

Forests, Indigenous Peoples and Forestry Policy in Panama: an assessment of national implementation of international standards and commitments on traditional forest related knowledge and forest related issues

Marcial Arias García

Fundación para la Promoción del Conocimiento Indígena de Panamá.

[**Mariasg@cwpanama.net**](mailto:Mariasg@cwpanama.net)

"The forest is our life and our existence. In the forest we find our food, our medicines, our housing and our knowledge. How can they think that we, the indigenous people, could destroy our life, destroying forests? We have used the forests for a truly sustainable development, only taking what we needed."

Gilberto Arias, First Kuna Cacique

1. INTRODUCTION AND BACKGROUND

This study assesses the implementation in Panama of the international commitments and most appropriate practices regarding Traditional Forest Related Knowledge (TFRK) and related forest issues. These were analyzed and studied on the basis of ascertaining how far Panama has incorporated such commitments and standards into its national policies and laws and into the management of forest resources in the field. It considers the Proposals for Action of the Intergovernmental Panel on Forests (IPF) and the Intergovernmental Forum on Forests (IFF) and the Convention on Biological Diversity (CBD), specifically Articles 8j, 10c and other related articles.

Governments, including the Government of Panama, have engaged themselves to promote and protect the use of the indigenous peoples and local communities' traditional knowledge and customary practices related to forests. Panama has supported these international commitments set out in the Programme of Work¹. In Panama, traditional knowledge and even less, traditional knowledge related to forests, has not been given the special attention granted to other equally relevant environmental issues. Presently it is not protected by laws, and although legislative initiatives exist to protect biological diversity and forests, and there are laws recognizing indigenous territories, they do not include knowledge. As an illustration, article 97 of the General Environmental Law ignores a fundamental principle: that of the consent of those who possess the knowledge. This is left to the free will of those wishing to commercialize the knowledge of indigenous and local communities. For example, article 97 is a replicate of the text of article 8j, but the word "APPROVAL" that is a principle of protection and founded prior consent, has been dropped out. The article reads as follows "the State will respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles for the conservation and sustainable use of biological diversity and promote their wider application with the involvement of such communities and encourage the equitable sharing of benefits

¹ Proposed Programme of Work (E/CN.17/IPF/1995/2), Addendum on Programme of Work (E/CN.17/IPF/1995/L.2/Add.1), Traditional Forest-related Knowledge (E/CN.17/IPF/1996/9), Traditional Forest-Related Knowledge (E/CN.17/IPF/1996/16), E/CN.17/IFF/1997/2 Proposed Programme of Work of the Intergovernmental Forum on Forests, Report of the Secretary-General: Traditional Forest-related Knowledge (E/CN.18/2004/7)

arising from them.”² One may ask why the original text has been changed, especially in the part relating to consent, a principle of the protection of knowledge, by eliminating the word “APPROVAL.” Approval and involvement are important in the protection of knowledge, and at least the indigenous and local communities should be able to say “yes” or “no” to their promotion.

The second national report to the CBD states that “the General Environmental Law of the Republic of Panama recognizes traditional knowledge (indigenous and local) in the conservation and sustainable use of biodiversity.” But it does not protect it. In a report to the CBD on benefit-sharing, mention is made of the Special Regime for Intellectual Property over the Collective Rights of the Indigenous Peoples “for the protection and defence of their cultural identity and their traditional knowledge.” However, in article 1 this same indigenous intellectual property law enables traditional knowledge, and particularly knowledge likely to be used commercially, to be addressed through a special system of registration, promotion and marketing of their rights. It practically reserves indigenous knowledge for commercial use only.

There are also community initiatives, but they do not enjoy governmental support, such as the Kuna Yala Comprehensive Development Plan (still being prepared). Presently some forest areas are being managed by the Kuna themselves, such as the Corregimiento Nargana Wildlife Area (Área Silvestre Corregimiento Nargana)³.

Unless Panama acknowledges that the issue of the traditional knowledge of the indigenous peoples and local communities is a means to preserve and protect natural resources, widening their application, as set out under article 8j and 10c of the Biological Diversity Convention and the Work Programmes and Action Plan of the IPF/IFF/UNFF, the implementation of such international commitments will not fulfil their purpose and will have major limitations. Equally, unless the National Government gives priority to indigenous issues as part of the national agenda, it will not achieve its objectives. This implies the need to take the time to assess the process of international agreement implementation in a transparent, broad and participatory manner.

Thus, the aim of this study is to provide specific recommendations to improve implementation and to ensure the faithful execution of international instruments in the indigenous communities. This article also documents the situation in Panama regarding forests, indigenous peoples and their rights with reference to traditional knowledge (section 2). We assess progress and problems in the implementation of international and national commitments (section 3), and also report on the results of several interviews with indigenous leaders involved in community projects (section 4) and present our conclusions (section 5) and recommendations (section 6).

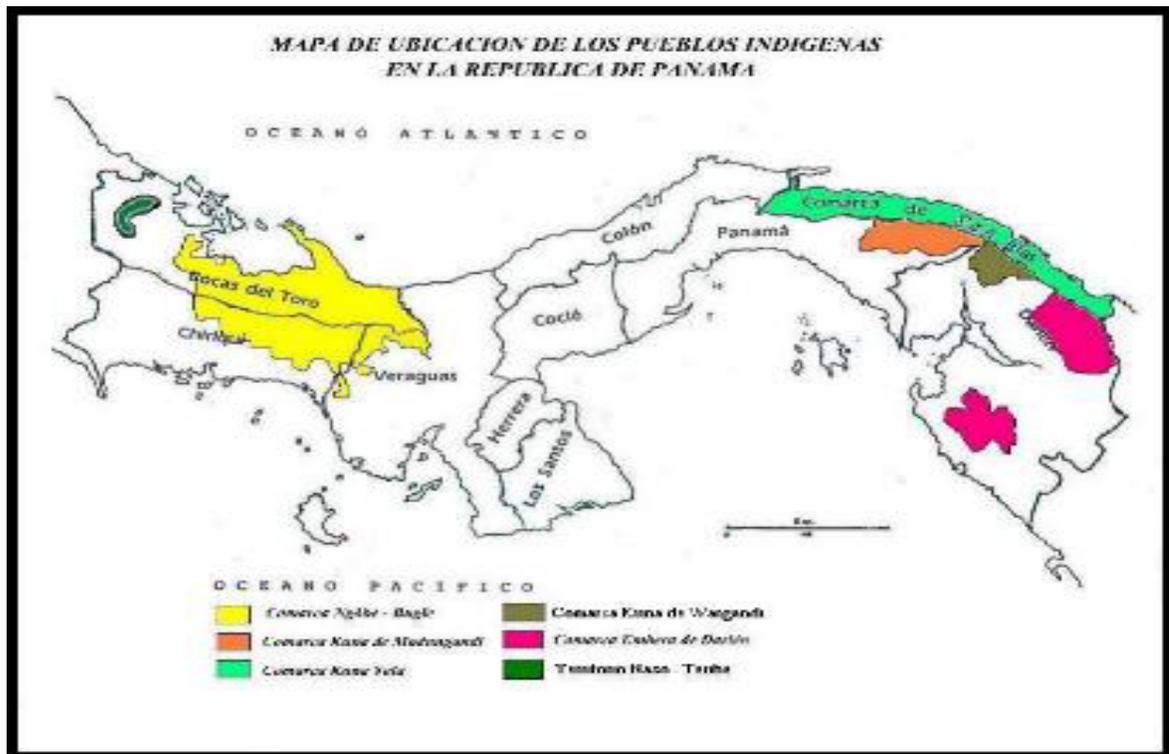
² The original text reads “Subject to its national legislation, respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles for the conservation and sustainable use of biological diversity and promote their wider application with the **approval** and involvement of the holders of such knowledge, innovations and practices and encourage the equitable sharing of benefits arising from the utilization of such knowledge, innovations and practices”

³ The Corregimiento Nargana Wild Area (Área Silvestre Corregimiento Nargana) was approved in 1994, under Resolution 022-94 of the Board of Directors of INRENARE (2/8/94), Gaceta 22.617 (7/9/94). See section 2.3.3 for more information.

2. NATIONAL SITUATION

2.1 Situation of indigenous peoples in Panama

Panama is a region showing some of the greatest biological and cultural diversity in the world. The Republic of Panama covers an area of 74,927 square kilometres (7,492,677 hectares)^{4 5}. Presently, 15,103.4 square km (20 per cent) of Panamanian territory is made up of indigenous territories recognized by law (indigenous "comarcas"). Here below we will give details of the various indigenous peoples and *Comarca* system.



