Title
The Ngäbe-Buglé Fight to Maintain Territorial Sovereignty

Permalink
https://escholarship.org/uc/item/9qf03131

Author
Bivin Ford, Sara Elizabeth

Publication Date
2015

Peer reviewed|Thesis/dissertation
UNIVERSITY OF CALIFORNIA SAN DIEGO

The Ngäbe-Buglé Fight to Maintain Territorial Sovereignty

A thesis submitted in partial satisfaction of the requirements for the degree of Masters of Arts

in

Latin American Studies

By Sara Elizabeth Bivin Ford

Committee in Charge:

Professor Leon Zamosc, Chair
Professor Richard Feinberg
Professor Christine Hunefeldt
Professor Nancy Postero

2015
The Thesis of Sara Elizabeth Bivin Ford is approved and it is acceptable in quality and form for publication on microfilm and electronically:

________________________________________________________________________
________________________________________________________________________
________________________________________________________________________
________________________________________
________________________________
Chair

University of California, San Diego

2015
# TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Signature Page</td>
<td>iii</td>
</tr>
<tr>
<td>Table of Contents</td>
<td>iv</td>
</tr>
<tr>
<td>List of Abbreviations</td>
<td>v</td>
</tr>
<tr>
<td>List of Figures</td>
<td>vi</td>
</tr>
<tr>
<td>Acknowledgements</td>
<td>vii</td>
</tr>
<tr>
<td>Abstract of Thesis</td>
<td>ix</td>
</tr>
<tr>
<td>Introduction</td>
<td>1</td>
</tr>
<tr>
<td>Chapter 1</td>
<td>14</td>
</tr>
<tr>
<td>Chapter 2</td>
<td>41</td>
</tr>
<tr>
<td>Chapter 3</td>
<td>51</td>
</tr>
<tr>
<td>Chapter 4</td>
<td>80</td>
</tr>
<tr>
<td>Conclusion</td>
<td>99</td>
</tr>
<tr>
<td>Appendix</td>
<td>113</td>
</tr>
<tr>
<td>References</td>
<td>118</td>
</tr>
</tbody>
</table>
LIST OF FIGURES

Figure 1: Roadblock on the Path to Barro Blanco ........................................... 13
Figure 2.1: Timeline: History of Indigenous Comarcas in Panama ................. 25
Figure 2.2: Map of Ngäbe-Buglé Comarca .................................................. 39
Figure 2.3: Ngäbe-Buglé Protestors Block the Pan-American Highway ............ 40
Figure 2.4: Anti-mining Graffiti in Panama City, Panama .......................... 40
Figure 3: Current and Planned Hydroelectric Dams in Panama ..................... 54
ACKNOWLEDGMENTS

This thesis would not have been possible without the amazing amount of support I received both at UCSD and when in Panama. First and foremost, my advisors: Nancy Postero, Christine Hunefeldt, Richard Feinberg and Leon Zamosc. Thank you for listening to my ideas, giving me a sense of direction, challenging me and putting up with my random office visits to go over things! My LAS classmates: Christa, Megan, Claudia, Eli, Vero and Daniel. In Panama, I wouldn’t have been able to complete my research without the help of Osvaldo Jordan and Francisco Herrera. Thank you so much for all of your contacts and sharing your knowledge with me. To those living in Kiad who hosted me: Weni Bagama, Goijet Miranda and their families, and my amazing guide: Mechi Cri. To those that met with me in the city: Caciqua Silvia Carrera and Diputado Ausencio Palacios. Thank you for sharing your stories and lives with me, I hope that I have done them justice. Last but not least, my family and all of the support they have shown me that has gotten me to where I am today.
ABSTRACT OF THE THESIS

The Ngäbe-Buglé Fight to Maintain Territorial Sovereignty

by

Sara Elizabeth Bivin Ford

Master of Arts in Latin American Studies
University of California, San Diego

Professor Leon Zamosc, Chair

The Ngäbe-Buglé Comarca was created in 1997, granting the Ngäbe and Buglé people territorial autonomy. Since its creation, however, they have fought against the government and foreign multinationals to maintain this territorial autonomy. This thesis will recount the many obstacles the Ngäbe-Buglé overcame in order to establish their Comarca, as well as their recent struggles to gain control over the resources within this
territory. Most recently, the Ngäbe have been battling the encroachment of the Barro Blanco hydroelectric project into a portion of their territory. They have employed various methods of resistance, including road blockades, sit-ins and direct dialogue with Panamanian government representatives. Their struggle, and that of indigenous peoples in Panama as a whole for greater recognition, will be analyzed through the lens of the Indian Question. Finally, a look at what development means for the Comarca as a whole will be explored, as well as where both the Panamanian State and the Ngäbe-Buglé can go from here.
Introduction

Panama is faced with a series of issues related to the enforcement and protection of the rights of indigenous peoples, particularly in connection with their lands and natural resources, the implementation of large-scale investment projects, self-governance and participation, and social and economic rights, including their rights to economic development, education and health.¹

The two things I remember most as a child from growing up with the Guaymí, as they were known back then, were that their chickens slept in the trees and that we would tie string to bumble bees for fun. My mother would take us kids out at sunset after our showers to watch as the neighbors would shoo their chickens up the planks they connected to the trees, so that they could roost by night time. I was always scared of the bumblebees, so I never tied one to a string myself, but they were great fun to play with. Life was simple. We walked everywhere, had a simple wardrobe, got water from the well and washed our laundry in the stream; and life was good. I also remember walking to a deserted area, where no grass was growing, the red clay soil like an open wound in the earth. There were abandoned washing machines and refrigerators. Who had been here, I wondered? I was too young to understand at the time. I would later find out that this was the abandoned copper mine, Cerro Colorado, which had been abandoned when copper prices plummeted in the 1980s. I would later find out that this was one of the things that spurred the Guaymí, who joined forces with the Buglé, to fight for the creation of their own Comarca: the Ngabe-Buglé Comarca.

The Ngäbe-Buglé Comarca is home to two indigenous groups that occupy the mountainous area of Western Panama, including areas in the provinces of

Veraguas, Chiriquí and Bocas del Toro. Indigenous peoples (or Amerindians) comprise around 12.3% of the Panamanian population. The Ngäbe are the largest indigenous group with a population of 260,058 and the Buglé are the fourth largest with a population of 24,912. As is the case throughout the rest of Latin America and the world, the Ngäbe-Buglé have struggled since colonial times to protect their territory from outsiders in order to preserve their way of life. On March 7, 1997, after nearly a decade of negotiation with the government, they were finally granted the semi-autonomous territory that they occupy today. However, until 2012, they still lacked the rights to the mineral and water resources within their territory, which caused major conflict between the Ngäbe-Buglé, the Panamanian government, and the foreign multinational corporations (MNCs) that wished to exploit the mineral and hydro resources within their territory. The Ngäbe-Buglé have been fighting these projects for over 30 years through protests both near their territory and in Panama City, negotiations with the government, and through the help of NGO’s and UN agencies.

The issues of mining and hydroelectric projects are not singular to the Ngäbe-Buglé. In the past 15 years, as the price of copper has risen on the world market, and Panama’s economic boom has created a greater demand for electricity, these issues have become important to the nation in general. Although the Panama Canal is a source of pride for Panama, many are resistant to more mega-projects that are destructive to Panama’s natural environment and biodiversity, especially since many are within the Mesoamerican Biological Corridor (MBC). Mining projects such as Petaquilla Gold and Minera Panama have met similar opposition, as have hydroelectric projects in areas

---

2 Anaya, James. Page 5.
outside of indigenous comaracas, in spite of the promised economic benefits these projects will bring. Environmental NGOs such as the Environmental Advocacy Center (CIAM) have formed in order to assess the situation and fight for the rights of both the environment and those living in areas surrounding these proposed projects.

Environmental history of Panama

Panama does not have a strong history of environmental protection. For starters, the country was cut in half and a trench was dug from the Atlantic to the Pacific, in a time when environmental impact was not a factor to weigh when considering the viability of a project. The National Environmental Authority (Autoridad Nacional de Ambiente – ANAM) was not created until 1998, through Ley 41 (Ley General del Ambiente) and only recently, in March 2015, did it become the Ministry of Environment through the modification of Ley 41. President Varela tweeted that “the creation of the Ministry of Environment represents the guarantee that the issue of the environment will be incorporated into all State decisions.”[^3] This is a huge step forward for environmentalists and indigenous peoples alike. However, there is still so much work to be done. Although the requirement of an Environmental Impact Assessment (EIA) has been in place since 1998 (Ley 41), the system for evaluation is flawed. According to several sources, ANAM is not fully trained in assessing the EIAs that companies produce, many of which are incomplete or that would not hold up in nations where EIA standards are much stricter. This has led to a plethora of problems, including indigenous peoples filing lawsuits for not following international regulations, such as prior consultation, or pollution caused by

[^3]: Ohigginis Arcia, Cinthia Almanza. “Presidente Varela sanciona ley que crea el Ministerio de Ambiente.”
projects due to mismanagement. Essentially, while making ANAM the Ministry of Environment is a great start, there is still so much work to be done.

*Indigenous Rights and Citizenship*

Since the colonization of the Americas, indigenous peoples have been marginalized in the societies and nations created throughout the continent. Their land was taken, their populations decreased astronomically due to violence and disease. For centuries, indigenous peoples’ plight went unheard. However, in the past 60 years, there have been great advances made with regards to the recognition and establishment of indigenous peoples’ rights. The International Labor Organization (ILO) was the first to address indigenous issues, dating back to 1957, when Convention 107 on the protection of indigenous, tribal and semi-tribal populations was adopted.

ILO Convention 107 adopted an “integrationist” approach aiming to assimilate indigenous peoples into national society, an agenda that subsequently came under heavy criticism. In 1989, this convention was revised, emerging as ILO Convention 169 concerning Indigenous and Tribal Peoples in Independent Countries. Currently, ILO 169 is the only binding instrument that specifically refers to the need to protect the rights of indigenous peoples.4

In 1997, the UN Inter-American Commission on Human Rights approved the UN Declaration on the Rights of Indigenous Peoples. This document calls for the right to self-determination, and “urge[s] governments to acknowledge indigenous peoples’ right of ownership over their traditional lands and the natural resources obtained from their lands so as to protect the economic, political, and spiritual interests of indigenous

peoples.”⁵ Within the UN Declaration is the Principle of Free, Prior and Informed Consent, which “requires States to consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them (article 19).⁶ This includes any activity that may affect their territory, whether it is by the government or MNCs. It is the responsibility of the government to ensure that MNCs are complying with this principle within their territory.

Where does Panama stand in relation to these international conventions and decrees? Unfortunately, it has not yet ratified ILO Convention 169, in spite of requests to do so by indigenous leaders, as well as the Special Rapporteur on the Rights of Indigenous Peoples, James Anaya. According to Anaya’s 2014 report,

The [Panamanian] Government has taken some decisive steps towards ratification, including the establishment of an inter-institutional working group on ILO Convention no. 169 in 2010. The working group, composed of a number of different government agencies, prepared a report in which it analysed the historical, social, legal and political reasons why Panama should ratify ILO Convention no. 169 and stated that it had not found any disadvantages associated with its ratification…However, the Government has since notified the Ombudsman’s Office that it will not ratify ILO Convention No. 169 for constitutional, economic, political, administrative, social, legal and environmental reasons.⁷

As we will see throughout this thesis, the issue of Panama’s negligence to ratify ILO Convention No. 169 has put its indigenous peoples, especially those living outside of comarcas, in a sort of limbo.

---

⁵ Ibid, 11.
⁶ UNHCR. "Free, Prior and Informed Consent of Indigenous Peoples."
Tied to the issue of indigenous rights is the issue of citizenship. What does it mean to be a Panamanian citizen? Panama was originally inhabited by its indigenous populations, was conquered by the Spaniards, then existed as part of Colombia. Its reputation as being the “crossroads of the world” is reflected in its diverse population. Thanks to the construction of the canal, Panama became populated by not only American and French people, but by those brought to work on the construction: West Indians and African slaves, as well as Chinese people. These communities are still alive and well today. Panama also has large Jewish, Indian (from India) and Arab populations, as well as a great European presence, evidenced by the plethora of schools available in the capital to serve these enclaves: the Greek school, French school, Chino-Panameño (Centro Cultural Chino Panameño), and a host of international schools. “The Cantonese Chinese, Hindustani, Jewish and Arabian communities are numerically significant.”

From the region, there are large Colombian and Venezuelan populations, that immigrated more so in the 1980’s-1990’s (Colombian) and 2000’s (Venezuelan) due to crises in their countries. Many of these peoples are now 3rd and 4th generation, and consider themselves Panamanian, while also adhering to their ancestors’ identities. One can become a Panamanian citizen by living in the country for five years, and taking a citizenship test. One can become a resident by purchasing multiple properties and setting up a bank account. However, where do Panama’s indigenous people fit into this puzzle?

According to the Ciudad de Saber website on Panama’s population, “Regardless of the judgments of visible heritage (phenotype), it is almost impossible to deny the

---

8 Ciudad de Saber. “Panama Population.”
presence of Indians, with 39.7% genetic contribution.”9 What Arias is referring to is the genetic contribution to the Mestizo population, which makes up 65% of the nation’s total population.10 However, the 12.3% of the population that is full-blooded Indian, are still marginalized and at the lowest end of the socio-economic ladder. Public education and health services are still very understaffed and underfunded in rural regions of Panama, where the majority of the indigenous people live. This was pointed out in several different interviews, with respect to the development projects that the government wants to develop within the Ngäbe-Buglé territory. They wanted to know, if the government needs these megaprojects in order to continue the economy’s growth, even though the economy is booming, why are they not seeing the fruits of any of this economic growth? In their eyes, so much is invested in infrastructure projects in Panama City, yet they are still without the sufficient number or schools, teachers or health centers.

One of the biggest issues the Ngäbe-Buglé are having, within and outside of the comarca, is their right to property. The creation of the Comarca established the right to communal property in the name of the indigenous tribe. But what of those outside the comarca? Are they not still entitled to the rights of all Panamanian citizens with regards to property? And shouldn’t those living within the comarca have their right to property, as well as that established by comarcal law, respected? Title III of the Panamanian Constitution established in 1972 lists the rights of all Panamanian citizens. Of note within this extensive list is Article 50, on protection of expropriation: “when the application of the law enacted for reasons of public benefit or social interest results in a conflict

9 Ibid. Quoted from Arias, Tomas. Panamá, un país indígena mestizado, Caminos de Maiz, 2003).
10 CIA World Factbook. “Panama.”
between private rights and the need recognized by the law itself, private interest must yield to the public or social interest.” However, as we will see in the case study of Barro Blanco, along with the Chan 75 hydroelectric project, Article 50 has not been upheld in the past several decades. Thus, not only are their rights as indigenous peoples being violated, but their rights as Panamanian citizens as well. The idea that indigenous peoples living within Panama are still considered “less than,” is clearly illustrated through the government’s treatment of them.

The 1972 Constitution and Indigenous Peoples

The 1972 Constitution does address indigenous peoples in several articles. It was the work of the Torrijos administration that allowed indigenous peoples to be included to such an extent. Chapter IV on National Culture contains two articles regarding indigenous peoples: Article 88, which states that it will promote bilingual literacy in indigenous communities, and Article 90 which “recognizes and respects the ethnic identity of national indigenous communities, and shall establish programs to develop the material, social and spiritual values of each of their cultures. It shall establish an institution for the study, preservation and publication of these cultures and their languages, and for promotion of full development of said human groups.” The Constitution makes further promises with regards to Education (Chapter V) in Article 108: “The State shall develop programs of education and promotion for indigenous groups which possess their own cultural mores, in order to ensure their active

---

12 Ibid.
participation in public life.”¹³ Then in Chapter 8, on the Agrarian System, it establishes that “The State shall give special attention to indigenous farming communities, with the purpose of promoting their economic, social, and political participation in the national life.”¹⁴ The final article which refers to indigenous peoples is Article 127 which sets up the comarca laws: “The State guarantees to indigenous communities the reservation of necessary lands and collective ownership thereof, to ensure their economic and social well-being. Procedures to be followed for obtaining this purpose, and the definition of boundaries within which private appropriation of land is prohibited, shall be regulated by law.”¹⁵ These are all of the laws regarding indigenous “special” rights outside of the ordinary rights of citizens within Panama.

Research Methods

In order to fully understand the situation of the Ngäbe-Buglé people as it stands today, I travelled to Panama City, Panama in June 2014. I began my fieldwork at the end of that month, contacting as many people I could and networking out from there. I had originally planned on writing about indigenous territorial rights in Panama, focusing on the Ngäbe-Buglé. After speaking with several contacts, I was told I had to check out the Barro Blanco situation, which I had been aware of thanks to social media and the news. I found a guide, and made my way into the small town of Kiad, where I stayed with the residents so that they could tell me their story and show me the area. I met with Weni Bagama, Goijet Miranda and their families. They are both members of the Movimiento

¹³ Ibid.
¹⁴ Ibid.
¹⁵ Ibid.
10 de Abril, Tabasará Libre (M-10), which is a peasant-indigenous movement that began in 1999 to fight against the installment of hydroelectric dams on the Tabasará River. After a full day of interviews, we set out the next day to cross the Tabasará River several times as it snaked towards the Pan-American Highway. After several hours we arrived at the camp set up on the border of Ngäbe-Buglé territory, with the Barro Blanco dam in sight. Along the way, the roads the company had previously constructed were now abandoned due to the amount of rocks and branches the surrounding peoples had lain across them to deny access (Figure 1). I spoke to those living at the camp about their experience there, why they were there and about the recent clashes with police in May. I then hiked back out by walking through the project and exiting on the Pan-American Highway.

I then followed the lead of Dr. Osvaldo Jordan, and went to Bocas del Toro to speak with Ngäbe living outside the comarca and fighting to keep the territory their family had lived on for generations. The culprits in this area were tourism ventures and another hydroelectric dam. The hydroelectric dam had already been completed, the land already lost. However, my main contact there, Feliciano Palacios, was in the heat of a battle with an American man who had purchased Palacios’ land from the government, not from Palacios, and Palacios was refusing to move his family. His is just one such story I heard from residents that came from surrounding islands to tell me their stories. I also traveled into Changuinola to hear from Ngäbe bananeros and union leaders; to talk to them about the 2011 protests and the role of Ngäbes in the areas’ syndicates. Many of their family members had also been affected by the construction of Chan-75. In contrast with those living within the comarca, all of those I interviewed in Bocas del Toro were
not living the traditional Ngäbe lifestyle. They were lawyers and union leaders and businessmen. They had integrated into Panamanian society, yet they all agreed that their heart is still Ngäbe, they all have family within the comarca, and wish that the areas in which they live had been included in the comarcal Law of 1997.

After several days in Bocas del Toro, I returned to Panama City, where I continued my research. I frequented the Smithsonian Tropical Institute (STRI) Library, which contained numerous helpful archives of students’ dissertations and the work of Jesuit priest Philip Young. I also spent my days at the Panamanian National Library, where I poured over news archives, magazines, scholarly publications, company reports – anything I could get my hands on that was related to the Ngäbe-Buglé, their culture and history. I was also fortunate enough to carry out several interviews with academics whom have published work on the Ngäbe-Buglé: Francisco Hererra, Osvaldo Jordan and Jorge Sarsaneda, from whom I gained so much more insight and understanding. To cover all of my bases I also met with lawyers from the Environmental Advocacy Center (CIAM), with Daniel Esquivel, Technical and Environmental Director at the Mining Chamber of Commerce, and Ausencio Palacios, a representative of the Comarca in Panama’s legislative body. I left Panama with a 60 pound carry-on full of photocopies and an entirely new understanding of what the Ngäbe-Buglé are facing in Panama today.

In Chapter one, this thesis will explore who the Ngäbe-Buglé are, how they have gotten to where they are today, and what obstacles they still face. Chapter two will address the 2011-2012 protests and what the Ngäbe-Buglé achieved through these protests: Ley 11. Chapter three will explore the Barro Blanco hydroelectric project and surrounding events as a case study for the current status of the Ngäbe-Buglé’s territorial
rights when faced the government’s neoliberal development model, foreign investors and MNCs. Is this style of development inevitable? Is their fight a worthy cause and their voice one that will be both heard and respected? In Chapter four, the Ngäbe-Buglé’s situation will then be analyzed through the lens of the Indian Question, as defined by Nancy Postero and Leon Zamosc in *The Struggle for Indigenous Rights in Latin America* as well as Gerardo Otero’s “The "Indian Question" in Latin America: Class, State, and Ethnic Identity Construction.” I will conclude with analysis of where both the Ngäbe-Buglé and the Panamanian State can go from here.
Figure 1: Roadblock on the path to Barro Blanco
Chapter 1

History of the Ngäbe-Buglé and the establishment of the Comarca

Who are the Ngäbe-Buglé?

