington DC-based archivists in the World Bank and Inter-American Development Bank, introducing the project and myself as their representative. The AAAS and its Committee on Scientific Freedom and Responsibility also provided advice and assistance in developing a rights-protective approach to the trip and to the subsequent investigation. Thus, in addition to professional organisation sponsorship, I briefed Dr. Rodolfo Stavenhagen, Special Rapporteur on the Human Rights and Fundamental Freedoms of Indigenous People, on the status of the project and received his formal request to submit updates and the completed report to his office. This detail illustrates the use of informal social networks to create a rights-protective political space.

Acta (an official document), which confirmed the intent to pursue reparations, and the establishment of a representative group – the Comunidades Afectadas por la Represa Chixoy, now known as COCAHICH: Coordinator of the Communities Affected by the Construction of the Chixoy dam. COCAHICH agreed to work with national and international advocates and an independent scientific team to conduct participatory action research and help craft and implement a reparations action plan (Johnston, 2004). I served as the principle investigator in this collaborative effort. Key elements of the resulting plan were as follows:

1. Establish and conduct an independent review of the evidentiary record: what were the legal requirements existing at the time the project was planned and the dam built? What commitments were made with regard to identifying and addressing social and environmental concerns? What was actually done? Furthermore, what were the social and environmental consequences of the failures, omissions and outright violations of national and international law?⁶
2. Develop the political will in Guatemala, within the financial institutions that funded the development and within the broader international community, to both acknowledge the consequential damages of Chixoy dam development and then do something about it.
3. Encourage the establishment of a reparations negotiation process that includes representatives of the responsible parties and the dam-affected communities, and facilitate the meaningful involvement of affected communities in this process.
4. Move the focus in reparations from a simple notion of compensation for loss of property (appropriate compensation = replacement values) to a 'sustainable way of life' compensation principle. Such a shift acknowledges that affected people are not just individuals whose titled property lies submerged beneath the reservoir, but families, communities and distinct cultural groups, such as the indigenous Maya A'chi, Quiche and other cultural groups, whose lives, livelihoods and ways of life were damaged by the construction and operation of the Chixoy dam.

To achieve these objectives community representatives and their advocates were asked to consider the following questions. What evidence exists to substantiate complaints and clarify the chain of events leading up to those complaints? What kinds of evidence exist, or might be developed, to demonstrate a way of life, identify the material resources that sustain a way of life and depict some of the consequential damages associated with its loss? What kinds of remedies are required to move communities from their current situational disaster towards a progressive, cohesive community that sustains individual, household and community needs? What role might NGOs and civil society play in documenting conditions and assessing needs? What kinds of forums (legal and otherwise) exist or might be encouraged to determine who is going to pay attention to these complaints? How can we get the attention and willing involvement of culpable parties? Even more importantly, how can we get an enforceable commitment to finance and implement remedy?

Over the next few months research plans were refined, underwent peer review and incorporated into grant proposals with the hopes of encouraging foundation support for the formal study of the

⁶ It is important to define here what is meant by 'independent assessment'. Typically, post-development project assessment of the performance of social programs occurs in one of three ways: by in-house staff review, by consultants contracted by the financiers to conduct an external review or by staff of the non-governmental organisations that make up the activist community. In each of these situations, findings can be muted by controversy over the independent status of the review whereby one party or the other claims that an interest or agenda contaminates the objectivity of researchers and therefore the independent findings. In this case, conscious effort was made to ensure that the evidentiary record would be reviewed in ways that were transparent, thorough and truly independent of the various parties. The assessment would occur with a peer-reviewed process facilitated by scientific organisations, without financial support of and contractual obligations to potentially culpable parties (project financiers or governments).

Chixoy dam's history, its consequential damages and the community sense of meaningful remedy.⁷ Given the charged nature of this case, where the violence accompanying dam construction and forced displacement was determined by a UN-sponsored commission to be an example of genocide, great care was taken by all parties (myself and representatives of COCAHICH, Rights Action Guatemala, International Rivers and Reform the World Bank Italy) to establish this work as a truly independent scientific investigation. Research was conducted by the Center for Political Ecology in partnership with local, national and international civil society and professional organisations. Progress in this effort was reported to Rodolfo Stavenhagen, the United Nations Special Rapporteur on the Human Rights and Fundamental Freedoms of Indigenous People, and findings delivered to the Special Rapporteur and to the OAS Inter-American Commission on Human Rights. While research plans were discussed and information sought from all parties, no financial support was sought or received from any potentially responsible party, namely the government of Guatemala; Instituto Nacional de Electrificación (INDE), the project developer, major financiers, the World Bank or the Inter-American Development Bank. Thus, work was financed largely through the pro bono contributions of international experts' time, along with modest financial support from foundations to cover community-based costs, travel, field research, report production and other local expertise. In addition, because a separate reparations initiative was evolving in Guatemala to address the specific obligations that the government had towards massacre survivors, the focus in the dam legacy issues study largely excluded the issue of reparations for massacres, assassinations and other acts of state-sponsored violence.

