

PERENCO

OIL PRODUCTION AT ANY COST

A REPORT ON THE SOCIAL AND ENVIRONMENTAL
CONSEQUENCES OF PERENCO'S ACTIVITIES IN GUATEMALA

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Introduction

Who are Perenco? Perenco are an independent Anglo-French oil and gas company. Its headquarters are located in London but it also has offices in Paris and the Bahamas¹. Founded by Hubert Perrodo (1944-2006), the company is now run by CEO, Jean-Michel Jacoulot, and still partly belongs to his eldest son, François Perrodo, the 173rd richest man in France.² Perenco operates in 16 countries, Central Africa (Cameroon, Gabon, Congo - Brazzaville, Democratic Republic of Congo), Latin America (Guatemala, Belize, Colombia, Peru, Venezuela, Brazil) in the Mediterranean (Tunisia, Egypt, Turkey), the North Sea, Australia and even in Iraq. Perenco maintains a low profile, is virtually absent from the media and is relatively unknown to the general public. Without being a "major player" in the exploration and production of hydrocarbons, it is nevertheless significant in its sector, producing around 250,000 barrels per day and employing more than 4000 people across the world³. Its strategy has been to buy and operate concessions, deemed non-profitable by other companies, with a particular focus on countries plagued by human rights abuses and environmental issues.

Why the report? This report considers the impact of Perenco's presence in Guatemala through its subsidiary **Perenco Guatemala Limited** (Perenco GL).⁴ It highlights the legal shortcomings of its current operating contract and the human rights violations linked to the presence of the company. The current status of international law offers neither the United States nor the international community the means to regulate the actions of multinational corporations who operate in several countries. The autonomy of this corporate body, as well as its limited sense of responsibility, prevents us from holding the company to account for the environmental and human rights violations committed by its subsidiaries. With this current legal structure, victims have no choice other than to apply to the court of the country where the subsidiary operates. Given the strong ties between

¹ www.perenco.com/contact.html

² www.challenges.fr/classements/fortune.php?cible=1916

³ Perenco regularly uses recruitment agencies and temporary local services so the actual number of employees working at facilities of the company is well above the given figure and therefore difficult to estimate.

² www.challenges.fr/classements/fortune.php?cible=1916

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⁴ The name of the subsidiary will be used in this report, taking into account that the parent company is directly responsible for the activities of its subsidiary. Perenco's activities in Guatemala are on a separate page from the company site and the website, dedicated to the activities of Perenco in Guatemala, shows the logo of the company not the subsidiary. It still uses the name of Perenco to illustrate its work, not that of the subsidiary and its current representatives are: Geoffrey Martin-Denavit (legal representative), Benedict of Fouchardière (CEO), Olivier Aberlin (Director financial), Larry Bottomley (Vice President of Exploration for Perenco), and Antonio Minondo Ayau (director of Industrial Safety and spokesman). See www.perenco.com and www.perenco-guatemala.com

foreign businesses and host states and their weak legal system, they receive only too little compensation for the harm they have encountered. This report endeavors to illustrate the lack of access to justice for the people in Guatemala. It also supports the EU campaign⁵ that promotes access to justice for victims of human rights violations in countries where multinational companies are located.

⁵ See www.desreglespourlesmultinationales.org and www.uneseuleplanete.org

REPORT SUMMARY

The Anglo-French owned oil company, Perenco, was set up in Guatemala in 2001 by its subsidiary Perenco Guatemala Limited (Perenco GL). Oil is extracted in the region of Petén, in the north of the country. Its presence has been questioned since the renewal of its contract in 2010, which guarantees the company's production for another fifteen years. It also allows for the company's expansion, despite the fact that its oil wells are located in a protected natural area. According to critics and politicians, this process has lacked transparency and has been inconsistent with the Constitution of the country, national laws and international legislation. Organisations, campaigning for ecological and social justice, have criticized the ongoing oil activity in the Laguna del Tigre National Park (LTNP), the largest wetland in Central America which is protected by international conventions.

Guatemala's legal framework offers a firm ruling over its protected natural areas. What's more, as a legally protected area in Guatemala, the Laguna del Tigre National Park is recognized by The Convention on Wetlands of International Importance, otherwise known as the Ramsar Convention. Despite reports of illegalities in the renewal of the contract, which was signed by the president Álvaro Colom in July 2010, GL Perenco still continues to work in the area. While the expansion project is strongly supported for the economic benefits it may bring to the country, many doubt that these benefits will be seen by the country's people and there are serious concerns about the adverse impact this will have on people's human rights as well as the environment. So while those in power are in favor of the continuation and expansion of oil production in the area, the statistics reveal that, in reality, Guatemala will suffer from the expansion.

Therefore, the continued presence of Perenco Guatemala Limited in the LTNP is a cause for concern, particularly when considering the increased military presence in the region which is partly funded by the company itself. There are also the threats, executions and ordered evictions of communities located in the LTNP, who live in a constant state of fear for having to leave their land. Furthermore, residents have to contend with poor living conditions in an area completely neglected by the state and in which Perenco have failed to deliver their promises on the development of education and health services.

BACKGROUND

INFORMATION ON

PERENCO GUATEMALA



Wells 4 and 32, Camp Xan. Photo credit: Collectif Guatemala

From 2001, Perenco Guatemala Limited have operated several oil wells in the northern region of Petén. This report will focus more specifically on the Laguna del Tigre National Park (LTNP), an area where 37 communities (or 40 000 inhabitants) are affected by the consequences of the activities of the company.

Socio-demographic information on the Petén region

Petén is the largest region in Guatemala. Its size (36 000 square kilometres) covers roughly one third of the country. The population density is, nevertheless, much lower than the national average, with only 614 000 inhabitants or 17 inhabitants per km² (of a total population of about 14.4 million)⁷. The region has 12 cities (Dolores Flores La Libertad Melchor de Mencos, Poptún, San Andrés, San Benito, San Francisco, San Jose, San Luis, Santa Ana, Sayaxché) as well as many national parks and protected nature reserves, including the Laguna del Tigre National Park. Located in the north of the region, it shares its largest border with Mexico and is home to the Maya Biosphere Reserve, a protected area created in 1990 and recognized in the same year⁸ by UNESCO's Man and the Biosphere Programme⁹. During the last century, Petén was home to several waves of migration, a change that has shaped its current social structure.

"In the 60s and 70s, many families from the west and the south coast of Guatemala migrated to Petén, which at that time was the least populated region of the country and offered the greatest prospects for economic development for its agricultural potential. The majority

⁶ With an area of 108 890km² and an estimated population of 14.4 million inhabitants, the average density of Guatemala is 132 inhabitants per km².

⁷ Data provided by the website of the National Institute of Statistics. This is a projection for 2010 of results of the 2002 national census. Found at: <http://www.ine.gob.gt/index.php/demografia-y-poblacion/42-demografiaypoblacion/207-infodemo2010>

⁸ Global Network of Biosphere Reserves. UNESCO, The MAB Programme. September 2010.

⁹ See www.unesco.org/new/fr/natural-sciences/environment/ecological-sciences/man-and-biosphere-programme/

of migrants were looking for a better standard of life through the purchase of plots of land which were allocated to people with families. "¹⁰

The early 80s saw an increase in internal armed conflict (1960-1996)¹¹, and so many families sought to escape the massacres and flee to Petén. These families came from different parts of the country, including the Mayan communities Q'eqchi'es¹² and the neighboring region of Alta Verapaz. With the ongoing civil war, the process of legalizing land was unsuccessful and the title deeds were eventually distributed among those close to the government (the military, powerful landowners, etc.)¹³

In the 90s Petén was re-developed by the Secretariat of Strategic Planning (SEGEPLAN), and restructured¹⁴ into three areas of management. The north, home to the Maya Biosphere Reserve and Mayan archaeological sites, followed the "Cuatro Balam" programme, aimed at developing the infrastructure of touristic sites. The area had also been modified due to the work of Perenco GL, which had built six new military units in the past 15 years and had threatened many communities with eviction. In the centre of Petén, an urban development programme, which gave focus to the community, would aim to provide better access to basic services to encourage tourism. The construction of five hydroelectric plants along the Usumacinta River was also planned for the area, as well as the granting of permits for new oil concessions. The south of Petén would be used for planting vast monocultures such as palm oil and the production of biofuels, teak and "piñones" for export. These monoculture plantations had already widely expanded in the area, leading to the eviction of several of communities¹⁵ and the significant deforestation in the region¹⁶

¹⁰ Los hijos que la guerra arrebató". El Periódico. 2001. Available at:

www.cicr.org/Web/spa/sitespa0.nsf/htmlall/5TDQ9Z?OpenDocument&View=defaultBody&style=custo_print

¹¹ The armed conflict in Guatemala, see: Report of the Commission for Historical Clarification. 1999.

Guatemala: memoria del silencio. Chapter II: Volume 3. "*Las Massacre: la violencia colectiva contra la población indefensa*". Guatemala. Available at <http://shr.aaas.org/guatemala/ceh/mds/spanish/>

¹² The Maya Q'eqch'ies are one of the Mayan peoples of Guatemala, living mainly in the north-east. The Q'eqchi is one of 21 Mayan languages spoken in Guatemala.

¹³ Interview with the Collectif Memoria Histórica in August 27, 2010.

¹⁴ The following information is taken from preliminary versions of three documents provided by the member SEGEPLAN Hector Nuila ("Avances del proyecto Cuatro Balam", "Avances del Departamento de Petén," and "Proyecto Matriz de") cited in: Resistencia de los Pueblos. "Tenemos that compartir palabras". Bulletin. December 2010, p.11. <http://resistenciadlp.webcindario.com/pdf/manifiestopeten.pdf>

¹⁵ www.lemonde.fr/week-end/infographie/2011/06/03/le-guatemala-sous-la-coupe-de-lagrobusiness_1531661_1477893.html

¹⁶ For more information, see :: « El mercado de los agrocombustibles : destino de la producción de caña de azúcar y palma africana de Guatemala », ActionAid, Guatemala, Novembre 2010.

armed conflict and military repression. In the 1970s, Basic Resources partnered with the group "Operación Conjunta", led by the French state-owned business Elf Aquitaine.²¹

Basic Resources' history in Guatemala is linked to different circles of economic and political power, including collaboration with important oligarchy families whose interests fall in line with the industry²². The alliances between different sectors (industrial, agro-export) are of particular importance for oil when considering power production in Guatemala. For national industries, it becomes a strategic move to take a stake in oil production in order to facilitate access to your own manufacturing plants.

On August 13, 1985, while Guatemala was still in the midst of armed conflict and a military-led government, Basic Resources signed the 2-85 contract with the Ministry of Energy and Mines for a period of 25 years.

Basic Resources has also been also linked to several right-wing neoliberal figures in Guatemala, mainly through Manuel Ayau Cordón, director of Basic Resources on several occasions. He was one of the leading thinkers of radical neo-liberalism and the founder of the private Francisco Marroquín University. His nephew, Antonio Minondo Ayau, is currently the Director of Perenco Guatemala Limited. Figures involved in politics or belonging to large families in Guatemala have also been found in positions of power at Basic Resources. For example, Enrique Camacho Novella, the former CEO of Cementos Progreso (the largest cement factory, owned by the Novella family) and Director of Basic Resources or Julio Matheu Duchez who, having worked as Vice President at Basic Resources in 1980, became Minister of the Economy in 1982 during the rule of Efraín Ríos Montt (1982-83), the dictator and leader of the military regime in power. The appointment of Vernon Walters, as a Consultant to Basic Resources in 1980 and 1981, having formerly been Deputy Director to the CIA,²³ also indicates an interest from United States in oil production in Guatemala. From the 90s, with the

²¹ Solano, Luis. "Efectos económicos y sociales de la actividad petrolera en la Franja Transversal del Norte y Petén, durante el período 1974-1998". Thèse d'Economie. Universidad de San Carlos de Guatemala. 2000.p.154.

