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June 14, 2013

Mr. James Anaya
UN Special Rapporteur on the Rights of Indigenous Peoples
c/o OHCHR-UNOG
Office of the High Commissioner for Human Rights
Palais Wilson
1211 Geneva 10, Switzerland
Via facsimile: +1 (520) 621-9140
Via email: indigenous@ohchr.org

Re: Request to meet about the Barro Blanco project during July 2013 visit to Panama

Dear Special Rapporteur Anaya:

Centro de Incidencia Ambiental de Panamá (CIAM), Movimiento 10 de Abril (M-10), Interamerican Association for Environmental Defense (AIDA), Center for International Environmental Law (CIEL), International Rivers, Marin Interfaith Task Force, Collective Voices for Peace, Asociación Ambientalista de Chiriquí (ASAMCHI), Carbon Market Watch, Movimiento 10 de Abril (M10), Earthjustice, Both ENDS, and Salva la Selva, express our gratitude on the announcement of your official visit to Panama from July 22 - 29, 2013. We are writing to respectfully request that you do all in your power to prevent and minimize imminent and serious threats to the Ngäbe people and

their indigenous territories associated with the Barro Blanco hydroelectric dam on the Tabasará River in the Province of Chiriquí, western Panama. Such actions may include, as appropriate, **conducting a formal investigation, making a site visit, and calling on the government of Panama to take immediate precautionary action by halting the dam's construction** until the Ngäbe's concerns have been fully addressed. As a preliminary matter, we request that you **meet with Ngäbe community members and CIAM during your upcoming visit to Panama in July.**

Construction of the Barro Blanco project is expected to be completed as soon as May 2014.¹ 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 are concerned that the company GENISA failed to adequately include the Ngäbe-Buglé *comarca* in its environmental impact assessment (EIA), and failed to consult the Ngäbe communities that will be directly affected by the Barro Blanco project during the stakeholder consultation process. In May 2008, Panama's environmental authority, Autoridad Nacional del Ambiente (ANAM), approved the EIA despite violations of national and international norms and standards.² In February 2011, the Ngäbe and civil society groups submitted comments to the Executive Board of the Kyoto Protocol's Clean Development Mechanism (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 sustainable development and help reduce carbon emissions; evidence submitted to the CDM board makes both of these conclusions doubtful.

The Ngäbe are also concerned about their physical integrity and security. 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 free, prior and informed consent; traditional lands, territories, and natural resources; and physical integrity and

¹ 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>.

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

security. The Ngäbe's efforts to hold the government accountable for its failure to adequately assess environmental impacts and consult with affected indigenous peoples 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 2012.³

More specifically, 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.⁴ 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 Special Rapporteur's 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 UN 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 remain unresolved after the verification mission.⁵ 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.⁶

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.⁷

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

³ 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>.

⁴ 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).

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

⁶ *Id.*

⁷ 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.

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) free, prior and informed consent of indigenous communities who will be affected by development projects; (ii) protection of indigenous lands, territories, and natural resources; and (iii) protection from state-sponsored violence. Human rights affected by the dam and Panama's failure to act include the rights to culture, physical security and integrity, land, health, subsistence, and freedom of movement and residence, as well as to access to information, public participation, and access to justice. Considering that the Panamanian government has failed to take the necessary actions to protect the Ngäbe people and that the Ngäbe's efforts to hold the government accountable have proved ineffective, the Ngäbe people are seeking recourse through other means.

On behalf of the Ngäbe, we respectfully urge you to:

- Meet with members of the affected Ngäbe communities to discuss their concerns about the project's impacts;
- Conduct a formal investigation into the threats to human rights associated with the Barro Blanco project;
- Visit the Barro Blanco project site to document the human and environmental harms to the Ngäbe-Buglé *comarca* and Ngäbe people;
- Call on the Government of Panama to halt the dam's construction until the Ngäbe's concerns have been fully addressed.

If you have any questions, would like additional information, or wish to schedule a meeting, please contact Mrs. Tania Arosemena via email at tarsemana@ciampanama.org or by phone at (507) 236-0866.

Respectfully,


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SUPPORTING INTERNATIONAL NGOS

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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*
9. Eva Filzmoser, *Carbon Market Watch*