



D I R E



S T R A I T S



Counter

Balance

**EIB INVESTMENTS IN PANAMA
AND THEIR IMPACTS ON
INDIGENOUS COMMUNITIES
WORKERS AND THE ENVIRONMENT**

MAY 2011

The mission of “**Counter Balance: Challenging the EIB**” is to make the European Investment Bank an open and progressive institution delivering on EU development goals and promoting sustainable development to empower people affected by its work.

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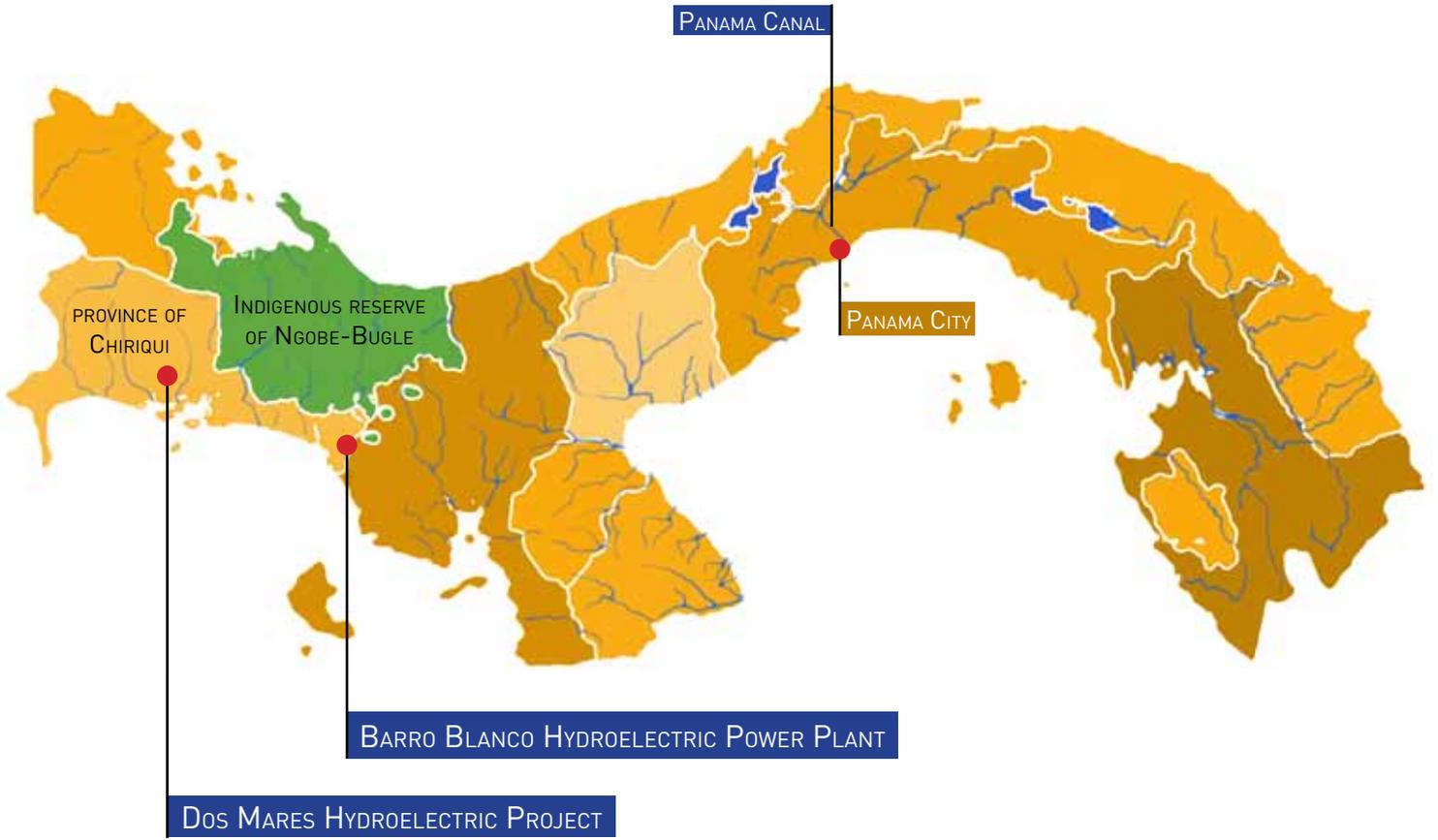




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PANAMA CANAL

PROVINCE OF
CHIRIQUI

INDIGENOUS RESERVE
OF NGOBE-BUGLE

PANAMA CITY

BARRO BLANCO HYDROELECTRIC POWER PLANT

DOS MARES HYDROELECTRIC PROJECT

Executive summary

The European Investment Bank, the European Union's bank that relies on EU member state guarantees to raise capital for its multi-billion euro lending operations, operates primarily in Europe, but also – increasingly – in the developing world. The EIB has operated in Latin America since 1993, with the relatively small state of Panama counting among the top EIB beneficiaries: between 1993 and 2010, the EIB has loaned over EUR 709 million for projects in Panama.

One of the key, officially mandated focuses for the EIB in its Latin American operations is environmental sustainability, including climate change mitigation. This report questions the rigour with which such important objectives are being approached, and also finds via several in the field researches that certain EIB-backed investments in Panama are delivering hefty impacts on local communities and workers. As a result of the described project-related problems, the quality and effectiveness of the EIB's due diligence in Panama is also identified as a key weakness.

In recent years Panama's energy sector has been undergoing steady expansion, with hydro power playing a dominant role. Hydro, perhaps not surprisingly therefore, is a sector that the EIB has opted to get involved in, though as yet, and despite some potential in Panama, the EIB has not provided loans for the wind energy sector in the country, nor has it backed any energy efficiency schemes.

Yet in spite of this chosen focus on hydro projects by the EIB (with perhaps other hydro projects to be financed in the near future), the Counter Balance fact-finding mission to Panama in October 2010 that forms the basis of this report found widespread evidence of project controversies and impacts connected with two hydropower projects: the Dos Mares Hydroelectric Plant, that received over EUR 140 million of EIB project finance in 2009, and the Barro Blanco Hydroelectric

Project that was under appraisal for financing from the EIB since 2009.

In the latter project, complaints from project-affected indigenous communities to the EIB's complaints office have ultimately resulted in the project sponsor declining the involvement of the EIB in the project financing – this step was taken just as officials from the EIB complaints office were preparing a site visit to the Barro Blanco project. While this can be regarded as something of an achievement by local groups, the Dos Mares project continues to be backed by the EIB, in spite of the litany of problematic issues described in this report.

Elsewhere in Panama, the biggest EIB engagement has been in the Panama Canal expansion project, that received an EIB loan of close to EUR 400 million in 2009. Major doubts hang over this project, principally in connection with the project appraisal and public consultation, the project tendering process and the treatment of construction workers, both unionised and non-unionised.

The canal extension project points to a further aspect of lax due diligence from the EIB: whether the bank has suitably effective procedures to ensure that EU money is not used for illegal practices such as money laundering, a practice that is notably present in Panama's economy, particularly in the construction sector.

Concluding with a set of ten specific recommendations, the report finds that in order for the EIB to be duly equipped to continue lending in Panama, it needs to dramatically improve its project appraisal procedures, especially in future operations where the Lisbon Treaty applies. The priority for the EIB in the region has to no longer be European foreign direct investment but instead compliance with and realisation of the EU development cooperation objectives for the area.



Panama city's skyline only since early 2000s - Caterina Amicucci

PANAMA'S POLE POSITION IN THE EIB'S LATIN AMERICAN PORTFOLIO

The European Investment Bank has operated in Latin America since 1993. The bank's operations in this region are regulated by a specific mandate given by the Council of the European Union every six years. The same mandate also governs the EIB's operations in Asia and is called the ALA (Asia and Latin America) mandate. The current mandate was given to the EIB in 2006, setting a lending ceiling of EUR 2.8 billion for Latin America and EUR 1 billion for Asia for the period 2007-2013.

The ALA mandate defines the following political priorities:

"EIB financing in the Asian and Latin American countries should focus on environmental sustainability (including climate change mitigation) and energy security projects, as well as the continued support of EU presence in Asia and Latin America through Foreign Direct Investment, and the transfer of technology and know how."¹

In November 2008, the European Court of Justice (ECJ) annulled the EIB's main mandate to lend outside the EU, ruling that any new mandate should be based on a section of the Treaty establishing the European Community (EC Treaty) that requires *"the sustainable economic and social development of the developing countries, and more particularly the most disadvantaged among them ... the campaign against poverty in developing countries ... consolidating democracy and the rule of law... [and] respecting human rights and fundamental freedoms."* The ECJ also gave the European Parliament the right to co-decide the new mandate alongside the European Commission, citing *"the fundamental democratic principle that the people should participate in the exercise of power through the intermediary of a representative assembly."*

In spite of the ECJ's ruling in 2008, the EIB continues to lend in the ALA countries under the same mandate, while the European Council and the European Parliament are still in the process of negotiating a new external mandate for the EIB for the period 2011-2013.

1. COUNCIL DECISION of 19 December 2006. Granting a Community guarantee to the European Investment Bank against losses under loans and loan guarantees for projects outside the Community (2006/1016/EC)

Table 1: Main beneficiaries of the ALA lending operations 1993-2010

COUNTRY	EURO
Brazil	1,943,226,806
China	1,254,518,621
Panama	709,696,409
Argentina	644,685,762
Philippines	413,820,227
Indonesia	335,125,621
India	355,000,000

The EIB's portfolio in the ALA countries², since the beginning of its operations there, amounts to EUR 7.9 billion in loans, with the main beneficiaries noted in Table 1.

Although Panama is a relatively small country, with 3.5 million inhabitants and a territory of less than 79,000 square kilometres, it is nonetheless the third top EIB beneficiary under the ALA mandate, after the major emerging economies of China and Brazil, and it has been the top beneficiary in Latin America, accounting for ten percent of overall EIB lending portfolio in the ALA regions.

Notably, out of the EUR 709 million that the EIB has lent in Panama, EUR 396 million has been made available for the Panama Canal Expansion, a project aimed at enabling the passage of Post-Panamax ships. The overall cost of this project is USD 5 billion, equivalent to 20 percent of Panama's GDP.

