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Rapport du Rapporteur spécial sur les droits des peuples autochtones, M. James Anaya

Additif

La situation des peuples autochtones touchés par le projet hydroélectrique El Diquís au Costa Rica*

Résumé

Le 30 mai 2011, le Rapporteur spécial sur les droits des peuples autochtones, M. James Anaya, a remis au Gouvernement costa-ricien le rapport reproduit en annexe sur la situation des peuples autochtones touchés par le projet hydroélectrique El Diquís. Le 2 juin 2011, ce rapport a été rendu public et diffusé auprès des peuples autochtones et autres parties intéressées au Costa Rica.

Le projet hydroélectrique El Diquís, conçu par l'Instituto Costarricense de Electricidad (ICE), entreprise nationale d'électricité, a pour but de construire un barrage hydroélectrique et d'autres installations sur le Río Grande de Térraba, dans le sud-ouest du pays, pour la production d'électricité à grande échelle. Plusieurs territoires autochtones reconnus par l'État se trouvent dans la zone concernée par le projet.

* Le résumé du présent rapport est distribué dans toutes les langues officielles. Le rapport proprement dit, qui est joint en annexe au résumé, est distribué en anglais et en espagnol seulement.

La situation des communautés touchées par le projet a fait l'objet d'un échange de correspondance entre le Gouvernement costa-ricien et le Rapporteur spécial, qui a commencé par l'envoi d'une lettre en date du 23 novembre 2010, dans laquelle le Rapporteur spécial transmettait divers griefs qu'il avait reçus concernant cette situation. Le 27 janvier 2011, le Gouvernement costa-ricien a envoyé au Rapporteur spécial une lettre dans laquelle il faisait savoir qu'il était disposé à recevoir une visite du Rapporteur spécial dans le pays afin de lui permettre de mieux évaluer la situation en vue de l'élaboration de recommandations. La visite au Costa Rica a eu lieu du 24 au 27 avril 2011.

Comme suite à sa visite au Costa Rica, le Rapporteur spécial a formulé un ensemble d'observations et de recommandations sur les mesures qui devraient selon lui être prises si l'État entend maintenir le projet hydroélectrique. Comme il est spécifié dans le rapport, pour le Rapporteur spécial, certaines de ses recommandations étaient valables dès le moment où ce document a été communiqué aux autorités costa-riciennes et aux autres parties intéressées, en mai et juin 2011, et leur mise en œuvre devrait commencer à brève échéance.

Annexe

The situation of the indigenous peoples affected by the El Diquís hydroelectric project in Costa Rica

Contents

I. Introduction

1. In this note, the Special Rapporteur on the rights of indigenous peoples, James Anaya, submits a series of observations and recommendations on the situation of the indigenous people affected by the El Diquís hydroelectric project in Costa Rica. The aim of the project, which is being promoted by the State-owned electric utility Instituto Costarricense de Electricidad (ICE), is to construct a hydroelectric dam and plant on the Río Grande de Térraba in the south-east of the country for the purposes of large-scale electricity generation. ICE is promoting this project as part of its plans to increase electricity production. The project was declared to be of public interest in 2008.[1]

2. A number of indigenous territories recognized by the State are located in the area affected by the project. Under the current proposals, the reservoir and part of the dam will cover 818.24 hectares of the Térraba indigenous territory, which accounts for around 10 per cent of the territory of the indigenous Teribe people. The reservoir will also flood 97 hectares of the China Kichá indigenous territory of the Cabecar people. Furthermore, the Rey Curré and Boruca indigenous territories, which belong to the Brunca people and are located downstream of the dam, could be affected by changes or alterations in the river's course. Housing thousands of workers for several years during the construction of the dam would also have a social impact on the indigenous communities living in the area. ICE includes in the area which would be indirectly affected by the project the Cabagra and Salitre indigenous territories of the Bribri people, the Ujarrás territory of the Cabecar people, and the Coto Brus territory of the Ngobe people, which are located upstream of the dam, given that the reservoir would be created and maintained in part with water flowing from these territories.

