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## Nicaragua : Impact of Interoceanic canal concession on human rights. The resistance of rural communities

### EXECUTIVE SUMMARY

*Cover photo: A boy is seen sitting in a boat along the shore of Cocibolca lake in Rivas, Nicaragua on December 11, 2014. The inhabitants of the area are against the construction of an inter-oceanic canal by Chinese company HK Nicaragua Development, which implies expropriation of large swathes of land and is scheduled to begin on December 22. ©AFP PHOTO / Inti OCON*

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## EXECUTIVE SUMMARY

In 2013, Law 840<sup>1</sup> was enacted and agreements have been signed under which the Chinese entrepreneur Wang Jing (through a network of 16 shell companies) obtained through a major legal structure, an unusual multiple concession. This concession allows the development and operation of a number of different megaprojects (including canals, railways, an oil pipeline, deep-water ports, free trade zones, airports and a hydroelectric plant) with unrestricted rights for at least 116 years over priceless land, territories and natural resources, including the majestic Lake Nicaragua (Cocibolca) – Central America’s primary freshwater reserve. The Government of Nicaragua seems to have<sup>2</sup> approved the expropriation of approximately 2900 km<sup>2</sup> of land for the canal, of which around 1188 km<sup>2</sup> (451 km<sup>2</sup> of dry land) are going to be expropriated temporarily and 1721 km<sup>2</sup> (908 km<sup>2</sup> of dry land) permanently<sup>3</sup>. This civil engineering operation will require the excavation of approximately 5 billion cubic metres of organic matter, according to the Executive Summary of the Environmental and Social Impact Study released by the HKND Group. At the time of approval, the financial cost of the project was estimated at \$50 billion. However, a number of critics believe that if the project is carried out as described the actual cost will be significantly higher.

The FIDH – the International Federation for Human Rights – together with its member body in Nicaragua, the Nicaraguan Centre for Human Rights (CENDIH) and an independent consultant, Mónica López Baltodano, had carried out an investigation into the circumstances surrounding the concession. The study placed a particular focus on the special legal regime that was created, the balance of the agreement between the Nicaraguan state and the investor<sup>4</sup> and through a field study, the situation of rural communities living in the vicinity of the proposed canal route.

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1. [http://legislacion.asamblea.gob.ni/SILEG/Gacetas.nsf/5eea6480fc3d3d90062576e300504635/f1ecd8f640b8e6ce06257b8f005bae22/\\$FILE/Ley%20No.%20840.pdf](http://legislacion.asamblea.gob.ni/SILEG/Gacetas.nsf/5eea6480fc3d3d90062576e300504635/f1ecd8f640b8e6ce06257b8f005bae22/$FILE/Ley%20No.%20840.pdf)

2. Canal de Nicaragua “Estudio de Impacto Ambiental y Social. Resumen Ejecutivo”. [http://hknd-group.com/upload/pdf/20150924/es\\_resumen/Resumen%20Ejecutivo%20del%20Estudio%20de%20Impacto%20Ambiental%20y%20Social%20%28EIAS%29.pdf](http://hknd-group.com/upload/pdf/20150924/es_resumen/Resumen%20Ejecutivo%20del%20Estudio%20de%20Impacto%20Ambiental%20y%20Social%20%28EIAS%29.pdf)

3. <http://www.elnuevodiario.com.ni/nacionales/372063-40-tierras-canal-expropiarian-forma-temporal/>

4. According to the documents accessible Wang Jing is the sole or main shareholder (and other minority shareholders seem to appear to comply only with commercial regulations of the country of registration) in the 15 companies related to the canal concession. Henceforth the report refers to “the investor”, meaning that any affiliated company from Wang Jing or Wang Jing himself.

## KEY FINDINGS OF THIS INVESTIGATION

In the first place, some serious shortcomings had been found in the legal regime governing the concession for the canal project — and other associated projects — which look to evade the constitutional and legal guarantees that protect the interests of the Nicaraguan State and its citizens, in order to facilitate a massive land grabbing by the investor. One clear example of these violations is the **expropriation regime** that will apply to the areas chosen by the investor for carrying out any one of the sub-projects. Law 840 explicitly excludes the guarantees contained in the 1976 expropriation law. In particular, it denies any right to appeal against the expropriation decision and provides a derisory level of compensation that falls far short of what the people displaced by the canal would need in order to acquire and resettle upon equivalent areas of land.

The provisions relating to free, prior and informed consent are also excluded from the concession regime, preventing the implementation of the guarantees contained in the Nicaraguan constitution, national legislation and Convention 169 of the ILO on indigenous and tribal peoples.

