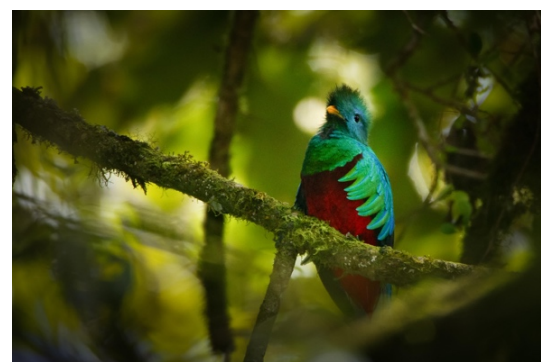


# Comarca Naso

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## Summary

The Naso Indigenous People have lived in Panama and Costa Rica since time immemorial. They currently live primarily along the Teribe River in the Bocas del Toro province of Panama. The Naso number a little over 4,000 people, and against enormous odds have preserved their language, culture, and way of life. They are one of the only peoples in the Americas to have a monarchy.

Their traditional lands cover some of the most mountainous and biodiversity-rich areas of western Panama. The Naso, one of only two Indigenous Peoples in Panama for which the government has not recognized their ancestral lands, have been fighting since at least 1973 for legal recognition of their territory. Previous attempts to establish by law a Comarca (or semi-autonomous indigenous province), in 2003 and 2005, failed due to a lack of political will.

In the 1980s, the Panamanian government created the La Amistad International Park (PILA) and the Palo Seco Protected Forest (BPPS), both of which overlap traditional Naso lands, without any consultation with them. The PILA was recognized by UNESCO as a World Heritage Site in 1990.

Despite the creation of these protected areas, the government has also advanced plans for the construction of hydroelectric dams on these lands, including the Bonyic dam, which has been built in the Palo Seco Protected Forest. Panama runs the risk of the PILA being included in UNESCO's List of World Heritage in Danger, due to the dams it has built and plans to build around the PILA.

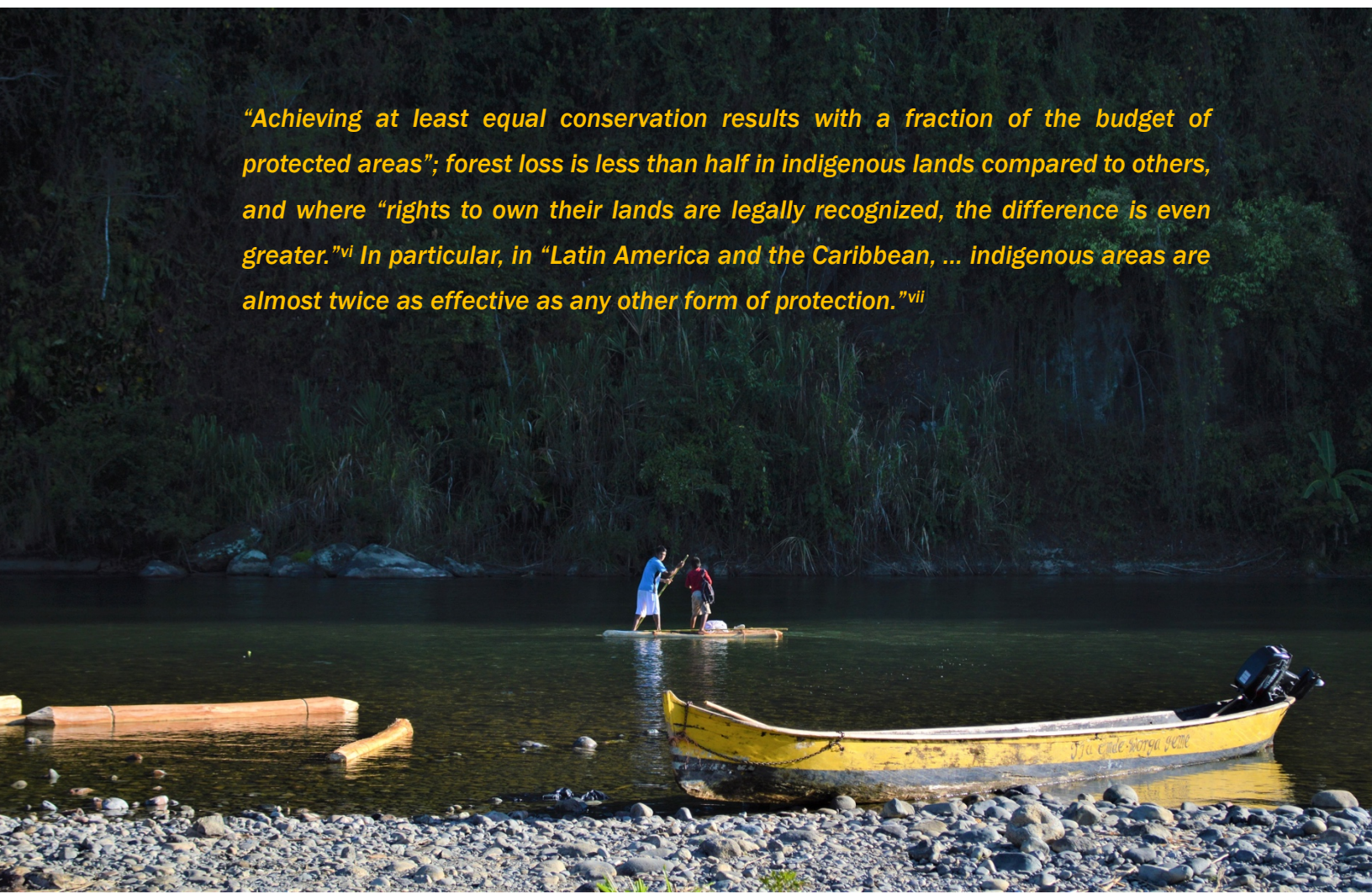
Despite the government opening up the PILA for hydro and agricultural development, it still has not recognized Naso ancestral lands. President Juan Carlos Varela recently vetoed a congressional law to create a new Naso Comarca, on the grounds that it would infringe on the protected areas. Given the proven role that Indigenous Peoples play in protecting forest, nothing could be further from the truth.

