

# 05 Territory, Identity and Autonomy

The struggle of the Kuna people in Kuna Yala to maintain autonomy and preserve their territory

## FACTS



### ■ Our ancestors taught us how to look after our land and our gold.

Taking care of our territory, which is sacred, comes from our most ancient traditions. For us, as Kunas, it's like a mother to us, and we have been defending her since long before the arrival of the Spaniards.

*(Gilberto Arias, Sailadummad of Kuna Yala)*

The relations between a society, its environment and its cosmivision constitute a guide for conserving nature, spatial and social order, culture and identity. In this framework, the Kuna people's management of their own autonomous territory on the basis of their culture, their vision of the world, and their own logic, and without turning to western rationality, naturally involves the conservation of natural resources.<sup>1</sup>

The issue of the self-determination of indigenous peoples in America and the rest of the world is one of the most strategic political discussions currently concerning indigenous organizations and states with a pluricultural composition. The International Labor Organization's (ILO) Convention 169 on Indigenous and Tribal Peoples in Independent Countries, and the United Nations Declaration on the Rights of Indigenous Peoples specifically address the right of indigenous peoples to govern themselves within their own structures and to maintain possession of their ancestral territories. This has not been achieved in most countries – even those that have ratified the Convention and signed the Declaration, and even when constitutional

and legal transformations related to indigenous rights have been achieved, concretely with regard to land and autonomy.<sup>2</sup>

When, at the beginning of September of this year, a delegation of representatives from indigenous peoples from Mexico, Honduras, Guatemala and Costa Rica arrived in Panama to learn about the Kunas' concrete experiences and their form of self-government through the Kuna General Congress, there was special interest in the concept of "territory and autonomy" and how to defend it.<sup>3</sup>

An important aspect for understanding the process of defending their territory and the current status of the Kuna people's political autonomy can be traced back to the Spaniards' arrival. Since then, the Kunas have found it necessary to confront threats against their territory that attack their way of life. Gold, plants, resources, their lands – all these have attracted many enemies over time. There have been attempts to steal their resources, expropriate their lands and invade their seas and coasts.

<sup>1</sup> This document represents the vision and position of the Kuna people. It is endorsed by the Kuna General Congress. CUDECA and EED facilitated its writing in the framework of a program sponsored by EED and entitled "Defensa del territorio y manejo comunitario de los recursos naturales en Mesoamérica" (Defense of territory and community management of natural resources in Mesoamerica). More detailed information on the issues presented in this paper can be found on [www.eed.de/biodiv](http://www.eed.de/biodiv).

<sup>2</sup> In Costa Rica the legislative bill on the autonomous development of indigenous peoples has been in Congress since 1992, and has not yet made it to the plenary. In Guatemala the plundering of indigenous lands persists and Mayans continue to work basically in servitude. Both countries ratified ILO's Convention 169. Panama has not yet ratified this convention.

<sup>3</sup> Experiences were exchanged in the framework of this program.

Today, as other indigenous peoples in the region, the Kuna people continue to face a series of challenges that attack their way of life: massive tourism, mining, electrification, and conservationist pressures that could take away their control over territory.

There are numerous requests for mining exploration throughout the country, however very particularly in Kuna territory. There is disagreement with the State over the interpretation of the right to use the soil and subsoil. The state believes it owns everything contained in the subsoil, but the Kunas do not agree.

In this regard the Secretary General of the General Kuna Congress, Ariel González, states: “Permits were granted by the executive in charge of indigenous territories although they had been rejected by the KGC. For example, in 1994, the Canadian company Western Keltic Mines, was granted permits affecting 50% of Kuna territory. The most recent case came out in the newspaper. They reported how territory is being mapped and distributed. The Kuna comarca is not excluded. There are requests for exploring and extracting gold and other minerals, also in other protected areas. This issue has to be discussed at national level, with the Ngöbe and Buglé people in the first place but not only at the level of the territories.”

The difficulties in achieving dialogue with the current government, and even worse, the current government’s resistance to meet with indigenous authorities, predicts rough times for Panama’s indigenous peoples, and in this case, the Kuna people.

The Kuna mainland and island territory are extraordinarily beautiful and contain enormous wealth. The natural resources have immense potential for the current economy. For this reason, the threats of mega-tourism facing the Kunas have increased substantially.