According to a 2000 survey, the Ngäbe represent 64% of the indigenous population in Panama, while the Bugle represent a mere 2%.\(^\text{16}\) It is thought that the Ngäbe “are probably descended from groups who fled from the devastating Spanish conquest of the more accessible and desirable coastal areas of Panama.”\(^\text{17}\) They have thus been able to largely preserve their way of life due to isolation. “Contact with the outside world…was infrequent and sporadic well into this century…[thus] they have managed to preserve their language and many of their customs and to maintain a very distinct cultural identity.”\(^\text{18}\) Their territory is mountainous and rugged, spanning the continental divide. While it is known that the Ngäbe were present in the area since before the arrival of Europeans in the fifteenth century, not much is known about ancient Ngäbe culture. “We have scarce references about the Ngäbe before the XVII century, and archival research has been minimal.”\(^\text{19}\) When compared to the plethora of literature that has been published on larger indigenous groups within Latin America, the amount of literature that has been published on the Ngäbe is scant. What has been published is mainly from foreigners who traveled to the region, either as anthropologists, Jesuit priests or sociologists.

In terms of political and social organization, they traditionally “live in very small villages called caserios which seldom include more than five to ten houses.”\(^\text{20}\) Families

---

\(^{16}\) Turner, Anayansi. Page 66.
\(^{17}\) Bort, John. Page 121.
\(^{18}\) Ibid. Pages 121-122.
\(^{20}\) Ibid. Page 124.
related to one another occupy the houses in each small village. “Kin groups…are the organizational basis of Ngäbe society. Kin groups regulate the behavior of their members; individuals look to their kin to provide moral, social, and economic support and assistance. Kin groups control access to land.”

Traditionally, there is no head of the Ngäbe-Bugle. Within their kin groups, leaders emerged through traditional gatherings called *balserias*, during which there were competitions among the men.

The *Mama Chi* or *Mama Tata Religion*

Of note within Ngäbe history and understanding their quest for political autonomy is a brief period (1961-1970) during which the *Mama Chi* or *Mama Tata* religion was created, peaked, and then metamorphosed through changes in leadership. The *Mama Chi* movement was “nativism as a demand for political autonomy.” As will be explored in the next section, the Guaymí entered a time of economic and social hardship due to changing Panamanian legislation with respect to unionization and land reform. As Chris Gjording points out in his article, “Trajectory of a Religion: The *Mama Chi* Movement among the Guaymí and its Social Consequences,” the economic hardship experienced at this time is crucial to the success of the religion. One of the members of Kiad, one of the communities affected by the Barro Blanco hydroelectric project and a devout follower of the *Mama Tata* religion, as it is now called, related a similar origin story to that presented by Gjording:

> A young Guaymí woman in the San Lorenzo district in September 1961…announced that she had seen two celestial bodies: the Virgin Mary

---

21 Ibid.
22 Herrera, Francisco. Page 51.
and her husband, Jesus Christ, according to one version of the events. These people appeared from the depths of the Fonseca River (according to one version; according to another they came down from the heavens in a chariot) and gave her a message for the Guaymí people, which, if followed, could rapidly bring their salvation in this world and a solution for their problems. The woman became known as Mama Chi, mama Chiquita, and continued as the movement’s main prophet until she died towards the end of 1964.23

The message was shared with the Guaymí, but it was prohibited to share it with outsiders. The message was essentially that a new era was coming in 1966 (five years time) and it would be bring the Guaymí great wealth and prosperity, unless they were not dedicated to the religion, in which case catastrophe would befall them. Mama Chi’s message spread like wildfire throughout the Guaymí population.

What did it mean to follow the message of Mama Chi? “The teachings of Mama Chi included, apart from the prophecy, orders with respect to relations with the outside world, the prohibition of certain traditional customs, the prescription for religious behavior and ethics of individual behavior.”24 First and foremost was complete withdrawal from relations with the outside world, which was partially followed by devotees. Why? “Latinos were seen as responsible for all of the evil and misfortune in Guaymi society, and withdrawal from contact with them was the way to avoid it…drastic changes in Latino-Guaymi relations were seen as the means to obtaining a more satisfying life. These orders attempted to carry out a return to a former, more agreeable time – a golden past.”25 Some of the decrees included: to stop registering births or deaths with the government; get rid of their “cédulas,” or government issued IDs; all children attending schools outside of indigenous territory or public schools within indigenous

23 Gjording, Chris. Pages 52-53.
25 Ibid. Page 56.
territory were to withdraw their children immediately (75% absence was reported in the 1963-64 school year); stop going into towns outside of the Comarca to avoid further corruption by Latino culture; completely stop buying and selling from Latinos. The latter were impossible to fulfill completely, however contact with the outside world was frowned upon.

With regards to traditional customs, Mama Chi banned the consumption of all alcohol, even that which was part of traditional ceremonies; banned “balserías,” which were large gatherings that lasted several days and included song and dance; “Chicherías” were also banned, which was an all-night party; and the Guaymi were ordered to treat one another in the “Christian” way – as brother and sister, which went against some of their cultural practices. While the balsería tradition has never been restored to its former glory, the Chicherías did resume slowly as the religion began to lose followers. Lastly, they were encouraged to be hard workers because that would bring about the prosperity prophesized in the new era. This was not much of a deviation from traditional culture, as the majority of the Guaymi are hardworking. However, these changes did deeply impact Guaymí culture. Getting rid of the balserias meant eliminating the process through which kin group leaders emerged. Instead, leaders were now forming within Mama Tata gatherings.

Mama Chi died in 1964, but the religion lived on. However, there was a change in leadership after her death that shifted its nature. Sukias, or priests, had aided the spread and leadership of the Mama Chi religion while Mama Chi was alive. Once she died, they lost much of their power to a rising group of young men that had been educated and

---

26 Ibid. Pages 56-57.
worked outside the Comarca, whom became known as “lo tudiantes” – the students. Under their leadership, the direction of the religion deviated towards the political. They preached about political autonomy and achieving it by working within the system. Their idea of a new era was more practical in nature, and called on the Guaymí to fight for their autonomy. This “separatist movement rising from the Mama-Chi revelation…became politically explicit when the “students” declared an independent republic in 1965.”

However, in this time period, most of the Guaymí saw this struggle for autonomy as futile.

1966, the year Mama Chi had prophesied a new era would begin, came and went without any supernatural event or establishment of a Comarca, nor did any great disaster befall the Guaymí people. “Effectively, everything remained as it was (if not worse economically).” The number of devotees began dwindling. In 1970, leadership reverted back to the Sukias amongst those that remained faithful. The direction returned to focusing on supernatural intervention and the Sukias continued preaching and prophesying about the great wealth that would come to those devoted to the religion, however this time they gave no definite date for this to occur. Gjording reports, however, that by the time he returned in 1972 (after having left in 1970) to continue his work and research among the Guaymí people, he “was surprised to find that the movement had practically disappeared.”

Osvaldo Jordan discussed this claim with Young, and the two came to the conclusion that perhaps the number of Mama Tata followers had merely

29 Ibid. Page 69.
dwindled in the area in which Young was conducting his research, since there is still a significant portion of the Ngäbe population that adheres to the Mama Tata faith today.

Gjording attributes three main causes of the downfall of the Mama Chi religion: the failed entering of a new era in 1966 as prophesied by Mama Chi, the change in leadership in 1964 and its new political orientation, and lastly, the final reverting in leadership back to the Sukias whom provided no concrete date for their prophesies. However, the social implications of the rise and fall of this religion are extremely important to the events that followed in the next few decades, especially in regards to a shift in the Guaymís’ views of themselves and the “outside world.”

According to Gjording, there are four major social effects the movement had. First, “the movement stimulated a sense of ethnic identity…[which] in turn promoted a more positive sense of personal value and also contributed to the diminishing of the degree of perceived deprivation.”

Essentially, it gave the Guaymí a greater sense of self-worth. Instead of forming their perception of personal and cultural value in comparison with the “outside world,” which led them to perceive themselves as being personally and culturally deprived, they formed it by making comparisons from within their own culture and community. Second, and in spite of Mama Chi’s order to take all of the Guaymí children out of outside schools, there developed throughout the lifespan of the movement, “a conscious, intense recognition of the positive value of education to be able to accommodate oneself to the changes that were being caused by the process of modernization.”

Although adherents to the religion today do not all send their children

---

30 Ibid. Page 72.
31 Ibid. Page 72.
to government schools, many of them are taught within their own schools, as was such in the community of Kiad.

The last two social effects are those that had the most profound impact on the future generations’ relentless quest for political autonomy and further development of the Comarca into what it is today. The third effect is that “the movement promoted a much more intense consciousness of the degree of dependence the Guaymí had on the outside world and that they were not controlling their own economic destiny.”

They began seeking government assistance for community development, establishing economic cooperatives and small businesses, and improving their political presence within the system. “Fourth, and last, the emphasis on political autonomy during one phase of the movement, although many then saw the task as futile, apparently promoted awareness of the possibility of using political means to achieve desired socioeconomic goals. To put it more simply, more Guaymís became politicized.” This last social effect leads to the next topic: how the Guaymí, or Ngäbe, managed to achieve territorial autonomy, a notion that, prior to this movement, was seen as an impossibility.

**Comarcas: from assimilation to integration**

Panama has an advanced legal framework for the promotion of the rights of indigenous peoples. In particular, the system of indigenous regions (*comarcas*) provides considerable protection for indigenous rights, especially in terms of land and territory, participation and self-governance, and health and education. National laws and programmes on indigenous affairs provide a vital foundation on which to continue building upon and strengthening the rights of indigenous peoples in Panama. However, the Special Rapporteur [UNHRC] notes that this foundation is fragile and unstable in many regards.

---

32 Ibid. Page 73.
33 Ibid. Page 73.
34 Anaya, James. Page 1.
Panamanian land usage and distribution has been dictated by shifting power regimes, the local elite and their companies involved in endeavors such as livestock and mining, and heavily influenced by foreigners, whether it be the US government or MNCs, such as the United Fruit Company. Panama’s indigenous peoples existed in the shadows for centuries since they were so far removed from Panama City. “Because the indigenous peoples have been, until the past two decades [written in 1995], geographically isolated from the national society, they have remained very independent.”35 With the expansion of the Pan-American Highway, growing campesino and indigenous populations began to migrate in search of more territory, and as a consequence, contact between the indigenous people and Panamanian society increased and the Panamanian government was made more aware of their presence.

The first indigenous group to rebel was the Kunas, located in the San Blas region on the northwest coast of Panama, stretching to the Colombian border. The reason they rebelled was due to the assimilationist policies and actions of the government. “From 1919 to 1925, the government imposed a policy of pacification and forced acculturation…Conservatives resisted, as did the rest of San Blas.”36 In 1925, Panama “first adopted the system of indigenous “reservations,” more than anything in response to a brief Kuna rebellion”37 that year. This system was a concept copied from the U.S. reservation model.38 After a long period of fighting and negotiation, the Kuna were conceded the territory that is now the San Blas Comarca through the passage of Ley 2 on

35 Herlihy, Peter. Page 78.
37 Herlihy, Peter. Page 81.
38 Herrera, Francisco. Page 50.
September 16, 1938. It was the first territory in Panama to be called a comarca. The Kuna government was not set up, however, until the passage of Ley 16 on February 19, 1953, which established the cacique system as the recognized administrative and legal system for the Comarca. The other indigenous groups would later adopt the cacique system once they received their own comarcas.

The Panamanian government kept expanding indigenous rights and government offices dealing with the indigenous question over the next couple of decades. In 1952, Ley 18 created the Department of Indigenous Affairs within the Ministry of Government and Justice. Its role was to “promulgate the rights of the indigenous groups defined in the 1946 Constitution, which demanded the effective integration of the indigenous cultures into national society.”39 In 1956, the first Panamanian Indigenous Congress was held in Panama City, which sought to discuss the legal-political situation of the indigenous peoples in Panama, as well as define indigenous policy. In 1957, Ley 20 was passed which gave the Chocó indigenous group their own comarca. The following year, the National Institute for Indigenous Affairs and Social Anthropology was established by Ley 27 in order to create a separate government agency and replace the Department of Indigenous Affairs. This time period saw a boom of legislation revolving around indigenous territories and affairs, followed by stagnancy until 1983. Although most groups had their reservations and comarcas, “the reservation and comarca territory existed only on paper, not in practice (with the partial exception of the San Blas Comarca). All indigenous territories were [still] exploited and colonized by foreigners.”40

39 Herlihy, Peter. Page 82.
40 Ibid. Page 82.
Although no new legislation was passed during the Torrijos years, there was a lot of formative work that led to making the comarcas what they are today. It was General Torrijos who made a point to visit the indigenous peoples on their remote reservations. “He emphasized the need for the indigenous peoples to fight for the delimiting of their comarcas and to receive medical and educational assistance from the government.”

In 1969, the Second National Indigenous Congress was held, where indigenous leaders learned about the cacique system used by the Kuna, which they would later adopt. In 1972, a new Constitution was passed, which “gave the indigenous peoples the right to participate in the Panamanian political system and deemed their reservations necessary for their economic well-being.” This was a huge foundation for the future demarcation of comarcal territories.

Meanwhile, the Office of Indigenous Affairs in the Ministry of Government and Justice set up a committee with representatives from the Kuna, Guaymí, Emberá and Wounaan indigenous groups. The committee was further divided into three groups according to topic: (1) dealt with debating the idea of a “comarca” versus a “reservation,” and which would be best; (2) indigenous policy: structure, participation and regional variations; and (3) formulate a state plan of action in relation to the indigenous population: how to incorporate the indigenous societies into the national economy and development policy. The first committee decided

The existence of the comarcas was...indispensable as much for the indigenous peoples as for the State. For the indigenous groups, it would guarantee territorial rights, socioeconomic development and the preservation of their cultural heritage; for the State it would allow the

---

41 Ibid. Page 83.
42 Ibid. Page 84.
stabilizing of the migration patterns from rural to urban areas. The group concluded that the delimitation of the comarcas should be the responsibility of indigenous authorities in conjunction with the State. The internal administration of the territory should be managed by the indigenous peoples that live there, in accordance with their own culture and traditions. The sub commission concluded that each comarca should have its own charter (*Carta Orgánica*) that would provide a legal basis for the comarca, by establishing the rights and obligations of the communities, as well as the administrative regulations and naming of government authorities for the region.\(^\text{43}\)

The conclusions of this committee are so important, because they are the basis for how the comarcas still function today. The second committee decided all indigenous groups would adopt the cacique system of the Kunas. The last group “analyzed down to the letter the state policies on political, economic, social, cultural and educational affairs”\(^\text{44}\) to determine how these policies would affect the indigenous peoples’ culture.

General Torrijos’ government supported the committee’s conclusions, and in 1978, Torrijos announced a national plan to delimit indigenous territory. However, his sudden death in a plane crash in 1981 put a slight hold on things. Although the Emberá-Wounaan had their comarca approved in 1983, the creation of the Ngäbe-Buglé comarca took fourteen more years due to a myriad of complications. Francisco Herrera, an anthropologist at the University of Panama, writes that three historical conditions allowed for the success of the creation of the comarcas: “[1] a low national population density that facilitated the survival of the indigenous groups in marginal regions; [2] a State weak in formation under North American tutelage; [3] and a politically adaptive and opportunistic

\(^{43}\) Ibid. Page 85.
\(^{44}\) Ibid. Page 85.
elite.” Unfortunately, Herrera sees many of the rights and territorial borders granted by the comarca system as transient in the eyes of the elite.

Figure 2.1: Timeline: History of Indigenous Comarcas in Panama

History of the Ngäbe-Buglé Comarca

In the eyes of the government, the comarcas are not destined to confine the indigenous peoples like something filed away without interest. Instead of that…the comarcas represent a profound aspiration rooted in the very conception of autonomy of the indigenous groups, as a need to find a secure border, where each one of them can develop as an ethnic group, without diminishing or harming the general interests of the State. – Captain Pelujo, former indigenous official, Panamanian Defense Forces.

The Ngäbe-Buglé comarca was not approved until 1997 with the passage of Ley 10 due to the complex nature of defining its borders because of the presence of several multinational corporations (MNCs), the existence of one of the world’s largest copper deposits (Cerro Colorado) in the heart of their territory, as well as pressures from tourism and hydroelectric potential. Out of all of the indigenous groups, the Ngäbe-Buglé occupy

---

46 Herlily, Peter. Page 86.
territory closest to the Pan-American Highway. All of these conflicts still exist today, and the focus of this thesis is one such project, the Barro Blanco hydroelectric project.

Traditionally, the Guaymí, now known as the Ngäbe, occupied areas of the provinces of Veraguas, Chiriquí and Bocas del Toro, in close quarters with the Buglé people. Even before talk of a comarca began, the Ngäbe and the Bulgé were systematically being pushed further into the mountain range on the North Western coast of Panama due to territorial seizure from national livestock companies, the United Fruit Company, and migrating campesinos.

Since the middle of the twentieth century, the Guaymíes of Chiriquí Province have been faced with new trans-kin/trans-community “enemies” that challenged their traditional way of life. These included: the deterioration of resources through erosion and overworking of the land, pressures on the land from increasing population and a diminished land base, the problems created by increasing numbers of people leaving the area for seasonal or semi-permanent work outside…of this list of enemies, the most immediate for the Guaymíes was the land shortage.”

The Agrarian Reform Law passed in 1962 further exacerbated the land issue and the migration of campesinos. “The conflicts over lands between indigenous peoples and campesinos…ended in deaths and tragedy…which along with the great workers strike (1960) against the banana companies in Chiriquí and Bocas del Toro, the majority of which were Guaymí, created instability…in the indigenous area.” This unrest spurred the Mama Tata religion, as we explored previously, and the beginning of a politically oriented movement. Another factor that also greatly impacted the Guaymí at this time was the completion of the Pan-American Highway. “Both Sarsanedas and Herrera agree

47 Gjording, Chris. Pages 48-49.  
48 Ibid.
that the construction of the Pan-American Highway between Santiago (Veraguas) and David (Chiriquí) accelerated the dispossession of Ngäbe lands.”

Due to increasing encroachment of outsiders into their territory and job insecurity, by the late 1960’s, according to Herrera, “the indigenous movement already had some form of activation, and leadership was emerging. As such, in 1969, the first meeting to elect the leaders of the political structure was held in Altos de Jesus, and three caciques were chosen.” One cacique was chosen for each region, and “in turn the caciques would also be able to appoint jefes inmediatos who would have jurisdiction over a number of communities.” However, this structure was one that had been borrowed from the Kuna; it was not inherent in Guaymí culture. “The system of the caciques implanted in 1969 in many ways was built upon the pan-Ngäbe tendencies catalyzed by the Mama Tata movement.” Thus, the modern political formation of the Guaymi began. They would now be able to present a united front when confronted by outside projects wanting to gain access to their land, and in order to negotiate the creation of a comarcal law.

The 1970’s and 1980’s was a time of change and unrest within all of Panama. US-Panama relations became ever more strained. Anti-American protests in 1964 led to the killing of several students by American forces, now commemorated in a national holiday known as “Día de los Mártires.” A coup d’état overthrowing President Arnulfo Arias in 1968 led to the military rule of General Omar Torrijos, whom had a populist agenda and signed the Torrijos-Carter Treaty, transferring the Panama Canal to Panamanian hands by

---

49 Jordan, Osvaldo. Page 164.
50 Herrera, Francisco. Personal Interview.
52 Jordan, Osvaldo. 175.
the year 2000. Torrijos was followed by the oppressive regime of General Manuel Noriega, who was toppled by Operation Just Cause in December 1989.

One of the most important period for indigenous peoples in Panama was the Torrijos era. Torrijos’s regime focused on national interest and sovereignty, and sought to achieve this through the consolidation of the national state. The Torrijos-Carter Treaty was just one piece in the puzzle. At this time Panama as a whole was still largely underdeveloped, and the development of the countryside, as well as indigenous lands, were key to creating a functioning state. “According to this view, indigenous peoples…were an important element in the creation of a new sovereign Panama; and therefore, the Indians needed to be incorporated, not forcefully assimilated into the nation.”\textsuperscript{53} Torrijos demonstrated his interest in the indigenous population by attending the National Indigenous Congress in Cankintu (Ño Kribo region) in 1972. “The event marked the beginning of an enduring alliance that would transcend the life of the General.”\textsuperscript{54} However, while wanting to grant indigenous peoples control of their territory, part of Torrijos’ plans included developing mining and hydroelectric projects to fuel Panamanian development and the economy, several of which were within or would affect Ngäbe territory.

