

Business Investment and Human Rights: Lessons Learned from a Conflict

The Case of the Maya Kaqchikel of San Juan Sacatepéquez



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INTRODUCTION

Peace Brigades International (PBI) is a non-governmental organization with 30 years of experience and a presence in several countries. PBI promotes the non-violent resolution of conflict and the defence of human rights. The organization provides accompaniment and international observation to protect the environment in which threatened human rights defenders work. PBI seeks to dissuade violence through the presence of international volunteers, advocacy work and the dissemination of first-hand information. PBI has a broad support network both in the countries in which it works as well as internationally. The organization's key principles are non-violence, non-interference and non-partisanship.

The PBI-Guatemala project dates back to 1983, when a team of volunteers was set

up in the country in response to requests for international accompaniment from civil society organizations and nascent human rights organizations. In 1999, three years after the signing of the Peace Accords to end the country's civil war, the project was closed. This decision was taken after a lengthy internal and external evaluation, which concluded that civil society organizations had been successful in opening a political space and a framework within which to act. Despite closing the project, however, a follow-up committee continued to monitor the political and human rights situation in the country.

Starting in 2000, PBI began receiving new petitions for international accompaniment from Guatemalan civil society organizations, which led to the formation of an exploratory committee. This committee found that the environment in which human rights defenders were working had narrowed and, in some cases, closed. In April 2003, a decision was taken to reopen the PBI-Guatemala Project. This time, the project would focus on three priority areas of emphasis, namely the fight against impunity, the land problem and the negative effects of globalization on human rights. PBI-Guatemala's strategic plan adopts a broad and inclusive definition of "human rights defenders," which includes a wide range of individuals who belong to groups or organizations in Guatemalan civil society. These may be human rights defenders who propose socio-political and economic changes aimed at addressing inequality, exclusion and deep-rooted injustice, or developing processes to defend and promote human rights, and/or challenge the impunity of the past while confronting the human rights violations of the present.

The aforementioned areas of emphasis and the project's strategy are implemented in a complex national and international context in which the phenomenon of globalization is an important factor. With this globalization, we have been witnessing the growth of so-called mega-projects throughout Latin America, including Guatemala. These projects are managed by large domestic and international businesses (mining, hydroelectric, oil, agricultural and services companies, etc.). These companies operate under exploration and operating licenses granted by the Guatemalan government. This situation has generated conflicts between rural – particularly indigenous – communities and state and private entities.

Aside from the debate about whether these mega-projects contribute to or hinder the country's development, there is no doubt that they have led to various problems (threats, attacks, legal persecution) for those promoting human rights, including economic, social and cultural rights, as well as the collective rights of indigenous

people. Behind these conflicts are the powerful economic interests of the business sectors initiating and supporting these large projects. These interests are pitted against those of the communities defending their means of subsistence. Moreover, these communities demand that their right to informed consent be respected in the case of plans or projects that affect the natural resources in their territories, as well as their right to self-determination.

This is the environment in which PBI provides accompaniment to civil society organizations, including those defending natural resources and demanding respect for economic, social and cultural rights, as well as the rights of indigenous peoples. These human rights defenders are often threatened or attacked for their work. The accompaniment of human rights organizations or the social processes they promote has been documented by PBI-Guatemala in various publications, including two special reports: *Metal Mining and Human Rights in Guatemala. The Marlin Mine in San Marcos*, published in 2006, and *Guatemala's Indigenous Women in Resistance: On the Frontline of the Community's Struggle to Defend Mother Earth and her Natural Assets*, published in 2010.

The aim of the present study is to document and analyze the conflict that began in 2006 and continues today in San Juan Sacatepéquez. Such analysis can help find ways to prevent violence in similar situations. This conflict began with the arrival of Cementos Progreso S.A. (CEMPRO) and its plans to establish a quarry, build a cement plant and a new road. Productos Mineros S.A., a subsidiary of CEMPRO, holds an 80% stake in the aforementioned project, while the Swiss multinational Holcim holds the other 20%.

We hope that this study will help to identify new ways to break the stalemate and prevent this and similar conflicts from escalating.

Objectives

The principle objective of this study is to document the major elements and phases of this case from a human rights perspective, and track the course of the conflict, for the following purpose:

- To determine and analyse some of the causes and most important factors that generated and fomented the use of violence in this conflict.

- To draw conclusions and make recommendations that may be used by both local and national state bodies to prevent or avoid violent conflicts in similar situations.
- To draw conclusions that may be used as references for other communities immersed in conflicts of this nature
- To draw conclusions that may help the governments of the parent companies develop procedures to ensure respect for human rights and compliance with international obligations and facilitate mechanisms that promote the protection and safety of human rights defenders when multinational companies are involved in such investment projects
- To identify tools to increase protection for human rights defenders immersed in this or similar conflicts.

Scope and Purpose

It would not be possible for this study to encompass all of the information, analyses and facts that have emerged during the ongoing conflict in San Juan Sacatepéquez. The objectives defined in the section above entail priorities and limit the contents and scope of this document. In this regard, the following is noted:

- To document the case, priority is given to the information and analyses that are important from a human rights perspective to understand the direction the conflict is taking.
- In particular, the sections on Mediation and Protection Mechanisms and Errors and Omissions do not provide explanations and details about each step taken by the various actors over the years, but rather analyze the mechanisms involved and focus on some of the experiences reported in the documents consulted for this study, as well as the information PBI has gathered in interviews and in the field.
- At the same time, we make recommendations based on the conclusions of this study regarding the enforcement of human rights and deterrence of violence in this conflict (or others). These recommendations do not attempt to address the issues behind this conflict. These issues must be addressed by the

Guatemalan's involved.

Methodology

The method of research used for this study was to provide a narrative description of the conflict, but also to go beyond merely gathering and reporting the available data. An analysis was conducted of facts and information gathered both in documentary research as well as in the field, so that conclusions may be drawn and recommendations made. These conclusions will help to achieve one of the fundamental objectives of this study: to identify the lessons learned.

A detailed and thorough analysis of the entire course of this conflict is fundamental: developments, changes, setbacks, progress, etc., taking into account all of the actors involved and the interactions between them.

Information was gathered by two interrelated means:

- Analysis and systematic processing of documentary sources such as reports, messages, news, publications, etc.

- Semi-structured interviews with individuals involved in the conflict.

PBI's principles of non-violence, non-interference and non-partisanship are reflected in the objectives, methodology and preparation of this case study, as is our mandate: "To improve the situation of human rights in Guatemala and to contribute to the democratization process by providing an international presence. To support permanent political spaces for human rights defenders and civil society organizations suffering repression for their work."



THE CONTEXT

Brief Description of the Region

San Juan Sacatepéquez lies within the Department of Guatemala. Within its 242 km² there are 13 villages and 43 hamlets¹. According to a 2009 census, the population numbers about 350,000², and more than half live in rural areas. According to the Mayor of San Juan Sacatepéquez, Marta Sicán de Coronado, "about 82% of the town's population are ethnic Kaqchikel of the Mayan community, and the rest are mestizo"³. The town's economy is mainly based on the cultivation of flowers and the manufacture of furniture. The land is divided into small plots owned by farmers who use it for flower cultivation or subsistence agriculture. There are also large landowners, such as those in the hamlet of San José Ocaña, where the cement plant was built. According to those

1 San Juan Sacatepéquez, El municipio

<http://sanjuansacatepequez.net/index.php?showPage=202&cache>

2 Municipality of San Juan Sacatepéquez, 'Integración pública y social',

http://www.munisanjuansac.org/integracion_publica_y_social.html

3 Interview with Marta Sicán de Coronado, mayor of San Juan Sacatepéquez. San Juan Sacatepéquez, May 2009.

interviewed for this study, these lands were owned by a military officer who sold them and has since left the country. The majority of deeds list the owner as the “head of household,” which is a man, as a rule⁴.

Public services such as health and education are considered precarious and inefficient. For example, access to potable water outside of the urban centre is difficult. Nevertheless, San Juan Sacatepéquez is rich in natural resources and has granted seven concessions, two for the exploration and five for the exploitation of those resources⁵.

History of the Conflict

In 2006, the Guatemalan company CEMPRO (Cementos Progreso, S.A.) started building a quarry and a cement plant on a property known as San Gabriel Buena Vista located in the villages of Cruz Blanca, Santa Fe Ocaña, El Pilar I and II, Los Pajoques and San Antonio Las Trojes I and II. The Guatemalan company Productos Mineros S.A., a subsidiary de CEMPRO owned by the Novella Torrebiarte family⁶, holds an 80% stake in the project,

while the other 20% is held by the Swiss multinational company Holcim, the largest cement producer in the world⁷. Moreover, the project includes the construction of a 40km road through Xenacoj as far as the San Gabriel property, cutting through communal lands. The government has already granted permission for construction of the road which will link San Juan Sacatepéquez with the Inter-American Highway and will be financed by a public-private investment plan⁸. According to the Coalition of Indigenous and Campesino Organizations (CONIC), the local government of Xenacoj opposed the project after consulting with the community, and has



4 Interview with members of the San Juan Women’s Organization (AGIMS). San Juan Sacatepéquez, May 2009.

5 Information provided to PBI by the Guatemalan Ministry of the Environment and Natural Resources (MARN), Guatemala, May 2009.

6 El Observador No. 14, Guatemala, October 2008.

7 PBI Alert, Guatemala, July 2008.

8 <http://www.newsinafrica.com/noticia.php?idnoticia=2577>

refused to allow road-building machinery to pass through the town⁹.

In January 2007, several communities of San Juan Sacatepéquez asked the town government to hold a referendum on the construction of a cement plant. However, the referendum was delayed until finally it was cancelled by town officials. Consequently, the communities involved decided to hold the referendum through their local community development councils and community leaders (*alcaldes comunitarios*) without the backing of the town government. The referendum was held on 13 May 2007. While no official figures were available, organizers of the referendum say a total of 8,950 people participated and just four voted in favour of the project. When presented with the results, the Town Council pledged to consider them before granting any construction permits, but never did so, according to members of the communities holding the referendum¹⁰.

Since the referendum, residents of San Juan Sacatepéquez have reported numerous human rights abuses. According to a report by the Human Rights Ombudsman's Office (PDH in Spanish) there were numerous violations of the right to dignity, order, safety and equality committed by the National Civil Police (PNC)¹¹.

On 21 June 2008, a group of people tried to gain access to property owned by the cement plant in an attempt to block machinery from entering. According to reports from the communities, one member of this group was injured by the company's security personnel. A day later, in the early hours of 22 June 2008, a resident of the town, Francisco Tepeu Pirir, was found dead.

After the murder and in view of the rise in violence in San Juan Sacatepéquez, the government of Álvaro Colom declared a State of Prevention¹². The same day, about 1,000 police officers and 1,000 soldiers entered the community of San Antonio Las Trojes. The operation, witnessed by personnel of the Presidential Commission on Human Rights

9 Interview with Hermelinda Raxjal Méndez, CONIC delegate for San Juan Sacatepéquez. Guatemala, June 2009.

10 Memorial de la consulta comunitaria de buena fe presentada a la municipalidad por las comunidades en resistencia. San Juan Sacatepéquez, November 2007.

11 PDH, Acciones realizadas por la PDH en el caso Proyecto fábrica de cemento en el municipio de San Juan Sacatepéquez, Informe Ejecutivo Preliminar. Guatemala, June 2008.