In September 2014, Chinese experts from the company, alongside armed military officers, began a survey in the area designated for the future canal. They took photographs, flew over houses, entered properties without permission and put up boundary markers without any form of consultation or explanation. This provoked a great deal of tension and anxiety among the local population, who swiftly reacted by blocking access to their communities and organising a rural movement that has now held 81 marches in protest against the concession.

Even the consultancy firm (Environmental Resource Management, or ERM) hired by the investor to carry out the Social and Environmental Impact Study<sup>5</sup> openly recognises the serious flaws in the expropriation procedures provided for in Law 840, and the fact that it stands in clear contradiction with international standards. ERM also identified a need for at least 7 further studies before the government give the environmental go-ahead for the project; this has been completely disregarded by the Nicaraguan authorities.

According to the aforementioned Law 840, public lands are to be freely handed over to the investor, without any payment to the Nicaraguan State; something that is wholly detrimental to the State<sup>6</sup>. As for private and communal property, these are to be acquired at a cadastral value well below what they would be worth on the open market<sup>7</sup>.

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5. Canal de Nicaragua Estudio de Impacto Ambiental y Social ERM - <http://hknd-group.com/portal.php?mod=list&catid=46>

6. Cláusulas 9.3 MCA: (b) Con fines aclaratorios, y en tanto cualquier bien inmueble a ser transferido al Patrocinador en virtud de las Cláusulas 8.1 y 8.2 fuere propiedad de cualquier Entidad Gubernamental a la fecha de este Acuerdo, dicho bien inmueble será transferido al Patrocinador sin contraprestación alguna a cambio. "(...) no se pagará contraprestación por una Propiedad Requerida que sea a la fecha de esta Ley o con posteridad, propiedad de cualquier Entidad Gubernamental".

7. El Acuerdo Marco de Concesión, en la Cláusula 1.1 define la expropiación de la siguiente manera: "Expropiación" significa, con relación a un Sub-Proyecto, la expropiación, adquisición obligatoria, apropiación, incautación, confiscación, nacionalización o interferencia en la posesión pacífica, Desarrollo, Operación, tenencia, custodia o control de la totalidad o una parte de los Activos de Sub-Proyecto correspondiente, cualquier participación en cualquier Entidad Clave o de cualquier otros activos tangible o intangible o derecho del Patrocinador correspondiente o cualquier otra Entidad Clave pertinente, en cada caso, con relación a tal Sub-Proyecto y en cada caso las medidas que, cuando son tomadas por si solas o en conjunto tienen un efecto equivalente, y "Expropiar" se interpretará consecuentemente; Y en la misma cláusula define el valor de la expropiación así: "Valor de Expropiación" respecto a cualquier propiedad significa, el monto inferior que resulte de comparar (X) el Valor Catastral de dicha propiedad (si lo hubiere) a la fecha de este Acuerdo y (y) el precio por el cual dicha propiedad sería transada en igualdad de condiciones en un Mercado abierto entre partes no afiliadas y en la fecha de este Acuerdo; en cada caso calculándolo sin hacer referencia ni supeditar el valor (a) ninguna mejora o bienes inmuebles agregados (si fuere aplicable) después de la fecha de este Acuerdo o (b) cualquier cambio en el valor que ocurriere por el hecho de conocer la acción expropiatoria previo a la fecha de este Acuerdo; sin perjuicio de que, el Valor de Expropiación de cualquier propiedad que pertenezca, sea poseída, ocupada o de cualquier otra forma Controlada por cualquier Entidad Gubernamental en o posterior a la fecha del presente Acuerdo, tendrá un Valor de Expropiación equivalente a cero.

Under this law, and the Master Concession Agreement (MCA), an exclusive concession, valid for 116 years, has been awarded to the investor. The length of this concession is in clear violation of the constitutional and legal regulations intended to protect the country's sovereignty and the Nicaraguan people's **right to water**.

