



# SWIMMING UPSTREAM: Student Human Rights Advocacy in Costa Rica

by ANJELA JENKINS and BRANDON HUNTER



**WHEN THE HUMAN RIGHTS CLINIC** at the UT School of Law kicked off its third semester in spring 2010, we had no way of knowing what the experience would mean for us—and how could we? We didn't yet know each other,

much less the scope of our project, the amount of dedication and diligence it would require, and the degree of pride and satisfaction we would have every step of the way. What we would soon learn, however, is everything we could want to know (and more!) about the El Diquís hydroelectric project.

In addition to Prof. Ariel Dulitzky's superb direction, and the support, guidance, and approval of our contacts in Costa Rica, seven students have worked on the clinic's Costa Rica project over the course of three semesters. The group that worked on the project during spring 2010 comprised Brandon Hunter, a first-year master's student at LLILAS; Anjela Jenkins, a 2L at the Law School in her second semester in the Human Rights Clinic; and Susan Orton, an LLM student at the Law School. Brandon carried on with the project in fall 2010, working with Kristian Aguilar, a 2L at the Law School, and Eva Hershaw, a dual master's student in LLILAS and journalism. Kristian has continued work on the project with LLM student Santiago Mesta and LLILAS master's student Leticia Aparicio Soriano during the spring 2011 semester.

During the three semesters, students in the clinic carried out a fact-

finding mission, produced a comprehensive report of their findings, returned to Costa Rica to publicize the report, and worked diligently to follow up with officials in Costa Rica and at the international level. During three very different phases of the project, the members of each team became—and somehow managed to stay—friends. Because of division of labor, we each had a unique experience, developing different knowledge and skills, but all of us learned a great deal in the clinic; in particular, we have enjoyed and benefited from Ariel's knowledge and mentorship. And now we can proudly say that we designed and executed major phases of a human rights advocacy campaign—a considerable personal and professional achievement for all those involved but also, we hope, a significant contribution to the larger human rights community.

Anjela, Brandon, and Susan began the first stage of work on the Costa Rica project during spring 2010. From the description provided to us beforehand, we had a general idea of the project—we knew that it concerned an indigenous community in Costa Rica and their opposition to a proposed dam the government wanted to build on their land. Furthermore, we knew we would be writing a report about these facts and that part of that research would involve conducting a fact-finding mission in Costa Rica.

When we first met with Professor Dulitzky for an introduction to the project, we established a schedule for weekly meetings and a set of tasks to complete as we prepared ourselves for the mission to

Costa Rica. First on our list was to research and get a better picture of the situation there; second was to coordinate with our contacts in Costa Rica a timetable for our visit. Immediately we began to pore through documents, websites, and other public material, researching both the present stage of the El Diquís dam project as well as the previous attempts to construct a dam in the region.

The Proyecto Hidroeléctrico El Diquís is the current manifestation of a thirty-year venture by the Instituto Costarricense de Electricidad (ICE)—a state entity—to design and construct a dam in the southern region of Costa Rica. The current project’s predecessor, called the Boruca-Cajón project, was proposed in the early 1970s, but progress on this dam moved slowly until the 1990s, when Costa Rica signed and ratified the Framework Treaty of the Central American Electrical Market, allowing it to sell electricity to other Central American countries. The project’s proposed location at Cajón, on the boundary of the indigenous territories of Boruca and Curré, implied serious social and environmental impacts. Construction of the dam would have led to the inundation of approximately 4,000 hectares of indigenous territory and the relocation of thousands of indigenous individuals.

In light of its large-scale effects, the Boruca-Cajón project was met with serious opposition by indigenous and non-indigenous communities alike. Over the next thirty years, conflict between the Costa Rican government and the communities of the southern region intensified, garnering international attention and leading to further opposition to the project. Combined domestic and international resistance to the Boruca-Cajón project eventually resulted in its abandonment by the Costa Rican government and replacement with a new proposal.

In lieu of the Boruca-Cajón plan, ICE proposes instead to construct the dam on the Rio General, a major tributary of the Rio Térraba. Supported with funds from the Inter-American Development Bank (IDB), ICE began working on plans for further feasibility studies related to the economic and environmental viability of the El Diquís dam and to determine the potential energy output of the new project. For some observers, the new project also illustrated ICE’s attempts to minimize the ecological and social effects of the dam in comparison to the Boruca-Cajón proposal. The new proposal, originally named the Veraguas Hydroelectric Project, offers significant differences in comparison to the Boruca-Cajón project (see Table 1).

We were given two weeks to prepare for a 10-day fact-finding mission. We worked hard to schedule meetings, coordinate with our contacts, and ensure we connected with all relevant actors. This involved minute-by-minute communication among team members, officials in Costa Rica, our contacts, and Ariel. Yet we worked hard and managed to obtain meetings with just about everyone on our initial list. Arriving in San José with only a cursory understanding of the El Diquís project and the human rights situation in Térraba, we

	Boruca-Cajón	El Diquís (formerly Veraguas)
Power generated (megawatts)	852	631
Reservoir size (hectares)	1,2581.6	6,815
Area of Inter-American highway affected (kilometers)	37.25	3.6
Indigenous territory inundated (hectares)	4,039.7	734.1

Table 1. Comparison of El Diquís project to Boruca-Cajón project based on ICE data.

left 10 days later filled with knowledge about Costa Rican domestic law and human rights, indigenous rights history and law in Costa Rica, the El Diquís project, and the varied perspectives on the project’s implications. In writing our report, the goal became to condense all our information into a succinct document that clearly and adequately spoke to the human rights violations taking place. After further research and

much deliberation, we focused our attention on ICE’s violation of the right to free, prior, and informed consent due to the intrusion of ICE into Teribe territory. After several drafts, many revisions, and long nights in the clinic office, we completed the report. Adding a spiffy title, edits from our contacts, and Ariel’s approval, we ended the semester exhausted and full of accomplishment, yet the work was not over.