In order to understand more about the role of the EIB in the economy of Panama, and to evaluate the impact of EIB investments in the country, Counter Balance organised a fact-finding mission from the 9th of October until the 16th of October 2010. This report documents the main findings and draws some conclusions and recommendations.

Table 2. EIB lending in Panama

Projects financed 1993-2010	Year	Euro
DOS MARES HYDROELECTRIC PLANT	2009	140,939,149
PANAMA CANAL EXPANSION	2009	396,573,605
PANAMA CITY AND BAY SANITATION PROJECT	2007	27,140,725
SECOND PANAMA CANAL BRIDGE	2004	40,812,995
CABLE AND WIRELESS PANAMA II	2001	54,229,935
CABLE AND WIRELESS PANAMA	1998	50,000,000
Projects under appraisal at 1/10/2010		
Barro Blanco Hydroelectric Project*	2009	40,000,000
Panama City Metro	2010	200,000,000

*The project no longer appears in the EIB project pipeline due to withdrawal of the project promoter for funding from the EIB, see Chapter 3

2. The countries currently eligible for EIB financing under the ALA IV mandate are: ASIA Brunei, Indonesia, Laos, Malaysia, Philippines, Singapore, Thailand, Vietnam, Bangladesh, China, India, Mongolia, Nepal, Pakistan, South Korea, Sri Lanka, Yemen LATIN AMERICA: Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Uruguay, Venezuela.



1.0 PANAMA'S FAST DEVELOPING ECONOMY

High voltage transmission lines in Gualaca - Teresa Maisano

1.1 THE PANAMIAN ECONOMIC "MIRACLE"

Panama's economy has been one of the fastest growing economies over the past 15 years. GDP growth was 11 percent in 2007, 9.2 percent in 2008, and 2.4 percent in 2009. The economy has come to be dominated by services: banking, insurance, shipping and transport, "offshore" business and import-export account for between 75 and 80 percent of Panama's economic activity. The Panama Canal alone accounts for about 20 percent of national GDP and the revenues deriving from the canal account for a considerable portion of the national budget.

Another important chunk of GDP is generated by the Colon Free Trade Zone, the second largest free trade zone in the world after Hong Kong, with an overall goods exchange volume of USD 18 billion.

PANAMA AN OFFICIAL TAX HAVEN

IN 2000 PANAMA WAS AMONG 35 JURISDICTIONS AROUND THE WORLD IDENTIFIED BY THE OECD AS MEETING THE TECHNICAL CRITERIA FOR BEING A TAX HAVEN. IN 2002 THE COUNTRY COMMITTED TO CO-OPERATE TOWARDS INCREASING TRANSPARENCY BUT, ACCORDING TO AN OECD PROGRESS REPORT OF 16 MARCH, 2011³, PANAMA STILL FEATURES AMONGST THOSE JURISDICTIONS THAT HAVE COMMITTED TO AN INTERNATIONALLY AGREED TAX STANDARD BUT HAVE YET TO SUBSTANTIALLY IMPLEMENT THE STANDARD. THE NUMBER OF COMPANIES REGISTERED IN PANAMA IS APPROXIMATELY 350,000.

According to the Bureau for International Narcotics and Law Enforcement Affairs of the US Department of State: "the large number of offshore banks and shell companies, the presence of the world's second largest free trade zone, the spectacular growth in ports and maritime industries, and the use of the U.S. dollar as the official currency also provide an effective infrastructure for significant money laundering activity.

The bulk of Panama's money laundering activity is narcotics-related or the result of trans-shipment or smuggled, pirated, and counterfeit goods through Panama's major free trade zone, the Colon Free zone (CFZ). The funds generated from illegal activity are susceptible to being laundered through a wide variety of methods, including the Panamanian banking system, Panamanian casinos, bulk cash shipments, pre-paid telephone cards, debit cards, insurance companies, real estate projects and agents, and merchandise."⁴

The same report finds that "Panama's economic and geographic proximity to drug-related activity from Colombia, Venezuela, and Mexico, as well as weak capacity within the Government of Panama (GOP), makes Panama a natural location for money laundering."

3. A PROGRESS REPORT ON THE JURISDICTIONS SURVEYED BY THE OECD GLOBAL FORUM IN IMPLEMENTING THE INTERNATIONALLY AGREED TAX STANDARD*1 Progress made as at 16 March, 2011, <http://www.oecd.org/dataoecd/50/0/43606256.pdf>
4. International Narcotics Control Strategy Report, Volume II, Money Laundering and Financial Crimes, March 2009

One of the sectors driving Panama's economic growth is the construction and real estate sector – this has been mainly catalysed by injections of foreign capital. The construction sector in Panama often uses and relies on cash transactions, making it very easy to launder money. But over the last year the construction of buildings has tailed off dramatically due to the saturation of the market and caution in offshore investments because of the global turndown. The sector is now seeking to offset these losses by increasing infrastructure construction.

The highly pro-business government, lead by Ricardo Martinelli, is engaged in providing new and great opportunities to the construction sector and those lobbies interested in keeping revenues flowing fast.

Since Martinelli took office in 2009, there has been a major push in favour of building new infrastructure. Thanks to the Kyoto mechanisms, hydro projects represent double opportunities: Panama's government is planning to build 91 new hydro projects in the country, with a view to applying with 86 of them to the Clean Development Mechanism of the UNFCCC. If the government's hydro drive is fully realised, no one river in Panama will be free to flow without being dammed. Of these, 54 projects are located in only four river basins in Chiriquí, the richest of Panama's provinces when it comes to water resources.

And it is in this region that the EIB has already made investments in the hydro sector, with the prospect of more such investments to come.



Containers on the Canal's banks - Caterina Amicucci

PRESIDENT RICARDO MARTINELLI'S SUPERMARKET SWEEP



RICARDO ALBERTO MARTINELLI BERROCAL WAS ELECTED PRESIDENT OF PANAMA IN 2009 ON A FREE MARKET PLATFORM LEAD BY HIS OWN PARTY, DEMOCRATIC CHANGE, THAT WAS FOUNDED IN 1998. MARTINELLI'S MAIN ELECTION PLEDGES WERE TO CUT POLITICAL CORRUPTION AND VIOLENT CRIME, AND HIS CAMPAIGN BUDGET OF USD 35 MILLION WAS FINANCED FROM HIS OWN POCKET.

MARTINELLI IS ONE OF PANAMA'S RICHEST MEN, WITH CONTROL OF KEY SECTORS SUCH AS FOOD PRODUCTION AND RETAILING. HE IS THE OWNER OF THE SUPER 99 SUPERMARKET CHAIN AND HIS NAME APPEARS 177 TIMES AS DIRECTOR AND 188 TIMES AS A SHAREHOLDER IN PANAMA'S CORPORATE RECORDS. MARTINELLI HAS QUICKLY EMBRACED INTERVENTIONIST ECONOMIC POLICIES AND THE OPPOSITION AND CIVIL SOCIETY ACCUSES HIM OF RUNNING THE COUNTRY LIKE HE RUNS HIS SUPERMARKET, SELLING OUT TO FOREIGN INVESTORS THE COUNTRY PIECE BY PIECE.

IN ADDITION TO THE UNPRECEDENT HYDROPOWER CONCESSIONS GIVEN TO FOREIGN COMPANIES IN THE LAST FEW YEARS, MARTINELLI HAS PUSHED FOR A QUICK REFORM OF THE MINING CODE. THE REFORMS, WHICH HAVE DRAWN PROTESTS FROM PANAMA'S ENVIRONMENTALISTS, LABOUR LEADERS AND INDIGENOUS PEOPLE, MAKE IT EASIER FOR FOREIGN COMPANIES TO INVEST IN MINING. MAJOR EXTRACTIVE SECTOR-ORIENTED COMPANIES FROM CANADA AND SOUTH KOREA ARE READY TO EXPLOIT THE COUNTRY'S HUGE RESERVES OF COPPER AND OTHER RAW MATERIALS. THE LAW GENERATED A NEW WAVE OF PROTESTS AMONG THE INDIGENOUS COMMUNITIES.

OTHER DOUBTS HAVE BEEN RAISED CONCERNING THE DEMOCRATIC INTEGRITY AND INTENTIONS OF HIS LEADERSHIP. AN AUGUST 2009 U.S. STATE DEPARTMENT CABLE SIGNED BY THEN-U.S. AMBASSADOR TO PANAMA BARBARA J. STEPHENSON, AND RELEASED BY WIKILEAKS, DESCRIBES "MARTINELLI'S 'AUTOCRATIC TENDENCIES SUCH AS ASKING THE U.S. GOVERNMENT FOR HELP TO WIRETAP POLITICAL OPPONENTS,'" AND SAYS THAT "AFTER MEETING THE PANAMANIAN PRESIDENT, [STEPHENSON] IS UNDER THE IMPRESSION THAT MARTINELLI 'MAY BE WILLING TO SET ASIDE THE RULE OF LAW IN ORDER TO ACHIEVE HIS POLITICAL AND DEVELOPMENTAL GOALS.'"

IN JUNE 2010, MARTINELLI'S GOVERNMENT APPROVED LAW 30, ALSO KNOWN AS "LEY CHORIZO" OR "SAUSAGE LAW", DUE ITS MANY DISPARATE INGREDIENTS. TECHNICALLY AN AERONAUTICS LAW, LAW 30 IS A TROJAN HORSE. BURIED DEEP WITHIN IT ARE ALARMING CHANGES



TO NATIONAL ENVIRONMENTAL LAW THAT COULD ELIMINATE THE REQUIREMENT FOR ENVIRONMENTAL IMPACT ASSESSMENTS (EIAs) IN CERTAIN CASES. THE LAW ALSO WEAKENS THE AUTHORITIES' POWER TO INVESTIGATE POLICE OFFICERS FOR DISCHARGING FIREARMS AND CURTAILS THE RIGHT OF LABOUR UNIONS' TO STRIKE AND CONDUCT COLLECTIVE BARGAINING. IN JULY 2010, PROTESTS AGAINST THESE AND OTHER PROVISIONS CULMINATED IN A WEEK OF GENERAL STRIKES THAT DEGENERATED INTO VIOLENT CONFRONTATIONS WITH PANAMA'S POLICE FORCES. SEVERAL PEOPLE DIED AND MORE THAN 200 SUFFERED INJURIES WHEN POLICE FIRED BUCKSHOT PELLETS INTO CROWDS OF DEMONSTRATORS. THE UNITED NATIONS AND OTHER INTERNATIONAL BODIES ROUNDLY DEPLORED THE GOVERNMENT'S RESPONSE.