²² When speaking of oligarchy and of Guatemalan families, it is important to start from the concept of "family network" Marta Elena Casaus Arzú (Casaus Arzú, Marta Elena. "Guatemala: lineage y racismo." F & G Editores. Tercera edición. 2007. page 8) defines it as. " the families that structure the power elite in each country and form the nucleus oligarch. These networks are linked by five factors that spread unity and uniformity that allow them to form as a structure over the long term. Namely: a) alliances through marriage, b) through alliances and business c) geographic proximity and socio-racial d) participation in political associations, religious or socio-cultural and, e) the training of their own organic intellectuals. "

²³ Op cit. Solano, Luis. 2005.

implementation of laws for protected areas in full force and the creation of the Maya Biosphere Reserve²⁴, civil²⁵ society began to report the negative impacts of oil production in the LTNP.

The oil operations of Basic Resources in the area were particularly criticized due to the environmental²⁶ ramifications caused, despite the implementation of environmental conservation initiatives²⁷

Basic Resources saw its end in the late 90s and was initially bought by a Canadian company before being bought by the U.S Company, Union Pacific. It was sold again in 2001 for over 100 million dollars to the private Anglo-French company, Perenco²⁸

The beginning of oil exploitation in Guatemala²⁹

1930s:

The Dictatorial rule of Jorge Ubico (1931-1944): U.S. oil companies begin to come to Guatemala, including 'Standard Oil of New Jersey', a company owned by the powerful Rockefeller family.

1940s:

October 1944: Revolution begins in Guatemala and José Arévalo is elected president (1945-1951). Under his authority, the law concerning the oil industry changes in 1947 and in 1949, as he asserts that oil will be used primarily by companies in Guatemala, causing great discontentment among oil multinationals who leave the country.

1950s:

Coup of 1954: Castillo Armas is supported by the CIA in overthrowing the elected President Jacobo Arbenz (1951-1954). U.S. oil companies advise the new Government to develop new legislation that will focus on multinational oil companies, particularly in terms of taxes and guarantee investments.

²⁴ Orders 4-89 and 5-90. See 1.d. Legal framework.

²⁵ The term civil society denotes organized forms of people (associations, unions, social movements, etc.) and non-governmental forces (civil society does not mean political parties).

²⁶ See Part 6 of this report, "Environmental Impact" and Appendix XII and XIII.

²⁷ Predominantly a reforestation project. See the website of the company:

www.perencoguatemala.com/es/responsabilidad-social/reforestacion.html

²⁸ El mercado del petróleo Internacional en 2001. La producción mundial y la Exploración. National Commission Energy (Spain), Director Oil, October 2002, p13. Available at: www.cne.es/cne/doc/interes/PA007_02.pdf

²⁹ Richard Crockatt, The Fifty Years War: The United States and the Soviet Union in World Politics, 1941-1991, 1994 University of East Anglia ; Streeter, Stephen M. Managing the Counterrevolution. The United States and Guatemala, 1954-1961, Ohio University Center for International Studies. Research in International Studies. Latin America Series No.34. Athens. 2000. In Solano Luis. 2005. Guatemala : petróleo y minería, en las entrañas del poder. Inforpress Centroamericano. 169p.

1970s:

Basic Resources begins oil extraction in Guatemala and its first exports, mainly to the United States, begin from the commercial oil mining of its wells. The 1975 Act, from Kjell Laugerud's military government (1974-1978), highlights a very nationalistic view in its oil production and facilitates significant economic benefits for the state (and also for the military).

1980s:

Bloody internal armed conflict: The *de facto* military government of Ríos Montt (1982 -1983) develops a legal decree on hydrocarbon that is adopted in 1983 and is still in force today. The decree aims to attract foreign investment and is part of the first wave of structural adjustments imposed by the IMF against all budgetary support.

2011: Perenco operates more than 90% of Guatemalan oil production

Since the purchase of concessions, initially held by Basic Resources in 2001, today Perenco GL operates in Guatemala by extracting from its wells in Xan (area in Petén), which has a production area of 307 km²³⁰, or 47 wells, and is administered by the 2-85 contract. Perenco also operates in the Libertad refinery (an area in Petén) as well as a 475km pipeline specifically linking from the Xan wells and from Rubelsanto (a region in Alta Verapaz) to an exit in the Atlantic. The company also uses a port terminal in Piedras Negras (an area in Izabal)³¹ for its transportation connections.



Figure 2: Map of Perenco's operations in Guatemala. Source: www.perenco-guatemala.com

³⁰ <http://www.perenco-guatemala.com/about-us/qa-laguna-del-tigre.html>

³¹ Website Perenco Guatemala: <http://www.perenco-guatemala.com/about-us/perenco-inguatemala.html>

The Xan wells are located in the region of Petén, within the Laguna del Tigre National Park (LTNP), the largest wetland in Central America and the second largest in Latin America. The LTNP is recognized by the Ramsar Convention and is registered on the Montreux Record³². La Laguna del Tigre National Park was declared a national park in 1990³³. From 1985 to 1988, 100% of Guatemalan oil production came from concession 1-85 from Rubelsanto, the only wells in operation at this point. From 1992, the oil extraction from Xan began to account for more than half of domestic production and achieve 97.5% of the country's total production in 1998³⁴. The 2-85 contract, managed by Perenco, now produces 94% of the country's petrol³⁵, which accounts for approximately 13,000 barrels per day.

The oil extracted from the Xan Wells is considered low quality. One of the classifications measures the viscosity by API (American Petroleum Institute³⁶) gravity. Most oil has a high number of degrees API and the lighter the oil, the better the quality (the oil that is considered light, and therefore superior, is above 31.1 ° API)³⁷. Oil in the Xan Wells is 15.8 ° API, making it a heavy oil and therefore unsuitable for fuel. It is more specifically used for asphalt production. The majority of the oil produced from the Xan Wells is exported to the United States. The rest is processed locally to produce asphalt and sold to national industries to cover their energy needs³⁸.

Until 2009, Perenco GL also operated the wells in Rubelsanto, which were previously owned by Basic Resources. Interestingly, until 2009, when purchasing Empresa Petrolera del Rubelsanto del Istmo (EPI), a Guatemalan subsidiary of a U.S. private company, Basic Resources, was still officially listed as the company responsible for its production, which implies that they had not completely disappeared from Guatemala.³⁹ Fernando Solis and Luis Solano, journalists from El Observador and experts specialising in oil mining industries in Guatemala, believe that the creation of EPI came from an agreement between Perenco and Basic Resources to maintain control over wells in Rubelsanto. Fernando Solis has also spoken about the links between the two French companies, particularly as

³² See: <http://www.ramsar.org> - See 1.d. of the Legal Framework.

"The Montreux Record is the main tool of the Ramsar Convention, used to develop and identify sites where an adverse change has occurred, or is likely to occur, in ecological landmarks and where conservation measures are needed as a priority. The registry is managed under the Ramsar Database and is updated continuously. (Operating Principles of the Montreux Record; Article 3.1) "Resolution VI.1, Brisbane 1996, Appendix 3.

³³ Order 5-90 which created the Maya Biosphere Reserve.

³⁴ Bulletin "of Comportamiento Actividad Energética". Sección de Cuentas Nacionales del Departamento de Estadísticas Económicas del Banco de Guatemala, 1996-1198. In op. Solano, Luis. 2000. p.81.

³⁵ Solano Luis. "Petroleras en acción, selva en destrucción". Enfoque. Análisis de situación. N°6. 30 April 2010. p.3.

³⁶ See their website: <http://www.api.org/>

³⁷ <http://www.unctad.org/infocomm/francais/petrole/qualite.htm>

³⁸ Luis Solano. "Oil acción, selva in Destruccion". Enfoque. Análisis de situación. No. 6. April 30, 2010.

Information confirmed in an interview with a resident of Puerto San Tomas, September 2010.

³⁹ Interview with Fernando Solis. 16 December 2010.

Basic Resources had been run for many years by Frenchman Gilberte Beaux, right hand man to Anglo French billionaire, John Goldsmith who was a pivotal player at Basic Resources in the 70s and 80s.⁴⁰

Legal framework of oil exploitation and human rights and environmental violations Guatemala

Existing laws and conventions adopted / ratified by Guatemala	Specific articles
	On the regulation of economic and oil activity
Political Constitution of the Republic (effective January 1986 and amended in November 1993)	Article 121 e) State Property. The subsurface deposits of oil and minerals, and any other organic or inorganic substances from underground.
Decree 109-83 Exploitation of hydrocarbons Act (September 16, 1983)	It states that the MEM may not authorize any extension of contracts if they violate the national interest or the laws of the Republic (Article 12). Sets the amount of royalties payable by oil companies depending on oil quality.
Decree 71-2008 Fund for the Economic Development of the Nation FONPETROL (November 18, 2008)	Article 8. Reformation. It amends Article 12 of Decree Law 109-83 of the Head of State, which reads as follows: "Article 12. Term contracts. The term of contracts for oil operations may be up to 25 years, with the MEM approving a single extension of up to 15 years, provided they prove economic terms more favourable to the State (...). The MEM may not authorize any extension of contracts for oil operations, if they injure national interests or violate the laws of the Republic. "
DR-CAFTA, NAFTA between the United States, Central America and the Republic Dominican (effective June 2006)	Chapter 17.2. The parties recognize that it is inappropriate to encourage trade or investment by weakening or reducing the protections afforded in domestic environmental laws (...) or as an incentive for the establishment, acquisition, expansion or retention of an investment in its territory.
	On the conservation of protected areas and environment
Constitution of the Republic (effective January 1986 and amended in November 1993)	Article 46. It establishes the general principle that human rights, treaties and conventions accepted and ratified by Guatemala take precedence over domestic law. [This applies to the Ramsar Convention (www.ramsar.org), the International Covenant on economic, social and cultural rights, the International Covenant on Civil and Political Rights (www.ohchr.org) and the Convention 169 of the International Labour organization (ILO) (www.ilo.org).] Article 64. National interest is declared the conservation, protection and enhancement of the natural heritage of the nation. The State shall promote the creation of national parks, reserves and sanctuaries, which are inalienable. Article 97. The State, municipalities and the inhabitants of the territory national are required to promote the social, economic and technological development that

⁴⁰ Interview with Fernando Solis. 16 December 2010

	prevents contamination of the environment and maintains ecological balance.
Decree 4-89 Protected Areas Law (Jan. 10, 1989)	Establishment of protected natural areas and obligation for companies to carry out an environmental impact study before the start of a project. This study is to be validated by MARN and CONAP.
Decree 5-90 creating the Maya Biosphere Reserve (Jan. 30, 1990)	This decree gives legal status to protect the Laguna del Tigre National Park, core area of the Maya Biosphere Reserve.
Decree 68-86 Environment Protection and Improvement Act (November 28, 1986)	Article 8 stipulates that any project that could result in a deterioration of the environment, skilled technicians will make an environmental impact study approved by the MARN.
Convention on Wetlands of International Importance or Ramsar Convention (adopted in 1971 and ratified by Guatemala in 1990)	The Ramsar Convention is an international treaty for the conservation and sustainable use of wetlands. Guatemala adopted it in 1990. Under this Convention, the LTNP is also entered in the Register of Montreux (1993), which lists wetlands of international importance, particularly those threatened by human intervention.
Decree 16-04 Emergency Act for the protection, restoration and conservation of LTNP (May 13, 2004)	Decree 16-04 of Congress implements Article 64 of the Constitution by enacting a national emergency and public interest defence and restoration of LTNP, core zone of the Maya Biosphere Reserve, as a public good of invaluable economic value and of great ecological value. The State is obliged to protect and manage it effectively, taking immediate and effective measures to allow full protection, control, conservation and restoration of it and to prosecute illegal acts committed in this area.
	On the rights of indigenous peoples
Agreement on Identity and Rights of indigenous peoples (Peace Accords, December 1996)	This agreement is part of the Peace Agreements signed in 1996, and recognizes the diversity and plurality of the Guatemalan people and obliges the State to consult indigenous peoples and to leave a space for participation in the development of various development policies.
ILO Convention 169 (adopted in 1989, ratified by Guatemala in 1996)	Requires the State to organize a dialogue and consultation with indigenous peoples before starting a project to exploit natural resources on indigenous lands.
International Covenant on economic, social and cultural rights (adopted by Guatemala on May 19, 1988)	Article I (common to the two Covenants DESC and DCP) 1. All peoples have the right to self determination. By virtue of that right, they freely determine their political status and freely pursue their economic, social and cultural development. 2. To achieve their own ends, all peoples freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic cooperation, based on the principle of mutual benefit and international law. In no case may a people be deprived of their means of subsistence.
International Covenant on civil and political rights (adopted by Guatemala on May 5, 1992)	Article 2 1. Each of the States Parties to the present Covenant undertakes to respect and ensure to all individuals within

	<p>its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.</p> <p>Article 6</p> <p>2. The right to life is inherent in the human person. This right shall be protected by law. No one shall be arbitrarily deprived of his life.</p>
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**MISSION REPORT ON THE IMPACT OF
PERENCO'S ACTIVITIES IN
GUATEMALA**

Note on methodology

In addition to significant research (print and online),⁴¹ three field trips took place with input from Collectif Guatemala at the LTNP as part of this report. The first field trip was in September 2010, the second in November 2010 and the third in February 2011.

