

THE PRIVATIZATION OF ENVIRONMENTAL DISCOURSE: CLEAN DEVELOPMENT AND INDIGENOUS TERRITORIALITY IN WESTERN PANAMA

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Artigo recebido em: 07/11/2017
Aprovado em: 07/02/2018

ABSTRACT

Facing the global ecological crisis, international organizations, national governments, financial institutions and private business have supported the idea of a green economy searching for win-win scenarios and public-private partnerships. Unfortunately, this perspective does not usually consider alternative conceptions of well-being, justice and happiness. The case of the Barro Blanco hydroelectric project in Western Panama warns against the underlying assumptions of the prevailing environmental discourse of sustainable development. Unless development projects start considering different opinions, ideals and expectations, there will be the possibility for protracted conflict and severe environmental damage as happened with the forceful flooding of Ngäbe communities in a hydroelectric reservoir linked with the Clean Development Mechanism (CDM) of the Kyoto Protocol. As negotiations continue for new market-based mechanisms to mitigate climate change, lessons should be learned from the Barro Blanco debacle to find new pathways that reduce greenhouse emissions and at the same time respect human rights and indigenous worldviews and territoriality.

Keywords: Clean Development, Commodification of Nature, Green Economy, Indigenous Territoriality.

RESUMO

Encarando a crise ecológica global, organizações internacionais, governos nacionais, instituições financeiras e empresas privadas apoiam a ideia de uma economia verde procurando por cenários vantajosos para as duas partes e por parcerias público-privadas. Infelizmente, esta perspectiva nem sempre considera concepções alternativas de bem-estar, justiça e felicidade. O caso do projeto hidroelétrico Barro Blanco no Panamá Ocidental alerta contra suposições subjacentes do discurso ambiental predominante no desenvolvimento sustentável. A menos que projetos em desenvolvimento comecem a considerar diferentes opiniões, ideais e expectativas, haverá a possibilidade de conflitos prolongados e um ambiente danificado como aconteceu com a inundação forçada das comunidades Ngäbe em um reservatório hidrelétrico ligado ao Mecanismo de Desenvolvimento Limpo (MDL) do Protocolo de Kyoto. Como as negociações continuam para os novos mecanismos assentes no mercado para atenuar a mudança climática, lições deviam ser aprendidas do fracasso do Barro Blanco em encontrar novos caminhos que reduzem a emissão de gases de efeito estufa e, ao mesmo tempo, respeitar os direitos humanos e respeitar as visões de mundo e territorialidade dos indígenas.

Palavras-chave: desenvolvimento limpo, mercantilização da natureza, economia verde, territorialidade indígena.

RESUMEN

Encarando una crisis ecológica global, organizaciones internacionales, gobiernos nacionales, instituciones financieras y empresas privadas apoyan la idea de una economía verde buscando escenarios ventajosos para todas las partes y asociaciones público-privadas. Infelizmente, esta perspectiva no siempre considera las concepciones alternativas de bienestar, justicia y felicidad. El caso del proyecto hidroeléctrico Barro Blanco en Panamá occidental alerta contra los supuestos subyacentes al discurso ambiental predominante en el desarrollo sostenible. A menos que los proyectos en desarrollo comiencen a considerar diferentes opiniones, ideas y expectativas, existirá la posibilidad de conflictos prolongados y un ambiente dañado, como ocurrió con la inundación forzada de las comunidades Ngäbe, en un reservorio hidroeléctrico ligado al Mecanismo de Desarrollo Limpio (MDL) del Protocolo de Kyoto. Como las negociaciones continúan para los nuevos mecanismos para atenuar el cambio climático basados en el mercado, las lecciones resultantes del fracaso en Barro Blanco deben de ser aprendidas con el fin de encontrar nuevos caminos que reduzcan la emisión de gases de efecto invernadero y, al mismo tiempo, respetar los derechos humanos y las visiones de mundo y la territorialidad de los indígenas.

