

How Finnfund's Agua Zarca financing contributed to murder and violations of indigenous peoples' human rights

Finnfund financed projects have repeatedly adversely affected indigenous communities' rights to their ancestral lands, environments and livelihoods and the affected communities have thus opposed such projects and have faced violence or oppression for defending their rights.

As Finnfund's financing and its guidance have directed funds repeatedly to corporations, whose financed project activities have led to repeated human rights violations, Finnfund's financing has to be corrected.

With Agua Zarca in Honduras where 2 Lenca first Tomas Garcia (2013) and then Berta Caceres (2016) were murdered for opposing the project which Finnfund started to finance from 2014 onwards as is addressed in this document.

But similar type of violations have taken place also in respect to Finland's financing of corporations both via Finnfund and also otherwise for example in Guatemala and Kenya:

- In Guatemala Andres Pedro Miguel (an indigenous Maya) was murdered in 2012 in context of the protest against [Maya lands captured for a Santa Cruz Barillas dam](#) which Finnfund decided to join to finance in 2014 after which many Mayas were kept jailed for years for opposing the project. Ruben Herrera, the community leader and human rights defender who opposed the project, died in jail in July 2020 as his health was badly affected by his imprisonment.

- In Kenya Finland used to finance the capacity of Kenya Forest Service (KFS) corporation, whose carrying out brutal military [forced evictions of indigenous Sengwer community and burning the houses of thousands of Sengwers in 2014](#) was reported to the government of Finland in 2014 but still later Finland continued to finance KFS project with the EU in traditional Sengwer land resulting to the murder of Sengwer Robert Kirotych. Also Finnfund has invested in Kenya to Lake Turkana Wind Power (LTWP) project which is based on LTWP's decision that for the project's purposes "**the concept of Indigenous Peoples has been narrowed down**" so that the indigenous Samburu, Rendille and Turkana pastoralists, who have traditionally lived in the area, have been excluded from having rights as indigenous peoples in the project. (Sorry that [our report on LTWP](#) is only in Finnish, but we try to translate it later in English)

These are all related also to the general [weakness of the human rights in the EU legislation and in EU's legislative plans](#)

Finland has to guide Finnfund's and other corporations' activity and development finance in a manner which makes human rights respected and realised as indivisible whole in publicly demonstrable way which can be verified also by the UN bodies internationally authorised to assess, monitor and guide their realisation also to duly address the violations.

1. Questions on Agua Zarca to Finnfund, Finland and to the UN human rights system

In 2.12.2019 seven men – the gunmen who shot dead Berta Caceres and middlemen involved to organise the murder - were sentenced for 30-50 years in prison for murdering of Berta Caceres 2.3.2016 for her opposition against Agua Zarca project financed by Finland/Finnfund/FMO/etc. in Honduras.

One of those who were judged guilty for the murder was Sergio Rodriguez who was responsible for the relation to the affected communities and environment of the Agua Zarca project of the DESA company which Finland financed through Finnfund. Also DESA's earlier security chief was sentenced to prison for Berta's murder. (1) The sentenced men have still complained about their sentence in the court.

The main director of DESA corporation which Finland financed, Mr. David Castillo is also currently under trial - both for Berta's murder but also for the acquiring of environmental license by corruption for the Agua Zarca project which Finland then financed via Finnfund financing and advertising. Soon after the murder of Berta Mr. David Castillo bought 1,4 million dollar luxury house from Texas.

As Finnfund and also Finland have repeatedly financed in indigenous communities' ancestral lands without their free, prior and informed consent such corporate projects which are claimed to be UNGP-compliant but which have led repeatedly to murders of indigenous people who oppose the project and to continuous violations of their rights to their ancestral lands, then:

a) Why the same financing structures of the projects which have already repeatedly led to murders of projects' indigenous opponents and violations of their rights in Honduras, Guatemala, Kenya, etc., are allowed to continue as if

being in compliance with the UNGPs?

b) Is it acceptable for the United Nations that corporations use UNGPs in this way to protect the corporations to violate indigenous people's rights without getting any problems from this?

c) As Agua Zarca project's earlier indigenous opponent, Tomas Garcia, had already been murdered for protesting against the project less than 3 years earlier than Berta Cáceres got murdered - why soon after that first murder of the project opponent, Finnfund started to finance the project leading to the murder of the second indigenous opponent?

As Finnfund had claimed in 2016 in its webpage that it would have "at its disposal all information relevant to the possible human rights impact" of its financed projects (2) why then the following things happened:

d) Why in 2 March 2016 Berta Cáceres got murdered for opposing Finnfund financed DESA company's project even though Finnfund has assessed - with "all information relevant to the possible human rights impact" at its disposal - that there are no relevant human rights risks to finance the project ?

e) Why did Finnfund director Jaakko Kangasniemi say in a public immediately after Berta's murder that Berta had been murdered due to jealousy ? (even Honduras' Supreme Court has proven Berta was murdered for opposing Agua Zarca and evidence shows DESA corporation - which was involved in the murder and which Finnfund financed - had bribed some media in Honduras to wrongly report the murder having happened for jealousy)

f) When asked just after Berta's murder to show Agua Zarca's human rights impact assessment and its acquisitions of lands that Lenca had traditionally used, why did Finnfund's Impact and Communications Director say that assessment on Agua Zarca human rights impacts and acquisitions of traditional Lenca areas can not be made public as such human rights assessment belongs to confidential business documents shared only among its business partners, like DESA ?

g) As even the respective minister told the Finnish parliament still after Berta's murder that: "The project has been prepared carefully and the social and environmental questions have been deeply considered" (3), if that would have been the case why the human rights impacts found in such "carefully prepared" impacts assessment could not have been made public ?

