

**Observations on the State of Indigenous Human Rights in Panama in Light of the
UN Declaration on the Rights of Indigenous Peoples**

Panama

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Cultural Survival is an international Indigenous rights organization with a global Indigenous leadership and consultative status with ECOSOC. Cultural Survival is located in Cambridge, Massachusetts, and is registered as a 501(c)(3) non-profit organization in the United States. Cultural Survival monitors the protection of Indigenous peoples' rights in countries throughout the world and publishes its findings in its magazine, the *Cultural Survival Quarterly*; and on its website: www.cs.org



Founded in 1988, the Rainforest Foundation was one of the first international organizations to focus on the vital link between the protection of rainforests and securing the rights of indigenous peoples who live in them. For over 20 years its mission has been to support indigenous and traditional forest peoples in their efforts to protect their lands and resources. It has helped protect 28 million acres together with partners on the ground, and has a wide network of partners and allies in South and Central America. Together with sister organizations in the UK and Norway, the Rainforest Foundation US promotes a rights-based approach to forest protection in 18 rainforest countries across the globe.

In preparing this report, Cultural Survival and the Rainforest Foundation US collaborated with the Alliance for Conservation and Development and a broad range of Indigenous and human rights organizations, advocates, and other sources of verifiable information on Panama.

Keywords: Indigenous Peoples, Land Rights, Free Prior Informed Consent, Police Violence

Executive Summary

Panama fails to implement laws and policies that favor Indigenous Peoples, creating a favorable image while maintaining violently repressive actions in practice. Safeguards are not being carried out to protect Indigenous citizens of Panama, and the state reaction to Indigenous protest shows more value placed on the exploitation of natural resources than the lives and well-being of its citizens. The construction of the Barro Blanco Dam on the Tabasará River, for example, is a grave concern for Indigenous Peoples of Panama and has not upheld standards set out in the UN Declaration on the Rights of Indigenous Peoples. In addition, despite notable advances in titling Indigenous lands, there remain some 40 communities without collective title to their lands, and even the established *comarcas* have all been invaded by third parties.

Introduction and Background

In the field of Indigenous rights, Panama has a thoroughly mixed record. The system of reserved territories called *comarcas* offers significant protection for Indigenous lands and autonomy. All of the country's 5 *comarcas* have been invaded by third parties however, and legislation to dislodge and sanction such people does not exist. Two governmental bodies were established to address Indigenous concerns, as well as a national ombudsman, the Defensor del Pueblo. Numerous plans and task forces aim to target Indigenous poverty, which stands at 89.9%, according to a 2012 survey by the Ministry of Economy and Finance¹. Enlightened laws have been passed. Rural schools and health centers, though underfunded and unevenly distributed, are ubiquitous. However, the gap between stated intentions and governmental actions is huge. The office of the Defensor has proved ineffectual; progressive legislation is often ignored; and many official plans and projects constitute mere window-dressing. The government consistently fails to protect Indigenous citizens, and when large-scale national development is at stake, it actively furthers their abuse, violently and fatally repressing Indigenous protests. Indigenous Peoples---Kuna, Emberá, Wounán, Ngöbe (or Ngäbe), Buglé, Naso, and Bribri---numbered 285,000 in the year 2000, constituting roughly ten percent of the national population (though Indigenous organizations claim that those numbers are in fact much higher). Their lands, which encompass some of Panama's last remaining forests, are threatened by a recent wave of intensified exploitation of natural and social resources, especially mining, agro industry, massive hydroelectric dams, and tourism. Construction on the Barro Blanco Dam began in 2011 without the free, prior and informed consent from the local Indigenous peoples. The dam will displace about 3,000 people and will cause the flooding of petroglyphs and three ancestral cemeteries.

Many of the recommendations made in the 2013 Panama Mid-term Implementation Assessment have not been adequately addressed. We provide case studies below, illustrating the Panamanian government's failure to address the recommendations made to this date. We have grouped the

¹ Informe del Relator Especial sobre los derechos de los pueblos indígenas, James Anaya. La situación de los derechos de los pueblos indígenas en Panama. A/HRC/27/52/Add.1 7 de mayo de 2014.

information into 4 major themes, each with a specific (though unfortunately not isolated) example: Threats to Physical Security and Violence; Free, Prior and Informed Consent; Repressive Laws; and Land and Resource Rights.