12 Guatemalan Constitution, Article 151; Law on Public Order, Guatemala, 1965. The State of Prevention authorises the following measures: a) Restrictions on outdoor meetings, public demonstrations or other events, including of a private nature;

b) Limit on freedom of assembly to events with prior authorization. Participants who carry weapons or engage in violence are required to leave, and if they refuse the meetings or demonstration may be shut down immediately by authorities.

c) Only members of the security forces may carry weapons in the town in question.

d) Freedom of movement in vehicles is restricted, and any vehicles in the town in which a State of Prevention exists are subject to search, and drivers are required to state their itinerary.

(COPREDEH) and the Peace Secretariat (SEPAZ), resulted in the arrest of 43 people¹³. The State of Prevention remained in effect for 15 days, during which the PDH received various complaints alleging abuses by the security forces. The security forces reportedly demanded food from residents, restricted their freedom of movement, and committed offences against women. The PDH also received complaints of illegal detention and warrantless raids. The police and the army stayed in the area beyond the official end of the State of Prevention, 7 July 2008¹⁴.

In October and December 2008, three people were arrested and accused of murdering Francisco Tepeu Pirir. The three people arrested are members of indigenous communities opposed to the San Juan Project. They have remained in custody since their arrests. Due process has not been guaranteed for these individuals due to delays in the legal process¹⁵. Meanwhile, the family of the victim continues to wait for the case to be resolved and for those responsible to be brought to justice.

After the State of Prevention was lifted, a formal dialogue on the conflict was set up at the national level. Participating were the Office of the UN High Commissioner for Human Rights (OHCHR), the PDH, the Rigoberta Menchú Foundation, CONIC and CEMPRO. Mr. Jean-Pierre Villard, the Swiss ambassador at the time, and a representative of the German Embassy, also attended the talks as guests. Initially, no representatives of the communities were included in this dialogue. The purpose of these talks was to make progress in resolving the conflict. During the first two months after representatives of the communities were finally invited to participate, the talks broke off several times after the



During the first two months after representatives of the communities were finally invited to participate, the talks broke off several times after the

13 According to the Human Rights Commission of the Guatemalan Congress, these arrests were illegal because they were made a day before the State of Prevention was announced in the state's Official Gazette. Prensa Libre, Denuncian abusos de la PNC en San Juan Sacatepéquez, Guatemala, 2 July 2008.

14 According to women interviewed in the communities opposing the plant, police remained there after the State of Prevention was lifted and this presence was still evident in May 2009 with vehicles coming and going, and helicopters flying over the area.

15 PBI Bulletin No. 24. Guatemala, 2011.

community representatives complained that their positions and demands regarding the San Juan project were not being taken into account.

Despite the results of the community referendum and the municipal government's pledge to take them into account before granting permits, the construction works for the cement plant went forward.

On 12 February 2009, a violent incident connected with the cement plant left seven indigenous women injured on a bus. The women involved filed a complaint with the state MP (state prosecutor's office) in San Juan Sacatepéquez, stating the following: "Armed men entered the bus and separated cement plant workers from members of the community opposed to the plant. Once the latter (those who opposed the plant) were identified, the men fired shots, beat the women, doused them with petrol and threatened to set them afire."¹⁶

In March 2009, representatives of the "12 communities in resistance"¹⁷ demanded an end



¹⁶ Interview with Carmela Curup, of the Guatemala Association of Mayan Lawyers and Notaries (AANMG). Guatemala, May 2009; Prensa libre, Encapuchados interceptan e incendian autobus," Guatemala, 13 February 2009.

¹⁷ The "12 communities in resistance" refers to communities and individual human rights defenders directly affected by the San Juan Project who have stated their opposition to it. This is the way in which these communities and individuals sign off on press releases and public statements, and makes clear the fact that the overwhelming majority of people living in these communities are critical of the San Juan Project, as evident in the referendum results and the public activities. Although there are nuances, very strong opinions, as well as individuals in favour of the San Juan Project and divisions in the communities, we consider the term to be the most accurately reflects the reality that PBI has observed in the field.

to the arrests of their leaders, suspension of mining activities during the talks, and for progress on an environmental impact study to be conducted by an international company. Lawyers representing the communities¹⁸ said they were told by SEPAZ that CEMPRO disagreed with these assertions, and later no further meetings were called and the talks were discontinued without results.

This boycott of the talks by CEMPRO was followed by a mobilization of civil society groups and by actions taken by legal representatives of the 12 communities in resistance. Meanwhile, at the international level, the International Labour Organisation's Committee of Experts on the Application of Conventions and Recommendations asked the Guatemalan government in 2010 to suspend construction of the plant.¹⁹

The people arrested during the State of Prevention were freed after several months in jail. In October 2009, the government ordered the Ministry of Defence to withdraw troops stationed at the CEMPRO facilities in San Juan Sacatepéquez²⁰. This move came after

campesino and indigenous organizations had staged several days of protest throughout the country while negotiations continued between their representatives and President Álvaro Colom in a national dialogue led by former Guatemalan congressional president Catalina Soberanis and former URNG leader Arnaldo Noriega.

In an interview with PBI in April 2012, CEMPRO officials stated that the company had suspended works on the cement plant in 2009²¹.



18 Press release issued by Carmela Curup of the Guatemala Association of Mayan Lawyers and Notaries (AANMG). Guatemala, August 2012.

19 ILO, Report of the Committee of Experts on the Application of Conventions and Recommendations, Indigenous and Tribal Peoples. International Labour Conference, 99th Session, 2010. Geneva, February 2010.

20 Prensa Libre, Gobierno no acepta todas las peticiones, Guatemala, 16 October 2009. http://www.prensalibre.com/edicion_impresa/PDF_16102009_PREFIL20091016_0001.pdf

21 Interview with management of company relations and sustainable development at CEMPRO, Guatemala, April 2012.

Nevertheless, the 12 communities in resistance of San Juan Sacatepéquez continue to report many attacks and threats from company employees and others. At the same time, there was a hostile public defamation campaign against these opponents. Moreover, procedures have begun for the construction of a road that was rejected by the communities because it does not correspond with their infrastructural needs.

Several international bodies have played an important role in bringing to light the human rights situation of the communities involved in this conflict. For example, James Anaya, UN Special Rapporteur on the Rights of Indigenous People, visited San Juan Sacatepéquez in June 2010 and issued a report on the situation. In March 2010, the UN Commission on the Elimination of Racial Elimination (CERD) expressed its "grave concern about growing tensions with indigenous peoples related to the exploitation of natural resources, particularly the serious situation caused by the installation of a cement quarry."²² According to CERD, the cement plant project involves "the implementation of a project by force despite the rejection of it by the community."²³ The Committee repeated its concern that the Guatemalan government continued to permit the dispossession of lands historically belonging to indigenous peoples and duly recorded as such in the appropriate public registers. It was also concerned that the right to informed consent was not being respected.



In April of 2011, the German agency for International Development (GIZ) and

22 Centro de Políticas Públicas y Derechos Indígenas, Guatemala. La ONU denuncia el despojo de tierras a indígenas en Guatemala, March 2010,

<http://prensa.politicaspublicas.net/index.php/alatina/guatemala-la-onu-denuncia-el-despojo-de-tierras-a-indigenas-en-guatemala>

23 Prensa Libre, Crítica de la ONU, Guatemala, 13 March 2010.

CEMPRO signed an agreement to initiate a “pilot project for a public–private alliance to develop a system to address conflicts.”²⁴

According to GIZ, “the cement factory issued an offer to negotiate directed at GIZ, asking if they could be present during the talks. GIZ (through its PCON Project) decided to facilitate workshops for both sides by means of a public–private project. [...] GIZ provided extensive information to the communities about the two steps it intended to take, and proceeded to conduct the workshops. Regarding CEMPRO’s offer to negotiate, GIZ made and distributed photocopies of it to all of the communities. [...] The result [of the negotiations] was a “five–point plan” that both sides were to share and consult with their respective organizations. Unfortunately, this did not proceed as agreed and some members of the communities learned about it through the press.”²⁵

Some members of the communities involved confirmed that they indeed learned of the existence of this arrangement through the news media. As a result, they contacted the German ambassador and asked him to visit San Juan and verify the situation himself.



24 El Metropolitano. Abril 2011.

http://carretera-a-el-atlantico.elmetropolitano.com.gt/es/52/la_region/742/GIZ-y-Cempro-firman-convenio.htm

25 Letter from GIZ to PBI, translated by PBI, Bonn, 31/08/2012 and 02/10/2012.

The ambassador visited the San Juan Sacatepéquez communities three times (in June, August and November of 2011) and met directly with residents, especially during the November 2011 visit.

The news media have also played an important role in the course that this conflict has taken. Since the State of Prevention, the Guatemalan press has published several opinion columns disparaging the opposition of the communities and the civil society organizations advising and supporting them²⁶. The 12 communities involved have complained that defamatory statements against them in the press have increased since February 2012.

Concerns About the Impact of the San Juan Project from a Human Rights Perspective

Members of the communities located around the San Juan project have expressed their concerns at various times about the impact that the work being developed by the cement company and its plans have had on them. This impact mainly concerns the ability of the communities to exercise the individual and collective human rights recognized by Guatemala. In 2009, PBI highlighted these concerns, illustrating the problem by quoting women living in San Juan Sacatepéquez in a special report.²⁷ Some of the effects were observed directly by PBI during a visit to the area.²⁸

• Impact on Environmental, Economic, Social and Cultural Rights

The environment and natural resources. Residents have informed us that they fear that consumption by the plant once it is operating will make the existing **water** shortage worse; dust emissions in the **air** will increase due to digging and the transport of material during the preliminary phase prior to construction or during operation of the quarry; there are also concerns about the fertility of the adjacent **lands**; and there are worries about the impact on **biodiversity** and the ecosystems.

Health effects. "The children have become ill and some have developed a cough and other respiratory problems. Some have lesions on the skin. According to the local physician, these problems are directly attributable to the cement plant."²⁹

26 Some of these articles were: Humberto Preti, *Está en agenda*, Prensa Libre. Guatemala, 28/06/2008; Alfredo Kaltschmitt, *Una mentira mil veces*, Prensa Libre. Guatemala, 04/07/2008; Humberto Preti, *Entre abusos y desmanes*, Prensa Libre. Guatemala, 19/11/2011; Humberto Preti, *Pobre nuestra Guatemala*, Prensa Libre. Guatemala, 18/02/2012.

27 See PBI monograph, "Guatemala's Indigenous Women in Resistance: On the Frontline of the Community's Struggle to Defend Mother Earth and her Natural Assets." Guatemala, May 2010. The references cited below in "Impacts on Economic, Social and Cultural Rights" are excerpts from this report based on interviews conducted in 2009.

28 Visit by PBI to the area affected by the cement plant project of San Juan Sacatepéquez. Guatemala, May 2009.

29 See PBI monograph, "Guatemala's Indigenous Women in Resistance: On the Frontline of the Community's Struggle to Defend Mother Earth and her Natural Assets." Guatemala, May 2010.



