

Pro Bono – Law Firms

Mayan Struggle For Accountability Compels Holland & Knight To Put Business Negotiation Skills To Work For Villages In Guatemala

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In May 2005, Holland & Knight was retained by COCAHICH, a coordinating committee of 23 Mayan communities in Guatemala that were severely impacted by the construction of the Chixoy Hydroelectric dam in the early 1980s. The fact that COCAHICH is a pro bono client of the firm is irrelevant to the resources devoted to ensuring a successful outcome. The team of lawyers involved in the representation is headed up by D.C. partner Enrique Gomez-Pinzon, an international commercial negotiator, and Tallahassee partner Elizabeth Bevington, a commercial litigator. The team includes over 20 associates, partners, paralegals and foreign trainees from eight of Holland & Knight's offices. This team of highly motivated and talented individuals is bringing its skills to bear in on behalf of some of the poorest people in one of Central America's emerging democracies.

Emerging Into Peaceful Democracy

Guatemala is a country "emerging" into a peaceful democracy after 30 years of military rule and a brutal civil war. Emerging is the right word, even though it has been nearly 10 years since the Peace Accords were signed. The polarization which gave rise to the civil war – the polarization of the rich and poor, the landowners and the landless, the indigenous and the ruling class – was not extinguished by the signing of the Peace Accords. In fact, the many promises for a bright future which were made in the Peace Accords have not all been kept. Still today, human rights workers and peace keepers are threatened, and sometimes assassinated, because of their work exhuming the mass graves, and the vindicating of the rights of the survivors of a government-sponsored genocide of the indigenous peoples. But some promises are kept, many human rights workers continue their work in Guatemala, and the hope for a new future burns bright in the hearts of nearly all Guatemalans of good will.

The struggle of the Mayan villages that once flourished on the shores of the Chixoy river and its tributaries highlights the continued need for accountability and fulfilled promises. Because the mountains that are home to those villages are so steep, the only land suitable for intensive agriculture in the area is found in the narrow river valleys. It was hardly worth building expensive roads into the area, and hardly worth annexing the area to the large commercial plantations. Inaccessible and uninviting to the "civilized" world, the river valleys remained as they had been for hundreds of years: populated by Mayans traveling between villages by footpaths along ancient trade



Photo by Elizabeth L. Bevington

Children in a Mayan village.

routes, and worshiping and celebrating at ancient Mayan ruins dotting the valleys.

The Press Of Progress

And so it might have been until this very day, were it not for the inexorable press of progress. In the late 1970s the Guatemalan government, financed by the Inter-American Development Bank and the World Bank, began searching for the "right" location for a large hydroelectric dam project. As is so often the case with such projects, one of the considerations was the cost of purchasing the land that would be submerged by the dammed river. The area of Alta and Baja Verapaz was attractive for many reasons, not the least of which was the fact that the river valleys that would be submerged were owned communally by indigenous villages rather than wealthy, and powerful, plantation owners.

The "resettlement" of the displaced villages was handled poorly. Much has been learned in the intervening years about the appropriate processes for handling this type of massive displacement and resettlement, and the Chixoy Dam project is frequently cited as an example of what not to do. The impact was devastating. Significant Mayan ruins now are submerged under the waters of the reservoir. The ancient trade routes were destroyed, shredding the social and economic fabric of the region. Even villages that did not lose their actual orchards, gardens, fields and homes were deprived of trading partners and in some cases their ability to reach any markets at all.

The resettlement "villages" were more like concentration camps: urbanized, set on a grid, with limited area for family growth, very small garden plots, and no grazing for animals or land from which to gather firewood or raw materials for the building of artisan crafts so essential to survival. The forcible ejection from the river valley villages to the "resettlement camps" took place during the height of the "scorched earth" approach to the 30-year civil war, during which the military engaged in what has now been acknowledged as government sponsored genocide. The villagers that objected to the relocation were subjected to multiple massacres, purportedly to eliminate the guerillas in their midst. One recent exhumation of a mass grave in the Rio Negro area confirms that one such massacre involved 170 women and children.

