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## Conseil des droits de l'homme

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**Promotion et protection de tous les droits de l'homme,  
civils, politiques, économiques, sociaux et culturels,  
y compris le droit au développement**

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

### Additif

### La situation des droits des peuples autochtones au Panama\*

#### Résumé

Dans le présent rapport, le Rapporteur spécial examine la situation des droits de l'homme des peuples autochtones au Panama, à la lumière des informations qui lui ont été communiquées pendant sa visite dans le pays du 19 au 26 juillet 2013, et d'une enquête indépendante.

Le Panama est doté d'un cadre législatif avancé en matière de droits des peuples autochtones. En particulier, le système des *comarcas* offre une protection importante des droits des peuples autochtones, notamment pour ce qui est des terres et des territoires, de la participation et de l'auto-administration, de la santé et de l'éducation. Les lois et programmes nationaux relatifs aux autochtones constituent une base solide pour établir et renforcer encore les droits des peuples autochtones du Panama.

Le Rapporteur spécial constate cependant que cette base est, à de nombreux égards, fragile et précaire. Comme indiqué dans le présent rapport, le Panama rencontre un certain nombre de difficultés dans la mise en œuvre et la garantie des droits des peuples autochtones, notamment de leurs droits sur les terres et les ressources naturelles, dans les projets d'investissements de grande envergure, en matière d'auto-administration et de participation, ainsi que de leurs droits économiques et sociaux, y compris les droits au développement économique, à l'éducation et à la santé. Le Rapporteur spécial adresse un certain nombre de recommandations au Gouvernement, inspirées des observations contenues dans le présent rapport.

\* Le résumé du présent rapport est distribué dans toutes les langues officielles. Le rapport proprement dit est joint en annexe au résumé; il est distribué dans la langue originale et en anglais seulement.



## Annexe

[Espagnol et anglais seulement]

### **Report of the Special Rapporteur on the rights of indigenous peoples, James Araya, on the situation of indigenous peoples' rights in Panama**

#### Contents

	<i>Paragraphs</i>	<i>Page</i>
I. Introduction .....	1–3	3
II. The indigenous peoples of Panama .....	4–11	3
III. Legal and policy framework .....	12–26	5
IV. Main human rights concerns .....	27–71	8
A. Land and natural resources .....	29–48	9
B. Self-governance and participation .....	49–56	13
C. Economic and social development.....	57–71	14
V. Conclusions and recommendations.....	72–76	18

## I. Introduction

1. This report examines the human rights situation of indigenous peoples in Panama and makes recommendations in that regard on the basis of information gathered by the Special Rapporteur during his visit to the country from 19 to 26 July 2013 and independent research.

2. During his visit, the Special Rapporteur held a series of meetings in Panama City with various representatives of the Government, including the Ministry of Foreign Affairs, the Ministry of the Interior, the Ministry of Public Security, the Ministry of Education, the Ministry of Health, the Ministry of Social Development, the National Land Management Agency, the National Environment Agency, the Supreme Court, the National Assembly, the Electoral Court, the Office of the Attorney General and the Ombudsman's Office. The Special Rapporteur also met with representatives of indigenous peoples and civil society in Panama City and held meetings with representatives of the Bribri, Kuna, Emberá, Naso, Ngobe and Wounaan peoples in the Ngobe-Bugle and Kuna Yala indigenous regions (*comarcas*) and in the collective territory of the Emberá people.

3. The Special Rapporteur wishes to thank the Government of Panama for its cooperation and its readiness to allow him to conduct his visit and hold discussions with indigenous representatives freely and openly. He also wishes to thank the Panama offices of the United Nations system for their cooperation, the Regional Office for Central America of the Office of the United Nations High Commissioner for Human Rights for its invaluable help in making the preparations for the visit and the Office of the United Nations High Commissioner for Human Rights in Geneva for its assistance in drafting this report. Lastly, he wishes to express his gratitude to the indigenous peoples of Panama, in particular their authorities and members of their general congresses, for inviting him to their territories, for showing him such hospitality and for sharing their stories, concerns and hopes with him.

## II. The indigenous peoples of Panama

4. Over the course of his mission, and especially during his visit to indigenous territories, the Special Rapporteur was able to observe the cultural diversity of the indigenous peoples of Panama, which can be seen in the customs, languages and other cultural expressions which they have preserved. It is clear that the indigenous peoples of Panama are proud of their indigenous identity and wish to continue preserving and strengthening all aspects of their cultures.

5. The preservation of these cultures is largely attributable to the system of indigenous *comarcas*, in which indigenous peoples have exclusive rights over their lands and enjoy considerable autonomy over internal matters. All indigenous peoples of Panama, except the Naso and Bribri, have *comarcas* that have been established under the corresponding legal regime. Taken together, the indigenous *comarcas* account for 22.2 per cent of the country's area, or 16,634 km<sup>2</sup>. As discussed below (section IV, subsection B), these indigenous peoples have a high degree of autonomy and a certain degree of control over the use of renewable and non-renewable resources within these areas, although concerns remain in this regard (see section IV, subsection A).

6. According to the 2010 census, indigenous peoples make up 12.3 per cent of the population, although some of them claim that their population is larger than what the census results indicate. The 2010 census, gives the following population estimates for the various indigenous peoples of Panama: Ngobe, 260,058; Kuna, 80,526; Emberá, 31,284; Bugle, 24,912; Wounaan, 7,279; Teribe/Naso, 4,046; Bokota, 1,959; and Bribri, 1,068.<sup>1</sup> The 2010 census results indicate that 196,059 indigenous persons live in *comarcas*, while 221,500 live in other areas.

7. The Ngobe have the largest population and speak Ngäbere. Their *comarca*, which is shared with the Bugle people, was established in 1997 and spans 6,968 km<sup>2</sup> in the provinces of Bocas del Toro, Chiriqui and Veraguas; approximately half of the Ngobe population lives in the *comarca*. In recent years, the Ngobe have been organizing opposition to hydroelectric projects that have an impact on their traditional lands, both inside and outside the *comarca*. Although the Bugle have historically been considered part of the Ngobe people, they have their own language, culture and forms of internal organization. The Bokota people are related to the Bugle and are considered by some sources to belong to the same ethnic group.<sup>2</sup>

8. The Kuna people live in three *comarcas* (Madungandi, Wargandi and Kuna Yala) in the Dagargunyala collective territory, Darién National Park and areas outside their traditional lands. Kuna Yala, the first *comarca* in the country, was established in 1938 following a long struggle for the recognition of the political structures, autonomy and lands of the Kuna people. The Kuna currently wield considerable political influence compared to other indigenous groups. Nevertheless, they expressed particular concern about a lack of consultation by the Government, the failure to abide by decisions taken by their authorities, the lack of State recognition of their rights over areas that they consider to be part of their traditional territory and the incursion of settlers into their lands. The language of the Kuna people is also called Kuna.

