

# RECOGNITION AND SUPPORT OF ICCAs IN COSTA RICA

**Patricia Madrigal Cordero and Vivienne Solís Rivera<sup>1</sup>**

Cooperativa Autogestionaria de Servicios Profesionales para la Solidaridad Social -  
CoopeSoliDar R.L.

Case study for:  
**RECOGNISING AND SUPPORTING  
TERRITORIES AND AREAS CONSERVED BY INDIGENOUS PEOPLES  
AND LOCAL COMMUNITIES**  
Global Overview and National Case Studies

Edited by Ashish Kothari, with Colleen Corrigan, Harry Jonas, Aurélie Neumann, and Holly Shrumm

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*(Disclaimer: The views expressed in this case study do not necessarily represent those of the Secretariat of the Convention on Biological Diversity, or of the Government of Costa Rica)*

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<sup>1</sup> Patricia Madrigal Cordero is a lawyer with a specialization in international law from the University of Costa Rica (1986); she's also a doctoral candidate of Environmental Law from Alicante, Spain (1994).

Vivienne Solís Rivera is a biologist with a degree from the University of Costa Rica (1983) and a master's degree in Ecology from the University of Kansas in Lawrence, Kansas, USA (1986).

Their work has focused on promoting community wildlife management and integral and interdisciplinary discussion on biodiversity use with emphasis on fairer and more equitable distribution of the benefits deriving from this use, and co-management and other forms of governance that encourage citizen participation in the conservation of protected areas.

They are the founders of CoopeSoliDar R.L. (2001), a cooperative formed by people of different knowledge and interests based on an ethical background of common values, with a social and cultural compromise that dignifies work in a framework of respect and happiness. Our mission is oriented towards proposing new and creative alternatives to reach that the cultural and biological richness contributes to the improvement of the quality of life or population with justice and equity, through accompanying participative processes for decision making from individual and collective spaces, at the local, national and international levels.

Contact: [info@coopesolidar.org](mailto:info@coopesolidar.org) - [www.coope-solidar.org](http://www.coope-solidar.org)

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## List of acronyms

ASADAs	Potable Water Associations
CDB	Convention on Biological Diversity
CONAC	National Council of Conservation Areas

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CONAGEBIO	National Commission for Biodiversity Management
CORAC	Regional Conservation Area Councils
FA	Forestry Act
INCOPESCA	National Fisheries and Aquaculture Institute
ICCAs	Indigenous peoples and community conserved areas and territories
MINAET	Ministry of the Environment, Energy and Telecommunications
PES	Environmental Services Payment
SINAC	Conservation Areas System
TECOCOS	Coastal Communities Territorial

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We have made an effort to reflect the reality of our country, as objectively as possible while respecting the knowledge, values and cultures. Thanks to Donald Rojas of the National Indigenous Round Table for sharing his time and knowledge, and to Ashish Kothari and Aurélie Neumann for editorial inputs. We keep hoping that pointing out the gaps we can get to respect different lifestyles that support conservation, for the benefit of all the indigenous people and local communities that day-by-day work and dream for a better future.

### Summary

Costa Rica borders Nicaragua to the north, Panama to the southeast, the Caribbean Sea to the northeast and the Pacific Ocean to the southwest. It has a continental territory of 51,100 km<sup>2</sup>. Located close to Ecuador, Costa Rica's Cocos Island expands its marine territory to 10 times that of its continental territory.

This small country has a huge variety of natural habitats and microclimates that have made existence possible for a wide diversity of flora and fauna – a characteristic it shares with the rest of the Central American isthmus connecting South and North America.

Together with the rest of the region it combines expanding economic development with major inequalities and a rising poverty index. It also maintains a democratic political system and legal framework that favours environmental conservation but needs stronger law enforcement and compliance

With respect to environmental performance, the 2010 State of the Nation mentions that the ecological footprint measured negative; in 2010, each inhabitant needed 13.4% more available land to sustain his natural resource use pattern. Some 56% of pollutant emissions come from transportation, while 21% come from industry and 23% are produced by commercial establishments.

The country's governing environmental body is the Ministry of the Environment, Energy and Telecommunications (MINAET). Passage of the Biodiversity Act in 1998 provided backing for the National System of Conservation Areas, which in fact had been operating for many years, unifying authority over forestry, wildlife and protected areas by bringing them together in territorial units called Conservation Areas. These areas integrate both protected and private areas for applying development and conservation strategies.

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At present, close to 26% of the national territory is protected under primarily state and private governance schemes (State of the Nation, 2010). Of this, 17.19% is marine territory, including interior and patrimonial waters.

The country has recognized the indigenous peoples' territories as indigenous reserves, which are administered by development associations. Conceptually, these territories could be considered ICCAs, even though the traditional forms of decision-making followed by their inhabitants are not officially respected. The reserves have a total of 3,344 km<sup>2</sup> (5.9% of the total continental territory of the country) and include 24 territories and 8 different indigenous groups. In the latest national census, 63,876 people living in these territories considered themselves indigenous (1.7% of the total population). These indigenous reserves were recognized by the Indigenous Act of 1977, but the boundaries of each territory were set by executive decree.

The MINAET recently approved and published its 'Policies for Protected Areas', where the stated goal is *"to consolidate a system of protected wilderness areas for in-situ conservation that is comprehensive, effectively managed and ecologically representative of the country's biological diversity by means of the recognition, encouragement and strengthening of different governance models for guaranteeing a long-term supply of ecosystem goods and services."*

As part of its principles, it mentions the importance of public participation and the need to incorporate local communities, indigenous peoples, Afro-descendant communities and civil society organizations so that their traditional and ancestral practices and knowledge can be recognized.

The way to achieve this is through the CORAC and COLAC committees described in greater detail in the case study.

Costa Rica does not recognize itself as a multi-ethnic state. At present there is a constitutional amendment in Congress that proposes to change Article 1 to define our country as an *"independent, free, democratic, and multi-ethnic and pluricultural republic"*. The amendment is currently under debate and according to established procedures will need at least two congressional periods for its approval.

The country's laws do not recognize collective ownership, either. The only constitutional mention of this is in Article 76, Title VIII, on education and culture: *"...The state will strive to maintain and cultivate national indigenous languages"*.

The view of land in an indigenous cosmovision entails sustainable use of natural resources. Hunting, agriculture and sacred sites are a part of the cultural identity that necessarily evolves in the territories.

There are other initiatives to promote governance models with civil society participation, such as the marine areas of responsible fishing. For example, the conservation efforts of three coastal marine communities have been legalized by the Board of Directors of the National Fisheries and Aquaculture Institute (INCOPESCA) in its decision to recognize the Isla Chira, Golfo Dulce and Tárcoles marine areas for responsible fishing, each with a different governance scheme.

The process of getting different sectors involved in conservation has been a slow and – at times – controversial one throughout the country's history of protected area conservation. The

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connection between biodiversity and culture has not been fairly or adequately recognized in conservation and development policies, leading to obvious consequences and fierce socio-environmental conflicts throughout both the country's territory and conservation history.

The biggest roadblocks to the governance and management of conservation areas by indigenous peoples and local communities are the following:

- Even though the Indigenous Law recognizes their territories, collective ownership is not recognized. The land is registered to the ADI or individual members of the indigenous people. Since this form of ownership is not recognized, the collective development of conservation efforts is limited. For example, more inclusive ways to distribute conservation benefits become more difficult if solely individuals exercise ownership. This has been pointed out as one of the limitations of the program of payments for environmental services, as explained in the case study.
- The legal framework does not recognize traditional forms of organization or customary law. Thus, proposed policies, plans, projects and strategies follow a traditional pattern and fail to recognize the indigenous cosmovision.
- There is institutional resistance to accepting new conservation proposals from locals, depending on their education and culture. The imposition of a Western accounting, management and administrative model excludes many local groups and indigenous peoples.

The national system of national parks and protected areas has had limited success in complying with the principles of sustainable development. The system has not been able to successfully combine conservation with the social wellbeing of many of the local communities inhabiting these territories or adjacent lands. The National Indigenous and Peasants Round Tables, as two separate organizations, are part of the National Commission for Biodiversity Management (CONAGEBIO), also established by the Biodiversity Act of 1998. This commission has a mandate to draft national policy on conservation, sustainable use and access to genetic resources and the associated knowledge, as well as to ensure equitable distribution of the benefits deriving from biodiversity use. These two Roundtable organizations, which are opportunities for civil society, have the capacity to influence policy-making in this field, which they have done. Both organizations have promoted the bylaws for access to traditional knowledge of biodiversity. They provide contributions, seek advocacy opportunities and stay on the alert for promoting and recognizing the conservation efforts of local communities and indigenous peoples.