The maximum time limit for concessions relating to the development and administration of Nicaragua's water resources is clearly defined as 30 years<sup>8</sup>. Article 66 of the General Water Law also stipulates that *"The Nicaraguan State places the highest priority on those bodies of water used for human consumption. This priority is unwavering and such bodies of water cannot be subordinated to or conditioned upon any other use."*

However, in this concession is included the main fresh water supply throughout Central America, the Great Lake Cocibolca. It is the richest tropical lake of America because of its enormous ecological, environmental and economic value<sup>9</sup>. This lake, with an area of more than 8000 square kilometres, will be crossed by the canal, exposing it to the risks of oil pollution, salinization, sedimentation, turbidity and invasion by alien species, with truly catastrophic consequences according to the scientific community.<sup>10</sup> At least 80,000 people take water from this lake.<sup>11</sup>

**Imbalance of the agreements damageable for Nicaragua and shell companies:** Laws 800 (2012) and 840 (2013), the Master Concession Agreement (MCA 2013) and other documents signed by the Canal Authority, President Daniel Ortega and the private investor in question, establish an "exceptional regime" whereby the State awards exclusive rights to the investor for the development and operation of more than 10 megaprojects simultaneously. In return, the investor has promised to do his best to pay 10 million dollars a year for 10 years to the country, in consideration of the rights granted<sup>12</sup> (Article 10, Law 840). Provision has also been made for a transfer of shares: the Nicaraguan government is granted a stake of 1%, to be increased by a further 1% every year until reaching 100%. On this subject it is important to point out that this share transfer applies to just one of the trading companies registered in the Cayman Islands (HKND Group Holdings Limited), and not to any<sup>13</sup> of the 15-plus associated companies.<sup>14</sup>

For example, the Master Concession Agreement (MCA) states that the investor has an unrestricted right to make use of land, air and maritime space<sup>15</sup>; an unrestricted right to extract, store and use water and all other natural resources<sup>16</sup>; the right to enjoy easements of access and navigation rights to rivers, lakes, oceans and other bodies of water within Nicaragua and its waters; and the right to extend, expand, dredge, redirect or drain these bodies of water, even where they are subject to protection or conservation measures, without paying any additional compensation to the state during the period for which the concession has been awarded<sup>17</sup>. The Law also establishes its own subordination to the MCA, a situation

8. Arto. 48, Ley 620: "La concesión ó autorización para el uso o aprovechamiento de las aguas nacionales se otorgará hasta por un plazo que en ningún caso será menor a 5 ni mayor de 30 años, de acuerdo con los usos establecidos".

9. [https://www.humboldt.org.ni/sites/default/files//Veredictos\\_2016\\_TLA\\_CANAL%20%20final.pdf](https://www.humboldt.org.ni/sites/default/files//Veredictos_2016_TLA_CANAL%20%20final.pdf)

10. <http://confidencial.com.ni/canal-imposible-traves-del-cocibolca/>

11. AFP Infographic <https://twitter.com/AFPespanol/status/547045521656131584/photo/1>

12. Juristas han advertido que la contraprestación acordada del pago directo parece estar supeditada directamente a la entrada en operaciones del canal húmedo, lo que abre interrogantes sobre lo que podría ocurrir en el escenario que el canal húmedo nunca sea construido mientras que si puedan emprenderse los demás mega-proyectos.

13. Los detalles del traspaso de acciones aparecen mencionados como parte de un "Acuerdo de Accionistas" que hasta la fecha nunca se ha publicado, desconociéndose si hay otros acuerdos específicos pactados al respecto.

14. <http://www.confidencial.com.ni/archivos/articulo/20075/telarana-de-empresas-de-maletin-tras-el-canal>

15. Cláusula 8.1 MCA: (b) el derecho irrestricto de usar la tierra, aire y espacio marítimo (...) donde se desarrollarán los trabajos de construcción del Sub-Proyecto (...)

16. Cláusula 8.1 MCA: (c) derechos irrestrictos para (...) extraer, almacenar y usar el agua y todos los otros recursos naturales (...) durante la vigencia del Término de Concesión.

17. Cláusula 9.4 MCA: El Gobierno proporcionará y asegurará que cualquier otra Entidad Gubernamental (excluyendo cortes y tribunales) que corresponda, proporcione a cada Patrocinador y a cada Entidad Clave (...) sin costo y contraprestación para el Patrocinador o la Entidad Clave, los siguientes: (b) en tanto fuere razonablemente necesario o deseable para tal Sub-Proyecto, servidumbres de acceso y derecho de navegación en ríos, lagos, océanos, y otros cuerpos de agua dentro de Nicaragua y en sus aguas, y el derecho de extender, expandir, dragar, desviar o reducir tales cuerpos de agua, según fuere necesario para tal Sub-Proyecto(...)

that is both extraordinary and unconstitutional. It even goes so far as to declare inapplicable any contrary legal provision.<sup>18</sup>

This regime is completely detrimental, to the extent that it restricts in an absolute and insurmountable way the effective exercise of the sovereignty of Nicaraguans over their natural resources, their common property and public property in the project area, as well as environmental sustainability, making clear that the negotiation was not conducted taking into consideration the interests of the Nation.

