

Kuna Yala: Self-Governance and FPIC



By Jorge Andreve,
Estebancio Castro Diaz and
Onel Masardule*

** All three are from Kuna Yala and work with indigenous peoples organisations based in Panama. Jorge Andreve is a member of the Fundacion Paluwala, which works on the protection of coral reefs and marine biodiversity. Estebancio Castro Diaz is the international representative of the Asociacion Indigena Ambiental (Indigenous Environmental Association) and an indigenous expert on the issue of climate change. Onel Masardule is the Executive Director of Fundacion para la Promocion del Conocimiento Indigena (Foundation for the Promotion of Indigenous Knowledge).*

Introduction

Many of the world's Indigenous Peoples are creating indigenous models of management for preserving and conserving protected areas in the face of disappearing species, deforestation, degradation of forests and coral reefs, and erosion of traditional knowledge. The management by the Kuna Yala of a wildlife reserve in their self-administered region in Panama is one such example.

The Kuna model of management defines development as a communal process in which the community participates and cooperates fully and effectively in all aspects of development -- social, political, environmental, cultural and spiritual. The social systems of indigenous societies, in contrast to western society, are based on respect, support, mutual protection, brotherhood and solidarity. These do not need to be codified in volumes which in the end do not serve their purpose. The daily practices of Indigenous Peoples are what define their reality and way of life. The social, political, economic and spiritual aspects of their lives are unified. This can be seen in their complex social and religious ceremonies which are still observed today. These have been the subject of studies by specialists of different disciplines (anthropologists, ethnologists, sociologists, among others) but they have never fully succeeded in understanding and interpreting indigenous societies.

Indigenous Peoples of Panama

The indigenous population in Panama represents 10 percent of the national population. The Ngobe-Bugle comprise the majority of the indigenous population, followed by the Kuna people, Embera-Waunan, Teribe and Bribi. These seven indigenous groups are found in five provinces and one region, the Kuna Yala.

The lands of the Ngobe-Bugle, Bribis and Teribes are located in the provinces of Bocas del Toro, Chiriqui and Veraguas and those of the Embera-Waunan are found in the province of Darién. The Kuna Yala



*Kuna woman doing embroidery work
and Kuna kids*



region is situated in the northeast of Panama and between maritime and continental areas. It covers approximately 7,513 km² and extends more than 320 km.

Current regional laws recognise the ancestral lands and territories of only five indigenous populations: the Ngobe-Bugle, Kuna and Embera–Waunan. The Kuna people were the first to be recognised (Second Law of 16 September 1938) and their lands were declared an indigenous reservation in Law 20 of 31 January 1957.

The Kuna people have the following lands and territories: the Kuna of Takarkunyala and Wargandi inhabit the province of Darién which borders Colombia; the Kuna of Madungandi live in the province of Panama, and the Kuna of Kuna Yala occupy the region of Kuna Yala. The Kuna Yala number 32,400 (2000 census), constituting 80 percent of the total Kuna population.