Hundreds of thousands of tourists may visit the islands each year, ruining their beauty with thousands of yachts, casinos, huge buildings and floating hotels. But this is not the lifestyle that Kunas wish for their descendants. For this reason, they have legislated tourism in Kuna Yala. And also for this reason, they have confronted the policies on tourism implemented by their country’s government – which intends to take away their right to make decisions regarding their comarca and to implement development plans formulated from the outside. Additionally, it intends to favor foreign interests and to do so without consulting Kuna authorities and the Kuna people.

In this regard the Kuna General Congress, as the highest political authority, clearly established in its statute autonomous will in territorial control in favor of self-determination of their territory.

In 2007 the ETESA company presented the Kuna Congress with a proposal for electrification, but they did not present a formal proposal. This generated annoyance and the proposal was rejected.

*“Kuna Yala has been the focus of the attention from this type of company. First it was INTEL, then cable and WIRELES, and then DIGITAL and MOVISTAR.”*

*(Bolívar López, Assistant Secretary of the General Kuna Congress)*

In order for a company to receive backing, it must request a formal meeting with the Kuna General Congress, which will decide whether or not it will accept the company's request, and can negotiate a payment or economic recognition if a project is authorized in comarca territory.

Most importantly, the Kuna authorities are those who have the authority to negotiate, to impose conditions, to reach agreements, or to reject this type of contract. This is what Assistant Secretary of the General Kuna Congress Bolívar López indicated: "The Kuna General Congress is therefore an institution that may reject any national or foreign company; it can sit down to negotiate as a government with its own autonomy."

### Political autonomy

In Kuna Yala, before these issues gained importance in the rest of America, there were already forms of indigenous government designed to gain legitimacy in the framework of an autonomous process.

The Kuna people managed to respond to the many threats intelligently and by mobilizing, and they developed a broad strategy of alliances – always with the intention of maintaining their autonomy. This was the case in their famous alliance with British pirates during the colonial period in their attempt to defend their territory from the Spaniards:

*"At the end of the 16th century-17th century, the British also arrived. They were enemies of the Spaniards due to political differences, and we allied with them to confront a common enemy. Of course, the British wanted gold and land, and we wanted our survival as a people and as a culture."*

*(Ariel Gonzales, Secretary General of the General Kuna Congress)*



The Assistant Secretary of the General Kuna Congress, Bolívar López, explains the situation of the Kuna people.

The Comarca known today as Kuna Yala dates back long ago and its antecedent in the Republican era is the Tule Nega Comarca constituted on April 17, 1871.

In 1903, after the separation from Colombia, the new republic of Panama was founded. Some years after the creation of this new state, the Panama government tried to prohibit the Kuna religion and traditional dress, and did not want to accept the autonomous status of the Comarca. The government sent in numerous police officers in an attempt to subdue the Kunas. But the Kuna people rebelled in the Revolution of Tule in 1925 against the abuses by the government and the national police established in their territory.

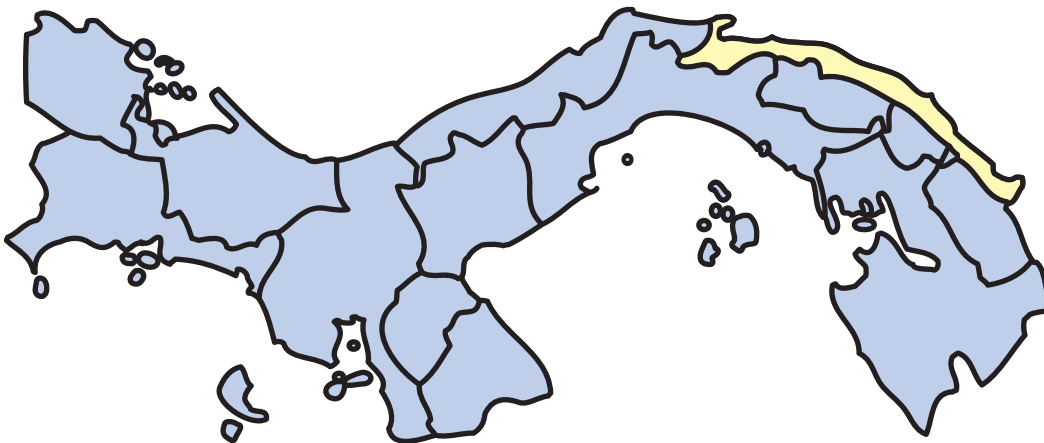
As part of their defense strategy and in order to defend their territory and their autonomy, Kunas established an alliance with the United States of America. This alliance generated positive results for them by paralyzing the aggression by the government – which had sent various army frigates to destroy the Kuna people. The government found it necessary to withdraw and later to sign a peace treaty that recognized autonomous authorities and forms of government. This was the beginning of a process that would lead to the legal consolidation of the Kuna Yala territory, with the first declaration of a reserve dating back to 1930. Then, on September 16th in 1938, it was converted into a comarca through Law 2.

