



June 24, 2013

Mr. John Knox  
 UN Independent Expert on Human Rights and the Environment  
 c/o Office of the High Commissioner for Human Rights  
 Palais Wilson  
 52 rue de Pâquis  
 CH-1201 Geneva, Switzerland  
 Via email: [ieenvironment@ohchr.org](mailto:ieenvironment@ohchr.org)

**Re: Panama's Barro Blanco dam project**

Dear Independent Expert Knox:

Centro de Incidencia Ambiental de Panamá (CIAM), Movimiento 10 de Abril (M-10), Asociación Ambientalista de Chiriquí (ASAMCHI), Asociación para la Conservación y el Desarrollo (ACD), Colectivo Voces Ecológicas, Center for International Environmental Law (CIEL), Earthjustice, Interamerican Association for Environmental Defense (AIDA), International Rivers, Carbon Market Watch, Both ENDS, Collective Voices for Peace, Salva la Selva and Marin Interfaith Task Force are pleased to hear of the consultation you are organizing in Panama from July 26-27, 2013. We are writing to draw your attention to a situation that is an important example of the issues you are currently investigating: the Barro Blanco hydroelectric dam on the Tabasará River in the Province of Chiriquí, Panama.

As explained below, this project has raised possible violations of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment. In furtherance of your mandate to study those obligations, we encourage you to examine the situation and to explore how it exemplifies the connection between human rights and environmental harm. In particular, we encourage you to look at issues related to the lack of consultation with affected people, the role of the CDM in fostering human rights violations, and the threats to environmental defenders. To gain a more in-depth understanding of the situation, we encourage you to meet with affected community members during your upcoming consultation in Panama in July. We also invite you to take any other appropriate action within your mandate that could slow or stop the dam's constructions and/or highlight the threat to the Ngäbe's rights.

Construction of the Barro Blanco project is expected to be completed as soon as May 2014.<sup>1</sup> Once completed, the dam is projected to flood homes, schools, and religious, archaeological, historical, and cultural sites in the Ngäbe-Buglé *comarca* (traditional indigenous territory). The dam will convert the Tabasará River from a running river to a stagnant lake ecosystem, resulting in significant changes to the Ngäbe's diet and landscape, as well as forced relocation of some indigenous families. The Ngäbe's territory and natural resources, including the Tabasará River are essential to their lives, livelihoods, and culture.

The Barro Blanco project raises concerns about the rights of peoples to be consulted and otherwise participate in decision-making on projects that will affect their human rights, including to a safe, clean, healthy and sustainable environment. The company building the dam, GENISA, failed to consult the Ngäbe communities that will be directly affected by the Barro Blanco project during the stakeholder consultation process and failed to adequately include the Ngäbe-Buglé *comarca* in its environmental impact assessment (EIA). In May 2008, Panama's environmental authority, Autoridad Nacional del Ambiente (ANAM), approved the EIA despite violations of national and international norms and standards.<sup>2</sup> The fact that some of the funding comes from German and Dutch development banks—both countries bound by clear obligations to protect participatory rights under the Aarhus Convention—is a matter of additional concern.

The Barro Blanco project's registration under the Kyoto Protocol's Clean Development Mechanism (CDM) also raises concerns about human rights violations arising from mechanisms designed to address climate change. In February 2011, the Ngäbe and civil society groups submitted comments to the Executive Board of the CDM, describing how the project failed to satisfy CDM requirements concerning climate and sustainable development effects, impact assessment, and public participation. Despite these claims, the Barro Blanco project was registered under the CDM in June 2011. Barro Blanco's registration as a CDM project signifies a determination that the project will contribute to

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<sup>1</sup> See local newspaper "Mi Diario"'s article on the Barro Blanco construction progress: <http://dn1s.midiario.com/2013-04-11/interior/barro-blanco-tiene-avance-de-40>.

<sup>2</sup> See case study submitted on behalf of members of the Ngäbe community to the Special Rapporteur on April 1, 2013 (attached).

sustainable development and help reduce carbon emissions; evidence submitted to the CDM board makes both of these conclusions doubtful.

Furthermore, the Barro Blanco project raises concerns about the physical integrity and security of environmental defenders. On March 19, 2013, the M10—an indigenous peoples’ movement defending the Tabasará River—led a peaceful rally against the Barro Blanco project in the nearby town of Vigui. According to local news reports, an estimated 150 police fired hunting pellets, rubber bullets, and tear gas at approximately 30 protestors. Three days later, a Ngäbe man who attended the protest was murdered by four masked men whom the M10 believe are linked to the police, heightening the sense of fear and concerns regarding personal safety and security for those in the M10 movement.

The Government of Panama has failed to take the necessary actions to protect the Ngäbe people, resulting in past and imminent violations of their rights to be consulted and otherwise participate in decision-making on environmental matters—including CDM projects—that will affect their environment and human rights; and to physical integrity and security as defenders of their environment. The Ngäbe’s efforts to hold the government accountable for its failure to adequately consult with affected indigenous peoples and assess environmental impacts have proved ineffective. Two such efforts include a lawsuit challenging the environmental review process under Panamanian law and a dialogue process between the Ngäbe people and the Government of Panama that resulted in an agreement in March 2012.<sup>3</sup>

In 2011, CIAM filed a lawsuit on behalf of members of the affected Ngäbe communities, challenging ANAM’s approval of the EIA for the Barro Blanco project.<sup>4</sup> Although the case has not yet been heard due to numerous procedural delays, construction of the dam continues. The Ngäbe fear that the dam will be fully constructed before Panama’s Supreme Court decides the case, rendering the lawsuit moot and depriving the Ngäbe of their right to a remedy for violations caused by the dam.