2.1.1 Indigenous peoples existing in the Republic of Panama

The last National Census carried out in Panama in the year 2000, recorded 2,839,177 inhabitants, of which 285,231 (some 10 per cent) are indigenous peoples. These comprise seven well defined linguistic groups, (in numerical order) known as Ngöbe, Kuna, Emberá, Buglé or Bokata, Wounaan, Naso (Teribes or Tlorios) and Bri-Bri. They are located in three (3) Provinces in the west of the country (Chiriquí, Bocas del Toro and Veraguas), in two Provinces in the east (Darién and Comarca Kuna Yala) and some groups are to be found to the east of the Province of Panamá. The Ngöbe, Buglere, Naso and Bri-Bri are located in the west, and the Kuna, Emberá and Wounaan in the east.

TABLE 1: INDIGENOUS PEOPLES AND THEIR LOCATION

	1990 POPULATION CENSUS	PORCENTAGE
WESTERN REGION	194,769	66.8
Ngöbe	123,626	63.5
Bugle	3,784	1.9
Naso or Nasos	2,194	1.1

⁴ SIF-ANAM/ITTO-2000

Bri-bri	500 *	0.2
EASTERN REGION	64,562	33.1
Kuna	47,298	24.3
Emberá	14,659	7.5
Wounan	2,605	1.3
Non-identified	103	0.05

* Not included in the 1990 Census. This estimate is mentioned by Francisco Herrera.

SOURCE National Population and Housing Census 1990. General Comptroller of the Nation.

The Ngöbe, the most numerous group, represent 63.6 per cent of the country's indigenous population and are located in various districts in the Provinces of Chiriqui, Bocas del Toro and Veraguas. The Province of Chiriqui is home to 62,825 Ngöbe and they are concentrated in the eastern Chiricano districts of Tolé, San Lorenzo, San Félix and Remedios, where the majority of the population is indigenous. However there are also large communities in the districts of Barú, Boquete, Bugaba and David. In the Province of Bocas del Toro (51,086), the majority are to be found in the District of Changuinola, home to almost 50 per cent of the total population and in the districts of Bocas del Toro and Chiriquí Grande where they represent 73.5 percent and 85.0 per cent of the total population, respectively. In the Province of Veraguas, the Ngöbe are a minority, with 6,971 inhabitants, mainly located in the districts of Cañazas and Las Palmas.

The Naso, are located in Bocas del Toro on the banks of the Naso River, a tributary of the Changuinola, and in the area of San San. This is one of the minority groups, with a population of 2,194, settled in 11 communities, according to the 1990 Census. Leadership is exercised by King Naso, who has prevented emigration of his people to the Changuinola banana plantations and they live in small villages on the banks of the river. Traditions are maintained in spite of the fact that they are under serious pressure from development proposals.

The Bugle occupy part of Bocas del Toro and Veraguas and total 3,784 people. Historically they have been placed between the Guaymi group and mixed with the Gnöbe. They are monogamous, contrasting with the Gnöbe, but maintain the same settlement patterns, the Balseria rituals and the existence of the Sukia.

The Kuna are mostly located in the Archipelago of San Blas (Kuna Yala) with some 34 thousand inhabitants, in the Territory of Madungandi (on the River Bayano), located in the District of Chepo, Province of Panama. The census showed 1,696 in the Upper Chucunaue, the Wargandi Reserve, with close on 2,000 Kuna and near the Colombian frontier where the Communities of Pucro and Paya are located (inside the Darien National Park – DNP).

The Embera are the third group in size of population (14,659), of which close on 78 per cent are located in the Province of Darien, not only in Territorial areas but mainly in the districts of Chepigana and Pinogana. The migratory process is notorious and almost three thousand are to be found in the Province of Panama, mainly in the districts of Panama and San Miguelito and in the Bayano region of the District of Chepo, in addition to some groups in the Province of Colon.

The Wounaan population with 2,605 inhabitants, is linguistically differentiated from the Embera, but maintains unity regarding the territory and acknowledgement of institutions and authorities. They are settled in Darien and a small group of over 300 people are located in the District of Chimán in the Province of Panama.

Finally, the Bri-Bri group, which was not counted in the 1990 census, is located along the Costa Rican frontier region and connected with the Costa Rican Bri-Bri. Although mentioned by various authors in the indigenous history of Panama, they are known and considered to be part of the Guayami family. The Bri-Bri population is estimated at some 450 to 500 people, according to some authors (according to Francisco Herrera in the consultant study on the Biological Corridor).

2.1.2 Indigenous "Comarcas"

The indigenous peoples have mostly organized themselves in five **Indigenous "Comarcas"** (see table 2), which could be defined as special territories and political divisions. The first recognition of an indigenous territory by the Panamanian Government was the San Blas Territory, in 1938. In 1983 the Embera-Wounan territory in the Province of Darien was recognized and in 1996, that of the Kuna of Madugandi in the Province of Panama. In 1997 the Ngobe-Bugle territory was recognized after a long struggle by this indigenous nation against the interests of mining and logging companies and cattle-raisers who opposed the demarcation and recognition of the territory. But some indigenous peoples have still been left out, such as the Naso, the Bri bri, the Embera and Waunan collective lands.

The Kuna Yala "Comarca" has been a model for other indigenous territories in Panama. This territory existed before the creation of the Panamanian state in 1903, as the Colombian Government had recognized the Kuna Tule Nega "Comarca" in a Law of 4 June 1870 on Indian settlements. The Tule Nega "Comarca" was set up with a General Commissioner appointed by the executive power of the union. On separation from Colombia, Panama did not recognize this law.

In order to achieve consolidation as a State, the first Panamanian laws were aimed at "civilizing" the Kuna, because some of them were willing to continue supporting the Colombian government. For this purpose, the Baptist and Catholic Churches were entrusted with the mission of pacifying the Kuna rising and forbidding Kuna women to wear their traditional dress and other cultural demonstrations.

So far, all the territorial laws adopted in the establishment of indigenous territories lack strict recognition of their free determination as peoples, and still less of their autonomy. In point of fact, indigenous autonomy is implemented in the case of the Kuna, where each community has its own regulations for its inhabitants and visitors.

Most of the indigenous territories are being administrated through their traditional authorities, the Caciques, Sailas, Nokoes, Spokespeople and Secretaries by the **General, Regional and Local Congresses**. They are the indigenous peoples' supreme authority. However, the national Government only recognizes the indigenous congress as the highest regulatory body and one of ethnic and cultural expression. We are only a folkloric body, not an institution of a sovereign people that has its own characteristics.

The defect of laws creating territories is that they are very ambiguous and confused, as they set up other types of authorities within indigenous territories, such as governors, mayors, representatives, councillors, as a parallel structure to the traditional one. On several occasions these structures have given rise to conflicts with the traditional authorities regarding political decision-making.

Table 2: RECOGNIZED INDIGENOUS TERRITORIES

TERRITORIES	LAW No.
Kuna Yala(1)	2 (16 February) 1938
Embera - Wounan(2)	22 (8 November) 1983
Madungandi	24 (12 January) 1996
Ngöbe - Buglé (3)	10 (7 March) 1997
Wargandi	34 (25 July) 2000

Notes:

(1) This Law included lands in San Blas and in the Province of Chiriqui and was reformed by Law No. 16 (19 February) 1953, whereby the "Comarca of San Blas is organized". (2) Presently there are 45 Embera-Wounaan communities that do not have property deeds. They are communities that were left out of the Territory. The Wounaan people have historically shared their territory with the Embera but have different languages. (3) The Bugle are an indigenous people who have shared their ancestral territories with the Ngöbe but have different languages.

2.2 Forests: National Situation

Panama has the second highest percentage of primary forests in Central America and the highest percentage of protected areas (one third of the total area of forests) in the region. All the other primary forests in Panama are threatened and together with them the rich natural heritage they contain and the territories and livelihood of the indigenous peoples.

The Panamanian Forestry Law⁶ establishes three categories of forests in the country that are classified according to the various functions they fulfil: production, protection and special forests:

- *Production forests* are those forests where forest products of economic value can be harvested in an intensive and rational way with a sustainable production;
- *Protected forests* fulfil functions regulating and protecting essential ecological processes;
- *Special forests* are those aimed at preserving areas of a scientific, educational, historic, tourist or recreational nature and other places of social interest and public utility. To date, no national study exists identifying these special forests.