9. The Emberá and Wounaan live in an area in eastern Panama that extends up to its border with the Colombian department of Choco. Most of the members of these groups currently live in the province of Darién. The Emberá-Wounaan *comarca* covers 438,350 hectares (or 27 per cent of Darién Province) and has a population of 9,397 members of the Emberá and Wounaan peoples, spread out among 40 communities. Outside of the *comarca*, two Wounaan communities have been officially recognized by the Government, and their lands have been given collective land status; other Emberá and Wounaan communities await official recognition. These communities' main concerns regarding their rights relate to encroachments on their *comarca* and collective lands, which have triggered violent clashes. These communities are also affected by the internal armed conflict in Colombia and by the presence on their lands of illegal armed groups belonging to the Fuerzas Armadas Revolucionarias de Colombia (Revolutionary Armed Forces of Colombia) (FARC) and Colombian refugees. The Emberá speak their own languages, both of which are in the Choco linguistic family.

10. The Naso live in western Panama, on the shores of the Teribe River in the province of Bocas del Toro, and in Costa Rica. They have adopted a monarchic system of self-government under the leadership of the Naso king. Their language is also referred to as Naso. For decades the Naso have been requesting the establishment of a *comarca* and have also reported problems relating to hydroelectric projects and agribusinesses operating on the lands to which they lay claim, as discussed below (section IV, subsection A).

<sup>1</sup> 2010 Population and Housing Census, National Statistics and Census Institute.

<sup>2</sup> Office of the United Nations High Commissioner for Human Rights, Regional Office for Central America, *Diagnóstico sobre la situación de los derechos humanos de los pueblos indígenas de América Central*, vol. II, p. 410.

11. The Bribri are the smallest indigenous group in Panama and were included in the national census for the first time in 2000. They live along the Yorkin and Sixaola rivers in Costa Rica and Panama, in the districts of Guabito and Bocas del Toro. The Bribri on both sides of the border maintain ties with each other and speak the Bribri language. The Bribri people are still awaiting official recognition and protection of their territorial rights, and this constitutes their chief human rights concern.

### III. Legal and policy framework

12. Panamanian laws governing indigenous affairs are undoubtedly among the most advanced in the world in terms of the protection and promotion of the human rights of indigenous peoples. The Constitution contains key provisions for safeguarding the rights of the country's indigenous peoples in respect of their identity,<sup>3</sup> language,<sup>4</sup> education,<sup>5</sup> autonomy and lands.<sup>6</sup> In overall terms, it stipulates that the State shall recognize and respect the ethnic identity of indigenous communities and carry out programmes to promote their cultures and material, social and spiritual values.<sup>7</sup>

13. Regarding the right of indigenous peoples to their lands and other related rights, the Constitution guarantees that the lands required by indigenous communities to ensure their economic and social well-being will be set aside and that their collective ownership of those lands will be maintained.<sup>8</sup> Between 1938 and 2000, in what has been acknowledged as being one of the foremost achievements in terms of the protection of indigenous rights in the world, the Government established the five aforementioned *comarcas*, or indigenous territories: Kuna Yala,<sup>9</sup> Emberá-Wounaan,<sup>10</sup> Madungandi,<sup>11</sup> Ngobe-Bugle<sup>12</sup> and Wargandi.<sup>13</sup> The laws providing for the establishment of the *comarcas* set forth the right of indigenous peoples to collective ownership of land within the *comarcas* and contain other provisions regarding natural resources, governance, the administration of justice, economic activity, culture, education and health. The Emberá-Wounaan, Madungandi and Ngobe-Bugle *comarcas* each have their own charters. These charters were adopted by executive decree and govern internal affairs as well as relations between the Government and the traditional authorities. The Kuna Yala *comarca* has drawn up regulations which, although they have not yet been adopted, have nevertheless served as a basis for agreements between the Government and the Kuna General Congress.

<sup>3</sup> Art. 90.

<sup>4</sup> Art. 88.

<sup>5</sup> Art. 108.

<sup>6</sup> Arts. 124, 126 and 127.

<sup>7</sup> Art. 90.

<sup>8</sup> Art. 127.

<sup>9</sup> Act No. 2 of 16 September 1938; Act No. 16 of 19 February 1953 on the establishment of San Blas *comarca*, *Gaceta Oficial* No. 12042 (7 April 1953); Act No. 99 of 23 December 1998 on the renaming of San Blas *comarca* as Kuna Yala *comarca*, *Gaceta Oficial* No. 23701 (29 December 1998).

<sup>10</sup> Act No. 22 of 8 November 1983 on the establishment of the Emberá *comarca* in Darién, *Gaceta Oficial* No. 19976 (17 January 1984).

<sup>11</sup> Act No. 24 of 12 January 1996 on the establishment of the Kuna *comarca* in Madungandi, *Gaceta Oficial* No. 22951 (15 January 1996).

<sup>12</sup> Act No. 10 of 7 March 1997 on the establishment of the Ngobe-Bugle *comarca* and other measures, *Gaceta Oficial* No. 23242 (11 March 1997).

<sup>13</sup> Act No. 34 of 25 July 2000 on the establishment of the Kuna *comarca* in Wargandi, *Gaceta Oficial* No. 24106 (28 July 2000).

14. Indigenous peoples enjoy a certain degree of decision-making power with respect to the preservation and development of the natural resources in their *comarcas*. In the case of renewable resources, some of the laws governing indigenous *comarcas* contain provisions authorizing the development of natural resources within their borders but only under certain conditions, which include the mandatory preparation of impact studies and the obligation to obtain the authorization of the indigenous authorities. Forestry laws stipulate that government agencies are to work in conjunction with the relevant indigenous congress when granting licences for forestry development in *comarcas* and indigenous communities.

15. Under *comarca* laws, indigenous authorities have less control over the development of non-renewable resources, except in Ngobe-Bugle *comarca* where, thanks to recent reforms, revenue from the development of such resources must be shared with the *comarca*. In March 2012, the Government adopted a special regime for this *comarca* to protect its mineral, water and environmental resources.<sup>14</sup> The law absolutely prohibits the issuance of licences in the Ngobe-Bugle *comarca* for mineral exploration or mining, with a few exceptions, and revokes all licences previously issued for such purposes.<sup>15</sup> It sets forth a separate regime for hydroelectric projects and specifies that the authorization of the plenary of the corresponding general, regional or local congress will have to be obtained for future projects, which will then be submitted for referendum in the corresponding district within the *comarca* or the regional or local district concerned.<sup>16</sup> The law also states that at least 5 per cent of the revenue from these projects is to be funnelled back into the Ngobe-Bugle community.