h) Why project's assessed human rights impacts - and "all information relevant to the possible human rights impact" which Finnfund claimed publicly to have on the project which led to 2 murders of its indigenous opponents - remained business secrets even after the project had repeatedly led to murders of its opponents and Finland still wanted to continue it ?

i) Why Finnfund's crucial source of "all information relevant to the possible human rights impact" (4) of Agua Zarca was DESA's community and environment manager Sergio Rodriguez, now sentenced to jail for 30 years for the murder of indigenous community's woman leader, internationally awarded human rights and environmental defender ?

j) Why has Finland advertised as a good environmental effort such project whose environmental license was acquired by corruption and whose environmental and community head/officer got sentenced to jail for 30 years for the murder of an indigenous defender who opposed the project and had got international environmental prize for her efforts ?

k) As originally Finnfund and Finland started to finance Agua Zarca - in spite of its high risk setting - by justifying it by the weight of its important environmental (renewable energy) and social (few jobs/ income) impacts, why then however after Berta was murdered the respective Finnish minister explained to the parliament that in spite of Berta's murder, Agua Zarca should be continued on the contrary because its "impacts have been assessed and recognised being very small impacts"?

So, as the project was said to be carried out for its - environmental (renewable energy) and social (few jobs/income) impacts, if such "impacts have been assessed and recognised being very small impacts" (5), why then to have such project?

l) Why this Agua Zarca type Finnfund's project financing and investments to a project which takes indigenous community's sacred ancestral land and river without community's free, prior and informed consent and leads to murders of 2 indigenous opponents of the project and continuous harassment of the community can be carried out in the name of the UNGPs ?

m) Why regarding Lenca community's ancestral lands which were taken without its consent could the responsible Finnish minister informed the parliament still after the 2 murders of project's indigenous opponents in 2016 that the "needed lands have been bought by voluntary sales where the rights of sellers to sell have been carefully reviewed. The surrounding local communities and indigenous peoples have been informed and consulted" ? (6)

2.How Finnfund land acquisition financing hurt indigenous community's rights to its ancestral land

The part of the Gualcarque river and lands surrounding it were acquired for Agua Zarca against the free, prior and

informed consent of a Lenca community for whom they were sacred and had cultural significance for its life-heritage.

The lands were not treated in the selling process according to the obligations which Honduras has on ancestral lands of indigenous peoples under the ICESCR-UNDRIP, Inter-American human rights system and under the ILO 169 - which the corporations would be responsible to respect independently from whether Honduras respects its obligations.

The UN Office of the High Commissioner for Human Rights reminds that "the murder of Berta Cáceres occurred in a context of violation of the rights of indigenous peoples" as "indigenous people of Honduras live in a critical situation due to the lack of protection of their rights over their lands, territories, and natural resources and the acts of violence they face for claiming their rights in a general context of violence and impunity". (7)

Finland is obliged to ensure that Finnish sources' financing and activity in poor countries respects indigenous peoples rights in compliance with those countries' international and regional obligations particularly so in countries like Honduras which has many crucial international human rights obligations but in which violations of vulnerable communities' human rights are wide-spread as national laws do not prevent them.

Agua Zarca's environmental license was acquired by fraud and in violation of Honduras' international human rights obligations. If lands which indigenous peoples' have traditionally used have been taken away from them to other purposes "in the context of investment projects", then "indigenous peoples' cultural values and rights associated with their ancestral lands are particularly at risk" and:

"States parties and businesses should respect the principle of free, prior and informed consent of indigenous peoples in relation to all matters that could affect their rights, including their lands, territories and resources that they have traditionally owned, occupied or otherwise used or acquired."

Otherwise "the obligation to respect economic, social and cultural rights is violated when States parties prioritize the interests of business entities over Covenant rights without adequate justification, or when they pursue policies that negatively affect such rights. This may occur for instance when forced evictions are ordered". (8)

Indigenous peoples have rights to lands they have traditionally used under the international law - independently from that whether state has registered such lands for them. These rights are thus violated by financing acquisition of indigenously used lands without indigenous community's free prior and informed consent even if the "rights to trade have been carefully checked" (9) in accordance of the national laws - like Finnish minister approved to be done with Agua Zarca.

Finnfund and the respective Finnish minister assumed also that "the local communities and indigenous peoples of the area have been informed and consulted" (10) even though the Lenca community who has held sacred the indigenous significance of the river area and its uses was not consulted and its consent was not reached for capturing the sacred area to the use of electricity industry. In Honduras there have been "scores of lucrative renewable energy projects sanctioned after a 2009 coup d'état [...] without legally required community consultations and environmental impact studies. Nonetheless, since 2009, the price of electricity in Honduras has risen by 164 %". (11)

As Lenca indigenous community then tried to defend its internationally recognised rights to the lands and waters of its life-heritage against Agua Zarca, a member of community was shot dead for opposing Agua Zarca but Finland still after that started via Finnfund to finance Agua Zarca and DESA who was thus encouraged to continue to oppress to opposing indigenous community and finally murdering also Berta as the second victim. And still after that Finland announced that in spite of the repeated murders of the opponents to Agua Zarca, Finland wants to continue finance DESA who carried out the murder.