THREATS TO PHYSICAL SECURITY AND VIOLENCE and LACK OF COMPENSATION: Violence against the Ngöbe (Articles 7, 28 of UNDRIP)

Recommendation n°27 of the 2013 Panama Mid-term Implementation Assessment still has not been implemented:

Continue its efforts to combat impunity and violations of human rights, with particular attention to the rights of Indigenous populations and persons of African descent (Recommended by Brazil)

Police brutality is rife in Panama and is increasing, especially with regards to Indigenous people who are standing up for their rights. Projects such as the Barro Blanco Dam threaten to ruin their daily lives and traditions, and several people have been violently and sexually abused and killed because they were protesting against this.

Under Article 7 of UNDRIP, Indigenous people have a right to liberty, security, and physical and mental integrity. This article codifies the right of Indigenous people to live free from acts of violence. Detailed below are some accounts of the continual violence experienced by numerous Indigenous people in Panama at the hands of the police. It is recommended that Panama increase its efforts to combat impunity of human rights violations against Indigenous populations and persons of African descent, and desist from using violence against Indigenous protesters.

After Indigenous protesters caused the closure of the Inter-American Highway in February of 2012, both men and women were arrested and many were raped by the Panamanian police. On 5 February 2012, Luis Jimenez was crippled and three unarmed protesters were killed by the “rubber bullets, batons, tear gas, and shot-guns” used by the police.

When the Ngöbe people blockaded the Pan-American Highway on January 30 2012, the police responded very forcefully and violently. A week following this, there remained a large number of police in Indigenous territories of Western Panama, including: Vigui, San Felix, Horconciitos, Chiriqui Grande.

On March 6 2012, a committee of human rights groups published a report detailing the human rights violations committed by the state of Panama against the Ngöbe people during the protests earlier that year. Within this report, the following human rights violations were evidenced: “lethal weapons, excessive violence, shots fired from helicopters, unlawful detainment, raids of

private homes without warrant, and the suspension of cell phone service blocking communication among activists within the Ngöbe-Buglé territory and calls outside the country.”

During a rally against the Barro Blanco Dam project on 22 March 2013, police wearing plain clothes and ski masks allegedly attacked, killed, and cast into a ditch a Ngöbe protester, Onesimo Rodriguez.

On April 25th of this year, seven Ngöbe people were injured when the police attacked a camp of protesters. None of these seven were able to receive medical attention at a hospital or medical center because they were afraid of being arrested.

Despite these protests and on ongoing challenge in the courts, the state of Panama has allowed the continuation of the Barro Blanco Dam project. To date, no compensation has been offered to the Ngöbe people even though the construction of the hydroelectric dam has resulted in people being forcibly removed from their land. Article 28 of UNDRIP states that Indigenous people need to be appropriately compensated for lands and resources that have been taken without their free, prior and informed consent yet, no restitution has been provided thus far. Furthermore, there has been a failure by the state to provide compensation for the victims of police brutality.

Free, Prior and Informed Consent: The case of Barro Blanco Dam (Article 8, 10, 20 of UNDRIP)

Indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior, and informed consent of the Indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return.

Recommendation n°71 from the 2013 Panama Mid-term Implementation Assessment still has not been implemented: *Conduct prior consultations with Indigenous communities, as required by international standards, in relation to all plans and projects that might affect them, in particular when it comes to large-scale projects such as hydroelectric dams and mining activities and regarding national plans and projects to reduce emissions from deforestation and forest degradation* (Recommended by Norway)

The state of Panama will leave Indigenous communities with no choice but to vacate their homes and their land if they proceed with the Barro Blanco Dam project. This is because the building of the dam will continue to flood the farmland and also destroy the Tabasara river, killing the diadromous fish and shrimp species and producing disease carrying mosquitoes. This will have a cultural and practical effect on the Indigenous communities because they will lose the Tabasara river which is very important to their way of life, whilst having to adapt to a new area which may

not give them the resources they need, to continue in their current lifestyle. These actions are in contradiction of Article 20 of UNDRIP which stipulates the right of Indigenous people to engage freely in all their political, economic and social systems or institutions.

The state of Panama has neglected to involve Indigenous people in discussions over the construction of the Barro Blanco Dam, and there has been little to no communication as the project has progressed. People were not warned that their homes may flood, and some had to flee while it was happening or die. Furthermore, when a public consultation was held regarding the dam project on 8 February 2008, it was not publicized or held locally in Indigenous towns, and when the Ngöbe people found out and tried to attend, they were blocked and not permitted entrance.