A description is given here below of the forest cover and the deforestation process; the main causes of deforestation and the impacts of forest resource exploitation through forest and mining concessions.

2.2.1. Forest cover and a history of deforestation

According to records existing in Panama, since 1850 the area covered by forests has rapidly declined. At that time it was estimated that forests covered 91 per cent of the area of the country, even after a severe deforestation process caused by Spanish colonialism which started in the sixteenth century. During the twentieth century deforestation was very noticeable (see table 3). For example, between 1947 and 1970 the forest cover declined from 70 per cent to 53 per cent. In the year 2000, the country's forested area barely reached 45 per cent of the country's total area, that is to say, half the forest cover existing 150 years ago.

Table 3 Estimations of the forest area in the Republic of Panama 1947 – 2000

Year	Area (ha)	Percentage	Source
1947	5,245,000	70.0%	Garver
1970	4,081,600	53.0%	FALLA-1978
1974	3,900,000	50.0%	FALLA-1978
1992	3,695,160 / 3,358,304	49.3% / 44%	SIF-ANAM/OIMT-2000 / WRM Project (2001) ⁷
2000	3,364,591	45%	SIF-ANAM/OIMT Project - 2000

Table 4 shows the forest cover, the deforested area, the area restored and the net change in forest cover by Province between 1992 and 2000.

⁶ No.1 of 3 February 1994

⁷ (Source: WRM Bulletin No. 46, May 2001)

Table 4: Rates of deforestation and restoration and forest cover by Province [1992 – 2000]

Province	Forest cover		Deforested area 1992-2000		Restored area 1992 - 2000		Net change in Forest Cover 1992- 2000			
	1992 - (Km2)	2000 - (Km2)	Total (Km2)	Annual (Km2)	Total (Km2)	Annual (Km2)	Total (Km2)	Total (Rate %)	Annual (Km2)	Annual (Rate %)
TOTAL	36951.60	33645.91	-3772.64	-471.58	466.96	58.37	-3305.69	-8.95	-413.21	-1.12
Bocas del Toro	3522.52	3421.91	-101.48	-12.68	0.87	0.11	-100.61	-2.86	-12.58	-0.36
Coclé	691.15	654.22	-108.51	-13.56	71.58	8.95	-36.93	-5.34	-4.62	-0.67
Colón	2844.72	2606.26	-293.08	-36.63	54.62	6.83	-238.46	-8.38	-29.81	-1.05
Chiriquí	1049.41	1211.12	-2.78	-0.35	164.48	20.56	161.7	15.41	20.21	1.93
Darién	9907.37	8531.25	-1376.12	-172.01	0.00	0.00	-1376.12	-13.89	-172.01	-1.74
Herrera	102.25	93.21	-16.13	-2.02	7.10	0.89	-9.04	-8.84	-1.13	-1.10
Los Santos	212.3	279.71	-1.29	-0.16	68.71	8.59	67.42	31.76	8.43	3.97
Panamá	5670.53	4978.32	-751.3	-93.91	59.11	7.39	-692.2	-12.21	-86.52	-1.53
Kuna Yala	2155.64	2123.42	-32.22	-4.03	0.00	0.00	-32.22	-1.49	-4.03	-0.19
Emberá-Wounaan	4018.92	3976.14	-53.44	-6.68	10.66	1.33	-42.78	-1.06	-5.35	-0.13
Ngobe-Bugle	3757.75	2939.82	-817.93	-102.24	0.00	0.00	-817.93	-21.77	-102.24	-2.72

Source: National Forestry Development and Administration Service (Servicio Nacional de Desarrollo y Administración Forestal – ANAM), 2003, Panama. SIF-ANAM/OIMT-2000 Project, report on forest cover 1992-2000.

It is important to note that the rate of deforestation in indigenous territories is low considering that there are no reforestation programmes, but traditional or indigenous practices of land use have not been taken in to account, such as the rotation of plots (for example the agricultural system of *nainu* among the *Kuna*), restoring forest areas each year. Restoration occurs through natural regeneration and through poli-cultivation with perennial species.

2.2.2. Causes of deforestation and forest degradation

There are many different factors generating the loss and destruction of natural forests in Panama, where deforestation continues at an alarming rate in some Provinces. In the National Strategy for Biological Diversity (NSBD), the Government of Panama reports that deforestation has reached an average rate of 50,000 hectares per year, mainly due to demand for land for agriculture and extensive stock-raising, the demand for fire-wood, rural and industrial expansion, the development of a major works and over-exploitation of forest wealth. Industrial logging, the construction of highways and other major works, the production of cacao in mono-cultivation systems and mining have also been identified as main causes of deforestation and forest degradation.

Direct and underlying causes

One of the most important contemporary socio-economic and ecological processes in Panama has been disorderly and unsustainable settlements in forest areas, responding to various and many-sided pressures such as highway and access route construction, the expansion of cattle-raising and agriculture and land speculation. Due to this and as a result of the lack of organized settlement programmes, the presence of settlers has been identified in most forest areas. Most of the country's forested zones and even some

protected areas and their buffer zones still show, to a greater or lesser degree, problems of settlements and logging.

Forests are constantly submitted to pressure causing their degradation, fragmentation and conversion to other uses, as will be seen here below:

- Conversion of forest areas to agriculture, stock-raising and tree plantations. These are the main causes of natural forest loss;
- Selective and unsustainable logging of species having a commercial value through concessions and permits with periods of harvesting of between one and five years. The necessary experience for long-term management has not been generated. Furthermore, the concessionaires are scantily trained and have little support to prevent settlers entering their concessions to log and burn for agriculture and cattle-raising;
- Forest degradation due to the extraction of forest products, such as trees and bushes for firewood and charcoal, palms and seeds for handicrafts, fruit and plant fibre, ornamental plants and other products;
- Forest and agricultural fires in forest lands, involving serious threats to forest conservation, biodiversity and the generation of environmental goods and services.

Mining has produced and continues to produce disastrous effects in various zones of the country, while generating conflicts with the indigenous communities living there. In 1994, 25 per cent of the country was occupied by mining concessions or requests for mining concessions and presently a little over half the area of the national territory is subject to requests for mining exploration concessions. Many mines are located in the forests and 70 per cent of the concessions have been granted in indigenous territories in San Blas, Boca del Toro, Veraguas and Chiriquí. The Panamanian Natural Resources Council reported that 70 per cent of the national territory (approximately 20,000 km²) that is considered to have mining potential is located in lands that are being claimed by indigenous groups.

Impacts of the mining industry

Several cases can be mentioned in Panama of the mining industry's destructive consequences on forests and on the peoples living in them. For example, the **Cerro Petaquilla Project** in the Province of Colon will imply the loss of at least 2,500 ha of forests to set up the facilities for the mine itself and the highways that will enable access to the zone. It is also feared that the project will affect the neighbours in the **El Copé National Park and Donoso Forest Reserve**. Between 1986 and 1992, this Province had the second highest rate of deforestation, representing 22.35 per cent of the total forest loss.

Another conflict of consideration has arisen because of copper exploitation in the Province of **Chiriquí**, between the Canadian company Panacobre S.A. and the **Ngobe-Bugle** people, the majority indigenous group in the country. Although the Ngobe-Bugle National Congress has rejected the project, the government granted a 25-year concession to the company, which can be further extended. The **Kuna** people, the second largest native population in Panama, have also rejected mining projects and are facing aggression in their traditional territories.⁸

Indirect and underlying consequences

The main indirect causes of deforestation are the following:

⁸ For more details on the impacts on indigenous peoples, see section 2.3.4.

- The construction of highways, oil pipelines, gas pipelines, railways, sea ports, airports, laying of electric cables and optic fibre communications and industrial and assembly-line corridors;
- The construction of hydro-electric projects;
- Areas protected without the consent of the indigenous peoples have been identified as one of the causes of deforestation and forest degradation⁹. The customary methods of resource management and control by the indigenous peoples have been altered by the implementation of outside rules, undermining the authority of indigenous leaders¹⁰. Officials, in collusion with private companies, have undertaken illegal logging, by means of bribes and corruption. Thus, the creation of protected areas has indirectly caused destructive consequences and serious impacts on forests are expected.

The general impacts of these activities are described here below. Sections 2.2.3 and 2.3.4 provide more details on the impacts on indigenous peoples.

Highways

The construction of the **Panama Canal and the project for a Pan-American Highway** through the Darien region on the frontier between Panama and Colombia are clear examples of megaprojects that have had destructive consequences or are expected to have serious impacts on forests and on indigenous peoples. The building of the Canal and now its extension will continue to destroy many hectares and flood peasant communities. Highways are a double-edged sword, and more so in the Province of Darien, one of the last bastions of green areas.