High voltage transmission lines in Higuaron - Caterina Amicucci

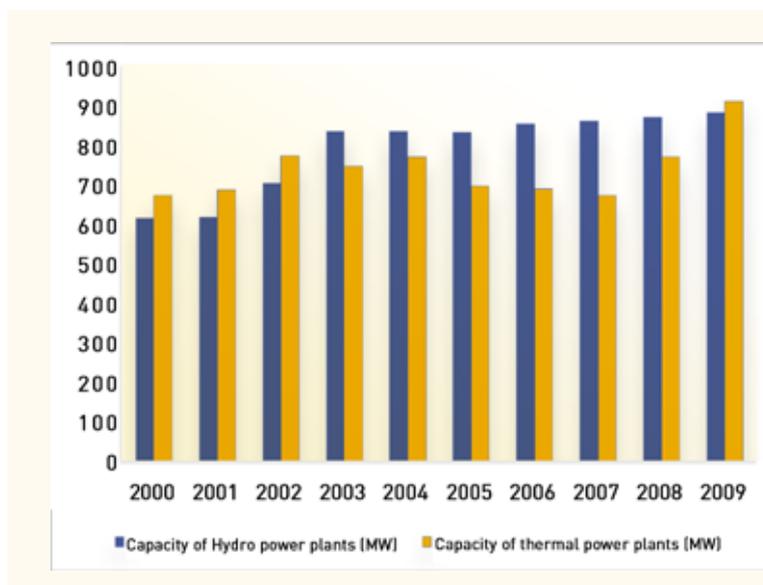
1.2 PANAMA'S ENERGY SECTOR

Panama has no proven reserves of oil, gas or coal.⁵ Its energy balance is dominated by oil products, which comprised 75 percent of total primary energy supply in 2008.

Panama's installed electricity capacity increased from 1,285 MW in year 2000 to 1,789 MW in 2009. In

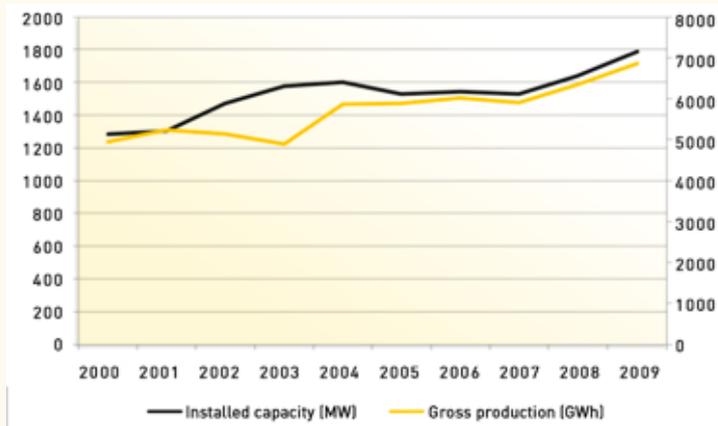
this period a series of small hydro capacities was regularly installed, while thermal power units were decommissioned and replaced, so that by 2009 hydropower had a 49 percent share of total installed capacity while thermal power had a 51 percent share.

Graph 1. Installed electricity capacity in Panama, 2000-2009 (Autoridad Nacional de los Servicios Públicos, Panama, www.asep.gob.pa)



5. According to statistical data for 2008 and 2009 at the US Energy Information Administration, www.eia.doe.gov

Graph 2. Installed electricity capacity and gross electricity production in Panama, 2000-2009 (Autoridad Nacional de los Servicios Públicos, Panama, www.asep.gob.pa)



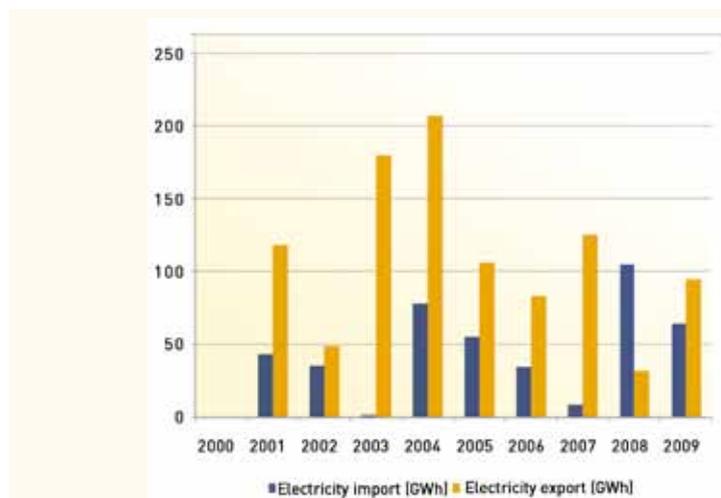
As expected, given the large share of hydro capacity, electricity production is rather strongly influenced by fluctuations in precipitation levels; as Graph 2 indicates, an increase in installed capacity can coincide with a decrease in electricity production.

The length of 230kV transmission lines increased from 1,091 km in 2000 to 1,951 in 2009; in the same period, it is reported that transmission losses decreased from 3.4 percent to one percent.⁶ The length of distribution lines increased from 19,287 km in 2000 to 29,082 km in 2008; in the same period, it is reported that distribution losses decreased from 18 percent to 11 percent.⁷ The number of customers connected to the grid increased from 513,638 in 2000 to 786,485 in 2009.

Electricity demand is dominated by the commercial sector, followed by the residential, governmental and industrial sectors. The peak load is estimated to be around 1100 MW, therefore Panama possesses a considerable reserve margin for export purposes.

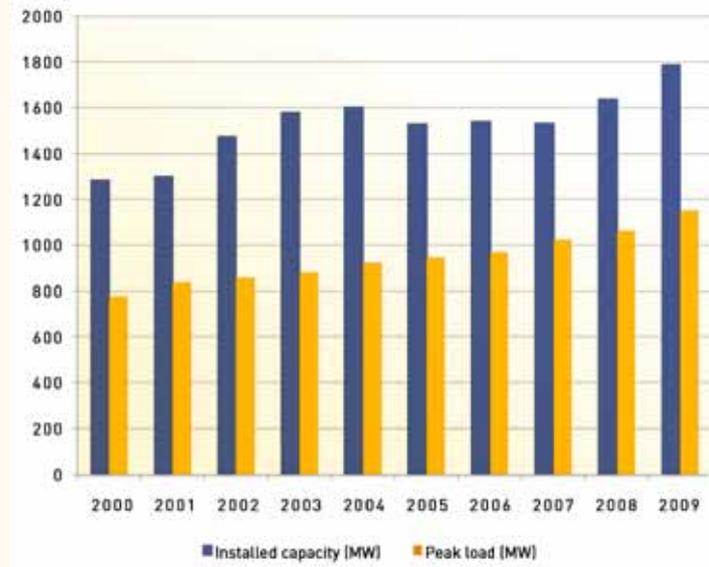
In dry years the capacity of thermal power plants is sufficient to make up for the lower output of hydro facilities, while imports are broadly marginal (Graph 3). The reserve margin (the difference between installed capacity and peak load) is considerable (Graph 4).

Graph 3. Electricity imports and exports in Panama, 2000-2009 (Autoridad Nacional de los Servicios Públicos, Panama, www.asep.gob.pa)



6. According to statistical data at the Autoridad Nacional de los Servicios Públicos, Panama, www.asep.gob.pa
 7. According to statistical data at the Autoridad Nacional de los Servicios Públicos, Panama, www.asep.gob.pa

Graph 4. Installed capacity and peak load in Panama, 2000-2009 (Autoridad Nacional de los Servicios Públicos, Panama, www.asep.gob.pa)



Development plans

The National energy plan released by the National Energy Secretariat in 2009⁸ established as a generation plan the installation of an additional 1299.80 MW by 2023 via the following energy sources:

- 706.30 MW from hydropower
- 473.50 MW from thermal power
- 120 MW from wind power

Law 45/2004 establishes incentives promoting hydroelectric generation systems and other renewable sources. These incentives are mainly favourable for hydro projects up to 10 MW and consist mainly of: simplified concession and license procedures; the exemption of distribution charges; tax exemptions/reductions for developers, and; the acquisition by the state of an equivalent fiscal incentive of up to 25 percent of the direct investment cost during the first ten years after commissioning.

According to the Ministry of Economy and Finance, as of December 2007 there were concessions for 90 hydro projects (with a total of 2640 MW installed capacity) and licenses for 17 wind projects (with a total of 3783 MW installed capacity).

A document that appears to be an energy strategy for Panama, "Plande Expansion del Sistema Interconectado

Nacional 2007-2021" (PESIN), completed in October 2007, presents, among other things, demand projects with annual electricity consumption growth rates of 5.7 to 6 percent, while the installed capacity needs would grow by 5.6 to 5.8 percent annually. Thus, installed capacity would need to reach 1969-2056 MW by 2021. PESIN doesn't touch upon any energy efficiency measures.

Although an apparently thorough study, in terms of analysis about the potential of different renewable energy sources, PESIN touches upon wind power and hydropower only. It indicates that a study called "Energy Development, Wind in Panama" was completed in March 2001, sponsored by the Global Environmental Facility. The study, among other things, analysed the institutional conditions hampering the development of wind power in the country, provided measured and analysed data at six sites and a national wind map.

The study indicates that the grid could integrate between 100 and 300 MW of wind capacity; it also noted that the atmospheric model used in the estimation of potential indicated 100 to 300 MW as the most profitable wind capacity. As for hydropower potential, based on a re-evaluation performed by ETESA, the electricity transmission company, the total potential is 3691 MW (846 MW already installed, 1545.35 MW units in the licensing process and 1299.19 MW from new sites).



