



The Global Initiative
for Economic, Social and Cultural Rights



Submission by the Global Initiative for Economic, Social and Cultural Rights (GI-ESCR), the Interamerican Association for Environmental Defense (AIDA), Payxail Yajaw konob' (Plurinational Ancestral Government), and the International Platform Against Impunity, on the occasion of the consideration of the fourth periodic review of Guatemala during the Committee on Economic, Social and Cultural Rights' 72nd session

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Introduction

1. The Global Initiative for Economic, Social and Cultural Rights (GI-ESCR) is an international non-governmental human rights organization that promotes transformative change to end endemic problems of social and economic injustice through a human rights lens. GI-ESCR's vision is that of a world in which every person and community lives in dignity and in harmony with nature. GI-ESCR aims to transform power relations to enable every person and community to enjoy their ESC rights and all other human rights now and in the future. As a long-standing partner of the Committee on Economic, Social and Cultural Rights, GI-ESCR has strongly contributed to the standard setting and innovative and creative understanding of ESCE rights.
2. The Interamerican Association for Environmental Defense (AIDA) uses the law and science to protect the environment and communities suffering from environmental harm, primarily in Latin America. AIDA combines legal advocacy with education and alliance-building initiatives. They prioritize high-need, high-impact cases that can set replicable precedents, propose feasible paths of action, provide legal language officials can adopt, and disseminate information on pending proposals. They also support our partners' efforts by injecting arguments based on international law into advocacy and litigation.
3. The International Platform Against Impunity (Plataforma Internacional contra la Impunidad) is an alliance of European and Central American civil society organizations that support and promote advocacy processes for the full enforcement of individual and collective human rights, with the vision of building stronger and fairer societies in Central America. Our actions at the international level are complemented by local actions of accompanying Human Rights Defenders by improving the conditions in which they work and in their fight against impunity and defense of human rights. Our headquartered is in Geneva, Switzerland and we have offices in Guatemala and in Honduras.
4. The Payxail Yajaw konob' or plurinational government is the articulation or ancestral expression of life and political organization of the nations of Mayan descent Q'anjob'al, Chuj, Akateko and Popti, which seeks to retake and vindicate the self-government, in its economic, political, social and educational system, among others. Its objective is to organize for the defense of the territory, the exercise of autonomy and self-determination of the native nations that make up the territory.

Within this, the promotion of food, economic, educational, energetic, environmental and environmental sovereignty and the life of the native peoples stands out, in the face of the implementation of national or transnational investment projects, extractive and hydroelectric projects that threaten the full life of the native peoples.

5. In light of the fourth periodic review of Guatemala during the 72nd CESCR session, GI-ESCR, AIDA, International Platform against Impunity, and Payxail Yajaw konob' would like to provide more information on the State Party's fulfillment of its obligation to ensure that companies and International Financial Institutions (IFIs) exercise due diligence and accountability in relation to human rights and highlight our concerns with regard to the Maya Akateka, Maya Chuj, Maya Q'anjob'al and Maya Mam Indigenous Nations, who live in the Yichk'isis Microregion, in the municipality of San Mateo Ixtatán, department of Huehuetenango. This submission centers their case and recent developments and focuses specifically on the need for a human rights-based and responsible exit strategy of corporations and IFIs that financed them involved in the construction of the hydro-electric dams in the affected region.

Details of the case

6. In the microregion of Yichk'isis (Ixquisis) Municipality of San Mateo Ixtatán, in the department of Huehuetenango, indigenous communities, especially Mayans including the Chuj, Q'anjob'al and Akateko native Mayan Nations, have seen their lives severely impacted by the planning and starting of the construction works of two hydroelectric dams called Generadora San Mateo and Generadora San Andrés which were financed by IDB Invest, an independent branch of the Interamerican Development Bank, and implemented by the Guatemalan company Energía y Renovación S.A. The aforementioned generators would use the waters of the rivers Río Negro, Pojom, Yalwitz Primavera, Varsovia and Palmira which are crucial for the livelihoods of the indigenous communities in the region, as they nourish them, provide them with fish, and keep crops alive.¹ The implementation and construction of the hydroelectric projects have violated several rights of the Covenant on Economic, Social and Cultural Rights².
7. First, the projects were authorized despite the absence of adequate consultations with the local communities on the ground and without providing those affected with sufficient information on the risks.³ This constitutes a clear violation of the right to free, prior and informed consent from the communities to the projects, a human right enshrined in the Covenant, as well as in UN Declaration on the Rights of Indigenous Peoples (UNDRIP), the International Labor Organization (ILO) Convention No. 169, and the Convention on Biological Diversity.⁴