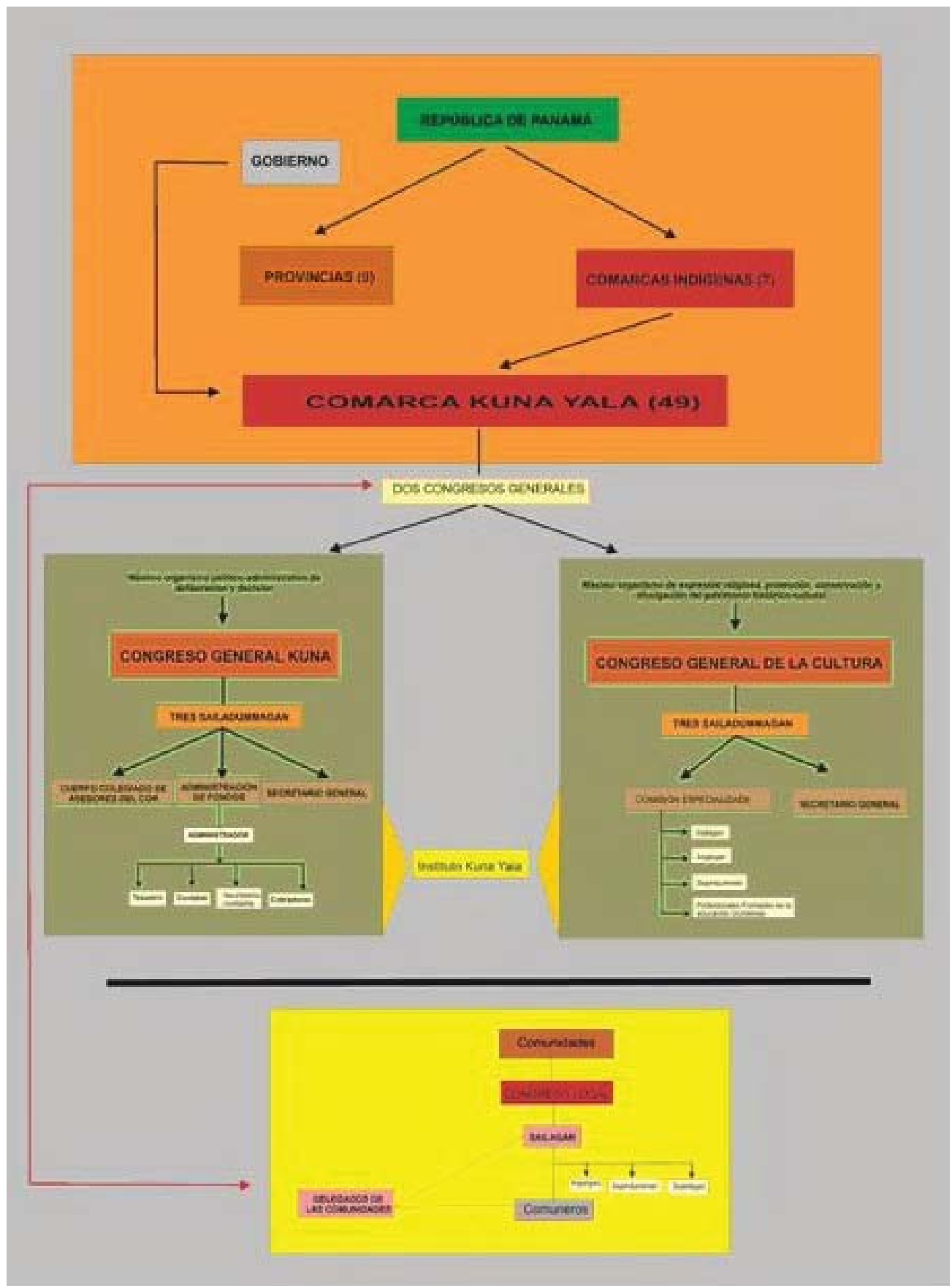
Kuna Yala Region

Law 20 (January 1957) recognised and established the Kuna Yala region as having its own special administrative system, which is included in national law. The State recognises the region's management and control of development actions.



Map of Panama

The government of the Kuna Yala region, in accordance with its Fundamental Law, is made up of a number of authorities (Figure 1). The General Congress of the Kuna Yala Region is the highest authority and consists of two congresses: the General Congress of Kuna Culture and the General Kuna Congress.