## Indigenous Peoples, forest conservation, and climate change

Globally, it is now well recognized that Indigenous Peoples are conservation allies rather than a source of risk. It has been documented in many countries that remaining forests have stayed standing precisely because Indigenous Peoples have been conserving and protecting them.<sup>ii</sup> Equally there is substantial evidence that land tenure security for Indigenous Peoples is a sound, effective, and cost-efficient conservation strategy. Indigenous tenure security is generally more effective than the creation of protected areas as a way to preserve forests and mitigate climate change.<sup>iii</sup> According to a recent global baseline survey, Indigenous Peoples and local communities hold rights to more than half of the world's land, but only have legal ownership over 10 percent.<sup>iv</sup>

Multiple recent studies by the World Bank, UN agencies, and others show that recognition of indigenous lands is the most cost effective, efficient, and sustainable means of conservation. As a World Bank study put it, “indigenous land rights is strongly related to successful conservation outcomes and conflict avoidance... and that it is a more sustained and cost effective way to protect biodiversity”<sup>v</sup>. According to the UN Special Rapporteur on the Rights of Indigenous Peoples, Victoria Tauli-Corpuz, Indigenous Peoples are:

*“Achieving at least equal conservation results with a fraction of the budget of protected areas”; forest loss is less than half in indigenous lands compared to others, and where “rights to own their lands are legally recognized, the difference is even greater.”<sup>vi</sup> In particular, in “Latin America and the Caribbean, ... indigenous areas are almost twice as effective as any other form of protection.”<sup>vii</sup>*



This trend holds true in Panama. Deforestation rates in indigenous territories around the Darien National Park (PND) are lower than those inside the protected area, despite arguably greater pressure (note that the PND is also a World Heritage Site, and that Panamanian authorities have apparently also used this status to prevent titling of traditional Embera and Wounaan lands in the area). In western Panama, where the PILA overlaps with Naso lands, there is currently both low population and low deforestation pressure, but that can easily change with increasing concessions for hydroelectric dams and granting state lands for economic development schemes. The Naso, on the other hand, have lived in harmony with their natural surroundings since time immemorial, and their worldview is rooted in a balance between human needs and the natural environment, making them natural guardians of the forest and the important biodiversity in the PILA World Heritage site.