For the Ngäbe, the 1970s and 80s was a time of political formation, fighting off the Cerro Colorado Copper Mine and the Tabasará hydroelectric projects (I & II), and a prolonged negotiation for the establishment of their Comarca. In 1972, as part of the revolutionary process of the Torrijos Regime, the Panamanian government held a

\textsuperscript{53} Jordan, Osvaldo. 170.
\textsuperscript{54} Ibid. Page 171.
Constitutional Convention. Part of this process included a discussion on whether to maintain the current framework of indigenous comarcas and reserves. It was decided that “The new constitution would not eliminate the existing comarcas and reservations, but would rather include an article mandating the State to allocate the necessary lands for the survival of indigenous peoples (originally Article 117).”\textsuperscript{55} Thus, the “government assumed the responsibility of conducting direct negotiations with each of the indigenous groups to draft the legal instruments for the creation of their respective comarcas.”\textsuperscript{56} In 1978, according to Ngäbe-Bugle Congressional Representative, Ausencio Palacios, the first commission was held concerning the Changuinola hydroelectric project, and after this meeting, the commission began to work on the first draft of a proposal for a law to create the Comarca, which would affect five provinces. They aspired to such a large territory since Ngäbe-Buglé spanned that entire area.\textsuperscript{57} The vast scope territory the Ngäbe were demanding would prove to be one of the factors in delaying the approval of the comarca.

In 1979, the Ngäbe-Buglé held the first General Congress in Cankintu. General Torrijos attended this meeting and although he “reiterated his promise to create a Comarca Indigena Ngäbe-Buglé…the General surely was preoccupied with another issue of national importance – the development of the Cerro Colorado Mining Project.”\textsuperscript{58} The Cerro Colorado Mining Project was a huge undertaking that not only required the establishment of the mine, but of several hydroelectric dams needed to power the operation. “Torrijos expected to dissuade the Ngäbe to accept the construction of the

\textsuperscript{55} Jordan, Osvaldo. Page 168.
\textsuperscript{56} Ibid.
\textsuperscript{57} Palacios, Ausencio. Personal Interview.
\textsuperscript{58} Jordan, Osvaldo. Page 176.
Project in exchange [for] government services and land recognition. The Ngäbe, however...closed ranks in demanding a comarca before negotiations could be undertaken.” Whether or not Torrijos would have been able to negotiate this project with the Ngäbe in exchange for a Comarca is unknown, as he died suddenly in a plane crash on July 31, 1981. “None [of the following] politicians would communicate [as] effectively with the indigenous leaders” and Ngäbe representatives stuck to their demand for a Comarca before negotiations could commence on projects.

Throughout the 1980’s, the Ngäbe continued to organize and become stronger under the leadership of the first president of the General Congress, Julio Dixon, and with the help of religious organizations (mainly Catholic and Christian). In 1983, “the first Ngäbe-Bugle March for the Creation of a Comarca Indigena arrived to Panama City only to encounter a capital and a government bureaucracy that...had changed its tone, its approach and its style towards indigenous peoples.” Although the government was able to negotiate a comarca with the Emberá-Wounaan tribes (located in the Darién Province), “Ngäbe negotiations collapsed in 1983 after unresolvable disagreements on the continuation of the Cerro Colorado mines and the limits of the comarca in the Veraguas region.” Negotiations between the government and the Ngäbe continued throughout the rest of the 1980’s, albeit unsuccessfully. In 1986, the draft of the law to establish the Comarca was rejected by the government due to boundary issues and political division within comarcal authority. Then, at the fourth Ngäbe-Buglé General Congress, “government officials realized that the government proposal was not viable,

59 Ibid. Page 178.
60 Ibid. 179.
61 Ibid. 181.
62 Ibid. Page 182.
and consequently froze negotiations for the creation of the comarca in the midst of internal crisis of the Party and of the country.\textsuperscript{63} Comarcal authority remained divided for several years following.

According to Herrera, there were three reasons the demarcation of the Ngäbe-Buglé comarca was delayed. The first, the intention of the Ngäbe leaders to cover a territory that exceeded approximately 2,000 kilometers of what was finally agreed upon, creating opposition even from the Naso indigenous group, which was seeking its own Comarca, and from the non-indigenous Bocas del Toro inhabitants (\textit{bocatoreños}), opposed the entire process. The second was the opposition of the cattle ranchers (\textit{ganaderos}) and campesinos on the Pacific slope in the provinces of Veraguas and Chiriquí that succeeded in getting the government (supported by General Noriega) to amend articles related to the extension of territory. The third factor of opposition to the project for the comarca was the Cerro Colorado mine, in the very heart of the comarca, considered one of the largest copper reserves in the world…The death of General Torrijos in 1981, the main driver of the negotiations of territories and mining projects, opened up opportunities for greater pressure from groups opposing the passage of the comarca law.\textsuperscript{64}

There is no doubt that the Ngäbe and Buglé wondered if they would ever succeed in establishing a comarca. Fortunately, copper prices plummeted in the 1990’s, causing the Cerro Colorado project to be put on hold. However, “in 2009, the Panamanian government announced its intention to resume the plans to open the Cerro Colorado mine, and began conversations at the highest level with governments and corporations of Canada Chile, South Korea and Singapore.”\textsuperscript{65} These plans would lead to protests in 2011, which will be explored shortly.

\textsuperscript{63} Ibid. Page 185.
\textsuperscript{64} Herrera, Francisco. Page 55.
\textsuperscript{65} Studnicki-Gizbert, Daviken. "Informe de Respaldo Dirigido al Relator Especial sobre los Derechos de los Pueblos Indígenas."
The 1990s brought with it a wave of awareness of indigenous rights across the globe. 1992 was the quincentenial anniversary of the arrival of Christopher Columbus to the Americas and indigenous groups across the continent were rising to the occasion, demanding to be recognized and heard. In 1993, the United Nations declared 1995-2014 the decade of the world’s indigenous peoples, promising to find improvements for the lives of the world’s indigenous peoples. In Panama, the U.S. government was on its way out, and in the wake of the Noriega Dictatorship and Operation Just Cause, “democracy” was reestablished, and the new democratic leaders realized that they needed to compete for the indigenous vote. Ernesto Pérez Balladares won the elections in 1994, and under his leadership, the Ngäbe-Buglé comarca project was reactivated.

Aware of the heightened attention being given to indigenous movements throughout the region and in Panama, the Ngäbe-Buglé staged a march from Santiago, Veragüas to the nation’s capital in 1996. The march was spurred by the death of a Ngäbe student who was murdered “under very suspicious circumstances in the town of San Felix, where a new company, Pancobre, S.A., was trying to bring back the Cerro Colorado mine. In response, the Ngäbe organized a second march to Panama City.”

This march demonstrated the strength and unity the Ngäbe movement had achieved. “It took around fifteen days. We staged demonstrations, burned some cars and macheteamos some policemen, many of our people participated,” recalled Palacios. “This provoked the government to open a space for dialogue. Thus, we set up an inter-governmental commission for the study, analysis and discussion of a proposal for a law of the

---

66 Jordan, Osvaldo. 189.
67 Palacios, Ausencio. Personal Interview.
Comarca.” The “government presented a new proposal that reduced the limits of the Comarca even beyond the controversial bill that had been rejected in 1986.” Although former leaders were in opposition, the younger generation that formed the negotiation team realized the importance of reaching an agreement. Serious talks with the government began, resulting in the signing of Ley 10, establishing the Ngäbe-Buglé comarca, by President Ernesto Perez Balladares on March 7, 1997 in Cankintu, “the heart of the historical Ngäbe territory.”

_Ley 10 and the Ngäbe-Buglé Carta Organica_

Ley 10 details the border of the territory set aside for the comarca and establishes other administrative and legal affairs relating to its creation. Of note within Ley 10 is Chapter VI on Natural Resources, which was amended through the passage of Ley 11 in 2012. Essentially, although the territory belongs to the Ngäbe-Buglé, the government reserved the right to exploit natural resources within their territory. Article 47 states that the State is obligated to ensure adequate compensation, ensuring improved quality of life for those affected, through the transfer or relocation of populations affected by development plans or projects. In such cases, the mechanisms of consultation, communication and participation will be promoted if necessary with the district authorities and population. Article 48 allows for the exploration and exploitation of natural resources, salt, mines, waters, quarries and all types of mineral deposits for

---

68 Ibid.
70 Jordan, Osvaldo. 190.
71 See Appendix I for an outline of Ley 10.
72 Asamblea Nacional, Ley 10. Article 47.
industrial development, agriculture, tourism, mining and energy, roads and communication or other activities that benefit the country.\textsuperscript{73} The reason these articles became controversial are because, as noted previously, the Ngäbe-Buglé had rejected the Cerro Colorado mine within its territory since the 1970’s, an issue that would arise again in the early 2000s.

Although the Comarca was legally established through Ley 10, the Ngäbe-Buglé Charter (Carta Orgánica) was not established until September 7, 1999. The Carta Orgánica resembles Ley 10, and is a Constitution of sorts for the Comarca. It sets forth the legal and administrative laws foundational to the comarca. First and foremost, it declares all territory within its borders collective territory and prohibits any sort of titling or privatizing of the land. “The ‘collective ownership’ of lands is the regimen of the majority of the inhabitants of the Ngäbe-Buglé Comarca, and thus it an inalienable, indefeasible principle necessary to achieve the cultural, economic and social welfare of its population.”\textsuperscript{74} The comarca is divided into three main regions: Ñö Kribo (comprised of the Kusapín and Kakintú districts), Ñidrini (comprised of the Besiko, Mironó, and Nole Duima districts), and Kädriri, or Kodri (comprised of the Müna and Ŋürüm districts), and establishes Buäbti in the Kädriri region as the capital (See Figure 1). The districts are further divided into 57 townships (corregimientos). While the entire territory is held collectively, there is a hierarchy of authority established under the cacique system. There is a General Congress, directed by the General Cacique and a board consisting of a president, vice president and secretary. Beneath the General Congress are three Regional

\textsuperscript{73} Ibid.
\textsuperscript{74} Carta Organica Ngäbe-Buglé.
Congresses, directed by the caciques of each region. Finally, there are seven local congresses (one in each district), which are attended by representatives from the 58 townships.

The Carta Orgánica also provides information on the procedures for possible resource extraction within the Comarca. Articles 228-230 state:

228. For the development of the exploration and exploitation of natural resources in the Comarca, previous consultation and approval must be achieved, guarantying effective participation in the planning and execution, as well as the benefits for the Ngäbe-Buglé people.
229. When the General Congress has knowledge of the execution of projects that cause any sort of effect on nature and affect the physical, social and cultural environment within the area of impact, an Environmental Impact Assessment must be carried out independently of that done by the company or government.
230. The benefits obtained in the above manner will be allocated to the operation and investment of the Comarca in accordance with the development plans the General, Regional and Local Congresses provide.

The Carta Orgánica thus lays out the requirements for the development of resource extraction activities within the Comarca. These are the same requirements laid out in Chapter VI of Ley 10 on Natural Resources, which was previously discussed. One must ask how, then, if the principles of prior and informed consent are not only international norms, but also included in Panamanian Law and the Ngäbe-Buglé Charter, has no one yet met these requirements with regards to mining and hydroelectric projects affecting the Comarca? Every mining and hydroelectric project that has come within Comarcal border has been vehemently rejected and protested both by inhabitants as well as Ngäbe-Buglé living outside the territory, mainly in solidarity or due to having relatives living within Comarcal borders.
Implications of Ley 10

Después de que empezamos a tener la ley, se empezó a dividir la dirigencia.
– Ausencio Palacios, Diputado de la Comarca Ngäbe-Buglé

After nearly three decades of struggle and negotiation, Ley 10 and the establishment of the Comarca were seen by most as a huge victory. Yes, the territory was not as large as they aspired it to be, and yes, many communities were left out. However, they had achieved what they had dreamed: government recognition of their sovereignty over their territory. What then? Part of becoming a comarca meant needing government representatives, and adopting a political structure similar to that of the national government. What role would the caciques then play? Who were going to assume these roles? Ley 10 delineates the Ngäbe-Buglé Comarca, but what of those that were left living outside the border? The creation of Ley 10, while a victory, also led to a period of division, confusion and restructuring of this newly founded comarca.

One of the obstacles presented by Ley 10 was political organization. When Ley 10 was created, there were already two layers to the Ngäbe-Buglé political organization: the traditional and the congressional. The traditional consists of the three regional caciques, local caciques and jefes inmediatos. Although this system was borrowed from the Kunas and is considered “traditional,” meaning these leaders do not hold the power to make decisions. Jordan compared the role of the caciques to that of the Queen of England, in that “everyone knows the Queen represents the people, but she does not represent the power of decision.”75 The congressional layer consists of the delegates elected to the local, regional and general congresses. The President of the General

---

75 Jordan, Osvaldo. Personal Interview.
Congress is the highest position in the system. “The power of decision lies with the congresses...these are the main organisms that make decisions for the Ngäbe people.” While Ley 10 recognizes these authorities, part of becoming a legally recognized Comarca meant incorporating the structure of the Panamanian government as well. This meant the creation of legislators, governors, corregimiento representatives, etc. which exist in every province, and now the comarcas as well. As if there wasn’t already division between leaders at the congressional level, now there was an entirely new level of leaders whose role is to negotiate with the Panamanian government and represent the Comarca’s interests in the National Congress. As we will see, at times traditional leaders have stepped out and tried to assume the role of the government representatives, which has created further confusion, problems and division.

Another issue with Ley 10 was that of the “areas anexas” and communities left out of the borders drawn in 1997. The map the Ngäbe leaders proposed back in the 1980’s included a much broader scope of territory. This was what postponed the passage of the law until 1997, when the commission in charge ceded on large amounts of territory in order to get the comarca established. Within Ley 10, there are 10 areas anexas that are defined, and the Panamanian government was supposed to make a decision on their status within two years (1999). However, they have yet to rule on this issue. For those left outside of the Comarca, it made battling development projects much more difficult, especially since Panama has not ratified ILO Convention 169. This proved to be the case in the Ngäbe towns that were displaced by the building of hydroelectric dam Chan 75, as well as those affected by encroaching tourism ventures in Bocas del Toro, two issues that

---

76 Ibid.
will be explored in Chapter 3. Those left outside of the comarcal borders were not satisfied with Ley 10. However, as Jordan quoted Palacios in saying, “It wasn’t what we desired, but it was what we could achieve.”

When I spoke with Palacios, one of the members of the commission that helped write Ley 10 and get it passed, I asked him what were some things he wished they could have included, but were unable to. First and foremost, he mentioned the borders of the territory – they wanted a much larger territory, but had to settle for less. Palacios also stated that they “should have included a traditional justice tribunal so that all of the caciques, all of the authorities that commit injustices can be taken to that department and sanctioned or dismissed. That would allow other authorities to not make the same mistakes.” He gives the example of caciques that get involved in political issues, which are outside their realm of authority causing trouble and credibility issues for the Ngäbes. Palacios also noted that he wished they had created an economic council or an organism to manage the comarca’s resources, since it is the Panamanian government that currently manages the comarca’s financial resources. Lastly, he spoke about the issue of the Panamanian government having authority over the Comarca’s natural resources, “when those resources are ours.” Palacios closed on a positive note, however. “Meanwhile, to me, it was a victory of a law.”

It is precisely these issues of governability, border questions, and natural resources that brewed over the next 10 years, erupting in a new wave of protests, marches

---

77 Jordan, Osvaldo. Personal Interview.
78 Palacios, Ausencio. Personal Interview.
79 Ibid.
80 Ibid.
and the creation of a new law: la Ley 11 in 2012. The following chapter will detail and analyze the period of unrest that came after a relatively quiet decade between 2000-2010.

Figure 2.2: Map of Ngäbe-Buglé Comarca

Source: http://www.territorioindigenaygoberranza.com/pan_15.html
Figure 2.3: Ngäbe-Buglé Protestors Block the Pan-American Highway

Figure 2.4: Anti-mining Graffiti in Panama City, Panama
Chapter 2:
Protest, Police Brutality and the creation of Ley 11

Ricardo Martinelli was elected President of Panama in 2009. A businessman, Martinelli wanted to grow Panama’s already burgeoning economy, and his administration would pass a series of reforms that would lead to some of the most violent protests the country has seen since the time of Noriega. In June 2010, the Ley 30, also known as the “Ley Chorizo,” was passed, which included reforms to the union system. Protests erupted in the capital, however those that created the largest protests against this law were the bananeros (banana plantation workers), the majority of whom are Ngäbe, in the Bocas del Toro Province. The protests turned violent when National Police retaliated against the protestors. Ley Chorizo was eventually overturned due to public protest. In 2011 the Ngäbe-Buglé rose in protests against Ley 8, which modified the Mineral Resources Code. The government overturned the modifications, and conceded to negotiate. Failure to uphold its end of the bargain, the Ngäbe-Buglé took to the streets once more in 2012, which led to the creation of Ley 11. Also in 2012, protests erupted in Colón City over a Free Trade Aone land sale law. The protests quickly turned violent and spread to Panama City, ending in a particularly violent looting of part of the capital after a peaceful march to the National Assembly turned violent. Martinelli’s presidential term was the most violent since the 1980’s, and the majority of the protests were led by the Ngäbe-Buglé.

2010-2011 Decreto Ejecutivo No. 537

On June 2, 2010, President Ricardo Martinelli issued Executive Decree N. 537: “through which Executive Decree 194 of August 25, 1999, which adopted the Ngäbe-
Buglé Administrative Carta Organica, [was] modified\textsuperscript{82} by the Ministry of Government and Justice. The decree overhauled the electoral system the Ngäbe-Buglé had set forth in 1999\textsuperscript{83}, making it identical to the Panamanian national electoral system of the Electoral Tribunal (Tribunal Electoral). The Ngäbe-Buglé rose in protest because this decree was formulated and issued without any consultation. They were not involved in the process, nor did they agree with it. This action violated their right to political self-determination.

In response to the Decree, Pedro Rodríguez, President of the General Congress at the time, presented three lawsuits to the Supreme Court of Justice (CSJ) on October 20\textsuperscript{th} related to the Comarcal elections set to occur on October 24\textsuperscript{th}. One of the lawsuits declared Executive Decree 537 unconstitutional because it allows the Electoral Tribunal (TE) to run the elections in the Comarca.\textsuperscript{84} Unfortunately, there have been no changes made to Decree 537 and elections held on October 24 were done in accordance with the changes.

The reason this Decree is so significant is that instead of Comarcal authorities deciding how elections should be run, the Panamanian government now presides. “The Electoral Tribunal [is now] the only competent authority to resolve any resulting controversy of an election.”\textsuperscript{85} According to Professor Studnicki-Gizbert, of the University of Montreal whom has been studying and writing about development projects in the Ngäbe-Buglé Comarca, not only did Decree 537 create a new electoral system, but by doing so, “also created a new set of leaders...[which] in the opinion of many

---

\textsuperscript{82} Gobierno de Panamá. “Decreto Ejecutivo No. 537.” Page 1.
\textsuperscript{83} Studnicki-Gizbert, Daviken. “Informe de Respaldo Dirigido al Relator Especial sobre los Derechos de los Pueblos Indígenas.”
\textsuperscript{84} Perez, Priscilla. “Congreso General Ngäbe-Buglé” demanda al TE.”
\textsuperscript{85} Decreto Ejecutivo 537, preamble.
interviewees between 2010 and the present, was a unilateral imposition on the part of the Panamanian government.”

It caused confusion – who was a legitimate authority anymore? The election turnout that year was poor after the passage of Decree 537 (23.9%, compared to 72% in the national elections held in May 2009).

This is a grave problem because it weakens the ability of the Ngäbe and Buglé towns to effectively manage their affairs and promote their collective interests. It is even more problematic in the current context of a series of conflicts with the Panamanian government in relation to mining and hydroelectric development projects. The authorities elected under the preexisting system, as well as close observers of Comarcal affairs, believe that Decree 537 was a deliberate tactic on the part of the government in order to weaken the ability of the Ngäbe and Buglé to oppose undesired forms of development within their territories.

The tactic was successful even in the sense that candidates close to the Martinelli administration were not elected even after the second election was held with the TE in charge, as had been the government’s intention (they were not pleased with the results of the first election).