While this case was pending, the Ngäbe began a dialogue with the Government of Panama, in response to the UN Special Rapporteur on the Rights of Indigenous Peoples’ call for both parties to find a peaceful solution to the conflicts and violence arising from protests against Barro Blanco and other infrastructure projects threatening their lands. As a result, the government and Ngäbe leaders reached an agreement calling for the United Nations Development Programme (UNDP) to undertake a verification mission at the Barro Blanco project site, and for Panama to conduct an expert assessment of issues of controversy that

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<sup>3</sup> Acuerdo del 15 de marzo de 2012 entre el Gobierno Nacional de Panamá representado por el Ministro Jorge Ricardo Fábrega y la Asamblea Nacional representada por la Comisión de Comercio y Asuntos Económicos y La autoridad tradicional de la Comarca Ngäbe-Buglé representada por la señora Silvia Carrera, Cacica General y la Coordinadora por la Defensa de los Recursos Naturales y el Derecho del Pueblo Ngäbe, Buglé y Campesino representada por el señor Rogelio Montezuma (March 2012 Agreement), *available at* <http://tinyurl.com/n8rato7>.

<sup>4</sup> Demanda Contencioso Administrativa de Nulidad, con Solicitud Especial de Suspensión Provisional, Contra la Resolución DIEORA IA-332-2008 de 9 de Mayo de 2008, Proferida por la Administradora General de la Autoridad Nacional del Ambiente (ANAM).

remain unresolved after the verification mission.<sup>5</sup> The agreement provides for temporary suspension of the dam's construction during visits to the project site by the verification mission and the expert assessment.<sup>6</sup>

During the verification mission in September 2012, the UNDP interviewed people in the Ngäbe-Buglé *comarca* concerning claims that GENISA had failed to consult with the affected indigenous communities. The mission interviewed people from the Quebrada Caña, Kiad, and Nuevo Palomar communities who described potential impacts (particularly flooding of homes, schools, churches, cemeteries, and archaeological, cultural, and sacred sites) that would threaten their ability to engage in subsistence farming and fishing on their lands. Such impacts would also significantly change their diet, considering that fish from the Tabasará River are one of their primary sources of protein.<sup>7</sup>

The Government of Panama has not delivered on its promises concerning the expert assessment. The government has not identified experts or set a date for the assessment. The Ngäbe are urging the Government of Panama to expedite the selection of independent experts to evaluate the social, environmental, and economic impacts of the Barro Blanco project on the indigenous population nearby. CIEL and Earthjustice have requested information regarding the status of the expert assessment from the UNDP Office that is helping to facilitate the assessment, but have received no response.

In sum, the State of Panama has not fulfilled its national and international obligations with respect to (i) the rights to participation in decision-making of people who will be affected by development projects; (ii) CDM stakeholder consultation requirements under the CDM; and (iii) protection from state-sponsored violence. Human rights affected by the dam and Panama's failure to act include the rights to access to information, public participation, and access to justice, as well as to culture, land, health, water, food, and freedom of movement and residence, physical security and integrity, and the right to a safe, clean, healthy and sustainable environment.

The lack of adequate assessment of environmental impacts to the affected area in its entirety has enabled the authorities to avoid identifying, evaluating, and mitigating the project's impacts on the Ngäbe's environmental rights. However, it is clear that this project's impacts will have negative consequences on their right to a healthy and ecologically sustainable environment. Thus, we ask you to consider how the violation of the Ngäbe's procedural rights is leading to further violations of crucial rights for their livelihood, including their fundamental rights to land, health, culture, food, and water. As the Barro Blanco situation illustrates, measures combating climate change can eventually cause human rights violations and environmental harm when they do not include appropriate human rights guarantees.

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<sup>5</sup> March 2012 Agreement, *supra* note 3, para. 1 ("Primero").

<sup>6</sup> *Id.*

<sup>7</sup> UNDP, Informe de la Misión de Verificación, Realizada del 23 al 28 de septiembre de 2012, Panamá, Dec. 2012, available at [http://www.bananamarepublic.com/informe\\_mision\\_verificacion\\_final\\_20121219.pdf](http://www.bananamarepublic.com/informe_mision_verificacion_final_20121219.pdf).

On behalf of the Ngäbe, we respectfully encourage you to meet with members of the affected Ngäbe communities to discuss their concerns about the project's impacts on their enjoyment of a safe, clean, healthy and sustainable environment; incorporate that information, particularly on the threats to human rights and environment associated with the Barro Blanco project, including the lack of consultation with affected peoples, the role of the CDM in fostering human rights violations, and the threats to environmental defenders, into your study of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment; and take any other appropriate action within your mandate that could slow or stop the dam's constructions and/or highlight the threat to the Ngäbe's rights.

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If you have any questions, would like additional information, or wish to schedule a meeting, please contact Ms. Weni Bagama by phone at (507) 6259-7478 or Mrs. Tania Arosemena via email at [tarosemana@ciampanama.org](mailto:tarosemana@ciampanama.org) or by phone at (507) 236-0866.

Respectfully,



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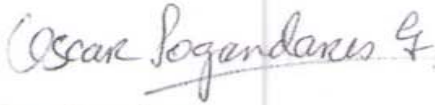


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#### SUPPORTING INTERNATIONAL NGOS

1. Astrid Puentes Riaño, *Interamerican Association for Environmental Defense (AIDA)*
2. Alyssa Johl, *Center for International Environmental Law (CIEL)*
3. Martin Wagner, *Earthjustice*
4. Katy Yan, *International Rivers*
5. Guadalupe Rodríguez, *Salva la Selva*
6. Diane Dunn, *Collective Voices for Peace*
7. Dale Sorensen, *Marin Interfaith Task Force on the Americas*
8. Anouk Franck, *Both ENDS*
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