The resulting development project audit and consequential damages/community needs assessment were completed over the next two years in a series of independently funded projects involving hundreds of people. Members of the dam-affected communities, volunteers, activists, lawyers, scientists, archivists and scholars worked on community outreach, capacity building, community histories and needs assessments, household surveys, land title searches, archival research, oral histories, ethnographic interviews, English/Spanish and Maya Achi translations and data analysis. The research plan, findings and recommendations for reparation were discussed with the affected communities, their advocates, representatives from the Guatemalan government, the World Bank and the Inter-American Development Bank, and a peer review was facilitated by the American Anthropological Association Committee for Human Rights, the American Association for the Advancement of Science and Human Rights Program and an international panel of involuntary resettlement experts (Santa Fe Statement, 2004). All findings were supported by substantiated, documentary evidence.⁸

To deconstruct World Bank and other institutional depictions of the development record and its outcomes, we examined the paper trail of records, reports and agreements with assistance from former project consultants, archivists and activists. This effort included visits to libraries and archives in Guatemala and Washington, DC; and the assistance of archaeologists and ethnologists who reviewed archives in France. After months of letters, emails and phone calls, the Inter-American Development Bank and the World Bank granted limited access to project records.⁹

In addition to archival material, a number of new evidence-generating projects were initiated to identify and measure the consequential damages associated with dam development, forced

⁷ Reparations research and report production was supported by grants from the Ford Foundation, Global Greengrants Fund, Grassroots International, Global Fund for Human Rights, Moriah Fund, Sigrid Rausing Trust and the Swedish Society for Nature Conservation. Peer review of study methods, findings and reports was supported by a grant from the American Association for the Advancement of Science, Science and Human Rights Program, the intellectual contributions of members of the Society for Applied Anthropology, American Anthropological Association and the American Association for the Advancement of Science. The School for Advanced Research on the Human Condition (SAR) hosted a reparations peer review meeting. See Santa Fe Group on Reparations and Development, Chixoy Statement, 10 November 2004.

⁸ The following summation of work and study findings has been previously published. See Johnston, 2009.

⁹ Despite the World Bank's written promise for full disclosure, only one-third of the project record, some 26,000 pages of reports and documents, was scanned and made available for this study.

displacement and related loss of the means to sustain a healthy way of life.¹⁰ We hired a land title specialist to examine the record of deeds and address the question of how access and control over land title changed before, during and after the project. In addition, we hired research and support staff to train community representatives and help develop local histories and needs assessments. With the aid of a linguist/ethnographer team and trained community representatives, we conducted 176 household surveys, establishing for a representative sample of the affected population the quality of life for pre-dam households (circa 1975) and the current relative status and access to critical resources (circa 2004).

The household survey examined pre-development and current conditions for families displaced by the dam, as well as households living upstream, adjacent to or downstream from the dam. Participatory ethnographic methods and documentary resources were used to identify the following: traditional patterns of resource value, access, use and control; key events and conditions that adversely impacted these resource relations and thus altered or destroyed people's ability to be self-sufficient; sociocultural and biophysical damages associated with these events and conditions; and the socioeconomic consequences of these changes. Key indicators included household demographics, housing conditions, household resources, patterns of access and the use of river and forest resources, access to land and agricultural productivity, the ability to produce surplus and to therefore participate in the market, other income-generating strategies, and access to potable water, electricity, sanitation and a telephone. To substantiate informant accounts of pre-dam socioeconomic conditions and to measure change over time, household survey findings were cross-checked with the land title record, the census and ethnographic documents from the periods before and during dam construction. A significant portion of the 2004 household survey sample (75 per cent) participated in a census conducted by Gustavo Adolfo Gaitan (1979) in four visits to the Río Negro and Chixoy river basins. The census reported family names, household size, number of structures in the household compound, size of farmland, number and kinds of domesticated animals, agricultural products and market participation for fourteen communities living on the river banks upstream of the dam site. In addition to household surveys, previously published testimonies detailing massacre events were reviewed, and ethnographers conducted a series of follow-up interviews with key informants. To verify testimony and substantiate accounts of major human rights violations, informants' versions were cross-checked with at least three independent sources, in line with standard human rights reporting protocol.

MAJOR FINDINGS OF THE CHIXOY DAM LEGACY ISSUES STUDY¹¹

Community needs assessments, household surveys, key informant interviews, archival research and land title searches produced a wide array of data supporting consequential damage findings.

Analysis of project plans, memorandums, trip reports and other documents by an expert panel of resettlement specialists found that the social requirements of the project were inadequately addressed by developers (INDE), the government of Guatemala and major financiers (Inter-American Development Bank and World Bank). Land acquisition for project construction was not completed and remains incomplete to this day. No realistic effort was made to restore the livelihoods of affected people, which was in direct violation of the banks' legal agreements. Project-affected people were not systematically consulted, despite their repeated protests and petitions requesting such to the authorities and the banks. Both the Inter-American Development Bank and World Bank continued to disburse funds without taking into consideration the escalating violence harming project-affected people. The Inter-American Development Bank and World Bank were informed of the failed resettlement process and the risks of impoverishment to the people (Partridge, 1983, 1984), but failed to correct the situation when provided the opportunity via new loan negotiations. In 1996, when firm evidence was established of a

¹⁰ For a further description of 'consequential damage assessment' methods and their application in the Chixoy case, see Johnston (2005, Volume 3).

¹¹ Findings are abstracted from the Executive Summary in Volume 1, in Johnston, 2005.

deepening impoverishment of dam-affected communities, of the government of Guatemala's failure to correct prior errors in good faith and of the World Bank's violation of its own policies (Witness for Peace, 1996; World Bank, 1996), the banks did not take reasonable and/or responsible action. Instead, the Inter-American Development Bank, World Bank and government of Guatemala responded in a way that failed to engage the affected people in planning culturally adequate and comprehensive corrective plans. Supporting details for these findings are outlined below.