Calabacito Indigenous community, River Tabasará – Desislava Stoyanova

1.3 ENERGY IMPACTS ON COMMUNITIES: THE CHIRIQUÌ AND THE COMARCA NGOBE-BUGLÈ

The Chiriquí province lies in south-west Panama and has 409,821 inhabitants in a 6,548 km² territory; GDP per capita is USD 12,119. David, Panama's third biggest city, is the capital of the region. The economy is primarily based on agriculture and livestock.

In recent years the region has progressively become a tourist destination, principally a residential tourism destination for many US pensioners that find in Chiriquí a place where they can still live with a high standard of living and high purchasing power that is no longer possible in their country of origin. This phenomenon has been seriously affecting the local communities, their culture, their living conditions and the local landscape. The region has an extraordinary biodiversity heritage due to its variety of microclimates and ecosystems, and these can radically change in very short intervals.

The indigenous territory (Comarca) Ngöbe-Buglé is also located. Starting in 1972, the Panamanian government was required to establish comarcas, demarcated

regions in which indigenous groups possess exclusive land rights and considerable administrative autonomy. Within comarcas, people elect a General assembly, governor, and any number of regional and local leaders, although the government still controls public expenditure and tax revenues within the territory.

The Ngöbe-Buglé comarca, located in north western Panama, was formed in 1997 on the land previously belonging to the provinces of Bocas del Toro, Chiriquí, and Veraguas, and it has a population of 169,000 inhabitants. The indigenous community is threatened by natural resource exploitation and environmental degradation on their ancestral lands and, because of this, lives under strong political pressure.

The main rivers of the region are heavily exploited by hydroelectric power plant projects. There are currently 63 hydroelectric power plants foreseen in the region, out of which 17 are under construction, 11 are in the final phase of design and 35 are still awaiting approval. Eleven of the region's 13 districts are affected by



*Meeting in Calabacito indigenous community, River Tabasará -
Caterina Amicucci*

Eleven of the region's 13 districts are affected by hydroelectric power plants. The Gualaca district alone (625 km² and 8,848 inhabitants) produces 42 percent of the consumed national energy supply – for this, 50 percent of its forested territories are engaged in the projects, yet, strikingly, 33 percent of the local population does not have domestic electric energy.

The indigenous comarca is also threatened by mining activities, in particular by a government plan to exploit the Cerro Colorado, one of the world's largest deposits of copper. Mining in the area, although it is legal because the property rights of underground resources belong to the state, poses a great environmental threat as waste materials from extraction and processing pollute local watersheds.



*In the school of Palomar indigenous
community - Caterina Ammicucci*

2.0 THE EIB IN PANAMA



The canal from Miraflores lock - Caterina Amicucci

2.1 THE PANAMA CANAL

The Panama Canal is approximately 82 kilometres long, crosses the Isthmus of Panama in the Canal Zone and connects the Caribbean Sea with the Pacific Ocean. The United States gained construction rights after Panama declared its independence from Colombia in 1903 with US backing. The construction of the canal started in 1904, and was eventually opened to traffic on August 15, 1914.

A 1977 treaty stipulated that Panama was to gain full rights of sovereignty over the canal on December 31, 1999. Since then the canal has been administered by the Panama Canal Authority (ACP), a public entity of the Government of Panama. Approximately 14,000 ships pass through the Panama Canal every year, in 2008; 7.7 billion tons of cargo passed through the canal.

Every year the Panama Canal generates around USD 1.8 billion, with a resultant net income for the Panamanian state of USD 1 billion. In April 2006, the then president Martin Torrijos proposed a plan to expand the canal in order to allow bigger vessels (so-called Post-Panamax vessels) to transit the canal. In October 2006 a national referendum on this expansion was held. On a turnout of only 39 percent of the voting population, the expansion project received 76.8 percent approval.

Immediately after the referendum the Government of Panama gained a total of USD 2.3 billion⁹ in project support from multilateral financial institutions. Among these institutions, the EIB contributed to the project with a USD 500 million loan in 2009.

According to the Panamanian social organisation FRENADESO¹⁰, before the referendum took place project opponents were censored by all national and local media and 90 percent of the public information and project documents available before the referendum were not translated into Spanish, but published only in English. On several occasions FRENADESO requested access to the documents in Spanish, but received no official response.

Panamanian civil society further accused the government of misrepresenting project information, particularly concerning the overall cost of the project, estimated at USD 5.2 billion. Only after winning the referendum did the Panama Canal Authority recognise that the costs were indeed higher than previously presented. However, the figures used in public debates by the authorities continue to be the same.

Very limited technical information was made available before the vote and no alternative designs have been taken into consideration. Those attending public forums were reassured that – once the expansion was approved and funding became available – project details would be more fully evaluated and that their concerns would be satisfactorily resolved before proceeding. But those assurances vanished once the go-ahead vote was secured.

Doubts have been raised by independent engineers and researchers¹¹ concerning the technical design of the project. They claim that the actual plan is to build a set of locks with three steps at each end of the canal – a single-lane with a total of 6 chambers and 18 “recycling” tanks – that will be too expensive and complicated for the service it will provide and that there are far more effective designs, ones in fact that are more modern and that can markedly increase service while using less water. With more manipulations to perform, the locks now planned will require more maintenance than more modern locks. In addition, the present design is expected to quickly turn Gatun Lake salty and create an avoidable saltwater migratory pathway across the Isthmus of Panama – it is feared that this will put many marine species along both sea coasts at risk of extinction. This could irreversibly reduce the variety of Caribbean Sea and Pacific Ocean catches, Gatun Lake’s invaluable fresh water stands to be contaminated for no reason.

In order to gain public support the ACP declared that the canal expansion project would generate 5,000 direct jobs between 2007 and 2014, with a peak in 2010. But up until now only 1,960 workers have been employed.

In July 2010 a strike was held to protest against Law 30 (as mentioned above)¹² and to demand higher wages for those working on the canal’s expansion. The strike concluded with the firing of 50 workers who had led the protests, with 17 leaders put on trial; eight of these individuals belong to the Executive Board of the trade union SUNTRACS. They are faced with potentially 20-year jail sentences on the charge of undermining state security and obstructing free aquatic transit

in the canal. In December 2010 the Wood’s Worker International (BWWI) lodged a formal complaint to the EIB.



Canal’s lock – Desislava Stoyanova

Further controversies have been thrown up in connection with the tendering process for the project’s construction. The construction company was decided following a competitive tender procedure, ultimately won by a consortium called Grupos Unidos por el Canal comprised of four shareholder companies: Sacyr Valle Hermoso (Spain), Impregilo (Italy), Constructora Urbana (Panama) and Jan de Nul (Belgium). The Panamanian shareholder was owned by an Executive Board member of ACP, Rogelio Aleman, yet Panamanian law in this matter holds that an ACP Executive Board member cannot own more than 15 percent of the shares of a corporation involved with the canal. Aleman managed to transfer his quota to a family member.

FRENADES0 believes that there was a clear illegal process in the bid, as this individual had privileged access to information. This appears to be confirmed by a Wikileaks cable published on December 17, 2010 (see full text of the cable in the box below).

Recent talks between China and Colombia to build an alternative to the Panama Canal, that would link Colombia’s Atlantic and Pacific coasts by rail, could affect the long term sustainability of the canal expansion project.

9. Japan Bank for International Cooperation (JBIC) USD 800 million, European Investment Bank (EIB) USD 500 million, Inter-American Development Bank (IDB) USD 400 million, Corporacion Andina de Fomento (CAF) USD 300 million, International Finance Corporation (IFC) USD300 million.

10. This social organisation includes academics, students, trade unions, ecologists and human rights activists.

11. See: http://www.panamanews.com/pn/v_17/issue_03/opinion_21.html

12. To learn more about the Ley 30 please visit: <http://www.suntracs.org/v2/media/palabrapublica6.pdf>. Concerning the Ley 30 (or Ley Chorizo) it has been abrogated by the Parliament even though many of its articles were emended and approved. The articles related to the EIA were abrogated.

WIKILEAKS SHEDS LIGHT ON PANAMA CANAL EXPANSION PROBLEMS

ID:242958
DATE:2010-01-08 17:19:00
ORIGIN:10PANAMA1
SOURCE:EMBASSY PANAMA
CLASSIFICATION:CONFIDENTIAL
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DESTINATION:VZCZCXYZ0018
RR RUEHWEB

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INFO RUCPDO/DEPT OF COMMERCE
WASHINGTON DC
RUEAIIA/CIA WASHINGTON DC
RUEATRS/DEPT OF TREASURY WASHINGTON DC
RUEHZP/AMEMBASSY PANAMA
RULSJGA/DEPT OF TRANSPORTATION
WASHINGTON DC
RUMIESS/SOUTHCOM IESS MIAMI FL

C O N F I D E N T I A L PANAMA 000001

SENSITIVE SIPDIS
E.O. 12958: DECL: 2020/01/08
TAGS: ECON, PGOV, EWWT, EINV, PM
SUBJECT: SENIOR GOP OFFICIALS EXPRESS DOUBTS
ABOUT CONTRACTOR FOR PANAMA CANAL LOCKS
REF: 2009 PANAMA 0550

CLASSIFIED BY: STEPHENSON, AMBASSADOR; REASON:
1.4(B), (D)

1. (C) SENIOR GOP OFFICIALS HAVE EXPRESSED DOUBTS TO THE EMBASSY AND TO MEMBERS OF A VISITING U.S. CONGRESSIONAL DELEGATION ABOUT THE ABILITY OF THE GUPC CONSORTIUM LED BY SPANISH AND ITALIAN FIRMS SACYR AND IMPREGILO TO CARRY OUT THE WORK ON THE EXPANSION OF THE PANAMA CANAL.

2. (C) AT A DECEMBER 29 LUNCH WITH THE AMBASSADOR, VICE PRESIDENT/FOREIGN MINISTER JUAN CARLOS VARELA EXPRESSED SERIOUS CONCERNS ABOUT GUPC, RAISING THE TOPIC BY SAYING DRAMATICALLY, "THE CANAL EXPANSION PROJECT IS A DISASTER." HE DESCRIBED THE COMPANIES THAT ARE LEADING THE CONSORTIUM AS BEING IN DEEP FINANCIAL TROUBLE AND EXPRESSED HIS DISMAY THAT THE SAME COMPANIES THAT CANNOT DO THE CANAL EXPANSION ARE NOW TRYING TO

WIN THE BID FOR THE PANAMA CITY METRO PROJECT. "IN TWO OR THREE YEARS," HE CONTINUED, "IT WILL BE OBVIOUS THIS WAS ALL A FAILURE." (NOTE: VP VARELA IS SENSITIVE TO POSSIBLE FAILURES WITH THE CANAL EXPANSION AND METRO PROJECTS, BECAUSE HIS ASPIRATION TO BE ELECTED PRESIDENT IN 2014 IS CURRENTLY HIGHLY DEPENDENT ON A SUCCESSFUL ON-TIME COMPLETION OF THE PROJECTS. END NOTE.)

