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**The Situation of the Térraba Indigenous People of Costa Rica:  
A Request for Consideration under the Early Warning and Urgent  
Action Procedures of the United Nations Committee on the  
Elimination of Racial Discrimination  
(Seventy-Seventh Session)**

**I. Summary**

1. This request concerns the situation of the Térraba indigenous people (also known as the Teribe) of Costa Rica and is respectfully submitted for consideration under the Committee on the Elimination of Racial Discrimination's ("the Committee") early warning and urgent action procedures. It is submitted by four organisations of Térraba indigenous people, one national indigenous organisation, and one international NGO ("the submitting organisations").<sup>1</sup>

2. According to the most recent census, the Térraba people number approximately 750 persons. In 1956, they were granted title to part of their traditional territory. However, this title was amended and considerably reduced, without any form of notice or consultation, in 2004 by excising the General River, roads, land used by State services (e.g., schools), and water springs. This caused the fragmentation of the titled lands into a number of discrete blocks. At present, close to 90 percent of this titled area is illegally occupied by non-indigenous persons with the tacit or formal approval of the State. As discussed below, the Committee has expressed concern about this same situation on two prior occasions.

3. In addition to the preceding, Costa Rica, through its state-owned electricity company, intends to construct a hydroelectric dam ("the Diquis dam") that will flood at least ten percent of the Térraba people's titled lands (see Annex 2, Image 2, containing a map of the area to be flooded). As well as permanently depriving the Térraba of the use and enjoyment of these lands, the Diquis dam, if built in the manner currently proposed, will also flood a large number of sites of sacred, cultural and archaeological significance to the Térraba people. These include sites of fundamental importance to their identity, cultural integrity, and spiritual and religious freedom, including many hundreds of burial sites and geographical features that are considered to be 'pillars of Térraba existence and identity'.

4. There has been no consultation with or participation by the Térraba in relation to the Diquis dam, which has been granted the 'highest priority status' with regard to obtaining environmental and other permits by the Office of the President.<sup>2</sup>

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<sup>1</sup> The submitting organisations are described in Annex 1.

<sup>2</sup> The lack of consultation and participation is confirmed in studies jointly undertaken by faculty from the University of Florida and the University of Costa Rica. See H. Needleman, K. Patterson and S. Di Lucca, *The Proposed PH Diquis and its compliance with International Law*, 23 July 2009. Available at: <http://www.law.ufl.edu/conservation/costarica/spotlight/diquis.shtml>. These studies analyse international environmental laws and some human rights principles and conclude that the Diquis project has failed to comply with applicable norms to-date.

This is the case despite many requests for participation and even large protest marches organised by the T rraba to highlight their exclusion from decision making.<sup>3</sup> In particular, their requests to be afforded the opportunity to participate in decision-making to-date have been rejected by State officials as being premature, a position that has been endorsed by the Constitutional Chamber of the Supreme Court.<sup>4</sup> This has happened notwithstanding the fact that some amount of infrastructure has already been built, including roads and a warehouse for heavy machinery, and housing for an estimated 3,000 construction workers and their families is being built presently.<sup>5</sup> There has also been excavation of tunnels that may be used in the operation of the dam and concessions have been issued to extract building materials for the construction of the Diquis dam in lands currently occupied by the T rraba and which lie outside of the titled area.

5. The specific impacts of such a large population increase (potentially more than 9,000 people if the workers' family members are counted) on the T rraba people are difficult to predict at present. Evidence from similar situations elsewhere strongly supports the likelihood of substantial, negative and multi-generational impacts.<sup>6</sup> Moreover, it is widely believed that the State is presently ill-equipped to deal with such large-scale and negative impacts and nor will it be able to effectively control and mitigate them in the future. Environmental and social impact assessments have not been conducted for the activities identified in this and the preceding paragraph. If they have been conducted, the T rraba are unaware of their existence and their right to participate in such assessments has not been respected. They have also been denied their right to participate with respect to the broader process of impact assessment in relation to the Diquis dam itself.

6. The situation described herein threatens gross and irreparable to the T rraba people and fully meets the criteria for consideration under the Committee's early warning and urgent action procedures.<sup>7</sup> In addition to constituting a large-scale and serious "Encroachment on the traditional lands of indigenous peoples ... [including] for the purpose of exploitation of natural resources," it also represents a situation that threatens the cultural, and perhaps even physical, survival of the T rraba people given their small number, the likelihood of substantial and negative impacts on the maintenance of their multiple relationships with their lands, and the massive, illegal and openly notorious occupation of their lands by outsiders.<sup>8</sup> It thus represents a grave situation "requiring immediate attention to prevent or limit the scale or number of serious violations of the Convention" and to reduce the risk of further racial discrimination.<sup>9</sup> The submitting organisations therefore respectfully request

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<sup>3</sup> On 6 October 2009, more than 150 Terraba and others marched along the inter-American highway demanding respect for their right to participate. They marched all the way to the municipality of Buenos Aires, more than 13 kilometres from Terraba territory. ICE employees filmed and shouted at them in Buenos Aires causing a confrontation that required intervention by the police. See 'Costa Rica: Popular March, for Dignity in the South' (containing an account and pictures of the march and confrontation). Available at: <http://linksunten.indymedia.org/node/12391>.

<sup>4</sup> See 'Indigenous Peoples Sidelined in Plans for Dam', *Inter Press Service* 27 May 2009. Available at: <http://ipsnews.net/news.asp?idnews=47000>.

<sup>5</sup> Instituto Costarricense de Electricidad, *Proyecto Hidroel ctrico Diquis – Generalidades de la Obra*. Available at: [http://www.grupoice.com/esp/ele/infraest/proyect/icelec/proy\\_diquis\\_infgen.htm](http://www.grupoice.com/esp/ele/infraest/proyect/icelec/proy_diquis_infgen.htm).

<sup>6</sup> See *inter alia* *Dams, Indigenous Peoples and Ethnic Minorities*. World Commission on Dams, 1999.

<sup>7</sup> See *inter alia* D. Moscovici & C. Wenger, 'Planning for Scale. Plan Puebla Panama and the Diquis Hydroelectric Project', *Panorama*, University of Pennsylvania, 2009, at p.63 (confirming the high probability of "irreversible local impacts" on indigenous peoples and the environment). Available at: [http://www.design.upenn.edu/files/panorama08-13\\_Moscovici.pdf](http://www.design.upenn.edu/files/panorama08-13_Moscovici.pdf).

<sup>8</sup> See *Guidelines for the Use of the Early Warning and Urgent Action Procedure*, August 2007, at p. 3, para. 12.

<sup>9</sup> *Prevention of Racial Discrimination, including early warning and urgent procedures: working paper adopted by the Committee on the Elimination of Racial Discrimination*. UN Doc. A/48/18, Annex III, at para. 8-9.

that the Committee considers the situation described herein under its early warning and urgent action procedures at its seventy-seventh session (see paragraph 49 below for specific requests).

## **II. The Térraba People: A Threatened Existence**

7. There are eight indigenous peoples in Costa Rica who cumulatively comprise around 1.68 percent of the national population. As noted above, the Térraba people number around 750 persons, approximately one percent of the total number of indigenous persons in Costa Rica. They live in four main villages (Térraba, Bijagual, Ceibón, San Antonio y San Cristóbal) and a number of small settlements in Puntarenas province. One of their main villages, Macho Monte, is located outside of their titled lands and has no security of tenure over their traditional lands. Concessions to extract construction materials for building the Diquis dam have been granted in these traditional lands without any effective participation in decision making by the Térraba people residing there.