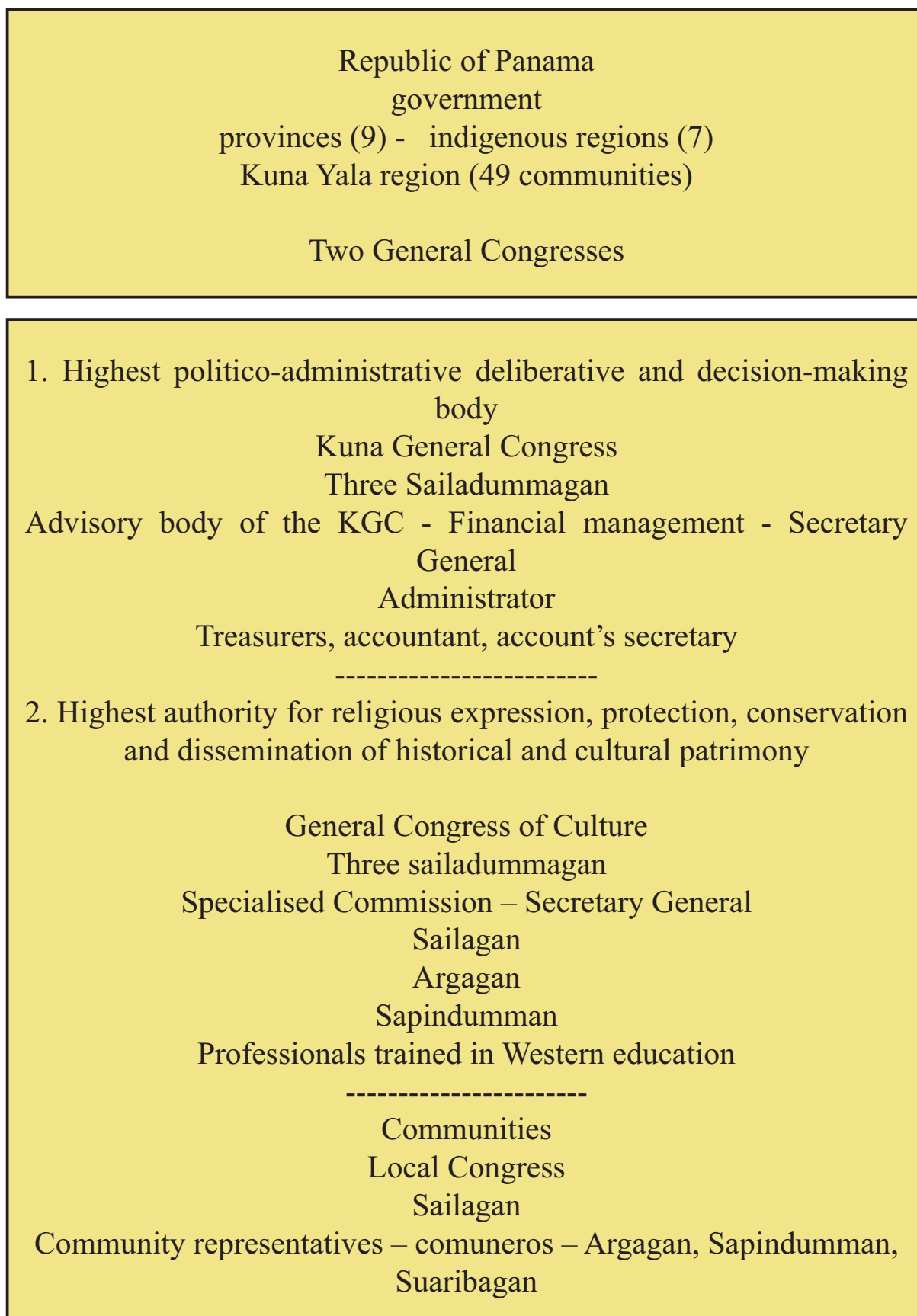


Figure 1. Organogram of administrative system of Kuna Yala indigenous region (by Andreve Jorge)

This administrative system can evolve and be adapted to accommodate new conditions and changes which emerge from the complex process of global development. All these constitute a complex dynamic activity, involving important elements such as cultural strengthening, respect for indigenous values and rights, good administration in the territories, natural resources, and cultural, economic, social and institutional rights. This model is participatory: the territory's social, economic, cultural and environmental management passes through the hands of members of the community in accordance with the principles of participation and communal cooperation.