Highways threaten a zone of considerable biodiversity

By Cabinet decree 123 of 4 December 2002, the Government of Panama decided to "exempt the Ministry of Public Works from the requisite of selecting public works contractors and authorized it to hire CUSA (Constructora Urbana S.A.) directly for the design, funding and construction of the **Boquete-Cerro Punta ecological route**". This route will be built through the Paso del Respingo, crossing the **Volcán Barú National Park** and the **La Amistad International Park**, violating the zone's protected status. The road is along the Quetzales Trail and according to the company, will cost 7.5 million dollars. The justification given for direct hiring is the urgency of benefiting from the dry season. Although this project will not be developed in the indigenous peoples' territories, there is no doubt that it will affect indigenous communities in an indirect way, as they depend on the rivers, the animals living in the area, but above all, the presence of tourists and urban expansion, will affect them.

Hydroelectric projects

Since the beginning of the seventies, the Government has authorized various feasibility studies to gather information on the potential of the Teribe River and its tributaries for the **generation of hydro-electric energy**. The result has been a proposal to launch the construction of two hydro-electric projects, one on the upper stretch of the **Teribe River**, and the other on one of its tributaries, the **Bonyic River**. The project will directly affect the **Naso community**, with major flooding, loss of many hectares of agricultural land, forests, etc.

⁹ (Source: *Indigenous workshop on the Underlying Causes of Deforestation and Forest Degradation. Quito. Ecuador, 1998.*)

¹⁰ IAITPTF (199x), "Pueblos Indigenas, Bosques y Biodiversidad". P. 153.

Apparently the Government decided to postpone the project. However, almost thirty years later, a small group of investors re-launched it, requesting a Environmental Impact Assessment (EIA), and the concession of the water necessary to carry out the project. In 1998, the National Environmental Authority approved the EIA and the concession of water for a period of 50 years. The group also obtained a concession to generate energy from the Regulating Body for Public Services, also for a 50 year period. However, at that time, Panamanian environmental legislation was less strict than it is now. The new environmental legal framework demands that any project with important impacts on the environment must arrange for a process of citizen participation, a step that has not yet been taken.

Presently the "**Bonyic Hydro-electric plant**" is the property of a company called Hidro Ecológica del Teribe S.A. and its main shareholder is a Colombian company known as Empresas Públicas de Medellín (EPM). It expects to start the operational stage during the second half of 2006, the total cost of the project will be approximately 50 million US dollars, for a reservoir of 800,000 cubic meters and a dam wall 30 metres high and 135 metres wide.

Empresas Públicas de Medellín (EPM), the largest purveyor of public services in Colombia will build, through one of its branches, a hydro-electric plant in Panama costing 50 million US dollars for the benefit of the Naso Tjer Di indigenous peoples. The project is for a capacity of 30 megawatts. The Naso people are organized under a monarchy – the only one in the Americas to be recognized both nationally and internationally. However, currently the community leadership is being threatened by internal divisions, as the EPM has powerful economic influence.¹¹

The accelerated rhythm of forest destruction is one of the most serious environmental problems in Panama, as this country still conserves part of its original forest cover. Furthermore, these projects do not contribute to conservation and forest protection, and endanger the situation.

2.2.3. Exploitation of forest resources and other natural resources: forest and mining concessions

The granting of **forest concessions** in Panama is regulated by the Panamanian Forestry Law¹² and Resolution No. 05.98 of the Board of Directors.¹³ Article 27 of the Forestry Law stipulates that "the forests belonging to the State's Forestry Heritage may be used in one of the following ways..." and item 3 of said article goes on to say "through concession for forest use granted by INRENARE (presently ANAM), to individuals or corporations."

Indigenous people can participate as individuals but outside territorial demarcations as indigenous lands cannot be attached, are imprescriptible and cannot be transferred according to article 102 of the General Environmental Law. However, article 101 of the same Law reads: "The use by their members for industrial or commercial purposes of resources located in community or indigenous peoples' lands requires authorisation from the appropriate authority." The appropriate authority can be the National Environmental Authority or the Indigenous Congresses. Independently, this authorization is in contradiction with article 102.

¹¹ (Source: La Prensa Digital, 6 October 2004)

¹² **N° 1 of 3 February 1994** "Whereby the Forestry Legislation of the Republic of Panama is established and other provisions are promulgated."

¹³ "Whereby Law No. 1 of 3 February 1994 is regulated and other provisions are promulgated."

The modalities foreseen in the Forestry legislation for granting forest concessions are the following (Article 28 of Law No. 1 of 3 February 1994):

- Up to five thousand (5,000) hectares, by private contract (this includes concessions for extracting sunken wood from lakes).
- For areas over five thousand (5,000) hectares, the procedure of public bids will be used, foreseen in the Fiscal Charter, to be awarded to whoever offers the highest stumpage value according to the forest species.

Since 1994, 25 per cent of the country's territory has been occupied by **concessions or requests for mining concessions**, and at present a little over half the national territory is subject to requests for mining exploration concessions. Many mines are located in forests and 70 per cent of the concessions have been granted in indigenous territories in Kuna Yala, Bocas del Toro, Veraguas and Chiriqui.

However, the Government has created a series of policies, laws and Executive Decrees related with indigenous peoples' rights and with the implementation of international instruments, including the agreement on the UNCED forestry principles¹⁴. In 1996 a discussion took place with the Chamber of Mining on the draft for law 90, known as the General Environmental Law. In addition to fines and severe penalties for damage to the environment, it finally establishes the consent of the Indigenous Peoples for approval of projects in their territories, a principle that is coherent with the constitutional text. The mining code was modified by Law No. 3 of 28 January 1988. It establishes incentives for the mining industry in Panama.

Over the past few years there have been some initiatives seeking to implement (indirectly or directly) some of the IPF and CBD Proposals for Action. According to the focal point for the National Forestry Plan, the General Administrator for the National Environmental Authority (ANAM), "Governmental bodies have established mechanisms to incorporate traditional forest related knowledge in the sustainable planning of forests, in conformity with Article 8j, through the Programme for Management of the Wildlife Area in Kuna Yala projects." Additionally, it is maintained that the Project on Management of Cativo (*Prioria copaifera*) Stands and Non-Timber Forest Products with the indigenous communities in Darien¹⁵ is also included. However, this project was an initiative of the Kuna communities with the support of international NGOs, which at first endorsed this proposal and ANAM contributed to implement small agro-forestry projects. At present they do not receive support from any governmental or international body.

There is no doubt that true recognition of forest-related indigenous knowledge is important. This recognition is at an early stage because the national Government has not given priority to indigenous knowledge as a part of sustainable development and as a part of the national agenda.

¹⁴ United Nations Conference on Environment and Development (UNCED)

¹⁵ Technical Report on Forest Ecosystems prepared on the basis of decision IV/7 adopted at the Fourth Meeting of the Contracting Parties, assessing the elements of the work programme for Forest Biological Diversity in the framework of the Convention on Biological Diversity.

2.3. Indigenous peoples, rights and traditional knowledge

2.3.1. Traditional forest-related knowledge

Panama has ratified many international conventions that respect and recognize the indigenous peoples' traditional knowledge, such as the Convention on Biological Diversity, which is aimed at the conservation of biodiversity, sustainable use of natural resources and fair and equitable benefit-sharing from the use of natural resources. However, article 8j of the Convention also establishes that the States, subject to their national legislation, shall respect, preserve and maintain the knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles, for the use of the natural resources located in their territories. This means that the States must respect the principle of spirituality and of what is sacred as practiced by the indigenous peoples regarding the use of their surrounding natural resources.

The Kuna people do not recognize the jurisdiction of the national authorities insofar as it addresses activities they have not been consulted over, and that do not comply with article 8j of the Convention on Biological Diversity, which demands the approval of the indigenous peoples to comply with the principle of prior consent.