Some recommendations deriving from the analysis include:

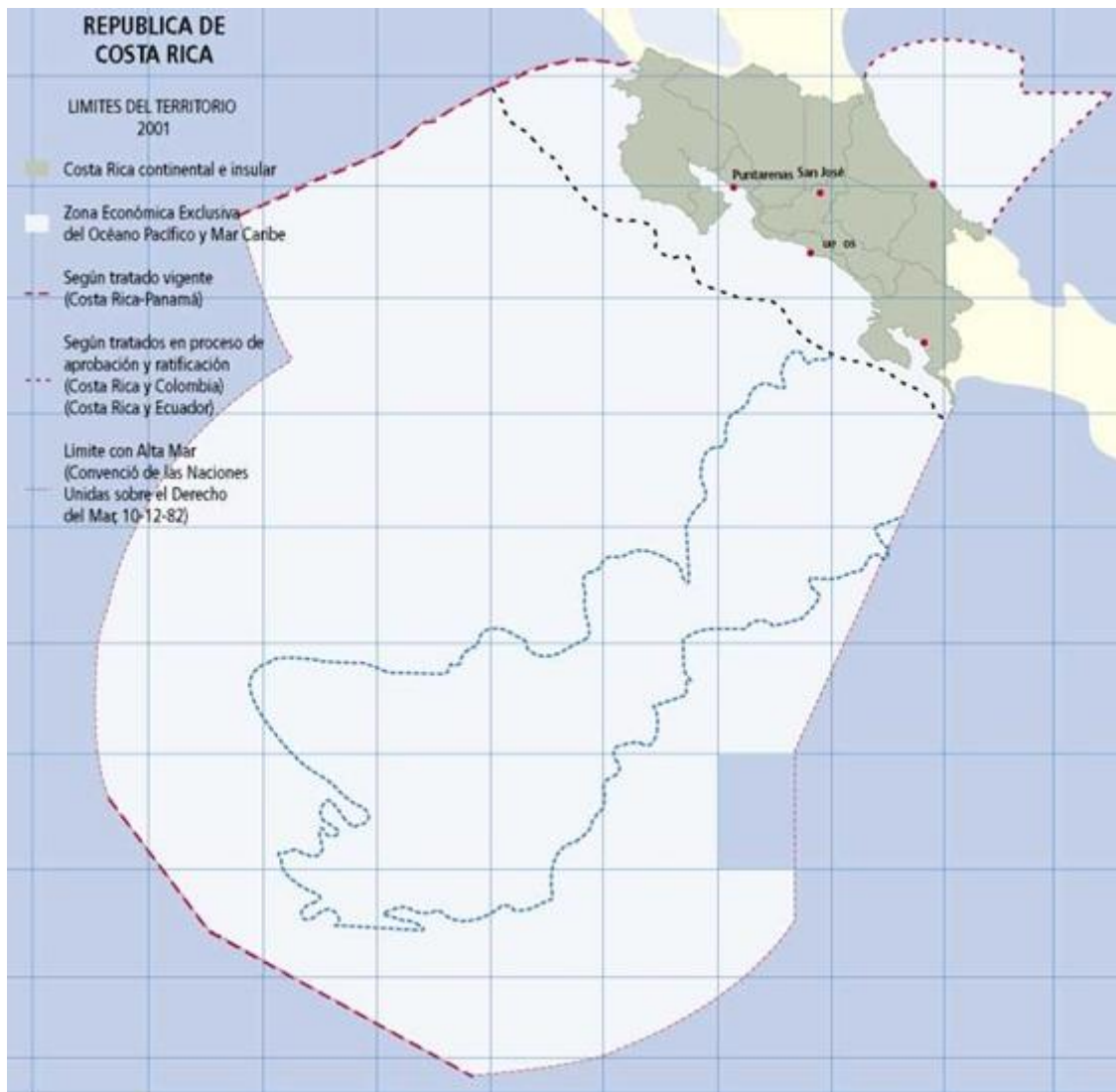
- The Costa Rican state has ratified the CBD (Convention on Biological Diversity) and its PoWPA (Programme of Work on Protected Areas). There is still a need to implement the recognition of different forms of governance for protected areas, despite the fact that recognition is included in the policy for protected wilderness areas.
- Follow-up and support is needed for bills currently in the legislative pipeline: recognition of the Republic of Costa Rica as a multi-ethnic and pluricultural country; the law for the autonomous development of indigenous peoples; and the law on coastal territories.
- Awareness-raising is needed for the country's legal authorities who have to resolve situations in which the rights of indigenous peoples and Afro-descendant and local communities are seriously affected by applying obtuse, formal interpretations lacking a focus on human rights.

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## 1. Country description and context

### 1.1. Key features of Costa Rica

Costa Rica borders Nicaragua to the north, Panama to the southeast, the Caribbean Sea to the northeast and the Pacific Ocean to the southwest. It has a continental territory of 51,100 km<sup>2</sup>. Located close to Ecuador, Costa Rica's Cocos Island (25 km<sup>2</sup>) expands its marine territory to 10 times of its continental territory.



**Map 1: Costa Rica's territory, terrestrial and marine**

Running through the country from north to south is a series of volcanic mountain chains. Near the border with Panama, rise the heights of the Talamanca Range, with 16 peaks higher than 3,000 meters and the country's tallest mountain, Mt. Chirripó, 3,819 meters above sea level. In the midst of the country's mountains is an extensive depression, the central plateau, at 1,000-1,500 meters above sea level. On both sides of this central tableland are two quite different coastal plains (*Revista Turismo y Cultura*, 1993).

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The 212 km-long Caribbean coast is smooth and flat with swampy areas, canals, sandy beaches and fairly low tides. The Costa Rican Caribbean is inhabited primarily by Afro-Americans and Ladinos (Amerindian and Spanish descendants), though there are still Bribri and Ngäbe Buglé populations, mainly near the border with Panama. The 1,016 km-long Pacific coast, on the other hand, is rocky and rough and interspersed with abundant inlets, islands, peninsulas, and spits with lush vegetation that often reaches almost to the sea. The Costa Rican Pacific was inhabited in the past mainly by indigenous Chorotegas, Terrabas and Borucas, in addition to Ladino settlers.

As with other tropical countries, Costa Rica has only two seasons: a rainy season and a dry one. The dry season ('summer') generally runs from December to April, while during the rest of the year (the rainy season) the rainfall is heavy and abundant, reaching up to 4,000 mm on the Osa Peninsula in the south. Temperatures vary not so much by season as by altitude. The minimum temperature drops to no lower than 15<sup>o2</sup> throughout the year, while the maximum reaches no higher than 26°. The coastal areas are hotter but rarely reach temperatures of more than 30°.

Despite its small size, Costa Rica has a wide variety of natural habitats with highly varied microclimates, making existence possible for an extremely diverse array of flora and fauna, including 850 species of birds, 2,233 mammals, 150 amphibians, 200 reptiles, and 35,000 species of insects that have been classified so far. There is also significant plant diversity, with 1,400 tree species, 10,000 vascular plants and 1,200 orchid species, among others. In 2010 a total of 88,711 identified species were reported, with 366 new ones for science: two arachnids, 343 insects, three tardigrades, ten fungi and eight plants (State of the Nation, 2010). In 2010 the IUCN Red List reported 2,292 fauna and 194 plant species facing some risk of extinction in Costa Rica. This number includes 169 fauna and 116 flora species in the critically endangered, endangered and vulnerable categories (State of the Nation, 2010).

Costa Rica has been holding democratic elections since the past century; the military forces were abolished in 1948, and the country has been successful in avoiding dictatorships and military coups. Despite this encouraging historical precedent, the political bases of the party system and government administration have seriously eroded in recent years, both nationally and locally. The latter, of particular significance to the concerns of this document, is primarily reflected in legislative holdups, lost impetus in the main performance indicators of the judicial branch and, at the level of local government, predominantly divided administrations, making governance difficult and potentially reducing policy management capacity if the mayors and leaders involved decide against negotiation and articulation of interests (State of the Nation, 2010).

According to the 2010 State of the Nation Report, Costa Rica is clearly and manifestly stalled on matters of social integration and equity; it is being held back by a stagnant poverty index and growing inequality and social violence. According to the report, poverty affected 21.3% of all households in 2010. Both this figure and the indicators of extreme poverty, intense poverty (or poverty gap), and severe poverty have surpassed the levels reported in recent household surveys. Some 13.4% of non-poor households are at risk of poverty, so if we add this to the percentage of poor households we find 35% of Costa Rican families are at high risk of poverty. In absolute terms, in 2009 the number of poor households was 236,800, while in 2010 this number had risen to 274,616, of which 77,365 were living in extreme poverty,

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<sup>2</sup> References are in degrees Celsius.

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especially in rural areas. The country's rural sector suffers the biggest consequences from the fragile macroeconomic performance, characterized by low or moderate growth, weak job creation and reduced real income expansion.

The 2010 State of the Nation Report shows some revealing environmental trends. The ecological footprint measured negative; in 2010, inhabitants needed 13.4% more available land to sustain their natural resource use pattern. Some 56% of pollutant emissions come from transportation, while 21% come from industry and establishments produce 23%.

In addition, the area under private conservation has grown steadily since 1995, increasing from 32,895 to 81,429 protected hectares in 2010. Only 8% of wetlands have a management plan. In 2010, Costa Rica took the lead in Latin America in terms of population with access to drinking water (89.5%). Land use planning is considered the biggest liability and top environmental challenge facing Costa Rica. The environment is still not a basic component of territorial planning instruments.

### **Box 1: Central American Regional Context**

Costa Rica is part of the Central American isthmus joining the two continents of North and South America. The region had a population of 43,914,267 inhabitants in 2011 ([www.ccp.ucr.ac.cr](http://www.ccp.ucr.ac.cr)); the population growth rate is high, especially in urban areas due to migration from the country to the city (ORMA-UICN, 2011). It is also a region of abundant cultural and biological diversity.

Several phenomena can be found in Central America: an increasingly younger population and a high migration index; economic development marred by huge inequalities, sinking thousands into poverty; and democratic systems and a pro-environment legal framework in need of capacity-building for complying with and enforcing the laws (ORMA-UICN, 2011).

A third of the Central American population lives in poverty, which is increasing as the population grows (ORMA-UICN, 2011). Central America is poorly connected and out of sync with what is happening in the rest of Latin America. Several of its countries have the worst performance in Latin America, while two rank near the top on certain development indexes. The situation is made even more risky and complex by a lack of strategic resources such as gas, oil and food. Trapped in the snares of spreading social violence and the geopolitics of drug trafficking, the region also has the misfortune of being highly vulnerable to extreme nature events (State of the Nation, 2011). Indeed, its geographic location has been defined as being one of extreme vulnerability by the Intergovernmental Panel on Climate Change (IPCC, 2007).

Biodiversity management in this region of the world is conditioned by land tenure, population growth, inequality, migration and poverty, as well as by production practices (primarily agricultural) that have led to habitat loss, deterioration and fragmentation along with pollution and overexploitation of natural resources (State of the Nation, 2008).

### **Box 2: Indigenous Peoples in Costa Rica**

Costa Rica has 8 socially and culturally different indigenous groups – Cabecars, Bribis, Ngäbe, Terrabas, Borucas, Huetars, Malekus and Chorotegas – living in 24 territories and speaking 6 indigenous languages. In addition to these are migratory indigenous populations such as the Nicaraguan Miskitos and Panamanian Ngäbes who work in agriculture in different parts of the country.