16. The *comarca* system was strengthened in 2008 with the promulgation of Act No. 72 on the establishment of a special procedure for granting collective title to indigenous lands outside the *comarcas*.<sup>17</sup> Under this special procedure, the authorities of the indigenous group or community in question are to submit an application to the National Directorate for Agrarian Reform.<sup>18</sup> Negotiation procedures are in place for the resolution of disputes when such applications are contested.<sup>19</sup> The land title awarded to communities through this procedure is collective, indefinite, non-transferable, irrevocable and inalienable.<sup>20</sup> The Government and third parties are obliged to coordinate with traditional authorities in order to obtain their free, prior and informed consent for the roll-out of projects on their collective lands.<sup>21</sup>

17. Panama also has a strong legal framework for the protection of the intellectual property and traditional knowledge of indigenous peoples. A law was passed in 2000 which provides for the establishment of a special collective intellectual property rights regime for the protection and defence of the cultural identity and traditional knowledge of indigenous peoples.<sup>22</sup> Furthermore, the Criminal Code of 2007 contains provisions under which the reproduction, copying or modification of works or traditional knowledge protected as part of the collective rights of indigenous peoples are punishable offences.

18. The provisions of the Constitution on indigenous languages and education stipulate that the State shall promote bilingual literacy programmes in indigenous communities.<sup>23</sup>

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<sup>14</sup> Act No. 11 of 26 March 2012.

<sup>15</sup> Arts. 3 and 4.

<sup>16</sup> Art. 6

<sup>17</sup> *Gaceta Oficial* No. 26193 (30 December 2008); regulations set forth in Executive Decree No. 223 of 29 June 2010, published in the *Gaceta Oficial* of 7 July 2010.

<sup>18</sup> Arts. 5 and 6.

<sup>19</sup> Art. 8.

<sup>20</sup> Art. 9.

<sup>21</sup> Art. 14.

<sup>22</sup> Act No. 20 of 26 June 2000.

<sup>23</sup> Art. 88.

Article 10 of the Education Act states that education in indigenous communities is to be based on their right to preserve, develop and honour their cultural identity and heritage, while article 11 states that instruction is to be provided in a manner that is in keeping with the characteristics, objectives and methods of bilingual, intercultural education.<sup>24</sup> The Act mandates the Ministry of Education to set up a unit for the implementation of special programmes in indigenous areas.<sup>25</sup> A number of *comarca* laws require that the education programmes rolled out by the Ministry, especially bilingual and intercultural programmes, be coordinated with *comarca* authorities. In 2010, the Government adopted a law that grants official recognition to indigenous languages and alphabets and makes bilingual, intercultural instruction mandatory in all public and private schools in indigenous communities located in *comarcas* and on collective lands.<sup>26</sup>

19. There are also considerable safeguards in place regarding the health of indigenous peoples. The *comarca* laws guarantee the right to health, including access to health-care services that incorporate traditional healing methods. Pursuant to Ministry of Health resolution No. 322 of 2005, health-care facilities located in *comarcas* are required to provide services to the indigenous population free of charge.

20. Other laws also contain specific provisions on indigenous peoples. In addition to constitutional and *comarca* law provisions on the administration of indigenous justice, the Code of Criminal Procedure authorizes indigenous judges to adjudicate on cases involving offences committed in the *comarcas* in accordance with indigenous law (with the exception of cases involving murder or offences related to drugs or organized crime or offences committed against the Government or the national economy).<sup>27</sup> The Civil Registration Act contains specific provisions that authorize members of indigenous groups to register their children under their indigenous name and in their people's or ethnic group's *comarca*, even if they were born elsewhere.<sup>28</sup> Indigenous peoples are authorized to register and celebrate their marriages in accordance with their culture and traditions.<sup>29</sup>

21. The Indigenous Affairs Committee of the National Assembly, established in 1995, informed the Special Rapporteur of a number of bills regarding indigenous peoples that have been submitted in recent years, including a bill on the prior consultation of indigenous and native peoples and a bill on the protection of traditional indigenous medical knowledge, use and practices and other matters. However, these and other bills have been criticized on the grounds that they were drafted without sufficient consultation with indigenous peoples; the Special Rapporteur has not received any information from the National Assembly in this regard.

22. In what could prove to be a best practice in terms of responding to indigenous peoples' considerable development needs, the Government has undertaken to devise a comprehensive development plan for indigenous and native peoples. This initiative has been launched at the request of indigenous peoples and was agreed to by the Government during a dialogue that will be described below (see para. 44). Discussions about the plan focus on four main areas: (a) social issues; (b) economic issues; (c) politics; and (d) special issues, such as the administration of justice, traditional governance, institution-building in the territories and for the authorities, and food security). A panel made up of indigenous representatives appointed by their peoples and government representatives has been established to draw up the plan. The Government has expressed the hope that an executive

<sup>24</sup> Act No. 34 of 6 July 1995, amending Act No. 47 of 1946.

<sup>25</sup> Art. 24.

<sup>26</sup> Act No. 88 of 22 November 2010.

<sup>27</sup> Act No. 63 of 28 August 2008 (the Code of Criminal Procedure), art. 48.

<sup>28</sup> Consolidated Civil Registration Act (Act No. 31 of 25 July 2006), arts. 45 and 47.

<sup>29</sup> Family Code (Act No. 3 of 17 May 1994), arts. 60 and 61.

decree can be issued that will convert the plan into a policy of State. The Special Rapporteur considers that this would be a key achievement, provided that the plan is truly based on the aspirations of indigenous peoples and that sufficient funds are allocated for its implementation.

23. Following the Special Rapporteur's visit, the Government announced that it would establish an office for indigenous affairs at the deputy ministerial level in order to address the problems of the country's indigenous peoples. The Special Rapporteur considers this to be a positive step, provided that this office is given a large enough budget and that indigenous peoples are given a role in its work.

24. Panama is a party to major international treaties such as the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and the International Convention on the Elimination of All Forms of Racial Discrimination. At the regional level, Panama has ratified the American Convention on Human Rights and has recognized the competence of the Inter-American Court of Human Rights. The Government also voted in favour of the adoption of the United Nations Declaration on the Rights of Indigenous Peoples in 2007.

25. One of the concerns brought to the Special Rapporteur's attention in many parts of the country has to do with the fact that Panama has not yet ratified the International Labour Organization (ILO) Indigenous and Tribal Peoples Convention, 1989 (no. 169). The Government has taken some decisive steps towards ratification, including the establishment of an inter-institutional working group on ILO Convention no. 169 in 2010. The working group, composed of a number of different government agencies, prepared a report in which it analysed the historical, social, legal and political reasons why Panama should ratify ILO Convention no. 169 and stated that it had not found any disadvantages associated with its ratification.<sup>30</sup> Accordingly, the Government informed the Human Rights Council that, in response to recommendations made at the universal periodic review regarding the ratification of that convention, the working group had concluded its work and advocated ratification (A/HRC/16/2, para. 431).