Finland's responsibility to prevent Finnish financing for projects which violate indigenous peoples' rights is particularly clear in respect to Finnfund as Finnfund gets most of its finance directly from the public funds of the government of Finland, who also owns most of Finnfund which "is in fact acting on that State party's instructions or is under its control or direction in carrying out the particular conduct at issue". (12)

Thus as Finland finances corporations' activities in countries like Honduras, Finland is responsible to secure that:

- The company respects "indigenous peoples' and communities' rights over lands and natural resources in accordance with their traditional patterns of use and occupation" (13), "their diverse and specific forms and modalities of control, ownership, use and enjoyment of their territories" also as rights of their "cultural survival". (14)

- As "business enterprises should respect human rights [...] wherever they operate" and "avoid infringing on the human rights of others and [...] address adverse human rights impacts" in their activity, this corporations' responsibility to respect human rights "exists over and above compliance with national laws and regulations" of the host states and

"independently of States' abilities and/or willingness to fulfil their own human rights obligations". (15)

- Indigenous peoples have rights "to use lands not exclusively occupied by them, but to which they have traditionally had access for their subsistence and traditional activities" (16) and "the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters [...] and other resources and to uphold their responsibilities to future generations in this regard". (17)

- They have such right "insofar as the material, cultural or spiritual link with these territories is still in existence". (18) Project must first assess its impact "upon the ways of life" and what "links these peoples to their territories, including their distinct forms of economic subsistence, their identities and cultures, and their forms of spirituality". (19)

- State has to "protect and guarantee the special relationship" they have with land "guaranteeing their subsistence as peoples". (20) "Companies must not contribute to States' failure to meet [...] international obligations" or "proceed with [...] projects for which the State has failed to carry out an adequate consultation with indigenous" peoples. (21)

- In such areas states have a "duty to prioritize" the rights of "indigenous and tribal peoples' cultural and material survival" also "in cases of conflict with third party property rights". (22) Right to "self-determination of indigenous [...] peoples applies to their communities, their sovereignty and their right to the land, their culture, their lifestyle and their close relationship with the environment" which they have right to continue "protecting, conserving, reclaiming, recovering, restoring, protecting, investigating, disseminating, expanding and transmitting to future generations" - without being exposed to measures "undermining the traditional culture of indigenous communities" or to "coercion against the celebration of their periodic ritual native festivals and other cultural expressions." (23)

- Indigenous people have also "the right [...] to enjoy their particular spiritual relationship with the territory they have traditionally used and occupied" "intimately connected to the places".(24) If a project would "take place on, or [...] have an impact on, sacred sites and lands and waters traditionally occupied or used by" indigenous communities, such project needs to respect their "cultural heritage, religions, beliefs and [...] systems of natural resource use, including patterns of land use, places of cultural significance, economic valuation of cultural resources, sacred sites, ceremonies". (25)

- "Impact assessments should ensure that climate actions respect human right" and do "not adversely affect human rights as, for example, might sometimes be the case in relation to [...] hydroelectric dams." "Particular care should be taken to comply with relevant human rights obligations relating to participation [...] and to ensure that adaptation and mitigation efforts do not adversely affect those that they should be benefiting." (26)

3. Cooperation with a criminal DESA organisation trusted under Finnfund's UNGP 'due diligence'

Project's environmental license had been acquired violating the obligations of international and Inter-American law presented above but was also acquired by fraud by DESA's director, who is in addition to Agua Zarca's illegal environmental license now also investigated on Berta's murder.

The thoughts of the above referred Finnish minister responsible on Finnfund ownership guidance changed drastically a month later after a week during which Lenca delegation visited Finland and the Finnish media published what Lencas told.

Then the same Finnish minister said in news interview "I consider it very important [...] to clarify once more the backgrounds of the project" and when journalist asked "So is it possible that the money of Finnish tax-payers have been transferred to the pocket of Central-American oligarch ?", the minister replied: "That we are just trying to clarify. It is impossible for me to take a stand on this kind of speculation". (27)

If Finland "tried to clarify" - like the minister said - whether Finnish tax-payers' money would have gone to the pocket of Central-American oligarch if the project had continued, can Finland let us see the content of what resulted from that attempt to clarify the business of the Atala oligarch family and how Finland's finance for DESA corporation owned by the oligarch, advanced the development of democracy in Honduras (like Finnfund assumed it to advance)?

And are assessed human rights impacts on Lencas such Finnfund's business secrets which can lead to such UNGP /'due diligence'-competent murders of financed project's opponents in respect to which Finnfund had "at its disposal all information relevant to the possible human rights impact" between 2 murders, but without need for Finnfund to make public that all relevant information which it has on project's impacts including the murders ? And at the same time in 2016 Finnfund continued all the time declare that it followed UN Global Compact and UNGPs under which however:

- "business should communicate externally on its adverse human rights impacts and responses" and "to potentially affected indigenous peoples how the business is addressing a human rights risk" with "effective monitoring and

reliable reporting on the impacts [...] on indigenous rights [...] to enable a business to fulfil its responsibility". (28)

- "In order to account for how they address their human rights impacts, business enterprises should be prepared to communicate this externally, particularly when concerns are raised by or on behalf of affected stakeholders" (29)

Thus, while many EU states tend to say that to urgently prevent violations like the murder of Berta Cáceres, all must focus just to apply the UNGP due diligence as soon as possible - not negotiate a binding UN treaty on TNCs - in reality on the contrary, Berta was murdered under the UNGP due diligence applied by the FMO and Finnfund - allowing the murder to take place without any real sanctions to FMO or Finnfund who were protected more than the victims by the UNGP.