"NAINU" AGRICULTURE AMONG THE PANAMANIAN KUNA: AN ALTERNATIVE FOR NATURAL FOREST MANAGEMENT

The journal "Etnoecologica" Vol. 6 No. 8, pages 84-99, in its article on "Nainu" agriculture among the Panamanian Kuna: an alternative for natural forest management, by Geodisio Castillo, describes the different agricultural systems known as "nainu." These are the following: the forest-temporary crops-fallow system or cultivation on slopes, the agriculture-agro-forest-agriculture system or family plots, riparian market gardens of "puki" (*Ipomea* sp.) or alluvial (sediment) market gardens on river banks, market gardens on coral islands, agriculture with trees bordering "nainu" and the various combinations of annual, perennial and tree crops in a "nainu." The most common combinations are "masi" + "ogob" (Coconut) and "masi" + "niigla" (Cecropia). Mixed crops are very common, among them "oros" (*Oriza sativa*) + "masi" + "oba" (*Zea mays*) may be mentioned. Forest timber products are also used, mainly for the construction of huts (houses) and dugout canoes and non-timber forest products for use in medicine-botany, handicrafts and food." This is concrete proof of the existence of forest-related traditional knowledge, and also shows that mono-cultivation is not rooted in Kuna culture.

2.3.2. Indigenous peoples' territorial rights and land tenure

In 1957 a new Fiscal Charter was promulgated, with the main merit of creating procedure and principles in force today, which the Agrarian Charter, with a few modifications follows to the letter. Over this period, land was administrated by the Ministry of the Treasury.

The Agrarian Reform in Panama was born as a result of the Alliance for Progress Programme, specifically the document known as the "Punta del Este Charter," setting out the need to promote Comprehensive Agrarian Reform programmes, geared at an effective transformation of structures and unjust land tenure systems and land exploitation, aimed at substituting the large landowning and dwarf owning regimes by a fair property system. As a result of the "Punta del Este Charter" agreements in August 1961, our country adopted Law 37 of 21 September 1962, known as the Agrarian Charter, which entered into force on 1 March 1963. Later, on the basis of Law 12 of 25 January 1973, the Agrarian Reform Commission ceased to exist and the Ministry of Agriculture and Livestock Development was created, amalgamating almost all the institutions that were linked to the Agriculture and Livestock sector. However, the Agrarian Charter is now obsolete.

The five existing regional (*comarca*) laws did not include all the expectations of the Indigenous Peoples. For example, in the case of the Kuna, it may be understood that the government representatives at the time the regional law and delimitation were drawn up only consulted the leaders (if in fact a consultation did take place). As a result, the Kuna continue to fight for total recognition of their territory. In the case of the other regions, the question is how far did the indigenous peoples actually participate? Furthermore, many Embera – Waunan communities were left out of the limits of the Embera – Waunan region, not to mention the Ngobe-Bugle where major interests of mining, cattle-raising, coffee plantations, etc., were involved.

In the absence of a policy for land tenure arrangements contributing to land tenure security, the indigenous peoples of Panama have resorted to the country's Constitution to get the Government to recognize their territorial rights and right to land tenure, clearly set out in article 5, which reads as follows:

*"The Territory of the Panamanian State is politically divided into Provinces and these into districts and the districts into "corregimientos." **The Law may create other political divisions, either to submit them to special regimes or for reasons of administrative or public service convenience.**"*

Furthermore, in its article 123¹⁶ the Constitution sets out that

"The State shall guarantee the indigenous communities reservation of the necessary lands and the collective ownership of these lands to achieve their economic and social welfare. The law regulates procedure that must be followed to achieve this end and the corresponding delimitations within which private appropriation of land is prohibited."

These articles of the Constitution have served to justify territorial delimitations subject to special regimes and the special nature granting the self-government and autonomy enjoyed by the indigenous peoples of Panama. However, very often these articles have been poorly interpreted by Government officials and by indigenous leaders, and for this reason we can find some indigenous laws that are not subject to a special regime but interpreted as Provinces, with the same organic structure as a Province.

2.3.3. Indigenous peoples and protected areas

Over the last few years, many Governments have designated indigenous territories as protected areas, without consulting the local population, because the indigenous communities prefer to have total control over their territory. Through the figure of protected areas many rules of the game can be implemented in which the indigenous communities are not directly involved in decision-making, such as co-administration, regulations going against their idiosyncrasy and the violation of their autonomous principles. In indigenous territories, protected areas should be determined by the indigenous population itself, without affecting their vulnerability.

Indigenous Peoples were living in areas that are presently protected before the creation of the Panamanian State. In spite of this fact, the National Environmental Authority (ANAM) now forbids them to use this territory in a traditional way. The creation of protected areas, called parks, usually in areas inhabited by indigenous peoples, implies the prohibition to hunt or fish or cultivate the land and the traditional use of natural resources, thus affecting the existence of these peoples whose cosmology revolves around their relationship with

¹⁶ In chapter 8 of the Agrarian regime

Mother Earth. This is what is happening for example in the Darien National Park where approximately 40 Embera and Wounaan communities live, together with two Kuna communities (Pucuru and Paya) and in the La Amistad International Park, where the Naso-Teribe and Bri-Bri peoples live in harmony.

It is important to note that before declaring indigenous territories Protected Areas, many circumstances should be taken into account. The Indigenous Peoples have preserved and protected their territories without declaring them Protected Areas.

Indigenous protection and management: The Corregimiento Nargana Wildlife Area

The **Nusagandi** project, located two hours away from the city, was the initiative of a group of Kuna workers, who were employed in various United States bases in the Panama Canal area. Nusagandi is a very valuable area in **Kuna** culture, in spite of the fact that they have no settlement in the area due to the fact that for many years it has been the place from where they have monitored the intrusion of groups of settlers in the Region. The area, with its natural forest, hosts an infinite number of species of flora and fauna, living there under the care of the Kuna who believe in symbiotic harmony with nature.

Concerned by the constant incursions of people who are foreign to the Kuna people, and who were becoming a threat to the peace of the territory, they decided to organize themselves. Non-indigenous people from various points of the Republic were coming to invade the territory, many of them wanting to settle, some mining for gold and using chemicals, others poaching, among other activities, thus violating the peoples' integrity. These Kuna people have struggled to maintain the rich biodiversity of the site, in a territory that they have gained through much sacrifice and the blood of many generations.

In view of this situation, the worker sons of the Region proposed establishing their presence in the zone in the hope of curbing the intrusion of non-indigenous people who were usurping their lands. A project was set up, initially called Udirbi. They established a fee among all the workers and started works in the area, in what would finally become a Biological Centre, today known as NUSAGANDI. In this process an attempt was made to transform the traditional knowledge present in people's memories, setting it out on paper and finally converting it into the first phase of a general plan for the management and development of the Region.

Presently all the communities in the Corregimiento de Nargana are carrying a sub-project known as "**Community protection and monitoring in the Western Region of the Kuna Yala Area.**" To achieve implementation of this subproject, the CBMAP Project is providing B/.15,316.62 and in turn, the community contributes B/. 6,516,00 in labour. The objectives of this sub-project consist of developing community monitoring of the forests in the area of Nusagandi and identifying the activities of groups of settlers that may be entering the zone. Their aim is to make an assessment of the situation in Nusagandi in order to prepare plans to make use of the area. Furthermore, this subproject will directly and indirectly benefit the 15,387 inhabitants of the Corregimiento de Nargana.

However, there is no doubt that many indigenous territories are being threatened by logging and mining companies, industrialists, settlers, etc. These plots of land and territories may be declared protected areas for conservation according to both traditional

and national standards. For example, in the case of the Kuna, "An mar Igar" (the Basic Law, statutes and regulations) enable them to declare a protected area.

The Environmental Law considers "co-administration under the principle of prior, free and well founded consent," but this is in contradiction with the indigenous peoples, because in Panama their territories or Regions are respected as being semi-autonomous and their own regulations are applicable. Is it only when problems arise regarding the implementation of protection that resort should be made to "co-administration, under the principle of prior, free and well founded consent"? This mechanism exists and should be used from the start.

Therefore, the adoption of measures aimed at achieving recognition of the traditional rights of the indigenous peoples over their territories is a central aspect for the sustainable use of forests and equitable benefit-sharing. If these forests still exist (when so many others have been destroyed) it is precisely because of the presence of indigenous peoples (and not in spite of their presence). It is time to recognize this fact and for their rights to be definitively ensured.

Table 6 **Protected areas by management category – year 2000**

N°	Management category	Area (Ha)	Percentage
1	National Parks	1,443,394	59
2	Forest reserves	346,413	14.1
3	Wildlife refuges	39,165	1.5
4	Protected forests	336,959	13.7
5	Wetlands	119,525	4.9
6	Natural monuments	5,739	0.2
7	Protected landscapes	605	0.02
8	Recreational areas	408	0.01
9	Zones for water protection	2,520	0.1
10	Wildlife areas	100,000	4.1
11	Biological Corridor	31,275	1.3
12	Hydrological Reserve	26,122	1.0
13	Multiple use area	2,000	0.08
	TOTAL	2,454,125	100

Source: National Service for Forest Development and Administration, ANAM, 2003, Panama

2.3.4. Mega-projects and corruption are a threat to indigenous territories and traditional knowledge

Indigenous territories, independently from their legal status, are now considered to be the last forested areas of Panama, rich in flora, fauna and in timber, water and mineral resources. These resources are attractive to mining, pharmaceutical, tourist and logging companies and also for the generation of electricity and for mega-projects funded by multilateral banking.