26. However, the Government has since notified the Ombudsman's Office that it will not ratify ILO Convention No. 169 for constitutional, economic, political, administrative, social, legal and environmental reasons,<sup>31</sup> and it restated this position to the Special Rapporteur during his visit. Having considered the Government's position in the light of the relevant background information, particularly the working group's analysis of the Convention, the Special Rapporteur is of the view that the Government's refusal has no solid legal basis and that Panama should proceed with ratification.

#### **IV. Main human rights concerns**

27. National laws and programmes dealing with indigenous affairs provide a vital foundation on which to continue building upon and strengthening the rights of indigenous peoples in Panama. However, the Special Rapporteur notes that this foundation is fragile and unstable in many regards and that indigenous peoples' rights are threatened in a

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<sup>30</sup> Letter from the Ministry of Labour, the Indigenous Affairs Committee of the National Assembly, the Ministry of Foreign Affairs, the Ombudsman's Office, the National Coordinating Committee of Indigenous Peoples and the National Directorate for Indigenous Policy to Roxana Méndez, Minister of the Interior (28 October 2010).

<sup>31</sup> See, for example, the letter from Fernando Núñez-Fábriga, Minister of the Interior, to Patria Portugal, Ombudsperson, A.J. No. 1495 (3 June 2013).



number of ways. The following section outlines a series of problems that exist with regard to the enforcement and protection of the rights of indigenous peoples.

28. During the Special Rapporteur's visit to Panama, many indigenous representatives told him that, as a rule, the Government does not respond to their complaints and concerns, especially about threats to their lands and natural resources, unless they take drastic measures. In fact, in recent years indigenous peoples have blocked the Inter-American Highway on a number of occasions in an effort to call attention to their situation. These efforts have resulted in the opening of dialogues with the Government and have led to tangible action on its part, but not before indigenous persons had been killed during violent clashes with the police. The Special Rapporteur considers that indigenous peoples and the Government should enter into an ongoing dialogue in order to address existing concerns in a peaceful and constructive manner.

## A. Land and natural resources

### *Comarcas*

29. As mentioned previously, the preservation and development of indigenous cultures in Panama is in large part due to the official recognition of their territories and autonomy as embodied in the *comarca* system. Titles have yet to be awarded for the areas adjacent to the Ngobe-Bugle *comarca* in Bocas del Toro Province, which were designated for demarcation within a period of two years under Act No. 10 of 1997. This has not been done in Bocas del Toro, and these lands continue to be threatened, particularly by tourism and real estate development.

30. Although lands within the *comarca* are the collective property of indigenous peoples, are protected against private takeovers and cannot be transferred to other parties, indigenous peoples have repeatedly expressed their deep concern at the presence of third parties on their territory, both inside and outside the *comarcas*. The situation has resulted in the loss of large tracts of indigenous land and natural resources and the erosion of the indigenous authorities' decision-making powers and control over their lands. These outsiders include settlers, private farming, ranching and tourism companies, and illegal miners and loggers.

31. Although indigenous peoples have a certain degree of control over the development of renewable and non-renewable resources in the *comarcas* (see paras. 14 and 15), this is one of the chief concerns that they brought to the Special Rapporteur's attention. Specific projects that are a cause of concern are discussed below (paras. 42–48).

### **Indigenous lands without official recognition or protection**

32. One of the primary concerns of the country's seven indigenous peoples is the lack of sufficient official recognition and protection of their traditionally held lands and natural resources outside the *comarcas*. More than 100 indigenous communities are thought not to have land titles or any other form of official recognition of their rights over the lands that they have traditionally used and inhabited. Some of these communities live in protected areas, such as national parks.

33. There are a number of Emberá, Wounaan, Ngobe and other indigenous communities located outside their *comarcas*. When the Emberá-Wounaan *comarca* was set up in 1983, 44 Emberá and Wounaan communities remained outside its boundaries. Since then, the indigenous authorities in these areas have been requesting the titling of their collective lands in the provinces of Darién and Panamá. This continues to be the Wounaan people's top priority.

34. Indigenous representatives of all these communities have submitted, or are working on, their titling applications under Act No. 72 of 2008 (see para. 16). In November 2011, members of the Emberá and Wounaan peoples blocked the Inter-American Highway for five days to call attention to their territorial demands. The blockade ended with the conclusion of an agreement between the National Land Management Agency and the traditional authorities of the collective lands in question under which the Government committed to grant titles to two Wounaan communities (Rio Hondo/Platanares and Maje Chimán) and to continue the titling processes for other communities.

35. Representatives of the National Land Management Agency have informed the Special Rapporteur that delays in according official recognition to collective lands and in issuing titles to them have chiefly been due to the claims made by landowners and settlers to the lands to be demarcated. Pursuant to Act No. 72, the National Directorate for Agrarian Reform is responsible for settling disputes involving challenges to applications for collective land ownership titles; if an amicable settlement cannot be reached, legal action is taken.<sup>32</sup> Act No. 72 does not provide for protection against encroachments that take place while a titling application is being processed.

36. While communities await the titling of their collective lands, settlers and loggers continue to move into them, leading to growing tensions and conflict. The delay in recognizing the Rio Hondo/Platanares collective lands has resulted in heightened conflicts over illegal logging.

37. The fact that two of the country's indigenous peoples, namely, the Bribri and the Naso, do not have *comarcas* of their own is a particular concern. Bribri representatives informed the Special Rapporteur that the titling application that they submitted under Act No. 72 for their collective lands, which cover a total area of 28,207 hectares, remains pending. They also reported that 80 per cent of the territory has been demarcated. However, the representatives of the National Land Management Agency with whom the Special Rapporteur met said that they had no knowledge of the application.

38. The Naso people have been fighting for the establishment of a *comarca* since 1973. They drafted a bill to that end and submitted it to the Legislative Assembly, but the bill has yet to be adopted. The government representatives with whom the Special Rapporteur broached the topic acknowledged the importance of establishing a *comarca* for the Naso and stated that they remained open to the possibility of doing so. While the Naso people await legal protection for their traditional territory, they are having problems with settlers and other outsiders. In particular, the Naso community of San San Drúy has had many disputes with Ganadera Bocas SA, a company operating on the lands that they are claiming. The Bonyic hydroelectric project has also sparked conflict, as is discussed in the next section.

### **Investment projects**

39. Numerous allegations of violations of the rights of indigenous peoples have been made as a result of the development of large-scale hydroelectric and other investment projects in Panama's indigenous territories, particularly in recent years. Government representatives informed the Special Rapporteur that the State views hydroelectric power generation as its main priority and that there are plans to construct further plants in the coming years.