Honduran Supreme court noted that "DESA executives proceeded to plot the death of Ms. Cáceres" because the protest campaign against Agua Zarca was led by her and disturbed their investment. (30) Killing was planned by the "consent of the executives of the DESA company" so that "Sergio Rodríguez and others" DESA managers were aware, even if others have not yet been sentenced. (31)

9 days after Berta's murder Finnfund's director told its investment had led to "better recognition of the issues of environment and society" according to how in respect to DESA's project activity "this would be carried out in concrete terms in the local level for example by those responsible for the project corporation's relations to the society" (32) - such as by Sergio Rodríguez sentenced as guilty for Berta Cáceres murder. What "prosecutors extracted from Rodríguez's phone is a file dated March 3, a photograph of Cáceres lying sprawled on the floor, one arm jutting out at an odd angle, the other covered in a pool of blood. Her mouth is open, her hair swirled above her head." (33)

Why and how such murdered Berta's photo which could not be found from media had arrived to Rodríguez's phone on the night of the murder before any media had informed about it? And why in the first morning after the night Berta was murdered, already as early as 05:37 Sergio Rodríguez had sent to DESA's chat group a newsclip about Berta's death? (34)

So for contributing to murder the winner of international prize of environmental defenders' "Sergio Rodríguez, DESA's Environmental and Social Manager, who coordinated informants who monitored Berta Cáceres and COPINH, was also sentenced to 30 years and six months." (35) Berta and COPINH had already over a week before Berta's murder informed that Sergio Rodríguez had threatened also through military police the safety of people who opposed Agua Zarca. (36) In his messages which the court has received "Rodríguez said he had tasked the company's infiltrators in COPINH to spread rumors to divide and weaken the organization" and he suggested to the DESA leadership that "we should also direct actions against them". (37)

Finnish minister responsible for Finnfund's ownership guidance announced in 11.3.2016 that "it would not solve the problem to withdraw from the project because one would not reach development impacts" and that DESA who arranged this murder would deserve Finland's full support, confidence and funding. (38)

Now the court has however sentenced in addition to Rodríguez also DESA's former security officer for 30 years to prison for the murder of Berta and has noted DESA's higher leadership having been involved in planning, ordering and paying the murder. Leadership directed through continuous mobile, text message, email and WhatsApp messages peoples who had worked in DESA to carry out the murder of Berta. (39)

DESA's director Castillo's trial continues and he has not yet got his sentences but "the judges who ruled on the trial of the seven men convicted of Berta Cáceres' murder noted in their oral verdict that executives of the DESA corporation knew about and consented to the plan to murder Berta Cáceres". (40)

"Evidence suggests that the murder of Berta Cáceres was part of a pattern of violence, corruption, intimidation, malicious prosecution and impunity for violence orchestrated by Castillo and others at DESA, who appear to have functioned as a criminal structure". He "transformed contracts obtained from state agencies, including those that may have resulted from acts of corruption, into financial instruments that were used to leverage international investment backed by public funds, including export credit agencies and development banks at least partially owned by foreign governments such as Norway, Holland and Finland, as well as multilateral development banks". (41)

Berta and COPINH informed already in the beginning of 2016 about this, how DESA has swindled Finnish tax payers money for its criminal activity as the trials have now shown.

Finland's minister responsible for development finance and Finnfund's ownership guidance told to the public that the "project has been prepared carefully and social and environmental questions have been deeply explored" bringing "improvements [...] to project's ability to take care of its responsibility on society and environment". (42)

She informed the Finnish parliament in 29.3.2016 "As responsible for ownership guidance of Finnfund, the Foreign Ministry also monitors the realisation of human rights based approach in practice" ensuring that "projects have to promote and support the realisation of human rights in practice". (43) But as she admitted a month later, it could have happened that Finland's money could have been going to the pocket of Central-American oligarch, the Atala family.

DESA's activity as owned by Atala's has been connected to financed violence, bribing police and military (to get them to use force to benefit Atalas' business), hiding the crimes and drug trading to ensure the oligarch family to get richer.

Berta's murder was planned in DESA's chat group "Agua Zarca Hydroelectric Project Security", to which belonged DESA director David Castillo, its main economic manager Daniel "Atala Midence, and DESA board members Jose Eduardo Atala Zablah and Pedro Atala Zablah". Also Jacobo Nicolas Atala Zablah was informed and "all four Atala Zablah men stood to lose a great deal of money if the company's proposed dam wasn't built" and they were owning or leading also corporations which owned DESA, such as Las Jacarandas or CABEL. (44)

Court documents show, how Atala-owned DESA and the activities of its director have been connected to violence, bribery of police, military and media, hiding the crimes and drugs trade financing to get a chance to swindle more money - also from Finland's public funds. Atalas wrote in their chats for example about how they buy police "with something more than food" to use force for their profit. DESA infiltrated also to spy the visit of the UN Special Rapporteur on the rights of indigenous peoples in the COPINH office. (45)

"In April 15, 2013, Daniel Atala indicates in a Whatsapp message that DESA directors had contacted high-level government authorities, including the Minister of Security, to get the security forces to 'remove those indians'" "On July 15, 2013, a soldier stationed at DESA's installations shot and killed Tomas García, a community leader, and injured his son, Allan García, during a protest by community members against the project. Whatsapp messages suggest DESA paid for the soldier's defense lawyer." 4 days later "On July 19, 2013, DESA's Chief Financial Officer, Daniel Atala, wrote via Whatsapp [...] 'I have spent a lot of money and political capital to get those 3 arrest warrants'", Berta and 2 others. "Within days, the three were indicted for illegal land occupation and damages to DESA. An appeals court later overturned the decision and dismissed the charges." (46)

When the project had thus already led murders of its indigenous opponents to take the ancestral lands of indigenous communities, who got threatened, wounded and continuously violated for defending to their ancestral lands the rights which they have under Honduras' international treaties, still Finland started in 2014 to finance the project based on ideas which it had got from the Finnfund, which got them from DESA representatives who had already arranged violent repression which had already led to murder of Tomas Garcia and to violence against Lenca community.

As DESA got thus Finnish financing to such its oppressive violent capture of community's ancestral land from which the Chinese Sinohydro had withdrawn, the Finnish and FMO based financing encouraged DESA to continue the violent oppression leading on 2.3.2016 also to the murder of Berta Cáceres whom DESA had already earlier started to threaten.

