

The Proposed PH Diquís and Its Compliance with International Law

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July 23, 2009



Proposed PH Diquís

- 179 m dam
- 3500-4800 GW/yr power station
- 2 tunnels constructed on the El General River
- Will supply the energy needs of 1,000,000 people???

Effects:

- Inundation of 6009 ha
- Loss of 948 ha of forest
- Inundation of 600-1000 ha of Terreba indigenous territory and 57-73 ha of China Kicha indigenous territory
- Displacement of 1068 people (non-indigenous)
- Loss of downstream wetlands



Proposed PH Diquís





What Agencies/Organizations Are involved?

- ICE
 - The Costa Rican governmental energy company
 - Claims that it has initiated the Diquis Dam proposal for the interests of serving the public good
- Setena
 - Governmental agency that conducts EIS and EIAs
 - Has begun an EIA regarding environmental impacts
- Environmental International NGOs
 - AIDA: Interamerican Association for Environmental Defense (Asociación Interamericana para la Defensa del Ambiente)
 - Cedarena: Center for Environmental Law and Natural Resources

AIDA



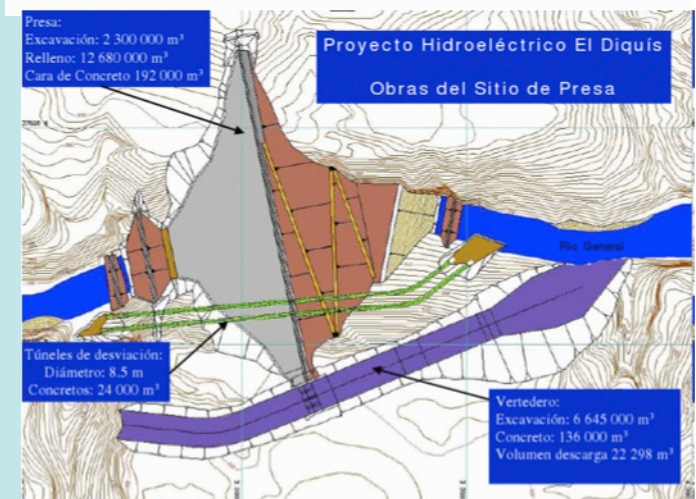
*Asociación Interamericana para
la Defensa del Ambiente*

*Interamerican Association for
Environmental Defense*

World Commission on Dams Report

Planning and management:

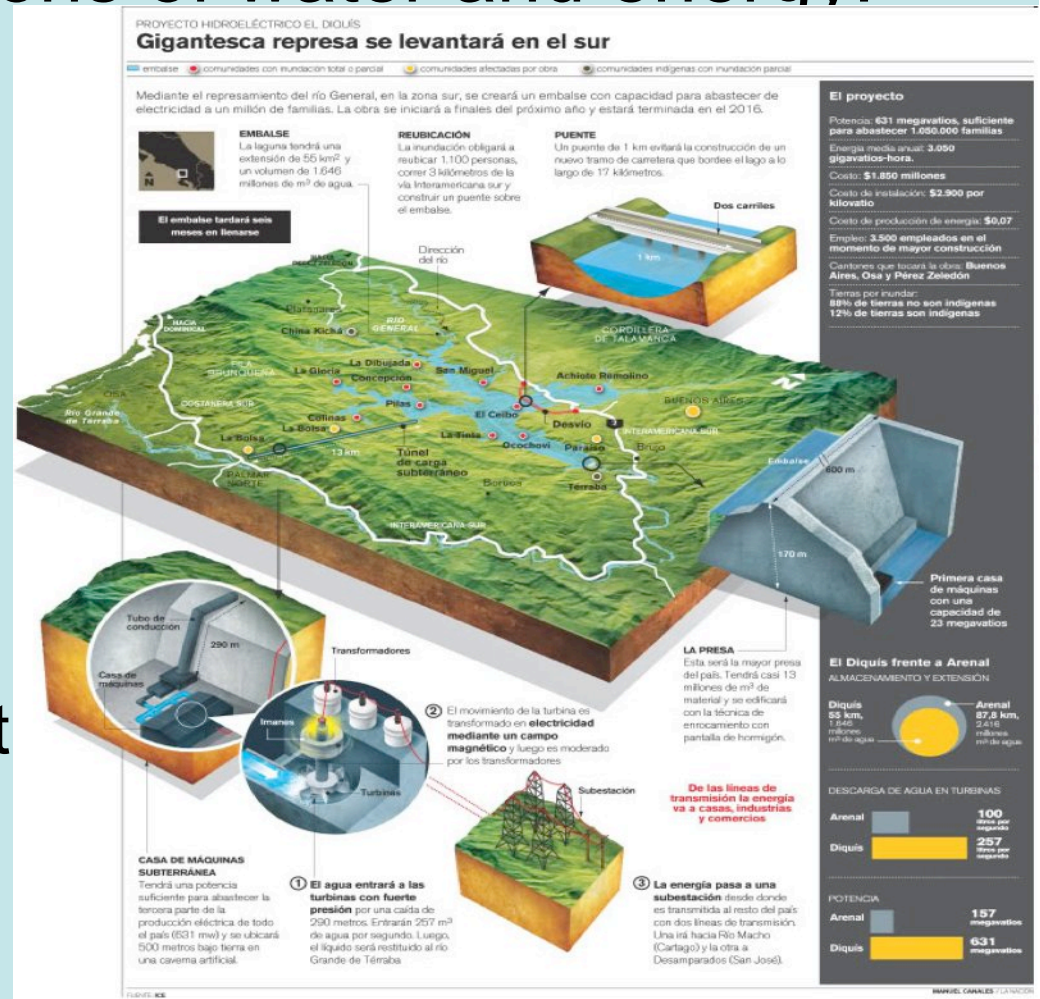
- Identify affected groups
- Early investment
- Public participation
- Developer's responsibility
- Follow agreed upon commitments