Each of these groups has its own cultural manifestations and expressions, some of which have been affected by the dominant culture. The survival and reproduction of many expressions



varies according to how much the dominant culture has inserted itself in different areas of the country and how each indigenous group has responded.

Despite their different means of livelihood, the various indigenous groups generally depend on basic agricultural production; in some cases their production is solely for their own consumption, while in others they have organized themselves into agricultural exporters of organic products. In some areas they also live off the sale of handicrafts and the tourism generated by this, such as in the Maleku and Boruca territories.

Taken from: [www.una.ac.cr/bibliotecologia/grupos\\_eticos/indigenascr.htm](http://www.una.ac.cr/bibliotecologia/grupos_eticos/indigenascr.htm)

### **Box 3: The Afro-Caribbean Population in Costa Rica**

The Costa Rican Afro-Caribbean population consists mostly of Jamaican descendants who moved to the Costa Rican Atlantic coast during two social and economical context developments, in particular: the building of the railroad to the Atlantic and the establishment of the first banana plantations from 1872 to 1921 (Meléndez and Duncan, 1972:58). Because of the dominant Costa Rican society's racism, at that time – and up until the 1950s – Afro-Caribbeans were not encouraged to move to the central valley or Pacific coast, and as a result they settled in towns on the Atlantic coast such as Puerto Limón, Cahuita and Puerto Viejo. Due to their Jamaican origins, Afro-Caribbeans speak an English dialect known locally as *Mecateli* (derived from 'make I tell you'). Their cultural features differ from those of the indigenous peoples, and their coastal towns have only existed for little over a century. Also significant is the fact that they represent at present approximately 2% of the national population, and that they have historically waged a battle to gain effective participation in the Costa Rican state – which they have largely achieved, reaching the top ranks within political parties, earning professional degrees and assuming positions of responsibility in public and private institutions. The struggles of the Afro-Caribbeans have, in fact, been struggles for civic participation and against racism and segregation.

Taken from: Guevara Berger and Vargas 2000.

### **1.2. Brief history of conservation, state- and community-based**

Conservation in Costa Rica does not begin with the creation of the National Parks System in 1972 as it is often mentioned. Indigenous peoples included conservation activities in their territories as part of their cosmovision. As the indigenous leader Rojas mentioned, sustainable use and conservation is part of the territory from the indigenous perspective. Other local communities protected the watersheds and production of water, as the coastal communities realized a sustainable use of the coastal marine resources.

Recently, at the end of 1900, the conservation law was approved, giving institutional competences to the MINAET or the INCOPESCA. But though conservation realized by indigenous people and local communities goes far back in time, the common perception is that conservation in Costa Rica began with the National Parks System in 1972.

*“In Costa Rica the governing body for the environment is the Ministry of the Environment, Energy and Telecommunications (MINAET), which, according to the Organic Law on the Environment and the law that specifically creates this ministry, must formulate, plan and execute the Costa Rican government's natural resource, mining and environmental protection policies.” (Cabrera, 2010)*

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Approval of the Biodiversity Act in 1998 provided legal backing for the National System of Conservation Areas (*Sistema Nacional de Áreas de Conservación*, or SINAC), which had, in fact, been working for years, by integrating administration of forests, wildlife and protected areas into Conservation Areas – territorial units that include both protected areas (PAs) and private areas in their development and conservation strategies. The system had been underway since the 1970s, when a process aimed at in-situ conservation of biodiversity was initiated. The process was administered at first under different management categories by the National System of Protected Areas, which later became the National System of Conservation Areas.

At present, close to 26% of the national territory is protected under primarily state and private governance arrangements (State of the Nation, 2010). Some 44% of protected wilderness land is in private hands, especially in categories such as protection zones, forest reserves, wildlife refuges and wetlands (Obando, Vilma, 2002). The same is true of 17.19% of the marine area, taking into account both inland and territorial waters (SINAC-MINAET, 2011).

The following management categories are legally recognized: national park, biological reserve, natural monument, national wildlife refuge, forest reserve, protection area, wetland, marine reserve and marine management area. Both continental and marine protected areas have been established in the country by the SINAC-MINAET.

**Table 1: PAs by Management Category, as per IUCN Classification, 2009**

<i>IUCN Management Categories</i>	<i>Number</i>	<i>Area (has)</i>	<i>% of the System</i>
I. Strict Nature Reserve / Wilderness Area	10	22,973	1.7
II. National Park	29	629,219	46.9
III. Natural Monument	1	229	0
IV. Habitat/Species Management Area	88	306,849	22.9
V. Protected Area with Sustainable Use of Natural Resources	41	381,602	28.5
TOTAL	169	1569,643	100

Source: State of the Nation 2009

In 2011, SINAC-MINAET approved and published its Policies for Protected Areas, where the stated goal is “*to consolidate a system of protected wilderness areas for in-situ conservation that is comprehensive, effectively managed and ecologically representative of the country’s biological diversity by means of the recognition, encouragement and strengthening of different governance models for guaranteeing a long-term supply of ecosystem goods and services.*”

One of its principles is public participation so that local communities, indigenous peoples, Afro-descendant communities and civil society organizations can be involved and their ancestral practices and traditional knowledge can be acknowledged.

The way it proposes to achieve this is through CORACs and COLACs, which will be reviewed further below. Unfortunately, from the viewpoint of the National Indigenous Round Table, the MINAET has no real policy for indigenous peoples, since these proposed councils follow a conventional direction without respecting the cosmovision of indigenous peoples.

### 2. Features of ICCAs

Costa Rica is not recognized as a multi-ethnic state. A constitutional amendment was proposed in Congress to change Article 1 to define the country as an “*independent, free, democratic, multi-ethnic and pluri-cultural republic*”. The amendment is currently under debate and, according to established procedures, will need at least two congressional periods for its approval (La Nacion, 2011).

The legal system does not recognize collective forms of ownership, either. The only constitutional mention about cultural diversity is in Article 76, Title VIII, on education and culture: “*...The state will strive to maintain and cultivate national indigenous languages.*” (Constitución Política de la República of Costa Rica).

#### 2.1. Range, diversity and extent of ICCAs

##### (i) Indigenous Reserves

Even though the state has enacted laws recognizing indigenous peoples’ territories, it tolerates the grabbing of their land by non-indigenous individuals and has not planned any actions for recognizing indigenous land rights in practice. It has not concerned itself with formulating public policies for indigenous peoples that respect their views on development (Camacho Nassar and Guevara Berger 2011).

The country has recognized 3,344 km<sup>2</sup> (5.9%) of indigenous peoples’ territories, called indigenous reserves, which are administered by development associations. Covered by the law are 24 indigenous territories and 8 indigenous peoples, seven of which are of Chibcha origin (Huetar in Quitirrisí and Zapatón; Maleku in Guatuso; Bribri in Salitre, Cabagra, Talamanca Bribri and Kekoldi; Cabécar in Alto Chirripó, Tayni, Talamanca Cabécar, Telire, China Kichá, Bajo Chirripó, Nairi Awari and Ujarrás; Brunca in Boruca and Rey Curré; Ngäbe in Abrojos Montezuma, Coto Brus, Conte Burica, Altos de San Antonio and Osa; and Teribe in Térraba) and one of Mesoamerican origin (Chorotega in Matambú). The indigenous reserves were set up by the 1977 indigenous law, and their borders have been recognized by executive decree. Though established by executive decree, the areas can be reduced only by legislation.

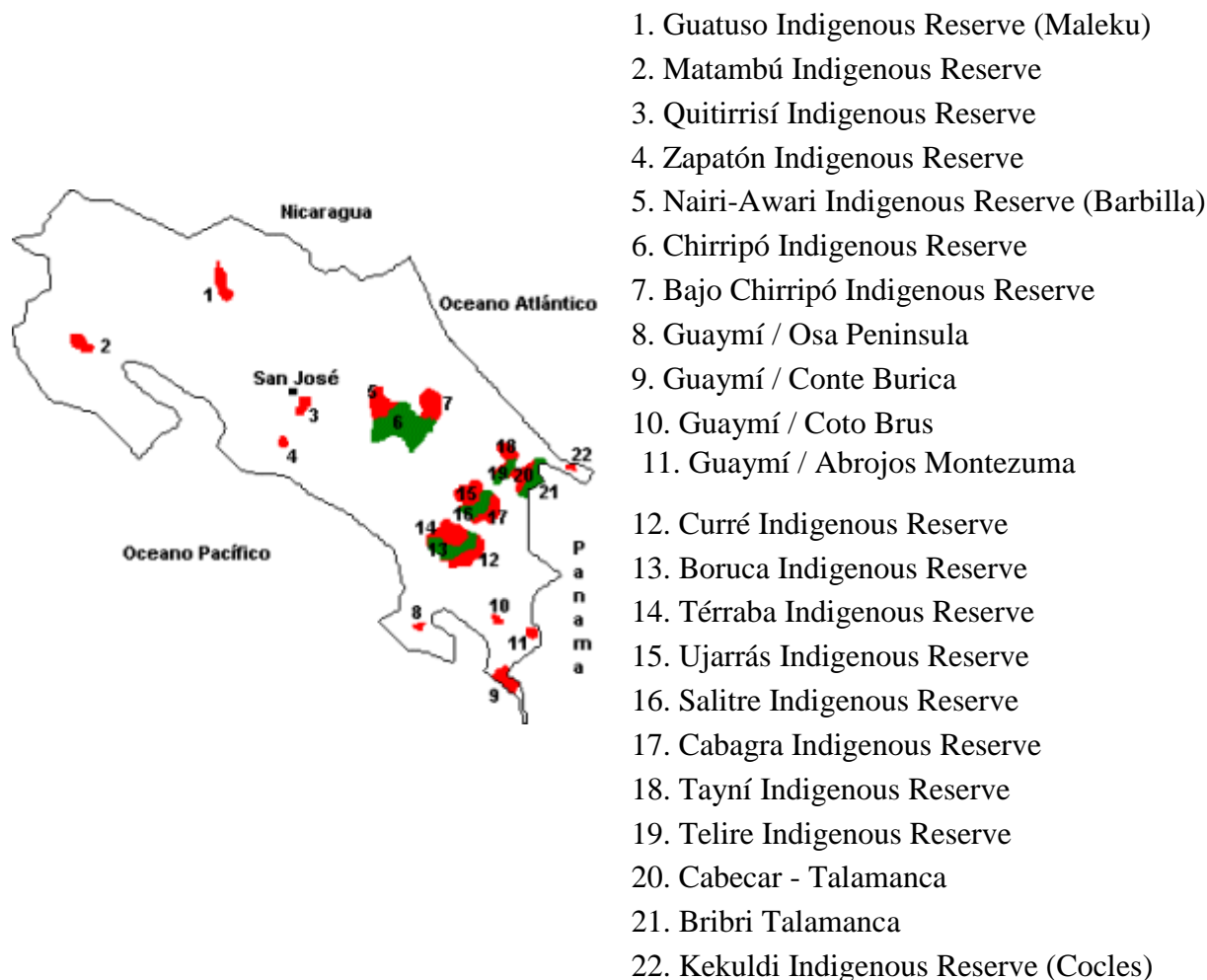
No consideration has been given to the situation of indigenous peoples living outside their territories; little information exists on them, and they are highly excluded from society. The case of the Maleku people dramatically demonstrates this. To ensure their survival, more than two-thirds of their 1,115 members have had to abandon the indigenous territory of Guatuso, which at any rate is extremely small (3,000 ha) and 85% occupied by settlers and cattle farmers. Some 80% of Malekus speak their own language, Maleku Jaica, but with conditions threatening the cultural reproduction of an entire people this language is unlikely to survive more than a generation, thus adding one more to the list of languages extinguished in spite of the survival of its representatives, alongside Brunca, Huetar and Naso-Teribe (Camacho Nassar and Guevara Berger 2011).