3. (C) VARELA AGAIN VOICED HIS CONCERNS ON JANUARY 3 IN A CONVERSATION WITH DCM AND VISITING CODEL MEMBER U.S. REP. PEDRO PIERLUISI OF PUERTO RICO. VARELA TOLD PIERLUISI THAT THE CONSORTIUM WAS "VERY WEAK" AND HE HAD "REAL DOUBTS" ABOUT THEIR ABILITY TO PERFORM. SEPARATELY, VARELA SAID TO DCM, "YOU DON'T MESS AROUND WITH SOMETHING AS IMPORTANT AS THE CANAL. WHEN ONE OF THE BIDDERS MAKES A BID THAT IS A BILLION DOLLARS BELOW THE NEXT COMPETITOR, THEN SOMETHING IS SERIOUSLY WRONG. OF COURSE I HOPE FOR THE BEST, BUT I'M AFRAID THAT ALBERTO [CANAL ADMINISTRATOR ALBERTO ALEMAN] HAS MADE A BIG MISTAKE." SEE REFTEL.

4. (C) PRESIDENT MARTINELLI EXPRESSED SIMILAR DOUBTS IN A CONVERSATION WITH AMBASSADOR ON THE MARGINS OF A GOP PRESENTATION TO THE CODEL ON JANUARY 4. WHEN THE AMBASSADOR ASKED HOW HE THOUGHT THE CANAL EXPANSION PROJECT WAS GOING, MARTINELLI GRIMACED AND INDICATED HE WAS A BIT WORRIED. HE SAID THAT HE FEARED THAT CANAL ADMINISTRATOR ALEMAN MIGHT HAVE TIPPED THE BID TOWARD THE CONSORTIUM THAT INCLUDED CUSA, WHICH IS RUN BY HIS COUSIN ROGELIO ALEMAN.

5. (C) COMMENT: WHILE WE AT THE EMBASSY HAVE HEARD RUMBLINGS OF TUSSELS WITHIN THE WINNING CONSORTIUM AS THE LEAD CONTRACTOR TRIES TO SQUEEZE SUBCONTRACTORS TO BRING COSTS DOWN TO THE LOW WINNING BID, WE HAVE NOT THOUGHT THE EXPANSION PROJECT TO BE IN ANY REAL TROUBLE. CERTAINLY CANAL ADMINISTRATOR ALEMAN REMAINS VERY UPBEAT ABOUT THE PROJECT, BOTH IN PUBLIC AND IN PRIVATE, AND WE HAVE ALWAYS REGARDED HIM AS A HIGHLY CAPABLE MANAGER WITH UNIMPEACHABLE INTEGRITY. GIVEN THAT THE VICE PRESIDENT IS NOW RAISING HIS CONCERNS WITH VISITING CODELS, HOWEVER, WE THOUGHT IT BEST TO LET WASHINGTON KNOW THAT THERE ARE CONCERNS AND THERE MAY POSSIBLY BE REAL TROUBLE. POST PROVIDED RELENTLESS ADVOCACY FOR THE BECHTEL BID ON THE CANAL EXPANSION AND UNDERSTANDS THROUGH OUR CONTINUING CLOSE CONTACTS WITH BECHTEL THAT THEY, WITH THEIR REPUTATION FOR COMING IN TO CLEAN UP MESSSES, ARE KEEPING A CLOSE EYE ON HOW THE PROJECT IS ADVANCING (OR NOT). END COMMENT.
STEPHENSON



The Esti river at the intersection with the abduction canal, Dos Mares hydro project - Caterina Amicucci

2.2 DOS MARES

2.2.1 Doubtful costs, questionable studies

Dos Mares is a three plant cascade hydro project with a total capacity of 115 MW. The project aims to exploit the outflow of the existing hydroelectric plants of Canjilones, Los Valles, La Estrella and Fortuna, in the upstream part of the Rio Chiriquí. The outflow water is deviated into the Rio Esti through a tunnel. Dos Mares will deviate the water back to the Rio Chiriquí through a series of canals, just before ending up in the sea. The project will have three plants, in Gualaca, Lorena and Prudencia (19.8 MW Gualaca, 33.8 MW Lorena, and 58.5 MW Prudencia).¹³

The total cost of the project is USD 422 million, and the EIB has backed the initiative with a USD 211 million loan granted to Bontex and Alternergy, both 100 percent subsidiaries of Gas de France.

The loan, already fully disbursed, has been granted under the Facility for Energy Sustainability and Security of Supply (ESF) and secured by a comprehensive guarantee from the GDF Suez group that covers both the commercial as well as the political risks of the project. The construction started in 2008 and the project is still under construction.

The Gualaca plant is expected to start generation in March 2011, but recently the upstream Esti plant faced a technical problem and was stopped. The Gualaca plant cannot generate power without the functioning of Esti. The Esti accident was kept confidential by the companies and was not covered by local media – it was though reported informally by the local community. It is not clear when the Esti plant will be repaired. According to the National Energy Strategy, the Lorena and Prudencia plants will start to generate power in 2012.

Three different EIA studies have been produced, one for each plant, as well as a cumulative impact study for the three plants. Yet, in the same basin, 17 further hydro electric projects are actually built and operating upstream. Nonetheless, the EIAs failed to take into account the over-exploited condition of the area and the new cumulative and synergic impacts.

Some small details, moreover, seem to be out of reasonable range – even to a non-expert eye. The three plants do not require the creation of reservoirs yet the number of hectares “used” is incredibly high. Taking the example of the Gualaca plant, 702 hectares¹⁴ have been expropriated for producing only 19.8 MW. This means more than 35 hectares per MW, not really an effective project in terms of land use.

13. It should be noted that the figures pertaining to Dos Mares' total generation capacity are inconsistent in different official documents and sometimes within the same document.

14. Estudio de impacto ambiental Proyecto Hidroeléctrico Gualaca, 2004, Table 6.3, pag. 214

The same conclusion can be arrived at for the total cost of the project. The average cost of electricity per MW at the international level is estimated at around USD 1000-1200 per MW. Of course this cost doesn't take into account mitigation measures that are usually not implemented by project promoters. The electricity produced by Dos Mares costs three times this average, and none of the mitigation measures foreseen in the EIA have been properly implemented as explained below. Lest it be assumed that the project's high costs are based on it being a hi-tech masterpiece, this is not the case. As the photo shows, the abduction canals are not even built with cement but they have been only dug and covered with a plastic film.



The Gualaca plant is not yet ready and the abduction canal appears. There are no plans to add concrete to build the canal. - Teresa Maisan

2.2.2 Unfair land acquisitions

According to farmers interviewed, the prices proposed and paid by the company for land acquisition were well below the market price. Often, when the landowners refused to sell, the company threatened to expropriate the land. The worst affected were the owners of small areas of land (from 2 to 12 hectares) that lost all their wealth. The testimonies claimed that the company followed an unequal policy with the land acquisition process and price offers. Rich landowners had more negotiation power and the facility to hire lawyers to defend themselves from any resorting to threats. The vast majority of people interviewed declared that the company abused those who were ignorant of the law and were not able to react properly to the economic offer or to the expropriation threats. In many cases the community accused the company of taking more hectares than agreed for sale. Some cases have gone to trial and are still under evaluation.

These allegations raise the suspicion that the company has been speculating. In the past for the Esti hydro electric project, around the Barrigon lake the company bought more land than was needed for the project for 20 cents per square metre. Nowadays the company is selling between 200 and 300 hectares of land in the lake surroundings to US real estate companies at 6 dollars per square metre in order to let them build luxurious residential villas for US pensioners. Many people are asking themselves why Dos Mares is buying so much land even after the construction of the canals.



Meeting of Dos Mares affected farmers in El Valle - Teresa Maisano



2.2.3 Uncontrolled level of noise and dust

There are allegations from the communities that the levels of noise and dust have not been properly controlled. This has caused several problems for the health of local people and cattle as well as to the local economy. In El Valle and Higuieron, children have developed lung disease and respiratory problems, and eye and ear infections due to the high level of dust. Stress, tension and anxiety problems are common among the population of El Valle due to the constant noise caused by the construction work and heavy machines, by day and by night. Other disturbance at night such as artificial illumination affects those living near the canal. The same factors have influenced the grazing activities of cattle, and thus the health of local cows has worsened, the quality of meat and the quantity of produced milk has dropped as well as negative impacts on the reproductive cycle.

2.2.4 Failure of public consultations

The local community has criticised that public consultations have been organised in Gualaca, Lorena and Prudencia without being properly advertised. The companies used a radio station (Radio Sol) that nobody in the area listens to – the community radio is considered to be Radio Chiriquí. The vast majority of those interviewed (around 60 villagers) were not informed about the consultation.

The methodology used to convene the meeting was not inclusive and participants were not allowed to verbally express their opinions and concerns. They were requested to write down the question that was then selected and read by the company's facilitator. Many farmers are illiterate and they were not able to participate in the discussion. During the consultations the company agreed to many commitments with the community in order to cool down potential opposition to the project – none of these commitments were fulfilled. The community accused the company of organising the consultations by corrupting people from unaffected areas.

The only persons properly and individually informed about the consultations were the richest stockbreeders and farmers of the area, namely those with the financial

means to jeopardise the project and with negotiating power due to the relevant property titles of key lands.

One farmer reported that in order to access a copy of the project's EIA's he had been charged USD 80, and received only part of the document.



