

MARQ WIJNGAARDEN  
MICHEL PESTMAN  
FLIP SCHÜLLER  
PROF. LIESBETH ZEGVELD  
MARIEKE VAN EIK  
PROF. GÖRAN SLUITER  
PROF. BRITTA BÖHLER  
WIL EIKELBOOM  
DR. CHANNA SAMKALDEN  
TAMARA BURUMA  
EDWARD VAN KEMPEN  
BRECHTJE VOSSENBERG  
TOMASZ KODRZYCKI  
DR. HANA VAN OOIJEN  
TOM DE BOER  
NYNKE BAKKENES

*ADVISEURS*  
PROF. HANS ULRICH JESSURUN D'OLIVEIRA  
PROF. TIES PRAKKEN

**PER 1 JANUARI 2016 IS ONS NIEUWE ADRES:  
LINNAEUSSTRAAT 2-A | 1092 CK AMSTERDAM**

**AS OF 1 JANUARY 2016 OUR NEW ADDRESS IS:  
LINNAEUSSTRAAT 2-A | 1092 CK AMSTERDAM**

**REGISTERED MAIL**

FMO

Nederlandse Financierings-Maatschappij voor  
Ontwikkelingslanden N.V.  
Anna van Saksenlaan 71  
2593 HW Den Haag

**ALSO BY FAX: +31 (0)70 324 61 87**

Pages: 3

Amsterdam, 9 March 2016

Our ref. 20160253.CS

**Direct tel.nr: +31(0)20-3446200**

**Direct faxnr: +31(0)20-3446201**

**Re: Agua Zarca**

Dear Sir, Madam,

On behalf of my client, the Civic Council of Popular and Indigenous Organizations of Honduras (COPINH), I ask your immediate attention to the following.

In January 2016, Berta Cáceres, co-founder of COPINH, asked my legal assistance on behalf of her organization and local affected people, to hold FMO responsible for its involvement in the completion of the Agua Zarca Dam in Honduras, which has been associated with numerous human rights infringements. As you know, in the night from March 2<sup>nd</sup> to March 3<sup>rd</sup>, Berta Cáceres was murdered. Her death is a brutal and appalling example of the way resistance of the local communities to the dam has been violently suppressed.

The Agua Zarca dam is being constructed with substantial financial support from FMO. As a consequence, FMO has a direct influence on whether and in what way the construction of the dam is completed. Under these circumstances, FMO is obliged to use its influence in order to prevent further human rights violations in the area of Agua Zarca.

FMO knows or ought to know that the construction of the Agua Zarca dam was commenced in conflict with the national and international obligation to

obtain free, prior and informed consent from affected indigenous communities. This has been set out elaborately in COPINH's previous correspondence<sup>1</sup> and is further illustrated not only by the continuous resistance of those communities, but also by the criminal prosecution by the Honduran Special Office of the Prosecutor for Ethnic Groups and Cultural Patrimony (*Fiscalía Especial de Etnias y Patrimonio Cultural*) of both the mayor of Intibucá and the deputy director of the environmental agency SERNA (*Secretaría de Recursos Naturales y Ambiente*), for their illegal approval of the project absent duly acquired consent.<sup>2</sup>

The Prosecutor has confirmed that the meetings organized by DESA and the former Mayor of Intibucá have no legal significance under Honduran law, and do not qualify as a legitimate consultation process with indigenous communities, because they were carried out by the company interested in building the project and not by SERNA, the state authority responsible for its approval.<sup>3</sup> Even though the information on both these criminal cases is public and official, the FMO has refused to date to acknowledge it.

FMO moreover was or should have been well aware of the intimidation and disproportionate violence used by the police, military and private security forces to suppress local revolts. Before the murder of Berta Cáceres, this had already cost another life - that of Tomás García - and resulted in the wounding of numerous others. Despite the fact that COPINH and other NGOs have repeatedly informed FMO about these human rights violations, FMO has hitherto tacitly accepted these circumstances and refused to withdraw its support.

FMO, in brief, has breached its duty of care by not properly performing its due diligence and/or by failing to react to the human rights violations of which it was or should have been aware. Persistence in this position amounts to (further) negligence and a violation of international obligations aimed at protecting human rights and the environment.

On behalf of COPINH, I therefore request and, if necessary, summon you to inform me in writing before 15 March 2016, 10:00 AM:

- i. that FMO will immediately suspend all financial contributions to the Agua Zarca dam construction;
- ii. insofar as FMO has already paid some or all such instalments: in what way FMO will use its position and available legal means arising from contract or tort to remedy these and any other illegal acts taken by DESA.

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<sup>1</sup> Among others: emails of Berta Cáceres to FMO from October 2013 and 14 November 2013. See also the forwarded email of the Indigenous Council, Community Council, and Council of Elders of La Tejera, Rio Blanco, 8 April 2014, and the letter of BankTrack and other NGO's of 20 December 2013.

<sup>2</sup> The indictment against the mayor was filed by the prosecutor's office with the First Criminal Court of Intibucá. Criminal proceedings against SERNA are ongoing.

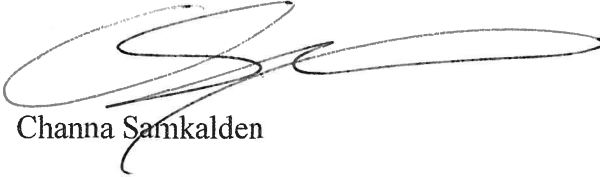
<sup>3</sup> Phone interview of March 2, 2016 between the Environmental Defender Law Center and the Prosecutor.

I further call on FMO to do all in its power to ensure that a) adequate measures are taken by the Honduran authorities and DESA to prevent further violence and other human rights violations; and b) the Honduran authorities sign an agreement with the Inter-American Human Rights Commission for an independent and impartial investigation into the death of Berta Cáceres.

COPINH reserves all rights and actions.

I assume all relevant documents to be in your possession, but I am ready to provide you with a copy of any such documents per your request.

Sincerely,



Channa Samkalden