The concession is anticipated to remain in effect even in the event that one of the various sub-projects, including the canal itself (the largest of the projects) is dropped or abandoned for any reason whatsoever, since the canal is only one of the sub-projects covered by the Agreement<sup>19</sup>.

The concession is, therefore, a blank cheque granted to the investor, allowing him to develop or to trade in a wide range of projects under exceptionally favourable conditions. It also allows the investor to buy and sell his rights over the various sub-projects "in parts", which is a highly profitable enterprise from his perspective<sup>20</sup>.

If the projects covered by the concession cannot be carried out for a reason external to the investor, including political force majeure, the Nicaraguan State would be obliged to compensate the damages caused to the investor<sup>21</sup>.

This economic burden would fall on the country directly, risking even-treasure reserves of the Central Bank of Nicaragua (CBN). Since it was agreed that the CBN had to waive its sovereign immunity. This means that if for some reason Nicaragua had to pay a debt to the investor, he could claim such payment even with Central Bank reserves.

The agreements are unfavorable for the State of Nicaragua. The economic returns to this country are derisory compared to the benefits that investors may obtain, and disadvantageous if compare to agreements for the construction of other channels such as Panama, or other mega-projects in Latin America.

The lack of competitive tendering, the utter inexperience of the investor who was awarded the concession, in conjunction with the detrimental effects of the contracts that were negotiated for the Nicaraguan State and the existence of a web of more than 15 shell corporations indirectly involved (a labyrinth of

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18. Arto. 17, Ley 840: "b) Será inaplicable a El Proyecto o los Sub-Proyectos: cualquier ley, código, o decreto que tenga fuerza de ley, así como cualquier reglamento, decreto, ordenanza o resolución emitida por cualquier Entidad Gubernamental que contradiga o impida: (i) el cumplimiento de las obligaciones de cualquier parte de El MCA en virtud a las disposiciones de El MCA incluyendo cualquier asunto que en base a las disposiciones de El MCA, el Gobierno deba cumplir, procurar o usar sus mejores esfuerzos para obtener o asegurar, o (ii) el ejercicio de los derechos otorgados a cualquier Parte de Sub-Proyecto en virtud a las disposiciones de El MCA".

Arto. 24, Ley 840: "la presente Ley modifica y deroga cualquier ley o disposición y cualquier otra legislación, reglamento o requerimiento de cualquier Entidad Gubernamental, que expresa o tácitamente se oponga a ella o que sea incompatible con los términos de El MCA".

19. Cláusula 15.1 MCA Sub-Proyecto No Viable: Si con respecto a un Sub-Proyecto, en cualquier momento previo del Cierre Financiero de dicho Sub-Proyecto, el Patrocinador correspondiente determina a su entera discreción que tal Sub-Proyecto no es viable (ya sea por razones comerciales, técnicas, legales, políticas o de cualquier otra índole) o que dicho Sub-Proyecto no se debería Desarrollar u Operar; en dicho caso, el Patrocinador tendrá el derecho de terminar la Concesión para dicho Sub-Proyecto y todos sus derechos, beneficios y obligaciones según este Acuerdo con relación a dicho Sub-Proyecto con efecto a partir de la Fecha de Terminación mediante la entrega de Notificación de Terminación a cada Parte (debiendo dicha Notificación de Terminación incluir un breve resumen de las opiniones del Patrocinador con respecto a la viabilidad de dicho Sub-Proyecto).

20. [http://www.nacion.com/nacional/politica/Afirman-Costa-Rica-Firma-Nicaragua\\_0\\_1584641559.html](http://www.nacion.com/nacional/politica/Afirman-Costa-Rica-Firma-Nicaragua_0_1584641559.html)

21. Ante la ocurrencia de un Evento Político de Fuerza Mayor con respecto a un Sub-Proyecto, el Gobierno deberá asegurar, durante el término de Concesión del Sub Proyecto, el pronto pago al Patrocinador de la cantidad necesaria para cubrir todos los costos fijos de cada Entidad Clave (neto de cualquier Monto de Indemnización por Seguro) asociadas o razonablemente imputables a dicho Sub-Proyecto (incluyendo cualquier costo financiero) para el período durante el cual tal Sub-Proyecto no pudiere ser (o estuviere sustancialmente impedido o restringido) Desarrollado u Operado de manera consistente con el presupuesto detallado de operación y la práctica anterior de la Entidad Clave.

companies registered in Nicaragua, the Cayman Islands, the Netherlands, Hong Kong and Beijing) all point to the possibility of a corruption scheme centred around the canal concession.