The view of land from an indigenous cosmovision entails the sustainable use of its natural resources. Hunting, agriculture and sacred sites are part of cultural identity and must necessarily be developed within a territory. In the last population census, 163,876 inhabitants (1.7% of the total population) were defined as indigenous, of which 51.5% are men and

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48.5% women; 33,128 of these (42.3%) inhabit the above mentioned territories, 18.2% live on the periphery and 39.5% reside in the remainder of the country.

### Map 2: Indigenous Reserves



(Source: [http://www.guiascostarica.com/rios/grupos\\_indigenas.htm](http://www.guiascostarica.com/rios/grupos_indigenas.htm) [Retrieved on April 9, 2012])

#### (ii) Other Community Governance Models

Other initiatives for civil society governance models – Marine Areas for Responsible Fishing, for example – also exist. Recently, several government entities have initiated legalization of local community contributions to conservation, such as in coastal marine communities where the National Fisheries Institute (INCOPESCA) has recognized 3 Marine Areas for Responsible Fishing with different governance systems: Isla Chira, Golfo Dulce and Tárcoles.

INCOPESCA's Board of Directors approved rules for the establishment of Marine Areas for Responsible Fishing on April 4, 2008; the rules seek to recognize fishers' rights to jobs, participation and a healthy and ecologically balanced environment. A Marine Area for Responsible Fishing is defined in these rules as "*an area with significant sociocultural, fishery or biological characteristics in which fishing is especially regulated to ensure long-*

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*term use of fishery resources and in which the INCOPECSA can count on the support of coastal communities and/or other institutions for its conservation, use and management.”* (Decree 35502-MAG, August 3, 2009). These rules and regulations were later declared of public interest by Decree 35502-MAG of August 3, 2009. Marine Areas for Responsible Fishing must be applied for by fishery organizations, whose requests are then approved by the INCOPECSA Board of Directors after verifying that the requirements have been met.



*Recognition of Marine Areas for Responsible Fishing*  
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The process for involving different sectors in conservation has been slow and at times controversial throughout the country's entire history of protected area conservation. The connection between biological diversity and cultural preservation has not been fairly or adequately recognized in conservation and development policies, leading to obvious impacts and fierce socio-environmental conflicts throughout the country's entire territory and conservation history. Despite this, serious steps are being taken to recognize local community efforts to preserve their lands and environmental and cultural values. The following are a few examples:

- Community conservation efforts through projects such as the Eco-ticos project in the Térraba-Sierpe wetlands and the Mangle-Benin project in the Golfo Dulce (State of the Nation, 2010);
- Efforts for local participative management through biological corridors (State of the Nation, 2009);
- The national tourism industry associated with protected wilderness areas and their biodiversity generates some \$2 billion in foreign currency, contributing 7% of the GDP, 23% of export earnings and close to 13% of all direct and indirect jobs (State of the Nation, 2010).

Regionally, the situation is no different. Because of this, in 2006 the Technical Committee on Protected Areas (CTAP in Spanish) of the Central American Commission for Environment and Development (CCAD in Spanish) has fostered a regional policy for shared management of protected areas for the purpose of *“legitimizing and strengthening the participation of organized civil society and local governments in the management of protected areas in each of the region's countries, by facilitating financial, technical, policy, legal and regulatory processes, sharing knowledge and experiences, and building stakeholder capacities. The aim of all this is to guarantee that the conservation and sustainable use of protected area goods and services is geared directly toward sustainable human development of the communities associated with those protected areas.”* This policy is based on the recognition that civil

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sector participation in the management of Central American protected areas has been common practice in the countryside, and has been on the rise in recent decades.

The government entities administering the national protected area systems have adopted co-management, joint administration or participative management as expressions of decentralization. In Central America the number of protected areas under this type of management has grown from 84 in 1998 to close to 200 at present. Much work is still pending, however, to consolidate these experiences and share the lessons learned.

At the Mesoamerican Congress on Protected Areas held in Merida in 2010, the ministers agreed to promote and reinforce the legal framework for recognizing the rights of indigenous peoples and Afro-descendant communities and their sacred sites, collective property systems and customary law, to achieve better governance. Unfortunately, as seen throughout this report, these policy statements have not been translated into legal reforms or true recognition processes.

### 2.2. Key ecological, cultural, socio-economic and political values of ICCAs



*The fisheries are recovering since the recognition of the marine responsible fishing area in Tarcoles.*

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Indigenous people consider the territory as a space in which the tangible and intangible elements coexist in a very dynamical way. For Western culture, it is difficult to understand that there is a difference between the land and the territory. Land is a physical element, which is not given greater cultural value, as it is done by indigenous peoples. Also, local communities, because of their relationship to the land, consider it as a source of life, food security, enjoyment and attachment.

The conservation of biodiversity cannot be understood by indigenous and local communities if it only includes the conservation of biological diversity. The indigenous people and local communities contribute to the conservation of natural resources within their culture and way of life.

Costa Rica still has a long way to go to succeed in establishing the relationship between conservation of biological diversity and cultural diversity, strengthening both in its policies.

### 2.3. Main threats to ICCAs

According to National Indigenous Bureau representative Donald Rojas Maroto, it is possible for indigenous peoples and local communities to establish conservation areas in Costa Rica, but they face several threats:

- *“The truth is that there is a lack of governance on indigenous reserves. The ADIs (Integral Development Associations) have included non-indigenous individuals living on the indigenous reserve. In general, the indigenous people are excluded from the decision-making. The Constitutional Chamber [of the Supreme Court] has ruled that Convention 169 establishes the need to respect their traditional structures.*
- *There are various places where indigenous reserves overlap protected areas. The Amistad International Park is located on ancestral indigenous lands. There is already a regional proposal to revise the protected areas and their borders with respect to traditional land use systems. The current conservation systems violate the rights of indigenous peoples.*
- *Current proposals do not follow models that protect and respect traditional systems. The environmental services program, for example, ignores traditional indigenous knowledge and use of non-timber forest products (medicinal plants, hunting, etc.). The state has to accept the existence of that knowledge. We must move from talk to action because the Biodiversity Act has already been recognized.*
- *The indigenous economy should be reinforced to guarantee food security; conservation must be maintained. And that cosmogonical view must be salvaged. We already have the concept of good living as an ideology to guide our actions; we have the Balu Wala as a planning method.”*

The development model that the country has promoted supports some activities that can be a threat to the ICCAs. During the last years, civil society has had to organize against hydrocarbons exploration projects, mining projects, and hydro-electrical projects, proposed to be developed even in indigenous peoples territories (as mentioned in box 7). The infrastructure projects and the usurpation of indigenous territories jeopardize the survival of ICCAs in Costa Rica.

### 3. Governance and management of ICCAs

#### 3.1. How are ICCAs governed and managed?

Article 1 of the Indigenous Act of 1977 recognizes indigenous peoples as those who constitute ethnic groups descending directly from pre-Colombian civilizations, and who preserve their own identity. As mentioned earlier, it was not until the year 2000 that a specific question was included on people who consider themselves indigenous, thus increasing their percentage from 0.5% of all inhabitants to 1.7%. Unfortunately, almost 50% of indigenous people live outside indigenous territories. In addition, already recognized territories have been usurped and invaded, and the indigenous populations living on them inhabit less than 50% of the available land area (Chacón 2007).

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This is the reality, despite Article 3 of this law, which states that indigenous reserves are inalienable, imprescriptible, non transferable and exclusive for the indigenous communities living on them. It goes on to say that non-indigenous people cannot lease, rent, buy or in any other way acquire land or properties within these reserves. Indigenous people can negotiate their lands only with other indigenous people. Any and all transfer or negotiating of land or land improvements within indigenous reserves between indigenous and non-indigenous people is absolutely null and void, with all the legal consequences this entails.

Traditional community structures were also recognized for administering these lands, but a later decree adopted by the Executive Branch stated that legal representation would be held by Integral Development Associations (Asociaciones de Desarrollo Integral, or ADI). These ADIs are governed by a state entity, DINADECO (National Community Development Office), which has not taken into consideration the characteristics of indigenous peoples. Many of these ADIs fail to integrate indigenous inhabitants. Their structure is entirely centralized in a board of directors, which has excluded anyone not speaking Spanish or able to take minutes or do accounting. The ADIs on indigenous territories have not received the funds granted by DINADECO because they do not have organized accounting systems.

