

EQUIPO NIZKOR NEGOTIATES LANDMARK SETTLEMENT FOR THE ITIKA GUASU GUARANI PEOPLE



Yaqui (10) and Irandey (8) Gareca, two Guarani girls from Itika Guasu. (Photo credit: R. Gareca)

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A Landmark Victory for Indigenous Peoples and the Environment

At the end of December 2010 Repsol Bolivia SA (a subsidiary of the Spanish oil corporation Repsol YPF) and its consortium partners (BG Bolivia and PAE E&P, representatives of British Petroleum), agreed the terms of a settlement with the Assembly of the Guaraní People of Itika Guasu (APG IG), represented by Equipo Nizkor. The settlement agreement was executed in front of a Public Notary on 29th December 2010 and ended a long-standing conflict between the APG IG and the oil company. The dispute had begun in 1997 when the companies, Chevron and Maxus SA, had unlawfully entered the Original Community Territory owned by the Guarani peoples of Itika Guasu -legally represented by the APG IG- to carry out their exploration activities. The agreement was signed after a protracted period of intense negotiations with Repsol Bolivia SA.

Investment Fund first for Latin America

The landmark settlement allowed these indigenous peoples to set up the Itika Guasu Investment Fund, established with the amount of US\$ 14.8 million, administered by a Council of Sages, and consistent with their own traditional Guaraní customs. It is believed to be the first time that an indigenous organisation has ever successfully established an indigenous investment fund in Latin America. The President of Equipo Nizkor, Gregorio Dionis along with members of the organization specializing in international commercial and indigenous law, provided the legal and financial advice, which resulted in the successful establishment of the Itika Guasu Investment Fund. Equipo Nizkor continues its support to the APG IG through a consulting agreement, which started in 2006.

The terms of the Fund ensure that the income generated from its investments are applied to three priority areas: Health; Education; and Housing. It gives funding to Itika Guasu Communities for specific projects, which will produce profitable activities, including planting crops.

Legal Precedent for Indigenous Peoples in Latin America

The terms of the settlement agreement set an important precedent in the sense that all of the demands of the APG IG with respect to the oil company were met.

These included:

- **Legal recognition of**
 - i. the APGIG as a legal entity;
 - ii. the customs and uses of the Guaraní people of Itika Guasu;
 - iii. their ownership of the Original Community Territory (TCO) Itika Guasu;
 - iv. international law on indigenous peoples and international human rights law;
 - v. the existence of, and the right to compensation for, environmental damage and an agreement to carry out regular, independent environmental audits

- **Effective insurance policies to cover the risk of losses and damage caused by the company;**

- **Warranties to return the land to its original state by the end of the term of the contract of operation between the company and the Bolivian Government**

“We signed (the Agreement) without surrendering any of our rights and obtained full legal recognition of our ownership of the Original Community Territory and of the existence of the APG IG... For at least the last six years we have followed a well-defined legal strategy that has allowed all of those involved to learn not only the value of our own rights, but also how they may be defended in practice. We were told by many that our dream was impossible, and some even claimed in ‘authoritative’ reports that breaking off negotiations with Repsol in 2006 was suicidal and that we would never achieve the demands and conditions that we sought at that time. Today we can proudly say that they were mistaken and, fortunately for the future of our children, that the decisions made in our Mburuvicha Assemblies were the right decisions.”

“We have also managed to incorporate into our [Agreement with Repsol Bolivia SA](#) the applicable standards of international human rights law, international commercial law and international criminal law; the 169 International Labour Organisation Convention concerning Indigenous and Tribal Peoples in Independent Countries and the jurisprudence of the Inter-American Court of Human Rights”. “In other words, this is not just a formal or rhetorical recognition of our rights. These laws form an integral part of the Agreement, which implies a recognition of all of the rights of indigenous peoples and our civil liberties. This is the first time that an oil company has signed such an agreement in Bolivia and in Latin America.”