It was not until February 1953 that Law 16 was enacted and ended up approving the territorial boundaries of 1938. Although the law had some deficiencies, it recognized the existence of Kuna territory and gave it unique political and administrative status. The comarca's territorial boundaries were established in this law, but autonomous status was not recognized until the enactment of the Kuna Fundamental Law in 1995, and the Kuna Yala Comarca Statute, which has been discussed in the Kuna General Congress since 1996.<sup>4</sup>

Although Panama has not ratified ILO's Convention 169, its National Constitution establishes indigenous territorial rights.

**Panama's National Constitution**

Article 123 . . . . .  
 The State guarantees indigenous communities that the necessary lands will be reserved and guarantees their collective ownership in the interest of their economic and social well-being. The Law will regulate the procedures that should be followed in order to achieve this aim, and will regulate the corresponding boundaries, within which the private appropriation of lands is prohibited.



Panama, with the Comarca Kuna Yala in yellow colour.

By defining the collective nature of indigenous lands, the Panamanian state acknowledged one of the foundations of the concept of indigenous territory: specifically, a living space, the ownership of which is collective and corresponds to entities that, according to their own power structures, have been given the responsibility of managing the territory. This also signifies that inside the perimeter of the indigenous territory, there may be different types of land possession, ranging from inherited lands subject to purchase, sale and rent within the restricted or expanded community to areas for conserving aquifers, and including hunting territories. Exercising sovereignty over their

<sup>4</sup> The Comarca Statute has been discussed and approved in the following meetings of the Kuna General Congress: Achudup in march of 1996, Achudup in february of 1997, Niadup in august of 1998 corrected during the General Congress of Mamsucun in november of 1998 and revised through the General Congress of Miria Ubigandup in june of 1999, Usdup in september of 1999 corrected in Dad Nakwe Dupbir, october of 1999, Digir in February of 2000 and Muladup in september of 2000.



own territory is based on the observance of the Comarca Statutes and territorial management guided by their own authorities. Thus, it has been possible to achieve a model that combines the use of different types of areas with different and complementary natural resources:

- Islands on which comarca communities are located and that have a variety of plants useful for food and in traditional health practices, despite the limited space available for them. Especially worth mentioning are breadfruit (*Artocarpus altilis*), mango (*Mangifera indica*), citrus fruits (*Citrus spp.*), coconut palms (*Cocos nucifera*) and noni (*Morinda citrifolia*), to mention some of the most common.

- Marine areas for fishing and the extraction of other food resources.

- Crop-growing areas on the mainland in which agriculture for family consumption is practiced with especially corn (*Zea mays*), rice (*Oriza sativa*), cacao (*Theobroma cacao*), yuca (*Manihot esculenta*), yam (*Dioscorea spp.*), malanga (*Xanthosoma*), plantain and banana (*Musa spp.*). These are typical tropical crops cultivated in the long-fallow (*barbecho largo*), itinerant agriculture practiced in the comarca. This nomadic production system permits the recuperation of fragile tropical soil and its ongoing use for agriculture.

- The importance of the mainland as a source of potable water.



A group of Kuna people receiving guests at their home upcountry.



Kuna people at the coast in Kuna Yala.

- Mangrove swamps and other wetlands from which wood and other resources are extracted, and where hunting and fishing are practiced.

- Forested areas that are not cultivated and that constitute reserve areas for hunting and collecting medicinal plants and fruits.

- Sacred areas that are not exploited due to the symbolic value associated with them.

These different types of spaces complement each other in a model for territorial control that is complementary in nature, and which the entire population participating in the management system is familiar with.

Effectively, since ancient times, the Kuna society has had its own norms for environmental management that are appropriate for the conservation of their ecosystem and the rational use of their resources. These norms have been concretely expressed in the currently governing Kuna Yala Comarca Statute. With regard to environmental management, it is worthwhile to mention some of the statute's articles here:

**Kuna Yala Comarca Statute**

Art. 141 . . . . .  
 Local congresses will not be able to make any decision in favor or against a project that will negatively impact the environment, or damage renewable or non-renewable natural resources, or the Kuna values of one or more Kuna Yala communities, without an extensive debate in the Kuna General Congress.

Art. 162 . . . . .  
 Any project that anyone seeks to conduct within Kuna Yala boundaries in proportions that could impact the ecosystem or the biodiversity of all or a significant portion of one or more communities in the comarca, or could damage, in one form or another, Kuna socio-cultural values, no matter in what amount, must be presented to the Kuna General Congress in writing and in detail, before its implementation.