When DESA had asked Honduran military to protect Agua Zarca by protests and one soldier then shot dead Tomas Garcia, Castillo ordered his staff to "pay the reporter from HCH" media to report that "protesters from COPINH also had blood on their hands: They had killed the child of someone who worked on the dam". But no evidence for such claim has been found. (47) Similarly in the context of Berta's murder Castillo wrote DESA's 'security' chat-group: "Instead of asking a journalist not to publish an article, I think it's better to give them instructions about what they should include in their article and what message to give."

Thus DESA paid media to report Berta's murder as if it would have been jealousy-caused "crime of passion", which also Finnfund's director then presented it to be and "on March 7, 2016, the Honduran minister of security, Julián Pacheco Tinoco, assured Pedro Atala Zablah that Cáceres's death would be categorized as a "crime of passion". (48) Even though the "the judges who ruled on the trial of the seven men convicted of Berta Cáceres' murder noted in their oral verdict that executives of the DESA corporation knew about and consented to the plan to murder Berta Cáceres" (49), still only DESA's director David Castillo has been arrested and even his trials continuously delayed and throughout the trial the judges have avoided consideration of each "fact, piece of evidence, witness or expert report that sought to link the intellectual authors, like members of the Atala Zablah family, to the assassination". (50)

DESA's text/chat/Whatsap messages show how authorities and journalists were bribed to spread baseless narratives about the murders and their targets and about how COPINH would cause danger. Such DESA's narratives which it bribed the Honduran media to publish, DESA sent then as media news also to its foreign contacts (51) including

Finnfund, which has further transmitted such 'news' to Finland's respective ministers Toivakka, Mykkänen, Virolainen, to the government and to the general public in Finland during 2015-2018.

Currently on Monday, 1st March 2021 "the judges agreed to admit the experts proposed by the family's lawyers, and to call Daniel Atala, Desa's financial manager who ran the company day-to-day with Castillo, as a witness. Atala's father and uncles, the Atala Zablah brothers – Desa's majority shareholders [...] – cannot be called, the court ruled." " The murder trial opens on 6 April in Tegucigalpa and is scheduled to last almost four weeks." (52)

UN High Commissioner for Human Rights noted in the UN Human Rights Committee on 26.2.2021 that "Strengthening accountability and access to justice for victims of human rights violations must be a priority. I am concerned about obstacles to access to justice in several judicial processes, including in the trial related to the murder of Bertha Cáceres", about "continued criminalisation, threats and even murders of people defending human, environmental and land rights. I call on the State [...] to ensure the right to free, prior and informed consultation for indigenous peoples." (53)

Honduras has "its responsibility to deepen the investigation of this case, allowing to know the truth of the facts and guarantee reparation for the victims and their families, remembering that justice for the victims will only be effective and comprehensive when all the material and intellectual authors of the crime are prosecuted and held accountable" also "to guarantee the victims' access to justice." (54) "Justice for the victims will only be effective and comprehensive when all the material and intellectual perpetrators of the crime are prosecuted and held accountable." (55)

Also the Inter-American Court has stated that "this is an international right and it is the duty of states to guarantee compliance with the obligation to investigate cases ex officio, without delay, and to do so in a serious, impartial, effective manner such that those who are truly responsible for human rights violations can be brought to justice." (56)

4. Finland has to correct the damages it caused for Lenca people and provide justice

Because Finland as Finnfund's owner, funder and guide contributed through Finnfund to finance DESA in its execution of criminal activities through the Agua Zarca project, Finland is responsible to contribute to correct the injustice caused by Agua Zarca.

Finland has to support transparent independent international investigation on financiers and planners of Berta Cáceres' murder. Her Lenca organisation COPINH sees that DESA's "Project of death Agua Zarca, financed by the CABEL, FMO and FinnFund banks [...] the armed forces of Honduras, the National Police and private security forces [...], was the corporation that assassinated Berta Isabel Cáceres Flores [...] and it has been confirmed by the recent investigation." (57) "The lack of justice in Honduras necessitates the installation of an independent mission that carries out the trial and prosecution of those responsible for the assassination of Berta Cáceres." (58)

Finland has to provide to the use of international investigation all documents and correspondence on Agua Zarca, DESA and their financing which Finland or Finnfund have in their possession and agree on compensation with the victims.

This has to include what Finnfund had agreed about human rights in respect to Agua Zarca as Finnfund says its "human rights requirements and remedial measures are documented in Finnfund financing contracts" (59) - including contract on Agua Zarca hydropower project which it started financing soon after an indigenous community activist Tomas Garcia was murdered for opposing the project.

Finland has to ensure its financial support to such independent international investigation on murders of Lencas who opposed Agua Zarca, which the UN mandate holders who have been authorised to assess, monitor and guide the realisation of human rights can approve to be independent and competent

Finnfund's finance to Agua Zarca went through FMO, Dutch Development bank in the Netherlands as part of the same financing to DESA and under the same conditions as the FMO's financing, in respect to which **Copin, the organisation of Berta Cáceres and her "family are suing the development bank FMO for financing Agua Zarca" in the court in Netherlands.** This is because FMO and Finnfund along with it were financing DESA "despite warnings from Cáceres and NGOs that the local Lenca community was allegedly not consulted, as legally required, and was [...] subjected to violent repression as it opposed construction." (60)

Also "Non-judicial mechanisms for indigenous victims should be developed with the indigenous peoples concerned through their own representative institutions" (61) and **Finland is responsible to ensure:**

a) Just compensation to the victims for the suffering and damages caused by the financed project

b) Securing the safety for those Agua Zarca opponents who still suffer from the violent threats , destruction of their crops and from other sabotage due to Agua Zarca and its paramilitary supporters

c) Correction of the current Finnfund type financing structures which led to violations

d) Support to restore more peaceful conditions and livelihoods which prevailed in the area before Agua Zarca, securing indigenous peoples' rights to use and govern the areas traditionally used by them.