World Commission on Dams Report (cont.)

Critical issues for options of water and energy:

- Needs assessment
- Alternatives
- Project participation
- Project implementation
- Operation of the project



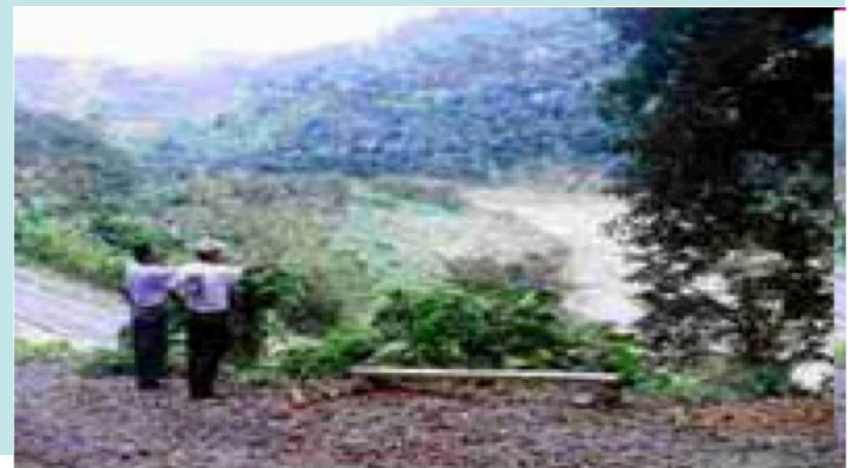
World Commission on Dams Report (cont.)

Needs assessment and alternatives:

- Public acceptance
- Comprehensive options evaluation
- Existing dams
- Conservation of rivers
- Recognition of rights

UN Special Rapporteur on Adequate Housing Basic Principles for Forced Displacement and Eviction

- Article 7: Forced Displacement disproportionately affects vulnerable populations
- Article 25: Asserts that states should protect the interests of its most vulnerable populations
- Article 38: Specifies that the State should explore all possible alternatives to evictions and flooding of indigenous territory



UN Special Rapporteur on Adequate Housing Basic Principles for Forced Displacement and Eviction

- Article 39: Need for dialogue between parties because interests of vulnerable communities historically are not taken into account during planning stages of development projects
 - The vulnerable communities and others working on their behalf, have the right to relevant information, full consultation and participation, and the opportunity to propose alternatives that authorities should consider.
- Article 40: The government authority (ICE) should show that there were no alternatives or mitigating measures before construction of the project
 - Government should prove that construction was simply unavoidable and that displacement of the community is within Costa Rica's International Human Rights commitments
 - Currently, ICE has only asserted that the Diquis Dam is necessary for promoting public interests by producing more hydroelectricity.

What Does Participation Mean?

- Informing affected indigenous and other vulnerable communities about the direct and/or indirect impacts of constructing the Diquis Dam
- Incorporating affected community interests into the decision as to how the Diquis Dam will affect their livelihoods
- Presenting them with viable alternatives and/or mitigating measures
- In regards to 6) when does negotiation begin?