The sector most affected by corruption is illegal logging that prevails in indigenous communities, with the participation of high government officials who bribe some indigenous leaders to promote and permit natural resource exploitation in areas or surrounding indigenous territories through their system of concessions, giving permits to logging companies.

There are also serious problems for the indigenous peoples and their territories regarding the extractive sector's laws, policies and practices in Panama. The Government has already approved major concessions for **copper and gold mining** in the territories of the Ngobe-Bugle and the Kuna (Mining exploitation contract No. 32, signed between the Government of Ernesto Perez Balladares and the Panacobre S.A Company (Tio mine Resources Inc., Adrian Resource, Innet Mining Corp.) and other concessions granted to national and international companies.

In the case of **Kuna Yala**, concessions granted to the Canadian company **Western Keltic Mines Inc.** span over 50 per cent of the Kuna territory (under the same Mining Exploitation contract No. 32). They have been rejected by the Kuna General Congress as they have not been subject to prior consultation, in addition to being an open violation of the autonomous principles of the Kuna. Historically, only the Kuna have made use of the exploitation of existing natural resources, that is to say, no foreign company has entered to prospect and exploit natural resources in Kuna territory. Therefore these concessions have been set aside, but this does not mean that the contract is no longer valid - at any time the national Government can produce it for its implementation.

2.3.5. Protection of Indigenous Intellectual Property

Recently, the Legislative Assembly of the Republic of Panama established a Special Regime for Intellectual Property over the Collective Rights of the Indigenous Peoples¹⁷ for the protection and defence of their cultural identity and their traditional knowledge. The Law is aimed at protecting the collective intellectual property rights and traditional knowledge over their creations, such as inventions, models, drawings and designs, innovations contained in images, figures, symbols, graphs, petroglyphs and other details, including the cultural elements of their history, music and art and traditional artistic expressions that may have commercial use, through a special system for recording, promoting and marketing their rights, in order to highlight the socio-cultural values of indigenous cultures and grant them social justice.

Main laws over Indigenous Intellectual Property

- Copyright Law¹⁸. This law approves the copyright law and that of related rights, setting out other provisions.
- Industrial Property Law¹⁹. This law promulgates provisions on industrial property.
- Indigenous Intellectual Property Law
- Law for the Special Regime for Intellectual Property over the Indigenous Peoples' Collective Rights for the Protection and Defence of their Cultural Identity and their Traditional Knowledge²⁰, and other provisions.
- Regulation of Law No. 20, of 26 June 2000²¹ of the Ministry of Trade and Industry. Executive Decree No. 12 (20 March 2001).

Like all the laws aimed at the Indigenous Peoples, they are very ambiguous and weak. It is assumed that the objective of Law No. 20 is to protect and defend the indigenous peoples' cultural identity and traditional knowledge, however this same law leaves marketing of their rights up to free will – that is to say, under marketing everything can be sold, much knowledge does not have a monetary value, but for the Western world everything has to be

¹⁷ Law N°20, of 26 June 2000

¹⁸ Law No. 15 (8 August 1994).

¹⁹ Law No. 35 (10 May 1996)

²⁰ Law No. 20 (26 June 2000)

²¹ Executive Decree No. 12 (20 March 2001)

resolved under that principle. Furthermore, much recognized traditional knowledge is linked to the spiritual and ceremonial part.

Another important element in the protection and promotion of indigenous peoples' knowledge is life system management based on biological resources and the advisability of equitable sharing of the benefits arising from the use of traditional knowledge, innovations and relevant practices for the conservation of biological diversity and the sustainable use of its components.

The CBD recognizes the customary use of biological resources, in accordance with traditional cultural practices compatible with the demands of conservation or sustainable use, but this use has not been recognized in Law 20.

The national government in its **thematic report on benefit-sharing** states that:

"the issue of intellectual property and traditional knowledge related with genetic resources is a matter of great interest and concern on the part of the Panamanian authorities and also of the indigenous communities."

However, it does not state whether it recognizes them or not. It may be affirmed that Law 20, does no more than recognize artistic and folkloric elements, setting aside genetic resources.

Law 20 only recognizes collective rights over: a) the traditional dress of the Kuna, Ngöbe and Bugle, Embera and Wounaan, Naso and Bri bri indigenous peoples; b) musical instruments, music, dance, oral and written expression; and c) traditional tools and art and the technique for their making, expressed in national raw materials, their processing, elaboration, combination of natural dyes, such as carvings in ivory palm and semi-precious wood, traditional baskets. It also points out that the right of use and marketing of art, handicrafts and other cultural manifestations based on tradition of the indigenous peoples, must be ruled by the regulations for use of each indigenous people, approved and recorded with the General Office for Industrial Property of the Ministry of Trade and Industry, or with the National Copyright Office of the Ministry of Education.

3. PROGRESS AND PROBLEMS IN IMPLEMENTATION

3.1. International Commitments

According to the **UNFF** web page, to date the Panamanian Government has not submitted a national report to the Secretariat of the United Nations Forum on Forests. Neither has it made a national report for **UNFF-4** regarding issues that are part of the programme for the fourth period of sessions, mainly social and cultural aspects of forests and forest-related traditional knowledge (FRTK).

Furthermore, it is important to note that the Panamanian State signed the **Convention on Biological Diversity (CBD)** on 5 June 1992 in Rio de Janeiro (Brazil) and ratified it through Law No. 2 of 12 January 1995. The signature of the CBD by Panama engages the country to take specific measures regarding comprehensive management of the biological diversity contained in its territory. Article 6 of the CBD notes two important tools for the arrangement of solutions at the level of each signatory country: the preparation of national strategies, plans or programmes for the conservation and sustainable use of biodiversity, and the integration of this perspective in other sectoral or inter-sectoral plans, programmes and policies. It has also committed itself to consider the participation and consultation of

indigenous peoples, respecting their traditional knowledge, as set out in articles 8j and 10c of the Convention. The Government has sent various reports to the CBD Secretariat and some of the points are assessed here below.

3.2 Participation

This assessment finds more development in the implementation of the Convention on Biological Diversity and the IFP/IFF, but certain limitations in the participation of the Indigenous General Congresses and the Indigenous Peoples' organizations. Here below we will briefly describe and evaluate various national strategies that the Panamanian Government is developing for the conservation of biodiversity, with a focus on participation.

The following chart shows a summary of the policies, laws and executive decrees affecting indigenous and local communities. Most of them have not been consulted in a direct way with the full and effective participation of the Indigenous Peoples. Furthermore, they are unaware of the existence of such policies and laws.

Summary of Government policies, laws, decrees, resolutions and bills affecting indigenous and local communities

- Law 24 of 7 June 1995, establishing wildlife legislation in the Republic of Panama and promulgating other provisions.
- Law of 3 February 1994, establishing the Forestry Legislation of the Republic of Panama and promulgating other provisions.
- Creation of up-dated Legislation for the sustainable management of productive forests and forest protection and control (Forestry Law 1) of 4 February 1994.
- Creation of Forestry Police with units of the National Police, Programme at a national level for the monitoring of wooded areas.
- Law of 30 December 1994, on Environmental Impact.
- Resolution of the Board of Directors 09-94, creating a National System of Protected Areas and defining management categories.
- Creation of a Law for Reforestation Incentives (Law 24 of 23 November 1992).
- Coordination agreements with public and private bodies developing activities tending to create deforestation processes.
- Establishment of policies for Forest concessions in productive forests under the criteria of Resource sustainability (63,000 hectares given in concession).
- Establishment of forestry projects in rural areas promoting sustainable forest development.
- Institutional Forest Warden and Forestry Extension Programme with the support of the Ministry of Education.
- Creation of Protected Areas (Parks, Reserves, Protected Forests, etc.).
- Advertising Campaigns to create citizen awareness on forest protection and rational use.
- Creation of the Environmental Statistics Commission, a satellite account has been opened in the National Account System.
- Submission of a profile to the ITTO to carry out a national forestry inventory for forest resource planning and sustainable development.
- Establishment of a statistical programme to gather Geographical Information to prepare maps on the country's forest cover.
- Launching of the Cativo Stand Project to carry out a Pilot Plan for the sustainable management of cativo stands in Darien. Financed by ITTO.
- Protection of 28 per cent of the National Territory (2,200,500 ha) outside the indigenous Regions protected by special Laws.
- General Environmental Law No. 41 (1 July 1998)
- Decree creating the National Council for Sustainable Development. Ministry of the Presidency Executive Decree No. 163 (25 November 1996)
- Copyright Law adopting the law on copyright and related rights and promulgating other provisions. Law No. 15 (8 August 1994).
- Industrial Property Law, promulgating provisions on industrial property. Law No. 35 (10 May