Article 43 of the 1965 Guatemalan Constitution allows seizure of lands for hydroelectric development, except for lands with pre-existing title. Land title research established that all the lands affected by the Chixoy dam had, at the time of development, properly registered titles. The dates for the first inscriptions vary between 1883 and 1910. In 2004, of the 26 lots involved, only one lot was in the name of the developer (INDE), while the rest were in the names of private owners, communal title or representatives of the indigenous communities of the area. In other words, submerged lands, a portion of the dam and the hydrologic works were built on lands still legally titled to their original owners. The failure to secure land title legally is a direct violation of loan agreements and bank lending policies. In one instance of communal title, to retain rights to cultivate upslope, the owners are still paying taxes on submerged lands (Johnston, 2005, Volume 2 and Volume 5).

Significant funds for compensation, resettlement and environmental restoration had been previously provided as elements of Inter-American Development Bank and World Bank loans.¹² While INDE and the government of Guatemala failed in their obligation to develop and implement just compensation, resettlement and reconstruction programmes, the financing institutions failed in their fiduciary responsibilities to monitor conditions, assess the use of resettlement and compensation funds and withhold such funds until corrective actions were taken and obligations met.

Failure to implement a viable resettlement and remediation programme at the time of dam construction contributed to violence in the area.¹³ Communities that attempted to negotiate fair compensation were declared guerrilla-supporting communities, and military and civil patrols were used to remove people forcibly from the reservoir site. Guerrilla activity did occur in this area, but it did not begin until well after dam construction had begun (Dill, 2004; Douzant Rosenfeld, 1988, 2003; Museo Comunita Río Rabinal Achi, 2003). Violence, a series of massacres and the burning of villages and fields in the early 1980s was followed by guarded containment of many surviving families in militarised 'model' villages.

Violence associated with resettlement negotiations and forced displacement included the kidnapping, torture and deaths of four community leaders from two villages, and the related loss of

¹² No resettlement plan was in place when construction was completed. Loans summarised in Johnston (2005, Volume 2, Table 2) total some \$980 million, including World Bank loan #545-GU-IBRD (6/12/72), which provided \$15 million to Guatemala's energy utility INDE to conduct pre-feasibility studies and engineering estimates, including land acquisition and resettlement. World Bank loans #1314-0 (7/16/76) of \$4.2 million and 1315-0 (7/16/76) of \$20 million were delivered to the Guatemalan government following the 1976 earthquake, along with funding for a national survey of housing conditions, including the Chixoy River Basin, where a census of the population, housing and property and initial proposals for compensation and resettlement were to be developed. An Inter-American Development Bank agreement dated 1/25/77 delivered \$1.51 million in technical assistance and grants of US \$231,000 and \$539,000 Canadian to INDE to prepare a programme to protect the Chixoy Basin environment and finance the preparation of a programme for the social and economic development of residents in the project zone. In this grant, the Inter-American Development Bank was responsible for planning and INDE for implementation. World Bank loan 1605-0 (6/19/78) awarded \$72 million to INDE with a clause in the contract obligating INDE to provide houses and services for relocatees "of better quality than those they enjoyed previously", establish and implement an adequate compensation programme and resettle the 1500 estimated residents in the project area. Inter-American Development Bank loans 301A and 302A (11/11/81) for \$45 million also included \$3.8 million for the purchase of lands and resettlement. Despite these and other funds provided, when an independent audit was contracted by the Inter-American Development Bank in 1982, insufficient size and quality of replacement land had been acquired, housing and resettlement village conditions were grossly inadequate and many people had been excluded from compensation. See Partridge, 1983, 1984.

¹³ This is the precise wording in two Truth Commission investigations: *Guatemala: Never again!* The official report of the Human Rights Office, Archdiocese of Guatemala (REMHI 1998, Volume 1) and *Guatemala: Memory of Silence*, Report of the Historical Clarification Commission (CEH, 1999, Anexo 1).

documents memorialising compensation and resettlement agreements with INDE's resettlement office. Similar actions in a third village resulted in the detainment and torture of a community leader, as well as seizure of land title and compensation documents.

Failures to negotiate an adequate resettlement agreement resulted in an escalation of violence that included a series of massacres. Massacre events were documented through the testimony of survivors and – except for the Los Encuentros massacre, the site of which lies under the reservoir – by exhumation and forensic analysis by *Fundación de Antropología Forense de Guatemala* (FAFG). The relationship between the Río Negro massacres and the Chixoy dam was noted in a number of national and international investigations, where the case was cited as an example of state-sponsored genocide. Massacres experienced by the communities that would be flooded by the reservoir included:

1. March 1980 massacre in Río Negro by PMA agents working for INDE (some 61 PMA worked on the Chixoy project as security for INDE);
2. February 1982 massacre of Río Negro community in Xococ;
3. February 1982 massacre of Río Negro residents in Río Negro;
4. May 1982 massacre of Río Negro survivors and their hosts at Los Encuentros; and
5. September 1982 massacre of Río Negro survivors and their hosts at Agua Fria.

Other communities in Chixoy river basin destroyed by massacre in this same time period include: La Laguna, Comalmapa, Jocotales, Chitucan, Los Mangales, Pacaal and Hacienda Chitucan (CEH, 1999; REMHI, 1998). Following the Río Negro massacres, demands for compensation from other dam-affected communities were silenced with threats from INDE workers that if they complained, they would end up like the Río Negro community.