Desarrollo actual

- 1) Elaboración de diseños básicos.
- 2) Decreto de Interés Nacional.
- 2) Estudio de Impacto Ambiental.
- 3) Modelo del financiamiento.
- 4) Marco normativo.
- 5) Instancia de coordinación y cooperación inter-institucional.
- 6) Negociación con comunidades.



Are Affected Community Interests Included in 'Public Interests?'

- The benefits of hydroelectricity tend may shroud detrimental impacts on local communities and on the natural resources this population rely on for their livelihoods.
- Even though the Diquis Dam Project proposal has been planned under the pretext of serving the public interest, indigenous persons and other marginalized communities will be affected.
- Assuming that ICE considers the interests of the affected population as part of the public interest, **their interests regarding the Diquis Dam proposal ought to be considered before the EIA is approved.**
- Without participation of the affected communities, ICE is disregarding the UN Special Rapporteur on Adequate Housing Basic Principles for Forced Displacement and Eviction
- At the current stage in the Diquis dam proposal, affected communities has not been consulted or even informed of the details regarding actions affecting their territory.

Recommendations

- ICE should provide proper notice to all potentially affected persons
- Notice should entail information regarding a public hearing to discuss all affected interests.
 - Public hearings are necessary for affected vulnerable populations
- However, valid notice does not mean publishing the details of a public hearing in the local newspaper that the marginalized or vulnerable population is not likely to read
- Indigenous and vulnerable populations have the right to have their voices heard regarding development projects that will affect their livelihoods
 - Such affected communities should have the opportunity to challenge the proposal and present possible alternatives
 - Should Articulate their demands and development priorities

Recommendations

- If displacement is certain to occur, it is recommended the indigenous community is given alternative land of better or equal quality and housing that must satisfy the following criteria for adequacy:
 - Accessibility, affordability, habitability, security of tenure, cultural adequacy, suitability of location, and access to essential services such as health and education
 - As a matter of efficiency, *if not already a form a practice*, it is recommended that such rights are specified in a binding contract between the government of Costa Rica (ICE) and the attorney or representative of the indigenous community

Biodiversity and Environmental Impacts

Convention on Biological Diversity

Ratified in 1994

Ramsar Convention on Wetlands

Ratified in 1991

Environmental Impacts

The Reservoir

- Diquis dam will inundate approximately 6000 hectares of land. The new reservoir will be a lentic (still water) system. In addition, the reservoir will inundate indigenous land where people conduct their lives according to traditional ways.

The General and Terraba Rivers

- Only about 10 percent of natural water flow will be allowed to continue down the natural river course (according to ICE, it will be 45 percent).

The Terraba–Sierpe Wetland

- The water will be of lesser quality than it would have been if allowed to flow down the natural river course, and it will be fed into the river on a constant schedule that will homogenize the wetland's water supply at wet-season levels year round. This will make salinity levels drop. In addition, over 300 hectares of wetland will be lost.

Convention on Biological Diversity

Conservation and Sustainable Use

Article 8:

Parties shall regulate or manage biological resources important for the conservation of biological diversity whether within or outside protected areas, with a view to **ensuring their conservation and sustainable use.**

Endeavor to provide the conditions needed for **compatibility between present uses and the conservation of biological diversity** and the sustainable use of its components.

Convention on Biological Diversity

Indigenous Participation in Project Planning and EIAs

Article 8:

Parties shall, subject to its national legislation, respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity and promote their wider application **with the approval and involvement of the holders of such knowledge, innovations and practices and encourage the equitable sharing of the benefits** arising from the utilization of such knowledge, innovations and practices.

Article 14:

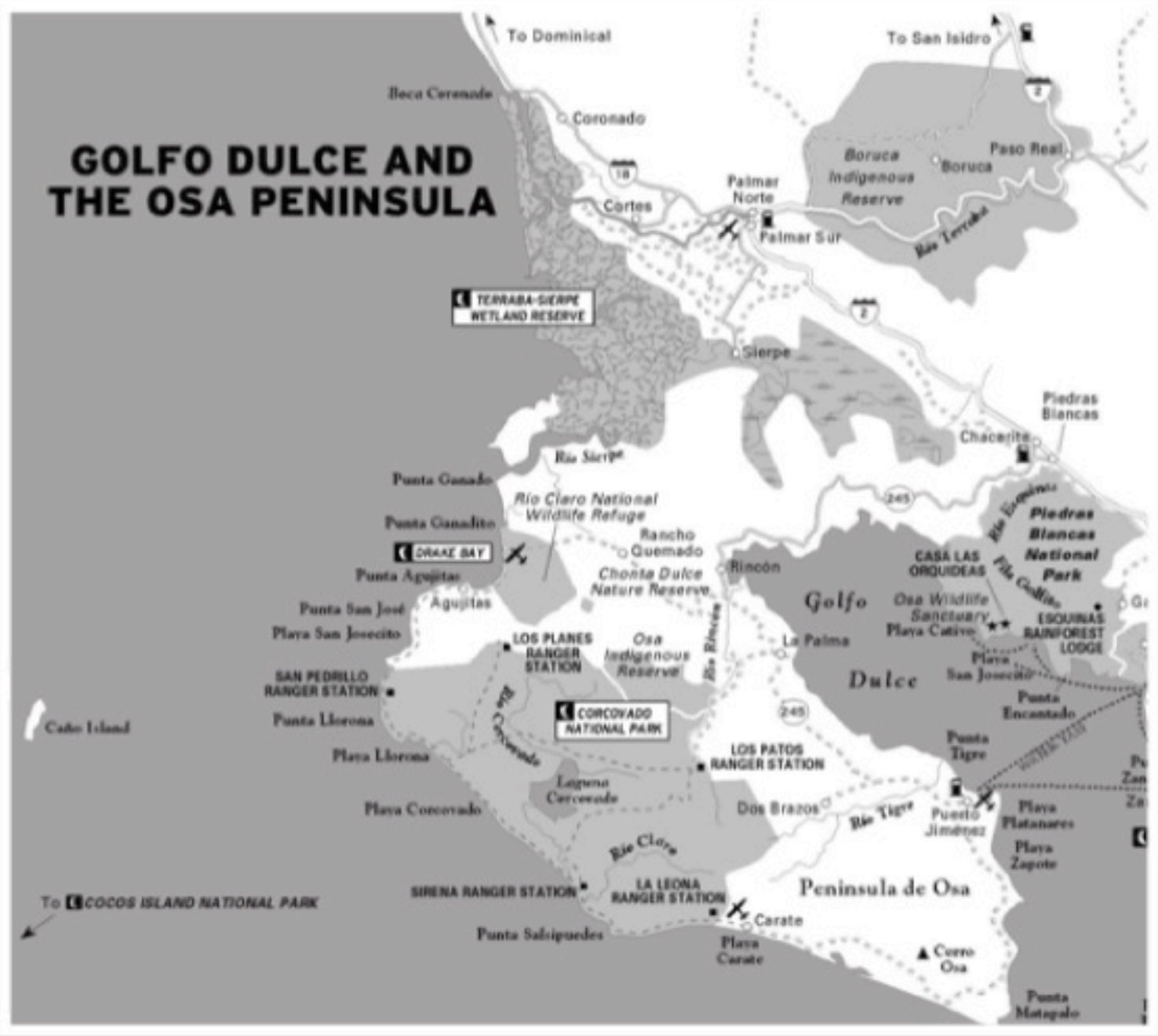
Introduce appropriate procedures requiring environmental impact assessment of its proposed projects that are likely to have significant adverse effects on biological diversity with a view to avoiding or minimizing such effects and, where appropriate, **allow for public participation in such procedures.**

Convention on Biological Diversity

Terraba-Sierpe Wetland: A Special Case

- Located within the Osa Conservation Area
- A designated Ramsar Site

GOLFO DULCE AND THE OSA PENINSULA



Convention on Biological Diversity

Terraba-Sierpe Wetland: A Special Case

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Article 6:

Develop national strategies, plans or programmes for the conservation and sustainable use of biological diversity or adapt for this purpose existing strategies, plans or programmes which shall reflect, *inter alia*, the measures set out in this Convention relevant to the Contracting Party concerned.

Ramsar Convention

Compensation for Lost Habitat and “Urgent National Interest”

Article 4:

Where a Contracting Party in its urgent national interest, deletes or restricts the boundaries of a wetland included in the List, it should as far as possible **compensate for any loss of wetland resources**, and in particular it should create additional nature reserves for waterfowl and for the protection, either in the same area or elsewhere, of an adequate portion of the original habitat.

Recommendations

- Conservation and sustainable use and Environmental Impact Assessment.
- Public participation in proposal development and the EIA process.
- Compensating for lost habitat and Costa Rica's international reputation.

Acknowledgements

- AIDA (Gladys Martinez)
- Cedarena (Gabriela Cuadrado)
- UF/UCR Conservation Clinic (Gaby Stocks)
- Inter-American Court for Human Rights