Art. 190 . . . . .  
 Natural resources, both renewable and non-renewable, and all the biodiversity in the Kuna Yala comarca, form part of the patrimony of the Kuna People, as such, and correspond to them, through their General Congresses, which will take actions in a coordinated manner to seek the means for the recuperation, protection, rational use, conservation and production of such resources.

Art. 196 . . . . .  
 Only Kunas will be allowed to use wood-producing trees in the Kuna Yala comarca, for domestic purposes and with prior authorization by the local Congress, and they will have the obligation to plant the same amount of trees as those extracted.

Art. 200 . . . . .  
 With the aim of conserving the flora for future generations, all Kunas who cut down a tree for the use of its precious wood will have the obligation to plant another tree of the same type.

Art. 201 . . . . .  
 All green areas located at the origins of and along the rivers in Kuna Yala will be considered as untouchable reserves, including a strip that is at least a kilometer wide on both sides of the rivers.

Art. 205 . . . . .  
 Only the Kunas from Kuna Yala will be able to rationally exploit marine resources, especially shellfish, with the approval of their local community, which will at the same time request permission from the Kuna General Congress. This rational use of these resources will take place under the strict monitoring and evaluation carried out by personnel from the Kuna Yala Institute for Comprehensive Development (Instituto para el Desarrollo Integral de Kuna Yala – IDIKY).

In addition, the territorial management of the Kuna Yala comarca is closely associated with the cosmovision and holistic conception of nature, which is at the foundation of Kuna culture.

The Kuna cosmovision includes original stories and cultural heroes who taught society ways to organize. When they arrived, they found chaos and from there created order. These are demiurges who create something from nothing or from something else. These

cultural heroes teach how the macrocosm, or the world of the gods, which usually is far away, is organized. In the case of the Kunas, Ibeorgun came from space and reproduced the organization from his world in Kuna territory. This is why Kuna Yala is a microcosm of a greater macrocosm. It is a sacred space, and if damaged or destroyed, this will impact the world of the gods, and will cause the cohesion between things to be lost. Destroying nature is equivalent to a transgression of what is sacred.

## Indigenous land rights and environmental protection

For Kunas, the ocean, mainland, islands, rivers, reefs, wind, storms, plants, animals (even including ourselves), together constitute an indivisible unit,<sup>5</sup> with internal relations that were established from our genesis as a people.

Therefore, precisely because they have preserved their autonomy, the Kunas are capable of sustainably managing natural resources according to their own concepts – which do not contradict current concerns regarding the conservation of nature in response to the threat of climatic change.

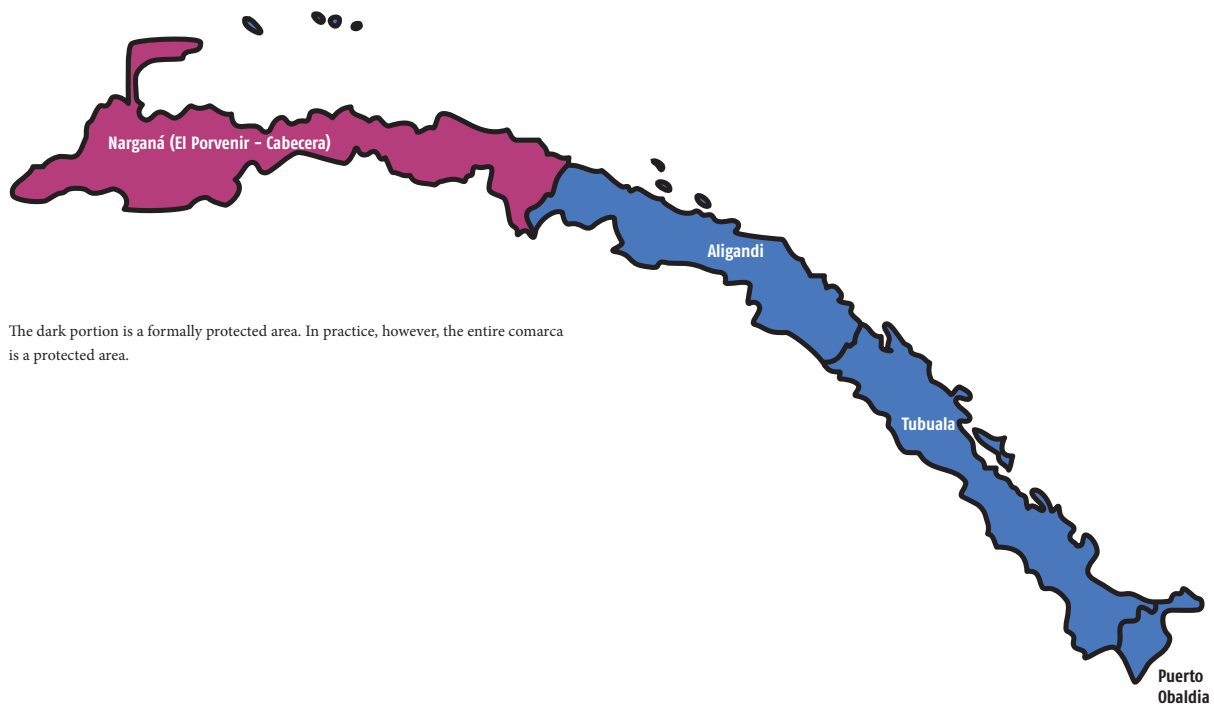
The threats against sustainable management currently originate and have historically originated from outside the territory. The Kunas' declaration of their own Protected Area within their territory in 1987 needs to be understood in a context in which there was great pressure exerted by local settlers – not indigenous – who were placing the territory in jeopardy. In this context, it was the General Kuna Congress that took the initiative to declare a Protected Area (PA) – which over time has been recognized as such