The lack of a viable programme to accomplish resettlement is well documented in World Bank and Inter-American Development Bank project files and reports. Trip memos, consultant reports, letters and other documents in the financier files demonstrate that the escalation of violence in and around the project area was also well-known by these institutions, as were the linkages between dam construction, resettlement failure and the escalation of violence (cf. Partridge, 1983, 1984; Douzant Rosenfeld, 1988, 2003). The World Bank and Inter-American Development Bank regularly sent staff to the area to evaluate performance and conduct new feasibility studies in support of additional financing. An archaeological research team worked in the Chixoy river basin periodically from 1978 through to 1982, and their reports, communications and concerns were part of the project record. INDE resettlement officers recorded conflicts and other details on all families in the affected communities, and submitted triennial reports to the Inter-American Development Bank on the status of social programmes beginning in 1977 and lasting through the full duration of the project. INDE resettlement office staff visited the Río Negro village the day after the March 1980 massacre, transporting by helicopter one of the surviving civilians to a hospital (he was later killed by soldiers while recovering at the hospital), which was noted in programme reports. Violence in the area, including the March 1980 massacre at Río Negro, was reported nationally and internationally. Furthermore, the relationship between the March 1980 Río Negro massacre and failed resettlement negotiations was noted in the Inter-American Commission on Human Rights draft report on Guatemala in 1980 and its final report in 1981 (IACHR, 1981).

In the case of Río Negro, the resettlement village funded by international loans on the basis of designs promising a traditional Mayan village with modern infrastructure, productive land and the provision of critical livelihood resources was not built. What was built was Pacux – a series of small one-room structures lined up in an urbanised grid, surrounded by wire fencing, with access to the village limited to a single road monitored by an armed military guard. The infrastructure, housing and adjacent agricultural fields reflect a priority of militarised control rather than the social and economic development of the community. Throughout the first several years of this settlement, residents were

not allowed to enter or leave the village without written permission, could not leave the area to grow food, pasture animals or collect firewood, and were forced to serve as unpaid labour in exchange for food. While model villages like Pacux were later built in other areas of Guatemala, most were demilitarised by the mid-1990s and residents were free to return to their former homes and lands. In Pacux, military guards were present up until December 21, 2003.¹⁴

The lasting military presence in Pacux helped perpetuate the social stigmatisation of the Río Negro community, generating the widespread perception that Pacux residents were dangerous subversives who must be monitored by armed guard to protect the broader population. Ten years of life under such guarded conditions produced an array of social, economic and psychological damages. Systemic violence associated with the stigmatisation of Pacux and its exceptionally long status as a militarised community includes a pattern of threats, harassment, torture, killings and rape. Exhumations by FAFG in 2004 of a clandestine grave located in a well on the guard base controlling the entry to Pacux found some 73 bodies.

Replacement land for the displaced population not only failed to meet the compensation objective of improving conditions, but also failed to meet even the minimal objective of equivalent replacement. This abject failure to provide the full extent of compensation promises (fertile lands, adequate housing, compensation for property losses, electricity and water, support for community health and education workers and effective economic development) had a degenerative effect on the culture, economy and health of both displaced and still resident communities.

The original compensation principle, established in Chixoy plans and loan agreements, articulated a commitment to improve living in conditions and the quality of life, and identified tourism development as a major strategy to transform the local economy. As early as 1973, plans called for scientific exploration of the pyramid complex and development of a Tikal-like tourism industry. Excavations of Cauinal in 1979 confirmed that the city complex was equal to or more important than Tikal, an archaeo-tourism site that at that time was Guatemala's largest source of foreign income. Ethnographic research confirmed that Chixoy river basin communities had ancestral ties to the ceremonial complexes (Douzant Rosenfeld, 1988, 2003). The archaeological team contracted by INDE submitted proposals on three occasions (1980-1983) to modify the dam at a projected cost of \$220,000 to rescue the Cauinal site and to minimise social impacts by allowing the development of archaeo-tourism. These proposals were rejected. Cauinal remains in a deteriorated state, partially submerged for part of the year and totally submerged at other times.

CONSEQUENTIAL DAMAGES

The consequences of this development history are profound and difficult to summarise, let alone quantify. The rationale for withholding aid over the years included assertions by the government of Guatemala and World Bank staff that project obligations had been met fully and, given the international attention to their plight, the socioeconomic conditions of the communities were actually better than other rural Mayan communities. To determine if this latter assertion was valid, household surveys included many of the same quantifiable indicators used by the World Bank in their assessment of national poverty rates and conditions in rural Mayan villages (2003).¹⁵

Our data demonstrate household production in the pre-dam era provided for all food needs in 79 per cent of the total survey population. At the time of the field study (2004), household production sustained all food needs for 28 per cent of the survey population. In resettlement communities, the deterioration of household production was even greater – 93 per cent of surveyed households in the

¹⁴ Resident experiences with involuntary displacement documented by Johnston (2005) stand in sharp contrast to World Bank framing of this case. See note 2.

¹⁵ The household survey instrument is published in Johnston, 2005, Volume 3.

resettlement communities reported the ability to provide all household food needs before the dam. Only 26 per cent reported this ability in 2004.

The declining ability to produce food is related directly to the loss of productive agricultural land, pastureland and access to viable river and forest resources. For the displaced residents living in urbanised resettlement villages, productive lands were scarce and, when provided, located at great distances from the home. The consequential damages of these losses are clearly illustrated in household survey data, which demonstrated significant declines in dietary protein, declines that help explain the region's extraordinarily high rates of malnutrition and infant mortality. The loss of access to fertile lands, pasture and river and forest resources also produced measurable change in household ability to generate monetary income.