*“Reserve lands used for forestry must be maintained as such in order to keep the hydrological balance of the watersheds and preserve the wildlife in these regions. Renewable natural resources must be used rationally.”* Thus states Article 7 of the Indigenous Law, but conflicts regarding with this issue also arose when in 1999 the MINAE prohibited the indigenous community from commercializing forest products. In general, the forest law forbids the change of the use of the soil. The current decree limits use for domestic purposes on lands without forest cover. Communities are barred from not only commercial but also domestic use of forest products when the land is with forest cover. When the land does not have a forest cover, the indigenous people can use the forest resources for their benefit with some rules established and enforced by the ADI (Decree 27800-MINAE, Reglamento para el Aprovechamiento del Recurso Forestal en las Reservas Indígenas, March 16, 1999).

*“For more than 17 years, the primary demand of indigenous organizations has focused on passage of a law for the autonomous development of indigenous peoples (legislative file 14.352). In this law, the indigenous people themselves have defined potential and reasonable legal mechanisms for proper management of indigenous territories, including the recovery of lands that have been continuously invaded by squatters in plain view and with the tolerance of public authorities. Nevertheless, after years of talks, negotiations, strikes, demonstrations and mass mobilizations, five presidential and legislative administrations have passed without its approval.”* (Camacho and Guevara Berger, 2011)

The national development plan does not take into consideration the indigenous community development plans prepared in four indigenous territories (Talamanca Bribri, Talamanca Cabécar, Cabagra and Alto Laguna de Osa); formulated through a participative process, these plans contain proposals based on each culture’s indigenous cosmovision and development concept (Camacho and Guevara Berger, 2011).





*Participation spaces must be opened where the local communities can feel comfortable.*

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### **Box 4: Wildlife Use by Indigenous Peoples**

With respect to wildlife, indigenous peoples maintain close ties to nature; they are a part of a whole, as in other nations. *“Indigenous people do not kill for ambition, pleasure or greed; they time their hunting and fishing by the seasons and agricultural cycle. They have a fundamental respect for the animals in the forest since, like the indigenous people themselves, these animals live in clans and have kings or masters. They occasionally sing a song before hunting to ask permission from the master of each animal species.”* (Salazar Salvatierra, nd). The Wildlife Conservation Act does not recognize their traditional artisan hunting and fishing; neither is there any express reference to the use of wildlife by indigenous peoples. *“Hunting has always been an activity in which indigenous peoples are competing with their non-indigenous farm neighbours and incoming hunters from other areas of the country. The white man invades their territories in search of wild animals such as tigers<sup>3</sup>, tapirs and deer. The prey is taken as trophies, sometimes by using illegal methods, even during off-season. White hunters do not respect indigenous settlements and profane the established norms and standards of the aborigines. They hunt with modern high-calibre weapons and take more than they need; occasionally they commit bloody massacres, leaving behind most of the meat in the forest so they can take home the heads, skins or horns as trophies to decorate their homes or add to their social status.”* (Salazar Salvatierra, nd). Taken from: Madrigal 2012.

### **3.2. Key issues faced in governing and managing ICCAs**

The key issues facing governance and management of local community and indigenous peoples’ conservation areas are as follows:

- *Collective ownership is not recognized.* Since this form of ownership is not recognized, the collective development of conservation efforts is limited. In the distribution of benefits, for example, more inclusive ways to distribute conservation benefits become more difficult if solely individuals exercise ownership. This has been pointed out as one of the limitations of the program of payments for environmental services (PESs), as explained further below.

<sup>3</sup> In Costa Rica, ‘tiger’ refers to any member of the feline family, such as ocelot or leopard; obviously there are no true tigers in Costa Rica.

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- The legal framework does *not recognize traditional forms of organization or customary law*. Thus, proposed policies, plans, projects and strategies follow a traditional pattern, as noted earlier, and fail to recognize the indigenous cosmovision.
- There is institutional resistance to accepting new conservation proposals from locals, depending on their education and culture. The *imposition of a Western accounting, management and administrative model* excludes many local groups and indigenous peoples.

### 4. Recognition and support to ICCAs

#### 4.1. Government recognition and support to ICCAs

The Indigenous Act of 1977 recognizes indigenous reserves; those territories should be inalienable, imprescriptible, non transferable and exclusive for the indigenous communities living on them. But the Government has not enforced this law, and usurpation and grabbing of these lands is frequent.

As mentioned earlier, progress on recognition of forms of community governance is still extremely slow in this country, for indigenous people and for local communities as well. A few experiences can be mentioned that have opened up opportunities for participation, but there are still major weaknesses.

##### *(i) PESs in Indigenous Territories*

In Costa Rica, the system of payments for environmental services was first introduced by means of the Forestry Act (FA) of 1996. Environmental services in Costa Rica are defined as those deriving from forests and forest plantations that directly affect environmental protection and improvement. According to Article 3, section k) of the FA, these services include:

- Mitigation of greenhouse gas emissions (fixation, reduction, sequestration, storage and absorption);
- Protection of water for urban, rural or hydroelectric use;
- Protection of biodiversity for its conservation and sustainable, scientific and pharmaceutical use, research and genetic improvement, and protection of ecosystems and life forms; and
- Scenic natural beauty for tourism and scientific purposes.

PES's can be granted for conservation and management of forests and forest plantations. In charge of administering the funds for the PES's system is the FONAFIFO (National Forestry Financing Fund), a decentralized agency of the MINAET with an instrumental legal status. According to FONAFIFO, our country's indigenous communities have been participating in the PES's system since 1997, thus making it a factor in the development of these communities. The significance of these territories for forest conservation is that they are located in the buffer zones of protected areas, and thus could be considered the last forest refuges outside of Costa Rica's protected areas. It should be noted that tracts of land in indigenous territories could come under reforestation and forest protection projects. As mentioned earlier, these areas have maximums and minimums. When the PES's first started out in 1997, the limit was 300 hectares; this was raised in 1998 to a maximum of 600 hectares. Today the PES's procedures manual sets the maximum area per indigenous reserve

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for PES's at 600 hectares per type per year. It also states that even though the same treatment should be given as for other beneficiaries, several particular factors should be taken into consideration, (Forestry Act, 7575, April 16 1996) since the ownership system on indigenous reserves has a special legal category.

The ADI is an association for public interest but is governed by private law. The territory of an indigenous reserve must be administered by the ADI, so these territories are not really collective ones. Collective areas would be those not assigned to individual families (Stallmeister and Leifert 2000). FONAFIFO feels that in the case of PESs the ADI is an organization representing several owners, and that the use and distribution of PESs among beneficiaries is an internal matter. For this reason the main problems found with PESs in indigenous territories are profit distribution and participation. Poor minute-taking and accounting abilities have led to the participation of people from outside the community – not always with good intentions. Moreover, forest authorities responsible for management of the resource have not encouraged stronger environmental training; in some cases there have even been problems of transparency.

From totals provided by FONAFIFO it can be deduced that approximately 50% of all PES's granted in Costa Rican indigenous territories from 1997 to 2000 were processed with the aid of the small donor program in the territories of Conte Burica, Coto Brus, Salitre, Ujarrás and Cabagra. This could mean that without the outside assistance of an institution such as the PPD (Small Grants Program from UNEP), many indigenous groups would be excluded from the PESs program as it functions today (CoopeSoliDar R.L. 2002).

### **Box 5: PESs in the Osa Conservation Area for Greater Participation of Indigenous Peoples**

With the support of the UNDP Small Grants Programme (UNDP-GEF-SGP), FONAFIFO, the Mesoamerican Biological Corridor (MBC) and the Tuva Foundation, the Osa Conservation Area (ACOSA) held a workshop in 2002 on 'The Participation of Indigenous Peoples in the Osa Conservation Area's Program of Payments for Environmental Services: A Coming Together of Two Cultures', facilitated by CoopeSoliDar R.L.

*Ngäbe Bugle woman talking about the impacts of environmental services in their community.*  
© CoopeSolidar R.L.

Some of the conclusions reached in this workshop by Ngäbe women participants include:

- If PESs are received, the ADIs should provide funds for women.
- More education and training is needed. We prefer the workshops on the reserves.
- There should be reforestation on the indigenous reserves and PESs should be received.
- Give other alternatives to women who do not have any land.
- *"They take pictures of us, all pretty in our indigenous dresses, to make proposals so they can get funding, but nothing comes to us. The whites ask for money with our photos and we get poorer and poorer. How can a community like ours compare if we don't even have electricity? They tell us we don't have the capacity to manage a project. Now any project has to be typed or computerized, and we don't have electricity. The projects should come from our communities, from what we need; the community should be consulted..."*

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The Ngäbe men agreed with the women and added:

- Technicians from the community should be prepared, with their equipment.
- More technical advisory should be given, and the ADI and community strengthened.
- There should be more cooperation for meeting requirements. The management plan and paperwork should be simpler; they are very expensive.
- The price per area should be higher.
- A quick response should be found to the problem of land titles.
- PESs should be able to be used for recovering land.
- There should be better communication and information.

There should be coordination with the MINAE for emphasizing resource preservation on indigenous territories.

### *(ii) Indigenous Territories and Access to Water*

Many of the 24 indigenous territories in the country lack access to water. For this reason, in 2006 the Costa Rican Water and Sewer Institute, known in Spanish as the AyA, set up a program for attention to indigenous matters within its rural aqueduct division. With a budget of 90 million colones (\$1.5 million), it started a pilot project to provide 6 indigenous communities with a rural aqueduct, benefitting 1,836 people.

Rural aqueducts in Costa Rica provide a way for local communities to actively participate in water collection, storage and distribution. Through ASADAs (Potable Water Associations), the AyA delegates management of the systems while maintaining ownership. It is interesting to note that though the ASADAs are extremely important for providing the service, those within the ASADAs – according to research – have very little knowledge of what an environmental management program means (Araya Rodríguez 2010). In this case the challenges are similar to those of the PESs, where training and organizational structure strengthening are needed for facing the challenges that arise.