¹ AIDA, Guatemalan Indigenous Communities File Complaint for Dams Damages (6 August 2018), last accessed 12 August 2022, <https://aida-americas.org/en/press/guatemalan-indigenous-communities-file-complaint-for-dams-damages>

² Plataforma Internacional contra la Impunidad, Jotay: Acting Together Program, Bank Information Center, Who pays the cost of Development? (January 2021) last accessed 22 August 2022, https://issuu.com/piregional/docs/eng-quienes_pagan_los_costos_del_desarrollo_1_

³ AIDA, *supra* 1, also Inter-American Development Bank Independent Consultation and Investigation Mechanism, Compliance Review Report Generadora San Mateo S.A. and Generadora San Andrés S.A. Projects (GU3794A-01 and GU3798A-01) (2021), MICI-CII-GU-2018-0136, p. 3

⁴ UNDRIP (2007), A/RES/61/295, arts. 19, 28. ILO Convention No. 169 (1989), C169, art. 6 (a). See also CESCR General Comment 21: Right of everyone to take part in cultural life (art. 15, para. 1(a), of the International Covenant on Economic, Social and Cultural Rights) (2009), E/C.12/GC/21, para 37; 1992 Convention on Biological Diversity

8. In addition, the inhabitants of the communities that oppose the projects faced threats, attacks, harassment and other forms of repression and intimidation,⁵ which in 2017 led to the murder of a local resident which has so far not been sufficiently investigated by competent authorities.⁶
9. The construction has also caused severe environmental harm, especially water scarcity and pollution through oil spills, erosion, and wastewater.⁷ Moreover, policy measures to address these environmental impacts did not consider the diverse ways in which inaccessibility to clean and safe water limited indigenous communities' ability to fish, grow food and maintain their traditional lifestyle.⁸ This indicates a violation of their rights to an adequate standard of living, to water, to food, to culture, and to a clean, healthy and sustainable environment⁹.
10. The corporation did not consider the gender specific impact of the implementation of the projects. Women were disproportionately affected by the creation of the dam, as the rivers and water play a significant role in their livelihoods. Women are responsible for the water management in the communities.¹⁰ Moreover, the influx of outside workers and security forces has rendered the area more insecure for women as they have been a *“source of insecurity and fear because of harassment and physical and verbal threats targeting women, and an impediment to free movement when these groups have prevented women from accessing the river or used their equipment to block the way.”*¹¹
11. In reaction to these violations, in 2018, local authorities and people from the microregion of Yich'isis (Ixquisis), belonging to the Maya Chuj and Maya Q'anjob'al indigenous peoples, from the communities of Bella Linda, Yulchen Frontera, Nuevo San Mateo, Pojom Nueva Concepción, and Caserío San Francisco, all in the municipality of San Mateo Ixtatán, represented by the Q'anjob'al, Popti, Chuj, Akateko, and Mestizo Plurinational Ancestral Government, in support of AIDA and the International Platform against Impunity, filed a complaint before the independent investigation mechanism of the Interamerican Development Bank (MICI) with regards to the two hydroelectric projects Generadora San Mateo and Generadora San Andrés. The goal of the complaint was to stop the financing of the projects as well as the responsible exit of the corporation from the indigenous lands.
12. In 2021, MICI identified several areas in which IDB Invest did not comply with their own policies , including on the assessment of indigenous peoples, its gender impact assessment, cultural impact assessment and environmental impact assessment.¹² This has led to a list of 29 recommendations

⁵ Frontline Defenders, Peaceful Resistance of the Microregion of Ixquisis members attacked, kidnapped and torture, (15 march 2019), last accessed 22 August 2022, <https://www.frontlinedefenders.org/en/statement-report/peaceful-resistance-microregion-ixquisis-members-attacked-kidnapped-and-tortured>

⁶ AIDA, *supra* 1

⁷ Plataforma Internacional contra la Impunidad, Jotay: Acting Together Program, Bank Information Center, Who pays the cost of Development? (January 2021) last accessed 22 August 2022 https://issuu.com/piregional/docs/eng-quienes_pagan_los_costos_del_desarrollo_1_

⁸ AIDA, *supra* 1

⁹ Art. 11 of the Additional Protocol to the American Convention on Economic, Social and Cultural Rights (Protocolo of San Salvador), and most recently recognized both by the Human Rights Council (A/HRC/RES/48/13) and by the General Assembly, both from the United Nations (A/RES/76/300).