8. Due to generations of assimilationist policies and practices, only 0.7 percent of the Térraba can speak their own language and their ability to transmit their culture to future generations has been compromised. Although Costa Rica constitutionally recognised indigenous languages in 1999, it has yet to adopt sufficient measures to support indigenous peoples to maintain and/or revitalise their languages and cultural heritage. At the same time, it continues to pursue activities, such as the Diquis dam, that may have severe negative consequences for indigenous peoples' cultures and well-being.

9. The Térraba people's traditional economy is subsistence-based, primarily drawing on the resources of their forests and waters. In the 1970s, the State began promoting clearance of forests for conversion to agricultural and pastoral lands and much of the Térraba's forest was lost. Their ability to practice and benefit from their traditional economy was further and drastically reduced over the intervening years due to the illegal occupation of their lands by non-members. Today, they are essentially denied their ability to practice and benefit from their traditional economy and they have been forced into the cash economy. In short, they have been denied any security over their means of subsistence.

10. One consequence of the destruction of the Térraba's traditional economy is that their region has the highest incidence of poverty in the country. In 2007, for example, the percentage of households in their region in extreme poverty was 19.3 percent whereas nationally the figure is 3.3 percent.<sup>10</sup> In this respect, the Committee observed in 2007 that extreme poverty among indigenous peoples was a problem nationwide, stating "that only 7.6 percent of indigenous people in th[eir] territories have their basic needs met."<sup>11</sup> It recommended remedial measures to ensure that "indigenous people do not find themselves compelled to leave their ancestral lands" in search of employment and better living conditions.<sup>12</sup> The loss of additional lands to be caused by the Diquis dam will further exacerbate this already serious and unequal situation.

11. The existence and well-being of the Térraba people as a distinct cultural and territorial entity is thus severely threatened. It is questionable if they will be able to

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<sup>10</sup> *Estado de la Nación, Estadísticas Sociales. Pobreza 2006-2007*. Available at: [http://www.estadonacion.or.cr/Compendio/soc\\_pobreza06\\_07.html](http://www.estadonacion.or.cr/Compendio/soc_pobreza06_07.html).

<sup>11</sup> Costa Rica: CERD/C/CRI/CO/18, 17 August 2007, at para. 12.

<sup>12</sup> *Id.*

survive as a distinct people into the latter part of this century without urgent intervention and protection. This request respectfully seeks this urgent attention and urges the Committee to act immediately so as to assist Costa Rica to fully comply with its obligations under the International Convention on the Elimination of All Forms of Racial Discrimination (“ICERD”).

### **III. Denial of Territorial Rights, Encroachment and the Threat of Irreparable Harm**

#### **A. The Domestic Legal Framework: A Persistent and Ongoing Failure to Adequately Respect and Protect Indigenous Peoples’ Rights to Own and Control their Traditional Lands, Territories and Resources**

12. While Costa Rica has endorsed the 2007 UN Declaration on the Rights of Indigenous Peoples and is party to a number of international conventions that guarantee the rights of indigenous peoples, including International Labour Organisation Convention No. 169, its primary law on indigenous peoples remains the 1977 *Indigenous Law*. This law, *inter alia*, provides that indigenous reserves (meaning areas titled to indigenous peoples that generally do not cover the same area as traditionally owned territories) are inalienable, imprescriptible, non-transferable and exclusive to indigenous peoples.<sup>13</sup> Despite this guarantee, massive illegal occupation of indigenous lands is the norm in Costa Rica. Like the Térraba, where more than 88 percent of their reserve is illegally occupied, the vast majority of these reserves are illegally and openly occupied by outsiders.<sup>14</sup> The Committee has expressed serious concerns about this illegal occupation of indigenous lands in Costa Rica on more than one occasion, and specifically identified the Térraba as one situation where attention was required in this respect in 2007.<sup>15</sup>

13. When indigenous peoples have sought to enforce protections for their titled lands provided for by the *Indigenous Law*, relief is routinely denied due to the absence of implementing regulations specifying remedial measures and penalties. Thus, the illegal occupation of indigenous lands continues with impunity. On the rare occasions that indigenous peoples prevail, judgments are not implemented or are only partially implemented. As noted in the Committee’s 2007 concluding observations, this includes the failure to implement decisions of the highest court in the land, the Constitutional Chamber of the Supreme Court, upholding indigenous peoples’ property and associated rights.<sup>16</sup>

14. In 1982, the *Indigenous Law* was amended by the Mining Code, which abolished the prior co-ownership by indigenous peoples and the State of subsoil resources.<sup>17</sup> This made the State the sole owner of all subsoil resources in the country, including those pertaining to indigenous territories. This unilateral taking of indigenous peoples’ subsoil property rights occurred without any form of consultation, due process or compensation.

15. The *Indigenous Law* nominally recognises and protects traditional indigenous governance institutions and procedures (or other bodies freely chosen by indigenous peoples). However, less than one year after this law was adopted, these

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<sup>13</sup> Ley Indígena, N° 6172 of 29 November 1977 (as amended), Art. 3.

<sup>14</sup> G. Berger, M. Vargas & J. Carlos, *Perfil de los Pueblos Indígenas de Costa Rica*. San José, Costa Rica, 2000.

<sup>15</sup> Costa Rica: CERD/C/CRI/CO/18, 17 August 2007, at para. 15. *See also* Costa Rica: CERD/C/60/CO/3, 20 March 2002, at para. 11

<sup>16</sup> Costa Rica: CERD/C/CRI/CO/18, 17 August 2007, at para. 15.

<sup>17</sup> Mining Code, Law N°6797, 4 October 1982, Article 6.

indigenous bodies were essentially abolished by Decree No. 8489 of 1978 and replaced with Integral Development Associations (“ADI”), the form of local government employed throughout the country. ADIs are official government bodies that, by law, “represent” and govern each indigenous territory. This is the case despite the fact that they are alien structures that do not take into account indigenous peoples’ traditions and customs and are perceived to be discredited, unrepresentative and unaccountable entities by most indigenous peoples.<sup>18</sup> The same is also the case with respect to the National Commission on Indigenous Affairs (CONAI), the State institution comprised of and coordinating the ADIs in indigenous territories. As noted by the Committee in 2007, CONAI has “failed to represent the interests of the indigenous peoples and ... as the State party recognizes, it has in the past strayed from its functions and responsibilities.”<sup>19</sup>

16. There is no legal requirement that all indigenous persons who are members of their people and/or territory can participate in the ADIs and in some cases they operate with less than 20 percent of the population as members. Also in some cases, non-indigenous persons have assumed positions of authority in the ADIs and acted to the detriment of indigenous peoples, particularly by transferring lands to outsiders. As discussed below, with respect to the Térraba people, the ADI holds title to their titled reserve and the group that controls the ADI routinely makes decisions without informing the people, and in some cases the president makes decision without even consulting the rest of the board of the ADI. Requests for information on decisions taken by the ADI in Térraba submitted by indigenous members of the community are routinely ignored.