3. ICE stresses that although land that lies within the Térraba and China Kichá territories will be flooded, there will be no need to resettle any indigenous people as these areas are not inhabited. Although the scope of the Special Rapporteur's mandate only covers the impact of the El Diquís project on indigenous peoples, it is important to note that according to the information provided by the Costa Rican Government, the project would displace, either completely or partially, 10 non-indigenous communities.

4. On 23 November 2010, the Special Rapporteur sent a letter to the Government about the impact of the El Diquís hydroelectric project on the indigenous peoples living in the area. In the letter, the Special Rapporteur asked to meet with representatives of the Costa Rican Government to discuss the status of the project during his next trip to Geneva. The request was granted by the Government and the meeting took place on 29 November 2010. After this meeting, the Government sent a letter to the Special Rapporteur saying it was "well disposed" to receiving a visit from him in Costa Rica. The dates for this visit were arranged in subsequent correspondence.

5. The Special Rapporteur's visit took place from 24 to 27 April 2011. During the visit, he met with various Government representatives in San José, including representatives of ICE, the State-owned utility responsible for the El Diquís project; the Vice-President of the Republic, Mr. Alfio Piva; members of the National Commission on Indigenous Affairs (CONAI); the Deputy Minister for Foreign Affairs, Mr. Carlos Roverssi; and deputies from the Legislative Assembly. Also in San José, he met with representatives of indigenous

[1] Executive Decree No. 34312-MP-MINAE, which declared that the studies and work on the El Diquís hydroelectric project and transmission infrastructure to be carried out by ICE were of national benefit and public interest (February 2008).

peoples and organizations, the United Nations country team, embassies and international bodies with offices in Costa Rica.

6. The Special Rapporteur went to the Térraba indigenous territory, where he met with representatives from this and other indigenous territories and was also able to visit the prospective site of the El Diquís dam. The Special Rapporteur also visited the ICE offices in Buenos Aires and held meetings with the key officials and technicians responsible for implementing the project.

7. The Special Rapporteur would like to express his gratitude to everybody who helped prepare the visit, especially the representatives of the Ministry of Foreign Affairs for their indispensable assistance in organizing the meetings with Government representatives, and the representatives of the Teribe and other indigenous peoples for all their help in organizing the meetings with the indigenous peoples and organizations.

II. Observations and recommendations

8. On the basis of his visit to Costa Rica and the information received on the status of the El Diquís hydroelectric project, the Special Rapporteur would like to make the following observations, setting out the criteria used and his recommendations. The Special Rapporteur bases his observations and recommendations on the relevant international instruments, in particular the United Nations Declaration on the Rights of Indigenous Peoples, adopted by the General Assembly in 2007 with the support of Costa Rica, and the International Labour Organization (ILO) Indigenous and Tribal Peoples Convention (No. 169), ratified by Costa Rica in 1993.

9. The Special Rapporteur believes that some of his recommendations are of immediate relevance and that they should be acted upon in the near future if the Government intends to press ahead with the El Diquís hydroelectric project. It should be noted that several of these observations and recommendations were transmitted orally to ICE and various Government representatives during the Special Rapporteur's visit to the country.

A. The need for adequate consultation

10. The Special Rapporteur takes note of the concerns expressed by indigenous representatives and non-governmental organizations regarding the El Diquís project, and the various complaints lodged against the project in the Costa Rican courts and elsewhere at both the national and the international level. In particular, concern has been expressed about the possible environmental, social and cultural impact of the project, and there have been allegations of a lack of adequate consultation with the indigenous communities affected by it. The Government has stressed that the project is still in the study phase, has not yet been approved in accordance with the procedure established by law, and will not be approved before consultations have been held with the indigenous peoples affected.

