

Protected Areas in Panama: An Obstacle to Legal Recognition of Indigenous Lands and Territories

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Background

Eastern Panama and the Darien rainforest are home to the Embera, Wounaan and Guna indigenous people, spread out in dozens of villages and millions of hectares of mostly intact rainforest that connects to the Mesoamerican Biological Corridor to the north, and Colombian Darien-Choco to the south.¹ Panama has a long history of recognizing indigenous rights to their lands and territories, going back to the Guna Revolution and the creation of the first indigenous Comarca, by the Guna people, in 1938, and continuing through with the creation of four more *Comarcas* by the year 2000. A *Comarca*, which is a semi-autonomous indigenous land reserve, was established for the Embera and Wounaan peoples in 1983, and consists of two separated districts, Cemaco and Sambu, both in the far eastern part of Panama. Two more Comarcas – Madugandi and Wargandi, were created in 1996 and 2000, respectively (along with the Ngabe Bugle Comarca in Western Panama, in 1997).

Unfortunately, many Embera and Wounaan communities were outside the area where the Embera Wounaan Comarca was established, and have remained without legal recognition of rights to their ancestral lands. The lack of land tenure security and enforceable boundaries has made indigenous peoples in Panama, as elsewhere, vulnerable to land grabbing by companies and outsiders and subject to much encroachment by illegal loggers, farmers and ranchers² The fight for territorial security has therefore been a long and persistent one in Panama's history. In 2008, after many years of struggle, Indi-

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genous peoples in Panama won the passage of Law 72, which establishes the rights, and the procedures to title, collective indigenous lands outside of the *Comarcas*.³

The struggle for legal recognition of collective lands

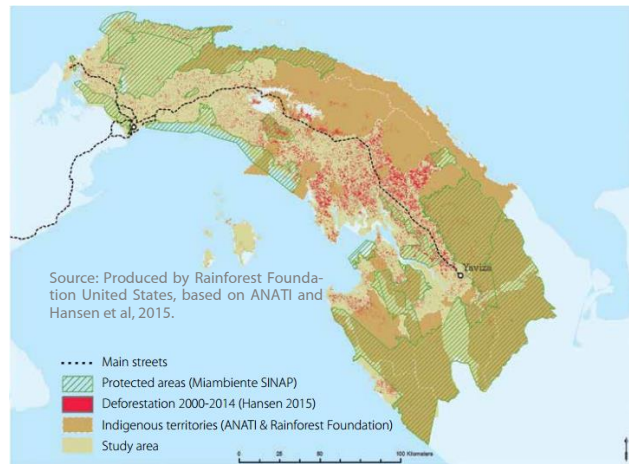
Since 2008, the emphasis of land titling work among indigenous organizations in Eastern Panama has centered on securing titles under Law 72. For the Embera, Guna and Wounaan, this work has been led by the Embera and Wounaan Collective Lands Congress, the National Congress of Wounaan People, and the Tagarkunyal Congress in concert with the National Coordinating Body of Indigenous Peoples of Panama (COONAPIP) and with the support of a growing number of international civil society partners. Together they have been mapping community lands and territories, one by one, and submitting applications for legal collective title under Law 72. Five such lands have received titles now, including two that were driven by the Guna of Madugandi and Embera of Alto Bayano case recently concluded by the Inter-American Court on Human Rights.⁴ Some 25 still remain pending.⁵ Over the last year the Ministry of Environment has been holding up the processing of collective titles in the Darien and elsewhere.⁶ While the ministry's reasons are not clear, they possibly stem in part from pressure from private sector interests in cheap agricultural and ranching lands, as well as national timber and seafood industries, not to hand over further large swaths of land to indigenous peoples. Advances in the REDD+ process have also highlighted the role of the protected area system, and whether those areas, as well as indigenous lands and territories, might be eligible for international carbon payments under one of the United Nations Framework Convention on Climate Change (UNFCCC) financial mechanisms such as the Green Climate Fund.