Household surveys and archival research also demonstrated some of the consequences of project planning and social programme failures. Some families displaced by the dam were excluded from the initial census in 1977. Others were disenfranchised by INDE in the post-project evaluation of 1991 because they were not present at the time of the census, as they had left in search of work. The majority of people excluded were disenfranchised because they were widows or orphans whose heads of households had been killed in the Río Negro massacres. Thus, the directly affected population – those who were physically displaced by the construction of the dam and its reservoir – is now significantly larger than presently or historically recognised by the developer (INDE) and project financiers (World Bank and Inter-American Development Bank). Furthermore, the total dam-affected population has been grossly underestimated. Downstream and upstream communities affected by the project have never been compensated for their losses, and were also subjected to intimidation and violence.¹⁶

In 2004, people in the resettlement villages were living in extreme poverty, with homes crumbling and few economic opportunities. For those who remained in the Chixoy river basin, periodic flooding seriously affected the length of the agricultural season and the number of harvests per year. Moreover, many fishing villages saw the complete loss of local fisheries. When dam repairs were made in the mid-1990s, no social impact assessment occurred, and no programme was created to protect downstream communities from the hazards of dam operations. Flash floods from unannounced dam releases not only caused severe erosion to riverbanks and agricultural fields, but also caused at least three documented fatalities in downstream communities. Downstream communities experienced water shortages (wells and springs dried up and available water was often contaminated). Crop failures were common. Of special concern was the increased rate of malaria, as varied river flow in the summer and winter seasons created stagnant pools and breeding grounds for mosquitoes.

The Chixoy dam Legacy Issues Study concluded that hydroelectric energy development occurred at the cost of land, lives and livelihoods – in violation of national and international laws. At the same time, World Bank and Inter-American Development Bank loans were repaid, with interest, in full. Project financiers, through their involvement and profit making, shared with the government of Guatemala some of the responsibility for the social violence and human rights abuses accompanying the construction of the dam and subsequent displacement and resettlement. World Bank and Inter-American Development Bank financial support and technical advice shaped the initial formation of Guatemala's electrical utility, INDE (Instituto Nacional de Electrificación), and its energy development plans. The World Bank and Inter-American Development Bank influenced, sustained, monitored and evaluated INDE's energy development and distribution projects. The World Bank and Inter-American Development Bank influenced and supported the privatisation of INDE. World Bank and Inter-American

¹⁶ As reported in the Chixoy Dam Legacy Issues Study (Johnston, 2005, Volume 2) the scale of the total affected community was suggested by the August 1983 petition submitted to President of the Republic and signed by 490 indigenous leaders of towns and villages of the indigenous highlands of the municipalities of Cubulco and Rabinal, who represented some 6000 families. Many of these householders were later subject to violence, some to murder and many fled the region. The total population now recognised by the government of Guatemala as the 'dam-affected' victims in ongoing reparations negotiations include some 33 villages that, according to the Comisión Técnica de Verificación, include 2329 families, or 11,383 people.

Development Bank loans for Chixoy Hydroelectric Development were repaid with interest, in full, with the income generated from the sale of INDE's distribution system. The privatisation of INDE in the late 1990s resulted in the closure of its resettlement office and the effective loss of any viable complaint mechanism for dam-affected communities. Some \$100 million of the proceeds from the privatisation were used to create a Rural Electrification Trust Fund, enhanced by a \$50 million bond and financing by the Inter-American Development Bank. In June 2004, this fund was reportedly worth \$333 million (Cockburn and Yapp, 2004).¹⁷ The privatisation of INDE occurred without any form of evaluation or demonstration that all remaining obligations to dam-affected citizens had been met.

RECOMMENDATIONS FOR REPARATION

Building upon the recommendations outlined by the WCD, the Chixoy Legacy Issues Study urged the establishment of a high-level commission in Guatemala to develop a legally binding plan for remedy (Johnston, 2005, Volume 1; WCD, 2000). The proposed commission would include representatives of the government and financiers, and the full and meaningful involvement of representatives from the dam-affected community. Full and meaningful participation involved the right for dam-affected community representatives to participate in all negotiations, accompanied and assisted by legal counsel and other experts of their own choosing, the right to present community documentation of complaints and independent assessments as evidence of damages and injuries and the right to review evidence supporting INDE, World Bank and Inter-American Development Bank claims concerning compensation and resettlement plans and performance.

Other recommended elements for a reparation plan included:

1. Immediate actions to address the dire needs of resettled, disenfranchised and stigmatised communities.
2. Reconstruction of the Chixoy river basin and resettlement communities.
3. Community- and family-specific remedies that reflect a commitment to restore, repair and improve life conditions in the Chixoy river basin and in the resettlement communities.
4. Reparation and reconciliation with respect to violence accompanying the construction of the Chixoy dam.
5. Political actions and initiatives that acknowledge and address the historical wrongs of this case of hydroelectric dam development subsidised by the lands, livelihoods and lives of society's most vulnerable people, and political action that ensures 'never again'.

Recommendations in this study also reflected the concerns voiced by dam-affected community members, as expressed in interviews and in the community needs assessments. Their articulated notion of remedy was not one of court trials and the imprisonment of individual actors, nor was it a demand for monetary compensation to individual victims. When asked what reparations means, the reply was to live with dignity. As explored in the community needs assessments, their vision of reparation was one that would enable families, neighbours and surrounding communities to again live in decent homes, gain access to fertile lands, electricity, water, education and job opportunities and, most of all,

¹⁷ In 1998, INDE was split into two companies, DEOCSA and DEORSA, and privatised with a 50-year concession to operate distribution assets. The companies are currently owned by Union Fenosa Internacional, S.A. (80% stake). The privatisation occurred as a result of a World Bank technical assistance loan for US\$15 million. To spur rural electrification, on the advice of the World Bank, the government created in 1998 the Programa de Electrificación Rural (PER). This programme, in theory, uses the Rural Electrification Trust Fund to subsidise private companies' costs in transmission lines and substations (\$151 million), with the remaining for distribution to subsidise electricity for 2600 communities. The Bank of New York holds the funds, while Banco Agrícola Mercantil de Guatemala administers at the request of the principle officers of INDE, DEOCSA and DEORSA. See Economic Consulting Associates and Mercados de Energía S.A., 2002).

allow honest reconciliation with a bloody and painful past. They wanted the nation, as well as other responsible parties, to understand, acknowledge and provide meaningful redress for the horrible human rights abuses that occurred, especially those associated with or causally linked to hydroelectric dam development. More fundamentally, they wanted the power and opportunity to 'sit at the table' and help shape the scope and intent of remedial solutions.