11. It is important to note that all parties agree on the need to undertake consultations with the indigenous peoples of the territories affected by the project before it is approved, and that the consultation process should be consistent with international standards. Furthermore, in his meetings with representatives of the indigenous communities affected, the Special Rapporteur noted that, with few exceptions, there was a willingness to enter into a dialogue with the authorities about the project and to seek ways to protect their rights and share in the profits of the project.

12. The Special Rapporteur believes that the Government should have launched the consultation process before carrying out technical studies, which would have allowed the

indigenous communities affected to participate in the initial decision-making process. The design of the project is now at an advanced stage, however, and the Government has taken various decisions which commit it to researching and developing the project, without adequate consultation beforehand. It is clear to the Special Rapporteur that, although the hydroelectric project has not yet received final approval, the ability of the indigenous peoples to exercise their right to self-determination and establish their own priorities for development has been infringed.

13. Nevertheless, the Special Rapporteur considers that it would be possible to remedy the lack of indigenous participation in the development of the project if a proper consultation process were launched now that met international standards and addressed the particular challenges posed in this case. The Special Rapporteur proposes criteria to further a consultation process of this kind below.

1. The aim of consultation: free, prior and informed consent

14. According to the applicable international instruments, consultation with indigenous peoples who may be affected by the El Diquís hydroelectric project should be undertaken with the goal of obtaining their free, prior and informed consent.[2] Such consent, which should be obtained before the project is approved, involves the indigenous peoples' acceptance of the impact that the project will have on them, and must be on fair and equitable terms. The consequences of the project in the Teribe people's case, under the current proposals, are that 10 per cent of their territory would be affected or flooded, and thousands of construction workers would be located there. For the other indigenous peoples affected, the impact would be less but still significant. As part of the consultation process, the parties should be open to seeking alternatives in the design of the project, so that its eventual impact will be different from that currently envisaged.

15. Free and informed consent to the impact of the project should be sought prior to any Government decision to allow construction work to begin, and should be explicitly framed in an agreement or agreements which contain commitments by the Government or ICE. The agreements must take into account all the rights affected by the project in relation to each of the indigenous peoples affected, including their rights to land and natural resources, any rights that could underpin claims for compensation, any mitigation measures and sharing the project's profits.

16. With the aim of reaching consent and agreement, the consultation process consists of an intercultural dialogue held in good faith to achieve consensus and mutual accommodation of the parties' legitimate interests. At the start of the process, neither the Government nor ICE should take it for granted that the project will go ahead, given that the final decision on whether or not the project should be undertaken is subject to the outcome of the consultations, irrespective of other considerations of social and national interest. Likewise, all parties to the consultations, including the indigenous parties, must act in good faith and recognize all parties' legitimate interests in the hydroelectric project, and try to reach consensual decisions.

[2] See the United Nations Declaration on the Rights of Indigenous Peoples, articles 19 and 32, and the International Labour Organization (ILO) Convention concerning Indigenous and Tribal Peoples in Independent Countries (No. 169), article 6. For an analysis of the duty of States to consult indigenous peoples on decisions likely to affect them, see the report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people to the Human Rights Council at its twelfth session (A/HRC/12/34).

2. Measures to establish a climate of trust

17. In order to launch and move forward with a consultation process and to reach consensual long-term decisions, a climate of trust needs to be established between the parties, as well as within the process itself. Given the project's history and various factors related to the disadvantaged situation of the indigenous peoples concerned, a number of concrete measures need to be taken in order to build this trust.

18. Firstly, ICE should acknowledge and address the concerns expressed by various representatives of the indigenous peoples and organizations concerned regarding the terms on which the hydroelectric project has been promoted and the preparatory studies carried out. There have been complaints from representatives of the Teribe people about construction work carried out by ICE, as well as the presence of heavy machinery for geological and other research within the Térraba territory. It is alleged that ICE did not conduct adequate consultations before moving onto Térraba territory, where it has been present since 2006. However, ICE and the Government maintain that it was not necessary to carry out the consultations stipulated in international instruments because ICE was only there to carry out research prior to starting the project. ICE also maintains that it did consult with the inhabitants of the Térraba territory, that it disseminated information on the hydroelectric project and that it sought permission to set up research facilities in the territory.

