

## **Guatemala: ICJ organizes conference on business and human rights: The case of Izabal**

Speaking at a conference in Geneva on 29 November 2018, Prof. Marco Sassòli, a Commissioner of the International Commission of Jurists (ICJ), recommended there be an international mission to Izabal, Guatemala in order to understand the problems facing the local Q'eqchis communities as a result of the Solway nickel mining operations.

The conference on the issue of 'business and human rights in the Department of Izabal, Guatemala' at the University of Geneva was co-hosted with the Department of Public International Law and International Organization, Faculty of Law of the University of Geneva and the City of Geneva. Dr Antonella Angelini from the Department of Public International Law and an expert in business and human rights was the moderator.

The main issue under review was the impact on the local communities of the operations of the *Compañía Guatemalteca de Nickel* (CGN-ProNico) a nickel mining company in El Estor, wholly owned by Solway Investment Group, a company registered in Zug, Switzerland.

Ramón Cadena, director of the ICJ Central American office gave an overview of the situation in Guatemala, a country beset by problems of corruption, violence, and impunity. He emphasized the need to strengthen the rule of law. He said that in the Department of Izabal, there were many concerns about the business impacts on the livelihoods of the local communities of indigenous Q'eqchis. He explained that these communities did not oppose development per se but wanted to ensure that it benefitted the majority of the population. He concluded by stating that the Swiss popular initiative for corporate social responsibility was very important as it would mean that multinationals based in Switzerland would be responsible for the acts of their subsidiaries in other countries.

Ms Amalia Caal Coc, from the Guillermo Toriello Foundation, stated that she spoke in representation of over 150 communities in El Estor. She explained how commercial agriculture and mining operations were damaging indigenous forms of organization and livelihoods. While she was not seeking to blame anyone, she wanted to find solutions, and in that sense, it was important to open different forms of dialogue. In particular, she stated that mining concessions should not be granted without the free, informed and prior consent of the local communities. She described how their local leaders had suffered from false criminal charges, imprisonment and violent evictions. Ms. Caal stressed the importance of addressing the degradation of the environmental situation of the Lake Izabal. She also called upon the Guatemalan state to assume its responsibilities to provide basic services and protect the rights of all citizens.

Mr. Maynor Alvarez, the manager of the CGN Community Affairs Department, explained that he was a certified instructor in international humanitarian law and that he was proud to be an employee of the Solway Investment Group. He said the CGN employed around 3000 workers, whose rights were respected. He stated that the company's operations were based on international regulations and that it was a profound supporter of the Universal Declaration of Human Rights, in particular the rights to education and health. He noted that in many ways the company has taken on some of the responsibilities of the State in terms of housing and health provisions. He affirmed that the company was working for the common good and he expressed gratitude to the ICJ for offering CGN the opportunity to start a dialogue.

Two representatives of the El Estor ethnic community who attended the meeting as CGN delegates shared their views on the current state of human rights protection in the department of Izabal through personal stories. They stressed the role of the company in the economic development of the region and the social support provided by the mining company to their families during difficult personal circumstances and social conflicts.

Sandra Epal Ratjen, Deputy Executive Director at Franciscans International, gave an overview of the international framework for business and human rights and explained that the subject is becoming increasingly important. She outlined the various spaces and frameworks in which international standards are being developed. These include the UN Committee on the Rights of the Child and the UN Committee on Economic, Social and Cultural Rights, as well the UN Special Rapporteurs. She stated that the Guiding Principles on Business and Human Rights adopted in 2011 were an important but insufficient step towards effective business accountability for human rights abuses. The issue of access to remedies for these abuses, particularly in situations where the public authorities were failing, in situations of conflict or in situations involving actors across borders, is not well addressed by current international law. For that reason, in 2014, some States had put forward the proposal to develop a UN Treaty on Business and Human Rights that would be a binding instrument addressing these current gaps.

In the discussion that followed, there were questions related to the problems that fishing communities were facing as a consequence of the pollution of Lake Izabal where 10 – 15 per cent of the local population depend on fishing for their livelihoods. There was also a question related to the effective application of the Equator Principles, a risk management tool adopted by financial institutions.

In his concluding remarks, Prof. Marco Sassòli, ICJ Commissioner and professor of international law at the University of Geneva, welcomed the agreement of participants on the standards. However, in view of the profound divergences on the facts shown in the presentations of the representative of local communities and of the company, he recommended that consideration be given to organizing an in situ ICJ international mission to the Department of Izabal. The purpose of the mission would be to discuss with the company and the local communities about the situation of human rights violations and abuses and how to put an end to them; and to establish mechanisms for affected individuals to raise grievances and concerns about potential negative impacts on their rights by Solway-company related operations.

### **Background Information**

[In a media release on July 24, 2018](#), the ICJ details how the Guatemalan authorities have persecuted human rights defenders by charging them with crimes of land appropriation or aggravated land appropriation in the Department of Izabal. In this way, the Guatemalan authorities effectively criminalize the exercise of the “legitimate right to resist” enshrined in article 45 of the Guatemalan Constitution, accusing environmental human rights defenders and others of crimes such as incitement to crime, illegal detention, threats, damages, illicit meetings and marches and other acts. In practice, the ICJ statement concludes, the State is penalizing the legitimate exercise of internationally recognised rights of freedom of expression and association.

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