Palabras clave: desarrollo limpio, mercantilización de la naturaleza, economía verde, territorialidad indígena

INTRODUCTION

In the last quarter of a century, environmental regimes have been moving towards commodification of natural resources and allocation of private property rights to different entities such as NGOs, corporations, individuals (McAfee 1999). In the 1990s the paradigm of sustainable development digressed into the prevalence of market-based mechanisms that would be expected to create profit in the process of producing public goods. A win-win logic began to permeate environmental discourse and practice as expressed in the creation of carbon trading in the Kyoto Protocol (1997)

By Rio plus 20, the rising discourse of a “Green Economy” has extended to many policy areas such as forestry, water conservation and climate change (Tienhaara 2014, Goodman and Salleh 2013). Unfortunately, this global trend oftentimes overlooked social and

environmental externalities such as encroachment of indigenous territories and disruption of indigenous worldviews. In many regards, the international environmental movement divided itself during the period between those movements and organizations that preferred alliances with the private sector (public-private-partnerships) and those who questioned the capacity of the capitalistic economy to respond effectively to global environmental challenges (Brand 2012, Prudham 2009, Lertzman and Vredenburg 2005). More recently, academics from different continents have begun questioning the capacity of political concepts such as “development” and “sustainable development” to satisfy human needs, aspirations and different conceptions of what may constitute a “good life” (Khotari et al. 2014).

This paper analyzes the case of the Barro Blanco dam in Western

Panama where the UN Clean Development Mechanism (CDM) of the Kyoto Protocol provided a justification for dispossessing a sensitive part of the Ngäbe indigenous territory including the community of Kiabda, a main cultural center of the Mama Tata spiritual movement. Despite manifest opposition to the flooding of these lands, a variety of non-indigenous actors defended the Project using as a justification reduction in carbon emissions, and the possibility to compensate the communities with revenues originating from carbon credits.¹ The capitalistic logic of financial institutions, private companies, international organizations and national governments was congruent with a global understanding of environmental conservation as a business transaction yet conflicted with Ngäbe conceptions of property, justice and well-being.

At the outset, those responsible for approving the branding of the Barro Blanco hydroelectric project as a carbon mitigation initiative seemed to ignore the century-long struggle of the Ngäbe people for territorial integrity and political autonomy (Velasquez-Runk 2012, Jordan 2010a, Gjording 1994, Herrera 1989, Young 1971). Several social scientists had referred extensively to conflicts associated with the construction of dams along the Tabasará River possibly linked to the

construction of the Cerro Colorado Mining Complex. In Panama demonstrations of the April 10 Movement for the Defense of the Tabasará River (M10) had captured public attention since the early 2000s. Yet, both CDM promoters and European financial institutions portrayed the Barro Blanco dam as a different kind of initiative focused on energy production for national development that reduced carbon emissions when compared with fossil fuel plants in other parts of the country. Under the aegis of the United Nations Framework Convention for Climate Change (UNFCCC), they insisted that the generation of Certified Emissions Reduction (CER) would allow to trade carbon credits that could be partly used to compensate the affected communities. Scant consideration was ever given to the possibility that the affected communities wished to reject any type of compensation arguing that sacred lands could not be traded, sold or expropriated.

Despite several efforts to produce a win-win game through UN-mediated dialogue, even when the international market for carbon credits collapsed, the Ngäbe refusal to assign a monetary value to the sacred landscape of the Tabasará River rendered the green economy environmental discourse as bogus preventing the possibility of any viable agreement. An undesirable outcome of this failed process was that dissenters began to be portrayed as irrational actors who did not want to negotiate according to logical terms. However, who determined the boundaries of rationality? Are spiritual values ultimately subject to market transactions? Or are there any limits to a purported ideal speech situation according to Habermas?