It is also a matter of concern whether or not it is the People's Republic of China that is actually behind the investor known as Wang Jing. At the time being, all of the companies that have been involved in the preparation phase for the construction of the canal megaproject are state-run Chinese corporations. When we unravel the web of 16 front companies, at the centre we find BNDR, a company registered in Beijing.

The question is, why China would hide its involvement in this project (being able to do it transparently)? Could that be to not take any responsibility for the illegal actions, human rights violations and other shortcomings that could incur in the project?

The Government of Nicaragua's communication on the concession of the channel has never been transparent. The Nicaraguan people were led to believe that the Canal Authority intended to establish a "mixed public-private enterprise", as promised in Law 800 (2012). What it was actually doing was negotiating an exclusive concession contract in favour of a "private investor", breaking the commitment that Nicaragua should own 51% of shares in the project. Instead it accepted a completely different business model, which left the country as a start with just 1% of the shares and enormous uncertainty over how the expropriations process is going to be managed, the environment protected, human rights guaranteed, etc. Between Law 800 and its later reform by Law 840 and the Master Concession Agreement (MCA), the situation had taken a sharp turn.

Altogether, the organisation of the corporate structure behind this megaproject will make it very difficult to allocate responsibility in any future conflict scenarios. The entire process has been characterised by secretiveness, a lack of transparency. Furthermore, it has become evident that there is an intention to exert pressure on local indigenous and afro-descendent community leaders directly affected by the canal project, and on local mayors, in order that they endorse the project.<sup>22</sup> 38 months after the concession contract was approved, the studies that were supposed to vouch for the project's economic, commercial, financial and technical viability have still not been published. The consultation with indigenous and afro-descendent communities proffered by the government and the concession company was not free, prior nor informed. This is a flagrant violation of the fundamental rights of the indigenous and afro-descendent peoples of Nicaragua.

As if this were not enough, the state has adopted a policy of criminalising anyone who is opposed to the construction of the inter-oceanic canal or to the concession as a whole. Both the penal system (through criminal charges and arrest warrants) and public vilification have been used to forge a link between the canal's opponents and illegal activity in the country's social and political imagination, in order to delegitimise their actions and demobilize them. The State has also used intimidation techniques, intensifying the police and military presence in the affected areas, with checkpoints, searches and other measures reinforcing the continual presence of armed government agents. A migration policy has also been put in place permitting the expulsion of foreign nationals with any links whatsoever to the area affected by the concession, whether they are researchers, journalists or human rights campaigners<sup>23</sup>. The aim is to create a de facto exclusion zone along the proposed route of the canal.

Data from various agencies point that at least 100 000 people are going to be affected. All these actions generate fear and anxiety in the communities near the project path, causing, according to various testimonies gathered, the displacement of tens of families who for fear of being expropriated and criminalized have sold their properties to migrate to other areas of the country or Costa Rica. At the same time this has caused the decline in agriculture production in these areas as people for fear of losing their crops have not grown as in previous years, disturbing the economic life of these populations.

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22. <http://www.laprensa.com.ni/2016/01/11/nacionales/1967324-gobierno-presiona-a-ramas-por-canal>