The information collected came either from the local people themselves or social and political organizations. Several organizations and individuals, including those based in the capital, Guatemala City, and those working on the case of Perenco in Guatemala, have contributed to the development of this report⁴². Information has also been obtained through interviews and the dissemination of documents on this subject.

The field trips that took place facilitated the collection of information from various sources such as affected communities and non- governmental organizations in public and small meetings, interviews and small groups. These interviews and meetings were recorded and some were filmed.⁴³ In total, more than fifty testimonies were collected.

Initial contact made with the Petén population was on 10 September 2010⁴⁴ during a visit to see hundred delegates represent 138 communities at the Petén Congress of the Republic in Guatemala City. The delegation, which also met representatives from several government departments⁴⁵, was made up of representatives from the different areas of Petén (Laguna del Tigre, Sierra Lacandón, Ruta el Naranjo, Centro Ruta Bethel and Ruta). After this meeting the following task was to collate the vital information, taking place from 10 to 15 September 2010. This was requested by the delegates in order to give sufficient time to verify the situation on the ground. It was carried out jointly by representatives of The Convergence of Human Rights⁴⁶ and members of the sister project ACOGUATE international⁴⁷ which is part of the French NGO, Collectif Guatemala

⁴¹ See the bibliography

⁴² The list of these people and organizations is available in the "List of meetings and talks" at the end of this report.

⁴³ See the complete list of interviews and meeting at the end of the report

⁴⁴ See the Manifiesto for the communities of Petén from September 10, 2010 (Appendix III).

⁴⁵ Amongst others, there were representatives for the Ministry of Energy and Mines, Ministry of Defense, Management and Planning, the Secretary of Agricultural Affairs, the Ministry of the Environment and the Home Secretary.. For more information, see: <http://resistenciadlp.webcindario.com/>

⁴⁶ The Convergence of Human Rights is a group of seven organizations working for the human rights of the people in Guatemala. <http://sedem.org.gt:8080/sedem/formando-redes/convergencia-por-los-derechoshumanos>

⁴⁷ The ACOGUATE project is comprised of 11 European and North American organizations, providing international support to Guatemala. It is also part of the French NGO, Collectif Guatemala. See: <http://acoguate.blogspot.com/>

The second field trip involved a second round of gathering information, from 21 to 26 November 2010, and was set up by members of ACOGUATE to allow for monitoring by the United Nations Office of the High Commissioner of Human Rights (OHCHR), an institution represented in Guatemala by the High Commissioner Alberto Brunori. The third field trip, from 12 to 18 February 2011, was led by two members of Collectif Guatemala.

There are few academic and bibliographical references directly related to the LTNP and oil exploitation in the region. However, through direct contact with communities and their representatives, many first-hand accounts have been collected, not only on the presence of Perenco but also on all the issues affecting communities in the LTNP. Most LTNP residents who testified for the creation of this report have requested the right to remain anonymous for fear of violent retaliation. To date, these fears have not materialised.

"People here do not have the courage to come forward. The truth is that people are threatened so they are unable to speak out. Sometimes they are killed"- LTNP Community Leader. September 2010.

"Everyone knows who is who and what they are involved in, but it is silence that rules." - Introductory meeting on the second field trip, November 21, 2010. La Libertad, Petén.

On May 27, 2011, Perenco was contacted through a letter, addressed to the Director General, to inform him of the key findings that had emerged from this report⁴⁸.

The presence of Perenco GL presents a number of problems in its area of production, LTNP. As well as the negative environmental impacts created by its activity, its human rights violations and disrespect for the rule of law in Guatemala are also strikingly apparent.

Calling into question the rule of law

Following the renewal of the 2-85 contract in 2010, Perenco GL began to receive more mainstream attention. The contract, having been initially signed in 1985 between Basic Resources and the government, was due to end in August 2010⁴⁹. But in late 2009, Perenco asked the Ministry of Energy and Mines to extend the contract for an additional 15 years. To do this, Perenco GL relied on

⁴⁸ Letter sent and dated 27 May 2011, available in Appendix XIV.

⁴⁹ See Appendix IV of the contract.

the Law of the Fund for Economic Development of the Nation, called "FONPETROL", passed in 2008⁵⁰. This law, which supplements and repeals certain articles of Decree No. 109-83, seeks to regulate the benefits to oil production more clearly. However, it also contains elements that allow for the renewal of oil contracts for a period of 15 years⁵¹.

The Xan Wells are located in the heart of the LTNP. Any principle behind a contract extension should be based on the law on protected areas, which came into force in 1989. The LTNP is also part of the Maya Biosphere Reserve and as such, has specific conservation regulations.

Despite this, the "FONPETROL" law states that while it acknowledges environmental concerns, an extension may be granted if, "the economic terms are favorable to the State." Analysis of financial gain, undertaken as part of this report,⁵² shows that the economic benefits for the State are minimal, while the impact of oil production on the environment could be extremely detrimental⁵³. Moreover, FONPETROL only speaks of contract "extension" and rather than "expansion"⁵⁴. But GL Perenco intends to build four new wells in the LTNP area to increase oil production which in recent years⁵⁵ has been in decline.⁵⁶ Perenco has agreed to distribute more of its profits to the State, in part through taxes related to increased oil production, but also through better the quality oil that is expected to come from the creation of the new wells⁵⁷.

Perenco pushed a strong media campaign at national level to promote the 2-85 contract extension. Newspaper inserts were made available to the press⁵⁸ and were signed by a group of Petén Mayors. However, according to several witnesses, these leaflets only spread misinformation about the contract. Witnesses also revealed the pressure and manipulation used to obtain signatures of support for the leaflets from local and regional development agencies such as the County Council Development agency (COCD) and the City Council Development agency (CICD)⁵⁹.

⁵⁰ See Appendix V. text of the law

⁵¹ Refer to, in particular, to Article 8 that reforms Article 12 of Decree No. 109-83 (Appendix IV): "Article 12. Length of contracts. The length of contracts of oil operations can be up to 25 years, the MEM can provide a unique extension of up to 15 years if the economic terms are favorable to the state (...). The MEM will not allow for an extension of a contract for oil operators if they infringe or violate national interest laws of the Republic. "

⁵² Refer to Part 7, the financial and economic impacts

⁵³ Refer to Part 6, the environmental impact

⁵⁴ See Decree No. 71-2008, "FONPETROL" (Appendix V).

⁵⁵ See www.indexmundi.com/es/guatemala/petroleo_produccion.html

⁵⁶ See the Contract Extension Agreement 2-85, entitled "Modification and Expansion of the 2-85 contract," and Clause 2 of the the same agreement, "Modification and expansion" (Appendix IV).

⁵⁷ Appendix IV: "Modification and extension of the contract 2-85", clause 6, "Returning oil revenues back to the State and State involvement in production "

⁵⁸ Refer to Appendix VII.

⁵⁹ These are two authorities, established as a result of the Decentralisation Act, a law which should allow for policy making at a local level.

"In March there was a COCD meeting [in which they took a vote for the renewal of the Perenco contract]. Without any explanation, they changed the date of the meeting a week before it was due to take place. Then, the evening before the meeting they made us move to one of the most expensive hotels. Many people who normally do not participate in Development Council meetings came. The first suspicion came from the changes in the date and time of the meeting and the arrival of a minister who only came to speak about FONPETROL and the renewal of the contract, a point that wasn't even on the agenda. The last straw was the participation of the Minister of Energy and Mines. We had to wait an hour for him to arrive. He then arrived, with Perenco employees, aboard their private jet. How can the company come to a Development Council meeting, a place where decisions need to be made in a participatory and transparent manner? There was no transparency at this meeting. [...] During the meeting, it was clear that people only raised their hands because they were scared that they would lose their job, as most of them were government employees. What's more, they're afraid of being exposed to political pressure or physical threats. This is why more often than not, they do not speak out. [...] Why has FONPETROL only been mentioned now? They've been negotiating a contract extension for the past two years. What has happened to the profits made by the oil company in previous years? Where are they? Where have they been invested? They never tell us that. "

-Leader of an organization, campaigning to protect the Petén environment, April 14, 2010.

While the new contract favours local Petén governments by giving them 0.15 dollars per barrel of the oil produced⁶⁰, concerns have been raised over the lack of transparency that surrounds the use of these funds by local governments. Equally, NGOs are questioning whether necessary budget monitoring will be carried out following this new windfall. What's more, in April 2010, representatives from 53 Petén communities appeared before COCD to appeal against the renewal of the Perenco GL contract, particularly given the lack of information available. Despite this, the newspaper inserts were still published and distributed in the press throughout the region, irrespective of the contradicting opinion of the local communities. Their right to respond to the insert was never published⁶¹.

⁶⁰ "Guatemala acepta las Donaciones Perenco." *El Periódico*. September 17, 2010. www.elperiodico.com.gt/es/20100917/economia/175287/. Between 2000 and 2009, annual production in the area fell from 7.3 million barrels to 4.6 million barrels, in correspondence to the 2-85 contract (source: Ministry of Energy and Mines in Solano Luis. "Oil acción, selva in Destruccion". *Enfoque. Análisis de situación*. No. 6. April 30, 2010). However, it is difficult to estimate the total income made by local communities as the cost of a barrel depends on varying oil prices

⁶¹ Evidence from a meeting with community leaders, in November 2010. In Guatemala, a person who publishes an opinion piece in an insert of a paying newspaper must pay for the response of the organization or person that has been mentioned.

“Perenco sent out a representative with a letter, asking my community if they would support the new contract. It said they needed signatures and that if they collected enough, there would be more community projects, such as job creation schemes and better access to health services and medicines. - ”Mayor of an LTNP community, September 2010.

In March 2010, the contract was signed directly between, the Minister for Energy and Mines, Carlos Meany and Perenco GL, without considering the views and expertise⁶² of relevant government agencies. As a result, the National Council of Protected Areas (NCPA) only issued its opinion on the matter after the contract was signed. The NCPA’s conflicting views on the renewal of the 2-85 contract, their assertions over the unlawfulness of this measure and the risk the contract will impose on the conservation of the LTNP⁶³, were not taken into consideration.

“The Minister of Energy and Mines is not above the law. [...] However, the law been falsified. In December 2008, he created the FONPETROL law. In this law, there is a clause that states that all laws opposing FONPETROL can be repealed. How is this possible? What kind of message does this send out? There is no transparency! The FONPETROL law contradicts the Emergency Act for the Conservation of the Laguna del Tigre. It goes against regulations established for protected areas, because [the Laguna del Tigre] is in a core zone, and yet the Government still choose to approve it.” -Luis Ferraté, Minister of Environment.⁶⁴

Despite conflicting views within the government and the advice of many NGOs⁶⁵, President Colom made the decision to renew the 2-85 Contract. This renewal was approved by a majority vote at a Cabinet meeting on 23 July 2010. Three ministers voted against this decision; the Minister of Environment, Luis Ferraté, the Minister of Home Affairs, Carlos Menocal, and the Minister of Culture and Sports, Jerónimo Lancerio. They explain why they made this decision in a national newspaper;⁶⁶

“Such a decision endangers the conservation, protection and restoration of Guatemala’s natural heritage, as well jeopardizing the ecological balance of our environment.” -Carlos Menocal.

“I think that signing and approving the 2-85 contract compromises the legal code of practice” – Luis Ferraté.