40. In general, the indigenous peoples affected by these projects claim that there have been irregularities in the processes involved in obtaining authorization for the construction of hydroelectric power stations or in reaching agreement on such projects. It has also been

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<sup>32</sup> Art. 8.

claimed that the revenues from these projects have been distributed improperly. Most of these projects are located outside of the boundaries of the indigenous *comarcas*, but they nevertheless have an impact on lands recognized as belonging to or claimed by indigenous peoples.

41. Recent experiences in connection with hydroelectric projects in Panama illustrate the consequences of the lack of an appropriate governing framework for consultations with indigenous communities. In the cases that have arisen recently, consultations were carried out in an improvised manner. Representatives of both the Government and indigenous peoples stated that those processes were unsatisfactory, partly because the enterprises involved undertook to carry out the consultations on their own and failed to work with the peoples concerned through their representatives.

### Specific projects

42. **Barro Blanco.** The Barro Blanco hydroelectric project is being developed by Generadora del Istmo, SA, a Panamanian enterprise with Central American financial backing. The dam for this hydroelectric project is currently under construction and is located outside the boundaries of the Ngobe-Bugle *comarca*. However, the dam's reservoir will flood lands in an adjacent area and will thus have a direct impact on a number of the *comarca's* inhabitants. Representatives of the Government and of the indigenous peoples concerned agree that the existing tensions and the continued rejection of the project by the Ngobe people are, to a large extent, the consequence of shortcomings in the consultation process. The environmental impact study approved by the National Environment Agency has also given cause for concern, since it fails to assess the project's impact on the lands and territories of the Ngobe-Bugle people.

43. The disputes surrounding this project began at the start of 2011, when members of the Ngobe people closed off various sections of the Inter-American Highway. The demonstrations ended on 27 February 2011 with the signing of the San Félix Agreement by the Government and the Coordinating Body for the Defence of the Natural Resources and Rights of the Ngobe-Bugle People and Campesinos. The Government undertook to work for the passage of a law that would prohibit mining and mineral exploration in the Ngobe-Bugle *comarca*. However, when the bill was passed into law by the National Assembly at its first reading, the article providing for the cancellation of commercial mining concessions already in operation within the *comarca* had been removed from the text. This sparked a fresh wave of demonstrations, and the Inter-American Highway was again closed off in February 2012. Two members of the Ngobe community died during those demonstrations, and the inquiry into the circumstances surrounding their deaths has not been completed. Indigenous peoples and various civil society organizations also claim that, while in police custody, a number of girls and women were subjected to sexual violence, including rape in one case. Investigations are also ongoing in these cases.

44. Following the signing of the San Lorenzo Agreement in February 2012, the Government, with the Catholic Church acting as mediator and the United Nations country team in Panama as an observer, set up two round tables with representatives of the Ngobe people to address controversial issues that remained unresolved, including the Mining Act and the Barro Blanco hydroelectric project. The round table on the Mining Act led to the drafting and adoption of Act No. 11 of 2012 (see para. 15 above). As a result of the round table on the Barro Blanco dam, the parties agreed to send a joint verification mission comprised of representatives of the Government of Panama, the United Nations and the Ngobe-Bugle *comarca* to the area to carry out a preliminary study on the impact of the project.

45. In its report of September 2012, the joint verification mission recommended that an independent study be carried out by an international team of experts. The hydraulic,

ecological and economic aspects of the project were examined in July and August 2013 and a participatory, community-level assessment was prepared. The study concluded that the project's impacts on the environment and the Ngobe communities in question could be mitigated but that appropriate consultations with the indigenous peoples in question had not been carried out and that the direct and indirect impacts had not been clearly explained or understood. It went on to say that the direct impacts could certainly affect the community as a whole and should be mitigated properly.<sup>33</sup>

46. **Chan 75.** In 2009, the Special Rapporteur visited the country to examine the situation of the indigenous communities affected by the Chan 75 hydroelectric project and issued a report containing recommendations in that regard (A/HRC/12/34/Add.5). For the most part, those recommendations were not heeded by the Government. The project resulted in the flooding of five Ngobe communities located outside the boundaries of the Ngobe *comarca*. Following the visit, most of the families concerned reached agreements with the Government and with AES Corporation, the terms of which have been made public. Two families have failed to reach an agreement with the enterprise, despite the fact that their farms have already been flooded. It is further claimed that AES has not completed construction work on the alternative housing that was promised to the families, who are currently living at various widely scattered locations. During the Special Rapporteur's visit, government representatives told him that it had been a mistake on their part to allow the company to carry out the Chan 75 consultations on its own at the start of the project. Indigenous representatives also complained that the consultation process took the form of negotiations with individual families, rather than with indigenous representatives or traditional decision-making bodies.

47. **Bonyic.** The Bonyic project, which is located on traditional lands claimed by the Naso people, is another controversial hydroelectric project. Although the enterprise carrying out that project has reached agreements on compensation with a number of the families concerned, others informed the Special Rapporteur that they had not negotiated with the company. In 2004, the previous Naso king signed an agreement on compensation and benefits between the enterprise Hidro Ecológica del Teribe and the Naso people regarding the construction of the Bonyic hydroelectric power station. In 2012, the current king signed an accord with the corporation which broadened the agreement on compensation and benefits, with the enterprise agreeing to provide a number of benefits mainly in the areas of job creation, education, health and infrastructure. However, a number of members of the Naso community oppose the accord and assert that they were not represented in the process and that the project will have an impact on the environment and will block access to certain areas within Naso territory.

48. **Bayano.** Indigenous representatives of the Kuna and Emberá peoples have made a number of allegations relating to the Bayano hydroelectric project, which, in the 1970s, led to the relocation of a large number of members of the Kuna and Emberá communities and the loss, according to one estimate, of 35,000 hectares of their traditional lands. Prior to the relocation phase, the Government offered to give the communities in question title to new lands, financial compensation and other benefits.<sup>34</sup> It is claimed, however, that the communities have still not obtained legal recognition of their ownership of the lands to which they were moved and that the Government has not paid the financial compensation that it had said it would. On 26 February 2013, the Inter-American Commission on Human Rights referred the case to the Inter-American Court of Human Rights, after the Commission had concluded that there has been an "ongoing violation of the right to

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<sup>33</sup> Peritaje al Proyecto Hidroeléctrico Barro Blanco, Resultados del Diagnóstico Rural Participativo, September 2013, para. 100.

