

**Written Submission of the Centre on Housing Rights and Evictions (COHRE)
to the Committee on Economic, Social and Cultural Rights
at its 31st Session (November 2003)**

I. Introduction

1. The following report is respectively submitted to the Committee on Economic, Social and Cultural Rights (Committee) in order to provide additional information in the context of the Committee's consideration of the second periodic report of the Government of Guatemala.

2. This report addresses the unresolved housing rights violations suffered by the Río Negro community over the past twenty years. While many of these violations initially occurred prior to 19 May 1988, the date the Government of Guatemala ratified the Covenant on Economic, Social and Cultural Rights (Covenant), they entail many ongoing violations and events over the past twenty years which have detrimentally affected the full realization of the right to adequate housing, both presently and continually since 19 May 1988.

II. Historical Context

3. For scores of generations, the Maya-Achi community of Río Negro was situated along the banks of the Chixoy River, a remote valley north in the Baja Verapaz department of Guatemala. In the early 1980s, however, the community was forcibly evicted, by means of a series of brutal massacres, and displaced to the distant town of Rabinal.

4. Prior to displacement, the Río Negro community lived a relatively peaceful existence on the rich land adjacent to the river. The rich soil near Río Negro allowed for sufficient crops of maize as well as mango, banana and other fruit producing trees. The river provided ample fish as a source of protein. The community lived a subsistence lifestyle and required little income from outside sources. Whatever income was needed was easily derived from selling firewood, crops and straw mats at market.

5. In the mid-1970s the Government of Guatemala began a partnership with the World Bank and the Inter-American Development Bank in order to construct the Pueblo Viejo-Quixal Hydroelectric Project (Chixoy Dam). The first phases of the construction project involved the displacement of those communities living in the reservoir basin, including the village of Río Negro.

6. The Government began construction of the Chixoy Hydroelectric Dam in 1975, in what the Government called an effort to bring cheap and available electricity to the county. Ironically, the Government also claimed that an objective of the resettlement component of the project was to be “an improvement of the living conditions of the population in the serviced area of the project,” rather than a mere compensatory payment for damages.¹ The Dam was raised along a stretch of land blocking the natural path of the Río Negro in Baja Verapaz, in central Guatemala. The project was financed in part by the World Bank and the Inter-American Development Bank (IDB), which provided initial loans of US\$72 million and US\$105 million, respectively.² Indeed, the project would not have been undertaken but for the involvement of the World Bank and the IDB. The then State-owned National Institute of Electrification or INDE (*Instituto Nacional de Electrificación*) was responsible for the administration of the funds, the coordination of the project, and the building of the Chixoy Dam itself.

8. INDE, however, did not consult the people that lived along the Río Negro, despite the fact that the construction of the dam would flood 31 miles of the river valley, leaving many of their homes underwater. It was only in 1977, almost *two years* after project construction began, that INDE officials flew by helicopter into the small village, of Río Negro, to inform residents that they would need to abandon their homes and lands because they would soon to be flooded. At first, after INDE promised that they would be given new homes and lands in compensation for their loss, the villagers, under duress due to prior threats of violence, reluctantly considered to leave behind their homes and lands at Río Negro. INDE’s promises would soon prove to be deceptive, however, as villagers learned shortly thereafter that the resettlement site which was to be provided them was in fact grossly inadequate, with conditions far worse than their living situation at Río Negro. By early 1980, the community of Río Negro actively resisted INDE’s efforts to relocate them to the cramped, inadequate houses and poor land at the resettlement site. Consequently, villagers began to be aggressively targeted by the Guatemalan army, which was in the employ of INDE, itself part of the militarised Government of Guatemala and controlled by an Army General.

9. INDE officials requested the Río Negro community to turn over their land titles, promising to return them promptly.³ Months later, when the community requested that the titles be returned, INDE officials claimed they never received them.⁴ In March 1980, members of the *Policia Militar Ambolante* (Mobile Military Police) based at the Dam site and contracted by the project shot seven people in Río Negro. The villagers chased the police away and one officer, according to the people of Río Negro, drowned in the

¹ Government of Guatemala, Project Report: Chixoy River – Pueblo Viejo Hydroelectric Project (December 1975). Furthermore, a footnote indicates that the World Bank contract with INDE (BIRF-1605/GU) includes a clause obligating INDE to provide houses and services for the relocates of better quality than those they enjoyed previously. For this reason, the loan contracts between IDB and INDE did not include such a clause.