19. The Special Rapporteur has observed that the indigenous peoples and organizations concerned generally believe that whatever consultations ICE carried out in the past were inadequate. Furthermore, the Special Rapporteur shares the view that, in accordance with international standards, ICE should have conducted consultations on the research facilities and activities before starting work in the Térraba territory, independently of any consultations carried out before the project is implemented. He also believes that ICE could have shown more consideration towards the indigenous peoples with regard to the project, as acknowledged by the ICE leadership in conversations with him.

20. The withdrawal of ICE from its facilities and operations in the Térraba territory, which was announced during the Special Rapporteur's visit, is a positive step towards overcoming the obvious mistrust caused by their presence. The Special Rapporteur believes it would also be advisable for ICE to agree not to recommence operations in indigenous territories without carrying out adequate consultations beforehand and to acknowledge the shortcomings in its behaviour towards the indigenous peoples.

21. Also to help build a climate of trust, the Special Rapporteur considers it would be advisable for ICE to release the feasibility studies carried out before the current stage of research began. Several organizations have requested these studies, yet to date ICE has refused to release them, arguing that they are incomplete or that the information in them could be misinterpreted.

22. The Special Rapporteur understands that the current feasibility and impact studies complement existing ones, and notes that ICE intends to disseminate information from the studies at future consultations on the project, as is its duty. However, the failure to release the completed feasibility studies has resulted in strong criticism and mistrust of the position of ICE and the Government as regards the project. The Special Rapporteur believes it would be advisable for ICE to seek a way of making these completed studies available, as a sign of its readiness to engage in a transparent consultation process in which the indigenous parties have access to comprehensive information.

23. Another issue is that most of the indigenous territories affected by the project are occupied by non-indigenous persons. It is estimated that at least 80 per cent of the Térraba territory is occupied by non-indigenous persons. In building the reservoir, the El Diquís project could mean the loss of 10 per cent of the Térraba territory. It is therefore

understandable that the Teribe people see the project as a threat and fear that instead of recovering more of their territory, they may lose even more of it.

24. As explained in paragraphs 42–44 below, the possession of large tracts of indigenous territories by non-indigenous persons is an underlying problem in Costa Rica and should be addressed by the Government as a matter of priority. In the case of the indigenous peoples affected by the El Diquís project, the Special Rapporteur believes that efforts should be made to establish a mechanism for land recovery, which could help create the conditions for consensus on the project.

3. Participation and representation in the consultation process

25. The applicable international instruments stipulate that consultations with indigenous peoples should be adapted to their own representation procedures and forms of organization in relation to decision-making.[3] Therefore it is not for the Costa Rican Government or any of its agencies to define how the indigenous peoples to be consulted about the El Diquís project choose their representatives. The indigenous peoples themselves must decide who will represent them. The consultations should therefore be carried out by means of representation mechanisms determined by the Teribe people themselves and by the other peoples affected by the project, in accordance with their own customs and traditions.

26. The Special Rapporteur has observed that there is currently no clear definition of the mechanisms or institutions which could legitimately represent the Teribe people during consultations with the Government on a project affecting their collective rights. Clearly the same is true of the other indigenous peoples affected by the El Diquís hydroelectric project. Each of the indigenous territories within the area affected by the project has an Association for Integrated Development (ADI), an institution established and regulated by the Indigenous Act (Executive Decree No. 8487 of 1978), which has representative and managerial functions. However, according to several sources, the ADIs in Costa Rica's various indigenous communities are viewed as State agencies and not as institutions which truly represent indigenous people. It has been alleged that the ADIs were imposed on the communities and that they have weakened the traditional systems of representation. In both the Teribe territory and the other territories concerned, there are various organizations which represent the interests of the territories in some way and offer alternatives to the ADIs.