Many scholars in Panama City, as well as Comarcal authorities themselves stated again and again in interviews how divided the Comarca is and how this division has weakened Comarcal authority when it comes to expressing their opinion on important issues and presenting a united front against the Panamanian government. Osvaldo Jordan stated, in a personal interview, that the government passed Executive Decree 537 in an attempt to “modify the laws in such a way that they can achieve more control.” The government was not pleased with the results of the 2009 election, so they decided to

86 Studnicki-Gizbert, Daviken. “Informe de Respaldo Dirigido al Relator Especial sobre los Derechos de los Pueblos Indígenas.”
87 Ibid.
88 Jordan, Osvaldo. Personal Interview.
modify the process in an attempt to get the delegates they had more sway with elected. However, this attempt in 2010 was unsuccessful. There were questions of legitimacy and confusion as to who had been elected and it divided the leadership. “It was not successful because it was not consensual. It didn’t fulfill the requirements of prior consent. There was a consultation process, but done behind closed doors with a select few representatives and government advisors.”

Through this Executive Decree, as well as the confusion over legitimate voting results, we can see that there are still residual effects of the confusion caused by the imposition of a Westernized political system on the Ngäbe-Buglé people by the Panamanian Government.

**Ley 8: Reforming the Mineral Resources Code**

On February 11, 2011, the National Assembly passed Ley 8, “which reform[ed] the Mineral Resources Code and introduced other provisions related to mining.” This law sparked a wave of protests both in Panama City as well as in areas near the Comarca, drawing environmentalists and the Ngäbe-Buglé to take to the streets. To this day, an anti-mining slogan, “El oro de Panamá es verde” (“Panama’s gold is green / Panama’s wealth is nature”), can still be seen spray painted around Panama City (See Figure 2.4). When the Ngäbe-Buglé rose in protest, with numbers reaching up to 10,000 strong, the protestors used peaceful means of expressing their opinion, using roadblocks and marches. However, they were attacked by Panamanian police, leading to extensive coverage not only by Panamanian newspapers, but international media as well. The

---

89 Jordan, Osvaldo. Personal Interview.
images of the Panamanian National Police attacking these protestors greatly aided their cause.

Caciqua Silvia Carrera spoke at length about the 2011 protests against Ley 8 and the mining reforms:

In 2011 the protests against the mining law that spoke about the exploitation of Cerro Colorado and other mining projects began….So that motivated the people to mobilize because they wanted to ask the government to respect indigenous territory and not just indigenous territory, but all Panamanian territory where people did not agree and still do not agree with open-pit mining operations.

Carrera expressed that one of the main reasons the Ngäbe-Buglé do not want mining within the region is due to lack of trust in mining companies and the government to mitigate environmental damages:

…because around 1970 or 1980, there was a mining project in Cañasa that was not beneficial. They contaminated the river. They left cyanide in the water and poisoned the river. Many fish died and the workers were left with lead in their blood and this was never brought before the company and not even the government made demands for reparations from the company for the workers. Thus, that’s why our cry has been heard at the international level that mining is not a project that brings development. That’s why everyone took to the streets to demand the repealing of Ley 8.91

On March 3, 2011, President Martinelli announced that the law had been repealed. “The repealing of Ley 8 came about due to the opposition of the indigenous peoples in the Comarca Ngäbe-Buglé that manifested through the closure of the Panamerican Highway in various locations, both in Chiriquí and Veraguas.”92 President Martinelli partially removed the focus from himself, blaming “the opposition and ‘foreign

---

91 Silvia Carrera, personal Interview.
92 Arcia, José. “President Sanctioned the Repeal of Ley 8.”
elements’ for inciting chaos.” Martinelli then proclaimed that if the Ngäbe-Buglé do not want mining or hydroelectric projects within their territory, then so be it, although it will “triplicar la luz” (triple the cost of electricity). Once the protests were over, a negotiations committee was established that contained Panamanian government officials as well as officials and representatives from the Comarca. According to Carrera,

Martinelli came to San Félix and promised to give us the Ley Especial, so a working group was formed. The government was there and an indigenous group – mainly indigenous leaders – and it was called the “commission.” They discussed the law from 2011 to 2012. There were several meetings where they discussed the law and the draft was presented to the National Assembly for approval. However, the law was suspended, and the promise was not fulfilled, which is why in 2012 we resumed mobilization to paralyze the country.

Thus, in 2012, the protests resumed due to the inability of the government to deliver on their promises.

The 2012 Protests and the Creation of Ley 11, “La Ley Especial”

The protests resumed in February 2012. The largest protest occurred when the Ngäbe-Buglé people blocked the Pan-American Highway at Ojo de Agua in Chiriquí, blocking off the Pan-American high way with tree branches, rocks and themselves in February of 2012 (Figure 2.3). The only route between Panama City, David and ultimately Costa Rica, this was an very strategic maneuver. The roadblock initially lasted for six days, creating food shortages in the capital and a long line of cars in which even hundreds of tourists were trapped. This maneuver threw President Martinelli into an

---

95 Silvia Carrera, personal interview.
outrage, much of which he so eloquently expressed on twitter: “@rmartinelli Es inadmisible q un sector de la población nos tenga de rodillas, pero tmbn es inconceivable que no se tenga vías de solución.”\textsuperscript{96} Translated, “It is inadmissible that one sector of the population has us on our knees, but it is also inconceivable that there are no paths to a solution.” In the meantime, President Martinelli sent the Panamanian police to attempt to control the situation.

Police responded to the protestors with “rubber bullet casings, shotgun shells, sting-ball grenades, [and] tear gas.”\textsuperscript{97} Caciqua Silvia Carrera emerged as the voice of the Ngäbe-Buglé in this struggle.

“When they treat us. What do we have to defend ourselves? We don't have anything; we have only words. We are defenseless. We don't have weapons. We were attacked and it wasn't just by land but by air too. Everything they do to us, to our land, to our companions who will not come back to life, hurts us.”\textsuperscript{98}

The only violent act reported on the part of the Ngäbe-Buglé was setting fire to a police station. However, on their part, “Three young Ngäbe-Buglé men were killed, dozens more wounded and more than 100 detained.”\textsuperscript{99} The violence against the Ngäbe-Buglé led to an investigation by Amnesty International for the excessive use of force by the police against what was a peaceful protest. In February of 2012, “the UN Special Rapporteur on indigenous peoples urged the Panamanian government to engage in dialogue with the Ngäbe-Buglé affected and to investigate the circumstances of the deaths and ensure that those responsible are held accountable.”\textsuperscript{100} While the government did sit down with the

\textsuperscript{96} Moreno, Ariel. “Panama: Indigenous Mining Protest Blocks Pan-American Highway.”
\textsuperscript{97} Helmore, Edward. "Panama's village leader Silvia Carrera defies a president."
\textsuperscript{98} Ibid.
\textsuperscript{99} Ibid.
\textsuperscript{100} EFE. "AI preocupada por la actuación de las fuerzas de seguridad en Panamá."
Ngäbe-Buglé, there has been no word on anyone being held accountable for the deaths of the three young Ngäbe-Buglé men. The negotiations that followed led to the creation of Ley 11, “La Ley Especial.”

After several weeks of negotiation between Panamanian government and Ngäbe-Buglé officials, they were still at a stalemate. “We started the discussion in the Assembly,” recalls Ausencio Palacios, now a Diputado and one of the negotiators of Ley 11, [but due to the inability to come to conclusions] “we left there and went to the UN…because we needed to go to a neutral place, which was the UN.”101 It was at these meetings at the UN that Palacios “proposed that we…divide the issue of the hydroelectric projects (Barro Blanco) and the issue of the mining code.”102 This decision would have major repercussions for those being affected by Barro Blanco, but Palacios saw it as the only way to move forward in the negotiations. Also, “keeping the issues together would have taken a lot of time, and our people in the comarca were already upset that we were taking so long.”103 Only after they divided the issues, taking the banning of hydroelectric projects out of the proposed law, were they able to come to a decision.

Ley 11, “La Ley Especial de la Comarca Ngäbe-Buglé,” was passed by the National Assembly on March 26, 2012. Ley 11 is the law “which establishes a special regime for the protection of the mineral, hydro and environmental resources in the Ngäbe-Buglé Comarca.” The law is very brief, only containing seventeen articles; descriptions of each are found in Appendix II. The most important articles within the law are Article 3, which “prohibits the granting of concessions for the exploration,

---

101 Palacios, Ausencio. Personal Interview.
102 Ibid.
103 Ibid.
exploitation and extraction of metallic and non-metallic mining and its derivatives in the Ngäbe-Buglé Comarca;”\textsuperscript{104} and Article 4, which “cancels all previously granted concessions for any natural resource exploitation project within the Comarca.”\textsuperscript{105}

These articles were seen as a huge victory for the Ngäbe-Buglé, though some critics were not happy that it still allows for hydroelectric projects. Article 6 addresses potential hydroelectric projects. It states that future project applications for hydroelectric development located within or partially within the Comarca will have to receive absolute approval from the General, Regional and Local Congresses and then submitted to a referendum in the project’s footprint.\textsuperscript{106} “Now the project has to be evaluated by the very residents its construction will affect,”\textsuperscript{107} said Carrera, who was one of the negotiators for Ley 11. When I spoke with Carrera she admitted they had wanted to get hydroelectric projects completely banned in the Comarca as well, but they had to pick their battles. In order to get mining completely banned, they needed to give way with regards to the hydroelectric projects. In the end, as Palacios reminded me, it was mining that had caused the people to take to the streets, not the hydroelectric projects. “Unfortunately, just as with Ley 10, it [Ley 11] did not resolve all of the problems. It has left as a legacy some very strong conflicts among Ngäbe representatives over the content of Ley 11 on hydroelectric and the consultation process. Opinions are very divided on these issues.”\textsuperscript{108}

\textsuperscript{104} Asamblea Nacional. “Ley 11: Que establece un régimen especial para la protección de los recursos minerales, hídricos y ambientales en la Comarca Ngäbe-Bugléd.” Page 2.
\textsuperscript{105} Ibid. Page 2.
\textsuperscript{106} Ibid. Page 3.
\textsuperscript{107} Personal Interview, Silvia Carrera.
\textsuperscript{108} Jordan, Osvaldo. Personal Interview.
Conclusions

The Ngäbe-Buglé protests of 2010-2012 made one thing very clear to both the Panamanian government and society as a whole: we are here, we are [more or less] organized, and we are going to fight for what we want, in a pacific manner, and not go away until you take us seriously. This is the legacy of the Ngäbe-Buglé from the Martinelli regime, which the new President Juan Carlos Varela, was Vice-President in. Varela knows what they are capable of if he tries to pass laws that are not in their favor. Panama is developing fast, and energy is one of the sectors it is seeking to grow in. However, the Ngäbe have been clear on two issues: no mining and no hydroelectric projects within or affecting their territory. The following chapter will address an ongoing issue for residents in the South West corner of the Comarca: the Barro Blanco hydroelectric dam, how those living within the footprint have been battling the development project, and how the current administration is addressing the situation.
Chapter 3
The Barro Blanco Hydroelectric Project

“At the heart of the dams debate are issues of equity, governance, justice and power – issues that underlie the many intractable problems faced by humanity.”

Panama’s Hydro and Electricity Situation

Panama is a nation whose territory is rich in hydric resources, with 52 watersheds and around 500 rivers. Although the annual dry season lasts an average of five to six months (December through April or May), the rest of the year is rainy season, supplying Panama with an average precipitation in depth of 115.3 inches in 2014. However, Panama’s few months of dry season have proven detrimental to Panama’s ever-growing demand for electricity. There have been power shortages towards the end of the dry season, causing prolonged blackouts and government-mandated restrictions on use of electricity in past years, although this year there have been no restrictions.

The first hydroelectric dams built in Panama were tied to the Panama Canal: Gatun (1913) and Madden (1935). These hydroelectric dams were built by the United States. The Panamanian government then installed hydroelectric power plants in La Yeguada (1967), Bayano (1976) and Fortuna (1984). More recently, it constructed Macho de Monte (2001), Dolega (2001), Los Algarrobos (2009), and Chan-75, also known as Chan I, was completed in 2012, which was a catalyst for anti-hydroelectric dam sentiment among the Ngäbe. Bayano caused resistance from the Kuna and Teribe indigenous peoples when it was built in the 1970s. The second dam to spawn resistance

---

110 "Water and Energy." Defensa Legal Del Ambiente En Panamá.
111 “Average Precipitation in Depth (in mm).” The World Bank.
112 Gas Natural Fenosa “Generación Eléctrica.”
from the Ngäbe is the Barro Blanco Hydroelectric Project, which is the focus of this study.

In 2011, hydroelectric power accounted for 53%, and oil-fired generation accounted for 46% of Panama’s net electricity generation (7.64 billion kilowatthours). Generation from biomass sources made up the remaining portion of less than 1%.113 This 53% is powered by the existing hydroelectric dams, and there are 37 hydroelectric projects either in the design or construction phase and 34 more in the pipeline (See Figure 3).114 Although there are power shortages towards the end of dry seasons and electricity rationing measures taken, Panama is still producing more energy than it consumes. In 2014, Panama’s net generation of electricity (7.64 billion kilowatts) surpassed its net consumption (6.63 billion kilowatts).115 Where is this extra electricity going?

According to Tania Arosemena, an environmental lawyer at the Environmental Advocacy Center (CIAM) in Panama, there are too many hydroelectric projects that have been approved, and many without the proper analysis by the National Environmental Authority, ANAM. One example she gave was that of the Chiriquí Viejo River. According to Arosemena, ANAM has approved too many projects along the scope of the river, to the point where if they are all built, they will not be able to work effectively. Furthermore, this river supplies water to a province (Chiriqui) that is known as the “bread basket,” of the nation – where the majority of agricultural and livestock production is

114 Autoridad Nacional de los Servicios Públicos. “Listado de Concesiones.”
115 Ibid.
carried out. This was further expounded upon on CIAM’s report on hydroelectric projects:

Since the late nineties…the privatization of the Panamanian electric service, opened [Panama up] to private investment to develop the country's energy infrastructure. This situation has brought a high level speculation in energy generation that transformed the rivers of Panama open to the highest bidder for the construction of hydroelectric dams. This wave of investment has led to a situation [in which] many rivers have become victims of abuses affecting neighboring communities and other users of these resources.

Essentially, lack of planning and research has led to the wanton distribution of hydroelectric concessions. An issue which, if not addressed properly, could lead to severe consequences.

One of the main reasons Panama is seeking to expand its electricity generation capacity is due to the Plan Puebla-Panama agreement, within the Proyecto Mesoamérica for the Integration and Development of Central America. The PPP involves the construction of an Interconnected Electrical System of Central American Countries (SIEPAC), which will connect Guatemala, El Salvador, Honduras, Nicaragua, Costa Rica and Panama. SIEPAC infrastructure will allow for the creation of a Regional Energy Market (MER), another project within Proyecto Mesoamérica’s Energy sector. “During 2010, 98% of the construction of the Central American Electrical Interconnection System (SIEPAC) was reached,” according to the 2009-2010 Executive Report. The purposes of this interconnected system are to create a more integrated Central America and pave the way for greater development in the region.

*Chan-75: The Source of Mistrust*

---

116 Arosemena, Tania. Personal Interview.
117 CIAM. “Water and Energy.”
Chan-75, also known as Chan-1, since it is the first of three planned hydroelectric dams on the Chiquinola River in the Bocas del Toro Province, was constructed by AES Corporation, a U.S. company, along with several Panamanian affiliates. Although outside the Comarca, this dam greatly affected Ngäbe communities living within its footprint.

Figure 3: Current and Planned Hydroelectric Dams in Panama

“The environmental and social implications of the dam…resulted in strong opposition from the affected indigenous Ngöbe communities, Panamanian environmentalists, and

---

119 Schneider, Keith. "Panama's Hydropower Development Defined By Fierce Resistance and Tough Choices."
the international environmental and human rights community.”

Although community consultations were carried out, agreements were not reached with all of the families. Also, as noted in a case study on the project, one of the biggest problems with the consultation was the great inequality between the company and the communities. “These inequalities are further exacerbated by the company’s pre-conceptualized views on who the Ngöbe people are as well as the unshakeable belief in the virtues of western-style development.” This misconception, as the author, Jessica Barber, a graduate student at the School for International Training, explains in greater detail further on, is what created the tension. “Despite claims of advocates that AES will sacar (remove) the communities from poverty and give them something better…the reality is that the communities will be forced to assimilate into the dominant Westernized culture.” This is a pattern that we will see repeated in both the Barro Blanco EIA and the UNDP’s evaluation of the situation.

When I interviewed those that would be relocated by Barro Blanco, they were not only worried about the loss of their home, but of their crops, of the cacao tree they possess whose yield gives them a profit, a loss of resources and land which feeds them. These are not just their homes, but also their way of life. Barber wrote about this beautifully when writing about those relocated by Chan-75:

This [Westernized] culture is based around a capitalist monetary exchange system that they are not prepared to enter because their cultural system is one of self-subsistence, collective land, and little, though always increasing, participation in the monetary economy…the issue here is not which system holds more value, but rather the forced removal of people...
from a system they know and understand that holds cultural importance for them. The modern houses in town may come with a TV but they do not come with farmland, the only source of food more community residents have ever known. Without the ability to produce their own food, the residents are forced into low-paying jobs by their lack of training for anything better. [However], in general, the company and its advocates refused to believe that the opportunity they are providing could be anything but good, and a general development-oriented society is inclined to agree.¹²³

While the case of Barro Blanco is slightly different since it is assumed that the residents will be relocated within the Comarca, how will they be fairly compensated for lack of resources? In the end, perhaps they can be relocated to a similar area, however, to them, it’s the principal of the matter. It’s their land that their families have been tending to for generations, and which the government legally proclaimed theirs, and now they are being bullied into relinquishing what is rightfully theirs.

The UNHCR Special Rapporteur reported on the Chan-75 Hydroelectric project, following up on whether or not his recommendations from a previous visit had been followed, and on the current situation of the Ngäbe villagers affected by the project:

For the most part…recommendations were not heeded by the Government. The project resulted in the flooding of five Ngobe communities located outside the boundaries of the Ngobe comarca. Following the visit, most of the families concerned reached agreements with the Government and with AES Corporation, the terms of which have been made public. Two families have failed to reach an agreement with the enterprise, despite the fact that their farms have already been flooded. It is further claimed that AES has not completed construction work on the alternative housing that was promised to the families, who are currently living at various widely scattered locations. During the Special Rapporteur’s visit, government representatives told him that it had been a mistake on their part to allow the company to carry out the Chan 75 consultations on its own at the start of the project. Indigenous representatives also complained that the consultation process took the form of negotiations with individual

families, rather than with indigenous representatives or traditional
decision-making bodies.\textsuperscript{124}

His observations confirm the claims of those whose villages were affected: they were not
properly consulted, and reparations are still pending in the case of several families.

When interviewing those living within the communities that will be affected by
the Barro Blanco Dam, as well as Caciqua Silvia Carerra, all of them mentioned the
wrongs done to their people by the Chan-75 project. While they were initially opposed to
both mining and hydroelectric projects within their territory, the case of Chan-75 further
validated their mistrust in foreign hydroelectric corporations, the Panamanian
government and their promises of compensation and relocation. Goijet Miranda, one of
the members of Movimiento 10 de Abril, stated, “In Chan-75 no one came to an
agreement with the government, the people negotiated their land with the company. But
how did they negotiate? By being intimidated by the company.”\textsuperscript{125} In the same way,
Miranda said, that Barro Blanco is intimidating them.

\textit{Tabasará I and Tabasará II}

During the Torrijos years, when the idea of the Cerro Colorado Copper Mine were
in full swing, several hydroelectric projects were also in the works as they would be
needed to provide energy to the mine. Two of the proposed dams were on the Tabasará
River in the Veraguas Province, named Tabasará I and Tabasará II. However, Torrijos,
“seeing the mobilization against the dams said that if the Indians did not want the

\textsuperscript{124} Anaya, James. "Report of the Special Rapporteur on the Rights of Indigenous Peoples:
The Status of Indigenous Peoples' Rights in Panama."