17. With one important exception, when the State consults with indigenous peoples it does so only through the ADIs, which is tantamount to the State consulting itself given that the ADIs are local government bodies that report to and are responsible to the central government.<sup>20</sup> It is known, for instance, that the State has made certain agreements with the ADI in Térraba territory in relation to the Diquis dam, but the nature and scope of the agreement(s) are unknown and requests to access relevant documents, if any exist, have been ignored. Likewise, when presenting requests for funding to the World Bank’s Forest Carbon Partnership Facility, which may have considerable impacts on indigenous peoples, the State is only consulting with the ADIs.<sup>21</sup> Again, this is basically the State consulting other State agencies and denies indigenous peoples their right to freely identify their own representatives, through their own procedures, in order to participate in crucial decisions pertaining to their territories.<sup>22</sup>

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<sup>18</sup> See *inter alia* ‘Indigenous Peoples Sidelined in Plans for Dam’, *IPS* 27 May 2009. Available at: <http://ipsnews.net/news.asp?idnews=47000>.

<sup>19</sup> Costa Rica: CERD/C/CRI/CO/18, 17 August 2007, at para. 10.

<sup>20</sup> The exception is the process for the elaboration of the Bill for Autonomous Development of Indigenous Peoples. In this process, indigenous peoples participated in ‘Assemblies’ in each of the twenty four indigenous territories; and only indigenous persons could elect their representatives to elaborate and negotiate the text of the bill. The elections were monitored and verified by an indigenous organization and organized with representatives of the *Ombudsman*, the Legislative Power and the Supreme Elections Court. The members of each territory were previously informed about the election process and all members above 18 years could vote. This stands in stark contrast to the normal process of only consulting with the ADIs.

<sup>21</sup> *Readiness Preparation Proposal, Submitted to the World Bank FCPF*, Government of Costa Rica, June 2010, p. 15 (stating that consultations have taken place with the ADIs “representing the interests of the indigenous peoples”). Available at: [http://www.forestcarbonpartnership.org/fcp/sites/forestcarbonpartnership.org/files/Documents/PDF/Jun2010/ENGLISH-R-PP\\_Template\\_COSTA\\_RICA\\_14\\_June\\_2010.pdf](http://www.forestcarbonpartnership.org/fcp/sites/forestcarbonpartnership.org/files/Documents/PDF/Jun2010/ENGLISH-R-PP_Template_COSTA_RICA_14_June_2010.pdf).

<sup>22</sup> Article 18 of the 2007 Declaration on the Rights of Indigenous Peoples provides that “Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures as well as to

18. Indigenous peoples, including members of the Térraba people, have challenged the imposition and operation of ADIs in their territories as a denial of their right to govern themselves through their own institutions and to participate in the governance of their lands and communities. This has included complaints by indigenous community members that they have been denied membership in the ADIs and challenges to the validity of the ADI system in relation to indigenous peoples' rights. With respect to the former, the Supreme Court has ordered ADIs to admit indigenous persons as members. In the case of the latter however, the complaints have been rejected by the Constitutional Chamber of the Supreme Court, which has held that, while the ADIs are far from ideal in the indigenous context, they are the only option available under existing law.<sup>23</sup> The case filed by members of the Térraba people that challenges the ADI as being incompatible with indigenous peoples' rights was recently admitted and remains pending before the fourth chamber of the Supreme Court (responsible for *amparo* actions).

19. Given the absence of effective judicial remedies to address the imposition of the ADIs, indigenous peoples have sought to address and correct this situation (as well as the invasion and expropriation of their lands) through the legislature.<sup>24</sup> This led to the drafting, over a seven year-long period, of the *Proyecto de Ley de Desarrollo Autónomo de los Pueblos Indígenas* (the Bill for Autonomous Development of Indigenous Peoples ("*Autonomy Bill*")), which was first submitted for debate in the Congress in 1995. It was subsequently modified and reconsidered by the Congress 2002. As the Committee observed in that same year, the *Autonomy Bill* is "aimed at granting full autonomy to indigenous peoples and recognizing their right to enjoy their own cultures, as well as the right to administer their territories." If adopted and effectively implemented, this law could go far towards correcting the long standing problems affecting indigenous peoples in Costa Rica, including the Térraba people.

20. However, the Committee observed in 2007 that "despite the recommendation contained in its final comments of 2002, the *Autonomous Development of Indigenous Peoples Bill* has not been adopted owing to legislative obstacles."<sup>25</sup> It added that it was "disturbed to learn that the bill may once again be shelved" and recommended that Costa Rica "remove without delay the legislative obstacles preventing [its] adoption..."<sup>26</sup> The submitting organisations observe that this Bill continues to languish in the legislature, although there are some efforts under way at present to further debate the law with a view to its adoption or archival. In the meantime, indigenous peoples' rights continue to be violated with impunity and their cultural and territorial integrity continues to be undermined and threatened by the invasion and illegal alienation of their lands and by resource extraction and infrastructure projects that take place without regard for their rights and without their free, prior and informed consent.

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maintain and develop their own indigenous decision-making institutions." See also ILO Convention No. 169, Article 6.

<sup>23</sup> In May 2003 the Supreme Court ordered the State to provide indigenous peoples with adequate instruments to guarantee their right to participate in decision-making processes and to organize in elective institutions, administrative and other organizations responsible for policies and programmes of their concern.

<sup>24</sup> The Human Rights Committee has previously acknowledged the absence of effective remedies by which indigenous peoples may seek protection for their rights in Costa Rica. See Costa Rica. 08/04/99. CCPR/C/79/Add.107, at para. 21 (stating that the Committee "remains concerned at the lack of effective remedies for indigenous people in Costa Rica").

<sup>25</sup> Costa Rica: CERD/C/CRI/CO/18, 17 August 2007, at para. 9.

<sup>26</sup> *Id.*

## **B. Eighty Eight Percent of the Térraba People's Titled Lands are Possessed by Non-Indigenous Persons and they are Denied any Security of Tenure and Security over their Means of Subsistence**

21. The legal framework described above has led to a situation where the Térraba people is denied effective possession of and security of tenure over both the full extent of its traditional lands and the lands that have been titled to it by the State. The Térraba are likewise denied their right to “effectively control, manage and distribute” their territory in accordance with their own customs and traditions<sup>27</sup> and through their own institutions by the imposition of local government bodies that frequently do not permit effective participation by indigenous peoples in the governance of their territories.<sup>28</sup> Indeed, the situation of the Térraba is both emblematic of the nationwide situation and an extreme example of this problem (although it is by no means the most extreme).

22. The Térraba were one of the first indigenous peoples to be allocated an indigenous reserve under Costa Rican law. In 1956, they were granted title to part of their traditional territory, comprising 9,355 hectares (see Annex 2, Image 2, containing a map of indigenous territories).<sup>29</sup> This title was amended and considerably reduced in 2004 when the State, without any form of notice or consultation, excised the General River, roads, land used by State services (e.g., schools), and water springs. All were unilaterally declared property of the State, causing the fragmentation of the territory into a number of discrete blocks. The title was re-issued to the ADI in 2004 without any form of consultation with the people in general.

23. At present, close to 90 percent of this titled area is illegally occupied by non-indigenous persons with the tacit or formal approval of the State, both the central government and the ADI. Some of these landholdings (e.g., *fincas*) are very large and, therefore, a few individuals hold a considerable amount of the land within the Térraba's titled area. Some persons have established businesses, including bars that openly sell alcohol even though this is illegal under the *Indigenous Law*. Even lands that have been purchased from illegal occupants by the State for return to the Térraba have since been retransferred back to non-indigenous colonists. This has mostly been done by the ADI without any form of meaningful participation by the community at large.