1996)

- Law on Indigenous Intellectual Property. Law on a Special Regime for Intellectual Property over the Collective Rights of the Indigenous Peoples for the Protection and Defence of their Cultural Identity and Traditional Knowledge and promulgating other provisions. Law No. 20 (26 June 2000)
- Regulation of Law No. 20 of 26 June 2000. Ministry of Trade and Industry. Executive Decree No. 12 (20 March 2001)
- Decree creating the National Council for Indigenous Development. Ministry of Government and Justice. Executive Decree No. 1 (11 January 2000)

The National Environmental Authority, through the National Biodiversity Strategy, clearly recognizes a lack of participation on pointing out: "An almost total absence of participation of local, indigenous, peasant and Afro-Antillean communities has been identified in the task of joint management and protection of protected areas." If we analyze each law issued it would seem that they all have a target, not the indigenous peoples, but the group governing the country at the time. An example of this are the requisites demanded for participating in forestry concessions; our participation in reforestation incentives is even less possible. Traditional authorities have not been consulted in the preparation of most of the forestry Laws because there is no single and clear policy on indigenous Regions and they have been unable to correctly interpret territories under special regimes. The Laws promulgated so far have not considered the presence of indigenous peoples and therefore there are always major gaps and limitations to their implementation in indigenous communities.

On forestry legislation, independently from the participation of indigenous peoples, these Laws are to defend forested and green areas, but this leads us to ask why the settlers or non-indigenous people continue to invade indigenous lands and territories, indiscriminately deforesting, especially when the Government reports recognize that the main causes of deforestation and loss of biodiversity are not linked to the indigenous peoples. This means that the Laws only cover part of the national territory and we need other Laws to defend indigenous territories.

The national Government has requested financial support from GEF, through cooperation agencies, such as UNDP, ITTO, IDB and the World Bank for projects promoting the application of the work programme centred on forest biodiversity. Some may ask what type of project has been carried out in the indigenous communities. In its thematic report to CBD on forests (page 12), the government replies in a superficial manner to the Secretariat's questions, stating that "...in other indigenous Regions..." We have been unable to identify which Region they are talking about, so far no project centred on forest biological diversity has been seen. Furthermore what needs to be done first of all is to protect and promote traditional knowledge related to forest management.

In this same report there is a question on methodology to improve integration of conservation and sustainable use of forest biodiversity under a holistic approach of sustainable forest planning on a national level. The national Government reports that there is a clear institutional policy in Panama on the need for sustainable forest-planning and that State policies to carry out this planning have been prepared and implemented. However, at the end of the report, the following statement is made "...However, a national methodology needs to be prepared integrating this concepts of conservation and sustainable use, guaranteeing participation at all levels (institutional, organized groups, rural communities)." (page 12). It is assumed that the indigenous peoples come under the heading of rural communities. These answers indicate some weaknesses in Panama's policy on conservation and sustainable use of forest biodiversity.

In fulfilling the work programme on article 8j of the Convention on Biological Diversity it is important to emphasize whether the participation of the Indigenous Peoples is really being taken into account. As we explained in the introduction, the General Environmental Law has eliminated the word "Approval," the only word it eliminates from the original text of article 8j of the Convention on Biological Diversity. For many experts on international law, this is a principle of consent, but in its comments the national Government insists that the principle of the indigenous peoples' well founded, prior consent is recognized and resorts to a assimilationist and integrationist convention: ILO convention 107, now substituted by ILO convention 169 that Panama has not yet ratified.

Also in its report to the Secretariat on the application of article 8j of the CBD, the national Government mentions Law 20 of 26 June 2000. For the indigenous peoples, this law is very limiting as it does not recognize all their collective rights, or all types of traditional knowledge, but is limited to recognizing folkloric manifestations and expressions.

Equally, it mentions a State coordination for the establishment of mechanisms to facilitate and promote liaison with indigenous and local communities, setting up through Decree No. 1 of February 2000, CONADI, the National Council for Indigenous Development (presently not in operation). Therefore where there is an indigenous unit it would come under the control of each ministry and office, and each one would operate according to its budget.

In this box we list relevant national initiatives.

National Commitments: national initiatives in the framework of environmental strategies

- Decree creating the National Council for Sustainable Development. Ministry of the Presidency. Executive Decree No. 163 (25 November 1996). However this Council lacks indigenous participation and is not concerned about traditional knowledge.
- Decree creating the National Council for Indigenous Development. Ministry of Government and Justice. Executive Decree No. 1 (11 January 2000). This is an incipient Council that is attempting to substitute the Indigenous Policy of the Ministry of Government and Justice as a bureaucratic and political entity. So far it would seem that it has only served the party interests of the Government of the day to continue enrolling people in the ranks of its party. It does not have a clear policy towards indigenous peoples.
- Coordination agreements with public and private bodies developing activities tending to create deforestation processes. These are intergovernmental coordination efforts made among themselves without indigenous participation.
- The establishment of policies for forest concessions in productive forests under the criteria of the sustainability of this resource (63,000 ha have been given in concession). According to this policy of forestry concessions, the indigenous peoples cannot enjoy credit as their lands and territories are not profitable, cannot be attached and are not transferable.
- The establishment of forestry projects in rural areas promoting sustainable forest development. These projects have the same limitations and do not consider indigenous Regions.
- Institutional Programme for Forest Wardens and Forestry Extension with the support of the Ministry of Education. This programme is only implemented on the outskirts of indigenous regions. For example the Kuna have various forest workers in the Kuna Yala Wildlife Area, but they are not paid by the Government nor do they

- receive governmental training.
- Submission of a profile to ITTO to carry out a national forestry inventory to achieve planning and sustainable development of forest resources. The indigenous peoples are totally unaware of the submission of this profile.
 - Establishment of a statistical programme to gather Geographical Information to prepare maps on the country's forest cover. This work is carried out by various public and private institutions without indigenous participation. For this reason, the Kuna are developing their own mapping process of their territory.
 - Launching of the Cativa Project to carry out a Pilot Plan for the Sustainable Management of the Darien cativo stands, funded by IMMO. This project was managed by ANAM and the Smithsonian Institution for Tropical Research, without co-management by the indigenous peoples in decision-making, or in the execution of the projects.
 - Creation of Protected Areas (Parks, reserves, protective forests, etc.).
 - Resolution No. 09-94 of the Board of Directors creating the National System of Protected Areas and defining management categories.
 - Law of 30 December 1994, on Environmental Impact.
 - General Environmental Law, Law No. 41 (1 July 1998)
 - Advertising Campaigns to create citizen awareness on forest protection and rational use.
 - Creation of the Environmental Statistics Commission, it has been decided to open a satellite account in the System of National Accounts. Protection of 28 per cent of the National Territory (2,200,500 ha) outside the indigenous Regions protected by special Laws.

4. INDIGENOUS EXPERIENCE AND ASSESSMENT

In order to analyze and assess forestry policies and practices, the author of this report interviewed various indigenous leaders who were involved in the development of plans and projects in indigenous communities.

A frequent complaint is the lack of effective participation in the formulation of policies and standards. As observed by the Legal Advisor of the General Indigenous Congresses and Director of the Indigenous Programme of the Centre for Legal and Public Assistance (CEALP):

"...participation of Indigenous Peoples' organizations and indigenous NGOs has been improvised to justify external funding. In the process of preparation and implementation of national plans on forests and in the preparation of the National Biodiversity Plan, the traditional authorities of the indigenous communities have not been active or effective. From my point of view, the Government is not seriously interested in biodiversity in indigenous territories, so far there has been no coordination, although the Law clearly authorises it and no workshops have been held in the indigenous communities to carry out consultations."