The Chixoy dam Legacy Issues Study was delivered to the Guatemalan government at a press conference in Guatemala City on July 13, 2005. Mayan representatives from twenty-three affected communities travelled there to attend this event. At the press conference, indigenous leaders presented to Dr. Frank LaRue, director of the Presidential Commission on Human Rights (COPREDEH), copies of the five-volume study. LaRue formally accepted the study on behalf of the Guatemalan government and announced the formation of a commission to negotiate remedy for this case, noting that Guatemala's finance minister had formally invited the Inter-American Development Bank and the World Bank to participate in a Chixoy reparations negotiations process. This agreement echoed promises made the previous September 2004, following protests by the Mayan community at the dam site.

On July 26 and 27, 2005, indigenous representatives presented the study to senior staff at the World Bank and Inter-American Development Bank in Washington, DC and participated in a Washington Office on Latin America-sponsored press conference held at the National Press Club. They also met with their new advisors, a pro bono team from the law offices of Holland and Knight, who agreed to act as legal advisors for the dam-affected communities in the reparations negotiations process announced by LaRue.

In the ensuing months and years, a reparations negotiation commission was established, with representatives from all responsible parties and the dam-affected communities meeting under the facilitation of a representative from the Organisation of American States (OAS) Inter-American Human Rights Commission. The Inter-American Development Bank issued a small grant to prepare economic development plans for each of the affected communities. On September 18, 2006, the government of Guatemala and COCAHICH signed a political agreement, which contained the basis for the negotiations on the verification and reparations of the damages and losses caused by the construction of the dam. The agreement was renewed several times in subsequent meetings, and later a verification sub-commission was established to review the evidence and conclusions. On November 20, 2008, President Alvaro Colom Caballeros signed an accord acknowledging that "damages and violations" occurred during the dam's construction and accepting the obligation to offer reparations. In the rationale for this accord the Chixoy dam Legacy Issues Study (Johnston, 2005) was accepted as one of the definitive statements of the chain of events, complaints, obligations and remedial needs.

As of this writing (April 2010), the struggle to secure a reparations agreement is in the final stages. Terms for the reparations plan have been finalised and responsibility to implement the agreement reportedly accepted by the government of Guatemala. OAS has been asked to assist in administering a reparations trust fund and to facilitate a commission to monitor the implementation of reparation plans. Chixoy dam reparations will address the project-specific needs of some 33 dam-affected communities, as well as the long-ignored infrastructural and socioeconomic needs of the region including roads, a bridge over the reservoir, community access to water, electricity, health, education and food assistance programmes. The reparations plan also includes environmental restoration in the Chixoy basin, modification of stream flow to preserve downstream wildlife and support for museums and memorial sites to commemorate this history.

Reparations for the series of massacres experienced by the Río Negro community during dam construction are part of a separate complaint filed with the OAS Human Rights Commission. In March 2008, that Commission declared the petition admissible, published their findings in a report to the OAS General Assembly and continues its analysis of the merits of the case (Inter-American Human Rights Commission, 2008).

SOCIAL CONSEQUENCES OF THE CHIXOY REPARATIONS MOVEMENT

At the community level, perhaps the most important lessons emerge from the earliest phases of the reparations struggle, before the formal study began. Organising local involvement required an outreach initiated by massacre survivors who travelled to other resettlement villages and up and down the river valleys. This effort to organise the dam-affected communities involved meeting and learning to work with people who played indirect or even direct roles in the violence. Such meetings were, at the most fundamental level, opportunities to confront and reconcile histories and their consequences. Because meetings were organised around the question of who was affected by the dam, the engagement focused on the driving forces behind various events and the commonalities in people's experiences. This focus on dam construction as a local catalyst for tension, conflict, displacement and associated miseries made visible the linkages between the local and structural violence of the state and its partners in the internationally financed development. Taking on the identity of a 'dam-affected community' placed incredible psychosocial demands on people, and the tensions produced by these histories continue. Nevertheless, by studying and embracing their common past, dam-affected communities are now able to envision and work towards the possibilities of remedy.

Community reconciliation offers lessons for the nation. When the study began, there was no mechanism for the discussion of dam-development issues among the various affected communities, let alone any evidence that the government would support a rights-protected examination of these issues. For some, this study and the formative negotiation process represent an opportunity for the nation to build a mechanism that can help the many other people promised reparations by the 1996 Oslo Peace Accords, yet whose problems and issues remain unaddressed. For others, the study and its demand for remedy, which vests indigenous groups with partnership power in a development process, represent a precedent upon which other groups might build.

The July 2005 release of the Chixoy dam Legacy Issues Study was covered by all major media outlets in Guatemala and a subsequent National Press Club Conference in Washington, DC. In Guatemala City, a formal representative of the government – Frank LaRue, director of the Presidential Commission on Human Rights – acknowledged on camera that associated injustices generate an obligation to provide some sort of meaningful remedy, including a promise of 'never again'. This very public action communicated a sense of possible remedy for historical injustice, and the message that rights-protective space may be emerging for those who had been historically silenced. Such messages resonated throughout the country and the region, where indigenous communities were suffering from the human and environmental disasters that accompanied an escalation in imposed and destructive development.