² Corruption and technical problems ultimately raised the cost of the 300-megawatt dam from \$340 million to almost \$1 billion.

³ Witness for Peace, A People Dammed: The Impact of the World Bank Chixoy Hydroelectric Project in Guatemala, Washington, DC: Witness for Peace (1996).

⁴ *Id.*

Chixoy River. INDE and the Guatemalan army, however, accused the villagers of murdering the police officer and of being supporters of the country's guerrilla movement. Three months later, in July 1980, two representatives from the Río Negro community agreed to a request from INDE to come to the Chixoy Dam site to present their *Libros de Actas*, the community's only other documentation of the title to their land as well as the resettlement and cash payment agreements it had signed with INDE. Their mutilated bodies were found a week later, and the documents have never been found.

10. In February 1982, after reaching the impasse in negotiations with the Government, 73 women and men from Río Negro were ordered by the local military commander to report to Xococ, a village upstream from the reservoir zone which had a history of land conflicts and hostility with Río Negro. Only one woman out of the 73 villagers returned to Río Negro - the rest were tortured, including raped, and then murdered by Xococ's Civil Defence Patrol (PAC), one of the notorious paramilitary units established by the Guatemalan military. On 13 March 1982, ten soldiers and 25 patrollers arrived in Río Negro, rounded up the remaining women and children and marched them to a hill above the village where many were tortured, including raped. Seventy of the women and 107 children were then brutally murdered, with most of the women dying of strangulation or hacked to death with machetes. As for the children, the perpetrators smashed their heads against rocks or trees until they died. Only two women managed to escape. Eighteen of the children survived because they were taken back to Xococ where they were enslaved by the very patrollers who had murdered their families.

11. Two months later, on 14 May 1982, 82 more people from Río Negro were massacred at the nearby village of Los Encuentros. Fifteen of the victims were taken away by helicopter and never seen again. Witnesses testify that the perpetrators were government soldiers and members of the Xococ PAC who arrived in an a truck owned by *Codifa*, a company under contract of the Chixoy Dam project and funded by the Banks.

12. Finally, in September 1982, 35 orphaned children from Río Negro were among 92 people machine gunned and burned to death in another village near the dam. Broken, terrorized and grieving, the survivors of the community were then forcibly evicted from their homes, uprooted from their lands, and moved to a grossly inadequate resettlement site. Filling of the reservoir began soon after this final massacre.

III. Present Conditions of the Survivors of Río Negro

13. The survivors of Río Negro have lived in extreme poverty since their displacement; a situation which is direct result of, *inter alia*, the forced eviction and forced displacement of their community in the early 1980s.

14. Most of the survivors were relocated to the "Model Village" of Pacux, established by the Government behind a military base near the town of Rabinal. In July 2003, COHRE visited Pacux, which is really nothing more than an urban slum and the residents live in extreme poverty without adequate food, housing, water, health care or educational opportunities. Over the years, members of the community have been beaten and raped by soldiers at the military base situated at the entrance of their community. In order to escape this ordeal, thirteen families have returned to the site of Río Negro and have built

homes on the hillsides above their former village, which is now under water. These families eek out a subsistence life on the steep hillsides above the reservoir. While they are free from the abuse of the soldiers, however, they live in a greater degree of poverty than do their counter-parts at Pacux.



Typical housing at Pacux, the “Model Village” to which the Río Negro community was relocated.

15. The alternative housing provided by the Government of Guatemala at Pacux, and funded by the World Bank and Inter-American Development Bank, lacks adequate availability of services and infrastructure as required pursuant to General Comment No. 4. While the original village of Río Negro provided free water and energy, in the form of firewood, for cooking and heating, the community at Pacux must pay for these essential goods and services. As there are few employment opportunities, and no resources available off the land itself, they are unable to acquire adequate and sufficient water and fuel.