**Table 1:** Analysis of Deforestation in the Comarca, PILA & BPPS

Area	Total Hectares	Overlap (Hectares)	%	2001-2007	2008-2012	2013-2017	Total Forest Loss (Has)	%
Comarca Naso	145,182.86			181.00	319.31	181.50	681.81	0.2%
La Amistad/ Palo Seco	375,659.00	136,583.7838	94%	1855.07	2945.53	2133.83	6934.43	1.8%

Courtesy RF-US, using Government of Panama data.

In Panama, current estimates are that almost as much aboveground and belowground carbon is stored in unrecognized community lands (178 million metric tons, or Mt) as in those lands recognized by the government as community-owned (209 Mt); and when it comes to organic carbon in soils, more carbon is actually stored in unrecognized lands (501 Mt) than in recognized lands (495 Mt).<sup>viii</sup> Where rights are not recognized, there is a higher risk of deforestation and the release of this carbon into the atmosphere. This means that there is an enormous potential to maintain carbon sinks in standing forest through the recognition of indigenous collective lands, including those in the proposed Naso Comarca.

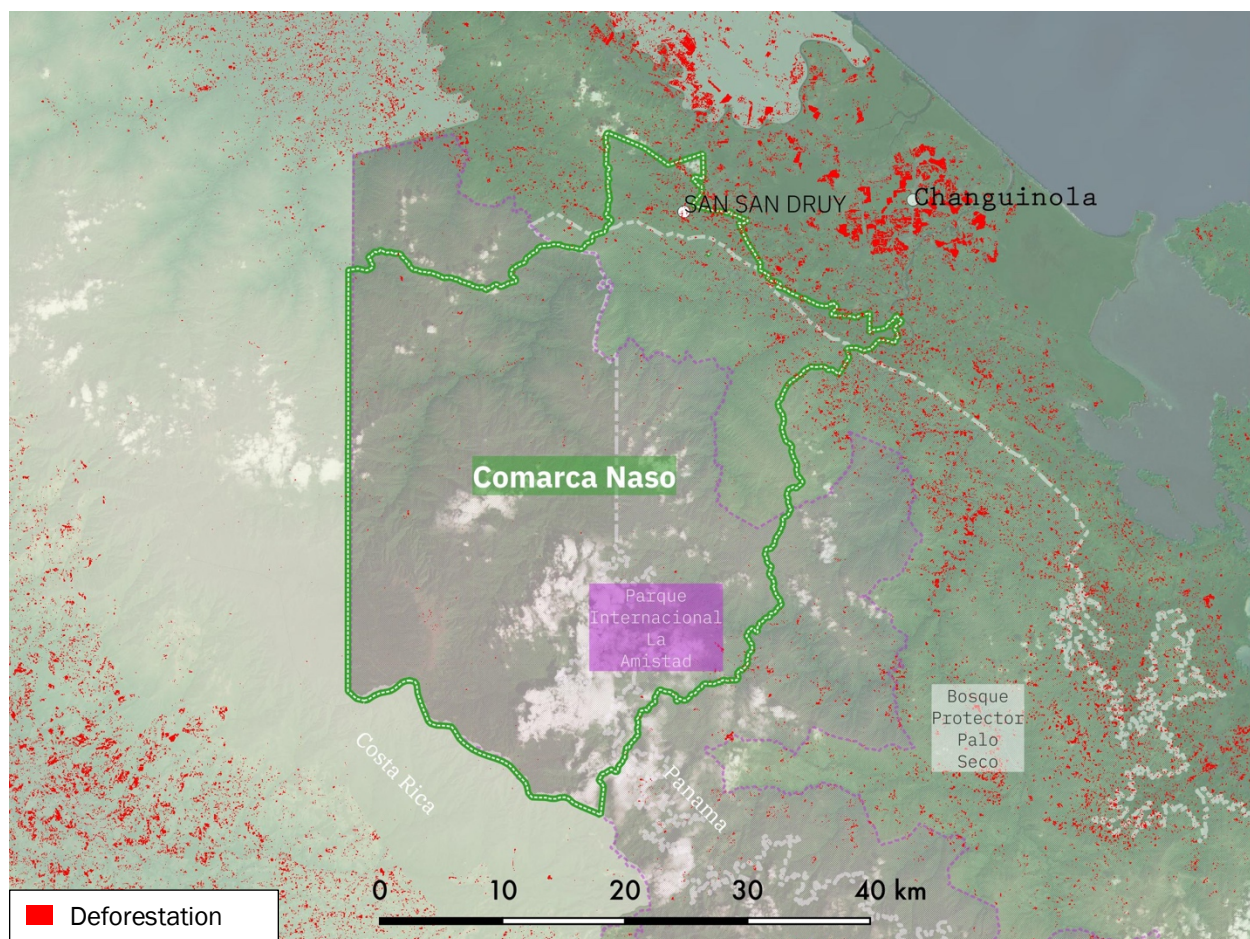
## The Naso People: guardians of the forest