Kuna General Congress

The General Congress of Kuna Culture is the highest authority of religious expression, protection, conservation and dissemination of the people's historic and cultural heritage. On the other hand, the Kuna General Congress is the highest political and administrative decision-making body of the region. The regional authorities and communities have an obligation to comply with its decisions and resolutions.

The two Kuna congresses are each represented by three general chiefs: the Saila Dummagan (chiefs), a board of management, and advisory and representative commission teams. The two congresses work in cooperation, each one in its area of competence.

The Saila Dummagan, which have the same hierarchy in the whole region, coordinate their administrative functions. The chiefs of both congresses have a secretary and undersecretary elected by the General Congresses. Both are charged with managing the administrative activities of the chiefs within and outside the region.

The congresses also have a board of advisers, elected by the Kuna General Congress, who are qualified professionals of high moral fibre and with knowledge of the Kuna people's cultural values. An administrator works with a treasurer, accountant, vice-secretary and other partners to manage the funds.

The Kuna Yala region is made up of 49 communities, each of which has a Local Congress known in the Kuna language as Onmakednega, the highest authority on the community's religious, cultural and politico-administrative affairs. Authorities and members of a community must comply with its decisions. It is in the Local Congress that the members of each community participate, discussing all matters concerning daily life.

The sailagan or sailas of the communities are legitimate authorities in the eyes of their respective peoples. Each community has a main saila, who is the highest authority, and other subordinates (usually two). Their election, dismissal and exercise of their functions are undertaken in accordance with the social and religious practices of the Kuna community (Kuna Congress, 2001).

Managing and directing their own development (social, cultural, environmental and economic) internally or regionally means that the Kuna people can practise a model of administrative, adaptive and participatory self-development. This is demonstrated in their management and development of a wildlife reserve in the Kuna Yala region.