27. For an adequate consultation process on the hydroelectric project to be carried out, the indigenous peoples concerned need to take steps to define representation and participation procedures in relation to the process. For this to happen, they need to demonstrate the same sense of solidarity and cooperation that the Special Rapporteur witnessed among the various indigenous organizations when he visited Térraba.

28. While the Government should not attempt to influence the way in which the indigenous peoples are represented, it should be willing to provide them with logistical support in determining the representation procedures, if they so wish. The Special Rapporteur calls on the Government to be patient and to allow the indigenous peoples affected by the project to take the time they need for this purpose.

[3] See United Nations Declaration on the Rights of Indigenous Peoples, art. 10; ILO Convention No. 169, art. 6; and Inter-American Court of Human Rights, *Case of the Saramaka People v. Suriname*, Interpretation of the judgement on preliminary objections, merits, reparations, and costs, Judgement of 12 August 2008, Series C, No. 185, paras. 11–13 (applying the Inter-American Convention on Human Rights).

29. As part of this process, and in order to create a favourable climate for a dialogue in good faith between the parties, the Government will need to show a willingness to address the deep concerns of the indigenous peoples regarding the representativeness of the ADIs (see paragraphs 46–48 below).

4. Defining "consultations on consultations"

30. The Special Rapporteur notes with satisfaction that ICE has recognized the need to consult with the indigenous peoples affected by the project on the details of the consultation procedure itself. As the Special Rapporteur mentioned previously, the need to carry out "consultations on consultations" not only arises from the State's obligation to consult with indigenous peoples about legislative or administrative decisions which may affect them directly, but is also a key element in achieving "a climate of confidence and mutual respect for the consultations", which should ensure that "the consultation procedure itself is the product of consensus".[4]

31. ICE and other competent State institutions have put forward an analysis of what the specific elements of a consultation procedure could be. The Special Rapporteur believes that the work carried out on this subject has been important in raising awareness, prompting talks between ICE and other State actors on the criteria to be considered when establishing the procedure, and encouraging ideas on possible forms of consultation in the future.

32. However, the Special Rapporteur warns that although it may be useful to draw up proposals for consultation procedures beforehand, proposals made by one party or the other which are detrimental to a true consensus-building process should not be put forward. The consultations on consultations should involve an open and comprehensive dialogue between the parties on the various aspects of the consultation procedure to be established, such as defining the different steps in the consultations, the corresponding time limits and the specific forms of participation. Positions should not be taken on these aspects prior to the dialogue.

33. Furthermore, the State should not rush into a dialogue with the indigenous parties on the consultation procedure. Once again, the State actors need to be patient so that the indigenous parties can define their own representation procedures and are able to prepare themselves properly for the dialogue.

5. Mitigating the power imbalance

34. There is no doubt that there is a power imbalance between the parties to the current dialogue on the El Diquís project (the indigenous peoples concerned and the State/ICE). Generally, the indigenous peoples have been victims of discrimination and marginalization, which has prevented them from entering into dialogue with representatives of the State and with other actors who want to exploit the natural resources in their territories. In this case there is a clear imbalance between the parties in terms of their access to information on the project and their technical capacity to evaluate the information and to prepare and respond to proposals in negotiations on complex subjects.

35. Measures need to be taken to mitigate this power imbalance. Otherwise, any consensus or agreement reached in the consultations will lack legitimacy and will be unsustainable. ICE must first ensure that the indigenous peoples have access to full and clear information on the project and its possible impact at every stage of the process.

36. It is also important to ensure that the required knowledge and technical capacity is available to the indigenous peoples. The indigenous peoples should therefore have their

[4] A/HRC/12/34, para. 51.

own expert advisers in relevant areas such as engineering, law, finance, the environment, development and business. The State should finance these advisers on terms that allows them to work exclusively for the indigenous parties and outside the control of ICE or any other party.[5]

6. Proposal: a team of independent experts to facilitate the process

37. The Special Rapporteur believes that it would in any case be extremely difficult to overcome the power imbalance between the parties and to guarantee lasting results without some sort of facilitation by one or more external stakeholders. A facilitating team that fits the specified terms of reference and has the necessary technical ability could ensure a well-balanced process and inspire confidence in it. The Special Rapporteur also believes that the inclusion of external stakeholders could help clarify issues of representation, define the procedure and produce ideas that might lead to consensus.