¹⁰ AIDA, *supra* 1

¹¹ Inter-American Development Bank Independent Consultation and Investigation Mechanism, *supra* 3, para 2.40

¹² *Ibid.*, p. 76-77

to be implemented by the corporation and the Inter-American Development Bank and has thus opened the doors for the bank to withdraw from the project.¹³

13. In 2022, after the MICI report, in a landmark decision, the IDB Invest decided to stop financing the projects, which resulted in an agreement between the parties which implied that IDB Invest will no longer be participating in the financing of this project. While this decision is celebrated by the indigenous communities on the ground, concerns remain about the bank's divestment from the dams which must be consistent with the recommendations of MICI's findings report, especially recommendation 29, which responds to the request of the communities to ensure a responsible exit from the operations in line with the other conclusions and recommendations of the report, and with international human rights law, including economic, social and cultural rights under CDESCR.

Application of International Law Standards

14. CDESCR outlines States' obligations towards business enterprises in its General Comment 24 on state obligations in the context of business activities. Within, the committee highlights that the obligation to protect obliges States parties to effectively prevent infringements of economic, social and cultural rights in the context of business activities.¹⁴ In case of any human rights violations due to the conduct of the corporation, the State party must provide available, effective and expeditious remedies to victims, make information on such remedies and reparations accessible to victims¹⁵, ensure effective access to justice¹⁶ and guarantee that such information is accessible to indigenous peoples and available in their languages.¹⁷ State parties, including through their judicial proceedings, must recognize and protect the customary laws, traditions, and practices of indigenous peoples and traditional customary ownership over their lands and natural resources in judicial proceedings.¹⁸ Especially with regards to indigenous women and girls, States should implement service provision protocols to improve access to justice that consider their specific needs and all crimes against women and girls must be investigated, prosecuted and adequately punished combined with adequate reparations for the victims.¹⁹ Regarding the perpetrating corporation, the State party "*should consider imposing criminal or administrative sanctions and penalties.*"²⁰

¹³ AIDA, The Day That The Indigenous Struggle Bore Fruit In Guatemala (10 December 2021), last accessed 12 August 2022, <https://aida-americas.org/en/blog/the-day-that-the-indigenous-struggle-bore-fruit-in-guatemala>, Inter-American Development Bank Independent Consultation and Investigation Mechanism, Compliance Review Report Generadora San Mateo S.A. and Generadora San Andrés S.A. Projects (GU3794A-01 and GU3798A-01) (2021), MICI-CII-GU-2018-0136, recommendation 29

¹⁴ UN Committee on Economic, Social and Cultural Rights (CESCR), General comment No. 24 (2017) on State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities, 10 August 2017, E/C.12/GC/24, para. 14

¹⁵ *Ibid.*, para. 38

¹⁶ *Ibid.*, para. 40

¹⁷ United Nations Global Compact, A Business Reference Guide: United Nations Declaration on the Rights of Indigenous Peoples (2013), p. 47. UN Committee on the Elimination of Racial Discrimination, general recommendation No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system, CERD/C/GC/31/REV.4, para. 30.

¹⁸ *Ibid.*, para. 52. Also see A/68/279, para. 34; and Committee on the Elimination of Racial Discrimination, general recommendation No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system, CERD/C/GC/31/REV.4, para. 5 (e).

¹⁹ UN Committee on the Elimination of Discrimination Against Women, Concluding observations on the combined eighth and ninth periodic reports of Guatemala (2017), CEDAW/C/GTM/CO/8-9, paras. 13(a) and 21(b)

²⁰ *Ibid.*, para. 15

15. The UN Guiding Principles on Business and Human Rights highlight that States, when acting as members of multilateral institutions that deal with business-related issues, retain their human rights obligations within these institutions and should ensure that those institutions do not affect the State's ability to fulfil its duty to protect human rights and that they promote the business respect for human rights. This also applies for international financial institutions.²¹ The Working Group on Business and Human Rights has further elaborated that *"States should encourage multilateral institutions to adopt a gender perspective in discharging their respective mandates"* and to *"ensure that agreements and policy frameworks negotiated in a multilateral setting promote substantive gender equality and avoid exacerbating existing discrimination faced by women."*²²
16. The importance of a responsible disengagement from business operations has been highlighted by the UN Guiding Principles on Business and Human Rights that state that a corporation should disengage from its operations when it is unable to mitigate the human rights impact that it has been causing. Such exit must take into account credible assessments of potential adverse human rights impacts of doing so²³ and should include gender-transformative measures to prevent and mitigate adverse impacts.²⁴ The OECD Guidelines further conclude that *"the enterprise should also take into account potential social and economic adverse impacts related to the decision to disengage."*²⁵ In this light, operations undertaken by a corporation to disengage must underlie the same standards and scrutiny as other business operations.
17. From the UN Guiding Principles as well as CESCR's General Comment on business activities and the MICI concluding report, it is clear that any disengagement from business operations must precede a human rights impact assessment which has to pay specific attention to the human rights impact on indigenous peoples, especially their rights to land, resources, territories, cultural heritage, traditional knowledge and culture.²⁶ It is not enough though for such an assessment to be conducted by the corporation, but the State party should require business enterprises to communicate to the State how they address their human rights impacts.²⁷ The government must thus play an active role in the implementation of the disengagement operations, including the human rights impact assessment. Businesses *"should identify and assess any actual or potential adverse human rights impacts with which they may be involved either through their own activities or as a result of their business relationships"*, including *"meaningful consultation with potentially affected groups and other relevant stakeholders"*, *"integrate the findings from their impact assessments across relevant internal functions and processes, and take appropriate action"*.²⁸
18. The human rights impact assessment as well as the execution of the disengagement following the assessment must be drafted and implemented in consultation with the affected communities and must guarantee their right to participate fully and freely in these procedures.²⁹ Indigenous peoples have a right to participate in decision-making on matters that affect their rights and any decisions,