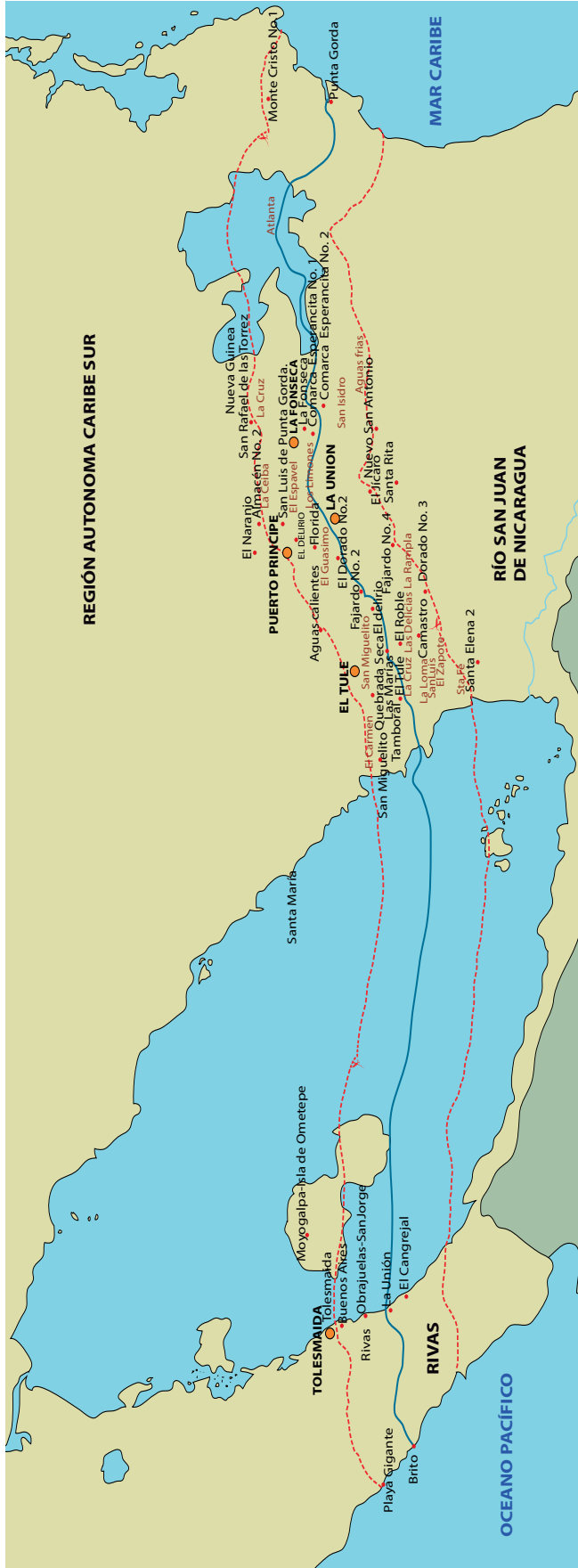
23. <http://confidencial.com.ni/ortega-ha-expulsado-de-nicaragua-a-25-extranjeros/>



The persecution of Council leaders has spread to national and foreign persons joining or documenting this rural social movement. This has resulted in the factual creation of a State of emergency and consequently lead to human rights violations. The raids, arbitrary arrests, prolonged detention, and other violations are systematic acts in this area. The government does not provide explanations whatsoever and it is unclear if there are cases of sanctions on those responsible for these abuses. It should be noted that impunity is a common factor in all complaints made by victims and the CENIDH, including serious acts of violence against the rural population occurred in December 2014, which were not investigated or punished.

This situation of abuse fostered the formation of a rural social movement "National Council for the Defence of Lake, Land and Sovereignty", with a broad national and international recognition and which manifested in carrying dozens of marches, demonstrations and mobilizations of hundreds of thousands of rural population who have strongly rejected this project which deprives them of their land and threatens their way of life *and against life in all its manifestations*. An added value of this document is that the motivations of the rural population to fight and oppose this project are also gathered.

Sadly, it is these women and men with the poorest prospects of accessing justice and ensuring that their rights are respected who are placed at greatest risk by this project. This report is dedicated to all of them, in the hope that it will serve to raise awareness of this issue and prompt action at both national and international levels from those with decision-making power.

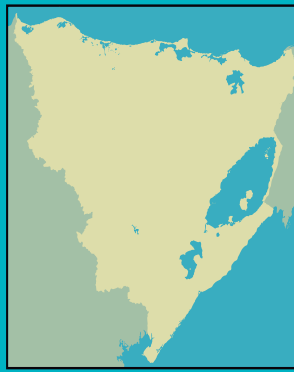


# MAPA DE POBLACIONES AFECTADAS POR LA CONSTRUCCIÓN DEL CANAL INTEROCEÁNICO

Ruta de Zonas Directamente Afectadas.  
 Ruta de Zonas Indirectamente Afectadas.  
 Comunidades donde se realizaron los grupos focales.

**Comunidades donde se realizaron grupos focales en gira de campo del CENIDH en la ruta del proyecto del canal Interoceánico.**

COMUNIDAD	DEPARTAMENTO O REGIÓN
Toluemalda	Buenos Aires, Rivas
La Fonseca	Nueva Guinea, Región Autónoma del Caribe Sur
La Unión	Nueva Guinea, Región Autónoma del Caribe Sur
Puerto Príncipe	Nueva Guinea, Región Autónoma del Caribe Sur
El Tule	San Miguelito, Río San Juan de Nicaragua