\textsuperscript{125} Miranda, Goijet. Personal Interview.
hydroelectric, then they were not going to build them.”126* Once the Cerro Colorado Copper Mine project was abandoned, so were the Tabasará hydroelectric projects, for the time being. In the late 1990s, the issue arose once more when electricity became privatized. Ngäbe and campesinos joined together to protest the construction of a dam on the Tabasará River, and their joint movement became known as the Movimiento 10 de Abril: Tabasará libre, (April 10th Movement: Free Tabasará) originating in 1999. “One of the characteristics of M-10 is that it was a mixed movement; it wasn’t just a Ngäbe movement, but Ngäbes and campesinos.” Needless to say, the M-10 was successful in stopping the construction of hydroelectric dams along the Tabasará River in the late 1990s and early 2000s. The issue would not arise again until 2007, when GENISA was given the contract to build the Barro Blanco Hydroelectric Dam, causing the M-10 to mobilize once more.

The first protest held against the current project was in March 2008, when the M-10 staged a sit-in at Cathedral Plaza in Panama City, Panama near the Presidential Palace. Around 400 protestors were in attendance. While Barro Blanco was not named at the time, international news reports stated that the protestors wanted President Martin Torrijos to stop the projects because “they have not completed an Environmental Impact Assessment nor citizen consultation, which are required by law.”127 According to Weni Bagama, one of the protestors, a resident of Kiad and a spokesperson for M-10, they stayed at the Plaza for nearly a month and a half. On March 15, 2008, around 60 Ngäbe

126 Ibid.
*This is a statement that I have found in several written and oral accounts, however did not find solid evidence of.
127 EFE. “Unos 400 indígenas y campesinos protestan contra proyectos mineros en Panamá.” *This article title should include “hydroelectric projects” as well.
protestors blocked the Pan-American Highway on the bridge that the Tabasará River flows under. “The closure lasted for 45 minutes and the road was reopened after some National Police arrived.”  

This, however, did not stop the project from progressing.

*The Barro Blanco Hydroelectric Project*

The Barro Blanco Hydroelectric Dam is located in a hilly region in Western Panama in the Province of Veraguas. The only available company document related to the Barro Blanco Hydroelectric Project available on the company website is the Environmental and Social Impact Assessment (ESIA) Summary, published on July 28, 2011. All contact attempts with the company, including requests for interviews and for the full ESIA, did not receive any response to date. Several studies were carried out between January 2008 and July 2010, including several Environmental Impact Assessments, Plans for the Rescue and Relocation of Flora and Fauna, Archaeological Studies, an Indigenous Report, and an Environmental and Social Impact Assessment Gap Analysis, among others. Those of importance to this study include the Cultural Heritage and Archaeology findings, as well as the impacts on the Ngäbe-Buglé communities within the project’s footprint.

With respect to Cultural Heritage and Archaeology, GENISA employed an archaeologist registered with the Heritage Office of the Panamanian National Institute of Culture (INAC). The study found a “small area in the project site with some evidence of pre-Colombian domestic remains in the reservoir and dam site area. The remains appear
to be of a domestic area or family home. The site has been disturbed previously by agriculture and quarrying.”129 This is the only archaeological finding reported by GENISA. This is one of the topics of conflict with the nearby Ngäbe communities, which argue that the company overlooked other archeologically important sites, including petroglyphs in some of the boulders along the Tabasará River. The report also includes a three-step plan for cultural heritage management, including (1) contracting an archaeologist for advice; (2) stopping construction within 40 meters of a find; and (3) enabling archaeological investigation of other areas within the site that “will not be disturbed by the project.”130

Section 6.4 of the report is titled “Impacts on the Ngäbe-Buglé Indigenous Community.” After providing a brief description of the Ngäbe-Buglé people and political structure, the report discusses the land take: “6.7ha of the Barrro Blanco reservoir (out of a total reservoir area of 258.67ha, i.e.2.6%) lies within an area belonging to the Comarca Ngäbe Buglé. This represents 1.6% of the 424.21ha area of one of the Comarca Annex areas.”131 Two different options were discussed to avoid flooding comarcal land: reducing the height of the dam and installing gabions. The first was dismissed because it would reduce the project’s MW production from 28.56 MW to 9 MW, and the second was dismissed because installing the gabions would be too expensive and the community rejected the idea because it would “complicate the traffic of people across the river and land.”132 Four communities reportedly lie within the proposed area of impact: Cogle,
Palomar, Quiabda and Quebrada Caña, with an estimated total population of 538, within 73 households. According to the report, the only community that really uses the river is that of Palomar, and it is mainly for bathing purposes. This was not what I found when I visited the area. All of the communities rely on the river not only for bathing purposes, but also for food, as a water source and transportation.

GENISA reports that it will have minimal impact on these communities. The only impacts it reports are:

- Some increase in water level close to the Palomar community. However this rise will not be greater than is currently experienced in the rainy season.
- Fishing – a more detailed understanding of the impacts if any will be produced by the fishing study currently being commissioned by Genisa.
- Some reduction in available land.133

The mitigation plan is as follows:

- The provision of alternative land if requested. The selection of alternative land will be negotiated with the Comarca authorities.
- Genisa owns land that could be made available adjoining the Comarca annexes. This land is not currently occupied.
- Technical assistance to increase agricultural productivity and assistance in improving housing. The company is in the provision of help to the owners directly affected by the Project, either with materials or labour to achieve improved quality of life.
- Most access to the riverbank will be maintained. This includes the reservoir area – though there will not be access to the machine house area for safety and security reasons.
- Annual income to the community for development projects through rental payments; and projects under the social program agreed in the December 2008 (currently being updated in 2011 with the Regional Congress of the Ngäbe Bugle Group).
- Memorandum of Understanding (MOU) with the General Cacique of the Ngäbe Bugle Comarca.134

133 Ibid. Page 37.
134 Ibid. Pages 37-38.
According to the report, a Memorandum of Understanding was signed between Comarcal Authorities and GENISA in December 2008. The key points of the MOU include:

A Master Plan with financing as follows: $63,000 up to the end of construction; 5% of CER credit value (up to a maximum of $30,000/year) once the project is in operation and has secured CER credits. To be used for:

- Training of community members – construction, river protection, reforestation, agriculture
- Creation of CODIGO or similar instrument to administer training and community development programs.
- Creation of a Credit Cooperative Sustainable Development Program with a portfolio of projects. Finance of the EIA for the road between Cerro Flores and Buobdi.
- A vehicle for the Comarca authorities (and support for fuel cost) to support implementation of the MOU.
- Local employment preference.
- If requested by the previous user of land that Genisa floods, the company will provide equivalent land (by area or value) and $2,000 compensation per ha flooded.
- Communications in local languages.\(^{135}\)

In spite of this MOU, GENISA and the Barro Blanco Hydroelectric Project have since experienced resistance from local communities, led mainly by the Movimiento 10 de Abril. One of the reasons this became so controversial is that it was the Cacique General of the time, Maximo Saldaña that signed the MOU with GENISA. However, as was discussed in Chapter 1, Caciques are merely traditional authorities and do not have decision-making power. Thus, this MOU has been protested by the communities and congresos as not having any power since it was not a congressional authority that signed the document.

The report acknowledges the protests centered around mining and hydroelectric projects in 2011, as well as the role played by Movimiento 10 de abril, which it essentially dismisses as making false accusations against the project. It states that

\(^{135}\) Ibid. Page 39.
Movimiento 10 de abril claims that Barro Blanco is a new version of the former Tabasará I Hydroelectric Project. However, “In fact, the project is very much smaller than the former project… and unlike the former project will not displace any people from their homes; nor is the 6.7ha of Comarca land currently used for farming. People will retain access to the river (and to the reservoir that will be created).”136 However, as we know now, there are five towns that will be effected, and must be displaced. GENISA states that Movimiento 10 de abril is against their project simply because they are opposed to any mining or hydroelectric project within the comarca. This is not entirely true. Since M-10 includes campesinos, what they are against is not only projects that affect the Comarca, but the river Tabasará in general, since the campesinos (who live outside the Comarca) will also be affected by its damming. As the situation stands at the time of this report (2011) Panamanian governmental authorities as well as comarcal authorities had approved further consultation on the project.

After reading the summary of the report, GENISA seems to have covered its bases with respect to community consultation. It paints the hydroelectric project as having little to no impact on the communities and archaeological or cultural heritage sites, and provides a fair mitigation plan. As we know now, this is not true. It will have an impact on the communities and will cause relocation. Thus, four years later, this is a project that still captures both national and international attention, as well as that of the UNHCR Special Rapporteur, requires national government intervention, as well as that of the Supreme Court, and has been suspended indefinitely as of February 2015. These are the main points that will be addressed in this chapter, along with an analysis of the tactics

employed by the Ngäbe indigenous communities and the Movimiento 10 de abril, the role of the UN and the media, both local and international.

*Movimiento 10 de abril para la defensa del Río Tabasará*

As reviewed in Chapter 1, M-10 began in 1999 as a movement composed of both Ngäbe and *campesinos* living near the Tabasará River to protest the construction of dams that would affect them – the Ngäbe being within the Comarca and the *campesinos* outside of it, but both equally affected by the prospective projects. One of the main reasons Movimiento 10 de abril has been so successful at rallying support in their favor is their ties to international NGOs and the use of the media, both traditional and social. They have staged sit-ins, visited the United Nations Center for International Law in Germany, and made alliances with a number of different environmental and social justice NGOs. The situation has been heightened since construction began on the dam, and when the surrounding communities found out that their land was to be flooded without prior consultation by GENISA. In 2011, according to Weni Bagama, they set up a camp at the entrance to the project right off the Pan-American Highway. They stayed there for almost two months until “Minister Carles signed an agreement stating that the government would suspend work, however they did not follow through on that agreement.”

When the Comarca took to the streets in 2012 to protest the reform of the Mineral Resources code, Ngäbe M-10 members joined their ranks, hoping to add the issue of Barro Blanco to the agenda. While it was taken into account in the writing of Ley 11, as we saw in Chapter 2, it was the issue that was impeding the signing of the law, and was

---

137 Bagama, Weni. Personal Interview.
thus separated. This setback did not cause them to back down. Due to the lawsuit filed by CIAM in 2011 against ANAM’s approval of GENISA’s EIA, the project was supposed to be suspended until the UN conducted a trip to the area and assessed the situation, however, work continued on the dam.

2013 was a big year for the M-10. Special Rapporteur James Anaya visited the area and reported on the project, which can be found in the following section. The UNDP sent a team in to analyze the situation and provided a report as well, also following. Weni Bagama traveled to Germany to present M-10’s case against GENISA to the Center for International Law in protest of the UNFCCC for giving the project Clean Development Mechanism certification. Baraga said that her motivation for this trip was that when she found out the UN couldn’t make the Panamanian government cancel the project, since that would be outside of their jurisdiction, the least she could do was fight the project’s CDM certification. Thus, Bagama raised support and made the trip to Germany where she was on a panel on June 10, 2013 concerning “Human Rights Protection in the Clean Development Mechanism.”

We are very worried. It’s not that we’re against development. It’s not because of us that the country isn’t going to develop. But we are asking that we get respect – our people as a community. They say we are poor and that we don’t have money, we don’t have tall buildings. But for us, the little that we have has much value and we are human beings. And as human beings, we should be respected. We are not asking for anything or taking anything away from anyone. The only thing we want is to protect the little we have and as an indigenous people what we have is our land, which we do not have enough of. We don’t have enough to work and produce the amount we need to live off of – for growing crops and raising animals. The majority of our land was taken from us, and they are still

138 CIEL. “Human Rights Protection in the Clean Development Mechanism.”
trying to take more. That’s why we want the CDM certification stripped from Barro Blanco.\textsuperscript{139} What comes across most strongly from her message is that they are still angry about the loss of much of the inhabited territory in the establishment of the Comarca through Ley 10, and that they feel they are not harming anyone else, or asking for or taking from and thus, why should others be able to do that to them? And without their consent? Bagama reiterated that they wish to be respected as human beings, which implies that throughout the process they have been made to feel less than.

In 2014, Ngäbe M-10, with the help of CIAM and several other persons and entities, filed a complaint through the complaint mechanism of the European development banks financing the project. This same group also wrote to UN Special Rapporteurs of adequate housing, the right to food, human rights, the rights of indigenous peoples, extreme poverty and human rights, and the right to education (six different Rapporteurs in total), detailing the situation of the communities that face eviction due to the Barro Blanco project. Close to the project, Ngäbe M-10 members of the communities to be affected set up a camp on the border of Ngäbe territory near the project. They set up camp in February, and were still there when I visited in July 2015. They take turns as to who stays at the camp. Around the time of the Presidential election in May 2014, the inhabitants of the camp clashed with police forces, and many were wounded. However, their ranks still hold strong. They keep followers updated on their Facebook page: Movimiento 10 de abril M-10, through the help of those that have access to internet and electricity, posting photos and news updates. M-10, Caciqua Carrera, “Ñagare Barro

\textsuperscript{139} Bagama, Weni. Personal Interview.
Blanco” (Ñagare is no in Ngäbe) and the “pueblo comarca ngobe bugle” all have Facebook profiles and groups that they consistently post on to gain recognition via social media, and many of their posts are linked to each other.

It is also worth noting that the Ngäbe-Buglé members of M-10 are all practicing Mama Tata followers. One of the communities to be affected, Kiad, has a building that they use as a church, where they hold services and also a small school, where they teach their children the hieroglyphics and about their people and the history of the religion; their children do not attend government schools and have not been exposed to a “Western” education. It is considered a cultural center. Their faith is one of the main reasons that they are so vehemently opposed to the hydroelectric dam. As explored in Chapter 1, the Mama Tata religion is very opposed to outsiders encroaching on Ngäbe territory. It is why they have continued living a life of subsistence, very sheltered from the outside world. It is also why they will cling to their answer: NO.

Centro de Incidencia Ambiental (CIAM) and their role in fighting Barro Blanco

The Environmental Advocacy Center (CIAM) is a non-profit organization composed mainly of Panamanian environmental lawyers and local activists. They are highly involved in issues concerning hydroelectric and mining projects, as well as seeking to promote sustainable development. Their mission is “to promote environmental protection, encourage citizen participation through the dissemination of knowledge, the building of networks and accountability in an effort to influence decisions and relevant
policies.”\textsuperscript{140} They have been a great help to the communities that will be affected by the Barro Blanco hydroelectric project by providing legal aid and helping disseminate information on the situation.

Since the project began, CIAM has filed several lawsuits regarding the project in Panamanian court. One was a lawsuit that they filed in 2011 against the Environmental Impact Assessment calling for it to be annulled. “It is currently still in the third chamber of the Supreme Court and is still pending, however it is in the final stages.”\textsuperscript{141} CIAM also filed a lawsuit against Barro Blanco for illegally expropriating indigenous territory in order to proceed with the construction of the dam. They also filed a lawsuit against the resolution that declared Barro Blanco a public interest project of urgent nature. They asked that the effects of that resolution be temporarily suspended – that it not take effect until the court made a decision on the lawsuit. This would prohibit the company from entering indigenous territory until a decision has been made.

CIAM, in conjunction with Earth Justice and the Center for International Environmental Law (CIEL) also filed a complaint to the international development banks funding the project. One is German and the other is Dutch (FMO), but they have a joint complaint mechanism. Due to this complaint, the banks are investigating the case. When asked to comment, Paul Hartogsveld of FMO replied that “In this particular case a complaint has been filed in our Complaint Mechanism and as a result we are not able to comment during the process of investigation by the independent panel.”\textsuperscript{142} However,

\textsuperscript{140} CIAM. “About.”
\textsuperscript{141} Arosemena, Tania. Personal Interview.
\textsuperscript{142} Hartogsveld, Paul. Personal Email.
according to CIAM, the financing has not yet been suspended, nor have they made a final decision as to whether they will continue financing the project.

**UNDP Special Report**

In September 2013, UNDP completed a report titled “Evaluation of the Barro Blanco Hydroelectric Project: Analysis of the Environmental and Economic Aspects.” After introducing methodology, the first commentary the report provides is that while the project adhered to World Bank, IFC and World Commission on Dams (WCD) criteria from an environmental standpoint with regards to biodiversity, the project failed to adhere to these standards with regards to “indigenous, social and participation policies.” More specifically, it did not adhere to IFC Section 7 on Indigenous Peoples. The report states that “from an environmental point of view, the impact is insignificant at a global level.” With regard to carbon emissions, the project “is considered to have a positive environmental impact because it will allow the reduction of carbon dioxide emissions, one of the main causes of global warming.” However, even if it doesn’t have a great impact on the global level, the report emphasized the impact the project will have on the local level. “The consequences of these environmental impacts translate into important aspects on the way of life and economies [both directly and indirectly] of the Ngäbe populations in Quebrada Caña, Kiad and Nuevo Palomar.”

---

144 Ibid. Page 7.
145 Ibid. 31.
146 Ibid. 7.
The report identifies three key ways in which these communities’ lives will be affected: loss of natural resources used in practical or economic ways, access to resources due to the expansion of the river and cultural impacts. The flooding and loss of the gallery forest is the largest impact the dam will have. What this means for the Ngäbes is: 
1) loss of medicinal plants; 
2) wood, used to construct their houses, beds, boats and other minor uses; 
3) additional products used in everyday life: palm fronds and other fibers used in baskets and other traditional/artisanal crafts.  

The report lists two main “irreversible” cultural losses. The first is the alteration of petroglyphs in the area. “The Ngäbe populations maintain a cultural connection with these petroglyphs and consider them an important part of their historic and cultural patrimony.” 

Secondly, losing this area will have serious consequences on these communities’ lifestyles and culture. “These populations are practically autonomous and self-sustaining thanks to the natural resources the land provides them. Any alteration to these resources will have repercussions on the culture of these populations.” Not included in this report is the presence of a Ngäbe cultural school, which teaches their language and culture and is tied to the Mama Tata religious movement within Ngäbe culture.

The report ends with the benefits that they believe the community can receive if the project is developed. The report emphasizes that these benefits are not an obligation to the company, but should be provided in good faith with the policies recommended by the World Bank, IMF and WCD. In other words, they fall within the context of good 

147 Ibid. 32.
148 Ibid. 34.
149 Ibid. 34.
Corporate Social Responsibility (CSR). The activities they list are: (1) reforestation, which can provide jobs and income for many of the locals as well as offer opportunities for training and improvement of environmental conditions; (2) aquaculture: an aquaculture project implemented with community involvement could improve the communities’ protein intake and provide opportunities for increased income and training, as long as foreign species are not introduced; (3) tourism: the reservoir can be an opportunity for tourism and recreation activities, such as sport fishing, etc., which would allow for the Ngäbe to participate and possibly lead some of the activities, allowing for increased income.\textsuperscript{150} The report states that these projects can be used to replace mitigation and compensation actions that the company is obligated to carry out.

\textit{UNHCR Special Rapporteur Report}

Also in 2013, the UN Special Rapporteur James Anaya visited to make an assessment of the status of indigenous people’s rights in Panama. Barro Blanco is singled out within his report as a case in which indigenous people’s rights are not being honored. Anaya states that the approved Environmental Impact Assessment “gives cause for concern, since it fails to assess the project’s impact on lands and territories of the Ngobe-Bugle people.”\textsuperscript{151} He then details the entire history of the conflict between the Ngäbe and the Panamanian government over the dam, and goes into detail on the September 2012 diagnostic report completed by the UNDP. Concerning the report, Anaya points out that “it went on to say that the direct impacts could certainly affect the community as a whole

\textsuperscript{150} Ibid. 35.
\textsuperscript{151} Anaya, James. Page 12.
and should be mitigated properly.” Essentially, that there would still be effects to the community, but simply mitigated in order to meet the indigenous peoples halfway.

Anaya ends his report with conclusions and recommendations. With regards to the “implementation of hydroelectric projects without appropriate consultations with the indigenous communities concerned, such as the Barro Blanco and Chan 75 projects,” Anaya suggests that the Panamanian government “establish, in coordination with indigenous representatives, a governing framework for a system of consultations to be applied to the case of hydroelectric and extractive projects that have an impact on indigenous peoples.”

Anaya then gives a recommendation specifically for the Barro Blanco situation:

As to the Barro Blanco hydroelectric project, the lands of the Ngobe people should not be flooded or adversely affected in any way without the prior agreement of the representative authorities of that people as to the conditions attached thereto. Without the agreement or consent of the Ngobe people, the State should not allow the territorial rights of this people to be prejudiced in any way unless it is necessary to do so for a public purpose that is valid from a human rights perspective and, in such cases, only to the extent that it is necessary for and proportional to that valid purpose.

Thus, Anaya does not suggest that the project be cancelled entirely, but that once effects are mitigated, and consent is achieved, only then should the government allow the project to proceed. One can only wonder what his suggestion for the Panamanian government would be now that several dialogue tables have resulted in the indigenous people simply saying no. Should they proceed anyways, even if an agreement cannot be reached?