Damage to Crops and the Local Economy. “Before, we grew maize and coffee, but not anymore,” said one woman PBI interviewed. “The dust affects the crops because the coffee plant is covered with dust and does not bear fruit. The same happens with the flowers. There is so much dust on the plastic covering protecting the flowers that the sun does not pass through. We have to clean them each week to avoid losing the crop.”³⁰

Impact on homes or infrastructures. “In the community of Santa Fe Ocaña, the houses tremble when the workers are digging in the mine with the machinery.”³¹

Ancestral values of the Mayan people. From the perspective of the Maya cosmivision, the exploitation of a hill is something that is completely wrong,” said one woman. “In the case of Las Trojes, they are defending the Machón Hill.”³²

It is essential to understand that various international and regional mechanisms and instruments cover and protect the human rights referred to in the concerns expressed and effects mentioned above: environmental, health, food and adequate house – in short, a decent life; the right of indigenous peoples to freely pursue their own economic, social and cultural development and to preserve and strengthen their own institutions for this purpose – expressly consolidating the right of indigenous peoples to self determination – to safely avail of their own means of subsistence and development (or to fair and equitable compensation if they are dispossessed of them) and to freely carry out all of their traditional and other types of economic activities, to improve their economic and social condition overall, to practice and revitalize

30 Ibidem.

31 Ibidem.

32 Ibidem.

their cultural traditions and customs, to preserve and protect the environment and the productive capacity of their lands or territories and resources that they have traditionally owned, occupied, used or acquired. They have the right to possess, use, developed and control the lands, territories and resources due to traditional ownership or other types of traditional occupation or use, as well as lands they have acquired in another manner³³.

The Guatemalan government, as well as others that have ratified international agreements that protect these rights, have undertaken to respect and fulfil them in their own countries and regions, but also universally. Regarding economic, social and cultural rights, the governments are obliged to take the steps necessary to gradually fulfil all of these rights. The Guatemalan Peace Accords also include the Guatemalan government's commitments regarding the recognition and exercise of the aforementioned rights, especially the Accord on the Identity and Rights of Indigenous Peoples, and the Accord on Socioeconomic Aspects and the Agrarian Situation.

● **Impact on Civil and Political Liberties and Rights**

In addition to the concerns expressed above, the 12 communities in resistance have also reported on many occasions to various bodies in Guatemala and abroad about a lack of respect for human rights. Some of these cases have been brought to light by Guatemalan institutions such as the PDH or Constitutional Court, and by UN Special Rapporteur James Anaya³⁴. The majority of these cases are mentioned above in the "History of the Conflict" and again in the Annex "Summary of Threats and Security Incidents," but we summarize the most important of these matters below, as they have an impact on the exercise of civil and political rights and freedoms.

Incomplete information and lack of informed consent from the communities involved. As representatives of the communities have repeatedly stated, one of the causes of the conflict in San Juan Sacatepéquez is the lack of complete and detailed information about the plans for the cement plant. The absence of a community referendum prior to starting the constructions works, as required by ILO Convention 169 on Indigenous Peoples and Tribes in Independent Countries, ratified by Guatemala, and by Guatemalan's own municipal code. According to the ILO, "it is the government's obligation to ensure that the indigenous peoples are consulted in compliance with the Convention,

33 United Nations Declaration on the Rights of Indigenous Peoples, UN General Assembly, 10/12/2007. Article 26.

34 ONU, Report of the Special Rapporteur on the Human Rights Situation and Fundamental Freedoms of Indigenous People, Mr. James Anaya. Addition. Preliminary Note on the Application of the Principle of Consultation with Indigenous Peoples in Guatemala in the Case of the Marlin Mine, 8 July 2010,

http://www2.ohchr.org/english/bodies/hrcouncil/docs/15session/A.HRC.15.37.Add.8_en.pdf; Centro de Políticas Públicas y Derechos Indígenas, op.cit.

and not private individuals or companies.”³⁵ In addition, the prior, free and informed consent of the affected communities cannot be considered to have been granted in this case since the result of the community referendums in the town was the overwhelming rejection of the San Juan project.

Reports of attacks, violations of the right to life, safety, dignity, gender equality and the ban on discrimination. Since the community referendums, residents of San Juan Sacatepéquez have reported numerous rights abuses that have worsened the conflict. The PDH received many complaints in this regard, particularly during the 2008 State of Prevention, but the complaints have continued. Since the referendum was held, residents of San Juan Sacatepéquez have reported numerous rights abuses that have helped worsen the conflict. The PDH confirmed that there were violations of the right to dignity, order and security, as well as the right to equality.³⁶ Tensions between the company and the communities, and within and between the communities themselves, have continued to rise, resulting in several unsolved murders.³⁷

Legal persecution of individuals involved in the defence of territory and natural resources. Right from the start, the organised opposition in San Juan Sacatepéquez has publicly denounced the campaign of legal persecution against them. This situation became worse during the State of Prevention decreed in June 2008. A total of 83 people from organization were arrested and held in prison for more than 40 days. Arrest warrants issued against five others three years ago have not been executed but have also not been revoked, and four people are awaiting trial. Three of them have been held in jail for more than three years without trial. One resident of San Juan Sacatepéquez, Abelardo Curup, was tried and sentenced to 150 years for the murder of three people. The conviction has been called into question by several human rights organizations.³⁸

Impunity and unequal access to justice. Residents of the 12 Kaqchikel communities in resistance filed 36 complaints against employees and others associated with the San Juan Project for threats, assault and battery, attempted kidnapping and attempted murder.³⁹ One of these cases made it to trial, with two people convicted of attempted

35 ILO, Report of the Committee of Experts on the Application of Conventions and Recommendations, Indigenous and Tribal Peoples. International Labour Conference, 99th Session, 2010. Geneva, February 2010.

36 PDH, Informe Ejecutivo Preliminar. Acciones realizadas por la PDH caso proyecto fábrica de cemento municipio San Juan Sacatepéquez. Guatemala, 4 July 2008.

37 PBI Alert. Guatemala, July 2008; PBI Alert. Guatemala, June 2010; PBI Alert. Guatemala, March 2011. http://www.pbi-guatemala.org/field-projects/pbi-guatemala/latest-news/?no_cache=1&L=3

38 Human Rights Commission in Washington, “Criminalization of Human Rights Defenders and Assassinations on the Rise,” February 2012.

http://www.ghrc-usa.org/Publications/El_Quetzal/Numero11.pdf

39 Documentation of complaints by the Guatemalan Association of Mayan Lawyers and Notaries, which legally represent the San Juan communities.

murder.⁴⁰ After a visit to San Juan Sacatepéquez, the aforementioned UN Special Rapporteur, James Anaya, reported his concern for the “various judicial proceedings initiated against members of indigenous communities for acts of civil protest against company activities.” The special rapporteur noted the speed with which these cases had been brought to trial compared to the failure to address the complaints filed by the communities in relation to violations of their rights, and said this can be interpreted as a “pattern of discrimination in access to justice.”⁴¹

Campaigns to Discredit the Communities and Social Activists. In addition to the aforementioned opinion columns discrediting the communities, there have also been radio and television programmes along these lines. On five occasions, flyers were distributed in San Juan Sacatepéquez (including an e-mail sent abroad to international bodies) to disparage, insult and intimidate individuals opposing the construction of the plant.

Divisiveness within the society, communities and families. In the communities affected by the construction of the cement plant, the population has been split into two groups: those in favour and those against CEMPRO’s plans. This is one of the concerns that is often cited by community leaders that is linked to the presence of the cement company and its activities.

Restriction of Basic Liberties (social control). “On some public roads, such as those leading to Las Trojes I and II (where the cement plant is located), residents are asked for identification”, said one woman we interviewed. “Each week, helicopters fly over the villages, and the children, who are already traumatized by the experience during the State of Prevention in June of 2008, hide because they are afraid it is happening again. We are sure that they know where the leaders of the community live. Once, a representative



40 PBI field work in international observation.

41 UN, Report of the Special Rapporteur on the human rights situation and fundamental freedoms of indigenous peoples, Mr. James Anaya. Addition. Preliminary note on the application of the principle of consultation with indigenous peoples in Guatemala and the case of the Marlin Mine, 08/07/2010. http://www2.ohchr.org/english/bodies/hrcouncil/docs/15session/A.HRC.15.37.Add.8_sp.pdf

of a state institution came and showed us aerial maps of our homes. They know where we live".⁴²

Increasing Violence. According to one resident we interviewed: "Since the cement plant arrived, there have been more deaths and there has even been more domestic violence."⁴³

In this case, by ratifying the various international and regional instruments, Guatemalan government has undertaken to recognize and guarantee the rights and liberties referred to in the complaints filed by the 12 communities in resistance. These include the right to life, physical and mental integrity, security, and human dignity; the right to be free from discrimination when exercising those rights, the right to gender equality, access to justice, freedom of movement; and the right to prior, free and informed consent, which guarantees that indigenous peoples will be consulted⁴⁴ and that they will be involved in decisions on issues that affect their rights, through their own representatives and in accordance with their own procedures. This also includes the right to self determination of indigenous peoples. It includes the right to freely determine their own political condition, the right to preserve and strengthen their own political and legal institutions and the right to full political and social participation, the right to establish and elaborate priorities and strategies for the development and use of their lands or territories or other resources, and finally their collective right to freedom, peace and security as indigenous peoples.⁴⁵



42 PBI, "Guatemala's Indigenous Women in Resistance: On the Frontline of the Community's Struggle to Defend Mother Earth and her Natural Assets," Guatemala, May 2010.

43 Ibidem.

44 United Nations Declaration on the Rights of Indigenous Peoples, 13/09/2007. Article 32, Par. 2. "States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources."

45 These instruments of international human rights law include the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights (ICCPR), the UN Declaration on the Rights of Indigenous Peoples, ILO Convention 169 on Indigenous and Tribal Peoples in Independent Countries, and the American Convention on Human Rights (ACHR).

“Indigenous peoples have the right to access to and prompt decision through just and fair procedures for the resolution of conflicts and disputes with States or other parties, as well as to effective remedies for all infringements of their individual and collective rights. Such a decision shall give due consideration to the customs, traditions, rules and legal systems of the indigenous peoples concerned and international human rights”.⁴⁶

Their individual or collective environmental, economic, social and cultural or civil and political rights, their defence and protection, or opposition to activities that affect or endanger such rights, are themselves rights that are recognized and protected internationally.⁴⁷

The concerns and the opinions of the 12 communities in resistance must be analyzed in the context of human rights. From this perspective, they are concerned about legitimate rights and commitments recognized nationally and internationally. Thus, a collective process was developed – and carried out with other communities and solidarity movements around the country – to defend and demand respect for these rights. It is the processes of social opposition to activities that violate, restrict or endanger human rights that are the cornerstone of the efforts to preserve those rights. Those who are involved in these processes become important actors who participate in the global movement in defence of human rights from a local and community level. In view of the concerns mentioned in this section, it is necessary to take the human rights perspective into account in these contexts in which the economic interests and plans of state and non-state actors oppose or ignore the standpoint of the communities, which is supported by recognized rights and by domestic and international law.

46 United Nations Declaration on the Rights of Indigenous Peoples, 13/09/2007, Article 40.

47 UN Declaration on Human Rights Defenders, 08/03/1999.

Table: THE COMMUNITY REFERENDUM



Legislation

Several international legal instruments ratified by Guatemala mention the right of indigenous peoples to prior informed consent. The two that most clearly state these rights are the United Nations Declaration on the Rights of Indigenous Peoples, and ILO Convention 169 on indigenous peoples and tribes in independent countries.

The United Nations Declaration on the Rights of Indigenous Peoples includes more than 20 provisions reaffirming the right of indigenous people to take part in decision-making.⁴⁸ Article 19 specifically states that States “shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.” Moreover, Article 32 states that “indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources.”

The ILO calls the principles of participation and consultation “the cornerstone” of Convention 169.⁴⁹ Convention Article 6 states that governments must “consult the peoples concerned, through appropriate procedures and in particular through their representative institutions, whenever consideration is being given to legislative or administrative measures which may affect them directly” and that “consultations carried out in application of this Convention shall be undertaken, in good faith and in a

48 UN, Human Rights Council, Preliminary report on the study on indigenous peoples and the right to participate in decision-making processes. Report. Report of Experts on the Rights of Indigenous Peoples.. Geneva, July 2010.