⁶² Interview with the NCPA. See the list of interviews

⁶³ Interview with the NCPA. See the list of interviews

⁶⁴ Refer to Rita María Roesch, ’s article, “Ferraté guerrero”, Prensa Libre, 12 March 2010. www.prensalibre.com/opinion/Ferrate-guerrero_0_223777708.html

⁶⁵ Among others, the Legal, Environmental and Social Action Centre of Guatemala, CEIBA Association, the Commission International of Jurists, the University of San Carlos and the National Council of Protected Areas

⁶⁶ Statements published in ‘le Journal Officiel’ (see Appendix VI) and cited in Ministros que votaron en contra de Perenco creen que habrá daño ambiental” ”Prensa Libre. July 27, 2010. www.prensalibre.com/noticias/politica/Ministros-votaron-Perenco-creen-ambiental_0_305969552.html

"We fail to see how this would benefit or develop the community, particularly as those living within the protected area already experience a high level of poverty" - Jerónimo Lancerio.

According to Geoffrey Martin-Denavit, CEO of GL Perenco, ***"This is a fair decision, based on the laws of the country. Before the signing, we met repeatedly with environmental campaigners; the signing came at an opportune moment"***⁶⁷

Yet the environmental impact study that GL Perenco is required to undertake in renewing their contract (Article 5 of the Ministerial Agreement 214-2010, see Appendix VI⁶⁸) has never been published and is unlikely to have been completed.⁶⁹

Following this decision, legal action has been taken against various national and international authorities for the unlawful actions committed in the process of the contract renewal, including the fact that ***"the Minister of Energy has not only extended the contract, but he has also increased the area of production, which constitutes as a clear violation of the law on protected areas"***

Ramón Cadena⁷⁰, a lawyer for International Commission of Jurists⁷¹, also adds that, ***"the Court of Justice and the State has violated statutory law and international conventions by extending this contract."***⁷²

Timeline of the 2-85 Contract renewal

2008

The FONPETROL Law is legislated. It refers to Article 12 for the duration of contracts: "The duration of oil production contracts can be up to 25 years. The Ministry of Energy (MoE) can provide a unique extension of up to 15 years if the economic terms are favorable to the state (...). The MoE will not allow for the extension of oil production contracts that affect the national interests or violate the laws of the Republic. "

⁶⁷ "Firma prórroga contra viento y marea". Prensa Libre. 24 July 2010. www.prensalibre.com/noticias/FIRMA-PRORROGA-viento-marea_0_304169625.html

⁶⁸ Article 5: "The entity, Perenco Guatemala Limited, will carry out observations with the National Council of Protected Areas - NCPA –in a contract in which the conditions and environmental operational standards will be established. This will be determined by an environmental impact study. "

⁶⁹ "Luis Ferraté, ministro de Ambiente, afirmó que Perenco aún no ha presentado los estudios de impacto ambiental para perforar nuevos pozos" in "Perenco Invertirá US\$35 millones", El Periódico, 26 mai 2011. See : <http://www.elperiodico.com.gt/es/20110526/economia/195924/>

⁷⁰ "Contrato petrolero viola ley y tratados". Prensa Libre. 13 mars 2010. www.prensalibre.com/noticias/Contrato-petrolero-viola-ley-tratados_0_224377585.html

⁷¹ The International Commission of Jurists is devoted to human rights, particularly in terms of unbiased and objective access to justice.

⁷² Public meeting at Sierra Lacandón. 24 novembre 2010.

2009

Perenco GL requests a 15 year extension on the 2-85 Contract.

2010

4 February: The Minister of Energy and Mines, Carlos Meany, signs the contract extension with a representative of Perenco G.L.

March: The Minister of Environment, Luis Ferraté, deems the contract extension illegal and refuses to authorise the contract extension, leaving the President of the Republic to make the decision.

May: Work is undertaken in Petén by two Wetland Ecosystems specialists under the Ramsar Convention. According to one expert, Maria Rivera Gutierrez, "**oil activity has caused a negative impact on the region.**"⁷³ The final report will soon be available on the Ramsar website⁷⁴

July: The press reveals that the Laguna del Tigre National Park Management report 2007-2011, used by the National Council of Protected Areas (NCPA) to manage the protected area, was modified between the time implementation and the printed version. It's noted that oil activity has been removed from the list of activities considered a threat to the Park as has the sentence that stated that "**new oil production will not be permissible**".⁷⁵ Despite a complaint filed against the officer in charge of this deception, no progress has been made by the prosecution in charge of this investigation.

22 July: President Alvaro Colom signs the 2-85 contract extension for another 15 years. Section 5 of the Ministerial Agreement No. 214-2010 states that, "**The Perenco Guatemala Limited entity will develop a contract with NCPA which will set the conditions and operating standards on environmental issues, as determined by an environmental impact study.**"⁷⁶

20 August: President Alvaro Colom announces the creation of the "Jungle Infantry Battalion" or "Green Battalion," An initiative designed to recruit 250 soldiers whose mission is "to protect the Laguna del Tigre" from drug traffickers and "invaders"⁷⁷

⁷³ "Petróleo impacta Laguna del Tigre". Prensa Libre. 15 April 2010. http://www.prensalibre.com/noticias/Petroleo-impacta-Laguna-Tigre_0_262173832.html

⁷⁴ See the RAMSAR Convention website : http://www.ramsar.org/cda/fr/ramsarhome/main/ramsar/1%5E7715_4000_1

⁷⁵ "Alteran plan a favor de petrolera". Prensa Libre. 7 juillet 2010. http://www.prensalibre.com/noticias/Alteran-plan-favor-petrolera_0_293970629.html

⁷⁶ Ministerial Agreements No. 214-2010, 215-2010 and 216-2010 (Appendix VI)

⁷⁷ A term used in a speech by Álvaro Colom to refer to the facilities of landless farmers who arrive in the remote area of Petén and who are often forced, by the development of mega projects (mainly large

November: "Green Battalion", is funded by Perenco⁷⁸, and set up in LTNP.

Legal demands against the extension of the 2-85 Contract

March 2010		
Type of demand	Explanation	Update / Result of redress
Communication to the Secretariat of the NAFTA environmental issues (including the U.S., Central America and Dominican Republic) presented by Ramon Cadena, of the International Commission of Jurists (ICJ)	Chapter 17 of NAFTA provides that the signatories can not violate environmental laws, since it is considered unfair competition.(See communication A nnex VIII)	In August 2010, the NAFTA Secretariat requested the State of Guatemala a report showing that there is no violation of environmental laws. In March 2011, the NAFTA Secretariat recommended to conduct an investigation. On June 10, 2011, the U.S. notified the Secretariat of TLC its vote to develop a factual record, the first step for further investigation.If this research shows Guatemala's violation of environmental laws, the country risks a fine of up to 15 millions. In addition, there is the provision that the Court brings a case to the Commission on Human Rights. The case will be presented to the Council of Central American Ministers of Environment next June.
July 24, 2010		
The Center for Environmental and Social Legal Action (CALAS) brings a case before the Constitutional Court against President Colom	This first action was intended to prevent the publication of the Government Agreement 214-2010, which authorized the signing of the contract extension.CALAS argues that this renewal violates Articles 64 and 97 of the Constitution and other laws.	Appeal dismissed.
July 28, 2010		
CALAS presents a complaint against the former Minister Carlos Meany and the current Minister of MEM Romeo Rodriguez	This complaint is brought by abuse of authority and dereliction of duty of the ministers for having authorized the renewal of the contract.	Appeal dismissed.
August 8, 2010		
The independent Member of Parliament Anibal Garcia brings a case	This demand is based on the fact that the decision to renew the contract is contrary to the Constitution, and also on the	According to the Court, the arguments presented are not sufficient to prove the violation of the Constitution. Meanwhile, the SAT requested

monocultures), to southern Petén or following their return from Mexico as refugees of war. "Colom anuncia instalación de seis militares destacamentos in Biosfera Maya ". Prensa Libre. July 29, 2010.

⁷⁸ Public meeting, Sierra Lacandón. 24 November 2010.

before the Constitutional Court	contributions of Perenco to the SAT. (See resource in Annex IX)	that the appeal is rejected, arguing that Perenco had actually paid their contribution and that this did not appear because of a clerical error.
August 9, 2010		
The University of San Carlos (USAC) appealed to the Constitutional Court.	The public university of Guatemala submitted this application in its capacity of co-manager of LTNP, whose opinion was not taken into account by the government to extend the contract 2-85.	Appeal rejected <i>in limine</i>
August 11, 2010		
The Central Committee of the region of the Laguna del Tigre makes its the 4th appeal to the Constitutional Court	This local committee of Petén presented an appeal against the renewal of the contract 2-85 and against the threats of expulsion that the president expressed in his speeches.	Appeal rejected "because the circumstances make it inadvisable" and because of the legal personality of the committee.
August 26, 2010		
CALAS brings a case before the Constitutional Court against the Council of government Ministers	This appeal against the Council of Ministers does not focus on the violation of environmental laws but to irregularities in the contract renewal process that attacks the rule of law (in particular Articles 28, 152 and 154 of the Constitution).	Appeal dismissed.
September 2010		
Monsignor Rodolfo Quezada, journalist Marielos Monzón, ecologist Magali Rey Rosa, doctor Jose Barnoya, lawyer Alfonso BauerPaiz and trade unionist Luis Lara presented a case before the Constitutional Court	Ramon Cadena (the ICJ), with two other lawyers, identified five unconstitutionality in the contract renewal of the well Xan: violation of Article 15 of the Act FONPETROL, non-retroactivity of the law, extension and modification of the contract without the environmental impact study no licitations of areas allocated to the opening of new wells, among others. (See Annex X resource)	Appeal rejected <i>in limine</i>
5 October 2010		
CONAP brings a case before the Constitutional Court against the renewal of the contract with Perenco	The CONAP attorney presents the appeal saying that "we depart from previous attempts of demands, as we invoke severe violations of international human rights treaties." See demand in Annex XI	Appeal rejected on the grounds that CONAP no jurisdiction to bring such an action, since the contract is an agreement of "private law" between the state and Perenco.

Environmental Impact

Several studies have been conducted to determine the impact of oil production on the LTNP.

In as early as 1997, during a first field trip to the Laguna del Tigre, Ramsar Committee experts had already recommended that authorities, ***“restrict licensing to undertake oil activity within the Biotope area to what is strictly agreed in the 2-85 contract. Upon completion of the contract, , [...] restrict leasing out other areas within the Biotope area and Laguna del Tigre National Park for activities that are not mentioned in Article 8 of the Regulation of the Law on Protected Areas (National Congress, 1990).”***⁷⁹

Oil operations are not part of the activities authorized in section 8 of the Convention⁸⁰. Moreover, this initial study also noted the impact of oil production on the environment particularly, the impact of excessive nitrogen oxides emissions, sulphur dioxide in air and water pollution.

A US biologist⁸¹ also identified hydrocarbons in surface water in the LTNP area, highlighting the levels of water pollution due to oil which can cause genetic damage to fish and aquatic species in the Park.

⁷⁹ Ramsar. 1997. Misión Ramsar Asesoramiento. Informe No. 38. Laguna del Tigre, Guatemala.

⁸⁰ Available at: www.redturs.org/inicio/docu/guate/regarea.pdf

⁸¹ Theodorakis, C. W. y Bickham, J. W. 1997. Contaminación of hidrocarbano dano y los peces al DNA del Parque Nacional de la Laguna del Tigre, Petén, Guatemala. In Bestelmeyer, B. Y L. Alonso (eds) 2000. Evaluación Biológica de los acuáticos sistemas del Parque Nacional Laguna del Tigre, Petén, Guatemala. Boletín RAP de Evaluación Biológica 16. Conservation International. Washington, DC.

