

24 April 2016

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

Re: Stakeholder comments regarding ongoing human rights concerns associated with the Barro Blanco Hydroelectric Power Plant Project (CDM Project #3237)

Dear Mr Buendia, Dear Mr Wolke,

We, the April 10 Movement for the Defense of the Tabasará River (M-10), Alianza para la Conservación y el Desarrollo (ACD) and Asociación Ambientalista de Chiriquí (ASAMCHI), are writing to provide stakeholder comments regarding the ongoing human rights concerns associated with the Barro Blanco Hydroelectric Power Plant Project on the Tabasará River in the Province of Chiriquí in western Panama. Pursuant to the Board's recent decision regarding stakeholder comments pertaining to human rights issues, we request that the Board (1) forwards this letter to the relevant UN human rights bodies and Panamanian national authorities, and (2) withdraws registration if the Board finds that the project violates CDM modalities and procedures.

The construction of the Barro Blanco dam will be completed in the coming days and flood tests have already started. The tension surrounding the situation on the ground is escalating, as the affected Ngäbe indigenous communities opposing the dams have received threats of forced eviction. Given the previous conflicts and violence against people who oppose Barro Blanco¹, and considering the imminent completion of the dam and the reported threats, there is serious concern for the personal safety and security of the local communities.

This situation arises from recent developments that warrant the urgent attention of the Executive Board and other relevant authorities. As described in previous correspondence, in February 2015, Panama's Environment National Authority (ANAM) temporarily suspended the construction of the Barro Blanco dam, based on ANAM's determination that the project failed to comply with its environmental impact assessment (EIA)². In late August 2015, Panama's Environment Ministry (former ANAM) imposed \$775,200 in fines on the project developer (GENISA) for non-compliance with the EIA, one of the grounds being the failure to "negotiate with, relocate and compensate those affected by the hydroelectric project" and the violation of the social and cultural rights of the affected Ngäbe people³. Shortly after, the Environment Ministry lifted the temporary suspension, allowing GENISA to resume construction in September 2015.

¹ In 2012, violent repression by the Panamanian national police of peaceful protests against hydroelectric power, including Barro Blanco, killed two indigenous people and left more than a hundred wounded. http://internacional.elpais.com/internacional/2012/02/08/actualidad/1328736812_527523.html

² These violations included, among other things: lack of agreement with the affected communities, absence of an approved archaeological management plan, repeated failures to manage sedimentation and erosion, poor management of solid and hazardous waste, and logging without permission

³ Please see ANAM's sanction decision in Annex 1, page 10, para 3 & 4

As evidenced by the Environment Ministry's determination and the resulting penalties imposed on GENISA, the Government of Panama recognized the severe human rights impacts, which to this day have not been adequately addressed. Similarly, the Independent Complaints Mechanism (ICM) of the Dutch and German development banks (FMO and DEG respectively) acknowledged the severity of the problem, when it found that the "lenders [FMO and DEG] should have sought greater clarity on whether there was consent to the project from the appropriate indigenous authorities prior to project approval."⁴ By its own recognition, the Government is in violation of international law⁵ and national law⁶ for its failure to adequately consult or obtain the free, prior and informed consent of the affected Ngäbe communities.

Despite these findings, the Barro Blanco project has continued and will be fully constructed by the end of this month (April 2016). Local affected stakeholders may be forcefully evicted any time now to allow for the flooding of six hectares of the Ngäbe-Bugle territory (comarca), including the communities' homes and schools, as well as their religious, archaeological and cultural sites.

The CDM Executive Board has a critical opportunity to take action to prevent further harm and protect the rights of the Ngäbe people who are adversely affected by the Barro Blanco dam. We respectfully request that the Board takes the following actions:

- Forward these comments to the relevant UN human rights bodies, including but not limited to the Special Rapporteur on human rights and the environment, the Special Rapporteur on the rights of indigenous peoples, and the Special Rapporteur on the human rights of internally displaced persons, to monitor and assess the situation on the ground.
- Forward these comments to the Panamanian national authorities and inquire about the project's status and the critical situation on the ground.
- Conduct an assessment to determine whether the project complies with the CDM modalities and procedures—if it does not, withdraw the project's registration on this basis.
- Building on the Board's recent decision on human rights issues, recommend that the CMP to develop a grievance process or mechanism that would provide a means to consider and address concerns regarding adverse impacts of a CDM project at any stage of the project cycle.

We look forward to your response.

Yours sincerely,

Oswaldo Jordan, Asociación para la Conservación y el Desarrollo (ACD)

Goejet Miranda, April 10 Movement for the Defense of the Tabasará River (M-10)

Oscar Sogandares, Asociación Ambientalista de Chiriqui (ASAMCHI)

⁴ <https://www.deginvest.de/International-financing/DEG/Die-DEG/Verantwortung/Beschwerdemanagement/Barro-Blanco/>

⁵ United Nations Declaration on the Rights of Indigenous Peoples, Art 10

⁶ General law #41 on the environment, art 103 which states that *"in the event of activities, works or projects developed in indigenous communities territories, consultation procedures will guide the establishing of agreements with communities representatives, in relation to their rights and customs as well as the obtention of compensations for the use of the recourses, knowledge or lands"* - http://www.oas.org/juridico/spanish/pan_res67.pdf

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