On 17 February 2014, the government issued a formal warning stating that the people had to vacate their homes immediately. After this, some of the Ngöbe people remained and peacefully protested against this eviction which resulted in the police being sent to the camp on 18 March 2014 to forcibly remove anyone who was still living there. This demonstrates the lack of dialogue between the state and the Ngöbe people.

By not recognising the right of Indigenous people to free, prior and informed consent, Panama is in violation of Articles 8 and 10 of UNDRIP, which prohibit governments from forcing Indigenous communities to vacate land and depriving them of resources. Furthermore, these articles protect Indigenous communities from cultural assimilation, yet the dam project will destroy important sites such as: a specialized Ngabere language school, a church, a cemetery, and several archaeological sites.

The Panamanian government have shown no transparency in their actions. In April 2012, they brought into force a law which prohibits new mining projects and restricts dam projects to those where the approval of the Ngöbe people has been obtained. Although, the Barro Blanco Dam project was excluded from this law and a leaked confidential report shows that the Panamanian government already has confirmed plans with signed contracts for further hydro-electric projects.

REPRESSIVE LAWS:

Recommendation n°47 has not been implemented: *Adopt measures to eliminate discrimination against people of African descent and Indigenous peoples* (Recommended by Argentina)

There are laws remaining which discriminate against Indigenous peoples.

In June 2010, the president brought executive decree 537 into force, which dictates the election process of Ngöbe leaders. The government moved away from traditional methods which means that these Indigenous people do not have equal say in what will affect their communities. Panamanian human rights and environmental organizations, as well as the Ngöbe Bugle

Congress, consider Executive Decree #537 an attempt by the government to influence the election of Ngöbe leaders and open the way for multinational mining companies to exploit copper and gold deposits in Ngöbe territory.

Law 14 allows the Panamanian state to impose jail sentences of six months to two years for protesters. This most significantly affects Indigenous people as they frequently rally in protest against continual violations of their rights. Police who use excessive violence against protesters, however, often operate with impunity.

LAND AND RESOURCE RIGHTS

Recommendation n°70 also has not been adequately addressed: *Take operational steps to implement the United Nations Declaration on the Rights of Indigenous Peoples, including the recognition of the right to land and natural resources of all Indigenous peoples in Panama* (Recommended by Norway)

Today Panama recognizes five comarcas: Guna Yala (established in 1928); Embera and Wounaan (1983), Madugandi (1996), Ngobe Bugle (1997); and Wargandi (2000). All of the Comarcas face invasions by third parties, however, including colonos, loggers, miners, and others². Panamanian legislation lacks adequate measures to dislodge and sanction invaders, leaving communities vulnerable to having their lands and resources usurped. In addition, as mentioned above, hydro-electric projects threaten to flood and displace still other communities.

Although Panama is well-recognized for its comarcas, there are still significant, long-standing demands for titling Indigenous lands. These include:

- Titling the Naso Comarca: a law was presented to the Assembly of Deputies in 2000, but has not yet been approved. The area is overlaid with the La Amistad International Park which was created in 1988³, without prior consultations with communities.
- Titling the “areas anexas” of the Ngobe Comarca: when the Comarca was established, it left out a number of areas, which remain vulnerable to invasion, and to impacts from the Barro Blanco Dam, as described above.
- Titling 25 Embera and Wounaan Collective Lands in Eastern Panama, as well as the Guna territory of Dagargunyala, and the Bri Bri collective land in Western Panama, under Law 72 of 2008. The situation of these Collective Lands, with a particular focus on the Embera and

² Huertas Gonzalez, Hector: La situacion juridica de los pueblos indigenas de Panama, 2014. Publicacion de COONAPIP. p. 42.

³ <http://www.cbmap.org/documentos/PILA.pdf>

Wounaan, is described in more detail below, as they represent one of the most important opportunities for titling lands in Panama today.

When the Embera and Wounaan Comarca was created by Act 22 in 1983, approximately forty-four Embera and Wounaan communities were left outside of it, without any kind of protection. Since then, these communities have been calling for the titling of their lands, which together cover about 1 million acres – about 8% of Panama. After the creation of the Wargandi Comarca in 2000 however, the government declared that it would not recognize any new Comarcas, leaving these communities (and others in Western Panama) without any recourse to obtain collective rights to their lands.