---

2015 Updates to the Situation

The new government administration under the leadership of President Juan Carlos Varela has been proactive in attending to the Barro Blanco situation. On February 2, 2015, the Office of the Presidency reported that the High Level Committee (Comité de Alto Nivel) designated to analyze the indigenous communities’ point of view with respect to the Barro Blanco Hydroelectric Project would recommend the suspension of all construction on the project to the Cabinet on February 4th.\(^{155}\)

The recommendation of the High-Level Committee, led by Vice President and Chancellor Isabel de Saint Malo de Alvarado, comes after detecting the company’s failure to comply with commitments made in the Environmental Impact Assessment (EIA) involving environmental management and the issue of cultural heritage. The Committee determined that there are innumerable unresolved issues, and it is up to the State to ensure compliance with the established commitments between the company and the community.”\(^{156}\)

This announcement, as well as the visit of the Vice President to the area is a huge accomplishment for the communities within the project’s footprint. A tripartite dialogue table was then established to discuss the issues surrounding the project with the participation of the indigenous communities, the Panamanian State and GENISA. Participants from the indigenous community include Silvia Carrera, General Caciqua of the Comarca, regional and local caciques and Ricardo and Manolo Miranda, local residents, along with the legal representative and mayor of the Muná District near which the project is located.

\(^{155}\)“High-Level Committee Will Recommend the Suspension of Work on Barro Blanco Hydroelectric Project.” Government of Panama, Office of the Presidency.

\(^{156}\)Ibid.
On April 6, 2015, La Prensa reported that Movimiento 10 de abril leader, Manolo Miranda, reported that “on Wednesday, talks concluded that aimed to identify the compatibility or incompatibility of the hydroelectric project with cultural, economic and environmental aspects in law and human rights. However, he noted that the indigenous committee made it clear that ‘Barro Blanco is not compatible with any of the above elements.’”  

This article also stated that President Varela was supposed to announce whether or not the project would be canceled on April 16th. However, this day came and went without an announcement.

On April 21st, La Prensa reported that Milton Henriquez, Minister of Government, asked the indigenous peoples and campesinos to be patient with the committee working on this issue, which is being moderated by the UN. Once everything at the roundtable has been synthesized, it will be presented to the Cabinet, where the State Ministers will determine the future of this project. It was also agreed that May 4th would be the final meeting for this roundtable. Interestingly enough, in spite of the hope given at the beginning of the article with Milton’s promises to address what the communities have said, the article ends with a quote from Silvia Carrera: “I felt mocked, because despite having a round table, the company still fails to meet standards yet keeps working. ‘We feel disrespected…Now the people have spoken. It’s up to the government to assume its role and cancel this project that the communities and people do not want.’”  

While the beginning of the article seemed hopeful, the manner in which the

---

157 Redacción de La Prensa. “Ngäbes aguardan anulación de Barro Blanco.”
158 Ábrego Samudio Demetrio. “Futuro de Barro Blanco, incierto.”
author ended the article seems to indicate that the indigenous peoples, while hopeful, feel as though the government is not on their side.

On May 5th, 2015 La Prensa reported that although yesterday was the last day for the round table on Barro Blanco, there is a new technical round table that will be established to further analyze the situation. Essentially, there was no resolution at the previous round table and the government is avoiding another confrontational situation. Manolo Miranda, the spokesperson for M-10, stated that “while [we] are accepting to enter this round table, [we] leave a clear message to the government: that [our] only proposal before the project is its cancellation, a demand [we] have not given up.”

Martín Santiago, of the UN High Commission, reportedly “applauded the indigenous and campesino representatives on the panel for being willing to negotiate on such a complex issue.” Caciqua Silvia Carrera was quoted stating that they are still waiting for President Varela himself to come to the committee and let them know what the future of Barro Blanco is.

The Ngäbe-Buglé have decided to abandon the dialogue at the technical round table and are preparing take to the streets in protest, La Prensa reported on May 19, 2015. They did so due to the Panamanian government’s refusal to cancel the project. The Presidency released a statement “calling for a dialogue with the indigenous and peasant sectors in order to achieve ‘agreements on remediable differences.’” The Director of Public Services, Roberto Meana, was also quoted saying that “the Government never said that the company GENISA, should abandon construction, but established that they would

---

159 Ábrego Samudio Demetrio. “Barro Blanco seguirá su curso.”
160 La Prensa. “Ngäbes, a las calles contra Barro Blanco.”
continue with the established work plan and resolve incompatibilities.”\footnote{Ibid.} It seems as though the government is simply ignoring what the Ngäbe-Buglé have to say and always planned on moving forward with the project, in spite of what their opinion is. Thus, the dialogue tables were a farce to begin with, and though the Ngäbe-Buglé participated willingly, with high hopes, they have realized these dialogues are getting them nowhere, so back to the streets they go.

Although no protests have been staged as yet, the Mama Tata spokesperson, Clementina Pérez released a statement to 	extit{La Prensa} on June 2. “After over five days of prayer and deliberation, the directors and bases of the indigenous religious order will pose their unique and definitive position to the National Government, which is nothing more than the immediate cancellation of the project.”\footnote{Ábrego Samudio, Demetrio. “Se pronunciarán sobre Barro Blanco.”} They will make this announcement to the executive body on June 5\textsuperscript{th} at a General Assembly. “It’s been over ten years that we’ve said no to Barro Blanco; it’s time for them to listen to us,”\footnote{Ibid.} stated Perez.

\textit{Analysis}

The new government of Juan Carlos Varela, former Vice President under Martinelli, truly seems to be interested in engaging the Ngäbe community and M-10 on this issue. However, are they truly listening to them? From the beginning, these communities have been clear: their answer is no. Varela’s government took this into consideration when it suspended activity in February 2006, the most decisive action that has been taken in favor of the communities since the project’s approval in 2007.
However, it seems that no matter how many times the Ngäbe say “no!” the government’s reply is “ok, let’s negotiate.” One of the problems is the fact that the dam is nearly finished and millions of dollars have already been spent. “There is not an easy solution because the position of the government remains that it needs the energy to supply the country and for what they call the development of the Comarca, and they don’t want to sour the nation’s investment climate.”

In a recent blog post on the online version of La Prensa titled “The myths of Barro Blanco,” author Rodrigo Noriega, called this argument completely false. Noriega states that “the concept of legal certainty does not exist in serious countries where the rules are constantly changing for reasons of social interest and public order. Does anyone remember the nationalization of General Motors by President Obama? It was necessary to save greater and more valuable assets than the interests of a few.” Noriega also pointed out several other recently cancelled projects in Panama that were done without affecting the nation’s investment climate. Noriega also points out in his article that the Ngäbe were not against the project (nor development in general) until they were wronged by the company, that the impacts are not insignificant, and that the amount of electricity to be generated by this project is merely enough to power one of Panama’s shopping malls and will in no way reduce the cost of electricity. Lastly, Noriega points out that the argument that it’s almost done is not a reason for it to be allowed to operate, and he includes a video of a dam being dismantled in the U.S.

164 Jordan, Osvaldo. Personal Interview.
165 Noriega, Rodrigo. “Los mitos de Barro Blanco.”
166 Ibid.
Conclusions

Since Varela was Vice-President under Martinelli, he saw first hand the implications of driving the Ngäbe-Buglé to take to the streets in protest. The implications were not only national, but had international implications as well in terms of the nation’s image as a human rights abuser and indigenous rights violator. It’s too bad these crimes are not seen as creating a poor investment climate. By allowing the Barro Blanco Hydroelectric Project to proceed without approval from those living within the Comarca, the Panamanian government will be sending the message that money wins, and when a project goes on ahead and continues construction even though the UN has told it to halt, so that it can get far enough along that it is “too late” to go back, then that sends a bad message as well. “What is clear is that this government does not want conflict. They have done everything possible to avoid conflict, but it’s hard to avoid it.”167

When I asked Ausencio Palacios about whether he thought Varela’s government would differ from that of Martinelli’s, he replied that “He has promised that he will consult, that he will support the indigenous sector…If he doesn’t follow through, then he is lying…As the saying goes, “you will know him by his works.” I believe many are hopeful that Varela’s regime will be different, and it has proven to be thus far, however, by prolonging “dialogue” when the answer from one side has remained the same, perhaps there isn’t a change, simply a nicer, more diplomatic approach to dealing with the issue.

Where the issue now stands, with the Ngäbe and M-10 vehemently opposing the dam, one has to wonder how the recommendations of the UNDP and Special Rapporteur’s reports can be heeded. The government has done the correct thing, in the

167 Jordan, Osvaldo. Personal Interview.
end, by suspending the project and calling for a dialogue table. However, due to the negligence to do this in the past, it has become an issue of pride for those being affected. Perhaps if the consultation had been carried out correctly in the first place, then those being affected wouldn’t have dug their heels in so deeply and been more open to accepting what the government and company have to offer. Varela’s government inherited this conflict, and it does not seem as though there will be a clean-cut resolution.
Chapter 4

Panama and the “Indian Question”

When one considers the case of Barro Blanco, one might wonder why the fight has dragged on so long. Why are these indigenous people fighting so hard over a mere 6.7 hectares of their territory, a mere fraction of the scope of their territory? And only around 500 people will be affected, a very small amount considering the size of the Ngäbe population. Why haven’t they succumbed to being bought off? Or heeding the UN’s suggestions that through dialogue, an agreement can be reached, and they can benefit from CSR initiatives and businesses that can spring up from allowing this dam to be built. As I stated in the previous chapter, the Ngäbe keep saying “no,” and the government keeps saying, “ok, let’s begin another dialogue table.” Whose words are falling on deaf ears? The Ngäbe’s or that of the Panamanian government?

The Ngäbe can be accused of standing in the way of progress and the power needed to fuel Panama’s booming economy and growth; of being backwards and stubborn. The Panamanian government and the UN can be accused of disrupting the peace, imposing neoliberal ideas of development on an unwilling people who simply wish to maintain their way of life – not for profit (imagine that!) but because it is their identity, it is their culture, their source of pride. When a corporation asks someone living in a house they themselves did not construct, on land they are not living off of, to move for a project, the answer is usually yes, since they can continue their way of life somewhere else. There is no sense of attachment to the land. They will continue being whomever they are no matter where they live. This is not the case with the Ngäbe living
within the project’s footprint. Where they live their families have lived for generations. They feed themselves and their children largely from the produce of their land, and their belief system, that of the Mama Tata, centers around the idea that this land is theirs, it was made for them, so why would they give that away?

This tiny project that, in the words of the UNDP, would have an insignificant impact on the global scale, brings up important questions as to the status of indigenous peoples within Panama. While many have been granted autonomous territories by law, how autonomous are they really? How negotiable does the Panamanian government see their borders as being? Were these comarcas given as a means to pacify the indigenous populations, with the patronizing idea that in the end they would get their way if they needed access? What is the role of the various indigenous peoples within Panamanian society? How are they perceived? What function do they serve?

Nancy Postero and Leon Zamosc address similar issues in the introduction of *The Struggle for Indigenous Rights in Latin America*. They pose a framework for analyzing indigenous movements throughout the region: the Indian Question. Gerardo Otero also addresses the “Indian Question,” in his essay, “The ‘Indian Question’ in Latin America: Class, State, and Ethnic Identity Construction.” Otero’s essay focuses more on the role of the nation-state and how it is “the ultimate terrain of struggle for indigenous peasants.”168

This chapter will analyze the Ngäbe-Buglé’s struggle to maintain control of its semi-autonomous comarca in the face of persistent invasion by both the Panamanian Government and international Multinational Corporations (MNCs) through the lens of the Indian Question.

---

What is the Indian Question?

Postero and Zamosc define the Indian Question as “the crucial issue of what kinds of rights indigenous people should be granted as citizens of democratic nation-states.” They believe that there are four critical areas of investigation necessary for discerning patterns on the basis of comparative analysis: (1) which theoretical framework should be used to appraise the meanings of the struggles of indigenous groups? The Indian Question; (2) how does the Indian Question arise in different contexts and what is the role of social movements in that process? How does it become important politically?; (3) what is at stake in the contestation over the status of the Indians? What are they actually fighting for; and (4) what is the relation between neoliberalism and the politicization of indigenous demands? I will use these four critical areas to analyze the status of indigenous peoples within Panama, more specifically the Ngäbe-Buglé and how (and if) this status has changed through the establishment of their Comarca.

The Issue of Special Rights

When defining the Indian Question, Postero and Zamosc ask, “Should indigenous citizens have all the same rights and obligations as other citizens, or should they also be granted special rights as the descendants of the original peoples of the Americas? If so, what kinds of special rights should they receive?” This is a crucial issue since, if democratization and the declaration of universal rights mean equal rights for all, why then should indigenous peoples get special rights? Simply because they were here first?

---

What we see in Panama is that the indigenous people demanded the right to communally hold territory that they already occupied. While no other ethnic group has been granted such a right, I am also not aware of a non-native people group that has demanded such a right. Thus, it would be impossible to determine whether the government would grant a non-native group this right.

Another factor in this issue of territoriality as a right is the fact that indigenous peoples were living on land that was untitled. The issue of titled land has become very salient in areas such as Bocas del Toro, where Ngäbe communities living outside of the Comarca, who have been living on their land for generations, never thought to go and get a land title, and are now being removed from their land because it became titled and someone else bought it. The push for the creation of the comarcas in Panama came when the indigenous groups were reacting to encroachment by campesinos or development projects, and they saw the need to draw a border. They do not want to live in a system of titled land, nor have to deal with the sale and purchase of an area. However, now that nearly all of Panama’s land is titled (with the exception of the land within the comarcas), then if another group was to demand this right it would be an entirely different scenario, one in which they would need to have already purchased or need to purchase the land.

Apart from receiving the comarcas, Panama’s indigenous peoples, except for the Ngäbe-Buglé, do not enjoy any other special rights, only the rights they hold as citizens of Panama. This is one of the problems Jordan identified in his interview. When I asked what could be done to improve the indigenous peoples’ situation in Panama, he replied that Panama is lacking a framework law, such as the Nicaraguan Constitution of 1987 that recognizes the nation’s ethnic pluralism and guarantees indigenous peoples’ rights or
Costa Rica’s Ley No. 6172, the Ley Indígena. On top of that, Panama has not ratified ILO Convention 169. Thus, when issues arise with indigenous peoples outside of comarcal territory, as happened with the construction of Chan 75 (Chapter 3), they were not granted any special rights that should be afforded to them under international law. Jordan believes that creating a framework law for indigenous rights “is the best way to comply with international standards and assure the indigenous populations of their full rights.”¹⁷⁰ However, when issues arise concerning land, why should indigenous peoples be afforded any special rights when “so many other people are poor and landless”?¹⁷¹ In Panama there isn’t even a history of great oppression or any debt that really needs to be repaid. Yes, they are on the bottom of the social and economic spectrum, however, does this mean they need special rights, or simply more public assistance that is afforded to all of Panama’s lower class citizens?

The question of special rights and the comarcas is key to the Barro Blanco case. The only special right the Ngäbe-Buglé had was that of possessing a communal territory. In the law that created the Ngäbe-Buglé Comarca, the government still had control over the territory’s natural resources – both mineral and hydro. However, through Ley 11, the Ngäbe-Buglé were granted special rights not afforded to Panamanian citizens in general: they succeeded in gaining control of their mineral resources by outlawing mining, thus gaining the right to exercise their authority to prohibit mining within their borders. Ley 11 does contain two articles with regards to hydro resources. Article 5 prohibits the alteration (interruption or rerouting) of river channels that run through the Comarca in a

¹⁷⁰ Jordan, Osvaldo. Personal Interview.
way that would harm any of the Ngäbe-Buglé communities or their annexes. Article 6 then addresses future hydroelectric project proposals, stating that they must be approved by either the General, Regional or Local Congress, and once that approval is gained, must be submitted to a comarcal, regional or local referendum for approval. In the case of Barro Blanco, the key word here is “future.” Barro Blanco was already in the construction phase when Ley 11 was passed, meaning it is exempt from this law. In Ley 10, although the government reserves the right to develop projects within the Comarca, it requires a consultation and approval process, and for adequate compensation to be given. As explored in Chapter 3, these processes were not carried out in the beginning, but the government now seems to be attempting to comply with the community consultation requirement. However, this project is still violating the one special right the Ngäbe-Buglé living within the affected communities possess: the right to their land.

How did the Indian Question become important politically?

Up until the 20th century, indigenous people in Panama played a rather passive role in Panamanian society; they kept to themselves. With the exception of Urracá, an indigenous leader – claimed by the Ngäbe to be their ancestor – who led his people in battle against the Spaniards in defense of their territory, and whose face graces the Panamanian penny, there have not been any major battles or clashes between indigenous peoples and the Panamanian government. This is especially true when compared with the bloody history of other Latin American indigenous groups, such as in Guatemala. Panama as a nation, however, has also not gone through a bloody war. The most turbulent

---

time in Panamanian history was during the rule of General Manuel Noriega, and he was ousted by the U.S. government in Operation Just Cause, which instead of being a battle was simply a massacre by US troops.

As was explored in Chapter 2, when the Panama gained its independence from Colombia in 1903, its government was tied very closely to that of the U.S. government, and adopted assimilationist policies towards the indigenous people living within its borders similar to those the US had adopted with regards to Native Americans. Thus, when the first indigenous people to rebel against these assimilationist policies, the Kunas, the Panamanian government took a card from the U.S.’s playbook and created the reservation system. This was not enough, however, and soon the idea of comarcas arose, and over the course of 70 years, nearly all of the indigenous groups were granted their respective (and joint) comarcas. How did they come to achieve these comarcas? In the cases of the Ngäbe-Buglé and the Kuna, through relatively peaceful protest and negotiation. They staged marches, created commissions to draft the laws that would define their respective comarcas and pretty willingly adopted a western administrative structure. Thus, in Panama, it was mainly through social movements that the Indian Question became important politically.

Of note, however, is the fact that there was never a truly national indigenous movement. Although there was a Department of Indigenous Affairs created in 1952 and a Panamanian Indigenous Congress that began in 1956, which did seek to discuss the legal-political situation of indigenous peoples in Panama, most of the achievements the different indigenous groups have made have been of their own accord. Nothing has occurred to the extent that we have seen in Bolivia or CONAE in Ecuador. Perhaps there
has never been need for a national indigenous movement in Panama, as each group managed to attain their autonomous territory through direct negotiation with government officials. “In my opinion, there is not yet a national [indigenous] movement in Panama...in Panama there is the Eastern Panama reality and the Western Panama reality.”\(^{173}\) In 1990, the National Coordinator for Indigenous Peoples in Panama (Coordinadora Nacional de Pueblos Indigenas en Panama - CONAPIP) was founded, and while “they have made an effort to try and unite [everyone], I think they are far from that goal. The most that CONAPIP has been able to achieve is to bring everyone together at a single table. However, I don’t see a national movement that coordinates actions, that has a solidified agenda.”\(^{174}\) As Panama continues to follow the neoliberal development path, however, and will continue expanding closer to indigenous territory, Panamanian indigenous groups may find the need in the future to become a united front.

*What is at stake? What are they actually fighting for?*

“What they are fighting for are not material things, but their identity, their cosmovision, their way of life.” – Osvaldo Jordan.

Postero and Zamosc state that there is “a tendency to lump the demands of all the various groups together, depicting a sort of generic indigenous agenda.”\(^{175}\) In Panama, however, the indigenous agenda of each tribe has proven to be very generic and similar. They all want their own territory, which they received, and their reasons for wanting this territory were also similar: to preserve their culture and way of life. When they saw the

\(^{173}\) Jordan, Osvaldo. Personal Interview.

\(^{174}\) Jordan, Osvaldo. Personal Interview.

\(^{175}\) Postero, Nancy and Zamosc, Leon. Page 4.
development projects and land reform laws (1960s) that were encroaching upon their territory, they knew they had to do something. It’s as much about maintaining a way of life within their borders as it is about keeping the “outside” way of life out of their borders. Otero makes a very profound statement about indigenous demands for territory. “Territory calls for a deeper meaning than the mere transferability of land ownership in market transactions. Territory alludes to the relations between humans and nature, and its users must ensure the possibility of its ‘ecological/cultural sustainability for the forthcoming generations.’  

Essentially, their way of life is tied to the land, and thus, instead of merely asking for special rights to continue practicing their traditions, they wanted a space to call their own where they could continue to do so in peace.