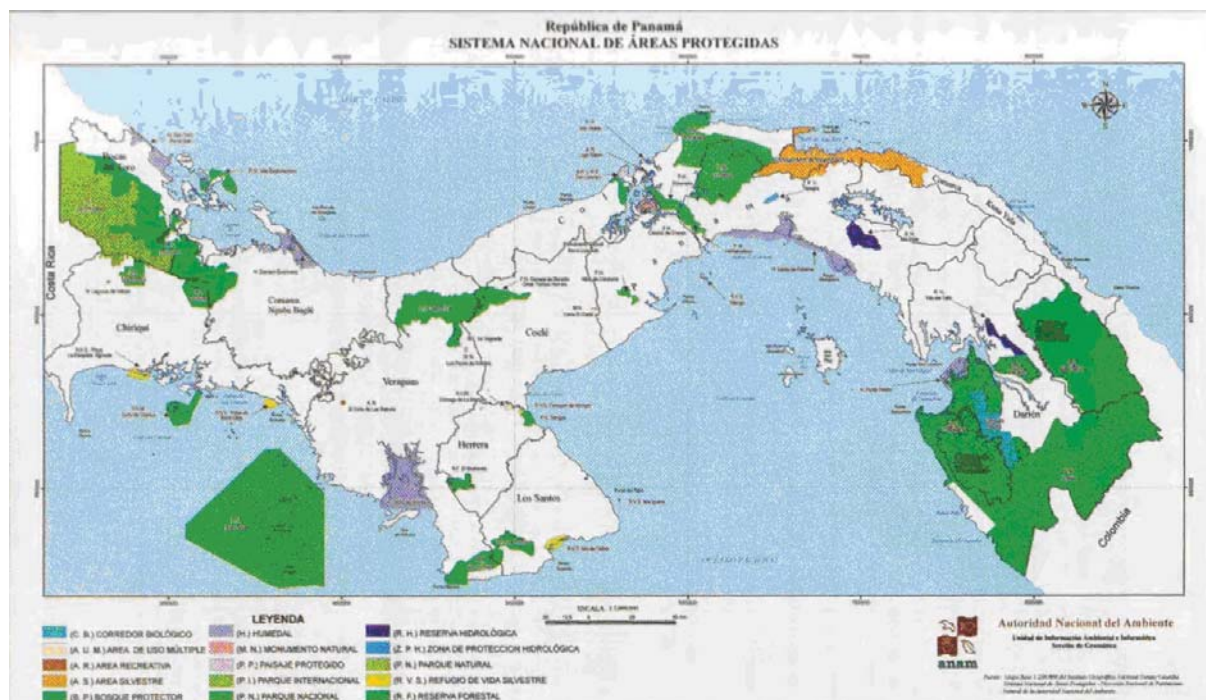


Protected Area of Kuna Yala Region

The Kuna Yala region has a wildlife reserve of approximately 100,000 hectares created in 1994 by a resolution passed by the National Institute of Natural Renewable Resources of Panama (now called the National Authority for the Environment). This reservation falls under category 4, “conservation through active management,” of the management categories of the International Union for the Conservation of Nature.

The region’s wildlife reserve was established in response to a desire expressed by the traditional authorities and the Kuna General Congress. They saw it as an alternative way of protecting Kuna territory from agricultural expansion, gold mining and other illegal activities.

Figure 2. Map of Protected Areas of Panama



Note: there is no staff deployed to the protected area of Kuna Yala (2005)

Grid 5 details the deployment of staff by the Administrative Area of ANAM, showing the protected areas which belong to this geographical area in the years 2004 and 2005

The Kuna regional management system has a special character as every action or activity relating to the wildlife reserve must be decided in consultation with and approved by the Kuna General Congress. This counters the notion that protected areas must be established in public land and administered completely by State or private authorities. Further it demonstrates that Indigenous Peoples can own and manage them.

Panama has 65 declared protected areas under the National System of Protected Areas by virtue of Law 41 of 1998 which established the country's General Law on the Environment. Comprising 34.43 percent of the country's territory, these protected areas are administered under different types of management¹. Most of the management categories used under the National System of Protected Areas are national parks (15), forest reservations (9) and wildlife reserves (9). The national parks represent 57.96 percent of the total coverage of Panama's protected areas. This percentage can increase to incorporate small areas of land declared as protected by other municipalities and private reservations.

The size of the protected areas varies greatly, but most are between

Box 1. Management Categories under National System of Protected Areas

- National park
- Natural reservation
- Natural monument
- Wildlife reserve
- Water resource reservation
- Protected landscape
- Forest reservation
- Natural recreational area

10,000 and 50,000 hectares which is roughly equivalent to the size of a national park. After this they range between 1,000 and 10,000 hectares and are administered by a combination of different types of management systems. It should be noted that approximately 42 percent of the protected areas have less than 10,000 hectares and nine per cent have not been measured.

The law provides that assistance be extended to protected areas, and some of these have already received some form of support. Of the 65 declared protected areas, 19 or 29 percent have management plans, and five are in the process of having their plans approved. Thirty-six areas have strategic, operational and monitoring plans.

The National Environmental Authority is the government body mandated to regulate protected areas. It awards administrative or service concessions to municipalities, provincial governments, foundations and private companies on the basis of previous technical studies. Since its creation however the Kuna Yala wildlife reserve has not gotten any formal support from the National Environmental Authority to develop management plans, staff or protection.

The Kuna Yala protected area is under threat from agricultural expansion, poaching, illegal gold mining and other activities which contribute nothing to the reservation's conservation or to the Kuna people's quality of life in the area. The attitude of the national authorities in this regard indicates that there is no real political will to comply with the law or to prioritise the strengthening of traditional authorities to preserve the environment in general. This despite the country's political and environmental strategy that stipulates these issues are priorities.

On the initiative of the Kuna Yala region's authorities and technical specialists, work is underway to develop a holistic development plan for Kuna Yala, as established in the Fundamental Law of the Kuna people. The Fundamental Law is currently not recognised in national law but is practised *de facto* under the Kuna's autonomous government system.