### *(iii) Marine Areas for Responsible Fishing*

In Costa Rica, as we have seen, there are no precedents for formal recognition of community conservation areas. Because of this there are no laws that permit recognition of areas where responsible artisan fishing has been going on for years.

Given this scenario, and at the request of CoopeTárcoles R.L. (see below, Box 6) and CoopeSoliDar R.L. to the INCOPESCA Board of Directors<sup>4</sup> for a concrete initiative, the executive director of INCOPESCA created a commission consisting of representatives from INCOPESCA, the Ministry of the Environment and Energy (MINAE), CoopeSoliDar R.L., CoopeTárcoles R.L. and other NGOs involved in marine conservation. The task of this commission was to prepare a national proposal to empower CoopeTárcoles R.L. as well as other communities and organized groups meeting certain conditions of suitability to ask the INCOPESCA Board of Directors to create marine community areas for responsible fishing.

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<sup>4</sup> The Board of Directors of INCOPESCA is a collegial decision-making body comprised by representatives from the fishing sector and government institutions; it is presided over by the Chief Executive Officer.

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*The marine responsible fishing area in Tarcoles was recognized in August 2011 because of the will of the artisanal fishermen from CoopeTarcoles R.L.*

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The INCOPESCA Board of Directors approved draft rules for the establishment of marine areas for responsible fishing on April 4, 2008; the rules seek to recognize fishers' rights to jobs, participation and a healthy and ecologically balanced environment. The definition of a marine area for responsible fishing set forth in these rules is as follows: *"...an area with significant sociocultural, fishery or biological characteristics in which fishing is especially regulated to ensure long-term use of fishery resources and in which the INCOPESCA can count on the support of coastal communities and/or other institutions for its conservation, use and management."*

The novelty of this is that it is not exclusive; that is, it does not generate exclusive rights. On the contrary, fishing within these areas will be permitted for both members of the requesting organization and any other fishers, as long as they have an unexpired fishing license and follow the rules set out in the fishery management plan defined for each area. With the participation of the requesting organization, a follow-up committee is named to oversee enforcement, control and monitoring of the fishery management plan.

The most complex part of this policy advocacy process was the analysis of state competencies and opportunities for participation in decision-making on a public good like the ocean. The initial proposal entailed state recognition of the practice of artisan fishing in the Tárcoles area for more than 40 years, and, consequently, of artisan fishers' access rights to coastal marine resources. The idea met with resistance from INCOPESCA officials who felt that power over the public good – the ocean – belonged exclusively to the state and that it was the state, in exercise of its absolute authority, who should make the decisions. This was precisely the position taken in the abovementioned rules, since it is INCOPESCA who sets up the marine areas for responsible fishing; however, INCOPESCA agreed to the creation of a follow-up committee with the participation of the requesting organization, and consequently, of the local stakeholders.

### **Box 6: Recognition of the Tárcoles Marine Area for Responsible Fishing**

The Tárcoles community is located in the Costa Rican central Pacific area in Garabito County, Puntarenas Province. In 2000, it had a population of 4,007, which was projected to increase to 4,315 by 2006 (CoopeSoliDar R.L., INFOCOOP Audit Report. Internal documents).

Tárcoles is located on the outer side of the Gulf of Nicoya, a geographic area characterized historically as “*the country’s largest and richest repository of fish*”.<sup>5</sup> Nevertheless, fish catches have been falling steadily in this area as a result of overfishing, unsustainable fishing practices and pollution from some of the rivers flowing into it such as the Tempisque and Tárcoles (CoopeSoliDar R.L. 2006:13).

The coastal community of Tárcoles has been depending on its fishery resources ever since it was founded some 50 years ago. CoopeTárcoles R.L. ([www.coopetarcoles.org](http://www.coopetarcoles.org)) is a cooperative formed by the artisan fishers of Tárcoles in 1985 for several purposes: to market their artisan fishing products directly, to eliminate intermediaries, to obtain better prices, to provide better working conditions, to create sources of jobs, to share their fishing knowledge and to raise the level of fisher organization and participation. At present the cooperative has 35 members, including 3 women; most are from Tárcoles, with a few from nearby communities such as Playa Azul and Tarcolitos.

In 2003, with the support of CoopeSoliDar R.L., CoopeTárcoles R.L. added the pursuit of sustainable management of natural and cultural resources to their objectives in the articles of association. This is the first artisan fisher initiative in Costa Rica that has adopted a voluntary fishing code, following FAO principles and adapting these to their own principles and values. It is also the first to keep a database on their catch and a record of influencing factors such as the moon; and it is the first to develop a participative zoning plan.

On August 19, 2011, by means of Decree A.J.D.I.P./193-2011 published in *La Gaceta* No. 159 on Friday, August 19, 2011, the Costa Rican state officially recognized the Tarcoles Marine Area for Responsible Fishing. The approved fishery management plan has several thematic axes, including areas with total or partial fishing bans, biology and fishery management, permissible fishing methods and practices: biology and fishery management, training and outreach, community outreach and knowledge-building, strengthening of local organizational structures, strategic partnerships and marketing, enforcement and compliance with current laws, and research and monitoring program.

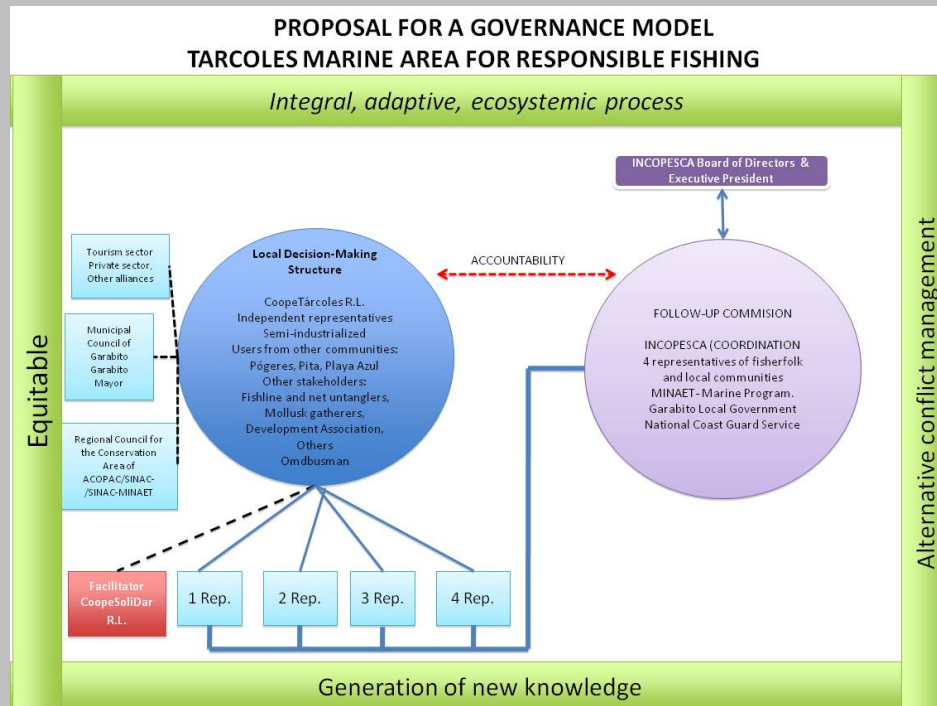
One of the decisions of the Tárcoles Marine Area for Responsible Fishing was to establish a shrimp fishing ban for one year over an area extending from the coast to a depth of 15 meters where shrimp fishing from trawlers, artisan shrimp fishing or net fishing would be prohibited. Only hand line fishing would be legal in this period.

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<sup>5</sup>The Gulf of Nicoya is a tropical estuary located on the Costa Rican Pacific coast. It covers an area of 1,500 km<sup>2</sup> and has high primary productivity and an abundant mangrove population. Within the gulf are 18 small-scale fishing communities whose target species are corbina, sea bass, shrimp and other crustaceans and mollusks. In 1985 the national government declared it an exclusive area for artisan fishing. The Gulf had already been extremely overfished by then, however. In the 1960s it was providing between 40% and 60% of domestic artisan fish catch; the catch dropped to 6% of Pacific coast production in 1995 (FAO 2001).

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In a participative process of local marine territory planning, fishers from the Tárcoles community proposed an innovative governance system for their marine area for responsible fishing that has been recently recognized by the state. The model is seen as an integrated, adaptive and ecosystemic process that proposes an alternative transformation of conflicts through the application of the principles of equity and knowledge-building, and that encourages voluntary regulation by artisan fishers with a view to conservation and development.



### (iv) Participation Opportunities Provided by the Biodiversity Act

Without doubt, the Costa Rican Biodiversity Act's passage in 1998 provides ample legal grounds for recognizing the contributions of local communities and indigenous peoples to conservation:

- It includes under the concept of biodiversity both tangible elements, as defined by the CBD, and intangible elements, knowledge, innovation and individual and collective practices;
- It develops the precautionary principle and key principles of international environmental law at the national level;
- It gives legal backing to the National System of Conservation Areas and conceptualizes it as a highly participatory system by means of regional and local councils located in each conservation area. Participating on these councils are five representatives from the area's different sectors chosen at a meeting of the organizations and institutions working in that geographical area;
- It creates the CONAGEBIO with the participation of indigenous peoples, farmers, academicians and government and business members;
- It regulates access to genetic resources and incorporates such principles as that of cultural objection;
- It recognizes different intellectual property systems such as farmers' rights and sui generis intellectual property rights for communities. To this effect it excludes non-



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genetically modified plants, animals and microorganisms, among others, from any and all kinds of IPRs.

Despite its passage 12 years ago, however, not much has been done to enforce or comply with it.