49 ILO, Monitoring Indigenous and Tribal Peoples’ Rights Through ILO Conventions, A compilation of ILO supervisory bodies’ comments 2009–2010.⁵¹ Guatemalan Constitution, Article 44

form appropriate to the circumstances, with the objective of achieving agreement or consent to the proposed measures.”

Other international instruments ratified by Guatemala that cover these rights are: the International Covenant on Civil and Political Rights (articles 1 and 25); the International Covenant on Economic, Social and Cultural Rights (Article 1); the International Convention on the Elimination of All Forms of Racial Discrimination, and the UN Declaration on the Right to Development adopted by the General Assembly in 1986.⁵⁰ All of these instruments of international human rights laws prevail over domestic law under the Guatemalan Constitution.⁵¹

Nevertheless, these rights are not only backed internationally, but under Guatemala law as well: in the Guatemalan Constitution (articles 66 and 44); the Peace Accord on the Identity and Rights of Indigenous Peoples (section F, Article 6 III); the Municipal Code (articles 63, 65 and 66) and the Development Councils Law (Article 26).⁵²

The Constitutional Court (CC) and the Good Faith Community Referendum

In late 2009, two years after the referendum was held, the CC heard a case brought by the communities of San Juan Sacatepéquez in which they alleged that the municipal resolution cancelling a previously scheduled referendum violated their constitutional rights. In a ruling on 21 December 2009, the CC recognised the right to be consulted as a collective right of the indigenous peoples, which in turn forms part of the rights covered by the Constitution, and said the state is therefore obliged to take the appropriate steps to guarantee it (legal, verification measures, etc.). However, the court also said that if no agreements are reached as a result of the consultation and dialogue “the dissent of the indigenous peoples does not bind the government bodies responsible for such projects.”⁵³ In practice, according to the CC, the government must guarantee the right to be consulted of the San Juan communities, but the results of the same are not binding for the state institutions responsible for issuing the permits necessary for the exploration and exploitation of natural resources.

Regulation Proposed by the Colom Government for the Consultation Process and the Response of Civil Society

In February 2010, consistent with the opinion of the CC, the government publicly presented a draft of a regulation for the consultation process provided for in ILO

50 Copenhagen Initiative for Central America and Mexico (CIFCA), “Xalalá Project, Development for All?” Brussels, November 2008.

51 Guatemalan Constitution, Article 44.52 CIFCA, op.cit.

52 CIFCA, op.cit.

53 Miranda, U.G., Comisión Pastoral Paz y Ecología (COPAE), La consulta: es una obligación del Estado y un derecho colectivo de los pueblos indígenas de rango constitucional, undated, <http://resistencia-mineria.org/espanol/files/documents/ResumenSentenciaSJ.pdf>

Convention 169. However, public opposition to the proposed regulation was expressed in many communities and civil society activities.⁵⁴ The main arguments against the new regulation were:

- It did not take into account the opinions of indigenous peoples or the mechanisms of consultation and decision-making that already exist and have guided the 59 referendums that have been carried out so far. The Pastoral Peace and Ecology Commission (COPAE) has written: "On many occasions, the bodies overseeing international human rights treaties have proposed a consultation about the consultation. This is to say, the state should consult about how to consult the indigenous peoples."⁵⁵
- Its spirit, direction and ultimate purpose is to diminish, restrict and distort the spirit of consultation, pushing aside the right to consent, ancestral territorial claims, the self determination of the people, and other fundamental rights set forth in various international treaties.⁵⁶ In this respect, the proposal was denounced for failing to fulfil the rights of indigenous peoples to make decisions about their own economic, social, cultural, political, territorial and environmental future.
- The legality of the regulation was also questioned. Under Article 66 of the Guatemalan Constitution, the state is obliged to recognise, respect and promote the ways of life, customs, traditions and forms of social organization of indigenous peoples. Article 46 established the general principle that human rights treaties and conventions approved and ratified by Guatemala prevail over domestic law. Therefore, opponents of the new regulation argued that the Guatemala government cannot legitimately make laws restricting rights recognised in treaties and conventions.
- In addition, the new regulation nullifies the results of previous referendums conducted by the indigenous peoples.

On 23 March 2011, the Council of Western Peoples (CPO) sought an injunction from the Constitutional Court to block the proposed regulation. Two months later, the CC

54 Loarca Carlos, *El Estado de Derecho de Álvaro Colom vs. Consultas de Buena Fe*, Enfoque, Year 2, No.15, Guatemala, 30 March 2011.

55 COPAE, *Consulta Comunitaria. Ejercicio del derecho de libre determinación de los Pueblos Maya*, undated, <http://copaeguatemala.org/1.html>.

56 See 'Legislation' section.

granted a temporary injunction in favour of the petitioners. Finally, on 1 December 2011, the CC issued a final ruling in favour of the CPO, "due to the fact that the procedure followed by the government of the Republic was not broad enough or adequate because it did not include the active participation and consultation of the indigenous peoples." Thus, the new regulations were struck down.⁵⁷

By March 2012, as this study was being prepared, 59 community referendums had been carried out in Guatemala. The procedure combined traditional forms of consultation of the indigenous peoples themselves, following current laws at the national and international level. Although the results were not taken into account in the government's policies and were not legally binding, the referendums were an important process in which the communities were able to gather information, organize and debate among themselves, and thus strengthen the social fabric. The referendums were carried out peacefully and democratically.

57 COPAE, op.cit.



MEDIATION AND PROTECTION MECHANISMS

Community Initiatives

The Kaqchikel communities of San Juan Sacatepéquez and their authorities have organised and taken part in many initiatives for the non-violent resolution of the conflict, seeking to reach agreements for the benefit of the population.⁵⁸ As mentioned above, there was a community referendum in 2007, and there were several roundtable negotiations with the government facilitated by the OHCHR. According to the communities and to institutions such as the PDH, these talks ultimately failed due to factors that undermined trust in the process,⁵⁹ including the unequal balance of power between the parties.⁶⁰

Other initiatives of the communities included challenges to environmental impact studies. Some observers have noted that the Ministry of the Environment and Natural Resources

58 PBI, "Guatemala's Indigenous Women in Resistance: On the Frontline of the Community's Struggle to Defend Mother Earth and her Natural Assets," Guatemala, May 2010.

59 Prensa Libre, PDH critica incumplimiento, Guatemala, 13/10/09

60 Interview with CEMPRO company relations and sustainable development management, Cit.

(MARN) and the Ministry of Energy and Mines (MEM) do not have the personnel, logistics and funds necessary, which limits their ability to control and follow up on these environmental impact studies. This leads to a situation of uncertainty about the actual impact that mining projects have on the surrounding communities.⁶¹ In the case of the San Juan Project, an expert hired by the OHCHR said the environmental impact study does not include a cultural component, although the area in which the project is being developed is overwhelmingly indigenous.⁶²

Table: SOCIAL MOBILIZATION

In addition to negotiations, court proceedings, referendums and direct contacts with Guatemalan authorities, opponents of the San Juan project have held public events to express their concerns and demands, and to demonstrate the widespread support they have. They have made their demands known to authorities and many sectors of Guatemalan society by holding protest marches and press conferences, distributing information and staging peaceful demonstrations. They do this in an attempt to counter the lack or distortion of information in the press. For example, 5,000 to 10,000 people from 12 communities participated in a march to the capital in July 2009.⁶³ In January 2012, about 7,000 people gathered before the municipal offices of San Juan Sacatepéquez to talk with the mayor, as PBI volunteers stood by as observers.⁶⁴ In addition, the communities continue to conduct audits of the work of Cementos Progreso on the cement plant project, evaluating the consequences for the population and its means of subsistence, as well as the impact on the environment. The communities continue to file complaints with state authorities about the violation of the individual and collective rights of indigenous people, and about attacks, threats and intimidation tactics. The Guatemalan Association of Mayan Lawyers and Notaries (AANMG) has also been the target of threats and attacks for its work in providing legal advice to the communities in the many court proceedings.

61 University of Rafael Landívar and the Agricultural Institute, Recursos Naturales y Ambiente, Perfil ambiental de Guatemala 2008–2009: las señales ambientales críticas y su relación con el desarrollo. Guatemala, 2009.

62 Guatemalan Association of Mayan Lawyers and Notaries (AANMG), Carta de la Asociación de Abogados y Notarios Mayas de Guatemala (AANMG) a la empresa Holcim. Guatemala, 31 January 2012.

63 See La Hora, 13 July 2009 and

<http://prensa.politicaspUBLICAS.net/index.php/latina/?p=5874&more=1&c=1&tb=1&pb=1> e

64 PBI Monthly Information Packet No. 100. News About our Work. Guatemala 2012.

In short, it is evident that the 12 communities of San Juan Sacatepéquez have pursued various political, social and legal avenues in opposing the cement plant so that their opinions may be heard and respected, and to find a non-violent solution to the conflict and improve their own security.

Initiatives of CEMPRO

CEMPRO has taken part in the dialogues arranged by the government and initiated a project with GIZ in 2011 for conflict resolution.⁶⁵ According to information provided on its website, CEMPRO has ordered additional environmental impact studies and has planned measures to mitigate the expected impact when the cement plant is operating. It has invited San Juan residents to visit the San Miguel cement plant in Sanarate.⁶⁶

Initiatives of Guatemalan Authorities and the International Community

The Ministry of Labour and Social Welfare was responsible for arranging the roundtable dialogues in 2008. Other state bodies taking part in the talks were the Ministry of Energy and Mines, as well as the PDH, which also documented the human rights violations committed during the State of Prevention.

Catalina Soberanis, who was the coordinator of the National System of Permanent Dialogue at the time, also intervened at certain stages of the process on behalf of President Álvaro Colom, particularly at a meeting in October 2009 held with several representatives of rural organizations to address the San Juan Sacatepéquez conflict. At this meeting it was agreed to establish "an independent body" to certify the environmental impact studies on the cement plant,⁶⁷ and the withdrawal of a military outpost at the CEMPRO facilities.⁶⁸



65 See "Context" section.

66 Cementos Progreso, El proyecto San Juan cumple con todos los requerimientos legales, October 2009. http://208.56.255.197/main.php?id=36&show_new=1&id_area=82

67 Siglo XXI, Revisarán estudios de impacto ambiental, Guatemala, October 2009

68 El Periódico, Gobierno logra tregua de 25 días con dirigentes campesinos, Guatemala, 16/10/2009

In addition, some international institutions have played an important role. The OHCHR, the Swiss ambassador, and a representative of the German embassy, sat in on the aforementioned roundtable talks. Other international missions have held meetings with representatives of the community and the company. They have also observed meetings between the community and the company, made visits to the communities, spoke with the MP's office, prepared reports on the conflict and observed public hearings.

It is also important to underscore the aforementioned visit to San Juan Sacatepéquez in 2007 by James Anaya, special rapporteur on the rights of indigenous peoples.

The Role of PBI

Since 2009, PBI has been providing accompaniment for members of the 12 communities in resistance of San Juan Sacatepéquez directly affected by the San Juan Project. The main objective of the communities is the defence of their land, territory and natural resources in the area. Several of its members have received threats and have been persecuted for their opposition to the project, and have asked PBI to accompany them. The conditions of this accompaniment are: a physical presence; contact with Guatemalan public authorities and the international community in Guatemala and abroad, and the dissemination of information. Thirty years of experience with accompaniment and observation teams in various countries has taught us that using all of the aforementioned



tools increases the level of protection for human rights defenders and helps promote the peaceful resolution of conflicts.