**Comunidades participantes en gira de campo del CENIDH en la ruta del proyecto del canal Interoceánico.**

GRUPO FOCAL COMUNIDAD	GRUPO FOCAL REGIÓN	GRUPO FOCAL DEPARTAMENTO
- Toluemalda	- La Fonseca	- La Unión
- Rivas	- Aguas Calientes	- El Tule
- Moyogalpa	- Nuevo San Antonio	- Las Matías
- Obrajuelas	- San Rafael de las Torres	- Imbabura Sur
- Obrajuelas	- Amaten No. 2	- Fajardo No. 4
- Pueblo Indígena de	- Fajardo No. 2	- Fajardo No. 4
- Hoya Gigante	- Pobl. de Obrajuelas	- Jardín
	- Comarca Esperanza No. 1	- Quebrada Seca
	- Comarca Esperanza No. 2	- Minerva Quezada
	- Comarca Esperanza No. 3	- Santa Rosa
	- Mariza Quezada	- El Roble
	- Santa Elena 2	- Dos de Oro
	- El Dorado No. 1	- Punta Gorda
	- Mariza Quezada	- Aguas Calientes
	- Santa Elena 2	- El Dorado PZ
	- El Dorado	- Santa Elena 2
	- El Naranjo	- El Naranjo

Map of the Canal route. @ CENIDH

## CONCLUSIONS

The Nicaraguan government has branded the leaders who oppose the interoceanic canal concession as enemies of development. This report has shown that this is not a project that aims to promote the country's development or improve the welfare of the population as a whole. None of the main constituent elements of a sustainable development project are present in the concession for the construction and implementation of several mega projects including the interoceanic canal.

The human rights violations described in this report also seriously affect the compliance of 5 of the 17 objectives of Sustainable Development voted for in December 2015 by the UN General Assembly.

We have shown that the legal regime of this concession does not ensure a balance between the rights of the State and of the investor, nor does it safeguard the economic and social interests of the nation; it is in fact detrimental to the sovereignty and economic interests of Nicaragua. Furthermore, the investor was not chosen after a rigorous tendering process, on the contrary, none of the companies have experience or capacity in carrying out the projects of the concession. Transparency and accountability in the use of income are equally essential in concession contracts of land to foreign investors who promise to create mega projects that will facilitate the development of the country. The granting of various megaprojects to Wang Jing companies does not meet either of these two conditions. Our research led us to ascertain the lack of transparency surrounding these projects and that the revenue accrued by the State for this concession will be derisory. This concession also sets a state of exception that repeals the constitutional and legal guarantees provided by the Nicaraguan State law, in particular with regards to the right to property and the right to water. Nor can it be considered that this concession respects common goods that are essential in the realization of human rights, such as fresh water sources or the environment. On the contrary, Lake Nicaragua (Cobibolca), among others, is being privatized. Far from promoting sustainable development and respect for human rights, numerous facts described in the report point to a possible corruption scheme.

Finally, our research shows that the first months following the concession led to a militarization of the intended areas for the canal, the criminalization of rural leaders opposing this project, and the repression of numerous protests and marches against it. Undue pressure exerted on indigenous and afro-descendant leaders led to a masquerade consultation that was not preliminary, free or informed. Local officials who had the courage to denounce the lack of consultation of the affected municipalities and shared their concerns against the impact of this project were also pressured, and in some cases removed from their functions.

FIDH – the International Federation for Human Rights – and CENIDH – The Nicaraguan Centre for Human Rights - believe that we are facing a process of mega land grabbing concerning between 30,000 and 120,000 small scale farmers, indigenous and afro-descendant communities in a state of serious defencelessness who will be obligated to hand over the land. This project will not only violate the rights of these groups, but it will impoverish the whole population. Other reliable sources have also reported potential irreparable damage to the environment, not to mention the likely impact of the construction and operation of a new interoceanic canal on climate change.

It is an obligation of the State to protect its citizens against possible human rights violations committed by companies or other actors and promote sustainable development. In the trio formed by the Nicaraguan State, the companies involved in the canal project and citizens living in rural areas, the State has a priority to safeguard respect for the rights of citizens. It is for this reason, and given the observed violations and those that will be generated by this project, the undersigning organizations of this report make the following recommendations:

# RECOMMENDATIONS

## **To the State of Nicaragua**

- Abandon the project of interoceanic canal and the other mega projects pursuant to the MCA;
- Abrogate Law 840 as unconstitutional and consequently suspend the implementation of the different contracts for the concession granted to the investor;
- Stop the militarization of the areas affected by the project;
- Investigate and punish those responsible for the violent crackdown on protests against the construction of the canal that have taken place in the last two years;
- Respect and protect the work and personal integrity of human rights defenders;
- Fulfil your obligations of transparency and ensure free access to information on projects that could be carried out in Nicaragua. This is an excellent method to fight the risk of corruption;
- Comply with your obligations to organize free and informed consultation of the indigenous and Afro descendants;
- Protect the common good that lake Cocibolca represents, avoiding its privatisation or concession;
- Develop a national action plan for the implementation of the UN Guiding Principles on Business and Human Rights and, given the gaps of those principles, support efforts for strengthening norms at national, regional and international level, for example by supporting an international treaty on transnational corporations, other businesses and human rights;
- Exercise appropriate supervision in order to meet Nicaragua's international human rights obligations and to combat corruption when engaging the services of companies which may impact on the enjoyment of human rights; or enact laws to this end.

## **To the Supreme Court of Nicaragua**

Examine with impartiality judicial claims concerning the unconstitutionality and illegality of Law 840 and of the various contracts for the concession granted to the investor.

## **To the international community**

Reinforce the discussions and reflection on how to protect common goods, such as Lake Nicaragua, from environmental impact and privatisation.

## **To the People's Republic of China**

Pursuant to its extraterritorial obligations regarding economic, social, and cultural rights, refrain from contributing through its State companies to a concession that in its current format will have a negative impact on human rights, the environment, and the interests of Nicaragua.

Establish a clear regulatory framework for companies and their subsidiaries operating in or managed from the State of China, to ensure that their activities promote and do not negatively affect the enjoyment of economic, social and cultural human rights in the context of their projects abroad.<sup>24</sup>

## **To the Netherlands, the Cayman Islands and Hong Kong**

Pursuant to its extraterritorial obligations regarding economic, social, and cultural rights, adopt the necessary measures to ensure that companies registered in the countries mentioned in this report do not undermine the enjoyment of economic, social and cultural rights (such as the right to water, the right to food, the right to property, the rights of indigenous peoples and Afro-descendants).

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24. The Committee on Economic, Social and Cultural Rights has expressed concern about the lack of adequate and effective measures adopted by the State of China « to ensure that Chinese companies, both State-owned and private, respect economic, social and cultural rights, including when operating abroad. » See N° 13 of the Concluding observations. [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolNo=E%2FC.12%2FCHN%2FCO%2F2](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolNo=E%2FC.12%2FCHN%2FCO%2F2)

**To the European Union**

In the context of the sustainable development chapter of the association agreement between Central America and the European Union, follow-up the direct investment represented by the above mentioned concession and its impact on the social and environmental situation of Nicaragua.

**To the United Nations working group on business and human rights**

Further analyse the human rights issues at stake in the context of mega projects, either through field missions, one of which may be to Nicaragua, or through position statements on this issue.

**To the UN rapporteurs on the right to food, housing, rights of indigenous peoples, the rapporteur of Nicaragua and the rapporteur on freedom of expression from the Inter-American Commission on Human Rights (CIDH)**

Request from Nicaragua the possibility to visit the country and assess the impact of the concession for the construction of an interoceanic canal and other mega projects based on the rights protected by their mandate.



# Keep your eyes open

## FIDH

**Establishing the facts** - Investigative and trial observation missions

**Supporting civil society** - Training and exchange

**Mobilising the international community** - Advocacy before intergovernmental bodies

**Informing and reporting** - Mobilising public opinion

## CENIDH

CENIDH is a non-governmental social, humanitarian and non-partisan organization devoted to the defense and promotion of human rights. Its objective is peace with social justice, through respect of the Constitution and international covenants and conventions of human rights signed and ratified by Nicaragua.

Director of  
publications:  
Dimitris  
Christopoulos  
Editor-in-Chief:  
Antoine Bernard  
Authors: Mónica  
López Baltodano  
(Consultora), CENIDH:  
Vilma Núñez de  
Escorcia, Juan Carlos  
Arce and Juana  
Cristina Bermúdez;  
y Jimena Reyes.  
Coordination:  
Jimena Reyes,  
José Carlos Thissen  
Diseño: CBT

fidh

## CONTACT US

FIDH

International Federation for Human Rights

17, passage de la Main d'Or

75011 Paris

CCP Paris: 76 76 Z

Tel: (33-1) 43 55 25 18

Fax: (33-1) 43 55 18 80

[www.fidh.org](http://www.fidh.org)



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FIDH takes action for the protection of victims of human rights violations, for the prevention of violations and to bring perpetrators to justice.

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