24. This massive encroachment on titled (and untitled) Térraba lands has generated conflict and mistrust between indigenous and non-indigenous people. The primary reason that this conflict has not manifested in serious incidents is because the Térraba have become a tiny minority in their own lands and are inhibited from

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<sup>27</sup> *Saramaka People v. Suriname*, Judgment of the Inter-American Court of Human Rights, 28 November 2007. Ser c No. 172, at para. 194 (ordering that recognition of the Saramaka people's territorial rights must include recognition of “their right to manage, distribute, and effectively control such territory, in accordance with their customary laws and traditional collective land tenure system”).

<sup>28</sup> See Articles 4, 18 and 19 of the 2007 Declaration on the Rights of Indigenous Peoples. See also *Yatama v. Nicaragua*, Judgment of the Inter-American Court of Human Rights, 23 June 2005. Series C No. 127, at para. 229 (finding violations of the right to political participation and the prohibition of racial discrimination because Nicaragua's *Election Law* forced Yatama, an indigenous institution, to adopt a structure that was alien to indigenous peoples' customs and traditions and, thus, it constituted a discriminatory impediment to equal participation in the elections. The Court determined that the universal rights of equality and political participation give rise to an obligation on the state to adopt affirmative and differentiated measures to guarantee the participation of indigenous groups under conditions of equality and to take into consideration their customary forms of organization).

<sup>29</sup> Decree No. 34, 1956: *Demarcation of the First Indigenous Reserves*.

openly raising many issues of concern. The persons who control the ADI have done nothing to address these concerns. On the contrary, the ADI continues to allow more non-indigenous persons to acquire lands within the Térraba territory and is not open and transparent with regard to decision making in this respect. Indeed, community groups have demonstrated that corruption and self-interest are the primary motivations of the ADI.

25. The Committee has taken cognizance of and expressed serious concern about the illegal occupation of indigenous lands in Costa Rica on more than one prior occasion. Its 2007 concluding observations, which reiterate the same concerns expressed in 2002,<sup>30</sup> for instance, state that

While noting that domestic legislation protects indigenous peoples' right to ownership of their lands, the Committee is concerned that this right is not guaranteed in practice. The Committee shares the State party's concern at the trend towards the concentration of indigenous land in the hands of non-indigenous settlers.

The Committee urges the State party to strengthen its efforts to guarantee the indigenous peoples' right to land tenure. The State party should take the necessary steps to implement Constitutional Chamber decision No. 3468-02 ordering the delimitation of the lands of the Rey Curré, Térraba and Boruca communities and the recovery of indigenous lands lost through improper transfer (art. 5 (d) (v)).<sup>31</sup>

26. Despite these clear recommendations, which specifically mention Térraba as requiring attention, and well established international obligations set forth in regional and universal human rights instruments and jurisprudence, Costa Rica allows the massive illegal occupation of indigenous lands to continue unabated. Also, passage of the *Autonomy Bill*, which includes provision for the establishment of a fund for expropriation of illegally occupied lands and their return to indigenous peoples, continues to be obstructed by powerful interests in the Congress and elsewhere and may be archived permanently this year.

27. The massive, notorious and unmitigated encroachment on the lands of the Térraba people is, by itself, reason enough for the Committee to consider this situation under its early warning and urgent action procedures. Add to this the imminent threat of the permanent flooding of at least ten percent of these titled lands by the Diquis dam, the massive demographic changes that will occur due to the migration of workers and their families to the dam site, and Costa Rica's ongoing failure to involve the Térraba in decision making about this project, then this situation becomes even more urgent and compelling. Likewise, the small number of Térraba people and the permanent loss of hundreds of sites of critical importance to their identity, cultural integrity and spiritual freedom, all causing irreparable harm to their ability to survive as a distinct people, are additional and aggravating factors. Cumulatively, these factors both invite and demand urgent international scrutiny and action.

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<sup>30</sup> Costa Rica: 20/03/2002. CERD/C/60/CO/3, at para. 11 (expressing concern about "Problems of ownership of land; that land has reportedly been appropriated by migrants and transnational enterprises" and recommending that "the State party undertake the necessary measures to protect indigenous lands from being invaded and to enable the restitution of those lands that have been occupied by non-indigenous persons").

<sup>31</sup> Costa Rica: CERD/C/CRI/CO/18, 17 August 2007, at para. 15.



### C. The Diquis Dam: The Threat of Irreparable Harm to the Térraba and Violations of Indigenous Peoples' Rights

28. The proposed Diquis dam is a 2004 reformulation of the Boruca-Cajón hydroelectric project that had been under consideration since the 1970s, but was rejected because it involved unacceptable environmental and social impacts. To generate 631 megawatts of power, Diquis will have a reservoir of either 5,494 or 14,691<sup>32</sup> hectares; require a 13 kilometer-long tunnel through the Brunca Mountain range leading to a power plant; require the relocation of around 1000 non-indigenous persons; require the flooding of at least 108 archaeological sites, many of which are of great significance to the Térraba people; and will cost an estimated two billion US dollars.<sup>33</sup> The dam will be located on the main tributary of the Térraba River, the General River, and both the dam and the reservoir will be partly located within the titled lands of the Térraba people. The river itself is culturally and spiritually significant to the Térraba people as are a number of caves along the river that will be flooded. In addition to the Térraba, the project will also affect the Cabecar indigenous people of China Kicha (more than 92 percent of their titled territory is occupied by non-indigenous persons),<sup>34</sup> as well as “have an indirect effect on the Curre, Boruca, Guaymi, Bribi, Ujarras, Cabagra and Salitre Peoples; who together represent nearly one half of Costa Rica’s indigenous population.”<sup>35</sup>

29. The dam is the responsibility of the *Instituto Costarricense de Electricidad* (“ICE”), an autonomous State institution established by law and reporting to the Office of the President. The ICE is mandated with the development of power sources, especially hydroelectric power, in order to promote the welfare of the Costa Rican people.<sup>36</sup> The Diquis dam project, in particular, has gained momentum with the ratification of the Framework Treaty of the Central American Electrical Market, which allows the ICE to sell energy to other countries in Central America through the Electrical Interconnection System of Panama and Central America (SIEPAC).<sup>37</sup>

30. The ICE has commenced what it describes as feasibility and impact assessment studies on the Diquis dam.<sup>38</sup> As noted above, it has done far more than conduct studies to-date and has already constructed a series of roads and other

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<sup>32</sup> Instituto Costarricense de Electricidad, *Ubicación del Proyecto Hidroeléctrico Boruca, Opciones de Embalse Cajón y Veraguas. SIG PH Boruca*, 2004

<sup>33</sup> Inter-American Development Bank, *Costa Rica, Estudios Complementarios Proyecto Hidroeléctrico El Diquis (Antes Boruca-Veraguas)*, CRT-T1017, 2006

<sup>34</sup> This is not further addressed here because the Térraba have not yet been able to fully discuss these issues with those peoples.

<sup>35</sup> *World Directory of Minorities and Indigenous Peoples: Costa Rica*. Minority Rights Group International, June 2008. Available at: <http://www.minorityrights.org/4109/costa-rica/indigenous-peoples.html>.

<sup>36</sup> Junta Fundadora de la Segunda República de Costa Rica, “Ley N°449 – Reglamento para la Creación del Instituto Costarricense de Electricidad”

<sup>37</sup> M. Barboza, *Propuesta metodológica para conocer la posición de la comunidad de Potrero Grande ante el Proyecto Hidroeléctrico Boruca*. Universidad de Costa Rica, Facultad de Ciencias Económicas. San José, Costa Rica. 2002.