The Advisor added:

"...the Government has made monographic studies on the assessment of the effect of fires and of exotic species on forest biological diversity and their influence in the planning of forest and savannah ecosystems and here again, the indigenous communities were not consulted. Taxonomic studies and

inventories have been made on a national scale, in provision of a basic assessment of forest biological diversity. None of these studies have considered traditional knowledge."

He also stated that:

"The National Environmental Authority (ANAM) shall coordinate with the traditional authorities of the indigenous peoples and communities, all matters regarding the environment and natural resources existing in their areas." However, in practice and in the implementation of activities, this is not taken into account..."

For example, when the Biological Corridor started to be implemented in the Kuna territory, the first confrontation was about who takes decisions. According to the Law, ANAM is the authority entrusted with overseeing environmental matters on a national level and the Kuna maintained that they are the owners of their territory and therefore it is the Kuna who should take the final decision on any project to be implemented through the biological corridor. This dilemma still exists.

Regarding projects existing in indigenous territories, the Advisor stated that:

"...projects carried out in indigenous communities have not been effective because most of them have not complied with their objectives. For example, presently projects have not been continued due to lack of financial resources and follow-up by the donors who started the projects. Regarding implementation of the Convention on Biological Diversity, there are laws on this matter, the problem is the State and the Government interest in not implementing such Laws adequately, they only want to use the name of the indigenous peoples to attract resources."

For his part, the Executive Director of the KaluKoskun Institute and representative of the Kuna Congress to the National Biodiversity Commission (CNB) stated that:

"The participation of Indigenous Peoples is an incipient process, it is only recently that the Kuna have been involved in the CNB, this commission has not addressed the issue of the Indigenous Peoples' traditional knowledge, the commission is dominated by scientists who have a very partial position regarding scientific subjects and do not have a holistic vision of the environment. Nor do they take into consideration cultural and social aspects of biological diversity. This process is still incipient. We have only had three meetings. I cannot affirm that the participation of Indigenous Peoples' Organizations is effective and full as we are in the regulation of the Commission, but we must make the most of the opportunity given to us by the Environmental institution."

Geodisio Castillo, the former director of the Kuna Yala Ecology and Wildlife Area Management Programme (PEMASKY), author of various articles on the Kuna's traditional knowledge on Kuna agriculture considers that:

"...indigenous participation must be seen from two angles. There are many alternatives to enable the Indigenous Peoples to participate in processes at a national level, the existing institutions have their doors wide open, sometimes it is us, the indigenous peoples who do not take the initiative of participating... I understand that it may also be lack of awareness of information on the resources existing at institutional level. Also there is no doubt that

Governmental structures do not disseminate information to indigenous organizations towards full participation."

Regarding the project, he pointed out that the last project to be carried out in Kuna Yala was on forest management, with a proposal submitted to the International Tropical Timber Organization (ITTO), through the National Environmental Authority (ANAM). The project had various components: one on forest management and Kuna knowledge of agriculture. Material was gathered but not systematized due to lack of follow-up and financial resources. The project was executed by PEMASKY and was expecting direct support (in accordance with the AEK/PEMASKY-ITTO-ANAM Agreement) from ANAM, but this did not occur. (if the author wants to add this)

An indigenous leader and advisor to the General Congress on Collective Lands, harshly criticised the national government and NGOs for using the name of indigenous people and poverty to obtain financial resources, and stated that:

"Projects developed in the province of Darien are not transparent and there is no equitable participation of the Embera communities as the Embera-Waunan people do not participate actively in projects such as Bio Darien and the one on sustainable development. All these projects only feed the technocrats and the bureaucrats. We are demanding true and full participation otherwise we will continue to be excluded."

He also affirmed: *"...if you assess the reports by our governments on the participation in the implementation of article 8j and on forestry principles or all the 1992 agreements, adopted in Rio de Janeiro, they are almost nil and the response of our government will always be ambiguous and vague when referring to indigenous communities. We can only quote the reports to the CBD Secretariat, and they have not even been able to reply to the Secretariat of the UN Forum on Forests because the indigenous issue is not of priority interest, and governmental technicians also endeavour to mix indigenous issues with the local and rural community, as if we were all a homogeneous society."*

Finally, the former director of the Programme for the Management of the Kuna Yala Wildlife Area summarized the following:

*There is great concern over the limited participation of local communities and particularly of the indigenous peoples in decision-making regarding the environment, natural resources and biodiversity resulting in recent changes towards community-based methods. There is an incipient participation, but mainly in indigenous organizations with experience, such as PEMASKY/AEK (since 1983), just to mention one example. Instruments must be given to the structure of the indigenous peoples' internal governments (Congresses) to enable them to take up their political role in the State and governmental political structures. Indigenous NGOs know these instruments and mechanisms but we have been very careful not to lose opportunities or presence, particularly at international fora. This leads to the discussion of the **representativity** of the indigenous peoples at the level of international fora. And thus, with reason a leader will say that participation is ignored or not allowed in State or Government structures. **This is not the best**, but at least in Panama "participation" is allowed because we have won it with dignity. So alternative alliances must be sought among indigenous peoples (congresses) and their indigenous NGOs to enable existing mechanisms or instruments to be constantly improved. And in the information or dissemination and orientation of these mechanisms, indigenous NGOs must play a **facilitating** role."*

5. Conclusions

An independent assessment on the Implementation of International Commitments on Forest-Related Traditional Knowledge (FRTK) in Panama and of the Intergovernmental Panel of Forests (IPF), the Intergovernmental Forum on Forests (IFF) and the Convention on Biological Diversity (CBD), specifically its Article 8j and related articles, have been the basis for this study, taking into consideration governmental and non-governmental plans, programmes and projects developed by the Government and NGOs in indigenous territories. The main problem indigenous peoples' organizations are still facing is the lack of participation in the preparation, implementation and evaluation of governmental plans, in spite of the fact that Panama has the most advanced Laws regarding recognition of the Indigenous Peoples' rights.

Indigenous lands and territories have not been considered as an important element in the development of the national economy; equally, they have not received political and financial support from the national authorities.

The forests of Panama have a major potential to produce a wide variety of products but only a few are used. For example: handicrafts, agricultural tourism based on traditional knowledge and traditional products such as coconut, corn, banana, mango and cane. However, Panama does not have a forest culture. It sees forest covered land as a potential for agriculture and considers trees and forests as an obstacle to productive activities.

For this reason, international instruments, national Laws and executive decrees do not have political and financial support. For example, Panama does not have a Ministry of the Environment, and forest and environmental issues continue to be discussed at the lowest level (INRENARE/ANAM), although at present its Board of Directors comprises three ministries: Economy and Finance, Health and Agriculture.

6. Recommendations to improve implementation

In order to improve the implementation of international commitments in indigenous communities, a single, strong and clear policy must exist, with internal regulations for all the indigenous peoples of Panama:

1. The Panamanian State must recognize the major role that indigenous peoples have played in sustainable development, as recognized by the international community in Rio de Janeiro in 1992 and in Johannesburg in 2002.
2. The responsible bodies must disseminate all existing information on international commitments. A support group, comprising indigenous and local representatives involved in the process and in thematic issues, should be established.
3. Full and effective participation of the indigenous peoples. Therefore the dissemination of information to indigenous and local communities is important. The General Indigenous Congresses must play a role in preparation, implementation and assessment and in decision-making regarding programmes and/or projects developed in indigenous communities.
4. The direct support of international cooperation for the agendas of indigenous Regions must be sought. Funds must be channelled towards the indigenous Regions and the State must facilitate this process.
5. The organizational structures of the indigenous Regions must be strengthened and they must be supported in their adaptation to the present situation, through training and

- exchange of experience among indigenous and local communities, with the technical assistance of NGOs and Governmental institutions.
6. Recognition of the special relationship between Mother Earth and the indigenous peoples and their knowledge, innovations and practices related with biodiversity and forests must be achieved.
 7. An independent biodiversity and forest monitoring system must be established, using indigenous knowledge and involving the indigenous people with the support of geographical information systems and technology.
 8. Standards and guidelines for the protection, management and development of indigenous knowledge must be established with consultation and participation of the indigenous peoples. A complete and organized revision should be made of the decrees and laws referring to the indigenous peoples.
 9. Benefit-sharing arising from the use of indigenous knowledge must be ensured, including other rights, obligations and responsibilities, such as land tenure rights and the management of indigenous cultures to facilitate the transmission of knowledge, innovations, practices and values to coming generations. .
 10. Research and development activities in the indigenous peoples' field of knowledge, practices and innovation systems must obtain the same political and financial support as "formal scientific" research and development activities.

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