e) Apologising its finance to Agua Zarca from Lencas, who opposed the Finnish financing of Agua Zarca which violated their internationally recognised rights and led to murder of their leaders

As Finnfund presents such projects which lead to murders and violations to be 'due diligence' which complies with the UNGPs, IFC standards, UN Global Compact, etc., and as these do not prevent Finnfund from publicizing that it complies with UN or IFC, such possibility of further misuse of the UNGPs, IFC standards, UN Global Compact or other 'due diligence' must be prevented

Finland's ownership guidance and development finance directed to the corporations have been structured to repeatedly finance such business, which is targeted to profit by measures which adversely affect the rights of indigenous peoples and are prepared to kill them if their traditional rights may prevent the corporations from obtaining profits by financing for such business of corporations.

As Finnfund violates the rights of indigenous peoples by financing corporations to buy, lease and exploit lands which indigenous peoples have traditionally used and by arranging local authorities to agree on the bases of national land registers the lands to become treated in ways which do not respect indigenous rights, Finland has to take measures:

- "to prevent and redress infringements of Covenant rights that occur outside their territories due to the activities of business entities over which they can exercise control, especially in cases where the remedies available to victims before the domestic courts of the State where the harm occurs are unavailable or ineffective" (62)

- "thoroughly investigate violations and take appropriate actions against alleged offenders; provide victims with effective access to justice, irrespective of who may ultimately be the bearer of responsibility for the violation; and provide effective remedies to victims, including reparation" by "restitution, compensation, rehabilitation, satisfaction, and guarantee of non-repetition". "An effective remedy may require improvements to legislation and policies that have proven ineffective in preventing the abuses". (63)

Finnfund shall not be able to continue its earlier activity to determine according to its business interests which would be such "specific circumstances, in which indigenous peoples are at risk of being adversely affected by a project" so that "the investee is required to obtain their Free, Prior and Informed Consent (FPIC) prior to proceeding with the project". (64)

"a State party would be in breach of its obligations under the Covenant where the violation reveals a failure by the State to take reasonable measures that could have prevented the occurrence of the event. The responsibility of the State can be engaged in such circumstances even if other causes have also contributed to the occurrence of the violation, and even if the State had not foreseen that a violation would occur, provided such a violation was reasonably foreseeable." (65)

As connected to Agua Zarca, Santa Cruz, Turkana etc. projects there has happened publicly known murders and other human rights violations already before Finnfund decided to start to finance such projects with violations, still Finland wanted to finance such projects where violations and even murders continued under the project. The problem is that:

Such violating projects appear profitable as indigenous peoples have not usually exploited so much natural resources from their lands, those resources have been saved and as they have not formed commercial ownership over lands, such lands are easier to be taken from them under commercial control without compensation as they usually do not have ownership documents to their lands, waters and forests.

Finland and Finnfund must be "in the context of business activities, ensuring specifically that information [...] including human rights impact assessments, are accessible to indigenous peoples" in matters which affect their life. (66) Where assessments find things whose publication could bring threat to someone's security there has to be impartial human rights competence to determine its confidentiality - not business interests keeping assessed human rights impacts as business secrets.

Finnfund has not complied with its commitments on what due assessment of human rights impacts would require and how human rights impacts have to be made known to those affected and related concerns publicly addressed - even

though the Honduran courts have now made clear how DESA whom Finnfund financed was involved to murder the opponents of Finnfund financed Agua Zarca project.

In its Human Rights Statement 2019 Finnfund says it "holds human rights in high regard and conducts its business with respect for, and a view to promote internationally recognized human rights" provided in UDHR, ICESCR & ICCPR and aims "to address them using" also the UNGPs and IFC standards. (67) It says that "transparency is a key guiding principle in Finnfund's operations" "guiding its activities as widely as possible" with continuing "open discussion with various stakeholders both in Finland and abroad" and "encourages the companies it finances [...] to be transparent and to adhere to [...] corporate responsibility." (68)

Yet in practice Finnfund does not however demonstrate how it would act like this so that it would transparently assess and address the impact of its activities to the indivisible totality of these human rights and "continuously identify, avoid, mitigate and manage potential and actual adverse human right impacts" of its activity on any of these rights as it promised (69) but rather hides its impacts on the totality of these rights under its business secrets.

To respect its obligations Finland would have to ensure that Finnfund complies with these commitments at least to the extent that it can prevent any such adverse impacts on human rights - without making its human rights impacts to be left business secrets.

Finland's development finance via Finnfund has to become duly and transparently demonstrated to comply with Finland's obligations under the ICESCR, ICCPR and overall UN human rights system as Finnfund also has promised it has to do under the UNGPs under which "the responsibility of business enterprises to respect human rights refers to internationally recognized human rights – understood, at a minimum, as those expressed in the International Bill of Human Rights" by the UDHR as codified into law by ICCPR and ICESCR. (70) - including thus that:

- "States shall promote [...] universal respect for, and observance of, human rights and fundamental freedoms for all without distinction" so that they "take joint and separate action in co-operation with the Organization" to implement this as such obligation under the UN Charter that "in the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail." (71)

- "Everyone, as a member of society [...] is entitled to realization, through national effort and international co-operation [...] and resources of each State, of the economic, social and cultural rights indispensable for his dignity" with work securing "existence worthy of human dignity" and "the right to a standard of living adequate for the health and well-being", right to "food, clothing, housing and medical care" and "other means of social protection" (72)