38. The Special Rapporteur thus proposes the appointment, if all parties agree, of a team of independent and reliable experts to facilitate the consultation process, and suggests that the team should be set up under the auspices of the United Nations system. The team should be multidisciplinary, with expertise in the areas of intercultural dialogue, indigenous peoples and their rights, the technical aspects of the hydroelectric project, environmental and social impact studies, mitigation measures, and the drafting of agreements on a fair distribution of profits.

39. The team would be involved in every stage of the process, including the first stage, in which consultation procedures would be agreed upon. Furthermore, the team would be available to help the indigenous peoples to organize and prepare themselves for the consultation process. Thus, the team would be much more than a passive observer.

40. Should the parties agree to this proposal, the Special Rapporteur would be willing to promote it within the United Nations system and to help establish a team of experts and define the terms of reference. The terms of reference would have to be acceptable to the parties.

B. Substantive issues beyond the hydroelectric project

41. The El Diquís hydroelectric project raises important issues for the indigenous peoples of Costa Rica that go beyond the project itself. These issues include the recovery of lands and the need for legislative reforms that address indigenous demands for autonomy and representation. Decisive steps towards settling these issues should complement efforts to design and implement a consultation process that is suitable for the specific case of the El Diquís project.

1. Recovery of lands

42. The State has granted legal protection to the country's indigenous territories since 1956[6] and delimited them by means of various decrees.[7] However, these territories are mostly inhabited by non-indigenous people. Some of these people hold title deeds in good

[5] See article 39 of the United Nations Declaration on the Rights of Indigenous Peoples, which states that "indigenous peoples have the right to have access to financial and technical assistance from States and through international cooperation, for the enjoyment of the rights contained in this Declaration", which include the right to consultation (arts. 19 and 32, among others).

[6] See Executive Decree No. 34, declaring and delimiting zones as indigenous reservations (1956).

[7] See, for example, executive decrees Nos. 13572 (1982), 13571 (1982) and 16570 (1985).

faith, with the corresponding rights to compensation under the Indigenous Act of 1977;[8] but according to information received by the Special Rapporteur, most of them do not have legal deeds and acquired land in indigenous territories by settling there or through irregular transfers, sometimes with the tacit consent of the Government. Under the Indigenous Act, the land in indigenous territories is inalienable and imprescriptible.[9] However, the inflow of non-indigenous persons to indigenous territories has affected the territories' demographics and landholding patterns, with large farms being established by non-indigenous persons, as in the Térraba territory.

43. It is alleged that, in the vast majority of cases, no procedures have been followed to compensate those who occupy indigenous territories in good faith, nor have there been any efforts to recover land held by non-indigenous persons through settlements or irregular transfers. Although the Agrarian Development Institute, the Government agency responsible under domestic legislation for compensating non-indigenous persons who hold title deeds in good faith, has bought some land under procedures to recover indigenous lands, the Special Rapporteur was informed that these procedures are slow and suffer from irregularities.

44. According to the information received by the Special Rapporteur during his visit, one of the main priorities of the country's indigenous peoples is to recover their lands. The Special Rapporteur believes that decisive steps need to be taken urgently to find solutions that would allow indigenous peoples to recover the land in their territories. The Special Rapporteur believes that the negotiations over the El Diquís project offer an excellent opportunity to address the basic issue of land recovery, which could help create the conditions for consensus on the project. This process of recovering lands on the Térraba territory could possibly be used as a model for other indigenous peoples in the country who find themselves in similar situations.