16. Río Negro also provided rich agricultural land and fishing, while Pacux is a crowded urban slum with little access to decent agricultural land and no access to fishing, which was one of the main sources of protein for the community.

17. Furthermore, despite an ethnographic study by Dr. Gaitán Sánchez of housing traditionally used by the Maya-Achi, none of the appropriate housing designs were considered. Indeed, in contravention of Art. 11(1) as informed by General Comment No. 4, Pacux housing lacks adequate habitability. The houses were originally constructed without separate kitchens, which the Maya-Achi indigenous population require, and were entirely constructed of milled lumber which was prone to rot and decay.⁵ The housing

⁵ William L. Partridge, Comparative Analysis of Bid Experience with Resettlement, Based on Evaluations of the Arenal and Chixoy Projects, paper produced pursuant to a consultancy agreement with the Inter-American Development Bank (December 1983).

lacks foundations with contributed to their deterioration due to rot. Additionally, no latrines were constructed.⁶

18. The contractors were subsequently forced to provide kitchens and latrines as well as concrete blocks at the bases of the walls. The kitchens, however, have no doors and therefore cannot be used for food storage. The latrines are without foundations and many have been undermined by erosion. The houses are crowded together on 5 x 10 metre lots. No space is provided for the construction of additions, often necessary to accommodate family growth.

IV. On-Going and Present Violations Directly Attributable to Past Intentional Actions of the Government of Guatemala

19. It is important to keep in mind that the Río Negro community enjoyed *higher* living standards prior to being forcibly evicted and forcibly displaced by the Government of Guatemala, and that the intentional, direct and calculated action of the Government of Guatemala to forcibly evict and displace the Río Negro survivors had a substantial impact on the present inadequate conditions in which they now are forced to live.

20. Although the Government of Guatemala's failure to *respect* and *protect* the rights of the Río Negro survivors to be free from forced eviction occurred prior to its ratifying the Covenant, it has failed to *fulfil* their rights under the Covenant, including the right to adequate housing, subsequent to becoming a State Party to the Covenant.

21. While the *fulfilment* of the right to adequate housing is generally an obligation which is to be progressively realised, the progressive realisation clause should not apply in this specific case, as the extreme poverty, including inadequate housing conditions, from which the Río Negro survivors presently suffer is the direct result of unlawful actions taken by the Government of Guatemala, with the complicity of the World Bank and Inter-American Development Bank (see below for more information on the issue of liability). In other words, the present conditions in which the Río Negro survivors live is not due to a lack of State resources, but from the State Party's intentional, direct and calculated violations of their human rights beginning in the 1980s, and therefore a lack of resources can not be accepted as an excuse for the extreme poverty in which the Río Negro survivors presently live. This conclusion is particularly relevant given that adequate resources should have been and should be forthcoming from the World Bank and the Inter-American Development Bank.

22. Consequently, as the progressive realisation clause is inapplicable in this specific case, the present living conditions of the Río Negro survivors thus amounts to a present and ongoing violation by the Government of Guatemala of, *inter alia*, Article 11(1) of the Covenant.

V. Liability of the Government of Guatemala

⁶ *Id.*

23. The Government of Guatemala was the sole owner of the *Instituto Nacional de Electrificación* (INDE), the State Electricity Institute, until October 1997, when the company was privatised and sold off as three separate companies with INDE as a holding company.

24. The INDE wanted the land on which the Río Negro community was situated as it was in the area to be flooded by the reservoir resulting from the construction of the Chixoy hydroelectric power dam (Chixoy Dam). The Chixoy Dam was included in the Government's development plan for the Transversal del Norte zone, where, incidentally, many of the generals in the Guatemalan military owned property.

VI. Liability of the World Bank and Inter-American Development Bank

25. The roles of the World Bank and of the Inter-American Development Bank are also important to consider when addressing the legal liability issues involved in the Chixoy case. As noted above, the World Bank and Inter-American Development Bank (IDB) both continued to provide loans for the Chixoy Dam throughout the displacement phase of the project. Indeed, the World Bank's second loan instalment to the Government of Guatemala actually occurred in 1985 - *after* the massacres and forced displacement took place.