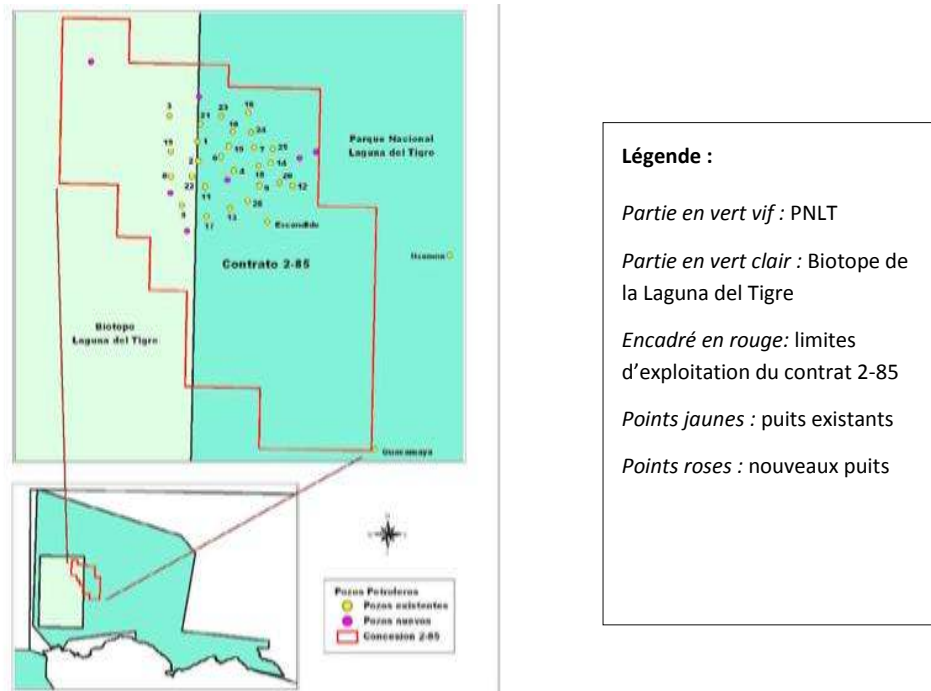


Figure 3. Map of locations of oil wells in the Laguna del Tigre National Park and the Biotope Laguna del Tigre-Río Escondido (CONAP)

The organization Parkswatch⁸² lists the impact of oil activity on the LTNP as the following:

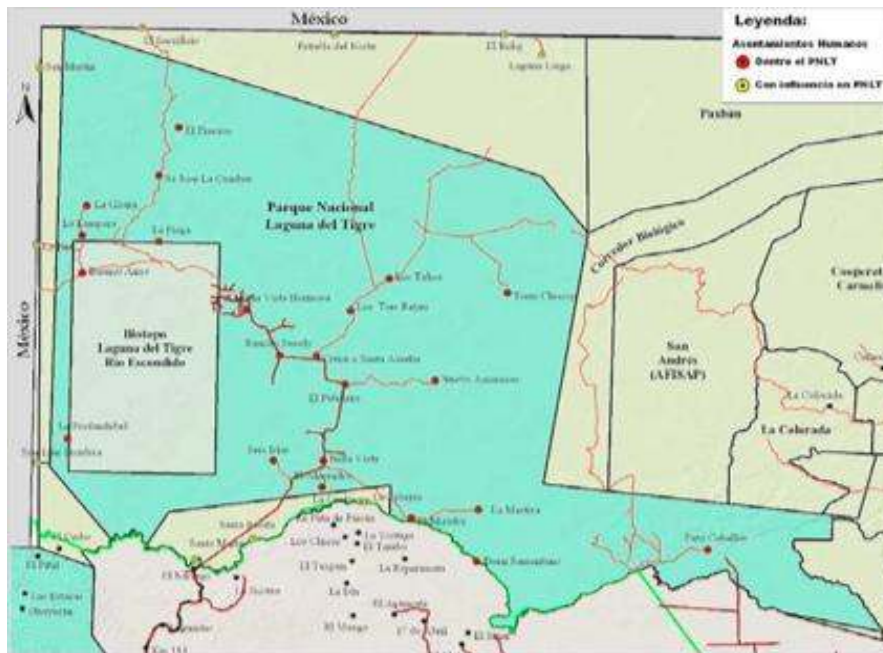
- Air and soil pollution
- Tree felling for the construction of wells (deforestation)
- The abnormal decrease in the number of birds near wells
- The opening of pits, roads and highways, particularly for pipeline maintenance, allowing for a continued presence from “invader”⁸³ communities
- The deforestation and burning of parts of the forest occupied by LTNP communities
- The irresponsible corporate behaviour towards LTNP communities

The part of the study focusing on the oil industry concludes that it has, "played a fundamental role in the reoccurrence of other problems such as invasions and threats to human habitation, the expansion of the agricultural frontier, livestock and fires."⁸⁴

⁸² ParksWatch. 2003. Perfil de Parque-Guatemala. Parque Nacional Laguna del Tigre. pp.16-18.

⁸³ See note 73

⁸⁴ Ibid. p.18



Légende :

Points rouges : à l'intérieur du PNLT

Points jaunes : avec une influence sur le PNLT

Figure 4. A map of the communities located through the open roads

"They use water from the wetlands to cool their infrastructure and their waste contains hazardous materials. This water is discarded, and in its polluted state, released back into the ecosystem. [...] Another consequence of oil production is air pollution caused by carbon dioxide. This pollution produces acid rain, and it's clear, even without official assessment, that the rain causes corrosion on the zinc roofing. If it has this effect on zinc, we need to consider its effects on plant and wildlife as well as humans. There are significant implications on human health and the environment. [...] The visible decline in health can be seen by: uneven skin, eye and throat problems and cancer. People cannot breathe properly; they suffer from headaches and nausea, especially those living near the La Libertad community where the refinery is located" - Head of an organization campaigning for the environment in Petén.

The NCPA⁸⁵, a government body in charge of the management of protected areas, also assessed and analyzed the impact and threats of oil activity in the management report for the LTNP area.

However, this report was illegally modified⁸⁶ and these risks have not been acknowledged in the contract extension. The original version of the report, focusing on the oil industry, stated that the roads built, as part of the Xan wells oil production, had facilitated land invasions in the LTNP. What's more, the report asserted that, "any new oil production will be prohibited", but this sentence was

⁸⁵ <http://www.conap.gob.gt/>

⁸⁶ See point 5 in Timeline of the 2-85 Contract renewal.

deleted. The original content of report recommended further evaluation of the oil contract in order to claim compensation from Perenco GL for damage caused by its activities in LTNP.⁸⁷

Also, this management report identifies a "recovery zone" inside the LTNP which is "an area in which the ecosystems have been affected by forest fires [...], intensive agriculture and the oil industry. These impacts have caused the ecosystem to deteriorate which is why it is necessary to implement measures that aim to improve degraded areas. This area also includes a polygon, given in 2-85 lease for the exploration and production of oil which is currently managed by Perenco."⁸⁸

The worldwide importance of LTNP prompted a group of German MPs to respond and assist in its conservation. In July 2010, a few weeks before the final decision of the contract renewal, four German parliamentarians sent a letter to president, Álvaro Colom, to propose an alternative, similar to "Yasuni initiative" in Ecuador⁸⁹. In this letter, parliamentarians stressed, **"the importance of the Reserve Maya Biosphere Reserve, recognized internationally for its unique and diverse biological makeup and, particularly the LTNP"**⁹⁰ The alternative proposed was to abandon the extraction of oil, in order to safeguard the park's biodiversity, in exchange for compensatory payments through a Trust fund, financed by different partners, such as Germany, with support from the UNDP.

⁸⁷ Op.Cit.Pensa Libre, "Alteran plan a favor de petrolera". 7 July 2010.

⁸⁸ CONAP. 2007. Plan Maestro del Parque Nacional 2007-2011 Laguna del Tigre y Biotopo Laguna del Tigre-Río Escondido. Consejo Nacional de Áreas Protegidas. Guatemala.
www.conap.gob.gt/Members/admin/documentos/documentos-centrode-Documentación / flat-maestros / PLAN MAESTRO LTIGRE_VERSION FINAL.pdf

⁸⁹ In Ecuador, President Rafael Correa proposed to leave the oil in Amazon Yasuni Park, one of the richest bio diverse nature reserves in the world, below the ground in exchange for a contribution from the countries in the global north, at an estimated amount of 350 million dollars annually for ten years, to make up the difference in income. There are close to 850 million barrels of oil beneath the jungle. In Guatemala, a group of German MPs suggested the creation of an economic compensation fund on the condition that the government cease to extract the oil from the Laguna del Tigre National Park. See article in Prensa Libre of 23/07/2010: www.prensalibre.com/noticias/Alemanes-proponen-fondo-extraer-petroleo_0_303569683.html

⁹⁰ Appeal before the Constitutional Court by the CONAP. October 5, 2010. See Appendix XI. "Alemanes proponen

fondo para petróleo no extra ". Prensa Libre. July 23, 2010. http://www.prensalibre.com/noticias/Alemanes-proponenfondo-Extra_petroleo_0_303569683.html



Student demonstration in Coatepeque:
"The Laguna del Tigre needs your support!

Save our Laguna del Tigre. The forest, water and the future is worth more than oil. No 2-85 contract renewal "

Source: *"Contra Objeción Estudiantil contrato Petrolero," Prensa Libre, 27/04/2010*

"The problem is that there hasn't been a study on the social and environmental impacts (of oil production) in this area, there has been no monitoring by the institutions [of State], to evaluate these impacts. Moreover, existing assessments have been funded by the company itself and so they publish whatever they want." - Head of an organization campaigning for the environment in Petén.

This lack of analysis on the social and environmental impacts in the area is one of the reasons why the NCPA filed an appeal with the Constitutional Court against the 2-85 contract renewal. ***"An environmental impact study, outlining the activities of the oil industry, has not been submitted to the National Council of Protected Areas, as established in Section 20⁹¹ above and as stated before the order 5-90 as well as in management plans that explicitly declare the incompatibility of the oil industry within the conservation area."***⁹²

Moreover, Perenco GL were called into question in 2004 and 2005 for failing to adequately clean up its oil pits in the wells of Rubelsanto (Alta Verapaz)⁹³. Although the pollution was not entirely caused by its production, the company was contractually⁹⁴ obliged to clean and restore over 90 sites polluted by oil activity. A series of reports in El Periódico had at the time detailed these incidents, which included an unsolved death of a young man, questioning Perenco GL and the Minister of Energy and Mines (who subsequently provided supporting statements to show that there were no more polluted sites in Rubelsanto)⁹⁵.

⁹¹ Article 20 of the Law on Protected Areas obliges the company to provide an environmental impact study to NCPA before the start of production.

⁹² Appeal before the Constitutional Court by the CONAP. October 5, 2010. See Appendix XI.

⁹³ "Petróleo en la selva, Perenco no ha limpiado fosas contaminadas". El Periódico. 8 February 2004.

⁹⁴ Appendix IV, clause 9.

⁹⁵ See Aun hay petróleo Regado in Rubelsanto ". El Periódico. August 6, 2005.

www.elperiodico.com.gt/es//pais/18761, "Asesinato in the jungle." El Periódico. March 7, 2004

Socio-Economic Impacts

The real financial benefits for the Guatemalan state

Implemented in 2008, the FONPETROL law means that where there are state economic benefits, a contract extension can be authorized. A collaborative study by the independent MP Aníbal García⁹⁶, and organisations CEIBA and the Centre for Environmental and Social Legal Action (CESLA)⁹⁷, showed that oil production of Xan wells does not seem to be advantageous for the state. In fact, the report states that beyond the official allocated funds, the additional "recoverable costs" that are authorized by Guatemalan law must also be considered⁹⁸. In 2008, Perenco GL paid the highest amount to date in royalties to the state. However, the "recoverable costs", exceed these royalties payments by 255% (see table below). In the diagram below, it is clear that the royalties (yellow) represent only a minimal amount compared to the "recoverable costs"(green) that the state reimburses to Perenco GL.