This customary law allows the Kuna to exercise the right to free, prior and informed consent (FPIC). Its articles state that: a) the natural resources and existing biodiversity in the Kuna Yala region are the heritage of the Kuna People; b) their benefits, protection and conservation will be provided for in line with traditional practices as established in the Statute of the Region; c) the Kuna General Congress will preserve and ensure the rational use of natural resources such as flora, forest cover, fauna, ground, water and marine species, lakes and all biodiversity in coordination with the relevant national or private authorities.

The co- and shared management system is not applicable in the Kuna territory as this would breach their customary laws which protect their territory from threats. All important decisions of the people are made in the plenary of the Kuna General Congress with the genuine and effective participation of the delegates of 49 communities led by their traditional authorities.

“This customary law allows the Kuna to exercise the right to free, prior and informed consent (FPIC)”

Free, Prior and Informed Consent

“the Kuna Yala model of self-development offers a contribution to the management and development of protected areas under a communal or regional government”

The Kuna People of the Kuna Yala region have practised free, prior and informed consent in their communities and with the State and national and international companies in matters concerning land, territory, autonomy and the sustainable use of natural resources. The systems of traditional and collective rights in indigenous societies originated before the establishment of the Nation State in Latin America. As a result, the Kuna People developed and refined their decision-making practices in accordance with the needs of their communities.

Free determination and the decision-making processes of the Kuna people use free, prior and informed consent, and their autonomy is based on these principles. Taking these concepts into account, the Kuna communities practise full and effective participation in all their communities to inform, analyse, discuss and adopt decisions relating to matters of importance in their communities, such as development projects and local, spiritual and ritual affairs. For example, when a Kuna community needs to create new pathways, the leading commission will inform, consult and take decisions on the proposal with all members of the community to ascertain whether the project is viable for all of them including for the wellbeing of Mother Earth.

These participatory communitarian mechanisms of decision-making,

implementation and execution of development projects lend greater transparency not only to the process but also to the system's framework and operation. It is a reflection of ongoing discussions at the international level on free, prior and informed consent. A body of scientific advisers on different issues brings a much deeper and sharper vision of the different environmental and cultural issues which could affect the natural management of a protected area in the region.

As a result, the Kuna Yala model of self-development offers a contribution to the management and development of protected areas under a communal or regional government. The aspect of community participation is fundamental to development relating to protecting, conserving and managing protected areas, which is evident in the daily use of natural resources in the Kuna communities.

Kuna woman is weeding her tomato garden



Environmental Laws and Biodiversity Convention

The Panamanian government has tried to comply with international environmental agreements through the Convention on Biological Diversity, pushing some laws at the national level. Within the framework of Law 41 of 1998 or General Law on the Environment, it has established a national strategy and a plan of action on biodiversity. However, these do not prioritise Indigenous Peoples.

Panama does not have any legislation or system which adequately promotes the exercise of the principle and right to FPIC in coordinating development, Indigenous Peoples' own laws and control over access and benefit sharing of genetic and natural resources, including sustainable biodiversity use, in the framework of the Biodiversity Convention. Progress is slow in the recognition of indigenous rights in these areas as well as in the protection of traditional knowledge and creation of new protected areas within the CBD framework.

Law 41 recognises traditional knowledge (of indigenous and local communities) for the conservation and sustainable use of biodiversity. However, there is no reference in its provisions on the protection and promotion of this knowledge or recognition of collective rights.

Although there is a law on the collective right to traditional knowledge (Law 20, 26 June 2000), cultural demonstrations and traditional knowledge of Indigenous Peoples are regulated. Further the government (through the Ministry of Commerce and Industry) has established the Department of Collective Rights and Folkloric Expression (Resolution N°3, 31 July 2001) and created a system of collective registry to grant collective rights. As the title of the law indicates, it does not make any reference to biodiversity or genetic resources.