The Biodiversity Act, Law 7788 of April 23, 1998, has as one of its objectives to promote the active participation of all social sectors in the conservation and ecological use of biodiversity in pursuit of social, cultural, and economic sustainability. To meet this goal, it has created different institutional structures. One is the National Commission for Biodiversity Management – CONAGEBIO – a decentralized MINAET agency with an instrumental legal status established to formulate conservation, sustainable use and equitable profit distribution policies following CBD guidelines. Its members include representatives from the National Peasants and Indigenous Round Tables and Costa Rican Federation for Environmental Conservation and three members from different social sectors, for a total of 11. Six of these are representatives from the government: the MINAE; Ministry of Agriculture; Ministry of Health; SINAC; INCOPESCA; and the Ministry of Foreign Trade. One represents the Costa Rican Union of Private Enterprise Chambers, and another represents the National Council of Rectors (academic organizations).

National Council on Conservation Areas (CONAC) and regional conservation area councils (CORACs) were created within the National System of Conservation Areas (SINAC), a decentralized participative body with its own legal status. The CONAC also includes officials from each conservation area and representatives from the regional councils. The law proposes a public invitation to name the conservation area director and at least five members from different social sectors to the regional councils, including one from the local government. Whenever necessary, local councils (COLACs) can be set up. The public is invited to elect their members; all organizations involved in the conservation area, whether governmental or non-governmental, can participate.

These are the only current legal instruments permitting participation. On different occasions when civil society participation in protected areas (PAs) has been questioned, the Comptroller General's Office has decided that the state has exclusive authority over these protected areas through the MINAET, and that approval of strategies, plans and budgets cannot be delegated. The experience of the CONAC and CORACs is very recent, since the Biodiversity Act spent ten years being questioned on its constitutionality until the final ruling made it effective.

### **4.2. Civil Society recognition and support to ICCAs**

The National Peasant and Indigenous Round Tables are members of the National Commission for Biodiversity Management (CONAGEBIO), also established by the 1998 Biodiversity Act. Its mandate is to formulate national policies on conservation, sustainable use and access to genetic resources and associated knowledge, and to oversee equitable distribution of benefits deriving from biodiversity use. Thus the bureaus have the capacity to influence policy-making in this field, which they have done. Both organizations have promoted the bylaws for access to traditional knowledge of biodiversity. They provide contributions, seek advocacy opportunities and stay on the alert for promoting and recognizing the conservation efforts of local communities and indigenous peoples.

Small Grants from UNEP have supported some initiatives that can be considered as incipient examples of ICAA's in Costa Rica, like conservation of small forest areas for water.



### 4.3. Key issues for the recognition and support to ICCAs

Globalization is a complex, contradictory and irreversible phenomenon with inherent features, from which Costa Rica has not been able to escape (Pastoral Letter 2012). In general, there is a search for a global cultural framework that homogenizes cultural manifestations. Globalization has produced an open market economy in Costa Rica that necessarily leads to socio-economic and political exclusions; it favours a supposedly representative democratic system in form only that has produced growing apathy, affecting citizen participation (Pastoral Letter 2012).



*Innovation in participation methodologies is needed to let the people express themselves, especially to enable women to participate in their own way.*

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Conservation has not been excluded from this phenomenon; studies have shown how this reality has had concrete, practical consequences on the way power is exercised, and actions are being developed for conservation and development – some of which are extremely useful for analysing ICCAs:

- At present the country's civil society is trying to salvage and restore some of the last refuges of traditional societies and their social and environmental values; more than just social atonement, this struggle might possibly provide the answer as to whether Costa Rica can achieve sustainable natural resource use in the future.
- The national system of protected areas has not been able to incorporate an ecosystem approach that gives equal value to the social and cultural aspects of its management. Some concrete examples where an attempt is being made to emphasize these aspects are the biosphere reserves, but in most cases the Costa Rican state has not recognized ancestral or local rights in the use of natural resources. With absolute state governance, the protected areas that to some extent were responding to collective management systems no longer have significant social or cultural resilience.
- In the buffer zones of protected areas, collective and organizational efforts are weak and respond almost completely to the overpowering needs of the communities to defend their principles and socio-economic and environmental rights. Individual and private interests have far outstripped the survival capacity of collective or community organizations that were formerly essential as governance systems for the territories.
- Costa Rica has serious socio-environmental conflicts throughout a large part of its territory, and most of these conflicts concern not only a variety of stakeholders but also

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a variety of environmental issues, including water or forest use, sea turtles, volunteering and mining. In most cases each sector addresses the interest individually.

- The social movements essential for the country's food security and food sovereignty have been disjointed, receiving very little support, with only a few initiatives primarily aimed at adapting agricultural or fishing products to market needs.
- Mass tourism and real estate developments, mainly on the Costa Rican Pacific coast, have significantly limited the endogenous development of local communities and coastal marine territories. Massive inequalities are now interlaced with private interests, often putting at risk the environmental conservation of these areas.
- In the past 5 years the country has experienced a growing separation among the different social strata; the Gini index continues to show a greater distance between the poorest sectors and those with the most social and economic opportunities. This is clearly transferring to the cultural and environmental realms.

Related to the examples that has been indicated:

- The Marine Areas for Responsible Fishing, identified as breakthroughs in recognizing the rights of local communities, have not received the follow-up needed for making them into true opportunities for conservation and development, despite the fact that three of them have been recognized to date. INCOPECA does not have enough human resources to support these areas; neither has it demonstrated the political will to go beyond their recognition.
- The conservation opportunities opened up by the Biodiversity Act, such as the CONAGEBIO or the CORACs and CORELs, have not been encouraged by the MINAET to fulfil their legal functions, including policy-making and seeking out new conservation and development instruments.

### *(i) Failure to Enforce the Law Recognizing the Rights of Indigenous Peoples and Afro-descendant and Local Communities*

Unfortunately, as seen throughout this report, even though policies exist for recognizing, promoting and strengthening the rights of indigenous peoples and Afro-descendant and local communities, putting the talk into practice have not always been possible. What has happened in Costa Rica, rather, is a blocking of the full recognition of these rights and opportunities for civil society participation in general.

For example, Decree 22072 of February 25, 1993 created an indigenous education subsystem, recognizing the existence of twenty-two reserves. It states that indigenous cultures should be governed by their own traditions and customs in order to protect and maintain them, that educators on indigenous reserves must be members of the local ethnic groups and preferably natives of the territory, that education must be bilingual, and that educators must have full mastery of the native language and Spanish. In the Térraba indigenous territory this decree has not been enforced because the educators are not native Terrabas. The conflict in the Térraba Lyceum reached such a state that the case was taken to court, where the rights of the indigenous peoples were upheld.

The Constitutional Chamber of the Supreme Court of Justice stated that [the contested action] “...flagrantly violated national and international laws and the constitutional right of the indigenous people of Térraba to an indigenous education – and especially the right of Teribe children and youths to receive an education in their culture and traditions and in their own indigenous language – by naming non-indigenous administrative and teaching staff in

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*primary education (primary schools) and secondary education (high schools) who do not know the culture and its traditions as the customary law of an indigenous people such as theirs.”*

Three years after this ruling, as the 2012 school year began, the Terrabas took over the lyceum to keep classes from starting until the government met the provision of the law. To the rest of the population this was presented differently, as an example of the media's inadequacy in reporting national indigenous conflicts, the divergence was presented in the press as a violation of the rights of the non-indigenous youths who attended the school with the Terrabas. Reporters claimed that the Terrabas were violating the right of a different type of education for the non-indigenous youths.

### **Box 7: Resistance of the Terraba People**

The building of the Diquis hydroelectric project in the country's southern area has also led to conflicts with local inhabitants, especially in the case of indigenous peoples who allege unauthorized use of their lands and the need for consultation on the project and agreements on the potential benefits for these inhabitants. The case is now in contentious-administrative court because of a complaint against the Costa Rican Electricity Institute (ICE) alleging in particular the holding of land within the indigenous territory's borders. The Front for the Defense of Indigenous Terrabas has been set up to deal with this project.

The case goes back to the early 2000s when the construction of the Diquís hydroelectric project was declared of national convenience and public interest. The reservoir would cover a total area of approximately 6,800 ha, and an average of 3,050 GWh/year would be generated. It would have a social impact on the indigenous territories of Térraba (800 ha) and Chinakichá (73 ha), and an indirect one on the territories of Curré, Boruca, Ujarrás, Salitre and Cabagra, requiring the relocation of 1,100 people.

The UN Special Rapporteur on the Rights of Indigenous Peoples, James Anaya, visited the country in 2011 and was able to convince the ICE to remove its machinery from the area until consultation was held with the indigenous peoples as provided by Convention 169. More than 200 archaeological sites considered sacred for these indigenous peoples were set to be flooded.

For its part, the state is defending the project as cleaner form of energy production than the importing of fossil fuels.

### *(ii) Lack of Recognition of Community Governance in the Protected Area System*

The national park and protected area system has had limited success in complying with its sustainable development principles. It has not been able to successfully combine conservation with the social well-being of many of the local communities in these territories and surrounding areas, so efforts to protect the environment in the protected areas and national parks have often forced local villages to leave their lands and halt their resource use activities, without giving them any decision-making power over the use of their lands or providing them any alternatives for their social development.

### **Box 8: The Case of the Ballena National Marine Park**

The Ballena National Marine Park is located in the Osa Conservation Area (ACOSA) in the southern Pacific area of Costa Rica, Central America. It was established by executive decree in 1989 in order to conserve a rich marine ecosystem. The borders were redefined in 1992, and today the park has an area of 5,375 marine hectares and 110 land hectares.

There was very little consultation with local communities prior to the creation of the Ballena National Marine Park, and this led to bitter face-offs between local users of the natural resources and Ministry of the Environment and Energy (MINAE) officials.

When the national park was created there were three communities – Bahía, Uvita and Ballena – with fishing communities (families living off the park and its resources) that practically disappeared when they could no longer use the ocean resources providing them with their livelihood.

The local communities lost legitimate representative structures for collaborative management. The Association for the Development of the Ballena National Marine Park (ASOPARQUE) was created in 1997 as part of a strategy for handling the conflict; at the time, it grouped together 22 local organizations. ASOPARQUE proposed to develop joint management initiatives for the Ballena National Marine Park. Unfortunately, these initiatives failed due to legal gaps blocking or preventing the state from supporting this type of collaborative process. The failure led to frustration among stakeholders, a loss of interest and a breakdown of communication channels, increasing the scale of the conflict, which continues to the present day.