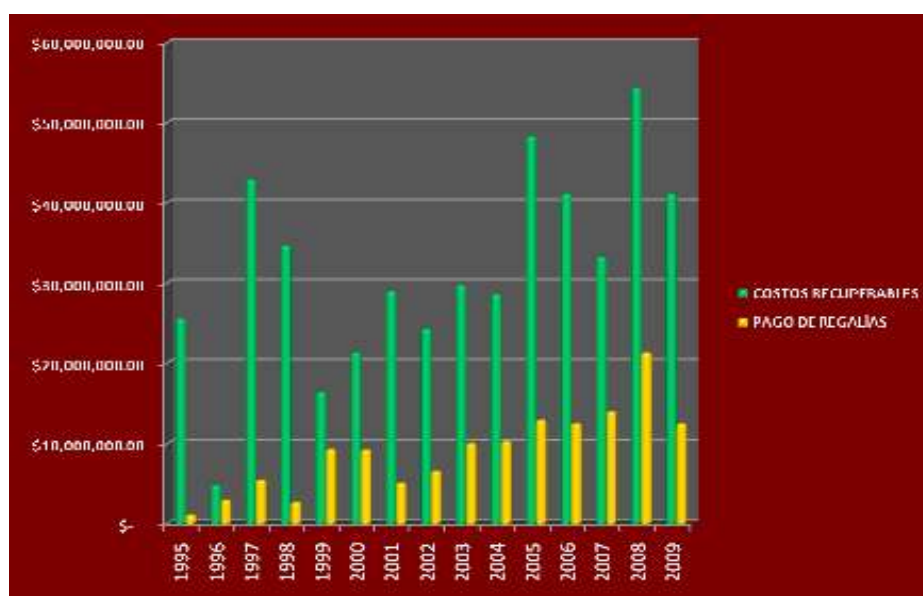


Figure 5. Comparison of royalties (in yellow) and "recoverable costs" (green). Basic Resources and Perenco between 1995 and 2009 (Source: Bureau of the member Aníbal García)

www.elperiodico.com.gt/es//pais/3261 and "¡No más sangre por petróleo ". El Periódico. April 4, 2004.

www.elperiodico.com.gt/es/20040404/investigacion/4134

⁹⁶ MP Rodolfo Aníbal García Hernández, and CALAS CEIBA,2010, *una historia de traición a Guatemala*. See Appendix IX.

⁹⁷ CEIBA is a social organization that campaigns for land and human rights of indigenous peoples. Their partner in Guatemala is Friends of the Earth International. CALAS is the Centre for Environmental and Social Legal Action which adopts a legal focus to environmental problems

⁹⁸ "Recoverable costs" are investments made by the company that are later reimbursed by the state. The Decree 109-83 gives a list of all "recoverable costs" (including staff salaries), but the FONPETROL law significantly expands this list, making many of the investments of oil companies, "recoverable".

Minister Aníbal García further explains that although there is clear evidence to suggest that the FONPETROL law was created in order to renew the Perenco GL contract, the passing of this law clearly lacked transparency. What's more, it took place against the backdrop of the 2009 vote for the national budget vote and was clearly in the exchange of favours⁹⁹

CESLA also observes that Perenco GL was exempt from the payment of 498.5 million dollars to the state between 1985 and 2009, owing to the reimbursement of "recoverable costs". Also, in September 2010, Perenco GL was repaid the sum of \$ 29.9 million in "recoverable costs", including wages, medical expenses and insurance costs, research, consultants' fees, food and clothing costs, machinery and equipment, fuels, etc¹⁰⁰. CESLA has called for the government to amend the regulations of the Hydrocarbons Act, **"so that the company contributes on the same basis as any other citizen"**¹⁰¹

However according to Perenco GL's spokesman, Antonio Minondo Ayau, ***"The company renewed its contract last year and the conditions are now much better for the state. Moreover, we are the main source of income for the country and our contribution in 2010 was 100 million dollars. [...] While CESLA is within its rights to take legal action where appropriate, I do not think that it should be taken in this instance."***¹⁰²

An alternative view point has been published by the Institute of Agriculture, Natural Resources and Environment, at the Rafael Landívar University, ***"Our analysis indicates that the advantages of preserving the LTNP exceed the profits generated by oil production. At worst, it would generate the same financial benefits to that of oil extraction"*** It adds that, ***"assuming that oil production is the best opportunity cost, we conclude that the conservation of the LTNP yields, as an minimum, the same level of benefits to activities contrary to nature preservation. Further to this, the LTNP has other benefits that cannot be quantified as we are not entirely aware of all its resources and functions"***¹⁰³

⁹⁹ Interview with Aníbal García, 8 April 2011

¹⁰⁰ 2-85 *Prórroga del Contrato: una historia de Guatemala has traición*. MP Rodolfo Aníbal García Hernández's CESLA and CEIBA, 2010.

¹⁰¹ "Piden eliminar privilegio petrolero". Siglo XXI. 26 January 2011. <http://www.s21.com.gt/node/28484>

¹⁰² Ibid.

¹⁰³ IARNA. "Laguna del Tigre. La necesidad de respetar y fortalecer su condición de parque nacional". 25 April 2010.

http://www.infoiarna.org.gt/media/file/publicaciones/boletines/boletines_prensa/pub_bol_prensa_9.pdf

Perenco's failure to comply with their commitment to develop communities

A problem, as highlighted by LTNP communities, is Perenco GL's failure to stand by its commitments to improve social and community development. The only support found on the premises consists of second hand desks, donated to the schools, which are of low quality and have the company logo stamped on them.

"On the radio we hear of what they [Perenco GL] have done for the schools but here, we haven't seen them uphold these promises. You have seen the poor condition the school is in; these desks do not match up to these claims. If they had kept their promises, the school would be in a much better condition." - Resident of an LTNP community, February 2011.



Desk given by Perenco to an LTNP community (February 2011)

"They say that it's Perenco that provides everything for the development of the community, that donates to schools and provides substantial aid. But these are lies; they do nothing" -Resident of an LTNP community, September 2010.

Many locals in these communities emphasise that Perenco GL has reduced its health services (which was initially a monthly medical visit) or that the service consists solely of paracetamol donations. Moreover, these "health centres" are often simple huts made of wooden planks, without any equipment¹⁰⁴

¹⁰⁴ Observations during field trips in September 2010, November 2010 and February 2011

"When we go there, it's as if we all have the same disease because they give us all the same drug" -Residents of an LTNP community, February 2011.



Left: the entrance to a health center / Right: two beds available to the center. (A community in LTNP, February 2010.)

Another promise made was to build roads for the 37 communities in the LTNP area. Although roads to Perenco facilities are currently leveled and covered with gravel, there are only rough tracks and paths that become impractical during the rainy season¹⁰⁵.



Left: Path leading to Perenco facilities, after the checkpoint. (November 2010)

Right: Daily labour for the people of LTNP. (September 2010)>

Sometimes, residents seek help from Perenco on certain issues; for example, women from one LTNP community were given designated hours for when they could use the nearby lagoon for washing clothes or bathing, "owing to potential risks," The request to install a well pump was not taken into account to compensate for the lack of access to the lagoon.

¹⁰⁵ Observations during a field trip in September 2010

"They say they can't build the well because it is in a protected area and that (according to a Perenco employee) if people are there illegally and then leave unexpectedly, it would be lost labor", -A resident of an LTNP community, February 2011.

Several witnesses have highlighted that, at the very least, Basic Resources used to give more importance to a regular health service. This contrasts with Perenco's communication policy which, as highlighted in the press and in its communications materials, is driven by community development and the fight against the deforestation¹⁰⁶. As stated in February 2011 by Perenco's Executive Director, Fouchardière Benedict, ***"Our work with communities is a fundamental aspect of our work. We provide support to local authorities for local development. Over the past 10 years we have provided desks at the beginning of each year to communities that are near the pipeline, which amounts to 6000 a year. We also rebuild schools"***¹⁰⁷

¹⁰⁶ See information folder for Perenco's "community development" activities and reforestation in Appendix XII and an example of their advertising in the press in Appendix XIII.

¹⁰⁷ "Benoit de la Fouchardière: la meta es invertir \$35 millones". Siglo XXI. 3 February 2011.
<http://www.s21.com.gt/node/29135>

Perenco's Impact on Human Rights

The Guatemalan state has a legal obligation to respect the rights outlined in several international treaties. The International Covenant on Civil and Political Rights as well as the International Covenant on Economic, Social and Cultural Rights have been involved in implementing the national law, as stipulated in the Constitution of Guatemala¹⁰⁸. It is therefore the State's responsibility to promote, protect and implement human rights as stated in these treaties¹⁰⁹. This responsibility includes preventing third party infringement. As it stands, the Guatemalan government has a responsibility to ensure that inhabitants of Laguna del Tigre area do not have their human rights comprised by Perenco GL activity.

At the UN Human Rights Council's 17th Session, Representative of the UN Secretary-General on Human Rights and Transnational Corporations and other business enterprises, John Ruggie, said in a report, presented at the meeting, that companies have a duty to respect all internationally recognized human rights by showing due diligence.¹¹⁰

The report lists the several human rights violations of people living in the area, directly caused by GL Perenco activity. It is also important to note that this report also makes reference to a dispute regarding the property and business rights of the people in the LTNP (as discussed in point B). But these people, as citizens of Guatemala, are entitled to exercise their rights in the entire territory, regardless of legal issues over their residential property. Human rights are interlinked¹¹¹ and the violation of one often leads to the violation of others.

The militarisation of oil extraction areas and human rights abuses of the LTNP populations

Following the announcement of the 2-85 contract renewal, the State of Guatemala officially accepted a donation of \$13 million from Perenco GL to help rebuild the area after the Pacaya volcano and Storm Agatha, but also accepted \$3 million in order to fund six new military barracks, as

¹⁰⁸ See section 2.7: « Cadre juridique de l'exploitation du pétrole et des droits humains et environnementaux du Guatemala »

¹⁰⁹ See « Récapitulation des observations générales ou Recommandations générales adoptées par les organes créés en vertu d'instruments Internationaux relatifs aux droits de l'Homme », UNITED NATIONS HRI International Instruments relating to human rights, distr. General HRI/GEN/1/Rev.9 (Vol.I)27 May 2008.

¹¹⁰ A set of measures implemented to prevent or reduce human rights violations. Guiding Principles on business and human rights: implementation of the framework "protect, respect and remedy" Nations United: <http://www.business-humanrights.org/media/documents/ruggie/ruggie-principes-directeurs-21-mars-2011.pdf>

¹¹¹ See the United Nations website about the Vienna Conference - 1993. <http://www.ohchr.org/FR/AboutUs/Pages/ViennaWC.aspx>

announced by President Colom in the National Park Laguna del Tigre.¹¹² Moreover, the ministerial decree 260-2010 between Perenco GL and State, as published in the Official Gazette, outlined the financial commitments of the company, including a contribution of \$0.30 per barrel produced in order to fund the "Green Battalion"¹¹³ operation. The military barracks are mainly for the installation of this battalion and the 250 soldiers whose official mission is to protect the Laguna del Tigre in the fight against drug trafficking which is prevalent in the area.¹¹⁴ The Franco-British company finances the Guatemalan army through its subsidiary.



Soldiers guarding Perenco checkpoint facilities (November 2010)

Given the situation, the 37 communities of Laguna del Tigre have condemned, in a press release, ***“the reported deployment of [...] the military for responsibilities relating to public security as well as the militarization of communities in La Libertad and San Andrés”***¹¹⁵ "

By definition, the military plays a role in homeland defense and security, not in maintaining public order. Therefore soldiers are not trained to carry out these objectives and so it comes as no surprise that communities are concerned about the poor performance of these tasks if they are to be restricted to a military contingent. Examples of this have occurred in the past, as referred to below.

¹¹² Natural disasters that affected regions in the country in May 2010.

¹¹³ Ministerial decree 260-2010 in Appendix 15, also available on www.sgp.gob.gt/PaginaWeb/PEsp/AG2010_Esp.htm and published in the press in: *El periodico “Guatemala acepta las donaciones de Perenco”*. 17 september 2010 : www.elperiodico.com.gt/es/20100917/economia/175287/ and « *Batallon vigilara Parque Nacional Laguna del Tigre* ». Prensa Libre. 01 September 2010 : www.prensalibre.com/noticias/Batallon-Parque-Nacional-Laguna-Tigre_0_327567256.html

¹¹⁴ See www.prensalibre.com/noticias/Militares-tomaran-Laguna-Tigre_0_320967920.html

¹¹⁵ See the communities of Petén Manifiesto, September 10, 2010, in Annex III.

During a visit from the United Nations High Commissioner for Human Rights in November 2010, his representative for Guatemala, Alberto Brunori, said himself that, **"the army's task to uphold public safety does not work."**¹¹⁶

Set up from November 2010, the new battalion has its main military barrack in, **"a place known as the Xan well "** a location justified by its, **" strategic positioning near the Mexican border [for controlling] arms trafficking, cattle, illegal migrants and other illegal activities"**¹¹⁷

People are afraid of violent evictions by the military, as this has already happened in the past and in other regions. For example, in the region of El Estor (in the department of Izabal, the east the country), the army presence is linked to the protection of transnational interests, such as the exploitation of natural resources in the area, like mine and nickel extraction. This operation, now owned by the Guatemalan Nickel Company (CGN) and the Canadian subsidiary, HudBay Minerals, moved to the area illegally.¹¹⁸ With the involvement of the army, as well as private agents of the company, many violent evictions of indigenous Mayan Q'eqchi Es communities have occurred.¹¹⁹

This report has identified several human right violations, due to the militarization of the oil extraction areas that Perenco Guatemala Limited dominates. The main abuses identified include, violations of the right to freedom of movement, the right to work, the right to health and freedom of assembly.