1. Physical presence. PBI volunteers are occasionally present in the communities. In exceptional situations, we have provided 24-hour physical presence for San Juan communities who request it for fear they might be attacked after receiving threats. We have also been present at peaceful marches and demonstrations as international observers, and have provided moral support to the people who have been the target of threats or intimidation in the communities.

2. Contact with domestic authorities and the international community. We have held numerous meetings with a wide variety of authorities in the region and in the capital to address the problems and concerns in San Juan, including key Guatemalan authorities such as the PDH, the Presidential Commission on Human Rights, the National Dialogue Council, MARN, MEM, and the Interior Ministry. We have also met with the diplomatic corps and the foreign ministries of European countries, and with the OHCHR and various NGOs in several European countries, especially in Switzerland.

PBI also facilitated two speaking tours on the matter, one in Spain in late 2010 by a representative of the 12 communities in resistance. The second tour was made by two members of the communities in Switzerland, the Netherlands and Germany

in early 2012. During these speaking tours, the participants met with government officials of the countries visited, with the staff of various UN bodies, and with civil society members and scholars. At these meetings, they explained their main concerns and the precarious security situation of the San Juan communities. They also explained their requirements for human rights support and protection.

3. Dissemination of information. The PBI-Guatemala Project has published and distributed specific information about the accompaniment of those involved in defending territory and natural resources in the San Juan communities and the aforementioned organizations. These publications are the following, which are available on PBI's website:⁶⁹

✦ Information in Monthly Information Packet (MIP) since 2008



⁶⁹ <http://www.pbi-guatemala.org/>

covering the monthly progress of the accompaniment and international observation work in the San Juan communities.

- ✦ Several articles in the regular PBI-Guatemala bulletins between 2009 and 2011 (numbers 18, 20, 21 and 24).
- ✦ A special report published in 2010 studies the role of indigenous women in social processes in the defence of land, territory and natural resources. One of the three cases studies in this report involves the women of San Juan Sacatepéquez. In 2011, we presented this report and its results in San Juan Sacatepéquez with the participation of both women and men, and organised several other activities for a public presentation.
- ✦ Four alerts were published (2008, 2010, 2011 and 2012) regarding alarming situations in San Juan Sacatepéquez. An Alert is an extraordinary mailing to report on violations or troubling situations concerning human rights in Guatemala. The Alert is a single-page of information distributed to individuals, organizations and institutions who have expressed their support for PBI-Guatemala. It is prepared under the same principles of non-violence, non-interference and non-partisanship as all PBI documents.



ERRORS AND OMISSIONS

Lack of Prior Informed Consent

After analysing the course this conflict has taken, the problems become evident. The amount of information provided by the government about the project has been sorely lacking and the communities have not been sufficiently consulted prior to issuing permits and allowing the quarry to be opened, which was the first step in building the plant. This was the origin of the conflict and is cited repeatedly in the documents and interviews used for this study. A representative of CEMPRO has even acknowledged that it committed an error in failing to “come to the communities much earlier and talk with them. You have to talk with them before receiving the permit [...], always accompanied by the government. The company cannot go alone, this is a fatal mistake.”⁷⁰ This representative also said the company should have “gone to the traditional leaders, the elders, the indigenous mayors,

⁷⁰ Interview with management of company relations and sustainable development at CEMPRO, , Cit.

and not so much the development councils or municipal representatives, but where more work needs to be done is in the negotiations and the talks with indigenous authorities. You have to reach understandings and agreements with them and start the process from there.”⁷¹

Within a more general framework, and in reference to the regulation proposed by the government in February 2010 for the consultation process, representatives of the 12 communities we interviewed for this study, as well as the staff of diplomatic missions in the country, refer to the ruling of the Constitutional Court that the procedure was not broad enough or adequate, because it did not take into account the active participation of indigenous peoples, nor were they consulted. In this regard, the CEMPRO representative said “the previous government administration made an attempt [to regulate the consultation process] but failed [...] so there must be dialogue, negotiations. The president reaches an agreement on a regulation but it is useless if there is no consultation, we are extremely aware of this. There must be consensus and consultation.”⁷² One member of the diplomatic corps we interviewed found it ironic and paradoxical that the government proposal to regulate the consultation processes for the indigenous people did not itself involve their participation and consultation.

Declaration of the State of Prevention

Another error, according to most of the individuals involved in the process was the procedure followed for declaring the State of Prevention. CEMPRO stated that it “was an error to send so many police officers and soldiers. That is useless. You have to start with more negotiation and dialogue.”⁷³ “When the security forces have to maintain order in indigenous communities or in poor, ladino or mestizo areas, what they practice is violence or abuse of power,” wrote a group of civil society organizations in a report to the UN Special Rapporteur on the rights of indigenous peoples.⁷⁴ María Eugenia Morales de Sierra, assistant to the Guatemalan Human Rights Ombudsman at the time, shared the same opinion, reporting “serious violations of basic rights by the security forces in the communities of San Juan Sacatepéquez.”⁷⁵

71 *Ibidem.*; see also: National Extraordinary Commission for Transparency, Segundo informe y final segunda parte. Proyecto planta cementera San Juan Sacatepéquez, municipio del Departamento de Guatemala, November 2011. <http://www.comision-transparencia.info/wp-content/uploads/2011/11/Segunda-Parte-Segundo-Informe-y-Final.pdf>

72 *Ibidem.*

73 *Ibidem.*

74 CONAVIGUA, MOJOMAYAS, CUC, WAQIB'KEJ, representatives of the 12 San Juan Sacatepéquez communities affected by the cement plant: Comunicación urgente presentada al señor James Anaya, Relator Especial sobre la situación de DDHH y libertades fundamentales de los indígenas de la ONU. Caso violación al derecho al territorio del pueblo maya Kaqchiquel, San Juan Sacatepéquez, Guatemala. Guatemala, 14 July 2010.

75 Solano Luís, Termina Estado de Prevención; tensión continua, Inforpress 1760, Guatemala, 11 July 2008.

UN experts went even further in stating that “the State of Exception was imposed for purposes of imposing the construction of the cement plant without consultation,”⁷⁶ Investigative journalist Luis Solano wrote that the government’s decision to impose the State of Prevention came during growing community opposition to mining permits, in particular for the CEMPRO Project in San Juan, the main cement producer in Guatemala, owned by the Novella family, “one of the few families of the oligarchy that still wields power over the state in the country.”⁷⁷

Threats and Smear Campaigns

As we have noted, there have been continuous threats and attacks on members of the 12 communities in resistance. These attacks are documented in a table in the annex hereto. There have also been numerous accusations published in the news media against them. Several civil society organizations and international or regional human rights organizations have noted in recent years that smear campaigns are frequent and accompany the increased criminalization of the activities of these communities. This is seen as a response to their demands for respect for human rights and their complaints about rights violations.⁷⁸

In the case of San Juan Sacatepéquez, the size of the conflict is conspicuous at the judicial level, both for the high number of complaints, accusations and individuals involved as well as for the general delay in the judicial process, with only a few exceptions. The lack of justice contributes to closing off areas of dialogue, heightening tensions and social upheaval in the communities of San Juan Sacatepéquez.

Through their own authorities, and by coordinating with other communities, organizations and civil society coalitions, these communities have made public pleas for an end to the legal persecution and other attacks designed to quell their protests. They say these talks are undermining trust in the dialogue with public authorities and the company.



76 OIT, op.cit.

77 ADITAL, Flores marchando contra el cemento, Brazil, 10 July 2008.

78 PBI Boletín 23, Procesos legales contra actores protagonistas en la defensa y promoción de derechos humanos: pinceladas sobre el contexto actual y los impactos, Guatemala, 2011.

Roundtable Talks

A decisive factor in the breakdown of the talks is the imbalance of power between the parties to the conflict. This continues to be a factor and is recognised as such by the company, which stated “the company sits down with community leaders and there is an imbalance that is too great. Negotiations must be held under equal conditions.”⁷⁹ In this respect, the company has suggested that an agreement between CEMPRO and GIZ would help to balance the power.⁸⁰ However, the communities stated that they were not informed of the agreement and only heard about it from the news media. They regretted not being consulted about the contents and signature of the agreement, despite being one of the parties to the conflict.

Another factor cited by the communities in the breakdown of the talks was the violence to which they have been subjected throughout the process. For example, they note that the roundtable talks had barely begun in 2008 when the State of Prevention was imposed and 43 people were arrested, along with several human rights violations, some of which are noted in the summary attached to this report.⁸¹

“The protests [...] are a result of the lack of prevention and the breach of commitments assumed by the state at the roundtable talks,” wrote Human Rights Ombudsman Sergio Morales. “We found one person dead, several injured, some who were unable to make it to work or travel, and all of this could have been avoided [...]. This is not a new conflict. Several rounds of talks have been established, and these represented commitments between the parties that were not met [...]. They offer them things that they do not make good on later, and dialogue cannot be delayed.”⁸²

The fact that the company continues moving forward with earth-moving works during the talks also does nothing to create a climate of trust.⁸³

At no time did CEMPRO denounce the



79 Interview with management of company relations and sustainable development at CEMPRO, Cit.

80 Ibidem.

81 Interview with representatives of 11 of the 12 communities affected by the San Juan Project, Guatemala, April 2012.

82 Prensa Libre, PDH critica incumplimiento, Guatemala, 13 October 2009.

83 See the “Context” section of this report.

assaults and attacks against representatives and members of the 12 communities in resistance, which in many cases were perpetrated by employees of the company, according to the state prosecutor's office (MP).

In addition, it has not condemned baseless accusations made against communities and organizations of San Juan Sacatepéquez in the news media. These false accusations, according to the International Commission of Jurists encourage "hate and violence against civil society leaders, who [...] are defending the right of their communities to natural resources, to their indigenous territories, and ultimately to life and development."⁸⁴

Although they are not legally obliged to condemn such attacks and false accusations, this would have helped to establish the necessary basis of trust for a constructive dialogue.

Environmental Impact Study

One of the demands of the communities during the dialogue was to complete the environmental impact studies and submit them to MARN. As mentioned earlier, the environmental impact study does not include a cultural component despite the fact that the area in question is predominantly indigenous. The company has said that it is aware of this but these aspects are not included in the environmental study because "the ministry does not request it."⁸⁵



The community leaders insist that the study should include them. "We should be part of this study, but they did come to our communities to ask us, they did it from their offices. We want it done by independent international experts who not under the control of the company."⁸⁶

Differing Concepts of Development

One of the fundamental issues in this conflict is the existence of different concepts of what constitutes the development and well being of the communities and society. On the one side there are those who want to build a plant on

84 International Commission of Jurists (CIJ), Carta a Mayor Rolando Archila, Gerente de Canal Antigua, Guatemala, April 2012; Hurtado, Leonor, ¿Cómo explicar tanta injusticia?, July 2008, <http://www.albedrio.org/htm/articulos/l/hurtado-003.htm>

85 Interview with management of company relations and sustainable development at CEMPRO, Cit.

86 Interview with representatives of 11 of the 12 communities affected by the San Juan Project, Cit.

land that would seem to belong to them. On the other side are the interests and sensibilities of the indigenous communities, who reject the plant, but not merely out of fear. Their cosmovision is another factor that complicates matters because the land is important to them for different reasons. It is a clash of two worlds. CEMPRO management is aware of this problem. "It is very difficult to combine the Maya cosmogony with the Western world," said a CEMPRO management official. "They are completely different worlds [...]. At the same time, CEMPRO recognises that the communities have a right to give their opinion,⁸⁷ which should be respected. "It is essential to respect the cultural aspect, the anthropological aspect, traditions and everything else."⁸⁸

Members of the San Juan Sacatepéquez communities have insisted all along that the concept of development should be their own, not imposed upon them by big companies. "Development that respects our traditions. We want to keep our customs and traditions. This violence did not begin between us, it came from outside, from the company and the refusal of authorities to listen to us when we say 'no' to the cement plant."⁸⁹



Respecting the right of indigenous peoples to decide on their own development, and the interests of the state and the private sector to invest and create a series of social benefits such as employment and an increase in productivity, growth and profits, have so far been incompatible. In the meantime, the state has failed to meet international standards on matters of human rights, particularly the collective rights of the indigenous peoples.