²¹ UN Office of the High Commissioner on Human Rights, Guiding Principles on Business and Human Rights (2011), HR/PUB/11/04, principle 10

²² Working Group on the issue of human rights and transnational corporations and other business enterprises, Gender dimensions of the Guiding Principles on Business and Human Rights (2019), UNDoc A/HRC/41/43, paras. 19 & 20

²³ UN Office of the High Commissioner on Human Rights, *supra* 21, principle 19

²⁴ United Nations Global Compact, *supra* 17, para. 37

²⁵ OECD Guidelines for Multinational Enterprises (2011), Commentary on Chapter 2, paragraph 22

²⁶ UN Committee on Economic, Social and Cultural Rights (CESCR), *supra* 14, para. 17

²⁷ UN Office of the High Commissioner on Human Rights, *supra* 21, principle 3(d)

²⁸ *Ibid.*, principles 18-19

²⁹ See ILO Convention No. 169 (1989), C169, art. 15

actions, or other measures taken by the corporation or State party must guarantee their full, prior and informed consent, in line with international human rights law standards.³⁰ Such consultations must also take into consideration the different needs and demands of members within the community, especially women and girls, and guarantee their participation in consultations and decision-making processes is guaranteed without any forms of discrimination, intimidation, harassment, or violence against them.³¹ This is in line with CESCR's obligation to non-discrimination, arts. 2 and 3 of the Covenant. Especially given women's important role with regards to water management within indigenous communities, their voices must be at the forefront of any decisions and actions taken.³²

19. Such human rights impact assessment cannot be considered as a momentary analysis of the situation but has to be investigated and analyzed throughout the different stages of disengagement. It is therefore not enough to conduct one sole consultation. In addition to this, the voices of human rights defenders and especially women human rights defenders are crucial and they must be able to "*freely carry out their work protecting women's human rights and exercise their rights to freedom of peaceful assembly and association*".³³
20. A responsible disengagement strategy must also take into account the specific obligations to safeguard the rights of indigenous peoples to natural resources pertaining to their lands³⁴ as well as their "*right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources*".³⁵ Any action taken must therefore respect, protect, fulfil and promote the close ties that indigenous populations hold to their lands in order to guarantee their dignified life.³⁶ With the new recognition of the human right to a clean, healthy and sustainable environment, it is undeniable that the respect, protection and fulfilment of human rights is tightly linked to a clean, healthy and sustainable environment, and vice versa. The right can only be enjoyed if the full and meaningful participation of all, including women and girls, is guaranteed in decision-making related to the environment.³⁷
21. The Guatemalan state is also responsible for the violation of individual and collective human rights of the indigenous peoples, considering that the public security forces, army and the national police together with the company's private guards have permanently repressed the population. The Prosecutor's Office has not investigated the serious crimes that agents from the company have committed but has instead falsified investigations in favor of the company to criminalize ancestral authorities and indigenous personalities. The judiciary has condemned ancestral authorities - and indigenous personalities - in a discriminatory fashion, based on ethnic origin, and criminalized the historical demands of the peoples.
22. Guatemala should have reported on the actions taken to ensure that companies exercise due diligence on economic, social, and environmental human rights impacts on the lands and

³⁰ See UNDRIP (2007), A/RES/61/295, art. 18 and 19. UN Committee on the Elimination of Discrimination Against Women, *supra* 19, para 41(c). ILO Convention No. 169 (1989), C169