In 2008, after years of demands from the Indigenous movement, the government passed Law 72, which recognizes the collective land rights of Indigenous peoples outside the Comarcas, in compliance with Article 127 of the Constitution of the Republic of Panama. In June 2010, Executive Decree 223 was passed, regulating Law 72 and establishing the specific procedures for the recognition and granting of collective land titles in Panama.

On June 4, 2012, the two Wounaan communities of Caña Blanca and Puerto Lara received the first titles under Law 72. The titles were granted after years of delay and multiple postponements. This constituted an important victory for the Embera and Wounaan, who expected the Government of Panama to recognize, demarcate and grant their remaining land titles in a timely manner. However, the process has not advanced, resulting in renewed invasions of collective lands by *colonos* and loggers, leading to conflict, and further threatening their social and cultural life, and their traditional means of survival.

The process of recognizing collective lands has been painfully slow and repeatedly delayed by the government, both before Law 72, as well as afterwards. In response, the Embera and Wounaan carried out protests in June and November of 2011, again in 2012 and 2013. In June 2011, the government publicly committed to deliver a number of titles in October 2011. In November 2011, the lack of fulfillment of these promises resulted in new protests, and a new agreement establishing: a deadline of March 2012 for the delivery of collective land titles for 7 collective lands in the Darién⁴; dates for government inspections and field work in 9 collective lands⁵ and the suspension of the "recognition and award of possessory rights [to non-Indians]

⁴ ACUERDO DE ACCION Y DECISION – ANATI/MINGOB/PUEBLO DE TIERRAS COLECTIVAS EMBERA Y WOUNAAN, 18 de noviembre de 2011. The 7 collective lands then slated to be titled were: Caña Blanca, Piriati Embera, Ipeti Embera, Maje Emberá Drua, Rio Congo, Puerto Lara and Arimae.

⁵ ACTA 0001, REUNIÓN ENTRE LA DIRECCIÓN NACIONAL DE GOBIERNOS LOCALES Y EL CONGRESO GENERAL DE TIERRAS COLECTIVAS EMBERÁ Y WOUNAAN, 23 de noviembre de 2011. The 9 collective lands slated for government inspections were: Tutumate, Marea (Marea and

within the polygons that comprise the collective lands requested by the communities through their traditional authorities "⁶.

In early 2012, the dates negotiated in November 2011 were postponed again, triggering renewed protests. A new schedule to title eight (8) Embera and Wounaan collective lands in June to September 2012 was then established, and cited by government officials at a thematic hearing on Indigenous rights in Panama before the Inter-American Commission on Human Rights on March 23, 2012⁷.

Outside of the two titles granted on June 4, 2012, the others have since been postponed again and again, despite various meetings and negotiations with the government. On June 25, 2013 – following yet more protests by the Embera – the government issued a statement listing Bajo Lepe, Pijibasal, and Mercadeo as the next three collective lands slated for titling, though without giving a deadline⁸. All of these agreements have been neglected by the government. Since 2012, only one other collective land – Piriati – was titled, in June 2014 (it is worth noting that Piriati is one of the communities involved in the Case No. 12.354, Kuna Indigenous People of Madugandí and Emberá Indigenous People of Bayano and their Members, Panama, currently awaiting a decision by the Inter-American Court on Human Rights).

The three titles granted under Law 72 are smaller than those requested by the communities, as shown by their maps and official requests. Without explanation, the government granted parts of these collective lands to outsiders, despite its pledge not to title private lands on those claimed by Indigenous communities. This has led to continued conflicts, even in the titled collective lands. Unfortunately ANATI, the government lands agency, has continued to grant titles to non-indigenous people on collective lands still awaiting title, creating an unnecessarily complicated and problematic situation moving forward.

The lack of tenure security has led to several conflicts, stemming from invasions by settlers from other provinces; overlapping titles with private companies; illegal logging and the creation of

Aldea), Mogue (Mogue, Llano Bonito and La India), Platanares/Rio Hondo, Majé Chimán, Pijibasal, Aruza, Mercadeo, and Bajo Lepe.