⁸⁷ Ibid.

⁸⁸ Interview with management of company relations and sustainable development at CEMPRO, Cit.

⁸⁹ San Juan community members in a meeting with the mayor, Fernando Bracamonte, San Juan Sacatepéquez, 19/06/12. PBI minutes



CONCLUSIONS AND RECOMMENDATIONS

Conclusion

» The principle causes of the conflict are:

- Incomplete information and the lack of involvement and prior informed consent of the communities with respect to the planning and execution of the San Juan Project.
- The incompatibility of the Maya cosmovision and its concept of development with that of the investment interests of the company and the Guatemalan government's concept of development.
- Closely related to this incompatibility is the fact that the environmental impact study of the San Juan Project does not consider the cultural factor, which is that the area in which construction is planned is predominantly indigenous. This is considered by the communities to be a major omission and has had an important influence on the conflict.

» The State of Prevention imposed by the government in 2008 worsened the conflict and increased the level of violence. The state's use of force did not contribute to the resolution of the conflict. Instead it increased tensions in the San Juan Sacatepéquez communities and raised the level of distrust.

» The imbalance of power between the parties worked against the 12 communities in resistance, and made a genuine dialogue difficult.

» The various acts of violence committed against the communities and human rights defenders made them more distrustful and have become a major obstacle to a negotiated solution to the conflict. Some of these acts of violence have been committed by non-state actors, but there were also illegal arrests during the State of Prevention and a failure to guarantee due process for those detained.



» The fact that the company continued with its earth-moving operations during the dialogue to prepare for the installation of the plant only served to raise more doubts in the community about its willingness to reach a negotiated solution.

» San Juan project operations were suspended in 2009⁹⁰ but the company provided no other public information about this or its future plans, or regarding the withdrawal of its personnel and machinery from the area. This lack of information is the situation that the communities have been living with for years.

» The lack of initiatives aimed at increasing the flow of information, follow up on the referendum or build trust in the community so that there may be a more equitable balance

90 Interview with management of company relations and sustainable development at CEMPRO, Cit.

of power between the parties in the dialogue.



» Even after the company suspended its operations in the area, threats and attacks continued against the 12 communities in resistance, heightening the conflict and the tension between the parties.

» The role played by some of the news media in the smear campaigns against communities in resistance, as well as their representatives and members of international organizations accompanying them have made dialogue and a peaceful resolution to the conflict difficult.

» The failure of the government to pass a regulation on the consultation of the indigenous peoples, which itself was not duly consulted, is a factor that must be taken into account in any resolution of the conflict.

» The persistence and exacerbation of the conflict has affected both the individuals opposed to and in favour of the San Juan Project, as well as the relationship between them. Insecurity is on the rise, and both the communities and individuals within them have been pitted against one another, even within families. The social fabric has been torn and the work of the organizations and authorities from these communities has become increasingly more difficult.

Recommendations Aimed at the International Community Regarding the Conflict in San Juan Sacatepéquez

To protect the human rights defenders involved in the case of San Juan Sacatepéquez, we make the following recommendations to the international community:

- » Make Guatemalan authorities aware of its concern about the persistence of this conflict, which has deeply affected the communities of San Juan Sacatepéquez for the past six years and threatened the safety of community leaders and all organizations supporting and accompanying the process of opposing the construction of the cement plant.⁹¹
- » Ensure that the opinions, concerns and demands of the 12 communities in resistance are heard and taken into account, inviting them to a meeting with the Filter Group of the European Union missions and delegation in Guatemala, thus applying one of the protection mechanisms established by EU directives for human rights defenders.⁹²
- » Visit the San Juan Sacatepéquez communities and meet with human rights defenders and others who have been the object of a public smear campaign, as well as with local authorities.⁹³

General Recommendations to the International Community

As a result of the analysis of the errors and omissions in this process, we make the following recommendations so that negotiated solutions can be found for the current conflicts, and others can be prevented:

- » Urge the government making the investment to fulfil their international human rights obligations, particularly regarding the consultation and prior informed consent of indigenous people and their right to make decisions about their own development.⁹⁴
- » Refrain from providing support, through bilateral and/or multilateral cooperation programmes, for megaprojects such as the San Juan cement plant without guarantees of compliance with international obligations related to human rights, particularly regarding the consultation and prior informed consent of indigenous peoples.⁹⁵
- » Pursuant to the Maastricht Treaty on extraterritorial responsibility for economic, social and cultural rights, the EU is urged to develop a legislative framework to guarantee that European companies operating abroad meet international standards agreed to on the environment and human rights, including respect for the collective rights of indigenous peoples.⁹⁶

91 PBI Alert. Guatemala, June 2010.

92 PBI Alert. Guatemala, March 2012.

93 *Ibíd.*

94 See the "Community Referendum" section of this report regarding legislation.

95 CIFCA, *op.cit.*

96 Aprovech, CIDSE, CIFCA, FIAN, OBS, Oidhaco, PBI Colombia, PBI Guatemala, Dutch Platform, Criminalización de las y los defensores de DDHH en América Latina, una aproximación desde organizaciones internacionales y redes europeas, June 2012. <http://www.fian.org/noticias/noticias/criminalizacion-de-los-y-las-defensores-de-derechos-humanos-recomendaciones-a-la-ue-y-a-las-naciones-unidas/pdf>

» Likewise, the EU and its member states are urged to require European companies to conduct an analysis of the risks and potential impact of their operations or those of their subsidiaries on the rights of local communities, and to ensure compliance with the provisions of the laws of their own countries, even when operating abroad.⁹⁷

Table: PRIOR, FREE AND INFORMED CONSENT

The lack of regulations on consultation does not release governments from their duty to comply with all aspects of the right of indigenous peoples to be consulted. Furthermore, clear rules and requirements should be established for consultation processes, and regarding what information must be shared and how.⁹⁸

The various international or regional instruments or the rulings of the Inter-American Human Rights System cite many central elements to guarantee the process of consultation regarding prior, free and informed consent – processes that involve the dissemination of information, dialogue and negotiation, as well as referendums.⁹⁹

These elements are:

- The full participation of the communities and peoples affected.
- The participation of the peoples and communities affected at all levels of decision-making for the project.
- The government is responsible for carrying out these processes. This responsibility may not be assumed by private entities.
- The consultation process must be conducted in due time prior to any significant events to allow for debates, reflection, etc.
- The process must be carried out in a culturally appropriate manner.
- Complete information must be made available about any possible impact, damage or loss, benefits, and the possibility of compensation.

The government must assure that the communities and indigenous communities affected fully understand the situation. If necessary, translation and technical support should be provided.

- The government should ensure that the “good faith” referendum is carried out without pressure and without attempts to corrupt leaders and/or divide the communities and towns, and with a commitment by the indigenous peoples to assign representatives and inform the government about them, and to substantiate their position with arguments.

97 Ibidem.

98 Ruiz Chiriboga, O., Donoso, G. Pueblos Indígenas y la Corte Interamericana: Fondo y Reparaciones, June 2012, pp. 64 –74, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2094289

99 Ibid.; see also: Copenhagen Initiative for Central America and Mexico (CIFCA), Xalalá Project, Development for All?, Brussels, November 2008.

» We urge the UN Work Group on Human Rights, and transnational companies to take into account the recommendations made by other international and inter-American bodies regarding the criminalization of civil protest and activities promoting human rights. The Work Group must pay special attention to the actions of companies that contribute to this type of violence against human rights defenders¹⁰⁰.

» The diplomatic missions from the countries of origin of parent companies or subsidiaries with plans to make large investments in Guatemala are urged to verify and monitor compliance with the following:

- That the communities are duly informed by the government about such plans according to the established criteria.
- That the indigenous communities and peoples affected by the investment have had and continue to have the stipulated opportunities for participation, and that their knowledge and input is included in the environmental impact study.

» The diplomatic missions of the countries of origin of the companies are urged to inform the affected communities and peoples about the mechanisms and opportunities to register complaints where appropriate and promote greater attention to the impact on human rights, as well as the need to respect the latter and avoid violent conflict.



100 *Ibidem*.



SUMMARY OF ATTACKS AND THREATS AGAINST HUMAN RIGHTS DEFENDERS ACCOMPANIED BY PBI AND OTHER SECURITY INCIDENTS IN SAN JUAN SACATEPÉQUEZ

December 2007 to March 2012

During PBI’s accompaniment of the 12 communities in resistance of San Juan we have documented and analyzed information about threats, attacks and other security incidents affecting the organization and its work in defence of human rights, as reported by the organization and its members. This is first-hand information from human rights defenders, members of the community involved in the organizations, and residents of San Juan Sacatepéquez critical of the operations of Cementos Progreso in the town. For reasons of security, we have omitted the names of some of the individuals involved when the case does not involve public information. This is not an exhaustive list.

Dates and locations	Facts	Individuals/organization affected	Reference
14/12/2007 Santa Fe Ocaña San Juan Sacatepéquez	<p>Violation of the right to order, security, physical integrity, dignity and equality. During a meeting in Santa Fe Ocaña, about 68 police officers arrived in the community and arrested 17 people. Ten people were injured during the operation. The police used teargas, entered homes without warrants, and ordered women to raise their blouses so they could check for tattoos.</p> <p>Sexual violence. One woman was reported to have been raped by police officers.</p>	Residents of Santa Fe Ocaña.	Executive Report on actions taken by the PDH in the cement plant project case, San Juan Sacatepéquez, 04/06/08.