The General Law on the Environment has some articles which refer to or identify some elements of free, prior and informed consent. Section VII of this law specifically refers to the regions and Indigenous Peoples in several articles.

Article 96. The National Environmental Authority will coordinate with the traditional authorities of indigenous peoples and communities in all matters relating to the environment and natural resources present in their territories.

Article 97. The State will respect, preserve and maintain the knowledge, innovations and practices of indigenous and local communities whose traditional ways of life include the conservation and sustainable use of biological diversity. The State will promote their wide application, with the participation of these communities, and will ensure that any profits accrued will be shared equitably.

Article 98. The State recognises the right of indigenous regions and peoples to manage the traditional and sustainable development of natural renewable resources within their regions and reservations created by law. These resources must be used in line with the standards on environmental protection and conservation established in the Political Constitution, this law and other national laws.

Article 99. Studies on the exploration, exploitation and development of natural resources authorised in lands occupied by indigenous peoples must not be detrimental to their cultural, social and economic integrity, nor to their spiritual values.

Article 100. The State will guarantee and respect areas used as cemeteries, sacred, religious sites which form part of the spiritual patrimony of indigenous regions or people, and which are indispensable to the preservation of their cultural identity.

Article 101. Exploitation of resources located in the lands of indigenous communities and peoples for industrial or commercial ends must be authorised by the relevant authority.

Article 102. The lands within indigenous regions and reservations cannot be sanctioned and are enduring and inalienable. This limitation does not affect the traditional system of transferring land in the indigenous communities. In general, lands can only be transferred through prior consent.

Where lands are transferred, indigenous peoples have the right to prior

compensation, for example to compensation in lands comparable to those they previously inhabited.

Article 103. In the case of activities, works or projects developed within the territory of indigenous communities, consultative procedures will aim to establish an agreement between community representatives, taking account of their rights and customs and compensation due for use of resources, knowledge or land.

Article 104. To grant any type of authorisation related to the mining of natural resources, in the regions or indigenous community's lands, projects presented by members are preferred, provided they comply with requirements and procedures determined by competent authorities.

This does not prevent exploitation and development rights to natural resources which companies can hold under their exploration rights, in accordance with applicable legislation.

Article 105. In the case of activities designed to profit from natural resources in the lands or region of indigenous peoples, indigenous peoples will have the right to a share in any economic benefits when the destination of these profits has not been provided for in law.

Mechanisms for FPIC and Biodiversity Protection

Faced with this reality, the Kuna people of Panama have developed their own mechanisms for protecting traditional knowledge and the exercise of the right to free, prior and informed consent in the use and access to biological and genetic resources through the practical application of customary law.

The Kuna General Congress has passed the Fundamental Law (Anmar Igar) to implement and exercise the right to free, prior and informed consent on the matter of access to genetic resources and biodiversity in all dealings with the Panamanian State, research, academic and other institutions, even though there is currently no national law on this.

Nevertheless, all development initiatives, projects and researches planned in the Kuna Yala region must be regulated by and comply with this law whose articles prioritise respect, protection, preservation and transmission of traditional knowledge and the exercise of free, prior and informed consent.

Although the government of Panama approves governmental initiatives or projects to be implemented in the Kuna Yala region, it presents them to the traditional authorities of the Kuna Congress for consideration. The traditional authorities, in compliance with the Fundamental Law, present these in turn to the plenary of the Kuna General Congress (two sessions a year) for approval. Final approval requires that delegates discuss proposals in two or three separate sessions, and a consultation is carried out with each of the communities which make up the Kuna Yala region. Generally, to support the decision-making of the traditional authorities, the plenary of the Kuna General Congress forms an inter-disciplinary technical team to serve in a technical advisory capacity.

(This mechanism) The participatory model of self-development has permitted the Kuna People, even before the existence of the Convention on Biological Diversity, to protect and preserve their knowledge and traditional ways of life, reaffirming their self-determination within their land and territories.