2. Legislative reforms on indigenous issues and representation

45. For more than a decade, indigenous leaders have been promoting a bill to guarantee the rights of the country's indigenous peoples. The current version of this bill, the Autonomous Development of Indigenous Peoples Bill, was first submitted to the Legislative Assembly in 1995 and has been revised and amended by the Assembly on several occasions. The bill was also discussed in consultations with indigenous peoples, with the support of the United Nations system in Costa Rica. The Special Rapporteur understands that the debate on the bill is at a standstill. More recently, in August 2010, 30 indigenous persons were expelled from the legislative chamber, where they had been protesting to urge legislators to discuss the bill.

46. One of the central themes of the bill is the representation of indigenous people, especially in the associations for integrated development (ADIs). Representation procedures in indigenous territories are regulated by the Indigenous Act of 1977 and its Regulations of 1978. The Indigenous Act protects indigenous territories, and also recognizes and protects the country's indigenous peoples' traditional institutions of self-government. Article 4 stipulates that "the reservations shall be ruled by indigenous peoples

[8] Act No. 6172 (the Indigenous Act), art. 5

[9] Ibid., art. 3: "Indigenous reservations are inalienable and imprescriptible, non-transferable and exclusive to the indigenous communities that inhabit them. Non-indigenous persons may not rent, lease, purchase or acquire by any other means plots of land or estates on these reservations. Indigenous persons may only offer their land for sale to other indigenous persons. Any transfer, sale or bequest of land on indigenous reservations transacted between indigenous and non-indigenous persons shall be null and void, with all the legal consequences thereof."

according to traditional community-based structures or the laws of the Republic governing them, under the coordination and guidance of CONAI [the National Commission on Indigenous Affairs]". The Special Rapporteur understands, however, that the Regulations implementing the Indigenous Act (Executive Decree No. 8487 of 1978) have effectively deprived indigenous peoples' traditional institutions of the authority to represent them in matters of sustainable development, establishing the ADIs for this purpose.[10]

47. Almost all the indigenous representatives who met with the Special Rapporteur during his visit claimed that the ADIs did not adequately represent the indigenous peoples, adding that indigenous peoples see the presence of the ADIs in their territories as a denial of their right to self-government and their right to make decisions regarding their land and communities. The ADIs are apparently regarded as State institutions that regularly make decisions without notifying or consulting the indigenous communities they supposedly represent. While some indigenous territories have adapted their representation procedures to those of the ADIs, in other territories, such as that of the Teribe people, the presence of the ADIs has led to a deterioration in the indigenous peoples' traditional representation procedures. It should be noted that there are similar concerns about the lack of adequate representation on the National Commission on Indigenous Affairs.

48. There is a need to address concerns about the representativeness of the ADIs; doing so could boost progress towards the adoption of the Autonomous Development of Indigenous Peoples Bill. In its concluding observations on Costa Rica in 2007, the Committee on the Elimination of Racial Discrimination expressed concern about the Government's failure to adopt the bill and recommended that it "remove without delay the legislative obstacles preventing the adoption of the Autonomous Development of Indigenous Peoples Bill".[11]

III. Conclusion

49. **The Special Rapporteur offers these observations and recommendations to the Government of Costa Rica and the indigenous peoples affected by the El Diquís hydroelectric project as specific guidelines on the measures that he believes should be taken if the Government intends to press ahead with the project. The Special Rapporteur acknowledges the challenges involved in developing projects of this magnitude in indigenous territories – challenges that exist in almost every country where there are indigenous peoples. At the same time, however, he believes that Costa Rica has the opportunity to set a good example for other countries around the world and to resolve this situation in a manner that fully respects the human rights of the indigenous peoples, on the basis of agreements reached with them.**

[10] Article 3: "To exercise the rights and fulfil the obligations referred to in article 2 of the Indigenous Act, the indigenous communities shall adopt the organization … of the Associations for Community Development."

[11] CERD/C/CRI/CO/18, para. 9.