<sup>38</sup> See <http://www.iadb.org/projects/project.cfm?id=CR-T1017&lang=en> (containing a summary of studies financed by the Inter-American Development Bank in relation to the Diquis dam). It is troubling that a report on these studies identifies the main risk of the project as “the likelihood of the studies finding that the project is not economically and financially viable. This risk is considered low, given that, as previous studies have concluded, Costa Rica and Central America offer very favorable conditions for construction of a hydroelectric plant of this size.” No mention is made of the potential social viability of the project. See *Supplemental Studies for the El Diquis (Boruca/Veraguas) Hydroelectric Project (CR-T1017)*, Inter-American Development Bank, 30 January 2007, at p. 11, sec. 4.4. Available at: <http://idbdocs.iadb.org/wsdocs/getdocument.aspx?docnum=887211>.

infrastructure, including dynamiting and excavating tunnels, and concessions have been issued within the Térraba people's untitled lands to extract construction materials that will be used to build the dam. Additional concessions have also been applied for heaping further pressure on the Térraba and their remaining lands. By all appearances, the ICE has commenced constructing the dam in the broadest sense despite the fact that it has yet to complete the impact and feasibility studies, and despite the fact that impact assessments were not undertaken in relation to the above-listed infrastructure (if they have been conducted, they have not been made available to the public).

31. On 6 February 2008, the President of Costa Rica issued a decree declaring the Diquis dam, its studies and transmission lines to be in the "National Convenience and Public Interest," thus granting it the 'highest priority' in terms of receiving environmental and other permits.<sup>39</sup> The Térraba people were not consulted about this declaration and the State has to-date refused to accede to their requests to participate in decision-making because, it repeatedly maintains, consultation is not required at this stage of the project.<sup>40</sup> According to the ICE, "during this stage the work done is to inform about the generalities of the project, the consultation, negotiation or other stage will be done eventually."<sup>41</sup> It has also repeatedly told community members that their views that may be expressed during the eventual consultations are "non-binding," raising serious questions about the extent to which the Térraba people's views may be considered.

32. A study published by the University of Pennsylvania sheds more light on ICE's refusal to respect indigenous peoples' right to participate in decision making with respect to the Diquis Dam.<sup>42</sup> It observes generally that

Socially, the plan has even greater problems and hurdles to overcome [than the environmental concerns]. There is a great deal of opposition throughout the country. ... In response to these issues, ICE has created a taskforce responsible for handling all social conflicts associated with dam construction. It is interesting to note that there is no precedent for this type of initiative by ICE in the many years and dams they have built and operated in Costa Rica, suggesting that the intensity of the current conflicts are particularly high.<sup>43</sup>

It continues that:

ICE's social taskforce maintains that the indigenous groups have agreed to the newest plan; however, the natives have continued to hold numerous protests against the projects. On another front, questions of corruption have surfaced during discussions of land acquisition. Many of the indigenous

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<sup>39</sup> Decreto N°34312, *Declara de Conveniencia Nacional e Interés Público los estudios y las obras del Proyecto Hidroeléctrico El Diquis y sus obras de transmisión, en adelante el Proyecto, las que serán construidas por el Instituto Costarricense de Electricidad*, 2008.

<sup>40</sup> In this respect, Article 19 of the UN Declaration on the Rights of Indigenous Peoples provides that: "States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them."

<sup>41</sup> *Indígenas piden consulta sobre proyecto hidroeléctrico Diquis*, 8 October 2008. Available at: <http://www.redlar.org/noticias/2008/10/8/Noticias/Indigenas-piden-consulta-sobre-proyecto-hidroelectrico-Diquis>.

<sup>42</sup> D. Moscovici & C. Wenger, 'Planning for Scale. Plan Puebla Panama and the Diquis Hydroelectric Project', *Panorama*, University of Pennsylvania 2009, at p.63. Available at: [http://www.design.upenn.edu/files/panorama08-13\\_Moscovici.pdf](http://www.design.upenn.edu/files/panorama08-13_Moscovici.pdf).

<sup>43</sup> *Id.* at p. 65 (footnotes omitted).

land holdings have changed hands illegally over the years and now non-native people have purchased the properties unlawfully. Therefore, much of the land ICE needs to purchase for the project is now claimed and owned by non-native persons; so, ICE sees no indigenous conflict.<sup>44</sup>

33. In other words, ICE is claiming that because much of the land to be affected, while within an indigenous territory, is (illegally) held by non-indigenous persons, the problem should not be characterised as an indigenous issue, thus triggering obligations to ensure indigenous peoples' effective participation. ICE's argument however fails precisely because the lands and resources that will be directly and indirectly affected are lands traditionally owned by indigenous peoples, including areas that are legally titled to them. Moreover, if this argument were allowed to stand it would provide a perverse incentive to further alienate indigenous lands that unreasonably privileges the interests of non-indigenous persons and the State over those of indigenous peoples and punishes indigenous peoples for the acts and omissions of the State that have violated their rights for decades.

#### IV. Applicable Law

34. In sharp contrast to the preceding, the Committee has repeatedly observed that state parties to the ICERD have the obligation to not only consult with indigenous peoples, but also to obtain their informed consent with regard to any decisions that may directly affect their rights.<sup>45</sup> The Committee has highlighted this requirement in relation to the construction of dams in indigenous peoples' territories, including under its early warning and urgent action procedures.<sup>46</sup> In May 2010, for instance, the Committee reminded a state party of the "importance of obtaining the free, prior and informed consent of the indigenous peoples ... with regard to any measure or project that may affect their livelihood," in particular with respect to plans to build dams that had been authorised by legislative decrees.<sup>47</sup> The consent of the T rraba people is also required in relation to their cultural and religious rights protected by Article 27 of the International Covenant on Civil and Political Rights.<sup>48</sup>

35. Likewise, the judgment of the Inter-American Court of Human Rights – headquartered in Costa Rica – in the case of the *Saramaka People v. Suriname* is directly relevant and contains detailed requirements that are incumbent on Costa Rica as a party to the American Convention on Human Rights. This includes the

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<sup>44</sup> *Id.* at 65-6 (footnotes omitted).

<sup>45</sup> *Inter alia*, General Recommendation No. XXIII on Indigenous Peoples (1997), para. 4(d); and Ecuador, 21/03/2003, CERD/C/62/CO/2, at para. 16 (observing "that merely consulting these communities prior to exploiting the resources falls short of meeting the requirements set out in the Committee's general recommendation XXIII on the rights of indigenous peoples. The Committee therefore recommends that the prior informed consent of these communities be sought, and that the equitable sharing of benefits to be derived from such exploitation be ensured").

<sup>46</sup> *Inter alia*, India, 05/05/2007, CERD/C/IND/CO/19, at para. 19 (stating that the India must "seek the prior informed consent of communities affected by the construction of dams in the Northeast or similar projects on their traditional lands in any decision-making processes related to such projects...").

<sup>47</sup> *Communication adopted under the urgent action and early warning procedure: Brazil*, 31/05/2010, at p. 2. Available at: [http://www2.ohchr.org/english/bodies/cerd/docs/early\\_warning/Brazil31052010.pdf](http://www2.ohchr.org/english/bodies/cerd/docs/early_warning/Brazil31052010.pdf).