¹¹⁶ Public meeting. LTNP. November 25, 2010.

¹¹⁷ "Batallón élite del Ejército va a la selva". Prensa Libre. 21 November 2010. See : www.prensalibre.com/noticias/Batallonelite-va-selva_0_376162411.html

¹¹⁸ A UN agency acknowledged in 2007 that the state had violated international law for failing to have consultation with the local people in issuing operating permits to the company. See: www.chocversushudbay.com/la-mineria-canadiense-en-el-estor?lang=es

¹¹⁹ For evictions in El Estor see: <http://montreal.mediacoop.ca/fr/story/adolfo-ich-et-la-canadienne-hudbayminerals/6794>

Human rights violations: Testimonials

"When passing through the stream, we cannot move with our machetes or the work tools that we use to live. I think it's also a way to intimidate us."-Resident living in an LTNP community, September 2010.

"When we cross the river, it's as if we are strangers or we've returned to time of armed conflict."
LTNP Public Meeting. November 25, 2010.



Left: "At the ferry entrance, turn off the engine, put the handbrake on and get out of the vehicle."(November 2010)

Right: Military in control of the ferry. (September 2010)

"The scary part is that they [the company] pay the government and the government, acting on their behalf, use their authority to further intimidate us and marginalize farmers" Mayor of an LTNP community of, September 2010.

"In November 2010, 250 soldiers came (to a public meeting) and people didn't know why they were there. It reminded me of the past; it seems to repeat itself when peace treaties stipulate that the government must reduce the size of the army"- Public meeting in Sierra Lacandón, November 24, 2010.

"They stopped me whilst I was working on a machine and pointed to me and my young son. They made me get off the machine. I had a little money on me from another job. They told me to show them all the money.

- This money is a bribe, right?

- It's money from my work.

They took pictures of me with the money. I told them I was just a worker but they said I was working in a forbidden area. They then took me to the police station. They did not let go of my son either, saying that there was also a prison for children" - Witnesses reflecting over their treatment from the military, LTNP Public Meeting, September 2010.

"The government's plan is to evict us, that's why we are facing harassment and all of these restraints. They pierce the bags of corn to see if there is anything hidden inside, because they say we are drug dealers here in the Laguna del Tiger"- Resident of an LTNP community, February 2011

Privatization of land, expulsion and criminalization of communities

"Why should foreign companies have the right to stay on our land over us?"Public Meeting in Sierra Lacandon. November 24, 2010.



***Holes and borders are put in place for the new wells,
preventing farmers from accessing their land. (September 2010)***

The land that Perenco GL is located on was previously part occupied by farmers. Firstly, it is important to address the legitimacy of the occupation of this land by the farmers and then issues relating to land occupation by the company. It is also necessary, as part of reporting human rights violations, to take stock of instances of non-compliance with the rights of the LTNP people.

"[One of the concerns of the people is] the lack of legal certainty on the land they occupy. Since the colonization of the Petén, the vast majority have been displaced from the war until now."¹²⁰

Bulletin Resistencia de los Pueblos, December 2010.

The north of Petén is a region where many people have been displaced on grounds economic and internal armed conflict (1960-1996), and the presence of drug trafficking. In a way it is seen as the last option for already displaced people seeking refuge. For some people, an eviction can be the second or third forced displacement of their lives.

"The subject of evictions is very disturbing: there are certain rules, however, they do not lead to a solution. It is only when a solution is found that eviction can start to take place" - Alberto Brunori, representative of the OHCHR in Guatemala. LTNP Public meeting, November 25, 2010.

"Yet again, the concerns of our population, as they have been throughout our history, are that of being displaced by governments who allow the establishment of monocultures, [...] oil companies and tourism megaprojects to put their agenda before our cause"¹²¹ Bulletin Resistencia de los Pueblos, December 2010.



"No more evictions" demands a woman from Q'eqchi'e

There are two circumstances:

¹²⁰ Bulletin de Resistencia de los Pueblos. "Tenemos palabras que compartir". December 2010.

¹²¹ Op.Cit. Bulletin de Resistencia de los Pueblos.

- Communities who settled in the area before 1989 (before the enactment of the Law on Protected Areas) have more legitimacy and legal insurance on the land.
- Those who arrived after 1989 have, in some cases, agreements with the Government to occupy the land. For example, people in the Santa Amelia community within the LTNP area, have had, from the '90s, a "management agreement and resource development scheme"¹²² signed with NCPA, which allows them to live and grow their staple foods. In return, they must meet a number of requirements set out by NCPA, particularly relating to the amount of timber cut and occupied land. Nevertheless, this community has been the subject to an attempted deportation by the military in January 2009¹²³:

"They arrived at 5am on January 26 [2009]. We saw a plane and a helicopter which flew above us. When we stood up, we saw riot police and many soldiers. The women fled the area with the children, who were hungry and thirsty. When we returned, around 15h or 16h, it was over. The authorities were supposed to protect us but when we went back into our houses, everything was upside down; the mattresses, kitchen utensils ... They stole machetes, mobile phones, money ... They had beaten the young people and arrested others, one person died. We were very afraid and it's hard let go of this" - Inhabitants of a LTNP community, September 2010.

The status for families who settled on the land after 1989 and who do not have a legal agreement in place is unclear. In 1997, some communities, such as La Colorada, signed a legal agreement with NCPA allowing them to stay on their land for 20 years and were still expelled.¹²⁴

"It [Perenco] has no dialogue with the farmers; it doesn't even know the farmers and we don't know them. The only thing we know is that they are oil companies" -Mayor of a community of LTNP. February 2011.

¹²²As noted in Interviews with NCPA and testimonies collected during the November trip to the LTNP community.

¹²³ "Nuevo desalojo en Laguna del Tigre deja muertos y heridos". Cerigua. 27 January 2009. http://cerigua.org/archivo/index.php?option=com_content&task=view&id=6920&Itemid=2

¹²⁴ These agreements allow the inhabitants to use resources in a "sustainable" manner in exchange for the right to stay on their land.

The privatization of land located near the oil wells in areas where food grows for subsistence and the confiscation of land to drill new wells are examples of how the company takes advantage of the legal uncertainty surrounding land ownership in the LTNP area.

This appropriation of land takes place in several forms:

- Intimidation and the promise of compensation if people leave. These are verbal promises and are rarely fulfilled.

- Restriction in daily life activities (eg, washing in surrounding water points) under the pretext of security.

Farmers with their plots near the pipeline have been threatened in case they refused to maintain their plots by cutting the surrounding vegetation. A farmer told us that if he didn't, **"he would be sent to the court."** This person has never disputed these threats for fear of retaliation.

"We don't need work from them or to be a part of their projects. We just want them to let us do our jobs. We have tried to complain several times now with NCPA, the council and the police, but they do not hear us." - Inhabitant of an LTNP community, September 2010.

"We have come to realise that we don't exist in their thinking. [...] They see us as less than nothing, inferior beings that are worth nothing." - LTNP Public Meeting, September 2010.

Further to this, some of the populations living in the area of operation and its surroundings are the Maya Q'eqchi'e communities who are affected by the ILO Convention 169. This convention, ratified by Guatemala in 1996, makes free and informed prior consultation for projects in their territory obligatory. In this case, no consultation has taken place.

¹²⁵ Footnote for the table

¹²⁶ n/a

¹²⁷ n/a

¹²⁸ n/a

¹²⁹ n/a

¹³⁰ n/a

¹³¹ n/a

¹³² n/a

Conclusion

Perenco GL has not hidden its interest in further expanding its activities in Guatemala. Furthermore, following the Ministry of Energy and Mines' proposal to start operating in the Yalcanix area, 100 km from the Xan wells in early June,¹³⁵ this report presents the risk of human rights violations, environmental damage and the suspected illegality of the concession 2-85 renewal by the Anglo-French multinational Perenco.

These violations are due, first and foremost, to the Guatemalan government who has failed in its duty to protect¹³⁶ its citizens:

- Failure to regulate and control of the oil industry:

As we have uncovered, the regulatory system in the oil industry is lacking in impartiality. The oil company in question and the sector in general seem to be too heavily involved in the regulatory system. This is illustrated by the fact that the President of the Republic agreed to the renewal whilst ignoring the views of experienced national authorities who were vocally against the proposed agreement.

-Failure in risk prevention and access of information for the people concerned:

The report highlights that no environmental and social assessment has been undertaken, as required by Guatemalan¹³⁷ law and the Ministerial Agreement 214-2010, which renews the contract. Without an accurate diagnosis of the environmental and social risks associated with the project, no corrective action can be implemented. Moreover, people are not informed about the impact that the contract renewal could have on their lives.

¹³³ n/a

¹³⁴ n/a

¹³⁵ www.elperiodico.com.gt/es/20110601/economia/196224/ et « Perenco, tras mas zonas petroleras », *Siglo XXI*, 1^{er} December 2010, www.s21.com.gt/node/248245

¹³⁶ Guiding Principles on business and human rights: implementation of the framework "to protect, respect and remedy "the United Nations, Professor John Ruggie, Special Representative of the Secretary General of the UN on the issue of human rights and transnational corporations and other businesses: www.businesshumanrights.org/media/documents/ruggie/ruggie-principes-directeurs-21-mars-2011.pdf

¹³⁷ Article 20 of the Law of Protected Areas.

- Failure to take into account protected populations:

The State of Guatemala has signed and ratified the ILO Convention No 169¹³⁸ which provides for the free and informed consultation of indigenous people when potentially affected by a project of an industrial nature. At this stage, no consultation has been organized by the government.

- Delegation of sovereign powers of the rule of law to a private actor:

By signing the new concession contract, the Guatemalan Government has given the responsibility of funding security measures in the oil company's areas of operation to the military. Security related issues have a direct impact on the human rights of the population. During the onset of problems or when trying to obtain compensation, residents often have no choice but to negotiate directly with the company, despite the fact that protecting the rights of the individual is a function of the state.

The right to land:

The right and access to land is a central theme in the past and current issues in contemporary Guatemala. The Peace Accords of 1996 emphasize the need for a "comprehensive strategy that facilitates the farmers' access to land [...] and which provides legal certainty and promotes conflict resolution" The same agreement which promotes legal reform calls to, "end the lack of protection and dispossession that have particularly affected farmers and indigenous peoples [...] and regulate effective environmentally sustainable land use in line with the needs of development ". The decision to favor the presence of the oil company at the expense of farmers and their families is inconsistent with the spirit of the Peace Accords, which seeks to promote the, "social function of the land" beyond private property. Moreover, the ILO Convention 169, in Articles 7 and 16, recognizes the land rights of indigenous peoples and states, "the people concerned should not be removed from the lands they occupy "(Article 16.1) and that the State has a duty to consult them.

- Relationship between the government and the oil industry:

The dependent relationship that binds the government to Perenco GL results in a weakening of the State and an inability to impose corporate compliance on national and international legislation.

¹³⁸ See: www.ilo.org/ilolex/cgi-lex/convdf.pl?C169

- Lack of justice and reparation for victims:

By providing the company with such authority over the areas of operation, the government has displayed a profound lack of will to protect the human rights of its population and ensure effective restorative measures for victims.