⁶ ACUERDO DE ACCION Y DECISION – ANATI/MINGOB/PUEBLO DE TIERRAS COLECTIVAS EMBERA Y WOUNAAN, 18 de noviembre de 2011 (Annex 2). Also see Annex 4: Resolución No. ADMG-001 de 8 de febrero de 2012, that orders the suspension of all requests for adjudication submitted by outsiders to the Dirección Nacional de Titulación y Regularización within all collective lands claimed.

⁷ <http://www.oas.org/es/cidh/audiencias/Hearings.aspx?Lang=En&Session=125>, minutes 40:40 and 1:00:45.

⁸ See Annex 5, Comunicado de ANATI, June 25, 2013, which establishes the 3 collective lands of Bajo Lepe, Pijibasal, and Mercadeo, as the next in line for titling (though without giving dates). It also reiterates the government's promise not to grant titles to non-Indigenous people on collective lands claimed.

protected areas without the free, prior, and informed consent of communities. The situation led the four representative Congresses from the Darién (as well as the BriBri and Bugle) to file a formal complaint with the Supreme Court on February 1, 2012⁹. The complaint lists problems with invasions in the Embera Wounaan Comarca, Embera collective lands in Alto Bayano, and Embera and Wounaan collective lands in the Darién. Without titles to their lands, the collective lands in the Darién (as well as those in Western Panama) are even more vulnerable. In just one example, rampant illegal logging has caused serious conflicts in the Wounaan communities of Rio Hondo and Platanares in Panama Este, culminating in the deaths of two people in early 2012.

Recommendations

We respectfully request that the UPR Working Group and the Human Rights Council urge the Government of Panama to:

1. Ratify ILO Convention No. 169, concerning Indigenous and tribal peoples (as recommended by Special Rapporteur on the Rights of Indigenous Peoples in his 2014 Report on Panama), and the Ibero-American Convention on the Rights of Young People
2. Take operational steps to implement the United Nations Declaration on the Rights of Indigenous Peoples, including the recognition of the right to land and natural resources of all Indigenous peoples in Panama
3. Conduct prior consultations with Indigenous communities, as required by international standards, in relation to all plans and projects that might affect them, in particular when it comes to large-scale projects such as hydroelectric dams and mining activities and regarding national plans and projects to reduce emissions from deforestation and forest degradation. This should include introducing legislation upholding FPIC, and including FPIC provisions in relevant mining, hydro-electric, and forestry codes (see Recommendation b in the UNSR report on Panama)..

In addition, we request that the following specific recommendations be made:

1. **Titling and demarcation of collective lands and of annexed areas bordering comarcas should be expedited (see recommendations d, e and f in the UNSR report on Panama).** Forested lands under traditional use should not be classified as “*tierras baldías*” or subject to unrealistically small allotments.
2. The government should **suspend all hydroelectric construction until rigorous procedures for informed consent and environmental assessment** are established, implemented, and applied to all projects, even those already underway. The scale of hydroelectric construction should be drastically reduced.

⁹ See [Annex 7, Denuncia Formal: Invasiones de Territorios Indígenas de Panamá](#), signed by the Congreso General de la Comarca Emberá Wounaan, Congreso General Emberá Wounaan de Tierras Colectivas, Congreso Nacional del Pueblo Wounaan, Congreso General Emberá de Alto Bayano, Bulu BriBri and the Congreso Bugle, February 1, 2012.

3. A **moratorium on land alienation** should be imposed (especially on sales to foreign investors) in areas where there have been persistent allegations of fraud and unwarranted dispossession. Law 2 of 2006 should be revised to balance the needs of tourism investors and longtime inhabitants.
4. Given the rapidity of illegal land alienation, justice delayed is justice denied. **Titling procedures should be streamlined and expedited** for current inhabitants, with provisions for on-site processing and rapid hearings for small-scale disputes. For cases of alienation and dispossession, **court challenges must be promptly heard**. Neither “improvements” by settlers or tourist operators nor subsequent sales to third parties should take precedence over long-term occupation and use. Illegal alienation should be open to **retroactive challenge**.
5. Establish legislation that sanctions those who invade Indigenous lands (see Recommendation g in the UNSR Report on Panama)..
6. **Article 10 of Law 18 of 2003**, which removes protections for Indigenous lands and resources established in Law 41 of 1998, **should be repealed**, as should other recent environmental legislation diminishing Indigenous rights.
7. Executive Decree #537, which created a government-controlled electoral system for the Ngobe people, should be revoked to respect the Ngobe people’s right to self-government.