<sup>48</sup> *See inter alia Angela Poma Poma v. Peru*, CCPR/C/95/D/1457/2006, 24 April 2009, at para. 7.6 (holding that "the admissibility of measures which substantially compromise or interfere with the culturally significant economic activities of a minority or indigenous community depends on whether the members of the community in question have had the opportunity to participate in the decision-making process in relation to these measures and whether they will continue to benefit from their traditional economy. The Committee considers that participation in the decision-making process must be effective, which requires not mere consultation but the free, prior and informed consent of the members of the community").

obligation to obtain the consent of the T erraba people for any “large-scale project that may affect the integrity of their lands and resources.”<sup>49</sup> The term ‘integrity’ is defined in most dictionaries as “the quality of being whole, complete and undivided.” The Diquis dam will permanently flood at least ten percent of the titled territory of the T erraba and thus certainly affects the integrity of their lands and resources. These norms of binding law are restated in Article 32(2) of the Declaration on the Rights of Indigenous Peoples, which emphasises the need to obtain indigenous peoples consent in relation to any exploitation of their water resources.<sup>50</sup>

36. The Inter-American Court also held in *Saramaka People* that human rights law requires much more than a simple declaration that a project is in the national interest before a state may authorise a project that may restrict indigenous peoples’ rights.<sup>51</sup> On the contrary, in addition to demonstrating that the project is necessary and proportionate, the Court requires that the proposed project or investment cannot threaten the survival of indigenous peoples, which is understood to mean their “ability to ‘preserve, protect and guarantee the special relationship that they have with their territory’, so that ‘they may continue living their traditional way of life, and that their distinct cultural identity, social structure, economic system, customs, beliefs and traditions are respected, guaranteed and protected’.”<sup>52</sup>

37. Given the severity of the potential impacts on the T erraba people, particularly the permanent loss of a large number of burial, sacred and vitally important cultural sites that are described by the community as ‘pillars of their identity’, it is difficult to see, at least without an agreement with the T erraba people, how they can maintain their special relationship with their territory and how their distinct identity etc., can be respected, guaranteed and protected in the context of the Diquis dam as it is currently proposed. Again, the small number of remaining T erraba persons, the prior damage that has been inflicted on their cultural integrity by generations of assimilationist policies and neglect, and their extremely precarious tenure situation all need to be factored into this analysis.

38. In the words of the Human Rights Committee, the project also “must respect the principle of proportionality so as not to endanger the very survival of the community and its members.”<sup>53</sup> It is highly questionable if this principle can be adhered to given the extreme potential impact and the disproportionate effect that this will have on the T erraba people. In the first place, without agreement with the T erraba, the negative impacts on the T erraba would appear to greatly outweigh any potential benefits that they may acquire through employment or increased services. Likewise, the T erraba will suffer the vast majority of the harm while others receive the vast majority of the benefits. Additionally, the dam will be located in a place where the impact on the human rights of the T erraba would appear to be the most extreme. Thus, it is not apparent that the State has sought to choose the least

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<sup>49</sup> *Saramaka People v. Suriname. Interpretation of the Judgment on Preliminary Objections, Merits, Reparations and Costs.* Judgment of 12 August 2008. Series C No. 185, at para. 17. Available at: [http://www.corteidh.or.cr/docs/casos/articulos/seriec\\_185\\_ing.pdf](http://www.corteidh.or.cr/docs/casos/articulos/seriec_185_ing.pdf) (explaining that the “tribunal has emphasized that when large-scale development or investment projects could affect the integrity of the Saramaka people’s lands and natural resources, the state has a duty not only to consult with the Saramaka’s, but also to obtain their free, prior and informed consent in accordance with their customs and traditions”).

<sup>50</sup> Article 32(2) provides that “States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of their mineral, water or other resources.”

<sup>51</sup> *Saramaka People*, at para. 129-134.

<sup>52</sup> *Saramaka People v. Suriname. Interpretation Judgment*, at para. 37.

<sup>53</sup> *Angela Poma Poma v. Peru*, CCPR/C/95/D/1457/2006, 24 April 2009, at para. 7.6.

intrusive means from a human rights perspective or considered viable alternatives that will have no impact or a lesser and consented to impact on the T rraba.<sup>54</sup>

39. In order to ensure ‘survival as an indigenous people’, the State, in turn, is required to ensure their effective participation in decision making; ensure reasonable benefit sharing; and require independent environmental and social impact assessment and effective mitigation measures. If a project amounts to a denial of indigenous peoples’ “traditions and customs in a way that endangers the very survival of the group and of its members” then that project is impermissible under inter-American human rights law.<sup>55</sup> The same is also the case in the jurisprudence of the Human Rights Committee.<sup>56</sup>

40. The Human Rights Committee has also addressed the human rights obligations of states with respect to dams. In 1999, for instance, it observed that due to the culturally constitutive importance of the vegetation in a particular river valley, its flooding together with relocation and compensation would not be an appropriate way to comply with Article 27 of the Covenant.<sup>57</sup> It stressed in this respect that, when planning actions that affect indigenous peoples, state parties “must pay primary attention to the sustainability of the indigenous culture and way of life and to the participation of members of indigenous communities in decisions that affect them.”<sup>58</sup> More generally, and in common with the Committee,<sup>59</sup> the Human Rights Committee has held that activities that could compromise the resource and related rights of indigenous peoples “must not be addressed on the basis of the economic benefit to the majority population, or by affording the state a ‘margin of appreciation’ in regulating economic activity.”<sup>60</sup>

41. With respect to effective participation the Inter-American Court held in *Saramaka People* that consultation must commence in the earliest stages of the project; be conducted in conformity with indigenous peoples’ customs and traditions;

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<sup>54</sup> The Inter-American Court holds that “the ‘necessity’ and, hence, the legality of restrictions ... depend upon a showing that the restrictions are required by a compelling governmental interest. Hence if there are various options to achieve this objective, that which least restricts the right protected must be selected.” *Herrera-Ulloa v. Costa Rica*. Judgment of July 2, 2004. Series C No. 107, at para. 121. The Court has further explained that “Proportionality is based on the restriction being closely adjusted to the attainment of a legitimate objective, interfering as little as possible with the effective exercise of the restricted right.” *Yakye Axa v. Paraguay*. Judgment of June 17, 2005. Series C No. 125, at para. 145. The European Court of Human Rights has similarly ruled, stating that permits that restrict property rights “must not be issued if the public purpose in question can be achieved in a different way....” *Sporrong & Lonnroth v. Sweden*, European Court of Human Rights, Judgment of 23 Sept. 1982, at §69.

<sup>55</sup> *Id.* at para. 128 (also stating that “under Article 21 of the Convention, the State may restrict the Saramakas’ right to use and enjoy their traditionally owned lands and natural resources only when such restriction complies with the aforementioned requirements and, additionally, when it does not deny their survival as a tribal people”).

<sup>56</sup> *Angela Poma Poma v. Peru*, at para. 7.6.

<sup>57</sup> *See Chile*. 30/03/99. CCPR/C/79/Add.104, at para. 22 (stating that the Committee is concerned by hydroelectric and other development projects that might affect the way of life and the rights of persons belonging to the Mapuche and other indigenous communities. Relocation and compensation may not be appropriate in order to comply with article 27 of the Covenant. Therefore: When planning actions that affect members of indigenous communities, the State party must pay primary attention to the sustainability of the indigenous culture and way of life and to the participation of members of indigenous communities in decisions that affect them”).

