

To the CDM Executive Board
Martin Luther King Strasse 8
P. O. Box 260124
D-53153

Re: CDM Project Application #3237: Barro Blanco Hydroelectric Project.

9 February 2011

Dear Chair of the CDM Executive Board:

We are writing to you on behalf of the April 10 Movement for the Defense of the Tabasara River (M-10), Alianza para la Conservacion y el Desarrollo (ACD), Asociacion Ambientalista de Chiriqui (ASAMCHI), International Rivers Counter Balance coalition and CDM Watch to express our serious concerns about the proposed CDM project involving Generadora del Istmo, S. A. in the Tabasara River in Western Panama.

Following a validation report by the DOE AENOR, which recommends approval, registration of the PA #3237 has been requested. According to the information at the UNFCCC website, review has already been requested based on concerns about the additionality of the project. However, we would like to bring to your attention that not only the additionality of the Barro Blanco Project is seriously questionable, but that our concerns also relate to lack of adequate public consultation and the potential use of CERs for the compensation of affected communities as well as human rights abuses involving the company GENISA against the lands of the Ngobe indigenous peoples.

Human Rights Abuses and Ngobe Land Rights

Both Project Design Documents (PDDs) that were submitted for the project (in October 2008 and July 2009) failed to document the impacts of the Barro Blanco reservoir on the Bakama area of the Ngobe-Bugle Indigenous Comarca (autonomous territory).

During the first validation process, ACD informed the CDM validator, AENOR, about this serious omission and even provided proper evidence of this situation (as recognized in the validation report). As expressed in this document, maps were provided to prove the existence of the affected indigenous communities. The validation report does not indicate what measures were taken by the validator after this information was provided.

During the second validation process, ASAMCHI and ACD both submitted comments and were later in contact with AENOR regarding these concerns. However, despite receiving an automatic receipt that their comments had been received, the comments did not show up on the CDM project page. Yet, the validation report never addressed properly the question of lands of the indigenous communities. This constitutes a serious human rights violation by any state participating in the trade of CERs.

These concerns prompted an investigation by the Complaints Mechanism of the European Investment Bank (EIB) upon numerous complaints of the indigenous communities and environmental groups as the Environmental Impact Assessment entirely denied the existence of these communities along the Tabasara river. In November 2010, GENISA withdrew the request for loans from the EIB upon knowledge of the imminent visit of the EIB complaints office to Panama to meet directly with the affected indigenous communities (which according to the PDD and the validation report will not be affected by the dam project). Currently, the petitioners, which are several of the organizations signing this letter, are waiting for the EIB to release a conclusions report of this investigation. They have requested this information to be

made public and consider that the Executive Board should consider its findings before making a final decision about the validation process.

Public Participation and Stakeholder Comments

The Bakama area is legally recognized by the Government of Panama as collective property of the Ngobe indigenous people. Yet, most of the consultation for CDM validation, including the site visit by AENOR, only considered the opinion of the non-indigenous population. In this regard, the validation process for Barro Blanco violated the international principle of free, prior and informed consent contained in ILO 169 and the UN Declaration on Indigenous Peoples.

In May 2009, the UN Rapporteur on Indigenous Peoples, James Anaya, also issued a report documenting human rights violations in the construction of the Chan 75 hydroelectric project that also affects the Ngobe people of Western Panama. Regrettably, the validation process conducted by AENOR for Barro Blanco committed once again the same violations of the principle of free, prior and informed consent documented in the 2009 Anaya Report by not involving the affected indigenous communities.

With regards to the CDM consultation, as stated above, ACD submitted comments in the first consultation process conducted in 2008. These concerns were never addressed by the CDM validator. Instead, AENOR opened a second validation process, in which both ACD and ASAMCHI again submitted comments. The CDM login system acknowledged receipt of the ASAMCHI comments through email, but the website failed to display the comments as received. However, once again, AENOR did not address the substantial issues raised by this organization, pretending that they were never informed about the opinions of the stakeholders.

Compensation of the Affected Communities

Following the principle that was also utilized in the Chan 75 hydroelectric project, GENISA has proposed the use of CERs to compensate the affected communities, including the Ngobe indigenous peoples. In the Chan 75 case, this question is currently being examined by the Inter-American Human Rights Commission, which raises serious questions about the appropriateness of using CERs for the compensation of affected communities when human rights violations have not been considered.

In addition, the use of CERs for compensation of the affected communities complicates the assessment of the question of additionality as will be further discussed in the section below. Considering the extremely high rate of return of hydroelectric investment in Panama, the internalizations of compensation costs through CERs represents an anomalous procedure for the calculation of additionality.

Additionality

As expressed in several occasions by the undersigned organizations, hydroelectric investment in Panama has an extremely favorable net present value, which derives from the sale of electricity generated by hydroelectric plants at prices comparable to thermoelectric plants with higher operations costs. This situation occurs when non-contracted electricity is sold in the spot market, which happens regularly in Panama. For this reason, there are currently about 87 hydroelectric project scheduled for construction in Panama at this moment.

Recently, the Government of Panama has complained about the exaggerated levels of profit raised by hydroelectric companies and has even started investigations to avoid this type of speculation (see articles in *La Estrella de Panama*, December 28, 2010, and *La Prensa*, February 7, 2011 <http://www.prensa.com/hoy/negocios/2489716.asp>).

The PDD states that the IRR of the project without CERs is calculated as 9.25% and with CERs is calculated as 9.60%-10.02%. It is also stated that the project IRR needs to be at least 12% in order to be built. It is not explained why such a small increase in IRR from CERs compared to the increase needed to make the project viable would have much effect on project financing. Indeed, it is not convincing or believable that it would. The investment analysis works based on the premise that a project financial assessment against a benchmark predicts whether a project would be built. Therefore, either this project would not be built even with CERs, or there is something wrong with the benchmark analysis. In addition, the sensitivity analysis, to be accurate, should not only vary each figure on its own, but should vary them simultaneously.

On the basis of these serious concerns regarding the failure of the validation report to address the human rights abuses involving the company GENISA against the lands of the Ngobe indigenous peoples, the lack of adequate public consultation and the potential use of CERs for the compensation of affected communities, as well as doubts about the additionality of the project, we urge you to extend the request for review to the issues raised in this letter. We believe the project does not qualify as a CDM project and should be rejected.

Yours faithfully,

Oswaldo Jordan, International Affairs Coordinator, Asociacion para la Conservacion y el Desarrollo (ACD)

Oscar Sogandares, Spokesperson, Asociacion Ambientalista de Chiriqui (ASAMCHI)

April 10 Movement for the Defense of the Tabasara River (M-10)

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