Box 2. Articles of Fundamental Law of Kuna Yala relating to Protection of Biodiveristy and Traditonal Knowledge

Article 42. The existing natural resources and biodiversity in the Kuna Yala region are declared heritage of the Kuna People. Its development, protection and conservation will be dealt with in line with the traditional practices set out in the Region's Statute.

Article 44. The Kuna General Congress will preserve and ensure the rational use of natural resources such as flora, forest cover, fauna, ground, water and marine species, lakes and all biodiversity in coordination with the relevant national or private authorities.

Article 63. The State recognises the Kuna medicine practised in the Kuna region according to traditional norms. The General Congress of Kuna Culture will promote its research, development and practice, in line with the criteria in the Statute.

Article 66. On the issue of the administration of justice, in applying legal provisions, the customary law of the Kuna people and their traditional system of social control will be applied.



Conclusion and Recommendations

The adaptive and participatory model of self-development of the Kuna people is an effective model of management. However, certain elements or actions jeopardise the effective management of protected areas such as globalisation, State policies which have been developed without consultation, and climate change which has harmed and changed the natural way of life of the Kuna Yala people. These have also brought cultural, social, economic and spiritual changes to the communities.

Traditional practices of self-government, decision-making processes and the Kuna culture have supported the Kuna to adapt to the daily realities they face. The traditional system of free, prior and informed consent is a model which implements free determination because it is based on the Kuna people's tradition, faith in the people, identity, way of life and culture.

Through the use of free, prior and informed consent as a decision-making mechanism, the Kuna people seek greater autonomy and less State interference. The Kuna model of self-governance and decision-making is necessary for the Kuna people to continue to advance sustainable development in line with their needs and to respond to emerging changes in the era of globalisation.

Effective legislative measures, which are accepted by Indigenous Peoples, must be taken to protect their collective right to their traditional knowledge, innovations and practices. These must be backed with a strategy to prevent threats and guarantee their protection and revitalisation. This includes evaluating any authority or process that poses a potential danger and strengthening systems of traditional and communal management of biodiversity in indigenous territories. It should also guarantee the integrity of knowledge, innovations and practices as part of the cultural, social and economic fabric of indigenous life.

Although Panama has made progress in the enactment of laws, the full and effective participation of Indigenous Peoples is limited. The State is very ambiguous and does not prioritise collective rights.

Only Indigenous Peoples can guarantee the exercise of their rights. Thus to further strengthen these and help thwart threats to their territories and resources, they should undertake the following:

- Indigenous Peoples must develop a mechanism and system in line with their world view which genuinely promotes and guarantees the implementation and exercise of the right to free, prior and informed consent with regard to the use of their land, territories and the sustainable use of biodiversity as established in the Convention on Biological Diversity.
- Organise indigenous seminars on the theme of free, prior and informed consent to share different experiences and practices of this principle.
- Develop a common understanding of the principle and right to free, prior and informed consent to demand that States pass laws to implement this right in their lands, territories and the sustainable use of biodiversity in the framework of the Biodiversity Convention.
- Develop methods or actions to strengthen the adaptive and participatory self-development of the Kuna people in line with their own world view and governance which prevent the erosion and loss of their cultural and historical vision.

Endnotes

¹Resolution JD-0994 (Official State Bulletin N° 23169 of 21 November 1996) defines 17 categories of management for protected areas, which make up the National System of Protected Areas, as well as the use of the category “Forest Protector” founded in Forestry Law 1 of 3 February 1994 (Article 5).

References

Autoridad Nacional de Ambiente de Panamá. “Estrategia National de Biodiversidad”. 2000.

(National Environmental Authority of Panama. “National Strategy for Biodiversity”. 2000)

Autoridad Nacional de Medio Ambiente. Unión Mundial para la Naturaleza. “Estado de la Gestión Compartida de Áreas protegidas en Panamá.” 2006.

(National Authority of the Environment. World Union for Nature. “State of the Shared Management of Protected Areas of Panama”. 2006)