<sup>58</sup> *Id.*

<sup>59</sup> *See Australia*. CERD/C/AUS/CO/14, 14 April 2005, para. 16 (stressing “that the use by the State party of a margin of appreciation in order to strike a balance between existing interests is limited by its obligations under the Convention”).

<sup>60</sup> This is consistent with Article 46(2) of the UN Declaration on the Rights of Indigenous Peoples (providing that restrictions on indigenous peoples’ rights must be “non-discriminatory and strictly necessary,” and solely concern securing due recognition and respect for the rights of others or the “just and most compelling requirements” of democratic society”).

be undertaken in good faith and with the objective of reaching an agreement; and must ensure that indigenous peoples are aware of possible risks, including environmental and health risks, so that the proposed project is accepted knowingly and voluntarily.<sup>61</sup> The Court additionally explained in the *Yatama* case that state parties to the American Convention must guarantee that indigenous peoples “can participate, in conditions of equality, in decision-making on matters that affect or could affect their rights and the development of their communities ... and that they are able to do so through their own institutions and in accordance with their values, uses, customs and forms of organization....”<sup>62</sup>

42. In the case of the Térraba people, consultation has not started at the earliest stage of the project: in fact, this has been explicitly ruled out by the State, a view that has been endorsed by the judiciary. It is also questionable if the State is acting in good faith and with the objective of reaching an agreement considering that the Térraba have been told that the results of the consultation are “non-binding” before the consultation has even begun. If nothing else, such statements do not create a climate that is conducive to mutually respectful relationships and undermine confidence that the State is willing to deal with the Térraba people in an appropriate manner.

43. With regard to ‘who’ must effectively participate in decision making, the Court states that, “By declaring that the consultation must take place ‘in conformity with their customs and tradition’, the Court recognized that it is the [indigenous] people, not the State, who must decide which person or group of persons will represent the [indigenous] people in each consultation process....”<sup>63</sup> It continues that indigenous peoples “must inform the State which person or group of persons will represent them in each ... consultation process. The State must then consult with those [indigenous] representatives.... Once such consultation has taken place, the [indigenous] people will inform the State of the decisions taken, as well as their basis.”<sup>64</sup> With respect to the Térraba people, the only real discussion about the project to date has taken place with the ADI and the Térraba people have thus far been denied their right to choose their own representatives through which to participate. This also contravenes Articles 6 and 15 of ILO Convention No. 169.

44. The Court also ruled that the environmental and social impact assessments (“ESIA”) must be conducted with full respect for indigenous peoples’ customs and traditions and in accordance with international standards and best practices. In this respect, it identified the most appropriate international standards to be the *Akwe:kon Guidelines for the Conduct of Cultural, Environmental and Social Impact Assessments Regarding Developments Proposed to Take Place on, or which are Likely to Impact on, Sacred Sites and on Lands and Waters Traditionally Occupied or Used by Indigenous and Local Communities*.<sup>65</sup> The *Akwe:kon Guidelines* were developed by the state parties to the Convention on Biological Diversity, a convention in force for Costa Rica, to facilitate “the development and implementation of their impact-assessment regimes.”<sup>66</sup> The guidelines apply “whenever developments are proposed to take place on, or which are likely to impact on, sacred sites and on lands and waters traditionally occupied or used by indigenous and local communities.”<sup>67</sup>

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<sup>61</sup> Saramaka People, at para. 133.

<sup>62</sup> *Yatama v. Nicaragua*, Judgment of the Inter-American Court of Human Rights, 23 June 2005. Series C No. 127, para. 225.

<sup>63</sup> Saramaka People, Interpretation Judgment, at para. 18.

<sup>64</sup> *Id.* at para. 19.

<sup>65</sup> See <http://www.cbd.int/doc/publications/akwe-brochure-en.pdf>.

<sup>66</sup> *Id.* at p. 5.

<sup>67</sup> *Id.*

45. Last but not least, the Inter-American Court observed that the “purpose of the ESIA is not only to have some objective measure of such possible impact on the land and people, but also ... 'to ensure that members of the Saramaka people are aware of the possible risks ... in order that the proposed development or investment plan is accepted knowingly and voluntarily'.”<sup>68</sup> The Court therefore ties the prior ESIA requirement to the State’s duty to guarantee the effective participation of indigenous peoples in decisions about projects or investments that affect them.<sup>69</sup> Importantly, the Court also explains that ESIA’s need to address the “cumulative impact of existing and proposed projects. This allows for a more accurate assessment on whether the individual or cumulative effects of existing or future activities could jeopardize the survival of indigenous or tribal people.”<sup>70</sup>

46. Rather than comply with the above norms, Costa Rica has failed to provide for effective participation by indigenous peoples with respect to the ESIA and feasibility studies. Should it be determined that the Diquis dam would affect the survival of the Térraba as an indigenous people by compromising their ability to 'preserve, protect and guarantee the special relationship that they have with their territory', the project would be impermissible under inter-American and universal human rights norms. This should be part of the initial feasibility and ESIA studies and cannot be properly assessed without effective participation by indigenous peoples. Thus far the Térraba have been denied this right. It is also unclear, although highly unlikely, if Costa Rica is using the Akwe:Kon Guidelines as the appropriate international standards and best practice with respect to the conduct of the ESIA. It is however known that the ESIA is not being conducted with full respect for the Térraba’s customs and traditions, as ordered by the Court, as there has been no consultation with the Térraba in this regard to-date.

## **V. Conclusion and Request**

47. The Térraba indigenous people are threatened with irreparable harm should their right to effective participation and to give their free, prior and informed consent continue to be disregarded by Costa Rica in connection with the Diquis dam. This harm is both imminent and attributable to prior and ongoing acts and omissions of the Costa Rican State that substantially compromise a series of rights that are fundamental to the cultural integrity and survival of the Térraba people.

48. The irreparable harm threatened by the Diquis dam must be further viewed in the light of the fact that the Térraba number only around 750 persons and that their rights have been disregarded with impunity for decades. Their territory has been invaded and illegally occupied by outsiders and they retain possession of a mere 12 percent of their titled area. Two of their communities are outside of the titled area and have had their lands granted as resource extraction concessions. The Diquis dam will flood a further ten percent of their titled area as well as a large number of sites of vital importance to their identity and integrity as a distinct cultural and territorial entity. This situation full meets the criteria for consideration under the Committee’s early warning and urgent action procedures and requires urgent international attention.

49. In light of the preceding, the submitting organisations respectfully request that the Committee:

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<sup>68</sup> Saramaka People, Interpretation Judgment, at para. 40.

<sup>69</sup> *Id.* at para. 41.