<sup>34</sup> See Decree No. 156 of 1971.

collective property of the Kuna de Madungandi and Emberá de Bayano indigenous peoples and their members as a result of the State of Panama's failure, to date, to pay the financial compensation stemming from the dispossession and flooding of the victims' ancestral territories as from 1969".<sup>35</sup>

## B. Self-governance and participation

49. A strong protective framework exists in the country for self-government and political participation by the indigenous peoples of Panama. This framework is linked to the *comarca* system and, to a lesser extent, to the existence of collective lands. However, no specific protection of this type exists for these collective lands or for indigenous peoples whose territories have not been recognized.

50. As to political participation, under the Constitution of 2004, *comarca* inhabitants can elect parliamentary representatives, mayors, councillors and representatives of administrative districts. Currently, 7 of the 71 representatives in the National Assembly are indigenous persons (3 Ngobe and 4 Kuna), meaning that, at the national level, the Ngobe-Bugle community is proportionally represented and the Kuna people are overrepresented. The Emberá-Wounaan *comarca* elects parliamentary representatives jointly with Darién Province; the inhabitants of that *comarca* are therefore not, in actual fact, guaranteed appropriate representation, as their votes are merged with those of the overall electorate of Darién. The percentage of other political representatives (such as mayors, councillors and representatives of administrative districts) elected by the *comarcas* has been nearly proportional to the size of their population.

51. Indigenous peoples enjoy a significant level of self-governance within the *comarcas*, which includes the election of their local leaders and control over internal affairs.<sup>36</sup> Furthermore, as mentioned earlier, indigenous authorities enjoy formal, although not always effective, control over non-renewable resources within their *comarcas* and, as will be discussed below, many public economic and social development services are provided at the *comarca* level in coordination with those authorities. However, the Government retains control over the disbursement of public funds and over tax revenues within the *comarcas*.

52. The traditional governments of the indigenous peoples also enjoy a certain amount of recognition within the framework of the legally recognized collective lands located outside the boundaries of the *comarcas*. Act No. 72 states that the executive branch shall, by executive decree, accord recognition to the traditional form of organization, culture and authorities of the indigenous peoples holding collective title to their lands and that it shall establish procedures for coordination between those authorities and the Government.<sup>37</sup>

53. Notwithstanding such formal protection mechanisms, indigenous peoples have expressed concern that, in their view, the State does not duly respect the indigenous authorities and that it frequently fails to coordinate or consult with those authorities regarding legislative, political and administrative decisions that affect them, both within and outside the boundaries of the *comarcas*. In particular, there has been a lack of consultation on extractive and hydroelectric activities and on the development of related legislation. A number of laws are said to have been adopted in recent years without consulting indigenous peoples, including legislation on communal expropriation,<sup>38</sup> wind

<sup>35</sup> Case No. 12.354, *Kuna de Madungandi and Emberá de Bayano Indigenous Peoples and Their Members v. Panama*.

<sup>36</sup> See Act No. 10 of 7 March 1997, chap. III.

<sup>37</sup> Art. 15.

<sup>38</sup> Act No. 20 of 2009.

power concessions<sup>39</sup> and amendments to the Criminal Code.<sup>40</sup> It has also been claimed that the bills referred to in paragraph 21 were submitted to the National Assembly without involving the indigenous authorities of the *comarcas* and indigenous territories.

54. Those regions where government authorities are present within indigenous territories suffer the most from a lack of coordination, and this is particularly true of the border areas inhabited by the Kuna, Emberá and Wounaan peoples. The Special Rapporteur has been informed that the National Border Service of the Republic of Panama has failed to coordinate its activities with the indigenous authorities of the Kuna Yala and Emberá-Wounaan *comarcas*. The Ministry of Public Security has stated that, in general, the police coordinate their activities with the *comarca* authorities but that State authorities have special jurisdiction and responsibility in certain regions, such as the border areas in Kuna Yala and Darién.

55. One cause of concern that has arisen in the past few years is related to the 2011 elections in the Ngobe-Bugle *comarca*. In 2010, by means of Executive Decree No. 537 of 2 June 2010, the Government amended provisions of the administrative organizational charter of the Ngobe-Bugle *comarca* relating to procedures for the election of *comarca* authorities. According to the Electoral Tribunal, the amendments were of a technical legal nature and were designed to correct legal provisions governing the election of authorities contained in the administrative organizational charter that were thought to be in contradiction with the law which authorized the establishment of the Ngobe-Bugle *comarca*. It is clear that the indigenous peoples of the *comarca* were not duly consulted regarding those changes. The amendments were in place by the time that the Electoral Tribunal organized and monitored the 2010 elections, during which 1,740 *comarca* representatives were elected. According to the Electoral Tribunal, 23.9 per cent of the population voted in the elections, but a number of representatives of the Ngobe-Bugle people claim that the electoral process was manipulated by the Government and that the results are not legitimate.

56. The Special Rapporteur has received information which indicates that indigenous women often suffer from discrimination within their own communities, particularly in terms of their participation in traditional systems of representation. Such allegations give cause for concern and warrant attention.

## C. Economic and social development

57. In recent years, progress has been made in raising the level of economic and social well-being of indigenous peoples. As will be discussed later on in this section, various indicators point to an improvement in the living conditions of indigenous peoples. However, indigenous peoples continue to be poorer than other sectors of the Panamanian population and to be worse off in terms of access to basic services, education and health.

### Economic development

58. According to Ministry of Economic Affairs and Finance figures for 2012, poverty and extreme poverty levels among the indigenous peoples of Panama are alarmingly high, with 89.8 per cent of the population of the *comarcas* living in poverty, compared to 21.4 per cent of the population outside of the *comarcas*. Furthermore, 68.5 per cent of the population of the indigenous *comarcas* live in extreme poverty, compared to 6.4 per cent of

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<sup>39</sup> Act No. 18 of 2013.

<sup>40</sup> Act No. 44 of 2013.

the population elsewhere.<sup>41</sup> In addition, in contrast to the trend for the general population, levels of poverty among indigenous peoples have not fallen in recent years.<sup>42</sup>

59. The situation in terms of access to basic services is also a cause for concern and is undoubtedly exacerbated by the remoteness of many communities and homes in the indigenous *comarcas*. According to the latest official census, carried out in 2010, 93.3 per cent of the nation's households have access to water fit for human consumption. However, the figures for the Ngobe-Bugle, Emberá and Kuna Yala *comarcas* are much lower, standing at 28 per cent, 41 per cent and 77 per cent respectively.<sup>43</sup> Furthermore, at the national level only 5.5 per cent of all households lack access to sanitation services, whereas the percentages of households without sanitation services in the Kuna Yala, Ngobe-Bugle and Emberá *comarcas* stand at 94 per cent, 59 per cent and 42 per cent, respectively.<sup>44</sup> Access to sanitation services in the *comarcas* has, however, increased significantly since 1990.<sup>45</sup>

60. The Special Rapporteur was not provided with any information on government anti-poverty programmes specifically targeting the indigenous population. However, the Ministry of Social Development provided the Special Rapporteur with information on its social inclusion programme, which makes the receipt of specified social benefits conditional upon the fulfilment of certain responsibilities, such as school attendance and regular visits to health clinics. This programme is not, however, limited to indigenous peoples, and the way in which it is implemented has not been adapted to take into account their distinct ways of life and cultures.