Overlaps between protected areas and indigenous territories

Indigenous mappers in Panama estimate that in 2016, about 80% of the remaining untitled indigenous lands in Panama have some overlap with the national protected area system, which includes national parks, forest reserves, hydrological reserves, wetlands and mangroves (See map). Law 72 of 2008 gives the Environment Ministry the right to play a role in the approval of title applications for indigenous lands which overlap protected areas, to ensure that sustainable use plans are put in place which align with the objectives of the protected area system, despite the fact that almost all of the national parks in Panama were created without the free prior informed consent of the indigenous peoples living in and around them, as required by international law. Several requests have been stuck at the Ministry for months, and show little sign of progressing.⁷

Embera, Guna and Wounaan communities have fought for their rights to their traditional lands – which they have successfully managed for generations – to be secured under Panamanian law. Any form of co-management must be based on FPIC at the community and territorial levels. Panama has just passed a new consultation law mostly aligned with ILO 169, a long-standing demand of indigenous organizations.

The government is just now setting up a national forest monitoring system with support of the World Bank and UNDP through the REDD+ readiness grant, and has committed to incorporating community monitoring.⁸ A group of indigenous mappers and monitors has been trained over the past two years, but no funding is currently being dedicated in the REDD+ readiness grant to support indigenous mapping or monitoring, nor for the landscape level and local land use planning work needed to resolve the overlapping protected area and indigenous territory problem, which is generating conflict and fueling deforestation.



Conclusions and recommendations

Recent analytical work carried out by PRISMA and the Rainforest Foundation US indicate that, for a far lower cost and in the face of more active threats, indigenous territories in Panama are equally good as protected areas at conserving forests.⁹ Indigenous peoples then are key partners in forest conservation in Panama, and recognition of their legal rights to land is a key step that can be taken to ensure success of the national REDD+ strategy.

The ancestral lands of indigenous peoples in the Darien in fact are mostly located in protected areas, notably the Darien National Park, and the remaining forests in Panama are likely still standing because of the conservation and protection activities of indigenous peoples.¹⁰ There is no trade-off between indigenous territorial security and conservation of forests: titling is in fact a precondition for effective protection of forests.¹¹ Titling of remaining indigenous territories is within reach for Panama by 2020, as is effective community based monitoring, meaning that deforestation can likely be halted quickly, with the mitigation and adaptation benefits that implies.

There are many examples of successful co-management of indigenous territories which are on, or overlap with, protected areas in the Latin America region, including in Panama.¹² Successful co-management must however, be based on a full respect for the rights of indigenous peoples, and come with the support they need to for effective forest monitoring and sustainable development of livelihood alternatives that are not based on deforestation.

End notes

¹ World Bank Systematic Country Diagnostic Panama, 2015, p. 10

² Consulta comunitaria: el caso de Darién, Panamá/Carlos Perafán, Heli Nessim, Inter-American Development Bank, 2001, p.3.

³ Government of Panama, Law 72 of 2008.

⁴ http://www.corteidh.or.cr/docs/comunicados/cp_39_14.pdf

⁵ <http://laestrella.com.pa/panama/nacional/pueblos-indigenas-solicitan-titulacion-terrenos-colectivos/23968084>

⁶ <http://www.panamaamerica.com.pa/nacion/estado-panameno-acepta-compartir-con-indigenas-tierras-en-areas-protegidas-1045305>

⁷ Alvarado, L. Diagnóstico jurídico sobre los derechos de los pueblos indígenas y la superposición de áreas protegidas sobre tierras indígenas en Panamá, RF-US, September 2016

⁸ Government of Panama Readiness Preparation Proposal 2014, pp.83-84; UNDP REDD+ Readiness Preparation Project Document 2015, p.43

⁹ Ver Estudio PRISMA, Conservacion y Derechos Comunitarios: Lecciones de Mesoamerica, 2016

¹⁰ Deforestation, Land Use, and Property Rights: Empirical Evidence from Darién, Panama Author(s): Gerald C. Nelson, Virginia Harris, Steven W. Stone Source: Land Economics, Vol. 77, No. 2, Tropical Deforestation and Land Use (May, 2001), pp. 187-205

¹¹ Stevens, C., R. Winterbottom, J. Springer, and K. Reyta. 2014. "Securing Rights, Combating Climate Change: How Strengthening Community Forest Rights Mitigates Climate Change." Washington, DC: World Resources Institute.

¹² The Nargana protected area in the Guna Yala Comarca is one such example.



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