26. First, as organs of the United Nations and the Organization of American States, respectively, the World Bank and the IDB are obligated not to defeat the purposes of those bodies. For instance, the World Bank and the IDB must work to further the objectives of the UN Charter and the Charter of the OAS, respectively, and of course must not undermine those objectives. With respect to the UN Charter, those objectives include, *inter alia*, the promotion of "universal respect for, and observance of, human rights and fundamental freedoms for all."⁷ Similarly, the Charter of the Organization of American States reaffirms these United Nations "principles and purposes" and states as a purpose of the Organization the "consolidation ... of a system of individual liberty and social justice based on respect for the essential rights of man (sic)."⁸

27. Second, the States that make up the World Bank and IDB all have human rights obligations. These States can not ignore, or indeed violate, these obligations simply by organising themselves into the Banks or by using the Banks as agents to carry out policies that violate their respective international human rights obligations. Therefore, each Member-State of the World Bank, and in particular those making up the Executive

⁷ Charter of the United Nations, Art. 55(c).

⁸ Charter of the Organization of American States, Preamble, 119 U.N.T.S. 3, *entered into force* 13 December 1951; *amended by* Protocol of Buenos Aires, 721 U.N.T.S. 324, O.A.S. Treaty Series, No. 1-A, *entered into force* 27 February 1970; *amended by* Protocol of Cartagena, O.A.S. Treaty Series, No. 66, 25 I.L.M. 527, *entered into force* 16 November 1988; *amended by* Protocol of Washington, 1-E Rev. OEA Documentos Oficiales OEA/Ser.A/2 Add. 3 (SEPF), 33 I.L.M. 1005, *entered into force* 25 September 1997; *amended by* Protocol of Managua, 1-F Rev. OEA Documentos Oficiales OEA/Ser.A/2 Add.4 (SEPF), 33 I.L.M. 1009, *entered into force* 29 January 1996.

Directors, have violated their respective obligations under the Covenant to respect, protect and fulfil the rights of the Río Negro community.

28. Indeed, impunity for human rights violations would be the norm if States could simply violate their respective human rights obligations through the formation of corporations or organisations that then are used as agents of those States to carry out egregious policies. And that impunity would be further entrenched if victims of those violations can not avail themselves to remedies such as those provided by the Committee on Economic, Social and Cultural Rights.

VII. Conclusions

29. The Government of Guatemala, with the complicity of the World Bank and the Inter-American Development Bank, unlawfully forcibly evicted the community of Río Negro in 1982. Methods used to carry out the forced eviction included a series of massacres resulting in the deaths of 444 residents of the community.

30. Given their supervisory role in the Chixoy Dam Project, the World Bank and the Inter-American Development Bank knew or should have known that the Government of Guatemala was violating human rights in order to depopulate the reservoir basin.

31. The present living conditions are a direct result of, *inter alia*, the displacement of the Río Negro community and the failure of the Government of Guatemala, the World Bank and the Inter-American Development Bank to provide just and fair compensation to the Río Negro survivors including alternative adequate housing as required by General Comment No. 7.

32. The Government of Guatemala has an obligation to seek further funding from the World Bank and the Inter-American Development Bank in order to fully implement the relocation component of the Chixoy Dam Project, including the provision of alternative adequate housing and just and fair compensation for lost housing, land and crops.

VIII. Recommendations

33. The Government of Guatemala should provide just and fair compensation to the survivors of Río Negro, to be determined in full consultation with the survivors.

34. The Government of Guatemala should seek further funding from the World Bank and the Inter-American Development Bank in order to fully implement, and thus fully complete, the relocation component of the Chixoy Dam Project, including the provision of alternative adequate housing and just and fair compensation for, *inter alia*, lost housing, land, crops and other property in full consultation with the Río Negro survivors.

35. The Government of Guatemala should bring those responsible for the forced eviction, displacement, massacres and other human rights violations of the Río Negro community to justice.