<sup>70</sup> *Id.*

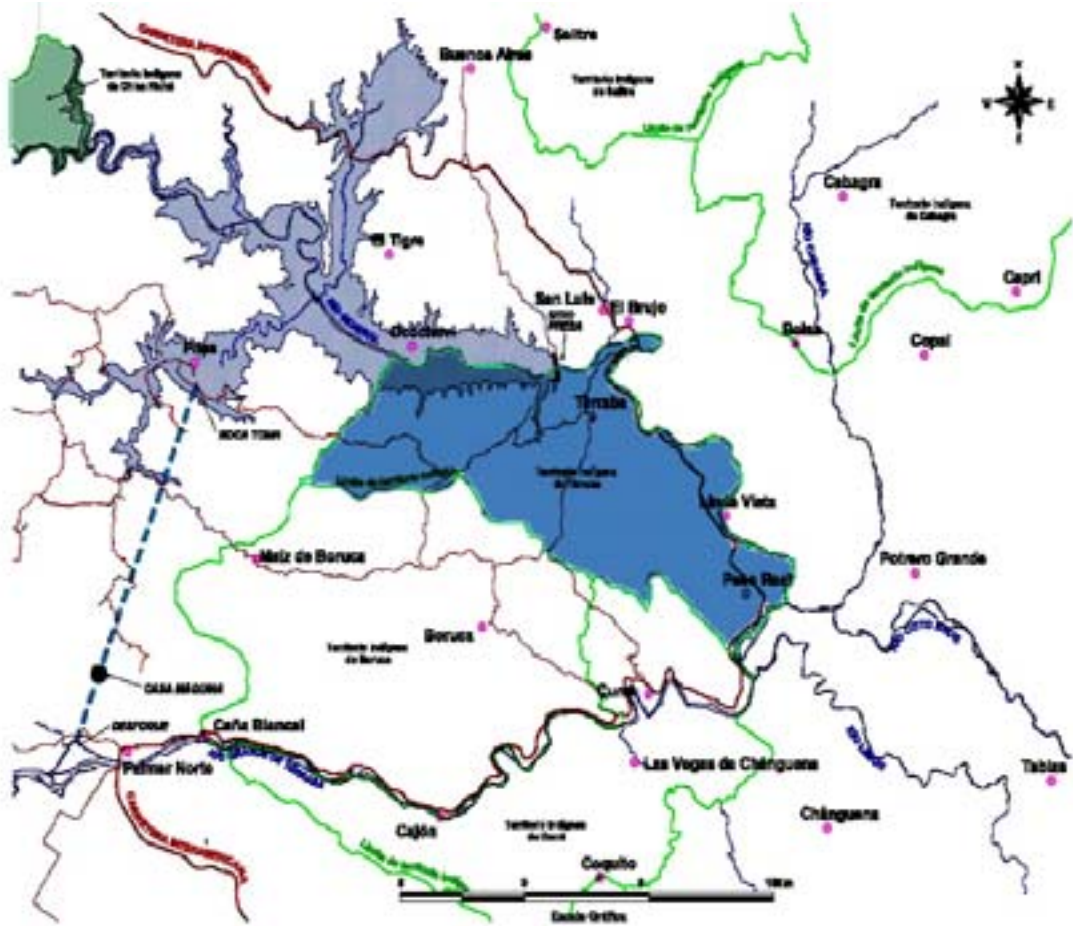
- a) considers the situation of the Térraba people under its early warning and urgent action procedures at its seventy-seventh session;
- b) recommends that Costa Rica ensures the effective participation of the Térraba people and other affected indigenous peoples in decision making pertaining to all aspects and stages of the proposed Diquis dam, and that it obtains their free, prior and informed consent in relation to this project;
- c) recommends that Costa Rica immediately supports the Térraba people to freely identify their own representatives, through procedures determined by themselves, with respect to their right to effective participation in the feasibility and impact assessment studies pertaining to the Diquis dam, and, if necessary, in all subsequent phases of this project;
- d) in addition to point (c) above, recommends that Costa Rica support and enable the Térraba and other affected indigenous peoples, in a manner agreed to by them, to conduct their own studies and establish their own 'panels of experts' so that they can inform their own communities about the Diquis dam and its potential impacts and effectively participate in decision making with respect to the dam and related works. This should include establishing training and other programmes to facilitate said effective participation and the creation of an independent fund that is not affiliated with the ADI and is accessible to the Térraba's freely chosen representatives;
- e) recommends that Costa Rica ensures that ALL sites of religious, cultural and spiritual significance to the Térraba are effectively protected and fully controlled by the Térraba people themselves;
- f) recommends that Costa Rica immediately begins the process of securing the rights of the Térraba people to effective possession of, control over and security of tenure over its traditionally owned lands, territory and resources, and that it ensures that the ADI in Térraba ceases any further alienation of Térraba lands and is replaced with a body acceptable to the Térraba people as a whole and through procedures acceptable to them. In particular and further, that the Committee recommends that Costa Rica, in full cooperation with the freely chosen representatives of the Térraba, commences and completes an adequate delimitation and demarcation of the traditionally owned lands of the Térraba and amends their title accordingly. This will require, *inter alia*, the inclusion of Macho Monte within the titled lands of the Térraba and the correction of the measures that resulted in the fragmentation of their extant titled lands. In light of indigenous peoples' right to collective juridical personality, as peoples, this title should be issued and registered in the name of the Térraba people rather than the ADI;
- g) recommends that Costa Rica immediately adopts the *Autonomy Bill*, as drafted subsequent to the consultation process with indigenous peoples, and ensures that it is implemented in full collaboration with indigenous peoples' freely chosen representatives; and, finally,
- h) recommends that Costa Rica does not only consult with the ADIs in relation to its proposals pending before the World Bank's Forest Carbon Partnership Facility, but also with indigenous peoples' freely chosen representatives (for instance in the same manner that it consulted with indigenous peoples about the drafting of the *Autonomy Bill*).



## Annex 1: Description of Submitting Organisations

- **Asociacion Cultural Indigena Teribe** is an indigenous organization in Térraba working on the promotion and defence on the rights of indigenous peoples in different areas such as culture, language and children. It was founded in 1990. Telephone number: +506 8874 5142, e-mail: [aict\\_90@yahoo.es](mailto:aict_90@yahoo.es)
- **Asociacion de Mujeres Orcuo dBon (Mano de Tigre)** is a Térraba indigenous women's organization. Founded in 2003, it promotes indigenous women's rights and the participation of women in decision-making. Tel: +506 8858 0416.
- **Museo Comunitario** is a Terraba indigenous organization founded in 2008 that works to raise awareness about and to preserve the cultural heritage of the Terraba people, founded in 2008.
- **Movimiento de Juventud Naso Lokes**
- **Enrique Rivera Rivera**. Promotes the sensitisation and capacity building in the defense of indigenous peoples' rights since 1990. Email: [Aict\\_90@yahoo.es](mailto:Aict_90@yahoo.es)
- **Kus Kura S.C** is an indigenous organization founded in 2002 that works at national and regional level in Costa Rica and Central America. It promotes the rights of indigenous peoples especially with children and youth which comprise approximately 70% of the total indigenous population in the region. **Address:** 545-2070, Sabanilla, San José, Costa Rica. Tel: (+506) 2225 6397, Fax: (+506) 2280 4394, email: [info@kus-kura.org](mailto:info@kus-kura.org).
- **Forest Peoples Programme** is an international NGO, founded in 1990, which supports the rights of indigenous peoples. It aims to secure the rights of indigenous and other peoples, who live in the forests and depend on them for their livelihoods, to control their lands and destinies. **Address:** 1c Fosseway Business Centre, Stratford Road, Moreton-in-Marsh GL56 9NQ, UK. Tel: (44) 01608 652893, Fax: (44) 01608 652878, e-mail: [info@forespeoples.org](mailto:info@forespeoples.org)





**Annex 2, Image 2: The map shows (in blue) the Turraba Territory and in green (at the top left-hand corner) the China Kichá territory, which will also be affected. The lightly shaded area is the areas scheduled to be inundated by the Diquis dam**