The answer changes, a bit, however, when we look at the Barro Blanco case. Yes, they are still fighting for their territory in order to preserve their way of life and culture, but what they are also fighting for is dignity and respect. Due to previous attempted dam projects in the area, the Ngäbe living within the area of impact are pretty savvy when it came to the necessary legal procedures for encroaching upon their territory. They are also aware that the $3,000 they have been offered in return for their land is a bad deal. “A hydroelectric company comes here and tells me they are going to give me $3,000 per hectare of land, but they don’t tell us that for that hectare of land, in the hundred years that they are going to have that concession, they will make millions per hectare of my land that they flood,” said Goijet Miranda, one of the residents of Kiad.

---

176 Otero, Gerardo. Page 250.
177 Miranda, Goijet. Personal Interview.
The communities feel insulted that (1) the company first claimed they found no one living within the footprint, (2) they then said they had completed the consultation process when they had not, and (3) they are trying to purchase the land that to them, does not have a price. Their families have been living there for generations, and their physical and cultural livelihood is attached to it. To offer money for something they do not attach monetary value to is insulting. Above and beyond this, the fact that the government keeps pushing them through rounds of negotiation when their answer has remained the same for the past 30 years when Tabasara Dam projects were first presented to the area, and that it’s a fight their parents and grandparents were a part of adds even more weight to their answer. Also, if they are to respect the “outsiders” way of life – accept the imposed governing structure and agree to meet with them about ceding territory they were already given, why can the government not accept their way of life and afford it the same respect? For the government and the company, what is at stake is money and reputation. For those living within the communities, what are at stake is their dignity and cultural heritage, as well as their livelihood.

*What is the relationship between Neoliberalism and Democratization and the Politization of indigenous demands in Panama?*

According to Postero and Zamosc, “Empirically, the Indian Question has arisen in three main ways: through direct actions of indigenous movements; as part of the negotiations in the aftermath of armed conflict; and as a factor in the electoral
Within Panama, I would argue that the politization of indigenous demands arose in Panama through a combination of the first and third ways that the Indian Question tends to arise. Indigenous movements definitely spurred the process of the creation of the comarcas, however, the reason that the indigenous people felt the need to create the comarcas was in order to protect themselves from the effects of the neoliberal agenda the government was pursuing, and continues to pursue today. Had the indigenous movements not happened, I do not believe that they would have comarcas at all, however, due to the democratic nature of the Panamanian government, and the international expectations that come along with that, I do believe Panamanian officials would have addressed the Indian Question at some point. How they would have done that is completely unknowable, but based on its attempt to integrate U.S. assimilationist policies when the Kuna first rebelled, it can be presumed that the assimilationist policies would have continued.

In their analysis of this question, Postero and Zamosc contrast two separate types of cases:

In some cases, indigenous movements play central roles in establishing the issue on the political agenda and are engaged in emancipatory projects to empower their own people. In other cases, their role is subordinated to that of other sectors, or subsumed within a hegemonic project which helps the dominant sector accomplish what Gramsci called aggiornamento – “updating” its political system to appear modern and liberal, while gaining political support for its policies.

In the case of the indigenous groups in Panama, I believe both of these cases apply. Indigenous movements – the marches staged, roads blockaded, etc. – helped establish the

---

179 Ibid. Page 8.
issue on the political agenda. This is what Otero calls “exigency from indigenous mobilization from below.” However, the populist agenda of the Torrijos Regime included recognizing the rights of the indigenous peoples. Torrijos promised all of the indigenous groups that they would be awarded their own comarcas as part of a restructuring of the Panamanian political system.

The final approval of the Ngäbe-Buglé Comarca was a combination of factors. The march to the capital staged in 1996 is how the Ngäbe-Buglé brought attention back to their cause, and while concessions did have to be made on their part, the final approval of the Comarca can also be seen as part of the democratic transition process as Panama was transitioning back to democracy after around twenty years of puppet presidents under the rule of military generals. Also on the agenda for many of the political candidates was obtaining more votes from the indigenous population in their favor. Through the creation of the comarcas they would set up a political structure within that would allow them to sway these new representatives in their favor. However, this backfired to some extent, as it is usually Partido Revolucionario Democratico (PRD) candidates that win the elections in the Comarca since this was Torrijos’ party. When Martinelli’s government ordered Executive Decree 537 in 2010, taking control of the electoral process in the Comarca, one of his motivating factors was to ensure that more of his party’s representatives (Cambio Democratico – CD) were elected. However, as discussed in Chapter 2, this attempt was not entirely successful.

Otero touches on the subject of democratic transitions and how they address the Indian Question both socially and politically:

\[180\] Otero, Gerardo. Page 249.
One could argue that the manner in which Latin American states address their relations with their Indian peoples will largely determine the character and depth of democratic transitions. The ruling classes have the choice: to keep the Indians as the most exploited, oppressed, and politically excluded groups in society, or to acknowledge and institutionalize their rights, not only on paper but in fact.\textsuperscript{181}

Based on this analysis, Panama is doing fairly well. While they have acknowledged the Panamanian indigenous peoples’ rights to territory and self-government, they have not afforded them any special rights. The key phrase in Otero’s analysis is the last phrase: “not only on paper but in fact.” While the Ngäbe-Buglé and three other indigenous groups have been granted comarcas, does the government in fact respect these borders? In the case of Barro Blanco, it is putting the neoliberal development model and the needs of the state above the institutionalized rights of the Ngäbe-Buglé people.

According to Otero’s standards, on paper, Panama’s democratic transition appears to have relatively good character and great depth. However, if we heed Francisco Herrera’s view that many of the rights and territorial borders granted by the comarca system are seen as transient in the eyes of the elite, then these rights are simply \textit{de jure} and not \textit{de facto}. Looking back to the years when Omar Torrijos was promising indigenous communities they would be given comarcas, while also negotiating the construction of mines and hydroelectric projects within their territories, one has to wonder if Torrijos truly had the indigenous peoples’ best interest at heart or if he was using the promise of a comarca as a bargaining chip, or as a way to legitimize negotiations with regards to these development projects.

\textsuperscript{181} Otero, Gerardo. Page 249.
While Martinelli was President of Panama, there were many outcries that his government was far from democratic, relating to issues not even related to indigenous affairs. According to documents released by Wikileaks, Martinelli tried to get the U.S. D.E.A. to wiretap his political opponents.\textsuperscript{182} There was also the time when then Vice-President Juan Carlos Varela accused Martinelli of using the National Assembly as an instrument for protecting his personal interests and electoral manipulation.\textsuperscript{183} His actions towards the indigenous community reflect the same undemocratic attitude, as evidenced by the creation of Executive Decree 537, which was created behind closed doors. The Barro Blanco project’s EIA was also approved under his administration, without GENISA having completed community consultations. To Martinelli, the neoliberal capitalist agenda was number one; ensuring that Panama was a truly democratic state came second. We see a return to democratic principles throughout the beginning of Juan Carlos Varela’s presidency (inaugurated in July 2014). His approach to Barro Blanco has been that of dialogue, even if his government is not entirely heeding the point of view of the Ngäbe-Buglé communities affected by the project.

One can also wonder as well whether it was in the best interest of the state to allow the creation of the comarcas and thus, the preservation of the indigenous groups’ ways of life, in order to use them as a means of promoting tourism. Kuna Yala draws thousands of tourists each year, since it offers the unique experience of visiting an indigenous comarca, enjoying its pristine beaches and getting to see cultural performances. The only hotel options are staying in bamboo or wooden houses over the

\textsuperscript{182} Reuters. "Panama President Wanted to Wiretap Rivals: WikiLeaks."
\textsuperscript{183} Redacción de Prensa. “Juan C. Varela culpa a Martinelli de incidentes en la Asamblea Nacional.”
water, identical to those the Kuna live in, to get the “Kuna experience.” Emberá and Wounaan tribes also offer similar tourism packages, though on a much smaller scale, and the trip to their villages is usually just a one-day affair. You get to see them in their native dress, perform dances and learn how they make their artisanal crafts. While the Ngäbe-Buglé, located further away from Panama City, do not engage as often with tourists, there are new initiatives moving in that direction. You can do a home stay in the Ngäbe-Buglé Comarca where you eat the same food as they do, stay in their wooden houses and bathe in the rivers. Allowing the indigenous people to maintain their traditional ways of life has proven to be a very lucrative tourism attraction for the Panamanian government.

This leads us to the question as to how neoliberal reforms have affected indigenous populations. Postero and Zamosc list three ways in which neoliberal reforms have an effect: “(1) political restructuring, which has changed relations between Indian groups and the state; (2) new emphasis on resource extraction schemes, which has threatened their lands; and (3) economic restructuring, which has caused drastic economic crises.”

In Panama’s case, only points one and two apply. The political restructuring of unions in the late 1950s dramatically affected the lives of Ngäbes who were employed by banana corporations. As was discussed in Chapter 1, this new law did not allow for part-time workers, and thus they were forced to choose between working full time or returning to the Comarca full time, instead of working on the banana plantations during the dry season in order to gain enough money to buy that which they could not produce, and returning home for the harvest to tend to their land and continue their subsistence lifestyles. The land reforms introduced by the Torrijos government

---

caused further distress to the Ngäbe people, as more and more campesinos began moving into their territory, as well as livestock companies. These two factors seriously altered and threatened their way of life, and along with several other factors, drove them to seek autonomy.

The 1970s brought an entirely new threat: a new emphasis on resource extraction, which has been explored at length in Chapters 1 and 3, and their reactions to this threat in Chapters 1 and 2. Apart from extraction projects merely affecting the Ngäbe, however, they also affected the Kuna, with the construction of the Bayano Dam in the 1970s. Although there was a lull in the emphasis on mineral extraction in the 1980s and early 1990s due to the low price of copper on the world market, the 2000s brought renewed interest. Cerro Colorado is not the only copper mine threatening the Ngäbe-Buglé people, either. The Petaquilla Copper and Gold Mine concession in the Eastern part of the Colon Province and Northern part of the Coclé Province is in an area where Ngäbe and Buglé communities live outside of the Comarca. This concession has been split into two different mines: The Petaquilla Gold Mine, and Minera Panama, a primarily copper mine. Both projects have incurred strong opposition from indigenous peoples living within the project’s footprint, as well as that of campesinos living in the area. However, as was the case with Chan 75, since these indigenous communities are not within the Ngäbe-Buglé Comarca, they do not have any special rights. Just as Postero and Zamosc conclude, “These threats have been the rallying cry for indigenous organizing: to protect their lands
and their livelihoods, indigenous groups across the continent have mounted campaigns of resistance.”

Otero and the Indian Question in Latin America

Gerardo Otero explores many of the same themes as Postero and Zamosc, however his analysis focuses on three main arguments. First, he argues that “in the case of indigenous-peasant mobilization, class and identity are inseparable.” Second, he argues that “the nation-state continues to be the ultimate terrain of struggle for indigenous peasants, even if transnational or international solidarity is welcome and can help in some dramatic instances.” Lastly, “given the demands of most Indian peoples in Latin America – which include land, territory, autonomy, self-governance, and rights to their cultural specificities – satisfying them will require state reform.” The first of Otero’s arguments does not apply to Panama since the only indigenous-peasant mobilization is related to unionization (2011 Bananero Protests in Bocas del Toro against the Ley Chorizo; see Chapter 2), and not to the granting of special rights. While M-10 is an indigenous-peasant organization, it is not seeking special rights either. The third argument has already been addressed in the previous section. I will thus only analyze the second of Otero’s three main arguments as applied to the Panama context.

The nation-state is the ultimate terrain for struggle for indigenous-peasants. Otero makes this point as “an argument against those who claim that the forces of globalization have fundamentally debilitated nation-states and that the fate of social movements now

185 Postero, Nancy and Zamosc, Leon. Page 23.
186 Otero, Gerardo. Pages 249-250.
depends on the degree and extent of international solidarity. On the contrary, nation-states continue to be a critical sphere for the imposition of ruling capitalist interests.”

Otero’s claim is wholly justified in the context of Panama. While UN agencies, international organizations, and local NGOs have gotten involved in many of the conflicts that arise between the government and indigenous peoples in Panama, ultimately, it has been the negotiation directly between the Panamanian government and indigenous officials that have resolved their issues.

The Panamanian government has blatantly ignored the suggestions of the Special Rapporteur on the status of indigenous rights in Panama, both in 2013 and 2014. The majority of the lawsuits CIAM (Center for Environmental Advocacy) has filed against the project (see Chapter 3) have either been delayed indefinitely or ruled against by the Panamanian Supreme Court. Movimiento 10 de abril is supported by organizations such as Earth Justice, CIEL and the Inter-American Association for Environmental Defense, and while these alliances have brought more international recognition and press to the struggle of M-10, in the end, it’s the government authorities and M-10 and comarcal authorities that are sitting at that table making the final decision. As Weni Bagama said, when she asked a UN representative in Panama to tell the government to halt or cancel the Barro Blanco project, due to their violation of comarcal and Panamanian law, and international norms, the UN representative replied that they could not, since that wasn’t something the UN was capable of doing. Essentially, this comes down to whether or not the government chooses to allow international organizations to hold any power over

187 Ibid. Page 249.
188 Bagama, Weni. Personal Interview.
their decisions and processes. In the case of Barro Blanco, the UN is merely being used by Panamanian Officials as an assessor and witness to the events surrounding the conflict, while ignoring the advice UN officials give them on how to proceed.

**Conclusion**

Based on my analysis of the Indian Question and how it has been addressed by the Panamanian Government through Postero, Zamosc and Otero’s frameworks, I can conclude that Panama has only moderately addressed the Indian Question. Yes, they have granted indigenous peoples comarcas, granting them territorial rights and the right to autonomous rule within their respective comarcas. However, there is still much to be done. Panama still needs to ratify ILO Convention 169 and address the issue of indigenous rights as a whole in order to afford the indigenous peoples living outside of comarcal borders their rights as indigenous peoples. There is also the issue that while comarcal borders are legally recognized, the Panamanian government seems to see these borders as transient and up for negotiation. Panama’s indigenous people also still remain on the lowest rung of the nation’s socio-economic scale and are still greatly marginalized. Simply affording them their territorial rights is not enough.
Conclusion

The story of the Ngäbe-Buglé and their struggle for territorial autonomy and against the Barro Blanco Hydroelectric Project are, sadly, not unique. Across Latin America we see similar struggles of indigenous peoples everywhere, using similar methods of protest for gaining legal and political rights to territory that has been theirs for centuries. These struggles are not just for territory, though, but “include issues of control and protection of the environment, the desire to reduce dependency on the capitalist economy, the protection of culture and identity, and struggles for human rights and a truly pluriethnic constitution.”

Respect is what it really comes down to: the indigenous peoples of Latin America wish to be respected and seen as equals within a society in which they have been seen and treated as subservient, icons and less than since the arrival of the Spanish Conquistadors in the 1400s.

There are countless cases similar to that of the Ngäbe-Buglé. In Brazil, four Amazonian tribes: the Munduruku, Apiaká, Kayabi and Rikbaktsa have joined forces to fight against the construction of hydroelectric projects near their territories. Their protest echoes that of the Ngäbe-Buglé: “The site has already reportedly expanded almost to the edge of a nearby village, although the local communities say they have not been consulted as they obliged to be under national laws and international standards.” They have fought the dams in similar ways: through appeals to the government and international agencies, and through public protest, stating that if their demands are not met, they will escalate their protests and occupy the construction sites. The stance of

---

190 Watts, Jonathan. “Amazonian tribes unite to demand Brazil stop hydroelectric dams.”
191 Ibid.
the Brazilian government echoes that of the Panamanian government. “The [Brazilian] government says this is necessary to support development of the country and to meet goals for greenhouse emission cuts.” While the Panamanian government did not talk about greenhouse emission cuts, this was a pro of the Barro Blanco project reported in the UNDP special report (See Chapter 3) and how the project was awarded the label of a CDM project.

In the case of Panama, however, indigenous movements have occurred on a much smaller scale and with significantly less violence. This is most likely due to the fact that a smaller percentage of the Panamanian population is indigenous. Take the case of Bolivia, for example, which Nancy Postero explores in her chapter “Articulation and Fragmentation: Indigenous Politics in Bolivia,” within The Struggle for Indigenous Rights in Latin America. Postero’s telling of how the indigenous peoples of Bolivia struggled prior to 2004: “there have been frequent blockades of the country’s highways by indigenous and peasant groups protesting the neoliberal government’s failure to live up to it’s promises,” could be used word for word to detail the Ngäbe-Buglé’s struggle against Barro Blanco over the past four years as well.

One has to wonder, based on the pattern of indigenous struggles seen across nations: how will this time period in history be characterized in the future? As the time when indigenous peoples managed to gain equal rights and protect their territories? Or when they struggled, and their cries were muffled by the ever roaring engine of neoliberal development and extractivism? If the latter is true, it will simply be a continuation of the past, only that it will have been carried out through the niceties of “dialogue,”

192 Ibid.
“consultation” and “adhering to international norms” instead of the violence inflicted upon the native peoples until recent history. We look back at our ancestors’ actions with horror, and promise the children of the victims alive today that we will rectify the wrongs committed in the past – pay reparations – and yet we continue to repeat the past, just in a nicer way, because we are more civilized now. However, we still hold the same mindset: we, those who have built these great nations and created great cities and need more and more; we know best. Can’t these indigenous peoples see that giving up their land is for the greater good? To solve a problem that we created? How could they be so selfish? Perhaps we will throw in some CSR initiatives to make it look better in the press, but our crime is still the same. Perhaps we’ll use their struggles to further our own careers, as journalists, historians, anthropologists, sociologists and political scientists. At least we are documenting what is, so that future generations can know, and perhaps they can actually reverse the trend, or at least bring it to a halt.

We have created a system in which these indigenous peoples seem to only have two options: join, and fight by becoming a part of a society that is not their own – by becoming a lawyer or a politician, by playing by society’s rules; or fight, and use rudimentary tactics such as road blockages and rely on pictures splashed around the foreign press of police abuse and the deaths of your people to get your way. It has already been proven that dialogue does not work. No matter how many round tables the Ngäbe-Buglé sat down to with the government, no matter how many times they reiterated their answer: “NO WAY,” the government’s reply continues to be “well, let’s talk some more so that we can resolve this in a civilized manner, since this is an issue of national interest.” It’s the repeated utilitarian principle of sacrifice for the greater good. However,
what sacrifices have been made for them in the larger scope of things? Why is their well-being and maintenance of culture and identity not a part of what is seen as the “greater good”?

*What does “development” look like for the Ngäbe-Buglé Comarca?*

Looking back on my interview questions for members of the Ngäbe-Buglé, I realize how deeply ingrained this notion of development is within myself. One of the questions I asked each and every person was what development meant for them and how they envisioned it for the Comarca. Those living in the town of Kiad had very different answers than those who had been exposed to Western education. Those living in Kiad (and this does not go for everyone living within the Comarca) did not have a direct answer to this question. Why? Because they want to maintain their self-sustaining way of life. They are happy to continue living the way their ancestors have for centuries: off the land. Which is why they need to keep their land, because it is their source of life.

However, a good question with regards to self-sustainability is: can the Comarca actually be self-sustainable? Nearly everyone within the Comarca does rely on Western products within their lifestyle, whether it be cast iron pans or sugar or coffee. As Jorge Sarsanedas, a Jesuit Priest who worked in the Comarca for several decades, pointed out, development projects must be carried out at the local level, and be focused on agriculture and livestock. Sarsaneda said that “in the area of Muñó Arriba, they have a project for growing medicinal plants, food, trees, pixbae, etc. This project ensures that they do not have to migrate. They don’t leave the Comarca to work on coffee plantations…They have
enough to meet their needs.” These sort of development projects, which utilize the land in a productive manner, would allow the Comarca to become much more self-sustaining. The International Organization for Migration (IOM) and USAID are implementing similar development projects in the Emberá-Wounaan Comarca on Panama’s Eastern Frontier. They sponsor initiatives such as coffee cultivation, education for better farming techniques, and increasing access to local markets for producers (agricultural and artisanal) in rural areas. These types of projects would be both sustainable and environmentally friendly.

When I interviewed Representative Ausencio Palacios, he spoke of the future of the Ngäbe-Buglé resting on whether or not the Panamanian government allocates more resources towards education and health care within the Comarca. However, there was a common thread of preserving the land in Palacios’ answer: “The Comarca could be developed without destroying the environment, without devastating the forests and without contaminating the rivers. The water…is a heritage of Panama…why do we have to threaten it? The government says, we have to build the hydroelectric [dam], we have to exploit the mine. I believe that in terms of a development strategy, we are not thinking that way.” Palacios also pointed out that by not allocating sufficient resources to poorer areas of the country (not only the comarcas), it allows Panama to maintain a level of poverty, and receive more funding from international development banks. “To me,” said Palacios, “the plan, as it is designed, is to not destroy the environment, but to use the resources that exist for the development of the area.”