- "Whereas a common understanding of these rights and freedoms is of the greatest importance for the full realization of these rights their realisation have to be assessed, monitored and guided by the UN bodies authorised to do that impartially in order **to secure "social and international order in which the rights and freedoms [...] can be fully realized"** and **"every organ of society [...] shall strive [...] by progressive measures, national and international, to secure their universal and effective recognition and observance"**. (73)

- Each state has "to the maximum of its available resources" and "by all appropriate means, including [...] legislative measures" ensure "progressively the full realization of the" economic, social and cultural human rights also in respect to "any obligations arising out of international economic cooperation, based upon the principle of mutual benefit, and international law" so that "in no case may a people be deprived of its own means of subsistence". (74)

"This obligation also requires directing the efforts of business entities towards the fulfilment of Covenant rights" progressively to "support to implement the Covenant rights" in global economy (75) responsible as "organs of society to promote and protect" human rights. Like the UN General Assembly has declared that "everyone who, as a result of his or her profession, can affect [...] human rights" "of others should respect those rights" (76) so that no company "shall participate [...] in violating human rights" (77) but "have an important [...] responsibility in contributing" "to the promotion of the right of everyone to a social and international order in which the rights [...] can be fully realized". (78)

Thus "grounded in recognition of" the "business enterprises as specialized organs of society [...] required to comply with" "existing obligations to respect, protect and fulfil human rights" UNGPs were approved thus as "the benchmarks against which **other** social actors assess the human rights impacts of business enterprise".(79) It is states' "prime responsibility and duty to protect, promote and implement", "to create all conditions necessary" also in economy to ensure that all can "enjoy all those rights and freedoms in practice" (80) compliant to what UDHR, ICCPR and ICESCR have set "as basic elements of international efforts to promote universal respect for and observance of human rights". (81)

UNGP does not express or change the contents of human rights to be respected, protected or realised, but is to "assist in channelling the benefits of business towards contributing to the enjoyment of human rights" taking into account "that further efforts to bridge governance gaps at the national, regional and international levels are necessary" (82) "without foreclosing any other long-term development, including further enhancement of standards" (83) guided by the UN bodies authorised to assess, monitor and guide the realisation of human rights.

As UNGP was approved to be used as a tool to get corporations to respect the rights provided by the ICESCR and ICCPR it is not used properly if states and corporations do not become aware of these rights' contents and what it requires from their business activity as in respect to ICESCR is presented by the CESCR by its General Comment 24. Still when asked from the Finnish foreign ministry's ownership and corporate management policy officers and from Finnfund representatives who assumed to comply with the UNGP, none of them replied in ministry's ownership management meeting in 15.11.2019 to be aware on what ICESCR obligations require according to the CESCR General Comment 24 in respect to business activity.

Finland is responsible to demonstrate how it implements its ICESCR obligations also in respect to Finnfund and other corporations in terms of what its implementation requires according to the UN treaty monitoring body authorised to assess, monitor and guide this implementation.

Finland is obliged to ensure also the totality of its laws and agreements to guide corporations to respect human rights in their activities (84) - compliant to what can be verified adequate in ways acceptable to the UN Human Rights treaty bodies who are authorised to assess, monitor and guide the realisation of the concerned human rights - and to prevent the corporations which act under its jurisdiction already in advance from violating human rights.

UNGPs require this from the states particularly clearly in case of corporations are "owned or controlled by the State, or that receive substantial support" from it - as is clear in case of Finnfund - (85) and UNGPs must be used and applied in full compliance with states' obligations under the ICESCR and other UN human rights treaties. It is thus a severe problem that when asked, neither the Finnish authorities - who are responsible to ensure the realisation of the economic, social and cultural human rights in respect to business activities as obliged by the ICESCR - nor the Finnfund knew about the CESCR General Comment 24 what ICESCR implementation requires in respect to the corporations business.

Finland has thus as a result continuously neglected many of its ICESCR obligations in respect to Finnfund and other corporate business activities and this has led to severe human rights violations, including also murders of the victims. This maintains continuous misuse of UNGPs in ways which do not fulfil but rather undermine the ICESCR implementation.

As UNGP says that the criteria for its proper use is "to achieve tangible results for affected individuals and communities" (86) in respecting, protecting and realising their human rights according to what the ICESCR and other UN human rights treaties require, Finnfund and the way how Finland has guided it have failed in this. In the name of 'human rights due diligence' Finnfund has published voluntary commitments, provided training and procedures but in ways which are not determined according to what advances human rights but according to what advances profitable business and make its business' human rights impacts to remain its business secrets.

Correction is needed now before more violations will result.

Finnfund has thought that for presenting its impacts "the values of indicators are gathered and announced in the level of the whole company, without discriminating the specific role of Finnfund in creation of the impact"- because "it is impossible to estimate to which extent the impact has been achieved just due to the inputs of Finnfund". (87)

Compliant to how Finnfund thus counts such conditions connected to company's business to which also Finnfund has influenced to some extent - together with many other financiers and connected actors - as being Finnfund's impacts, correspondingly also the impacts of financed corporate activity which violates human rights - like people murdered for opposing Finnfund financed project - need to be equally counted as Finnfund's impacts insofar as it is equally "impossible to estimate to which extent the impact has been achieved just due to the inputs of Finnfund". (88)

Thus compliant to how Finnfund has been allowed to present many nice-looking things to which many other financiers or actors contributed, to become presented as Finnfund's impacts, with the same logic the murder of an opponent of Finnfund financed Agua Zarca project would have to be also counted to an equal extent to be also Finnfund's impact.

All the more so as in case of protection from violation "State party would be in breach of its obligations [...] where the violation reveals a failure by the State to take reasonable measures that could have prevented" it "even if other causes have also contributed to the occurrence of the violation, and even if the State had not foreseen that a violation would

occur, provided such a violation was reasonably foreseeable" (89) - like in case where Agua Zarca opponents were shot and murdered already before the financing for it was approved and more got murdered during the financed project.