The President of the APG IG, Never Barrientos

A Long and Winding Road

The scale of this achievement should be considered in the context of the initial offer made to the Guarani by Repsol in 2006. In that proposal, Repsol was under no obligation to make even a minimum payment by way of compensation, no recognition of the Guarani land rights, and – by contrast – there was a requirement that the community give Repsol full immunity against any past, present or future liabilities (Something not uncommon all over Latin America where natural resources are big business). Just as egregious was the requirement that the Guarani submit proposals for investments to a committee, which included Repsol representatives with an absolute right of veto over any project proposed. In the event a project was approved, the funds were to be paid directly to the individuals or organisation managing it and the Guarani were denied any control over the funds, or even the selection of the project managers.

For six long years Equipo Nizkor fought with the corporate legal departments of the various oil Companies involved and endured the very public opposition of the Bolivian Government. Tactics over the years have included intimidation, threats which culminated in August 2010 in the severe beating of, and the shooting at, one of the community leaders.



Meeting of the Guarani People of Itika Guasu
(Photo credit: R. Gareca)

Achieving the Impossible

Even the role played by local development NGO's did not help the APG IG to achieve favorable results in the negotiations. In fact, the opposition coming from the Bolivian government and the local authorities was aggravated when several local NGO's, non indigenous organisations known as "social intermediaries", abandoned the Guarani people of Itika Guasu at the most critical stage of their confrontation with Repsol. These NGO's, which receive direct funding from Governmental agencies

from North America and Europe and through their NGO partners in the North, had “worked” for years with the APG IG. However the APG IG had neither a voice nor a vote on the proposals for “development” that many of these NGO’s were submitting on their behalf.

As [Jerry Reynolds](#) wrote for *First Peoples Worldwide* , the fact is that “[T]he funding source of the intermediary NGOs was advising Repsol on its legal response to the Guarani. And yet the intermediaries were advising the Guarani to abandon any legal strategy against Repsol... As the Guarani of Itika Guasu went their way, engaging in negotiation with Repsol as well as a legal strategy against the company, the intermediaries resisted community authority, sowing local discord even as a viable Guarani agreement with Repsol evolved”.

At the time when negotiations were about to be resumed, the individuals making up the leadership of the APG IG lacked the most basic means of survival. This situation of “economic strangulation” made it very difficult to travel around the communities to explain their legal strategy. It was clear that this situation was part of the overall pressure in order to undermine any possibility of taking decisions autonomously and, in sum, having their property rights and their right to consultation recognized by the companies who had been active in their territories since 1997.

One of the major obstacles to overcome was to meet with the 36 Guarani communities of Itika Guasu and to make sure that they received a comprehensive explanation of the issues from the APG IG, and the legal and financial advisers at Equipo Nizkor. However, with small and direct financial support from allies, the APG IG’s Board were able to be present in all of the communities that make up the Original Community Territory (TCO). They were able to explain the legal strategy and the context of the negotiations with the oil companies in an independent manner, without any intermediaries.

Overcoming a model of social humiliation

The Bolivian Constitutional Court has also endorsed the APG IG’s legal victory. In April 2011, the APG IG was officially notified of the judgement dated October 25, 2010 issued by the Court in the case of [SEDECA vs APG IG. SEDECA](#) is a state-owned company in Bolivia in charge of public works that had denounced the APG IG. The President of the APG IG had sent an official communication to one of SEDECA’s contractors saying that any works on Guarani land had to be subject to a prior and informed consultation process in accordance with Law 3760 and to ILO 169 Convention.

In a historic judgement the Constitutional Court ruled in favour of the APG IG which consolidates international indigenous law and its domestic application used as the basis to ratify the right to ancestral territory, as well as the obligation binding upon the State to carry out a free, prior and informed consultation process regarding any public and/or private project to be executed in Original Community Territory. The APG IG is clear that the settlement agreement it entered into with the Repsol consortium is unique in Bolivia and probably in all of Latin America. It will of course benefit the Guarani of Itika Guasu specifically but will also serve as a model for other indigenous communities. It is to be hoped that it will serve to guide the conduct of other Gas and Oil companies in their future activities in Bolivia and the rest of Latin America.