Dates and locations	Facts	Individuals/organization affected	Reference
04/02/2008 Cruz de Ayapan and Los Pajoques. San Juan Sacatepéquez	Attempted lynching. The PDH filed a complaint against the PNC (police department) of San Juan Sacatepéquez (EXP.EIO.GUA.579-2008/DCP) for violating the rights of the communities of Cruz de Ayapan and Los Pajoques.	Residents of Cruz de Ayapan and Los Pajoques.	Executive Report on actions taken by the PDH in the cement plant project case, San Juan Sacatepéquez, 04/06/08.
26/03/2008 Santa Fe Ocaña, Los Pajoques and Las Trojes. San Juan Sacatepéquez	Intimidation: A helicopter flew low over the house of various residents in Santa Fe Ocaña, Los Pajoques and Las Trojes. The frightened residents contacted the PDH in Santa Fe Ocaña. A PDH official told them to take photos and note the registration number of the craft.	Residents of Santa Fe Ocaña, Los Pajoques and Las Trojes.	Information received by PBI on security incidents during international accompaniment and observation work, November 2009.
28/03/2008 Santa Fe Ocaña. San Juan Sacatepéquez	Raid and theft. The PNC and soldiers raided a house in Santa Fe Ocaña without warrant. The resident of the house was hiding to avoid arrest. The officers reviewed all of the documents the resident had in his possession. Three automobile titles and some photographs disappeared.	Resident of Santa Fe Ocaña	Information received by PBI on security incidents during international accompaniment and observation work, November 2009.
June 2008 San Juan Sacatepéquez	Threats and defamation. A lawyer was threatened by unknown individuals and accused of threatening Cementos Progreso.	Lawyer Association of Guatemalan Lawyers and Notaries (AANMG)	Complaint, San Juan Sacatepéquez prosecutor, MP010-2007-2332
22 June 2008 San Antonio Las Trojes San Juan Sacatepéquez	Illegal arrests. About 1,000 police officers and another 1,000 soldiers entered the community of San Antonio Las Trojes. Observing this operation were members of the Presidential Human Rights Commission (COPREDEH) and the Peace Secretariat (SEPAZ). The police and soldiers arrested 43 people. These arrests were illegal, according to the Congressional Human Rights Commission,	43 residents of San Antonio Las Trojes	PBI Alert, July 2008

Dates and locations	Facts	Individuals/organization affected	Reference
	because they were made one day before the State of Prevention was published in the Official Gazette.		
21/06/2008-07/07/2008 San Juan Sacatepéquez	Restrictions on freedom of movement, offences against women, raids and arrests without warrants. Over the 15 days of the State of Prevention, the PDH received various complaints of abuses committed by the security forces. Among these abuses was a demand by police and soldiers to be fed by the families, restrictions on freedom movement, and offences against women. There were also complaints to the PDH about raids and arrests conducted without warrants. The police and soldiers remained in the area beyond 7 July 2008, when the State of Prevention was lifted.	Residents of the 12 communities of San Juan Sacatepéquez.	PBI Alert, July 2008
27/06/2008 San Juan Sacatepéquez Guatemala City	Threats. Lawyers sought protective measures from the Inter-American Court of Human Rights for threats they received for representing the San Juan Sacatepéquez case. They feared for their safety and their lives and this hindered their work in favour of the communities.	Lawyers Association of Guatemalan Lawyers and Notaries (AANMG)	Request to CIDH, P-1553-07
17/07/2008 Sacapulas Quiché	Abduction and torture. Faustino Camey was abducted while working in Sacapulas, Quiché. COPREDEH provided support to the family and the PNC arrested two suspects. Faustino reappeared a few weeks later alive but with signs of torture. The PNC released the suspects a short time later after filing a complaint with the MP.	Faustino Camey	
12/02/2009 On route from Guatemala City to San	Threats, intimidation and attempted rape. Residents of San Juan arrived to a meeting with the Ministry of the Interior, but not all were allowed to enter. Some	Residents of San Juan Sacatepéquez	http://www.prensalibre.com/edicion_imprensa/PDF_13022009_

Dates and locations	Facts	Individuals/organization affected	Reference
Juan Sacatepequez	were separated from the group and forced to return to San Juan by bus. As this bus passed Las Trojes and Cruz Blanca it was stopped by armed men wearing hoods. These men separated the San Juan residents opposed to the cement plant from those in favour. They set the bus afire, beat the cement plant opponents, dousing the women with petrol and threatened to burn them. One of the women related to one of the community leaders was the victim of an attempted rape.		PREFIL20090316_0015.pdf PDH <i>Report on violence in San Juan Sacatepequez, November 2011.</i> www.pdh.org.gt/index.php?...san-juan-sacatepequez <i>PBI interview with Carmela Curup, 2009</i>
02/11/2009 Guatemala City	Intimidation. The son of one of the community leaders was studying at the Instituto Multiétnico in the capital. He was finishing his exams when a security guard told him that two people were asking for him in a very insistent manner. The security guard warned the student to be careful because the intentions of these individuals did not appear to be good. The student informed his father about what was happening and told him he feared they might attempt to abduct or kill him. His father came to pick him up and take him back to Santa Fe Ocaña. He dropped out of the school and did not file a complaint.	Relative of community leader	Information received by PBI on security incidents during international accompaniment and observation work, November 2009.
11/02/2010 San Juan Sacatepéquez	Abduction and murder. Resident German Curup was abducted on his way to work in the capital at 6 a.m. on 11 February. His body was found two days later. He had been beaten and his throat cut. The case was turned over to the local prosecutor in San Juan, and UDEFEGUA documented the case.	German Curup	UDEFEGUA press release; 18/02/10.
16/02/2010 San Juan Sacatepequez	Defamation. A community representative travelled to Geneva with members of CONAVIGUA, CUC and UVOC to present	Representative of the 12 communities in	Waqib' Kej press release including scan of defamation flyer

Dates and locations	Facts	Individuals/organization affected	Reference
	the case to the United Nations and meet with representatives of Holcim. While they were in Switzerland, the Francisco Tepeu Foundation distributed a press release titled "Danger in Europe" that identifies members of the group Waqib' Kej and San Juan residents as terrorist and Al Qaeda collaborators.	resistance.	
15/03/2010 San Juan Sacatepéquez	Property damage. Several residents of the San Juan Sacatepéquez communities reported to the PDH in the capital that helicopters and aeroplanes flew over their communities, spraying a toxic substance that kills off crops and animals.	San Juan residents	Complaint filed with PDH
02/06/2010 Las Trojes	Intimidation, death threats and physical attacks. On 2 June, residents of Las Trojes I and II went to repair road damage from a storm. The town had paid about 15,000 quetzales (USD2,000) to lease machinery and materials. Employees of the cement plant blocked their path and told them that the company would fix the road. An argument ensued about who was going to fix the road. A bus arriving with people from Las Trojes was intercepted by the company employees and the people from the communities were attacked. The employees threatened to kill the passengers (including women and children) and burn the bus. Eight people were forced off the bus (apparently community leaders). Two were struck with machetes. The PDH arrived but were harassed by the employees and prevented from reaching the site of the conflict. A member of COPREDEH was able to arrive at the site and took statements from witnesses in order to file a formal complaint. The lawyer representing the community members	Las Trojes Mayor Gregorio Catzojay Tubac, local development council chairman Alberto Díaz Zet, and Marcelino Catzojay	Personal testimony, file No. 39-2010, Court of San Juan Sacatepéquez.

Dates and locations	Facts	Individuals/organization affected	Reference
	<p>prepared witness statements. CUC lawyers petitioned the court to investigate. A judge ultimately ordered an investigation of the facts, and later summoned the eight injured persons to appear and give testimony in the Court of San Juan.</p>		
<p>05/06/2010 Las Trojes I San Juan Sacatepéquez</p>	<p>Physical attacks, threats, intimidation and property damage. The community of Las Trojes was in a meeting with its leaders, in part to prepare for the arrival of a UN special rapporteur on 15 June. At around 8 p.m., the power went out and an armed group of plant employees who live in Las Trojes began firing shots toward the community leaders and threw all sorts of objects at them. They also blocked the entrance to the community to prevent anyone from coming or going. Many people were frightened and sought refuge in the church. The attacks continued in the street, with several machete attacks. Many people remained in the church overnight.</p>	<p>Residents of Las Trojes I</p>	<p>Complaint No. 644-2010, PNC police station No. 16, San Juan Sacatepéquez. PBI Alert 18/06/10. UDEFEGUA press release 08/06/10.</p>
<p>07/01/2011 Las Trojes I San Juan Sacatepéquez</p>	<p>Physical attack and property damage. Armed cement plant employees arrived in Las Trojes I and attacked one of its residents, damaged the church and burned a Christmas tree.</p>	<p>Leonso Camey Tupac, mayor of Las Trojes I</p>	<p>Complaint 27-2011, PNC police station 16, San Juan Sacatepéquez. Complaint filed in the capital on 07/01/11.</p>
<p>09/01/2011 Las Trojes I San Juan Sacatepéquez</p>	<p>Death threats. A cement plant employee threatened to kill Abraham Socoy Camey, mayor of Las Trojes I.</p>	<p>Abraham Socoy Camey, mayor of Las Trojes I</p>	<p>Complaint, PDH Capital, 10/01/11.</p>

Dates and locations	Facts	Individuals/organization affected	Reference
21/01/2011 Las Trojes II San Juan Sacatepéquez	Physical attack. A group of cement plant employees arrived in Las Trojes II and physically attacked three women cleaning the school.	3 women from las Trojes II	Complaint 068-2011, PNC police station 16, San Juan Sacatepéquez.
03/02/2011 San Juan Sacatepéquez	Death threats: While the School Committee and representatives of the Ministry of Education were discussing the transfer of two teaches, the father of one of them (a cement plant) fired shots from a gun and then pointed it directly at her.	Mariana Boror Raxon	UDEFEGUA Report on Human Rights Situation January to December 2011, Guatemala, 2012. p. 63. Complaints have been filed with the responsible authorities for all incidents published by UDEFEGUA.
05/02/2011 <i>El Pilar I</i> San Juan Sacatepéquez	Property damage: Residents employed by Cementos Progreso arrived at the home of Herber José Pirir in the community of Pilar I and attempted to intimidate him so that he would stop opposing the San Juan project. They doused the tyres of his car with petrol and set them afire.	Herber José Pirir Raxon Community Leader	UDEFEGUA, op cit. p. 63
06/02/2011 <i>Santa Fe Ocaña</i> San Juan Sacatepéquez	Death threats: At about 5:30 in the evening, as Juan Zet Tubac returned to his community, he was approached by four hooded men wielding machetes and threatening to kill him. He was able to elude his attackers by running away.	Juan Zet Tubac Community member	UDEFEGUA, op cit. p. 63
20/02/2011 <i>San Antonio Las Trojes I</i> San Juan Sacatepéquez	Intimidation – surveillance: On Sunday, 20 February, several cement company employees surrounded the home of a resident in Las Trojes I. They did not harm him, but the police detained two of them and later released them.	Resident, San Antonio Las Trojes I	Information received by PBI on security incidents during international accompaniment and observation work, February 2011

Dates and locations	Facts	Individuals/organization affected	Reference
27/02/2011 <i>El Pilar I</i> San Juan Sacatepéquez	Physical attack: Two cement company employees, Alberto Raxón Exquile and Rigoberto Raxón Subuyuj attacked a group of residents in the auxiliary mayor's office in El Pilar I.	Carlos Antonio Subuyuj Boch, Rosalío Subuyuj Raxón Community members	UDEFEQUA, op cit. p. 65
27/02/2011 <i>El Pilar I</i> San Juan Sacatepéquez	Physical attack, stabbing: On the night of 27 February eight employees of the cement company attacked a neighbourhood watch group of the El Pilar I community. One person in the watch group was struck with the butt of a rifle in the neck and another was stabbed, receiving an injury to his right lung.	Residents of El Pilar I	Information received by PBI on security incidents during international accompaniment and observation work, February 2011
28/02/2011 <i>Aldea Los Pajoques</i> San Juan Sacatepéquez	Murder: A young man from the village of Los Pajoques was murdered. His body was found in the nearby community of Xenacoj, where employees of the cement plant gather. There were indications of a violent attack. The young man's parents were actively involved in opposing the construction of the cement plant.	Resident of the community of Los Pajoques	Information received by PBI on security incidents during international accompaniment and observation work, February 2011
15/05/2011 <i>Santa Fe Ocaña</i> San Juan Sacatepéquez	Intimidation: A resident of Santa Fe Ocaña reported being following by a car with unknown occupants in an intimidating manner.	Resident of Santa Fe Ocaña	Information received by PBI on security incidents during international accompaniment and observation work, May 2011
15/05/2011 <i>El Pilar I</i> San Juan Sacatepéquez	Attempted abduction: Unknown individuals attempted to abduct a resident of El Pilar I in the centre of San Juan Sacatepéquez.	Resident of El Pilar I	Information received by PBI on security incidents during international accompaniment and observation work, May 2011
15/05/2011	Physical attack and death threat: A	Resident	Information received