The tropical forests of the region in and around the PILA and the Palo Seco Protected Forest have been protected by the Naso and Bri Bri Peoples for centuries. That is precisely why the area was recognized by UNESCO as a World Heritage Site.

This reality is widespread in Panama: where there is forest remaining in good condition is in the Comarcas and indigenous territories. And, in fact, worldwide, scientific research has proven that the territorial security of Indigenous Peoples contributes more to forest conservation than protected areas or any other strategy of environmental protection.<sup>ix</sup>

Deforestation trends in the PILA area show that forest clearing is happening on national lands outside of the Naso areas, where the agricultural frontier is advancing and urbanization is spreading. This is clearly shown in the figures: in the area of the Comarca some 682 hectares of forest have been lost, while in the areas of PILA and Bosque Protector the amount lost is 10 times greater, some 6,934 hectares in the last 17 years.

*Map of the Comarca Naso, PILA and BPPS with deforestation threat*



Since the 1970s, the Naso have had internal rules for the sustainable use of their natural resources. This has certainly contributed to the protection of the forest, and the rate of deforestation that has remained so low. This shows that there is no conflict between indigenous territorial recognition and protection of the environment. In fact, this “contradiction” has been overcome in several countries and in international jurisprudence.



*“Contrary to some voices of environmentalists who do not know the reality of our people and our territory, we are the true custodians of our land that today has friendship international park, and we are sure that the creation of the Comarca Naso will be a double shield for the park, because it has its category as a protected area and, in addition, it will reinforce the protection of our town that will enjoy the protection of its region”*

*-Reynaldo Santana, Naso King*

## The Naso Comarca Law

The first draft laws to create the Naso Comarca were presented to the national Assembly in 2004 and 2005, following a process of consultations and design supported by the World Bank as part of a large land administration project.<sup>x</sup> Unfortunately, they never advanced and the land rights of the Naso People have gone unrecognized to the present day.

In October 2018, after many years of struggle, the National Assembly of Panama approved Law 656, which creates the Comarca Naso Tjer Di. In 2016, the National Coordination of Indigenous Peoples of Panama (COONAPIP) supported further revisions and drafting of the bill, and won support from the Indigenous Commission of the National Assembly to sponsor its passage. The passage of the law by the National Assembly comes as the culmination of a four-year process of consultations among Naso communities, development of a draft bill, and negotiations with indigenous and provincial representatives in the National Assembly, who finally became champions of its passage in 2018. The bill establishes the new Comarca and specifies the legal and governance regimes within it; as well as the steps to create appropriate representation measures for communities in the territory. To be approved, the bill also had to win the support of opposition and ruling party politicians, which it did.

Unfortunately, early in 2019 the President of Panama, Carlos Varela, vetoed Law 656 on the grounds of insufficient consultation and because of the overlap with the two protected areas. During the period, the national press had given much credence to the idea that the Comarca would undermine the aims of the PILA and the World Heritage site, with little or no evidence to support that view. Some critics in the national press in Panama have asserted that the very existence of the World Heritage site would preclude the recognition and titling of indigenous land inside the protected area, a view at odds with UNESCO policy and practice and global precedents worldwide, as described below.