Recently, CoopeSoliDar R.L., in conjunction with the International Collective in Support of Fishworkers (ISCF), is conducting a study to see how the country's protected marine areas have responded to their responsibilities to local communities in terms of developing and improving their lifestyle. Some of the preliminary results show the huge challenges faced by the country with respect to community management and conservation of protected areas.

The park has no mechanism for participation or communication with the community at this time. The local committee has been named by the administration but has not been able to meet even once due to quorum problems. It would seem that the administration has focused on regulating tourism activity; marine control and surveillance has been minimal because the boat and control equipment have been out of service. The marine park association is not seen as a driver for development or generator of clear benefits for women and youths, although everyone recognizes the importance of a protection zone.

These elements demonstrates several revealing indicators:

- Artisan fishers are being eliminated as a productive and organizing social sector for the park's neighbouring communities (Ballena, Bahía and Uvita).
- Some artisan fishers have been able to change over from artisan fishing to tourism (whale-watching and sport fishing tours); others have had to leave.
- Expectations for the development of tourism activities associated with the park have apparently not been fully met, and the families are earning much less, with economic consequences, while tourism is moving to other nearby beaches where there are no regulations.
- There is an absence of analysis and social debate on issues of profit distribution, equity, gender and inter-generational participation.
- At this time there are no opportunities for local participation in the MPA's decision-making. There is no plan or strategy for dialog, consultation or decision-making.

Taken from Coope SoliDar R.L. (internal documents): *El Parque Nacional Marino Ballena y su gente: Un proceso de manejo conjunto en construcción.*

### 5. The Future

#### 5.1. Future activities planned by communities, government, and civil society, especially in relation to issues of recognition and support

Civil society has pushed for a series of constitutional reforms to change the current legal framework.

A constitutional reform to recognize Costa Rica as a free and independent, multi-ethnic and pluri-cultural democratic republic needs to be passed. Unfortunately, the current administration has taken it off the special session agenda, so it must now wait until the start of regular sessions. This reveals the government's lack of support for the reform.

The bill for the autonomous development of indigenous peoples has already been in the legislative pipeline for 12 years and is probably the most frequently consulted law in the history of this country. Its present situation is also very unfortunate, as it has not been moved up on the legislative agenda.

The displacement of coastal communities in the terrestrial maritime zone has led to the drafting of a bill of law to recognize coastal territories, the intent being to keep coastal communities that have lived for decades in the terrestrial marine zone from being evicted for not having met legal requirements – such as the filing of concession requests – established for the use of public goods. The sad part about this is that the local governments shoulder most of the blame for not having drawn up regulatory plans taking into account the rights of these zones' inhabitants so they can get their affairs in order.

TECOCOS is the common name of the Coastal Communities Territorial Draft Law, which has been proposed to solve the problem of property rights of coastal communities. This conflict has organized the coastal marine communities to face the land-grabbing problem.

Indigenous peoples continue their struggles to recover their lands and achieve recognition of their cultures and traditional knowledge in the face of a passive and silent state that contents itself with reporting ratification of Convention 169 and signing the Statement on the Rights of Indigenous Peoples.

There are opportunities, then, that have been opened up for civil society participation by force of resistance and persuasion. But they have not been followed up on or supported by the state.

#### 5.2. Recommendations

The Costa Rican state has ratified the CBD (Convention on Biological Diversity) and the Programme of Work on Protected Areas (PoWPA). There is still a commitment to recognize the different forms of governance for protected areas, despite the fact that recognition is included in the policy for protected wilderness areas.

Follow-up and support is needed for bills currently in the legislative pipeline: recognition of the Republic of Costa Rica as a multi-ethnic and pluri-cultural country; the law for the autonomous development of indigenous peoples; and the law on coastal territories.

Awareness-raising is needed for the country's legal authorities who have resolved situations in which the rights of indigenous peoples and Afro-descendant and local communities are seriously affected by applying obtuse, legalistic interpretations lacking a focus on human rights.

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Donald Rojas Maroto, National Indigenous Bureau representative, Thursday, April 12, 2012.

### **Annex 1: Brief description of each indigenous people in Costa Rica**

(Taken from: [www.travelingcostarica.com/viajes/costa\\_rica/historia.htm](http://www.travelingcostarica.com/viajes/costa_rica/historia.htm), [Last accessed April 12, 2012])

#### **Bribris**

These make up one of the most numerous indigenous peoples. They are located on the Salitre and Cabagra Indigenous Reserves in Buenos Aires County, Puntarenas Province, in the southern Pacific region, and north of the Talamanca Indigenous Reserve in the Talamanca County situated in the southern Atlantic region of Limon Province. The Bribris conserve their language, both orally and in writing. Their most important activity is agriculture, primarily cacao and plantain cultivation, although they also cultivate corn, beans and tubers. They also fish, hunt birds and raise pigs. Their artisan expression is found in the making of baskets and musical instruments, for which they use natural inputs. They move around in boats and rafts on the Sixaola River along the border with Panama.

#### **Cabecars**

The Cabecars are situated in Chirripó, the Pacuare Valley, the Estrella River Valley and the Talamanca Reserve located in the Atlantic region in Limon Province, although they also live in Ujarrás in Buenos Aires. This is one of the indigenous groups with the most intact cultural identity; though speaking both Cabecar and Spanish, they manage to conserve many of their own customs and traditions. Basically, they grow grains, coffee, cacao and plantains, supplementing this by fishing and hunting.

#### **Ngäbe**

The Ngäbe indigenous group is very large, originating more than 50 years ago from migrations out of Panama. There is a Ngäbe community in Abrojos in Corredores County, another in Conteburica in Golfito County, and a third in Coto Brus in Coto Brus County – all in the province of Puntarenas. The Ngäbes, particularly the women, conserve their physical features and traits, customs, dress and traditions. Their language is Ngäbere, but some of their chiefs and leaders also speak Spanish, for which a literacy program has been launched. The Ngäbes raise cacao, rice, beans, corn, hearts of palm and plantains. They combine agriculture with hunting, fishing, and pig and poultry farming. Their artisanry is especially noted for articles made with natural fibers, which they stain with tinctures and plant dyes, emphasizing the color black. They also make straw mats, string bags and hats from the barks of certain trees; their hand-made, highly-colored typical dresses are representative of their culture.

#### **Guatusos or Malekus**

This is one of the smallest indigenous groups, located in the country's northern plains in San Rafael de Guatuso County in the province of Alajuela. They conserve their physical features and cultural expressions, speaking both Maleku Jaika and Spanish; given the importance of preserving their language, their schooling is bilingual. They live in three settlements: El Palenque Margarita, Tonjibe and El Sol. Their main agricultural activity is the cultivation of cacao, peach-palms and hearts of palm, but they are also river fishers. Their artisanry consists of indigenous figurines, pottery, balsa-wood articles and wooden bows and arrows.

#### **Borucas or Bruncas**

This indigenous group, located in the Boruca Indigenous Reserve, consists of various communities – Boruca Center, Rey Curré (on the southern Pan-American Highway), Changuena, Maíz and Bijagual – all in Buenos Aires County. They preserve very little of their



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ethnos and their indigenous language has disappeared despite the University of Costa Rica's efforts to preserve it. They have a farming economy, raising basic grains, pigs and cattle. Their artisanry is expressed in textiles, where they start by planting cotton and preparing and applying plant dyes, and culminate the process by producing attractive, high quality articles. They also have their own style for engraving gourds. One of their most important and widely known cultural manifestations is the "Dance of the Little Devils", performed every year on December 31.

### **Térrabas**

At present the Térrabas constitute a very small group located on the Boruca-Térraba Reserve in Buenos Aires County. They have felt the effect of agricultural colonization; their settlement is primarily inhabited by non-indigenous farmers, with whom they have assimilated a non-native rural lifestyle. They have lost their indigenous language, but not their cultural identity. They cultivate corn, beans, rice, plantains and citrus fruit.

### **Huetars**

A small Huetar group that has been able to survive to present time is located in the highlands of the Quitirrisí Indigenous Reserve on the highway between the Counties of Mora and Puriscal. Another Huetar settlement can be found in Zapatón in Puriscal County, also in the province of San José. Scattered families can also be found in the Cerrito area of Quepos and neighboring areas. They have preserved very little of their culture and physical features, although they still maintain certain traditions such as the Corn Festival and the use of medicinal plants. They almost exclusively grow corn due to their poor soils, which are not very suited to agriculture. Their main economic activity is making palm, grass and plant fiber handicrafts; they are experts at using plant dyes for staining fibers. They also produce pottery, which they sell at fairs and in their own stands set up along the roadside. Nowadays the Huetars speak Spanish.

### **Chorotegas**

The Chorotegas have been reduced to a small settlement on the Matambú Indigenous Reserve in Hojancha County, Guanacaste Province. This is another example of the influence of a rural farm lifestyle. They have lost their language and speak only Spanish, though some maintain their physical features. They work as farmers, cultivating basic grains, fruits and vegetables, and they also keep honeybees. They preserve their ethnic identity and protect their customs and traditions, such as the making of clay pottery pots, producing beautiful earthen jars and figurines. There are also some Chorotegas living in San Vicente, Guaytil, Santa Bárbara and other areas throughout Guanacaste.

### **Miskitos and Sumus**

Although there are still no studies or ethnographic references regarding these indigenous groups, several Miskito and Sumu families have been living for hundreds of years along the country's Atlantic coast, in Barra del Colorado, Tortuguero and Parismina, for example. Their lifestyle is semi-nomadic; they live basically from fishing, planting only small plots of rice and tubers. They preserve the Sumu or Miskito language, customs and food habits, along with wealth of Afro-Caribbean cultural traditions.

### **Teribes**

Several Teribe families from Panama have been living on the country's southern border in the Yorkín and Sixaola area. They inhabit mountainous areas, fishing and hunting and cultivating grains; they still preserve the Teribe language, some customs and their own stories.