193 Sarsaneda, Jorge. Personal Interview.
194 Palacios, Ausencio. Personal Interview.
195 Ibid.
for the Comarca? As we have seen throughout this thesis, it means no mining, no hydroelectric dams, and a focus on creating self-sustainability through eco-friendly endeavors such as agriculture and small-scale livestock rearing. Essentially, ensuring that they are no longer as dependent on the “outside world”.

The Learning Curve: the relationship between Panama’s indigenous people’s and the Panamanian State

As this thesis has explored, the case of Barro Blanco is not the first of its kind in Panama. The relationship between the Panamanian government and the indigenous peoples has evolved since the nation’s formation in 1903. When the Kuna rebelled against assimilationist policies, the U.S. government advised both sides as to how to proceed. The Kuna rebellion and establishment of a comarca became the example for the other indigenous groups throughout Panama. Once the Kuna set up the cacique system, and as explored in Chapter 1, this system was then adopted by the other indigenous groups as they began to organize. The first indigenous peoples faced with the issue of a hydroelectric dam flooding their territory were the Kuna as well, with the construction of the Bayano Dam in the 1970s. They protested against its construction, but in the end, an agreement was reached with the government. Those living in affected areas were relocated and compensated. They were by no means happy about it, but the project proceeded nonetheless.

The Tabasará I and II projects were first proposed in the 1970’s, and negotiations were set to occur once a comarca was granted. However, these negotiations never occurred since the Cerro Colordo Copper Mine project was cancelled and the point of
their construction was to provide power to the mine. When the idea of a hydroelectric project on the Tabasará River was revitalized in the late 1990’s, it led to the formation of M-10, and those living in the area, the same ones protesting Barro Blanco, learned that through protest they were able to stop the project. However, in that time, the project did not even reach the construction phase.

The next hydroelectric project to cause conflict was that of Chan 75. As was the case with Barro Blanco, the community consultation process was poorly carried out, the Environmental Impact Assessments was approved in spite of this, and several Ngäbe towns outside of the Comarca were forced to relocate. This is where the Ngäbe learned that in spite of not having followed international norms regarding citizen consultation, the projects were going to proceed anyways, and this lesson proved correct in the case of Barro Blanco. They also learned from Chan 75 that not all of the relocation promises made by the company were upheld, and that many of the CSR projects were abandoned. Thus, they became wary of these projects. When speaking with those within the communities affected, their fears and mistrust of Barro Blanco stem from what they have heard about those affected by Chan 75.

When the 2011 and 2012 protests against Barro Blanco occurred, it was a great learning experience for both sides. The Panamanian government learned that the indigenous people were capable of presenting a united front, engaging with the press and wanted to be taken seriously. The Ngäbe learned that through protest, they were able to get legislation passed. As previously discussed, there were loose ends that were supposed to be addressed within two years after the signing of Ley 10, most importantly the issue of the annex territories. However, in 2015, nothing has still been done. However, by
staging the roadblocks and courting the press, they were able to achieve the passage of Ley 11. When it comes to Barro Blanco, the lawsuits filed in the Supreme Court with the help of CIAM have been either dismissed or postponed, and their pleas to the UN result in discussion panels, but not much is achieved. Both sides maintain their point of view.

Based on the past cases, the indigenous peoples have always had to concede. Is this group trying to set a new precedent for how they believe things should proceed between indigenous peoples and the government when the issue of hydroelectric dams affecting their territory arises? Perhaps. As I explored earlier there are similar stories out of Brazil, of indigenous peoples uniting against the construction of hydroelectric dams on their rivers, however a conclusion has not been reached there as well. If they look at examples throughout Latin America, though, they see that the norm is for the company and government to get their way. It is really impossible to tell how this situation will be resolved based on history. One has to wonder as well, what exactly they are fighting for. They are fighting for their pride, their honor, and for a precedent not to be set about the invasion of their territory, to name a few. They have turned this into a symbolic battle, which is a very good tactic to use in order to use in order to further their plight. However, how will this affect future relations with the government? What if the government decides to take this stance when it comes to funding for development projects (non-extractive, of course) within the Comarca that they want? Will winning this battle actually further whatever their view of the future of the Comarca is?
Barro Blanco: how will it end?

The new president, Juan Carlos Varela, has made it clear that he wants to do things the “right way,” as he demonstrated by halting the Barro Blanco project until an agreement can be made with the surrounding communities through peaceful dialogue. As Jordan said, Varela’s government “has done everything possible to avoid conflict.” They don’t want a repeat of the 2011-2012 protests, but it seems that their incessant insistence on continued dialogue and ignoring the indigenous response within the dialogue has pushed the indigenous people right back to their only option left: more protesting. It will be very interesting to see how this situation unfolds in the coming weeks and months, and whether the government will cave to M-10’s demands to completely abandon the Barro Blanco Hydroelectric Project. According to a blog, Dutch Development Bank, FMO, is pressuring the Panamanian government to continue construction, stating that if they do abandon the project, it “may affect future investments, and commitment to long-term investments in Panama.” See Chapter 4 on how this argument can be debunked. Correspondence sent to FMO for verification and comment has not received reply.

Barro Blanco is just one case, but to the Ngäbe-Buglè it is symbolic. The Ngäbe-Buglè run a newspaper blog for the Comarca. According to an article written titled “Barro Blanco Hydroelectric Project and the True Autonomy of the Ngäbe-Buglè Comarca,”

The problem with the Barro Blanco project is not just that they are going to build a hydroelectric, and it will affect the environment of our region

196 Jordan, Osvaldo. Personal Interview.
197 Van de Water, Marjolein. “Presión holandés en Panamá para la construcción de presas.”
and will be built upon a river sacred to the Ngäbe-Buglé people, but it is also the problem of valuing the respect the government should have for our Comarcal territory. The Comarca was a great struggle of sacrifice and blood for over 500 years that allowed us to obtain land for our children. This is how we achieved the Comarcal law which isn’t the best, but that we want to continue improving along the path of achieving true development for our Comarca, where the Ngäbe-Buglé people directly decide their future, not the businessmen and their governments, not petty politics. For these reasons, the Tabasará River is a symbol of the Ngäbe-Buglé struggle. If we allow for them to mock us now, to violate our lands, then tomorrow, they will continue doing so with the rest of our mother earth’s resources. That is why we have to stop them with all of our strength. Every Ngäbe-Buglé and campesino in the Comarca is obligated to expulse this company that is building this project on our territory.

If they lose this fight, they feel it will set a precedent for the future, and that the government’s hunger will never be satisfied.

As it stands, Varela’s government has heeded the recommendations presented by Special Rapporteur Anaya in regards to the Barro Blanco case – or at least tried to. They have engaged in dialogue. However, the Ngäbe and M-10 have no interest in hearing what they have to say anymore. To them, that bridge was burned when the project did not fulfill its requirements of prior consultation and seeking approval from the surrounding communities before proceeding. It seems as though they will stick to their guns and not back down on this issue. What is the government to do, then? The Ngäbe have them between a rock and a hard place, and the Varela government is paying for the sins of the past administration. In the end, the amount of territory lost from the Comarca is very minimal and in the big picture, will not have a great effect on the Comarca as a whole. Perhaps the government can concede to allow certain Annex areas into the Comarca in exchange for the territory that will be lost as a show of good faith. It is undeniable, however, that this stance will sour relations between Ngäbe leaders and the Panamanian
government in the future. If the Ngäbe win this fight, it will set a precedent that they can say no and will get their way. However, if the government wins, it's simply another case of a development project taking precedence over the wishes of those being affected that will fade into history, as has happened with Chan 75 and the Bayano Dam.

Where should we go from here?

Taking a step back and looking at the indigenous situation in Panama as a whole, where should they go from here? While it seems that Panama is leagues ahead of many of its regional counterparts since it has created comarcas for five of the seven indigenous groups living within its borders, how much have indigenous peoples actually achieved? As discussed in Chapter 4, the creation of the comarcas is the only step the Panamanian government has really taken with regards to indigenous rights. While the 1972 Constitution does recognize indigenous peoples and grants them several special rights, such as bilingual education (as seen in the Introduction), the issue of land rights for those living outside of the Comarca are still unaddressed. There is also the issue of how to handle situations such as that of Barro Blanco in which the government would like to enter Comarcal territory. While Ley 11 spells out that consultation must occur, and approval must be sought, there is no set protocol for what happens if the indigenous peoples refuse, as is the case today.

First and foremost, Ley 10 needs to be reevaluated and amended. The creation of a separate law dealing with the mineral and hydric resources of the Comarca should be added to Ley 10, along with the issue of the annex areas, which the Panamanian government was supposed to address within two years of passing Ley 10, but has still
failed to do so. As we saw in Chapter 2, Ley 10 was a negotiated settlement, and the Ngäbe-Buglé felt that they had to sign it if they were going to get any territory at all, since the span of territory had already been greatly reduced from the amount of territory they had proposed in the early 1980s. However, the government has not fulfilled its duties by addressing the annex territories, and the issue of the large communities living outside of comarcal borders. As we read in the Ngäbe-Buglé newspaper blog statement, they see Ley 10 as something they must improve upon – but a good starting point. It seems as though the borders established by Ley 10 are seen as flexible to both sides – the Ngäbe-Buglé and the Panamanian government, however one wishes to expand the borders, while the other wishes to reduce them. A first step in the direction of addressing and improving upon the current situation would be to reassess and amend Ley 10, and possibly the laws that established the other comarcas as well.

Simply modifying the comarcal laws is not enough to address the greater societal issue of relations between indigenous peoples in Panama and the Panamanian government. Issues we saw arise through the construction of Chan-75 in Chapter 3 will continue to arise if a framework law with regards to government-indigenous relations is not established. As Jordan pointed out, Costa Rica and Nicaragua both have these “leyes marcos” for indigenous groups. The change needs to be made at the Constitutional level, and not simply address bilingual school programs and providing economic assistance for agrarian endeavors. The ley marco must address the relationship between Panama’s indigenous people and its government; the relationship between the comarcal authorities and the Panamanian government. In order to create this document, a committee must be formed, perhaps even a Ministry of Indigenous affairs, in order to start a working group
to come up with a proposal for the *ley marco*, which will outline all of Panama’s indigenous peoples’ rights, as well as a method for dealing with constitutional jurisprudence in the case of issues related to indigenous peoples, as Costa Rica’s *ley marco* contains. Another step the Panamanian government can take in terms of assuring rights to those living outside of the comarcal borders is ratifying ILO Convention 169, as discussed in the Introduction and Chapter 3. There are only twenty-two nations that currently ratify Convention 169, and 14 of which are in Latin America, and many of which are states such as Bolivia, Guatemala, Colombia and Ecuador that are known for having indigenous protests and uprisings against injustices.

It is important to remember, however, that passing a *ley marco* or ratifying Convention 169 is not the solution to all of Panama’s problems. Costa Rican indigenous people are still underrepresented, and largely marginalized within Costa Rican society. Loss of land is still an issue for them, and they do not possess the protection of the comarca. Although mining was banned in Costa Rica in 2010 for environmental reasons, indigenous peoples are losing their land to tourism projects, cattle ranchers and farmers. Their way of life is still being threatened in spite of having a framework law.

In the end, if creating an indigenous framework law, ratifying Convention ILO 169 and amending Ley 10 don’t make any significant changes, what can actually be done to improve relations between indigenous peoples and the state, and ensure their rights and the protection of their identities? Are they a people that will slowly fade out due to expanding economies and the drive for development? What needs to be found is a way of incorporating their way of life and their cosmovision into development models. To find

---

198 "Ratifications of C169 - Indigenous and Tribal Peoples Convention, 1989 (No. 169)."
the value in preserving their way of life and allowing them to determine their own future, without being told what that should be by “outsiders.” As the Ngäbe-Buglé stated in their newspaper, the issue is not a hydroelectric dam, or even a mine, but that they want to determine their own path of development, without the intervention of the government or foreign multinationals.
APPENDICES

Appendix I: Ley 10 Outline

- Chapter I, territory borders;
- Chapter II, Property Ownership System;
- Chapter III, Government and Administration;
- Chapter IV, Administration of Justice;
- Chapter V, Economy;
- Chapter VI, Natural Resources;
- Chapter VII, Archeological Sites and Objects;
- Chapter VIII, Culture, Education and Health;
- Chapter IX, Electoral Circuits;
- Chapter X, Transitional Laws; and
- Chapter XI, Final Laws.

Appendix II: Ley 11 Article Descriptions

- Article 1 states that the reason for this law is to both protect the environment and due to social interest.
- Article 2 recognizes the right of the Comarca in relation to the use, management and sustainable traditional use of the natural renewable resources located within their territory, as long as they are used in a conservationist manner, as established in the National Constitution.
- Article 3 prohibits the granting of concessions for the exploration, exploitation and extraction of metallic and non-metallic mining and its derivatives in the
• Ngäbe-Buglé Comarca by any natural or legal person of public, private, national or foreign character. Only the extraction of rock, gravel and sand are excluded from this statement.

• Article 4 cancels all previously granted concessions for any natural resource exploitation project within the Comarca.

• Article 5 prohibits the alteration of river channels and heads, meaning redirecting or interrupting a river’s flow.

• Article 6 addresses hydroelectric projects. It states that future project applications for hydroelectric development located within or partially within the Comarca will have to receive absolute approval from the General, Regional and Local Congresses and then submitted to a referendum in the project’s footprint.

• Article 7 outlines the percentages the Comarca will receive from future hydroelectric projects: 5% annual earnings and 25% of company employees must be Ngäbe-Buglé.

• Article 8 sets forth that a Development Fund will be established with the earnings from the 5% annual income, to be managed by the General Congress.

• Articles 9-12 deal with compensations in case of damage, coordination with the National Environmental Authority (ANAM) on issues of environmental protection and conservation, the development of tourism activities in the region, and sanctions or fines if the law is broken, respectively.

• Articles 13-16 outline legal aspects relating to Ley 41 (the Environmental Law), primacy, retroactivity and repeals articles of Ley 10 relating to the exploitation of natural resources. Finally,
Article 17 states that Ley 11 is binding beginning March 26, 2012.


Pages 12-13:

Investment projects

39. Numerous allegations of violations of the rights of indigenous peoples have been made as a result of the development of large-scale hydroelectric and other investment projects in Panama’s indigenous territories, particularly in recent years. Government representatives informed the Special Rapporteur that the State views hydroelectric power generation as its main priority and that there are plans to construct further plants in the coming years.

40. In general, the indigenous peoples affected by these projects claim that there have been irregularities in the processes involved in obtaining authorization for the construction of hydroelectric power stations or in reaching agreement on such projects. It has also been claimed that the revenues from these projects have been distributed improperly. Most of these projects are located outside of the boundaries of the indigenous comarcas, but they nevertheless have an impact on lands recognized as belonging to or claimed by indigenous peoples.

41. Recent experiences in connection with hydroelectric projects in Panama illustrate the consequences of the lack of an appropriate governing framework for consultations with indigenous communities. In the cases that have arisen recently, consultations were carried out in an improvised manner. Representatives of both the Government and indigenous peoples stated that those processes were unsatisfactory, partly because the enterprises involved undertook to carry out the consultations on their own and failed to work with the peoples concerned through their representatives.

Specific projects

42. Barro Blanco. The Barro Blanco hydroelectric project is being developed by Generadora del Istmo, SA, a Panamanian enterprise with Central American financial backing. The dam for this hydroelectric project is currently under construction and is located outside the boundaries of the Ngobe-Bugle comarca. However, the dam’s reservoir will flood lands in an adjacent area and will thus have a direct impact on a number of the comarca’s inhabitants. Representatives of the Government and of the indigenous peoples concerned agree that the existing tensions and the continued rejection of the project by the Ngobe people are, to a large extent, the consequence of shortcomings in the consultation process. The environmental impact study approved by the National Environment Agency has also given cause for concern, since it fails to assess the project’s impact on the lands and territories of the Ngobe-Bugle people.

43. The disputes surrounding this project began at the start of 2011, when members of the Ngobe people closed off various sections of the Inter-
American Highway. The demonstrations ended on 27 February 2011 with the signing of the San Félix Agreement by the Government and the Coordinating Body for the Defence of the Natural Resources and Rights of the Ngobe-Bugle People and Campesinos. The Government undertook to work for the passage of a law that would prohibit mining and mineral exploration in the Ngobe-Bugle comarca. However, when the bill was passed into law by the National Assembly at its first reading, the article providing for the cancellation of commercial mining concessions already in operation within the comarca had been removed from the text. This sparked a fresh wave of demonstrations, and the Inter-American Highway was again closed off in February 2012. Two members of the Ngobe community died during those demonstrations, and the inquiry into the circumstances surrounding their deaths has not been completed. Indigenous peoples and various civil society organizations also claim that, while in police custody, a number of girls and women were subjected to sexual violence, including rape in one case. Investigations are also ongoing in these cases.

44. Following the signing of the San Lorenzo Agreement in February 2012, the Government, with the Catholic Church acting as mediator and the United Nations country team in Panama as an observer, set up two round tables with representatives of the Ngobe people to address controversial issues that remained unresolved, including the Mining Act and the Barro Blanco hydroelectric project. The round table on the Mining Act led to the drafting and adoption of Act No. 11 of 2012 (see para. 15 above). As a result of the round table on the Barro Blanco dam, the parties agreed to send a joint verification mission comprised of representatives of the Government of Panama, the United Nations and the Ngobe-Bugle comarca to the area to carry out a preliminary study on the impact of the project.

45. In its report of September 2012, the joint verification mission recommended that an independent study be carried out by an international team of experts. The hydraulic, ecological and economic aspects of the project were examined in July and August 2013 and a participatory, community-level assessment was prepared. The study concluded that the project’s impacts on the environment and the Ngobe communities in question could be mitigated but that appropriate consultations with the indigenous peoples in question had not been carried out and that the direct and indirect impacts had not been clearly explained or understood. It went on to say that the direct impacts could certainly affect the community as a whole and should be mitigated properly.199

46. Chan 75. In 2009, the Special Rapporteur visited the country to examine the situation of the indigenous communities affected by the Chan 75 hydroelectric project and issued a report containing recommendations in that regard (A/HRC/12/34/Add.5). For the most part, those recommendations were not heeded by the Government. The project resulted in the flooding of five Ngobe communities located outside the boundaries of the Ngobe comarca. Following the visit, most of the families concerned reached agreements with the Government and with AES Corporation, the terms of which have been made public. Two families have failed to reach an agreement with the enterprise, despite the fact that their farms have already been flooded. It is

199 Peritaje al Proyecto Hidroeléctrico Barro Blanco, Resultados del Diagnóstico Rural Participativo, September 2013, para. 100.
further claimed that AES has not completed construction work on the alternative housing that was promised to the families, who are currently living at various widely scattered locations. During the Special Rapporteur’s visit, government representatives told him that it had been a mistake on their part to allow the company to carry out the Chan 75 consultations on its own at the start of the project. Indigenous representatives also complained that the consultation process took the form of negotiations with individual families, rather than with indigenous representatives or traditional decision-making bodies.

(i) In the light of recent experiences with the implementation of hydroelectric projects without appropriate consultations with the indigenous communities concerned, such as the Barro Blanco and Chan 75 projects, establish, in coordination with indigenous representatives, a governing framework for a system of consultations to be applied in the case of hydroelectric and extractive projects that have an impact on indigenous peoples (paras. 42 to 46);

(j) As to the Barro Blanco hydroelectric project, the lands of the Ngobe people should not be flooded or adversely affected in any way without the prior agreement of the representative authorities of that people as to the conditions attached thereto. Without the agreement or consent of the Ngobe people, the State should not allow the territorial rights of this people to be prejudiced in any way unless it is necessary to do so for a public purpose that is valid from a human rights perspective and, in such cases, only to the extent that it is necessary for and proportional to that valid purpose (paras. 42 to 45).
References


http://digitalcollections.sit.edu/cgi/viewcontent.cgi?article=1007&context=isp_collection


http://www.ciampanama.org/#!/hydrological-resources/c11q

http://www.ciel.org/Climate_Change/CDM_HR_10Jun2013.html


http://www.elmundo.es/elmundo/2008/03/13/solidaridad/1205404349.html