## National legislation recognizes the rights of the Naso People to their land

National law in Panama, from the Constitution of the Republic to Law 72 of 2008, explicitly recognizes that Indigenous Peoples have the right to the lands and territories they have traditionally used and occupied, including land that has been designated as protected areas. That is aligned with international law, including the jurisprudence of the Inter-American Court of Human Rights, which also clearly recognizes that Indigenous Peoples have the right to their ancestral territories, and that the state has the obligation to title, demarcate, and protect them against the interests of third parties.<sup>xi</sup>

Panama's national constitution guarantees indigenous collective land tenure. Article 127 states that:

*“The state will guarantee reserving the lands necessary to indigenous communities and their collective property in order to achieve their social and economic well-being. The Law will regulate the procedures that must be taken to achieve this goal, and corresponding delimitation [of lands], in which private appropriation of lands is prohibited.”*

Panama has a long history of recognizing indigenous lands and territories, going back to the Guna Revolution and the creation of the first indigenous comarca in 1938. Four more comarcas were established in 1983 (Embera Wounaan), 1996 (Madugandi), 1997 (Ngabe Bugle), and 2000 (Wargandi). Outside these five comarcas, however, indigenous lands in Panama remained without any form of legal protection until 2008, when, thanks to pressure from the indigenous movement, Law 72 was passed. This law allows for the recognition of collective lands (“*tierras colectivas*”) outside the Comarca system. The original management plan for the PILA also recognized the presence of the Naso People, assumed that a Comarca would be established within the park, and made provisions for participation of the Naso leadership in park management.<sup>xii</sup>

In 2016, Panama passed a consultation law, Law 37/2016, which provides for free, prior, and informed consent for any legislative or administrative measures that affect the collective rights of Indigenous Peoples, including lands, territories, resources, ways of life, and culture. The law took effect on June 30, 2017.

## **International precedent: indigenous land rights are complementary to forest protection**

The Inter-American human rights system has relevant jurisprudence that recognizes both the importance of a healthy environment and the obligation to uphold the rights of Indigenous Peoples. In several decisions, it has upheld the obligation of states to respect indigenous rights established under international standards, including the United Nations Declaration on the Rights of Indigenous Peoples. In this regard, the recent decision of the Inter-American Court on the case of the Kaliña and Lokono Peoples vs. Suriname is of great importance for the current situation in Panama, and demonstrates the current position of the Court regarding the "overlapping" of indigenous lands and areas protected, where it states: "the Court finds that a protected area consists not only of its biological dimension, but also of its socio-cultural dimension... the rights of the indigenous peoples and international environmental laws should be understood as complementary, rather than exclusionary, rights."<sup>xiii xiv</sup>

The Convention on Biological Diversity (CBD), ratified by Panama in 1995, establishes that each State Party "shall respect, preserve and maintain knowledge, innovations and the practices of indigenous and local communities that involve traditional ways of life relevant for the conservation and sustainable use of biological diversity and promote its broader application, with the approval and participation of those who have this knowledge, innovations and practices, and will encourage the benefits derived from the use of such knowledge, innovations and practices are shared equally" (art.8.j). In addition, each State Party should protect and encourage "the customary use of biological resources, in accordance with traditional cultural practices that are compatible with the requirements of conservation or sustainable use" (Article 10.c).

UNESCO is obligated to follow the rights-based approach set forth by the UN Development Group. In its Medium-Term Strategy for 2014–2021, UNESCO affirmed that it will implement the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) across all relevant program areas, and explicitly states:

***"UNESCO does not support the removal of indigenous peoples from their lands and territories in any conservation or sustainable development project or program in which UNESCO is involved, including the world network of Biosphere Reserves of the Man and the Biosphere program and UNESCO global geo-parks."**<sup>xv</sup>*

## Implications for Indigenous Peoples in Panama

The issue of overlap between indigenous territories and the protected areas system in Panama constitutes one of the main barriers to the resolution of the ongoing human rights violations of the Naso, BriBri, Guna, Ngobe Bugle, Embera, and Wounaan Peoples whose land rights have been denied by the state. The establishment of the Naso Comarca is important not only to finally affirm the long-standing aspirations of the Naso People; but also as an important precedent opening the way for the recognition of the land rights for all Indigenous Peoples in Panama whose territories overlap with protected areas.