by Panama's Ministry of Environment. The reason the General Congress took this step was to build a legal barrier through the PA:

*“The creation of the Protected Wild Area territory – this was done only on paper for non-Kunas – and consequently within the PA, the management continued as if this law did not exist... All of this is for us a PA, independently of whether or not the state has implemented it... but in this territory, management continues the same, because we practice ancient agriculture and we continue to do so. There is normal hunting and not destruction...”*

*(Eraclio Herrera, advisor to the General Kuna Congress).*

When it is said that all of this is a Protected Area for the Kunas, independently of whether or not the state has implemented it, what is being said is that this type of management is the normal management carried out by the Kuna in any part of their territory, whether or not it has been formally declared as a Protected Area.



<sup>5</sup> For indigenous peoples, their territories constitute a concrete totality that cannot be segmented into different components, as western society does, specifically: land, fauna, flora, subsoil, river, etc. All the components of a territory are part of a global manifestation of the sacred, and as such, must be conserved, and consequently, territory is not an object that can be sold or exchanged. The social and cultural changes occurring during the period of history that began with the Spanish conquest have not managed to damage the basic conceptions of indigenous peoples with regard to the significance and importance of territory.

What is true is that the declaration had its effect, and since that time, the threat against Kuna territory is significantly less. Different types of controls have been established to halt the entrance of settlers, and a tax is even charged for entering and exiting the comarca.

Therefore, it is the Kuna General Congress that is autonomously administering and managing the Kunas' protected area, using different control mechanisms as they exercise their autonomy.

At any rate, the Kunas' position on Protected Areas is based on indigenous peoples' total management and administration of their territory. In this regard, Assistant Secretary of the General Kuna Congress, Bolívar López, states the following: "(...)we know that Protected Areas in many places are located within territories of indigenous peoples, and not indigenous peoples located within Protected Areas – which is the perception people usually have. Because we believe that indigenous peoples are the first who have settled, and therefore we cannot be inside Protected Areas – rather Protected Areas are within the comarca(...)"

Recently, the Panamanian government has been proposing a type of co-management of the Protected Area (national government – Kuna government). The response from the Kunas is very clear: There is no advantage for the Kunas to begin a co-management experience when in practice they are already managing

the area very efficiently. Co-management in economic terms could involve being required to share the income derived from controlling the area, entrance into the region, etc. In political terms, it would mean having to share decision-making, which is currently the exclusive terrain of the General Kuna Congress. It would also mean opening up space to negotiate together with the government projects such as initiatives within the REDD context so as to allow the government through formal co-management to receive resources from abroad for the purposes of conservation. These are negotiations that the Kunas already started on their own.

The issue of co-management of the Protected Area apparently is not even being discussed. But beyond this the General Kuna Congress certainly can request some support in the surveillance work they do, due to its magnitude. This points out the need to rethink how to improve the administration, use and management of the territory - always taking into consideration that the Kuna people should be the ones to know best how to manage their territory.

*"Respecting our autonomy, our right to territory and our particular form of managing resources constitutes, without a doubt, the wisest decision."*

(Bolívar López, Assistant Secretary of the General Kuna Congress)

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