Ultimately the dam was completed,

and the river waters began to rise, and the many promises made to the exiled villagers were broken, one by one. In one village the residents waited complacently for the army helicopters and soldiers which were to help them move their livestock and belongings. Instead the water came unannounced, and the villagers fled with only what they could carry. Other broken promises included the promise of free electricity generated by the dam, compensation for lost crops and livestock, new grazing and agricultural land, titles to the plots of land on which the new houses were constructed, and boats and bridges to replace the ancient trade routes. But these promises are just subsets of the real promise, a basic promise, the promise that the lives of the indigenous people forcibly removed from their land would be improved by this "progress" or that, at a minimum, they would be returned to the same standard of living that they enjoyed before the construction of the dam.

Promises Not Kept

That promise was not kept. The Chixoy dam affected people who prior to the dam were in the highly unusual position of actually owning the land they farmed. They are now reduced to the poorest of the poor. Every day is a crisis, be it lack of firewood, potable water or food. The affected communities organized, forming COCAHICH for the purpose of making their plight known. In September 2004, hundreds of members of the affected communities gathered at the Chixoy Dam to bring attention to their plight. The demonstration was peaceful, and after hours of negotiation resulted in the signing of an agreement between representatives of the communities and various government officials. In the agreement the government agency responsible for the operations of the dam, INDE, specifically acknowledged that no harm had been done to the dam during the peaceful demonstration. The agreement promised a fair and transparent forum for the negotiations and fact finding.

That promise was not kept either. Within days of signing the agreement, the community representatives whose names appeared on the agreement were arrested and charged with criminal offenses ranging from trespass to crimes against the state. The press coverage of the event accused the community representatives of being financed by foreigners, implying foreign support is sinister and threatens the government. One of the community representatives was falsely identified as having a criminal record. All the vehicles on the scene were identified by owner, owner's address, and tag number.

Formation Of The Damages Verification Commission

Despite the missed promises and inappropriate criminal charges, there have been some successes. With Holland & Knight's encouragement, the press released a long over-due apology and reported more accurately on both the original demonstration at the dam and

more recent developments. Dr. Frank LaRue, Director of the Presidential Human Rights Commission (COPREDEH) in Guatemala, has formally announced the formation of the Damages Verification Commission and invited the World Bank and Inter-American Development Bank (IDB) to participate in the Commission. World Bank has already accepted the invitation to participate and IDB is considering it.

The criminal charges are still pending, but the community representatives have acquired another powerful ally. The law firm of Winston & Strawn LLP has joined the defense team to bring international attention to the criminal charges and assist the communities in their quest for justice. Both Holland & Knight and Winston & Strawn were introduced to their Mayan clients by Lewis Gordon, who runs the Environmental Defender Law Center, a non-profit organization that locates environmental defenders from developing countries who have suffered abuses of their human rights and then enlists American lawyers from premier firms to work pro bono on their behalf.

The first formal meeting of the Damages Verification Commission was scheduled for October 12, 2005. Unfortunately the devastation inflicted on Guatemala by hurricane Stan was such that many of the government participants simply could not take precious time away from their first responder and recuperation duties.

So now it is more than a year since the demonstration, and still the community leaders are under criminal investigation, still the first formal meeting of the Damages Verification Commission has not been held, still the communities affected by the Chixoy Dam continue to spiral down into ever deepening poverty. But hopes remain high, determination is strong and the communities continue to struggle for justice and the fulfillment of promises, the promise of progress.

HOW CAN YOU HELP?

The Guatemalan Government, INDE the state owned electric company, the World Bank and the Interamerican Development Bank need to hear from as many people as possible that a fair resolution of the issues is important and that the U.S. business community is watching to see how this matter is resolved. If you have contacts in Guatemala or with the development banks, please consider letting them know you are aware of the case and interested in seeing a fair resolution.

Additionally, Holland & Knight, through its Charitable Foundation, is collecting donations for the indigenous people of Guatemala affected by the recent devastating mudslides and floods. The donations, in their entirety, will be passed along to a qualified charity addressing the critical needs of the people of Guatemala. Checks should be made payable to the Holland & Knight Charitable Foundation, and sent to P.O. Box 2877, Tampa, FL 33601-2877. Please include a note that the contribution is for Guatemala.

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