## Recommendations

Some of the key recommendations to remedy this dire situation include:

- The Panamanian National Assembly should pass by insistence the proposed Law 656 establishing the Naso Comarca.
- President Varela of Panama should immediately ratify Law 656.
- Any possible overlaps between the Naso Comarca, the Ngobe-Bugle Comarca, and Bri Bri ancestral lands should be resolved and demarcated on the ground through participatory mapping processes led by the communities and indigenous traditional authorities.
- The Naso leadership and communities should be involved in the management of the PILA protected area and World Heritage site, with technical and financial support from the Ministry of Environment.
- The PILA management plan should be revised and updated with the participation of the Naso communities, other local communities, and the environmental organizations present in the region.



## End notes

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- <sup>i</sup> La situación de los derechos de los pueblos indígenas en Panamá, Informe del Relator Especial sobre los derechos de los pueblos indígenas, James Anaya, 3 de julio de 2014; Consejo de Derechos Humanos de la ONU, A/HRC/27/52/Add.1
- <sup>ii</sup> See for example: <https://www.wri.org/news/land-matters-how-securing-community-land-rights-can-slow-climate-change-and-accelerate>
- <sup>iii</sup> Stevens, C., R. Winterbottom, J. Springer, and K. Reytar. 2014. "Securing Rights, Combating Climate Change: How Strengthening Community Forest Rights Mitigates Climate Change." Washington, DC: World Resources Institute.
- <sup>iv</sup> Rights and Resources Initiative, A Global Baseline of Carbon Storage in Collective Lands, September 2018
- <sup>v</sup> C. Sobrevila, The Role of Indigenous Peoples in Biodiversity Conservation: the natural but often forgotten partners, (World Bank, Washington D.C., 2008), at p. 45.
- <sup>vi</sup> A Letter from United Nations Special Rapporteur on the Rights of Indigenous Peoples, Victoria Tauli-Corpuz, June 2018, <https://mailchi.mp/rightsandresources/corneredbypas?e=de03727dd2>.
- <sup>vii</sup> A. Nelson & K. Chomitz, as above, at Table 6.
- <sup>viii</sup> Rights and Resources Initiative, Global Baseline of Carbon Storage in Collective Lands. September 2018, p. 4
- <sup>ix</sup> Victoria Tauli-Corpuz, Janis Alcorn, Augusta Molnar, Cornered by Protected Areas: Replacing 'Fortress' Conservation with Rights-based Approaches Help Bring Justice for Indigenous Peoples and Local Communities, Reduce Conflict, and Enables Cost-effective Conservation and Climate Action, June 2018. [www.corneredbypas.com](http://www.corneredbypas.com)
- <sup>x</sup> See: World Bank, MANAGEMENT REPORT AND RECOMMENDATION IN RESPONSE TO THE INSPECTION PANEL INVESTIGATION REPORT PANAMA LAND ADMINISTRATION PROJECT (Loan No. 7045-PAN) OCTOBER 28, 2010, for a summary of the controversies around that project.
- <sup>xi</sup> Alvarado Leonardo J., Diagnóstico jurídico sobre los derechos de los pueblos indígenas y la superposición de áreas protegidas sobre tierras indígenas en Panamá; Rainforest Foundation – US, septiembre de 2016
- <sup>xii</sup> See ANAM, Plan de Manejo PILA, 2004., which states: "De llegar a establecerse la Comarca Naso Tjër Di, la mayor parte de su superficie se traslapará con el PILA...se recomienda establecer un convenio entre ANAM, la Dirección Nacional de Política Indigenista, la Dirección Nacional de Reforma Agraria y el Consejo Naso para coordinar y regular el uso, manejo y protección de las áreas de traslape entre la propuesta comarca y el PILA"
- <sup>xiii</sup> Cf. International Union for Conservation of Nature and WWF-International, Indigenous and Traditional Peoples and Protected Areas: Principles, Guidelines and Cases Studies. IUCN, Gland, Switzerland, and Cambridge, UK, and WWF International, Gland, Switzerland, Principle 1.
- <sup>xiv</sup> Inter-American Court of Human Rights, Case of The Kaliña and Lokono Peoples V. Suriname, Judgment of November 25, 2015 (Merits, Reparations and Costs) [www.corteidh.or.cr/docs/casos/articulos/seriec\\_309\\_ing.pdf](http://www.corteidh.or.cr/docs/casos/articulos/seriec_309_ing.pdf)
- <sup>xv</sup> <https://unesdoc.unesco.org/ark:/48223/pf0000262748>