Ulcers on workers' legs - Teresa Maisano

2.2.5 Labour issues

The construction contract was awarded to the Brazilian company Odebrecht. This company is well known to Panama's construction trade union SUNTRACS. The company was accused by the trade union of killing Osvaldo Lorenzo Pérez, one of their members, in 2007, as reported by UNHCR.¹⁵

Few workers have been contracted permanently in the project, as the area does not offer a specialised labour force, though contrary to the provisions of the EIA, no training was offered to the workers. In Gualaca and Prudencia project workers were offered mainly short-term contracts (1-3 months) due to the favourable fiscal conditions in the country for such contracts. Overtime was not paid.

It emerged from the interviews, and via an anonymous internal source, that toxic chemical materials used in the construction have poisoned some workers. It was discovered that microcytic agents provoked ulcers in their skin because of these chemicals and the lack of security equipment. Five workers have already lodged legal suits against Odebrecht in the court in David as the company has repeatedly refused to provide any compensations.

15. UNHCR: <http://www.unhcr.org/refworld/docid/4c52ca762c.html>

The workers do not have security equipment: they have only a vest, gloves and yellow hats. Panamanian law obliges construction companies to provide worker's team. The national trade union SUNTRACS repeatedly criticised this situation in 2007 when a company assassin killed a worker affiliated to SUNTRACS.¹⁶

2.2.6 Communities' connections and viability

The community of Higueron strongly opposed the project, collecting 260 signatures to demand that an ancestral road be left accessible to the community. The company dismissed all claims and interrupted the road in order to build Gualaca's abduction canal. The community has used that road since it was established. It is an internal road, safe and short that enables the persons of Higueron and its more than 100 high school students to reach Gualaca by foot in 45 minutes – the vast majority of the local population does not possess vehicles. The interruption of the road has resulted in several problems for the community – people now need one and a half hours to reach Gualaca by foot, via the main road where vehicles circulate at high speed. Alternatively they can pay for transportation at 60 cents for a round trip, although this is not a sustainable solution for many families.

In El Valle, following community pressure, the company committed to build a concrete double bridge to replace the ancestral road split in two by the canal that goes to the powerhouse of Prudencia (Quebrada Gomez). The bridge was needed to connect the community with its farms and to move the livestock. However, the bridge built by the company is a tiny suspension bridge that does not allow the passage of horses, cars or livestock. Moreover, the bridge is very dangerous and

the community has had to repair it several times as the nets get broken easily. This bridge has resulted in several problems for the community as their livestock needs to be moved from one side to another of the canal.

According to the producers community of El Valle the suspension bridge came at a cost of approximately USD 1 million, while a local engineer, who participated in the competitive tender for the construction, made an estimated budget of USD 400,000 for its construction.

2.2.7 Reforestation

According to the Gualaca EIA, 22 hectares had to be reforested to compensate for the loss of vegetation. Nobody among the people interviewed was able to locate the new reforestation site. Therefore it was not possible to check the size of the reforested area and the type of tree planted. According to Professor Demetrio Miranda, Biology Professor at the Universidad Autonoma de Chiriquí in David, other projects, like Estí, connected with Dos Mares involved re-forestation but instead of re-planting native trees the company planted teaks, a species imported from South Asia. Teak is a forestall product that is not capable of preserving the local biodiversity, as it does not generate other plants or feed many animals. Moreover, planting teak needs to be done carefully as their plantation density could result in the soil drying. In Professor Miranda's opinion the companies chose this fast-growing tree because its wood is highly valued and this represents another potential business opportunity. The companies could have easily planted native species like oaks or guayacones.





House flooded near the abduction canal in Higueron - Higueron's villager

2.2.8 Damage to private properties

A range of damage to private properties has been reported. This was most significant in Higueron, where a flood inundated the town on August 31 last year due to a gate opened by the company after heavy rainfall. The town woke up full of water and mud. People have claimed losses such as:

- Bags of concrete lost during the flood (each bag costs 8 dollars and it is a big investment for the average family of this town). Many of these bags of concrete were bought to repair damage caused by the project works.)
- Bags of animals feed lost (horse feed costs 22 dollars a bag and chicken feed 10 dollars a bag)
- Wooden furniture inside houses lost (beds, mattresses, sofas and chairs) as well as electro domestics like washing machines. People have not been able to replace these objects as they do not have money.
- Animals like pork and chickens drowned in the flood, causing important losses in family budgets.
- Orchards of corn, beans, bananas and cassava were lost.
- Damage to stables and small walls.

Other damage was caused by detonations in the early stages of the construction. The EIA documents that detonations would be advertised in advance and that the company would do so with all the security condition standards. All testimonies declared that there was no advertisement given by the company and that no security measures were taken. The detonations took place day and night. Several structural cracks were reported in the houses of Gualaca and Higueron.

On several occasions the testimonies described how the company entered private properties without permission, uprooting and cutting trees and making excavations that were left uncovered.



Picture taken by landowner

16. From: <http://www.unhcr.org/refworld/docid/4c52ca762c.html>

"One day later on 14 August on the Panama-Colon motorway project, in the middle of demonstrations to ask for better occupational safety standards, a hired gunman shot and killed Osvaldo Lorenzo Pérez, the SUNTRACS union representative for the REC company. The trade unionists denounced the killer's links to the Brazilian company Norberto Odebrecht, which had hired him to suppress the protest."

3.2 Exclusion of indigenous people from the public consultation

In January 2008 Genisa presented to the Panama environmental authority (ANAM) the EIA for the construction and operation of Barro Blanco. Approval from ANAM took less than five months, in spite of the serious impacts that this project has on the livelihoods of the indigenous Ngöbe Buglé peoples living in the project area.

The public consultation, required by the EIA, was organised shortly after this on February 8, and the report on the public consultation was given to ANAM on the nineteenth of the same month. ANAM considered the consultation to have been sufficient for the accomplishment of this project and approved the Barro Blanco EIA on May 9.

Yet, the people directly affected were not even aware of the project, never mind the public consultation. When they finally found out about the meeting, a group of people from 50 affected communities had to force their way inside through security imposed by the company, while the company denied that it was an official public consultation but rather a closed meeting. It should be noted that most of the affected people cannot read and write – they do not understand contracts. The company

meanwhile makes promises on jobs and money, and it makes different promises to different people.

Ultimately, it appears that ANAM was content to accept this meeting as an official public consultation part of the EIA procedure. Yet despite the existence of a law on access to information in Panama, the document of this consultation is still not available to the public.

3.3 The Ngöbe-Buglé people and the River Tabasará

The communities affected by the Barro Blanco project, and living along the River Tabasará where the project is to take place, are entirely dependent on the water source of the river, which remains the sole water source throughout the year and is of vital importance for agriculture, cattle raising and human drinking water.

The Ngöbe Buglé people live exclusively on subsistence agriculture, with the most productive soil being on the banks of the River Tabasará, and now threatened with flooding. The local people are afraid that if one project is implemented a cascade of projects will follow, just as in the case of the River Chiriqui where 20 hydro projects were developed. The Ngöbe Buglé people continue to oppose the new Barro Blanco project and to oppose any development on the River Tabasará.

Leader of Movimiento 10 de Abril - Caterina Amicucci





A girl from the Calabacito community living along the banks of River Tabasará reading in their ancestral language
Caterina Amicucci

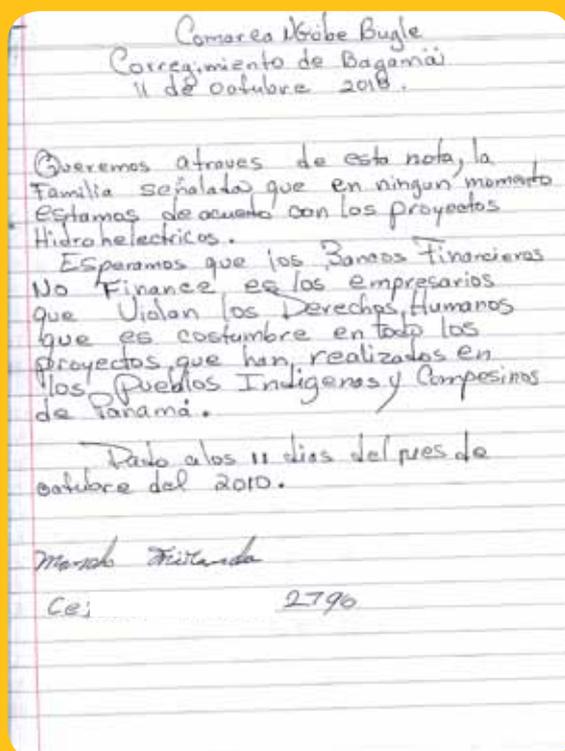
EXCERPT FROM THE DECLARATION OF THE NGÖBE BUGLÉ PEOPLE

"DETERMINED TO DEFEND THE LIFE OF PRESENT AND FUTURE GENERATIONS, WE DEMAND THE GOVERNMENTS IN POWER TO ELIMINATE THE HYDROELECTRIC PROJECTS IN THE TABASARÁ RIVER UNDER ANY NAMES OR FORM (AT PRESENT THE BARRO BLANCO PROJECT PROMOTED BY THE SPANISH COMPANY GENISA), WE CLAIM OUR RIGHT TO BE RESPECTED, THAT OUR LIVES BE VALUED ABOVE MONEY, TEN YEARS OF STRUGGLE DURING WHICH WE UNDERWENT STRONG VIOLENT ACTS AGAINST THE DIGNITY OF OUR PEOPLE AND AGAINST THE VIOLENT HUMAN RIGHTS REPRESSION WHERE MEN, WOMEN, CHILDREN AND ELDERLY WERE TAKEN AS PRISONERS IN A POLICE TRUCK (LA PRENSA, JANUARY 2003, LA CRITICA, 26 JANUARY 2003), AFTER BEING PERSECUTED AND ARRESTED DURING A PEACEFUL PROTEST IN DEFENSE OF THE TABASARÁ RIVER".

'APRIL 10 MOVEMENT OF THE DEFENSE OF TABASARÁ' (M-10), THAT HAS BEEN FIGHTING THE PROJECT FOR 11 YEARS.

"I CANNOT PERMIT THAT PEOPLE COME HERE TO DESTROY MY LAND AND THE LAND FOR MY CHILDREN" – A PERSON FROM THE VISITED NUEVO PALOMA COMMUNITY.

