

## Executive Summary of the Tranquil Report

In order to determine whether RP Global's small hydropower project Tranquil complied with Chilean law and relevant international business and human rights standards, as well as to seek recommendations, the company organized an Independent Review. This independent review was conducted in the period of 11-21 March 2019 by human rights professor Julian Burger (Essex, UK), who has worked on similar assignments for the UN, and two Chilean legal experts, Alonso Barros and Francisca Moya Marchi\*.

The review team was given access to all relevant documentation relating to the project, undertook a visit to the project site and met with approx. 30 persons such as stakeholders, RPG representatives, indigenous peoples, local community members, governmental authorities, opponents of the project and human rights experts.

Following their investigation the Independent Review team made the following observations:

### 1) Environmental & Social Impact:

The team confirmed that the environmental and social impact of the mini- hydroelectric project of less than 3 MW is minimal. No households were displaced nor were any livelihoods impacted. While some trees were cut due to the construction process, the review team concluded that the native forest was conserved, and the biodiversity respected. The main aspect bothering some neighbours in the local communities was the number of lorries used during the construction phase, although no accidents were associated with this traffic. There was a single complaint by one of the landowners, claiming that the vehicles had passed through her private road, after which the company exclusively used other roads to access the construction site. Overall, the project had a minimal environmental footprint.

### 2) Compliance with Chilean law (including Convention 169 of the ILO & by-laws):

The review team came to the conclusion that Chilean law was respected throughout the project development and implementation:

- Water: The water rights were rightfully purchased from the original owner. - Land: The lands for the installations were legitimately obtained in the form of sales of property and easements - Environment: The company had the relevant permits from the SEA,

the governmental body responsible for applicable environmental laws.

- Tourism: SERNATUR, the body responsible for tourism development, authorised the project, notwithstanding its location in an area designated for tourism, due to the consideration that it would not adversely affect the conservation of the forest nor diminish possible touristic interest. - Indigenous peoples: The company was not required to make an environmental impact declaration or study, due to the small size of the project. This means that a formal consultation process with indigenous peoples was not required under Chilean law. The company's agreement with the owners of the two indigenous land titles within the project's zone of influence was approved by CONADI, the governmental body for indigenous peoples. There are no THP installations on indigenous lands, the machine house and turbine are on the other side of the river (not on the side of the Quillempan land), on land acquired from a non-indigenous owner. - Electricity lines: The only electricity line that was newly installed due to the project was the part connecting the plant's turbine to the existing distribution line managed by the electricity provider company SAESA. The enhancement of the previously already existing distribution line caused minimal environmental impact and was built in accordance with the requirements of the Chilean State. No new distribution line was therefore laid, but the existing one was partly replaced and upgraded to reinforce it, works which were undertaken by SAESA, also in conformity with Chilean law.

### 3) Relation with local communities:

The Independent Review team considers that appropriate efforts were made to identify and engage with stakeholders.

- In 2012, three years before the project implementation, the company appointed a Community Relations Manager, a position which was maintained until 2 and half years after the project's completion. The two Community Relations Managers hired over the course of time were of Mapuche origin and thus had a profound understanding of the cultures, histories and ways of life of the indigenous peoples in the region. - The mainly impacted roadside village, the Tranquil Colony, was mostly affected by the moderately increased traffic during the construction phase. As part of its efforts to compensate and win the support of the Tranquil Colony, RPG held negotiations with the four organizations representing this community, consisting mostly of non-indigenous small farmers. An agreement was signed with these four organizations, legally notarised in the presence of the Mayor of Panguipulli. The agreement contains 18 points of action that the company has begun to

implement accordingly. These actions included, inter alia, an annual contribution of 3.5 million pesos (USD 5,000) for each organization, employment opportunities, grants to students and the construction of a medical and community centre. - The company was less successful in their efforts to reach an

agreement with the area's two indigenous communities: Pedro Quillempan and Inocente Panguilef. In the case of the Quillempan community, one part was favourable to the project and the other was opposing. In relation to the other indigenous community, Inocente Panguilef, it should be noted that this community is not contiguous to the project area although it suffered the same inconveniences arising from the additional traffic during the construction phase. - Two points were criticised: In the case of the Tranguil Colony, there was an overriding sentiment that the negotiations were unevenly balanced, that the company had the 'upper hand' and that some further financial commitments would have resulted in a fairer agreement. In the case of the Inocente Panguilef the view was expressed that their case was different from the non-indigenous Tranguil Colony and special consideration should have been given to their status as indigenous peoples. However, the representatives of the associations and of the Inocente Panguilef community that the team met, expressed no objections or deeper criticisms about the company and its operations.