Dates and locations	Facts	Individuals/organization affected	Reference
<i>San Antonio Las Trojes</i> San Juan Sacatepéquez	resident of was approached on a bridge in San Antonio Las Trojes by several individuals who threatened to kill him. Several other residents tried to stop the attack and were struck by the perpetrators.		by PBI on security incidents during international accompaniment and observation work, May 2011
19/05/2011 San Juan Sacatepéquez	Physical attack and death threats: At about 8:30 p.m., Celestino Tubac Boch heard a commotion in the street and went outside. A group of 20 men armed with guns, machetes and sticks came toward him and he ran. The men began throwing rocks at him, injuring his foot. As they continued to throw rocks and other objects at him, they threatened to kill him.	Celestino Tubac Boch	UDEFEGUA, op cit. p. 71
19/05/2011 San Juan Sacatepéquez	Physical attack and death threats: Returning home at about 8 p.m., these two residents were confronted by several cement plant employees armed with guns, machetes and sticks. The employees began pelting the two residents with stones and other objects, injuring one in the face and the other in the leg. The group shouted death threats at the two as they were throwing objects at them.	Florencio Xalin Zet Francisco Tubac Díaz Community members	UDEFEGUA, op cit. p. 72
19/05/2011 San Juan Sacatepéquez	Property damage. San Juan residents Samuel, Juan and Siquiej Díaz, José Mariano Noj and Rafael Tepeu Socoy, who work at the cement plant, fired shots, threw rocks and bottles at the walls of the home of Gregorio Cotzajay, and gouged it with their machetes. They then doused the walls with petrol and threatened to set it afire with the family inside.	Gregorio Cotzajay Community member	UDEFEGUA, op cit. p. 72
19/05/2011 San Juan Sacatepéquez	Physical threat/death threats: At about 11:30 a.m., María Juana Cotzajay and María Rosa Xalin Ávila were approached by two women whose husbands worked at the cement plant. The	María Juana Cotzajay María Rosa Xalin Ávila Community	UDEFEGUA, op cit. p. 72

Dates and locations	Facts	Individuals/organization affected	Reference
	two women struck them in several places, pulled their hair and threatened to kill them.	members	
20/05/2011 <i>San Antonio Las Trojes I</i> San Juan Sacatepéquez	Intimidation: A group of persons who had attacked the closed gate of the community of San Antonio Las Trojes I returned to intimidate residents. No one was hurt.	Residents of San Antonio Las Trojes I	Information received by PBI on security incidents during international accompaniment and observation work, May 2011
26/05/2011 <i>Cruz Blanca</i> San Juan Sacatepéquez	Intimidation and threats: A resident of Cruz Blanca received a message on her mobile phone warning her to stop looking for trouble in her community.”	Resident of Cruz Blanca	Information received by PBI on security incidents during international accompaniment and observation work, May 2011
07/08/2011 <i>Aldea Los Pajoques</i> San Juan Sacatepéquez	Intimidation and threats: At about 9 p.m., a group gathered at the entrance to the community of Los Pajoques. According to residents, they were employees of the cement company, were armed and shouted threats and insults at community members.	Residents of Los Pajoques	Information received by PBI on security incidents during international accompaniment and observation work, August 2011
08/2011 <i>Cruz Blanca</i> San Juan Sacatepéquez	Death threat: A woman and two men from Cruz Blanca received a death threat while attending a meeting with cement plant employees in the village. Others attending the meeting threatened to kill them.	Three residents of Cruz Blanca	Information received by PBI on security incidents during international accompaniment and observation work, August 2011
08/09/2011 Road between San Juan Sacatepéquez and Guatemala	Intimidation: Two residents travelling from San Juan Sacatepéquez to the capital to testify as witnesses in a court hearing were intimidated by several people taking photos and videotaping them.	Two residents and trial witnesses	Information received by PBI on security incidents during international accompaniment and observation work, September 2011

Dates and locations	Facts	Individuals/organization affected	Reference
08/09/2011	<p>Intimidating rumours: A member of the Association of Guatemalan Lawyers and Notaries (AANMG) told a PBI volunteer that rumours were being circulated about the arrest of two residents with the intention of intimidating the communities of San Juan Sacatepéquez. Several of the community leaders had announced their candidacy for public office. The aim of the rumours, according to residents, was to distract voters with the defence of the two potential candidates so that there would be a low turnout at the voting booth.</p>	Two residents	Information received by PBI on security incidents during international accompaniment and observation work, September 2011
24/11/2011 <i>Cruz Blanca</i> San Juan Sacatepéquez	<p>Threats and intimidating rumours: A member of this community told PBI that a friend had overheard a group of people making a threat against her life. This resident told PBI she feared that the group making the threat was hired by the company.</p>	Resident of Cruz Blanca	Information received by PBI on security incidents during international accompaniment and observation work, November 2011

Dates and locations	Facts	Individuals/organization affected	Reference
<p>BACKGROUND: Between January and March 2012, we noted a rise in security incidents related to surveillance, defamation and intimidation. These incidents occurred right before, during and immediately after a European speaking tour by one of the leaders of the 12 communities and a lawyer representing them. The speaking tour was organised by PBI in Switzerland, Germany and the Netherlands.</p>			
<p>18/01/2012 Cruz Blanca San Juan Sacatepéquez</p>	<p>Threats and intimidation: On 18 January, a resident of Cruz Blanca received a threatening mobile phone message. This resident believes that the threat is related to his involvement in the 12 communities opposing the cement plant, and was very frightened.</p>	<p>Resident of Cruz Blanca</p>	<p>Information received by PBI on security incidents during international accompaniment and observation work, January 2012</p>
<p>18/01/2012 Cruz Blanca San Juan Sacatepéquez</p>	<p>Death threats and intimidating rumours: At about 5:30 p.m., a resident of Cruz Blanca was on a bus when another passenger approached her and told her that she and others opposing the cement plant were simply idle people who did not want others to work. He said she should be dragged from her home, doused with petrol and set afire.</p>	<p>Resident of Cruz Blanca</p>	<p>Information received by PBI on security incidents during international accompaniment and observation work, January 2012 On 10 February 2012, residents accompanied by UDEFEGUA filed a complaint was filed with the human rights prosecutor, who said he did not have jurisdiction because the resident involved was a member of the local development council.</p>
<p>25/01/2012 Guatemala City</p>	<p>Surveillance and intimidation: A community leader and a lawyer were in the Guatemala City airport preparing to depart on a speaking tour in Europe, when an unidentified man interrogated some of the San Juan women accompanying them about the time of the flight and the length of their stay in Europe.</p>	<p>Community leader Lawyer Residents and relatives</p>	<p>Information received by PBI on security incidents during international accompaniment and observation work, January 2012</p>

Dates and locations	Facts	Individuals/organization affected	Reference
02/02/2012 Geneva Switzerland	Intimidation: During a public talks in Geneva by a community leader and a lawyer on a speaking tour, three employees of Cementos Progresos (including the Social Development manager) entered the location. The community leader and lawyer said they felt intimidated by their presence.	Community leader and legal advisor	Information received by PBI on security incidents during international accompaniment and observation work, February 2012
03/02/2012 Zurich Switzerland	Intimidation: During another talk, this time in Zurich by a community leader and a lawyer, the same three employees entered the location. The community leader and lawyer said they continued to feel intimidated.	Community leader Lawyer	Information received by PBI on security incidents during international accompaniment and observation work, February 2012
12/02/2012 Guatemala City	Surveillance: Arriving back home in Guatemala after their speaking tour, the aforementioned community leader and lawyer saw an armed man nearby talking on a mobile phone and fidgeting nervously. The man moved closer to them but after noting that he had been spotted by them, left the building.	Community leader Lawyer Family members and residents	Information received by PBI on security incidents during international accompaniment and observation work, November 2011
16/02/2012 San Juan Sacatepéquez	Surveillance: As a community leader accompanied a Belgian journalist on a bus to the centre of San Juan Sacatepéquez, a man among a group of Cementos Progresos employee arriving to collect their pay took several photos of the community leader and the journalist with his mobile phone.	Community leader	Information received by PBI on security incidents during international accompaniment and observation work, February 2012
18/02/2012 National level	Defamation: An opinion by Humberto Preti in the daily Prensa Libre cites the support of Norway and Switzerland of acts that are "against the law" in Guatemala, specifically mentioning a speaking tour in Switzerland and community leader Mauro Cotzoyay.	Mauro Cotzoyay	Public information: http://www.prensalibre.com/opinion/Pobre-Guatemala_0_648535217.html
21.02.2012	Defamation: Humberto Preti is		Public information

Dates and locations	Facts	Individuals/organization affected	Reference
Department of Guatemala	interviewed on Radio Punto and repeats the accusations made in his opinion column.		
26.02.2012 Municipal centre and surrounding communities of San Juan Sacatepéquez	Defamation: Unidentified persons print and distribute flyers distorting the objectives of Q'amolo Q'i San Juan and its leaders.	Residents identified in the flyer	Information received by PBI on security incidents during international accompaniment and observation work, February 2012
04.03.2012 Municipal centre and surrounding communities of San Juan Sacatepéquez	Insults, defamation and threats: Unidentified persons printed and distributed a flyer attempting to disparage the reputation of Q'amolo Q'i San Juan and several of its leaders, members and a lawyer representing the organization. The flyer uses insults specifically designed to be offensive to women against a female human rights defender.	Community leaders Lawyer	Information received by PBI on security incidents during international accompaniment and observation work, March 2012
04.03.2012 National level	Defamation: A television station, Canal Antigua, broadcasts a report on the San Juan Sacatepéquez communities and distorts the information about PBI's support of the communities and about alleged financial aid received from the Swiss Embassy. The report also mentions the Norwegian and Dutch embassies.	12 communities in resistance Peace Brigades International Swiss embassy Norwegian embassy Dutch embassy	Public information, complete programme: http://vimeo.com/37977312

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GLOSSARY

AANMG Guatemalan Association of Lawyers and Notaries

AGIMS Women's Association of San Juan Sacatepéquez

APRODEV Association of World Council of Churches and Related Development Organizations in Europe

CC Constitutional Court

CEMPRO Cementos Progreso

CERD Committee for the Elimination of Racial Discrimination

CIDSE International Alliance of Catholic Development Agencies

CIFCA Copenhagen Initiative for Central America and Mexico

COCODE Community Development Council

CONAVIGUA Coordinating Body of Guatemalan Widows

CONIC National Coalition of Indigenous and Campesino Organizations

COPAE Pastoral Peace and Ecology Commission

COPREDEH Presidential Human Rights Commission

CPO Council of the Peoples of Western Guatemala

CUC Campesino Unity Committee

GIZ German Development Agency

MARN Ministry of the Environment and Natural Resources

MEM Ministry of Energy and Mines

MOJOMAYAS Mayan Youth Movement

MP Attorney General or State Prosecutor's Office (Ministerio Público)

OHCHR UN Office of the High Commissioner for Human Rights

OBS Observatory for the Protection of Human Rights Defenders

OIDHACO International Human Rights Office – Acción Colombia

ILO International Labour Organisation

PBI Peace Brigades International

PCON Guatemala Peace Process Support Programme

PDH Guatemalan Human Rights Ombudsman's Office

PNC Guatemalan National Civil Police

SEPAZ Peace Secretariat

UDEFEGUA Guatemalan Association for the Protection of Human Rights Defenders

EU European Union

URNG Guatemalan National Revolutionary Unit

UVOC Verapaz Union of Campesino Organizations

WAQIB' KEJ National Coalition of Mayan Organizations

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