THESE COMMUNITIES ARE PART OF "COMARCA" – A COLLECTIVE PROPERTY OF THE INDIGENOUS POPULATION (ESTABLISHED BY LAW 10/1997). BY LAW, NO INDIVIDUALS IN THE COMMUNITIES CAN SELL OR TRANSFER LAND RIGHTS. THE COUNTRY'S CONSTITUTION (AS AMENDED IN 2004, ARTICLE 127) ESTABLISHES THE RIGHTS OF THE INDIGENOUS POPULATION.



"THE UNDERSIGNED FAMILIES WOULD LIKE TO EXPRESS WITH THIS SHORT NOTE, THAT WE STRONGLY OPPOSE THE HYDROPROJECTS. WE CALL ON THE INTERNATIONAL FINANCIAL INSTITUTIONS TO NOT FINANCE COMPANIES THAT VIOLATE HUMAN RIGHTS AS IT HAS HAPPENED IN ALL THE PROJECTS IMPLEMENTED IN THE INDIGENOUS AN FARMERS COMMUNITIES IN PANAMA."

DELIVERED THE 11TH OF OCTOBER 2010
CALABACITO COMMUNITY, LIVING ALONG THE BANKS OF TABASARA RIVER

3.4 The role of the European Investment Bank

The Barro Blanco hydroelectric power project entered the EIB's appraisal procedure in mid 2009 but remained for some considerable time under evaluation – the promoters sought a EUR 40 million loan from the bank. Apparently the project promoter approached two other European banks in parallel for financing – FMO, the entrepreneurial development bank of the Netherlands, as well as DEG, the private finance arm of the German KfW, one of Europe's largest development finance institutions, both of which cooperate with the EIB.¹⁹ According to the EIB description of the project, the bank assessed that if located in the EU the project would require a full EIA.²⁰ Under Panamanian Law a full EIA, including public consultation, is also required and has – as noted above – been conducted by the promoter.

In the summer of 2010 the local movement M10 approached the EIB's complaints office on behalf of the Ngöbe Buglé indigenous communities directly affected by the project. Their main concern was that the EIA does not reflect the project realities on the ground.

The EIA document available to the public in Panama denies the existence of the indigenous communities along the banks of the River Tabasará and beyond within the impacted area. Local people claimed that the project affects four districts (three districts within the Ngöbe Buglé region) and 78 communities, with over 5,000 people directly dependent on the river for their livelihood and basic needs.

Controversial information was given to the people about the area that is going to be submerged, and the EIA clearly had serious omissions, in particular failing to map the people living along the banks of the River Tabasará.

Of course, the promoter and the financiers were considering that the dam would have no impact on the people or their land. However, the fact that people were not informed where the dam will be, what will be the flooded area, or that they did not appear at all on the map of the EIA casts serious doubt about the actual impact of the dam on the livelihoods of the people.

The indigenous communities have never been informed either by the project's promoter or by the government, and have never been asked for consent to relocate and/or compensation. The promoter has gone as far as approaching individuals within the affected communities, offering to buy land, or offering bags of food. The developer offered people USD 0.1 per square metre, and in the case of expropriation it is said that this low price level is also enforced by the national legislation.

Such practice violates the EIB's own environmental and social policies, where, in the relevant section on Indigenous People and Other Vulnerable Groups, free, prior and informed consent is one of the conditions for the EIB to go ahead with a project.²¹ The EIB requests receipt of Indigenous Peoples plans in the case of projects that involve indigenous communities and land acquisition plans.

Following the response of the EIB complaints office that found omissions in the procedure and accepted the complaint of the local people, the EIB complaint mechanism confirmed their plan to conduct a fact finding mission in October 2010 and visit the project affected site and communities.

The complainants further explained to the EIB complaint office that the complaint had been prepared by the M10 on behalf of the Ngöbe Buglé indigenous communities directly affected by the project, due to fact that the great majority of the indigenous people are illiterate.

Just one week before the planned EIB visit, however, the project promoter decided to withdraw its request for financing from the EIB – unofficial local sources have explained this move on the grounds that the EIB visit would destroy the company's reputation.

At this stage, the EIB was forced to withdraw from the Barro Blanco project and the complaints mechanism cancelled their visit, awaiting a conclusions report from the EIB's Complaints Mechanism. The other two banks – FMO and DEG – remain in the project.

19. The EIB is permitted to provide up to 50 percent of the total financing for a project.

20. The project would fall under Annex I of the EU EIA Directive 85/337/EEC as amended

21. "Where the customary rights to land and resources of indigenous peoples are affected by a project, the Bank requires the promoter to prepare an acceptable Indigenous Peoples Development Plan. The plan must reflect the principles of the UN Declaration on the Rights of Indigenous

3.5 Barro Blanco and the Clean Development Mechanism

The Barro Blanco project is applying for credits under the Clean Development Mechanism (CDM) of the UNFCCC with a decision pending any time now. Yet there are also highly problematic issues attached to this.²² Both Project Design Documents 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 Ngöbe Buglé Indigenous Comarca.



Protest camp of the indigenous communities in April 2011, when the company started construction of the Barro Blanco dam with an expired EIA, afraid that its concession permit will expire. - Oscar Sogandares

During the first validation process, local civil society organisations informed the CDM validator, AENOR²³ about this serious omission and even provided proper evidence of the situation. Maps were provided to prove the existence of the affected indigenous communities. **Yet the validation report does not indicate what measures were taken by the validator after this information was provided.**

During the second validation process, local organisations 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 submitted

comments did not show up on the CDM project page. The validation report thus never properly addressed the issue of the lands of the indigenous communities. This constitutes a serious human rights violation by any state participating in the trade of Certified Emission Reductions (CERs).

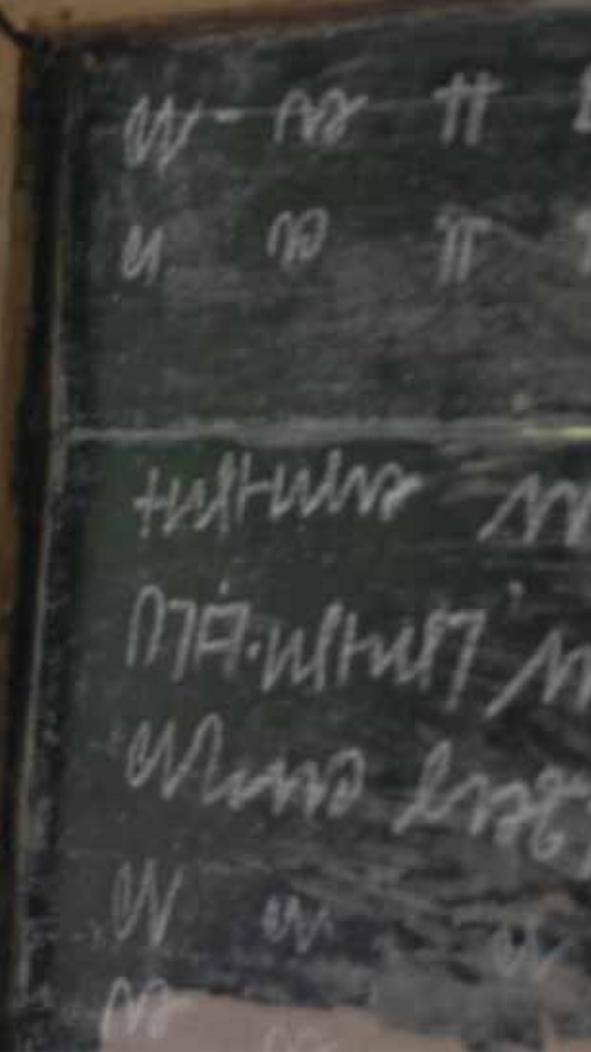
The Bakama area is legally recognised by the Government of Panama as the collective property of the Ngöbe Buglé indigenous people. Yet most of the consultation for the CDM validation, including the site visit by AENOR, only considered the opinion of the non-indigenous population. In this regard, the validation process for Barro Blanco violated the international principle of free, prior and informed consent contained in the International Labour Organization Convention No. 169 and the UN Declaration on Indigenous Peoples. In May 2009, the UN Rapporteur on Indigenous Peoples, James Anaya, also issued a report²⁴ documenting human rights violations in the construction of the Chan 75 hydroelectric project that also affects the Ngöbe Buglé people of Western Panama. Regrettably, the validation process conducted by AENOR for Barro Blanco once again committed 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.

Following the principle that was also utilised in the Chan 75 hydroelectric project, Genisa has proposed the use of CERs to compensate the affected communities, including the Ngöbe Buglé 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.