The summer of 2010 was spent translating and publishing the report. Anjela and Susan would

not return in the fall, but Brandon stayed on and was joined by Eva and Kristian to begin the advocacy plan for the report. We began the semester by familiarizing ourselves with the report and developing a campaign that would address the media, state officials in Costa Rica, and international actors. By sheer happenstance, our contacts in Costa Rica helped get us a spot presenting our report at a conference held by the University of Costa Rica on the El Diquís project. Alongside engineers, members of the Teribe community, and even officials from ICE, we were given the opportunity to present our findings. In addition, this allowed us to make a follow-up visit to Costa Rica and advocate for our report in front of state officials, NGOs, and the media.

It was decided the second trip would be shorter than the first since we would be meeting with fewer people. In addition, we prepared differently for the second trip, working on our understanding and presentation of the report and developing talking points rather than investigative questions. We established goals determined by how we thought state officials would deal with the implications made in the report, and we returned wanting to know the trajectory and current

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stage of the El Diquís project. We scheduled meetings, practiced our lines, and put together a clear and comprehensive presentation of our report and its findings.

Similar to the first trip, we found ourselves in countless conference rooms and offices, talking with state officials and soaking in a great deal of information. We presented our report at the conference, met with many of the same people we had met with during our first visit, and even returned to the Térraba to pass out copies of our report, present our findings, and ask about the current situation in their community. Most of the time we were met with sincere interest and enthusiasm for our report, yet in our meeting with the executive president of ICE we received criticism and our credibility was questioned. Despite our standing up for our report and findings, the meeting proved futile and we left feeling shocked, upset, and worst of all, powerless. In concluding the trip, we essentially concluded our work for the semester. We had achieved our goal of advocating and publicizing our report, and thus were left to wait for the results of our labor.

In the first few days following our visit, several stories were published about our report in both the English and Spanish language media. As the weeks passed, we were notified of several more, including coverage by Univision. In addition, we received follow-up e-mails from some government agencies, and after our report was sent to several international actors, we received correspondence from them as well. More important, we continued to keep in contact with the community in order to stay abreast of the situation and to learn about any updates with respect to the project and ICE's activities there.

Following the fall 2010 semester, the clinic continued to work on the project in a limited manner. We made the decision to send our report and findings to the United Nations Committee on the Elimination of Racial Discrimination, and on March 11, 2011, Mr. Anwar Kemal, the President of the Committee, sent a notice requesting that the Costa Rican state share any information on the advances and decisions made regarding the El Diquís project. Additionally, they asked that the state pay special attention to the methods used to guarantee the rights of the indigenous people affected, including consultation and obtaining free prior and informed consent in all the phases of the project that affect their territories or culture. In this letter the committee asked that the Costa Rican state respond to their request by July 31, 2011. The committee and the clinic currently are awaiting the Costa Rican state's response.

The clinic also submitted our report and findings to the Inter-American Development Bank. We received a response on April 18,

2011, stating that IDB had not financed any of the studies conducted by ICE thus far. However, they did state they still intended to support ICE in the completion of the environmental and social impact assessments, and they assured the clinic that they would take measures to ensure all relevant IDB policies are complied with and followed throughout the completion of the studies.

The most recent development was an official fact-finding mission conducted April 24–27, 2011, by James Anaya, United Nations Special Rapporteur on the Rights of Indigenous People. During his visit, he met with indigenous leaders, the Teribe community, and ICE. He asked ICE

for information regarding the studies they conducted on the Teribe territory, spoke with indigenous leaders about issues they faced, and consulted the community on the steps needed to ensure free, prior, and informed consent with regard to the El Diquís project. One development of note is that during Anaya's visit, ICE announced that they would be leaving the Teribe community and transferring all machinery and equipment to locations outside Térraba. Despite these changes, however, ICE has not halted its work on the El Diquís project in locations outside indigenous territory.

#### A Collective Reflection

In reflecting on our involvement with the clinic and on this project, we learned valuable lessons about the hard work, determination, and

level of strategy that go into human rights work. We gained a new appreciation for the efforts of human rights defenders and developed practical and professional skills that will be invaluable to us in the future. As an academic experience, we can say it was perhaps one of the most rewarding, interesting, and engaging projects of our academic careers and an experience none of us will soon forget.

Our work on this project now spans three semesters and includes a cast of characters uniquely talented and incredibly passionate about human rights. We owe the project's success to the teamwork, dedication, and intelligence of all those involved, but also to the guidance and wisdom of Professor Dulitzky, those who helped us on both visits in Costa Rica, and those who agreed to speak with us, answer our questions, and read our report. The project, like this article, was a collective effort, and one that utilized the special skills and diverse disciplinary expertise of those involved. At the same time, it is one of many examples of the Human Rights Clinic's ability to unite different students under the banner of advancing human rights and bridge the gap between the ivory tower and the activist community. ✨

*Anjela Jenkins graduated with a JD from the UT School of Law, and Brandon Hunter graduated with an MA from LLILAS in 2011.*

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