The human rights violations noted in this report are the result of serious failings from the **Perenco Guatemala Limited, of which the Anglo-French company is the sole shareholder**¹³⁹ The company, which was set up in Petén in 2001, has failed to **exercise due diligence** in the conduct of its operations, particularly in recognizing the environmental and social issues in an area protected by the Ramsar Convention where the presence of indigenous populations is subject to special protection under the Convention No. 169 of the ILO. If it's the Guatemalan government's duty is to protect its citizens from any human rights violations, including from private companies, then the main conclusions of this report signal that **Perenco Guatemala Limited has been successful because of the ineptitude of the government**. In acknowledging this, the company can be considered "complicit" of human rights violations, as defined by Prof. John Ruggie; ***"Complicity occurs when a company has, or appears to have, a negative impact on human rights caused by another party. Complicity can be understood from both a legal non- legal point of view. From a non-legal viewpoint, firms can be considered "accomplices" of the acts of another party when, for example, it appears that they benefit from the violation committed by that party.*"**¹⁴⁰

- Contradiction between the country's national laws¹⁴¹, international treaties and the lack of validation by the national institutions for the license renewal of the 2-85 contract:

The first obligation of a business is to fully comply with the legislation of the countries in which it operates. However, as we have seen, many sources of domestic law question the

¹³⁹ www.perenco-guatemala.com/about-us/perenco-in-guatemala.html

¹⁴⁰ Principle 17, Guiding Principles on business and human rights: implementation of the framework "Protect, respect and remedy" the United Nations, Professor John Ruggie, Special Representative of the Secretary General of the United Nations on the issue of human rights and transnational corporations and other businesses: www.businesshumanrights.org/media/documents/ruggie/ruggie-principes-directeurs-21-mars-2011.pdf

¹⁴¹ Chapter 17 of the Free Trade Agreement between Central America, the United States and the Dominican Republic establishes signatory states can jeopardize their environmental legislation, as this is considered the unfair competition; the Centre for Environmental and Social Action Legal (CALAS) estimated that the renewal of the concession violated in other sections 28, 64, 97, 152 and 154 of the Guatemalan Constitution.

legality of the concession contract renewal (see Legal Framework). Moreover, authorities specialising in environmental issues, have noted that the company project has been inconsistent with national and international legislation concerning the protection of the environment.

- Lack of measures to identify the environmental¹⁴² risks associated with concession contract renewal:

Section 20 of the Law of Protected Areas requires companies to produce and submit an Environmental Impact Assessment (EIA) study before the start of any operation. Furthermore, OECD Guidelines for Multinational Enterprises recommend, **“appropriate environmental impact assessments, even if the law does not enforce this.”** According to information we have so far, and the charges as cited in an NCPA appeal, it appears that no study of the social and environmental impacts has been conducted for neither the operation of 47 wells in camp Xan or for the new wells, as planned in the new contract (see Appendix VI). In their public statements, the company claims to have a ‘minuscule’ footprint on the Park natural, valued at 0.024%¹⁴³. However, in the absence of an EIA, it is worth querying how it obtained this figure. Although aware of the potentially negative effects the oil industry has on human rights, the company has not made adequate provision to monitor the health and social consequences of its activities and ensure that effective preventative measures are in place.

- Lack of prior and informed consent from the people:

Article 6 of Convention No. 169 of the International Labor Organization specifies the obligation to obtain prior and informed consent from indigenous peoples, through consultation before the implementation of any proposed project in their territories. According the information collected, as part of this report, no consultations were carried out to date and, moreover, local populations may be subject to forced displacement. (Colom’s speech on community evictions in the LTNP).

- Lack of transparency

The inhabitants of the Laguna del Tigre, and more generally of Petén, have no access to certain, if

¹⁴² Guidelines for Multinational Enterprises, OECD, Chapter VI, Environment, comments:

www.oecd.org/dataoecd/43/30/48004355.pdf

¹⁴³ www.perenco-guatemala.com/about-us/qa-laguna-del-tigre.html

any, basic data on the impact of the oil industry and the mining project on their lives. If such data exists then it has not been made public. Perenco Guatemala Limited has not provided residents with access to information about the impact of oil operations and the effects on their health and livelihoods. For the most part, it has been impossible to recover any information on Perenco Guatemala Limited's business activities; it has been equally impossible to find anything in a report, consolidated by parent company Perenco, on the non-financial impacts of its activities in the world.

The figure given for the company's ecological footprint on the park was 0.024%, for which no explanation or study has been provided. No more information beyond this figure is available on the website. As a French company, it will shortly be obliged to provide such information, under the conditions laid down in Article 225 Grenelle II Law. Due to the complexity of the situation in the Guatemala region, where there is a high rate of drug trafficking related crimes, it is impossible to provide a single explanation for human rights violations in local populations. However, it is clear that neither the government nor the company should use this complexity to divert attention from their own failings.

Recommendations

For the government of Guatemala

1. Implement NCPA's recommendations in full as well as any other national and international bodies who provide legitimate opinions on the oil concessions in Guatemala and areas protected by international conventions
2. Establish an independent monitoring body, integrated in the oil industry, which examines its human rights implications. This body's work should be carried out in conjunction with relevant government agencies (such as the Ministry of Environment and Natural Resources, Energy and Mines, Agriculture and Public Health) and NCPA. This body should ensure, amongst other things, that a system of repair and victim compensation is in place and that a human rights impact assessment is conducted for all oil operations, present and future.
3. Strengthen the role of NCPA by giving it real power to veto the approval of oil projects. It must have staff, financial resources and necessary equipment in order to adequately carry out its duties.
4. Establish a system of compensation and fair and transparent reparation. An alternative reparation policy must be established as quickly as possible pending more relevant legal measures.
5. Implement a compulsory social and human rights impact assessment for all projects concerning petroleum operations. These assessments must be carried out with the active participation of people affected by the project and the results made public.
6. Require, by law, that companies consult the people concerned and disseminate all the requested information, this information may not be considered confidential. Ensure that the consultation procedures seek to include and take into account the specific dynamics of potentially marginalized groups.

7. Amend laws relating to land use so that they are consistent with human rights obligations in Guatemala and so they do not affect the fundamental right to a decent standard of living, including adequate housing and access to food and water.
8. Develop a program to ensure that the inhabitants living in the oil producing regions of Petén are aware of their rights against oil companies and their legal protection available to them.
9. Require by law the provision of information on the human rights and environmental impacts of oil operations.
10. Revise the Petroleum Act law to ensure that it is compatible with the principles of law established by the Constitution of Guatemala and that the international conventions on human rights and the environment incorporate the measures proposed above (Recommendations 1-10).
11. Comply with the 1996 Peace Agreement by restricting the duties of the army, assigned by the Constitution, and the opening of new military units and increase in staff.
12. Temporarily suspend Perenco activity until an impact assessment is conducted by an independent body of the company.
13. Stop evicting LTNP and Petén communities without offering any prospect of relocation.

2. For the oil company Perenco:

1. Disseminate accessible information about the impact of oil operations on the environment and human rights, notably by publishing environmental impact assessments as well as any studies about the impact of oil operations on the water, soil and air. It should also publish information about money paid for the procurement or lease of land and the amount of compensation paid, with details of what these benefits cover. The

opinions of pressure groups on the law in Guatemala on how oil operations would impact the environment and human rights should also be communicated.

2. Make a public statement in support of an independent regulatory body for the oil industry in Guatemala and confirm that they will not lobby against it.
3. Hand over the control of the environmental management of the company to an independent body, including onsite inspections. These inspections must be performed by representatives of government agencies and non-governmental organizations and its results made public.
4. Undertake comprehensive analysis of the impact of their oil operations on the environment and human rights, with particular emphasis on transparency and the need for adequate information to be provided to the communities and affected people. The impact analysis should be made public, as well as plans to prevent or reduce human rights violations against individuals.
5. Review the process of public participation and consultation methods and ensure close and independent monitoring of this process is provided.
6. Before embarking on a project, to ensure that the population is fully informed, it should participate in an impact assessment on social and human rights, and provide the community with all relevant information held by the company about the project. They should work in conjunction with the government and the population for the implementation of these consultations, in compliance with the ILO Convention No. 169.
7. Integrate contractual clauses requiring that all contractors are fully informed of the company policy on human rights, the environment and gender issues, and are trained to act in accordance with the principles of ethical practice.
8. Voluntarily stop work connected to the 2-85 contract pending further in-depth study.

3. To France and UK governments in their actions nationally and within the European Union:

1. Require that mining companies headquartered or located in these states take necessary due diligence for all their operations, with particular attention to risk areas such as Petén. The due diligence measures must demonstrate that the companies concerned have made sufficient efforts to analyse and prevent negative impacts on human rights as caused by mining operations.
2. Set up provision for parliamentary supervision which should be able to examine complaints against companies in extractive industries and present evidence to support these claims.
3. Ensure that people whose human rights have been violated by extractive companies, whether by headquarters or their home state, have access to effective appeal rights in the State of origin, including its courts, if the host cannot or does not wish to act.
4. Engage with the Guatemalan government to help establish an independent monitoring body for the oil industry.
5. Engage with the Guatemalan government to help improve access to the legal appeal system for people whose rights have been affected by oil exploitation in Petén.

More generally, the work of the government should focus on following three main areas:

1. Making the parent company accountable

Company law, which includes the two principles of legal autonomy and limited liability, currently prevents a holding or parent company from being considered legally responsible for the actions of its subsidiaries abroad. Although a group of companies are economically connected (a parent company and its subsidiaries), each branch, which are often located in the global South, is legally isolated. Therefore restoring a legal framework for corporate groups is imperative in order to give more responsibility to parent companies. This can be done by imposing a duty of care, caution and vigilance or "human rights due diligence" as defined by Professor John Ruggie under European

legislation. While steps in France ¹⁴⁴ have already been taken towards this, lack of political will has meant that this yet to led to any legal measures.

2. Making their business activities more transparent

Access to information for stakeholders (consumers, people affected by economic activity, trade unions, governments, NGOs, etc.) remains limited. This lack of transparency prevents the development of qualitative practices such as Socially Responsible Investments (SRI). Therefore transparency particularly in areas such as: due diligence, especially in areas of conflict, and environmental and social impacts should be made mandatory. Also information on their human rights practices, based on specific indicators, should be reliable, relevant, recorded over a significant period of time and comparable to other firms in the industry (the disconnected and obscure nature of the information as well as methodological discrepancies makes the data difficult to read). Despite opposition from lobbyists ¹⁴⁵[3], France, through the Grenelle process, has made some progress in this area¹⁴⁶ however its clear work still needs to be done to clarify the methodology and for each foreign subsidiary to communicate this information.

3. Ensuring access to justice for victims

According to current legislation within the European Union and its member countries¹⁴⁷ [4], for disputes involving at least one foreign element (For example, a State in the developing world), one or more companies, human rights violations and environmental damage, the relevant court is the state in which the injury occurs. However, there may be countries where the international law of human rights and its possible sanctions have little or no deterrent effect. Victims of companies located in a developing country (as is often the case of subsidiaries of European companies - see

¹⁴⁴ Previously in 2005, as part of the draft reform of contract law and the law of prescription, Professor Pierre Catala backed the draft reform of Article 1360 of the French Civil Code:

http://www.justice.gouv.fr/art_pix/RAPPORTCATALASEPTEMBRE2005.pdf

More recently, in a mission report commissioned by the Minister for Ecology, Energy, Development and Sustainable Planning, Borloo, Lepage proposed the creation of Article 1384-1 of the Civil Code which relates particularly to the vicarious liability:

http://www.criigen.org/SiteEn/images/stories/Dossiers/Divers/rapportfinal-lepage_2008.pdf

¹⁴⁵ This is section 225 of the Grenelle 2 law which introduces the requirement for French companies with more than 500 employees to disclose certain non-financial data:

www.legifrance.gouv.fr/affichTexteArticle.do;jsessionid=6464653B62319E11FDC8BABCFE607929.tpdjo11v_1?idArticle=JORFARTI000022471678&cidTexte=JORFTEXT000022470434&dateTexte=29990101&categorieLien=id

¹⁴⁶ Letter from the Civic Forum for CSR and other groups to Prime Minister: http://ccfdterresolidaire.org/e_upload/pdf/communiquedfillonart225.pdf

¹⁴⁷ These regulations, called Brussels I and Rome II Regulation (EC) No 44/2001 of 22 December 2000, are on jurisdiction, recognition and enforcement of judgments in civil and commercial matters ("Brussels 1") Regulation (EC) No 864/2007 of the European Parliament and the Council of 11 July 2007 on the law applicable to non-contractual obligations ("Rome II").

point I) often have no opportunity to take to the parent company to court to see their requests resolved or dealt with fairly. It is therefore imperative that these legal barriers are removed so that victims have access to national courts in European states for violations committed by subsidiaries of companies located in the EU.

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November 2010: four public meetings in LTNP and 11 community visits Petén outside of LTNP.

September 2010: public meetings in three communities of the LTNP.

Appendices

Available at: www.collectif-guatemala.chez-alice.fr

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