61. During the visit, the indigenous representatives who met with the Special Rapporteur reported on a number of grass-roots economic development initiatives. One example which stands out is that of the Kuna, who have benefitted significantly in financial terms from tourism in the Kuna Yala *comarca*, where local tourism ventures are managed by the Kuna Congress. The Special Rapporteur also notes that natural resource development projects conducted by the Government or by third parties could provide indigenous peoples with economic development opportunities. However, such projects must be implemented on the basis of consensual agreements with the peoples concerned in a manner that is beneficial to those peoples and respectful of their human rights. As previously stated, under Act No. 11 of 2012, a minimum of 5 per cent of the revenues from hydroelectric projects in the Ngobe-Bugle *comarca* must be allocated to the Ngobe-Bugle community. The Special Rapporteur will closely monitor the implementation of this law.

## Education

62. As previously stated (see para. 18 above), Panama has a solid legal framework, including constitutional provisions and national and *comarca* laws, on education for indigenous peoples and intercultural and bilingual education. This framework is one of the most advanced of its kind that the Special Rapporteur has seen anywhere in the world.

63. In addition to these laws, the Ministry of Education has set up various programmes on education for indigenous peoples,<sup>46</sup> including the following:

<sup>41</sup> Ministry of Health, *Situación de Salud de Panamá* (2013), p. 27.

<sup>42</sup> *Ibid.*

<sup>43</sup> Office of the Comptroller General of the Republic of Panama, National Statistics and Census Institute, *Características de las Viviendas y los Hogares*, table 16.

<sup>44</sup> *Ibid.*, table 18.

<sup>45</sup> Ministry of Health, *Situación de Salud de Panamá* (2013), p. 52.

<sup>46</sup> Ministry of Education, *Gestión educativa en las poblaciones indígenas de Panamá en atención al derecho a la educación*, July 2013.

(a) In 2007, the Government created the National Intercultural Bilingual Directorate,<sup>47</sup> a body responsible for developing education programmes for indigenous peoples that are suited to their cultural norms;

(b) The Ministry of Education has set up regional education directorates<sup>48</sup> which have helped 42 Emberá and Wounaan schools and 369 Ngobe-Bugle educational centres to develop intercultural, bilingual education programmes in 2012. The Ministry also devised a 2013 Panama peer-to-peer project for training teachers, directors and supervisors working in rural and indigenous schools in the use of new instructional technologies. The Ministry has also developed a number of programmes to improve education within multi-grade educational centres in rural and indigenous areas based on teacher-training and other initiatives.

64. Academic achievement levels in the *comarcas* are improving. However, the gap in this regard between members of indigenous peoples and the non-indigenous population remains wide; for example, levels of school attendance among the indigenous communities are still lower than among the rest of the population. In general, indigenous children tend to leave school at an earlier age than children from other sectors of the population, with girls remaining at school for fewer years than boys. At the national level, on average, children attend school for 8.39 years, while the average for the Kuna Yala, Emberá-Wounaan and Ngobe-Bugle *comarcas* is 4.34 years, 4.32 years and 3.54 years,<sup>49</sup> respectively. Illiteracy rates in the *comarcas* are higher than the national average of 5.5 per cent, as well. The averages for the Kuna Yala, Ngobe-Bugle and Emberá-Wounaan *comarcas* are 28.3 per cent, 30.8 per cent and 22.9 per cent,<sup>50</sup> respectively. It should be noted, however, that these figures have improved since 2000.

65. Notwithstanding the progress made, indigenous peoples undoubtedly still face a number of obstacles in terms of their access to education, including a shortage of schools, particularly secondary schools in the *comarcas* and other rural communities that are home to indigenous peoples. The Ministry of Education estimates that around 96 per cent of schools in the indigenous *comarcas* are multi-grade institutions. Furthermore, progress in the provision of intercultural bilingual education is said to be limited; both indigenous peoples and the Ministry of Education have identified a lack of funding as a factor that hampers the development of programmes in that field. Moreover, even though the introduction of a curriculum suited to the needs of indigenous peoples is required by law, teachers still tend to follow the national curriculum.

## Health

66. Both government representatives and representatives of indigenous peoples acknowledge that the health status of indigenous peoples are negatively affected by poverty and extreme poverty, low levels of education, limited access to drinking water and sanitation, and the geographical isolation of many indigenous communities in Panama.

67. The available figures point to a gap between the indigenous and non-indigenous populations in terms of health conditions. For example, nationally, the average infant mortality rate stands at 13.2 deaths per 1,000 live births. The averages for the Kuna Yala and Ngobe-Bugle *comarcas* are 19.5 and 20.8,<sup>51</sup> respectively. The national average

<sup>47</sup> Executive Decree No. 274 of 31 August 2007.

<sup>48</sup> Executive Decree No. 323 of 18 October 2007.

<sup>49</sup> Office of the Comptroller General of the Republic of Panama, National Statistics and Census Institute, General and Educational Characteristics, table 21.

<sup>50</sup> Ministry of Health, *Situación de Salud de Panamá*, 2013, p. 37.

<sup>51</sup> *Ibid.*, p. 74 (figures for 2011).



maternal mortality indicator for Panama is 80.5 deaths per 1,000 live births, while the averages for the Kuna Yala and Ngobe-Bugle *comarcas* are 542.3 and 300.5,<sup>52</sup> respectively.

68. Indigenous peoples also tend to suffer from higher rates of infectious diseases. The incidence of tuberculosis has been identified as an issue of particular concern, with the Kuna Yala and Ngobe-Bugle *comarcas* having the highest rates: 163.3 cases per 100,000 inhabitants and 85.3 cases per 100,000 inhabitants, respectively (compared to the national average of 41.2).<sup>53</sup> The indigenous areas also have the highest rate of malnutrition among children of preschool age (under 5 years of age), and this situation has worsened over the past few years.<sup>54</sup>

69. In general, the indigenous peoples expressed concern at the limited availability of health services in rural areas. The number of health workers in the *comarcas* and other areas with large indigenous populations remains low, although the situation is improving. In 2011, medical-worker density in the Ngobe-Bugle *comarca* was 2.6 (an increase of 0.8 as of that year) and 13.0 in the Kuna Yala *comarca* (up from 10.9 in 2001).<sup>55</sup> A study on the health status of the indigenous peoples of Panama showed that 64.2 per cent of the indigenous persons who were interviewed identified distance as being an obstacle in terms of access to health services.<sup>56</sup>

70. The Government runs a number of programmes designed to facilitate access to health services. For example, it provides subsidies and transportation to clinics for midwives, has set up hostels and homes for expectant and new mothers close to major health-care centres and arranges for visits to indigenous communities by health workers trained to provide basic services. However, much remains to be done in this regard. One issue raised by the representatives of the Ministry of Health is that non-indigenous health workers are often unwilling to work in the *comarcas* despite the higher wages on offer. Cultural and linguistic factors also can interfere with access to health services. According to representatives of the Ministry of Health, most health workers in the *comarcas* should be indigenous persons who are familiar with the *comarca* laws. One of the many problems in this area has to do with the sensitization of health workers.