#### 4) Compliance with international E & S standards:

- Due Diligence Reports: The company commissioned two due diligence reports in 2016, which identified some areas of risk associated with environmental impacts and community engagement. Notwithstanding, the reports state that the company maintained good standards regarding environmental and social management, but also that the company was not successful in engaging with local indigenous peoples. - Indigenous cemetery: The company commissioned a study of the zone of impact of the project by two experienced archaeologists. The report concluded that there are no signs that would indicate the presence of an indigenous burial site or any other site of cultural significance in the area immediately affected by the project. - IFC & OECD standards: Due diligence with regards to indigenous peoples is covered by the International Finance Corporation's Performance Standard 7 (PS 7), the OECD Guidelines for Multinational Enterprises (updated 2011) and the OECD Due Diligence Guidance for Responsible Business Conduct (2018). PS7 requires companies to consult with indigenous peoples where a project may affect indigenous peoples' lands, cultures or resource-based livelihoods. As noted, an Environmental Impact Assessment Study (EIA), which would have

resulted in a full government consultation process with the indigenous people concerned, was not required by Chilean law due to the project's small size of only 2.9 MW and minimal impact. → To fulfil the standards of Convention 169 of the ILO and the IFC's

PS 7, the company would have been required to undertake an even more comprehensive engagement with its Mapuche neighbours, as a way of obtaining a more formal involvement and broader support of the indigenous population and as a precautionary measure in case undue criticisms arose at a later date (as has been the case). → While it is the Chilean state's obligation to hold consultations in conformity with ILO Convention 169 and Chile's indigenous law 19.253, it is also true, that being a small hydroelectric project of 2.9 MW the company was not required to generate a formal consultation process. In the view of the review team it would have been better advised to have gone beyond the exigencies and limitations of Chilean law, and to have submitted the project to the SEIA through a simple Declaration of Environmental Impact (not a full-blown EIA), which could have opened a consequent, state-led consultation process with indigenous peoples.

### ***Final conclusions & recommendations***

*“While the area around Panguipulli has not experienced the level of conflict as other parts of Araucania, it is nonetheless home to a large number of Mapuche who are generally disadvantaged in relation to the wider Chilean society, and have historic and present-day grievances against the State and industrial forestry. Even a benign, green and ostensibly beneficial project such as the mini- hydroelectric project built by RPG needs to take additional and pro-active measures to ensure that local indigenous peoples are fully informed and feel a sense of partnership. Despite the project being located solely on private property, the area in which it is set contains a large number of Mapuche inhabitants who consider themselves the historic owners of the lands now occupied and owned by outsiders. Broader cultural territorial claims aside, there are also legally recognised and protected indigenous lands in the vicinity of the project giving indigenous peoples a legitimate interest in developments that may affect them. Having said that, the review team recognize that both indigenous communities were divided and had no formalised leadership, making it difficult for the community relations managers to establish reliable and stable interaction with an indigenous decision-making body. It remains the case that the project produces clean energy, has minimal impact on the environment and does not, as far as the review team has been able to assess, negatively impact indigenous peoples' lands, cultures and livelihoods.*

*Finally, the review team considers that the company, drawing on its experiences in this case and others where it is operational, may wish to consider the*

*development of a protocol for operating in areas with indigenous populations to guide its work in the future”.*

\*Bibliographies of review team

**Dr Alonso Barros** is a lawyer (PUCCh) and PhD (University of Cambridge) with two decades of advocacy and anthropology involving projects affecting indigenous peoples' territories in Latin America, having worked for long periods amongst the Mixe of Oaxaca, Mexico and with Atacameño, Aymara and Quechua communities and peoples across the Argentinean, Bolivian and Chilean highlands. Since 2013, he works as a researcher and litigation lawyer, mediator and arbiter on behalf of indigenous peoples and communities facing the extractive industry in the Atacama Desert. British Academy Award recipient IC3\100226, Royal College of Arts, Co-Investigator "Tackling the UK's International Challenges 2018"; "The Scale of Justice: Energy Transition, Rights and Indigenous Title" (2018).

**Dr Julian Burger** is Visiting Professor at the Human Rights Centre, University of Essex and a Fellow of the Human Rights Consortium, School of Advanced Study, University of London. For over 20 years until 2010, he headed the indigenous peoples and minorities programme at the Office of the United Nations High Commissioner for Human Rights. During that time, he was responsible for the negotiations on the UN Declaration on the Rights of Indigenous Peoples and helped to establish the UN's principal institutions on indigenous peoples. He has undertaken a number of investigations on the impacts of economic activities on indigenous peoples and has also written extensively on indigenous peoples' rights.

**Francisca Moya** is a lawyer (University of Chile) and has an LLM in public law from the London School of Economic and Political Sciences. She has been a lecturer in Administrative and Environmental Law. Her academic publications are focused on environmental risk management, regulation, and public services privatisation and regulation. She has worked as a researcher at the Centre for Regulation and Competition, REGCOM, as a law clerk at the Constitutional Court of Chile and as legal adviser to the General Secretariat of the Presidency of Chile.