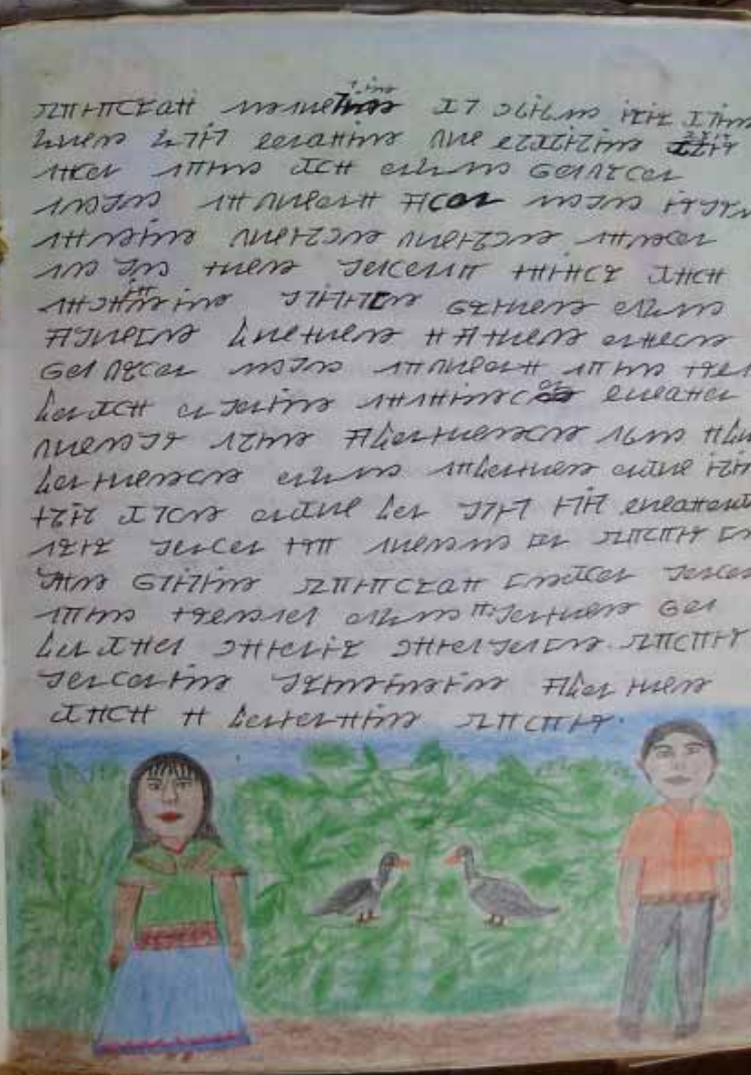
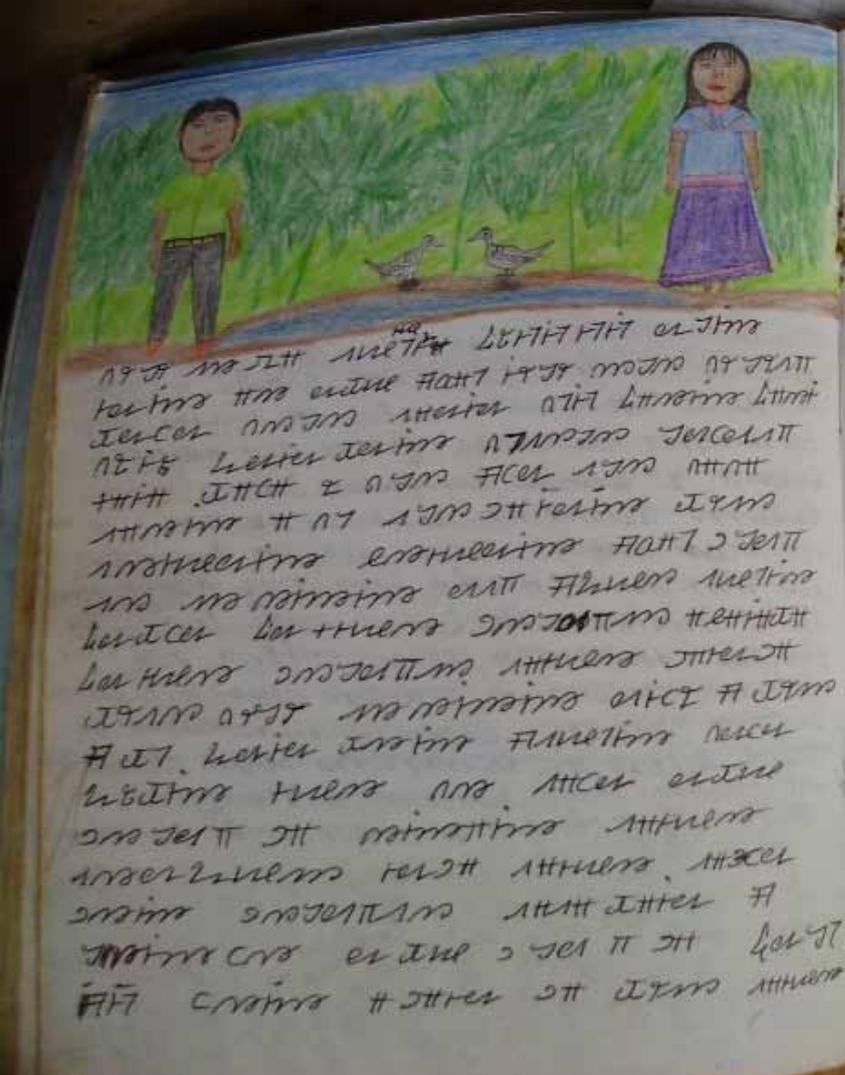
22. See Letter to the CDM Executive Board Regarding the Barro Blanco Hydroelectric Project, from February 2011. <http://www.internationalrivers.org/node/6215>

23. AENOR is the Spanish Association for Standardization and Certification, www.aenor.es

24. Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, James Anaya. Addendum: Observations on the situation of the Charco la Pava community and other communities affected by the Chan 75 hydroelectric project in Panama (A/HRC/12/34/Add.5), paras. 54 to 59. http://www2.ohchr.org/english/bodies/hrcouncil/docs/15session/A.HRC.15.37_en.pdf



The Calabacito community had coded in written their own ancestral language – Caterina Amiccuci





CONCLUSIONS AND RECOMMENDATIONS

This report raises serious concerns about the EIB's due diligence and the bank's ability to monitor local impacts and the quality of its projects. Related questions have to be asked also about the EIB's ability to adopt effective procedures to ensure that EU money is not used for illegal practices.

The glaring case of the Barro Blanco hydro project demonstrates that if it had not been for local groups advocating for indigenous rights and taking the issue directly to the EIB's Complaint Office, there is a very high probability that it would have been approved for financing without any consideration of the indigenous communities living in the area. The withdrawal of the company from the project is evidence of the poor and inconsistent environmental and social studies produced. It is questionable in fact whether such a project is even necessary, and whether it needs EIB support as well. There is no guarantee that it is not similar to other projects, like Dos Mares for example, technically a very poor project that expropriated an inconsistent number of lands from local farmers that

are accusing the company of land grabbing.

Technical doubts are also being raised, by independent researchers, about the Panama Canal expansion project for which no projects alternatives have been taken into account in the appraisal procedure and public consultation. The consultation, as described above, did not deserve the description 'public', consisting as it did of a referendum heavily manipulated by the government.

Finally, no extra due diligence has been identified by the EIB to prevent the likely occurrence of illegal practices such as money laundering happening in the country, especially in the construction sector.

In order to be duly equipped to continue lending in Panama, the EIB needs to dramatically improve its project appraisal procedures, especially in future operations where the Lisbon Treaty applies. The priority for the bank in the region has to no longer be European foreign direct investment but instead compliance with and realisation of the EU development cooperation objectives for the area.

In order for the EIB to achieve this, Counter Balance recommends that:

1. The EIB should only finance hydro projects that are in line with the recommendations of the World Commission on Dams (WCD). The EIB should not invest in hydro as long as it does not have the evaluation and monitoring procedures in place to make sure that the projects financed respect all the recommendations of the WCD.
2. Given that Panama is still in the OECD's 'graylist'²⁵ that views Panama as a tax haven often involved in money laundering through the infrastructure sector from the illegal proceeds of drug trafficking in Latin America, we call on the EIB to apply their policy "towards weakly regulated non-transparent and uncooperative jurisdictions", in particular by moving beyond the current assessments under the OECD and EU frameworks and carrying out an independent assessment of Panama looking into issues such as money laundering, specifically in the energy and natural resources sectors, as well as infrastructure development. The results of this report should be made public.
3. Whenever the EIB appraises a project in Panama, the EIB is urged to carry out an appropriate due diligence on potential money laundering that could be attached to certain investment projects like the ones in the construction sector. Particular attention needs to be given to the cost effectiveness of projects and the track records of the companies involved.
4. The EIB should closely monitor the Panama Canal Expansion project, ensuring that labour rights are respected and that the long term sustainability of the project is in place.
5. The EIB should urgently carry out an evaluation of the Dos Mares hydro project. Although the loan has been fully disbursed, the EIB needs to press the project promoters to implement the mitigation and compensation measures. Beyond this, the EIB

should address the allegations of land speculation and the exaggerated cost of the project.

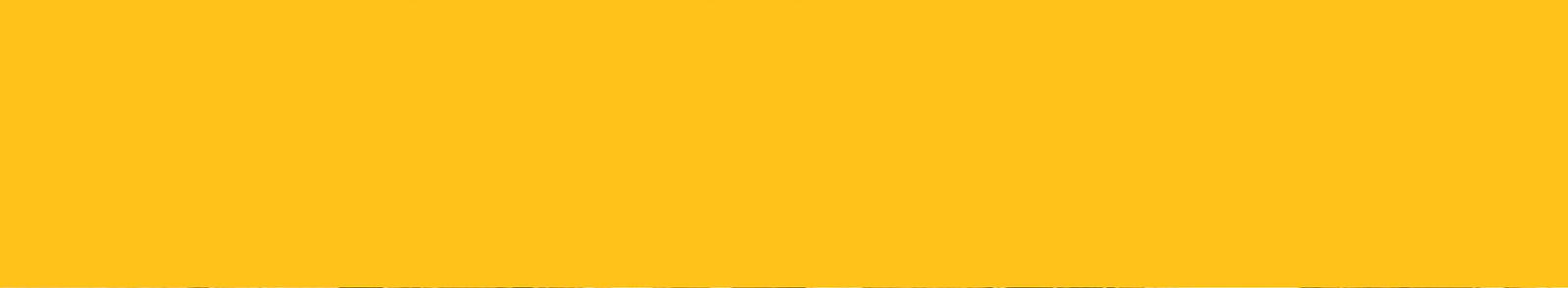
6. The EIB should not finance the Panama City metro project because Odebrecht, the leading Brazilian construction company, is accused in Panama of human rights violations and other illegal practices such as violating private property.
7. Even where a small hydro project is promoted as a "renewables project", the EIB should weigh up all the environmental and social aspects, and instead of trying to improve a project that violates Panama's own constitution and the EIB's own policies, when there is no assessment or rationale concerning the need for this energy and who will benefit from it, the EIB should not get involved in financing.
8. Given the over-exploitation of the country's rivers undertaken already by the government, international financial institutions such as the EIB should strive to encourage opportunities related to energy efficiency and the diversification of Panama's electricity production.

Other recommendations

1. The CDM executive board is urged to make a review of the Barro Blanco hydro project as the project violates the international principle of free, prior and informed consent contained in the International Labour Organization Convention No. 169 and the UN Declaration on Indigenous Peoples.
2. The Dutch and German development bodies FMO and DEG should withdraw from the Barro Blanco hydro project because it violates the international principle of free, prior and informed consent contained in the International Labour Organization Convention No. 169 and the UN Declaration on Indigenous Peoples.



25. <http://www.oecd.org/dataoecd/50/0/43606256.pdf>



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