In the months and years following the 2005 study's completion, while the reparations negotiations dragged on, leaders from the Chixoy dam-affected communities travelled broadly in Guatemala and Central America to share their experiences and struggles with other communities threatened by hydro-development and the extractive industries that it fuels.¹⁸ Their message: indigenous communities have a right to know when development is proposed on their lands. They have a right to be consulted as to the shape and form of proposed development and its mitigating measures. And that right includes the right to say no. When such rights are abused, documentation of the legal violation of national and international law can help generate the political will to provide meaningful redress.

¹⁸ Leaders also shared their experiences in the Spanish Court's efforts to prosecute the case of Crimes Against Humanity against General Efraín Ríos Montt (Guatemalan President from March 1982-August 1983) and seven other former Guatemalan military and civilian officials. The Chixoy Legacy Issues Study helped inform the Spanish Court in its 2006 review of the charges of torture, state terrorism and genocide leading to the decision to order defendants to be remanded in custody until trial and an international arrest warrant. In 2007, the Guatemalan Constitutional Court refused extradition of Ríos Montt and others on the grounds that Spain did not have jurisdiction over these cases. In early 2008, presiding judge Santiago Pedraz travelled to Guatemala and took the testimony of Río Negro and other massacre survivors.

Increased engagement between project-affected communities and engagement with more distant worlds (downstream, national, international civil society) has transformed dam-affected peoples. Changes include increased awareness of: (1) the fundamental rights of project-affected peoples, vulnerable groups, indigenous peoples and ethnic minorities, including the right to participate materially and benefit from project development, and the right to free and prior informed consent; (2) environmental degradation, socioeconomic decline and damages to health resulting from water enclosure, diversion and displacement; and (3) synergistic and cumulative impacts experienced by other project-affected communities.

In rural communities throughout the region, increased awareness of development impacts and the rights of dam-affected peoples has led to a rise in protests, calls for remediation, a strengthening of local and regional movements, such as the Movement of Dam Affected Peoples in Brazil (MAB), African Rivers Network, Latin American Network Against Dams and for Rivers, Communities and Water (REDLAR), Himalayan and Peninsular Hydro-Ecological Network (HYPHEN), and the 1997, 2003 and upcoming 2010 'Rivers for Life' international meetings of dam-affected peoples. One of the social consequences of this rights-based advocacy is the recent resurgence of the *consultiva*. Originally a participatory element of financing agreements, with the incorporation of consultation and informed consent language in national legislation, *consultiva* are increasingly taking on the status of a plebiscite, meaning a legally binding vote by communities in support or rejection of development proposals. Further, when the results of such community elections are ignored by the state, the Inter-American Commission on Human Rights has increasingly taken a stand (Aguirre, 2009; McGee, 2009, this issue).¹⁹

CONCLUDING CONCERNS

Given the many problems in this world, let alone the complex and demanding problems in Guatemala, why is it important to demand attention to and remedy for such cases of historical injustice?

The historical location of dam projects in remote regions and the documented demographics of development refugees have led many to conclude that large infrastructure water development and the associated displacement of culturally diverse communities are major factors in the rise of global poverty and decline in biocultural diversity. It was this destructive reality that prompted the formation of a World Commission on Dams. WCD evidence, coupled with the meltdown of the global economy, resulted in a temporary constriction of international financial investment in large water infrastructure projects.

Beginning in 2000 and extending through to 2008, the withdrawal of international development aid temporarily slowed the pace of infrastructure development worldwide, especially bilateral aid between the US and nations in Africa, Latin America and Southeast Asia, and water infrastructure development financing from the World Bank and other development banks. Yet, while international financial institutions' (IFI) involvement in large dam development slowed, new bilateral partnerships were created. Thus, by 2008, China, with its post-Three Gorges expertise, emerged as a major player in water infrastructure development in Africa, Latin America and Southeast Asia. In this new form of internationally financed infrastructure development, extractive resource rights are often granted in exchange for the construction of dams, diversions and supporting infrastructure (highways, power grids). As reported by International Rivers (IR, 2009), China is financing, or its companies building, 224 hydro-development projects in some 49 countries. The human and environmental safeguards employed in such cases are the norms of the host country, rather than the granting/aiding entity.

¹⁹ See, for instance, the November 2, 2009, Inter-American Commission on Human Rights hearing on dam construction trends in Latin America. At this hearing dam-affected peoples and non-governmental organisations presented information showing that governments continue to build dams with great social, environmental and economic costs, with disregard for national and international environmental and human rights law. More than 300 large dams are planned for the region (described in IR, 2009).

Furthermore, recent stimulus financing of international and regional development banks, and the successful rebranding of hydro-development as 'green energy' that fights climate change, has led to a resurgent push for and IFI financing of large dams and diversions (World Bank, 2009). Many of these new infrastructure projects are promoted as sustainable initiatives, yet, however, are designed to sustain extractive industry agendas. For example, in Guatemala, existing and planned hydro-development is promoted as poverty alleviation – providing purportedly 'carbon-free' electricity to rural households – yet in fact supports the urban and regional grids with expanded production, allowing power to flow north through Mexico to the US, and local production used to support the mining and processing of nickel, gold and other minerals.