71. The creation in 2011 of the Directorate for Indigenous Health Affairs of the Ministry of Health marked a major step forward. The Directorate is responsible for providing comprehensive health care to indigenous peoples and for helping them to preserve their ancestral knowledge and uphold their fundamental rights.<sup>57</sup> The Directorate provides health services such as vaccinations, dental care and the dispensation of medicines, as well as offering awareness-raising and training services, for example, to traditional midwives and doctors concerning health issues linked to their work in indigenous areas. Authorization for the creation of the National Commission on Traditional Indigenous Medicine<sup>58</sup> was issued in 2003. The Commission was given the mandate to promote traditional indigenous medicine, in cooperation with the traditional indigenous authorities. To date, however, this body has not been established.

<sup>52</sup> *Ibid.*, p. 80.

<sup>53</sup> *Ibid.*, p. 101.

<sup>54</sup> *Ibid.*, p. 124.

<sup>55</sup> *Ibid.*, p. 162.

<sup>56</sup> Ministry of Health and Pan American Health Organization, *Diagnostico Situacional y Plan de Salud para los Pueblos Indígenas de Panamá*, p. 45.

<sup>57</sup> Resolution No. 706 of 22 July 2011.

<sup>58</sup> Executive Decree No. 117 of 2003.

## V. Conclusions and recommendations

72. The legislative framework of Panama is highly developed in terms of the rights of indigenous peoples. In particular, the *comarca* system provides a significant level of protection for the rights of indigenous peoples in Panama, especially with regard to lands and territories, participation and self-governance, and health and education.

73. The country's laws and programmes on indigenous issues provide a vital foundation for further work to build upon and strengthen the rights of the indigenous peoples of Panama. However, the Special Rapporteur observes that this foundation is fragile and unstable in many regards.

74. As pointed out earlier in this report, Panama is faced with a series of issues related to the enforcement and protection of the rights of indigenous peoples, particularly in connection with their lands and natural resources, the implementation of large-scale investment projects, self-governance and participation, and social and economic rights, including their rights to economic development, education and health.

75. In the light of the observations made in this report, the Special Rapporteur makes the following specific recommendations to the Government:

(a) Seek out way of engaging in an ongoing dialogue with indigenous representatives in order to address existing concerns in a peaceful and constructive manner (para. 28);

(b) Ensure that indigenous peoples play an appropriate role in the formulation of a bill on the prior consultation of indigenous peoples. This bill should provide for consultation with the indigenous authorities in the *comarcas* and collective lands (para. 21);

(c) Proceed with the ratification of the ILO Indigenous and Tribal Peoples Convention, 1989 (No. 169) (para. 25);

(d) Redouble efforts to protect the lands and natural resources located within the *comarcas* and to resolve the pending issue of the titling of the areas adjacent to the Ngobe-Bugle *comarca* (para. 29);

(e) Move forward with the processing of the pending applications filed by the Bribri, Emberá and Wounaan peoples under Act No. 72 of 2008 and assist them in correcting any shortcomings in their applications that might lead to delays in that regard (paras. 34 to 37);

(f) Re-examine the proposal put forward by the Naso people regarding the establishment of a *comarca* as a means of safeguarding and securing official recognition of their territorial rights (para. 38);

(g) Take the necessary steps, in coordination with the corresponding indigenous authorities, to prevent third parties from entering recognized or claimed indigenous territories and punish any persons illegally present on those lands (paras. 30 and 36);

(h) Ensure that natural resource development projects are implemented on the basis of consensual agreements with the peoples concerned in a manner that is beneficial to those peoples and respectful of their human rights (paras. 39 to 41);

(i) In the light of recent experiences with the implementation of hydroelectric projects without appropriate consultations with the indigenous communities concerned, such as the Barro Blanco and Chan 75 projects, establish, in

coordination with indigenous representatives, a governing framework for a system of consultations to be applied in the case of hydroelectric and extractive projects that have an impact on indigenous peoples (paras. 42 to 46);

(j) As to the Barro Blanco hydroelectric project, the lands of the Ngobe people should not be flooded or adversely affected in any way without the prior agreement of the representative authorities of that people as to the conditions attached thereto. Without the agreement or consent of the Ngobe people, the State should not allow the territorial rights of this people to be prejudiced in any way unless it is necessary to do so for a public purpose that is valid from a human rights perspective and, in such cases, only to the extent that it is necessary for and proportional to that valid purpose (paras. 42 to 45);

(k) In recognition of the significant framework of protection provided by the *comarca* system with regard to self-governance and political participation, develop special protective measures of that type for collective lands and for indigenous peoples whose territories have not been recognized (paras. 49 to 55);

(l) Strengthen its coordination and consultations with indigenous authorities concerning legal, political and administrative decisions that affect them and ensure that any decisions taken by those authorities within their areas of competence are respected (para. 54). In that regard, the National Border Service of the Republic of Panama should coordinate its activities with the indigenous authorities;

(m) Respect the right of indigenous peoples to elect their authorities in line with their traditional forms of representation (para. 55);

(n) In view of the fact that indigenous peoples continue to have higher poverty rates and worse living conditions in terms of access to basic services, education and health: (i) Increase the efforts and resources devoted to narrowing the gap between indigenous peoples and other Panamanians in terms of access to education, health and economic development; (ii) Strengthen the coordination and implementation of education, health and economic development programmes and policies in collaboration with indigenous authorities, both within and outside the boundaries of the *comarcas*, and allocate additional resources for that purpose; (iii) Provide education and health specialists operating in indigenous areas with training in the areas of interculturality, indigenous languages and the legislation governing the *comarcas* (paras. 57 to 71);

(o) Given the strong legal recognition accorded to the right to bilingual and intercultural education, allocate additional resources for the enforcement of that right, provide indigenous teachers with intercultural bilingual teacher training and develop additional curricular guidelines and materials in ongoing consultation with the indigenous peoples concerned (paras. 62 and 63).

76. As to the allegations of discrimination against women, the indigenous peoples themselves must continue to build their capacity to combat all patriarchal social structures, persisting attitudes of male superiority and any purported cultural justification for discrimination against women.