³¹ UNDRIP (2007), A/RES/61/295, art. 22

³² UN Committee on the Elimination of Discrimination Against Women, *supra* 19

³³ *Ibid.*, para. 29(c)

³⁴ ILO Convention No. 169 (1989), C169, art. 15.1

³⁵ UNDRIP (2007), A/RES/61/295, art. 29.1

³⁶ Inter-American Court of Human Rights, Advisory Opinion OC-23/17 of November 15, 2017, on the Environment and Human Rights, para. 48

³⁷ John H. Knox, Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment (2018), A/HRC/37/59

territories inhabited by indigenous peoples. However, in its report to the committee, the State merely responds that COPADEH has requested advice from the OHCHR to prepare the baseline on business and human rights, that it has carried out exchange activities with other countries, that it participated in the VI Regional Forum, among others³⁸, but omits actions to approach to civil society and especially representatives of indigenous peoples to report on the actions it is taking to ensure that companies exercise due diligence on human rights and are accountable for environmental, social and human rights impacts.

Conclusions

23. This case illustrates global patterns on how green transitions are being conducted in disregard of international human rights standards and all too often at the cost of indigenous communities, especially indigenous women and girls, and their lands. To step up efforts towards climate commitments and the fulfilment of the Sustainable Development Goals, States and other stakeholders often neglect and/or ignore the impact of their development projects on the communities on the ground, leading to severe violations of their economic, social, cultural and environmental human rights.
24. Time and again, their right to free, prior, and informed consent and to active and meaningful participation is stripped from them during ingenuine or complete absence of consultations³⁹ and their livelihoods severely impacted by the projects, including their rights to water, health, adequate standard of living, and life.
25. Women and girls are more likely to live in vulnerable situations which increases the harmful impact of policies, projects and decisions which do not center human rights at the core. Women's absence from leadership positions and gender-blind governance within corporations and governments further increase the risk to not only harm women and girls disproportionately but enforce gender stereotypes and sexual and gender-based violence that they are already facing within their communities and outside.

Recommendations

26. In light of the above, GI-ESCR, AIDA, the International Platform against Impunity, and Payxail Yajaw konob' encourage the Committee on Economic, Social and Cultural Rights to present the following recommendation to Guatemala:
 - a. Ensure that the exit strategy of IDB is in line with international human rights law, and guarantees that local and indigenous communities, including women and girls, express their free, prior and informed consent throughout the operations. In this regard guarantee access to information and full and effective participation of all people potentially affected by the business disengagement, including women and girls.

³⁸ Replies of Guatemala to the list of issues in relation to its fourth periodic report to the Committee on Economic, Social and Cultural Rights (2022), UNDoc E/C.12/GTM/RQ/4, paras. 18-20.

³⁹ See for example the case of Électricité de France's human rights violating windfarm project in Union Hidalgo, Mexico: <https://www.gi-escr.org/latest-news/un-experts-call-on-all-edfs-key-stakeholders-to-uphold-their-human-rights-obligations-in-the-development-of-a-wind-farm-in-unin-hidalgo-mexico>

- b. Ensure that the exit plan includes: 1) recognition and restoration of social and cultural damages caused; 2) respect for the rights of indigenous peoples and recognition and restoration of the damages generated; 3) recognition and restoration of the damages generated by the differentiated impacts on women; and 4) prevention, mitigation and restoration measures from an environmental perspective.
 - c. Ensure that perpetrators of human rights violations, including against indigenous leaders, as well as sex and gender-based violence, violence against women and girls, are held accountable for their actions. Furthermore to ensure access to justice and effective remedies for victims of human rights abuses and violations, including full access to information in indigenous languages of the communities affected.
 - d. Take the decision of the Inter-American Development Bank on the San Mateo and San Andrés hydroelectric water dams into account on a national level to address the countless irregularities and rights violations denounced throughout the country in the context of the implementation of mega-development projects, specifically large dams, incorporating effective learning lessons deriving from these experiences, in order to limit and mitigate the possible impacts of the energy policy.
27. We encourage the Committee to uphold its recommendation to the State party to revise the legislative and institutional provisions relating to projects for the exploitation of natural resources, in consultation with the indigenous peoples, and that it strengthens its capacity to oversee extractive industries and ensure that they do not have a negative impact on the rights of indigenous peoples, their territory and their natural resources.
28. Finally, we would also like to encourage the Committee on Economic, Social and Cultural Rights to systematically consider and review State Parties' transitions policies, frameworks and projects with a human rights and gender lens to ensure they comply with the human rights standards set forth in the Covenant and further to consider the development of standards with regards to gender just green transition policies that put the wellbeing of people and the planet at the forefront.

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