In the Chixoy case, the initial failures to consult, engage in meaningful negotiations for a compensation resettlement plan and legally secure title contributed to violence and rights abuses. Abusive situations were compounded by the structural violence of the state which, for decades, denied the legitimacy of the dam-affected communities' complaints. Abusive situations were also compounded by the structural violence of internationally financed development, which typically operates according to host nation rules. The lack of an independent and transparent mechanism to consider and adjudicate complaints meant that the responsibility fell on the backs of the affected communities and their advocates to prove a wrong had been committed and grievous harm resulted as a result of flawed and corrupt development.

The inequities in this situation are not unique. While social and environmental safeguards exist in national constitutions and laws, and in the financing policies of institutions such as the World Bank and the Inter-American Bank, remedial justice is elusive, as demonstrated by the WCD. The primary interest of the developer, lender and construction companies is the successful and profitable completion of the project, not the on-the-ground experiences of host communities and their environments. Monitoring and post-project assessments, if conducted, are done so in less than transparent fashion. Dispute mechanisms, where they exist, typically disappear when construction is completed and the loans repaid (Johnston and Garcia-Downing, 2004; Oliver-Smith, 2009). Given that the financing structure of hydro-development continues to evolve from an enterprise largely pushed by, shaped and financed through international financial institutions such as the World Bank's International Bank for Reconstruction and Development, public/private partnerships (the World Bank's International Finance Corporation) and to development through bilateral aid (China), transparency is decreasing while hydro-development is increasing.

To sell this return to a large infrastructure development portfolio, a new 'best practice' commission driven by industry and financiers has drafted a sustainability assessment tool – the Hydropower Sustainability Assessment Protocol (HSAF) – billed as an alternative to the World Commission on Dam's findings and recommendations (IHA, 2009; see Locher et al., this issue; Bosshard, this issue). The initiative, organised by the International Hydropower Association and drafted by a self-selected group of organisations and entities, allows dams and diversions to be repackaged as sustainable green energy and food security investments. In December 2009, the IHA's draft assessment tool was reviewed by the International Network on Displacement and Resettlement (INDR, 2009). Findings of the review include significant shortcomings and technical errors, including the failure to consider the impoverishment risks imposed on the population affected by dam construction, the low priority or complete omission of dam displacement-resettlement concerns from key stages of the project cycle, a flawed and imbalanced scoring methodology and the failure to incorporate existing policies and mitigation measures that reflect international and national law (INDR, 2009).

The Chixoy case confirms the need for an aggressive effort to build upon, rather than discard, the WCD's findings. Given that millions of people have been – and too often continue to be – displaced without adequate means to sustain a way of life, and given the profound consequences of this impoverishment, redress and remedy must be provided for historical injustices to ensure a stable and secure future. Clearly, some sort of independent advocate mechanism is needed to clarify histories and

facilitate a negotiated remedy. Such a mechanism is suggested in the WCD recognition whereby governments

... should appoint an independent committee with the participation of legal experts, the dam owner, affected people and other stakeholders. The committee should develop criteria for assessing meritorious claims; assess the situation and identify individuals, families and communities fulfilling the criteria for meritorious claims; and enable joint negotiations involving adversely affected people for developing mutually agreed and legally enforceable reparation provisions.

Furthermore, an international obligation should exist to provide remedy for project-related abuses that include international organisations party to foreign investment agreements, corporate parties as well as the host nations (WCD, 2000).

The Chixoy case represents an effort to illustrate how an independent advocate mechanism – the project audit, consequential damage assessment and reparations negotiation process described in this paper – can help implement the right to remedy.²⁰ Furthermore, the case demonstrates how an independent advocate mechanism not only facilitates efforts to secure redress for historical injustice, but also in their implementation such mechanisms can also generate broader socio-political change. When receiving complaints, acknowledging their validity and providing meaningful remedy, the state also demonstrates a commitment to ensure 'never again' – to undertake new project developments in ways that consider and protect the health and well-being of resident peoples and the environments in which they live. In this promise by the state that new development will reflect the terms and provisions of national and international human rights and environmental agreements, the process *and* the achievement of reparations is transformative.

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²⁰ An independent advocacy mechanism to help achieve reparation for dam-affected communities was described in the 'Reparations and Right to Remedy' brief (Johnston, 2000). Regional and REMHI international mechanisms for accountability have been created to monitor, assess and adjudicate human rights and environmental issues in other arenas (e.g. post-conflict truth commissions, UN-appointed Special Rapporteurs, tribunals established through multilateral and UN treaty agreements such as the Inter-American Commission on Human Rights). In recent years, regional human rights courts have accepted cases and produced judgements on cases involving development and related human rights abuse; see especially decisions in the IACHR, African Commission on Human and Peoples Rights and the European Court of Human Rights described in Cassel (2007). Emerging human environmental rights law, especially efforts to implement The Declaration on the Rights of Indigenous Peoples (adopted by the UN General Assembly, 13 September 2007) and various climate change agreements, offer new opportunities to consider and adopt such mechanisms.

encourage a reparations negotiation process, especially: Carlos Chen, Cristobal Sanchez Osorio, Jesús Técu Osorio, Juan de Dios, Monti Aguirre, Annie Bird, Kathleen Dill, Linda Green, Jaroslava Colajacomo, William Partridge, Thayer Scudder, Barbara Lynch, Michael Cernea, Robert Hitchcock, Nick Hildyard, Carmen Garcia-Downing, Ted Downing, Anthony Oliver-Smith, Linda Whiteford, Ruth Krulfield, Stephen Hansen, Jennifer Schrimmer, Alain Breton, Beatriz Manz, Elizabeth Bevington, Stephania Molinari, Heidi McKinnon and Laura Nader.

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