If that what Finnfund likes to publicly present or avoid to present as being its impact, could remove its responsibility from negative impacts by assuming it does not have "connection to the impact" (90), then it could easily present positive nice-looking things as being fully its own impacts - even when resulting from diverse other sources -, and leave its own negative impacts as as being beyond its 'leverage' or 'connection' while keeping the details as business secrets .

The share of Finnfund financing in causing positive or negative impacts can not be duly impartially assessed by people paid by Finnfund or having economic interest in the case but due assessment requires an independent human rights impact evaluator to transparently assess and demonstrate the human rights impacts in publicly verifiable way.

Company with its business interests shall thus not be allowed to 'select' impacts of its activity by deciding why it would be not 'connected' to certain negative impacts on human rights - and thus not accountable for them - when it has agreed in its business contracts such conditions - whether secret or public - which have led to those impacts.

As "business enterprises can have an impact on virtually the entire spectrum of internationally recognized human rights, their responsibility to respect applies to all such rights" and "assessing human rights impacts [...] should include all internationally recognized human rights" - to become realised equally for all also under the UNGPs. (91)

What needs to be assessed are business' impacts on all human rights of all affected people equally, also on their right to development, and these can not be selected to be "assessed by examining the significance of the project to the company receiving the funding" or to its "closest stakeholders" as "groups that benefit the most".(92)

5. Finnfund Act subordinates public development financing under private profit making with Finnish interest and needs to be revised to duly comply with ICESCR obligations

Impacts of finance can not be reduced to what takes place only within a company receiving the finance. Still Finnfund has been allowed in name of 'due diligence' to assess and 'manage' human rights impacts primarily according to how they boost company and its business.

If companies can continue to select what to describe or present as their 'human rights impacts' according to what may most profit them and create their public narrative on their impacts according to what benefits such business, that continues the prevalent trend of justifying profit making as 'due diligence' even if it negatively affects human rights

This makes it more profitable for companies to invest to re-determining what is publicly meant by 'human rights' - to become something which does not restrict such profit making - rather than to change their business to respect human rights. 'Human rights' become thus publicly addressed widely as if they were just results of what corporations already do as their normal business without a need to correct or change their profitable business. That how corporate violates human rights or impair their realisation gets rarely published by corporations in their 'due diligence' accountability.

Such 'due diligence' does not set corporations to invest to get their business to respect or fulfil human rights but makes it more profitable for them to invest in publicity of such ways of speaking publicly about 'human rights' which change the content of what is publicly meant by human rights to become more beneficial for corporations.

In addition, Finnfund's financing activity, assessing and managing of human rights impacts are determined by a law to serve the Finnish interests in business in poor developing countries . **As Finnfund is based on idea how development financing in poor developing countries "shall finance companies, in which a Finnish interest is involved, to be established and operating in developing countries" like the Finnfund Act says (93), Finland is responsible to remove such provisions of that Act and to correct and amend the Act (94) and policies on Finnfund and development financing to duly comply with Finland's ICESCR obligations** presented also in CESCR General Comment 24.

In respect to such financing procedure which has led to repeated infringements, Finland shall revise all "forms of State support, privileges and advantages" and "review the adequacy of laws and identify and address compliance and information gaps" so as to enable "effective means of claiming reparations by victims". (95) If Finland allows the law and its application to be used so, that financing of development in poor developing countries is bound by law to prioritise private profits of companies which serve Finnish interests and this is officially advertised by public tax-funds to be 'due diligence' of human rights based financing, Finland neglects its obligations to respect human rights.

Finnfund says a basic condition for its responsibility which guides its activity in poor countries is "our responsibility to ensure that our own activities and the projects we fund are profitable" for companies. Then it just assumes that "benefits of our financing [...] in developing countries spread via companies and their immediate stakeholders" and would then reinforce "the development of poorest countries" while bringing the money back to Finland. (96) Such approach to 'responsibility' has been followed by most such business activities, which have violated human rights.

How could it be responsible or even justified in the name of poor countries' development, to use public development funds for financing corporations that serve Finnish interest to compete against those which do not have such Finnish interest? Impacts on human rights and development in poor developing countries can not however have as their measure or criterion the extent to which the finance may benefit some companies' Finnish business interests.

For Finnfund the aim of responsibility is however that "responsible business practices add value to the investment and contribute to creating positive impacts." (97) "Profitability, and Finland's interests" have belonged to its "key criteria" for positive human rights impact - as "businesses will ultimately be responsible for funding investments that are commercially viable". (98) When such commercial profitability has been followed as the 'ultimate responsibility', the finance and its impacts are assessed and used for setting poorest countries' resources into such use which returns the money out from the poor country in a manner which serves businesses' "profitability, and Finland's interests". (99)

If state allows 'due diligence' to be applied like this, what is publicly meant by 'human rights' gets thus increasingly re-shaped to what is profitable for business to publicly advertise 'human rights' to mean. Such voluntary 'due diligence' application has no transparent, verifiable demonstration of the human rights impacts and does not provide impartial human rights competent authority to independently monitor the impacts - which remain widely 'business secrets'.

This leads to a distorted public understanding on what are 'human rights'. Instead of making the laws and business practice to better secure respect for internationally agreed human rights, 'human rights' become invested to mean more and more what companies would have anyway done to profit - reducing human rights to a business image tool.

When companies can advertise that they practise 'due diligence' even though they neither adopt obligations which would bind them to stop making profit by business negatively affecting human rights, - nor make their human rights impacts assessed or monitored by any independent (not corporate paid/ordered) and competent human rights impact evaluators -, companies use such 'due diligence' to justify such business which negatively affects human rights.

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