Had external actors who expected to create profit examined the

¹ The Kyoto Protocol of the United Nations Framework Convention on Climate Change (UNFCCC) created an offset mechanism known as the Clean Development Mechanism (CDM) that was expected to generate overall reduction in carbon emissions by allowing Annex I countries to exchange Certified Emissions Reductions (CERs) with less developed countries (Non-Annex I). An international market was created for the exchange of these CERs that could then be used to compensate projects that arguably contributed to emission reduction.

Ngäbe history of continuous struggle for land rights they might have soon realized that their aspirations went beyond a mere contribution to “national development” or the generation of revenues, an approach that never bore fruit for the followers of Omar Torrijos in Panamanian politics between 1981-2009. Located at the heartland of the Ngäbe region of Kodriri, the Tabasará River had critical importance for local livelihoods and at the same time was considered a homeland for the peasant and Ngäbe communities living along its banks. For the followers of Mama Tata in the cultural community of Kiabda, in addition, the value of these lands was irreplaceable as the site of ancestral signs inscribed on petroglyphs from which an unique Ngäbe writing and reading system was uncovered by their elders.

This article will start with a general examination of the Ngäbe land struggle since colonial times to present, highlighting the emergence of the Mama Tata spiritual movement in the 1960s, years before negotiations started between the military government of Omar Torrijos and Ngäbe leaders for the creation of an autonomous territory (comarca indígena). The historical survey will then move through the difficult years following the approval of the Comarca; and how the issue of autonomy dissociated itself from land recognition, and delved into complicated questions of decision-making, consultation and customary law. Finally, a detailed description of the two logics operating in the Barro Blanco controversy will be presented – on the one hand, the capitalistic logic of UNFCCC market-based climate change mitigation; and on the other, the Ngäbe defense of a collective territory, spirituality and worldview.

The Ngäbe Struggle for Land in Historical Perspective

Like many other ethnic communities in the Americas, for centuries the Ngäbe have struggled for cultural survival, territorial integrity and self-rule. Today, the Ngobe ethnic community numbers above 250,000 peoples and occupies an extensive geographical area between the Western provinces of Bocas del Toro, Chiriquí, and Veraguas in Panama, as well as a number satellite communities in Southern Costa Rica. Although an autonomous territory (Comarca Indígena Ngobe-Bugle) was created through Law 10 of 1997, many communities were never included in this polygon, and for this reason, the Ngäbe as well as the Bugle still constitute important minorities in the three aforementioned provinces.

The Ngäbe lands encompass significant geographic and ecological variations from the high mountains of the Tabasará Range, also called Cordillera Central, to the dry slopes of the Pacific and the lush tropical forests of the Caribbean. The mountains constitute the main division between the Caribbean region of *Ño Kribo*, and the Pacific regions of *Nedrini* in the West and *Kodriri* on the East. Although both Pacific regions have less forest coverage than the Caribbean, *Nedrini* (formerly part of Chiriquí) is characterized by the existence of slopes that are more pronounced and a more humid climate when compared with the extensive dry savannas and undulated terrains of *Kodriri*; where the Barro Blanco hydroelectric project is currently located.

Whereas in the Caribbean Ngäbe settlements extend into the coastline and

the surrounding islands, the coastal plains of the Pacific are mostly occupied by mestizo peasant dwellers. In some regions, especially in Kodriri, poor peasants and large landholders have lived intermingled with Ngobe families for many decades, forming a complex of intercultural relations with very important political implications for land conflicts and political positioning (Falla 1979, Sarsanedas 1978).

During the Spanish colonial period, only the writings of priests Fray Adrian de Santo Tomas in the 1620s and Father Juan Franco in the 1790s describe thoroughly the regional culture and ethnic interactions of the Ngäbe ethnic community with Spanish colonists. Although they reveal subtle changes in cosmology and the advance of Christianity, in general there appears to be continuity in the social life of the Ngäbe as a separate ethnic community with only limited interaction with European imperial domination. The advent of North Atlantic capitalism, however, would unleash transcendental changes associated with increased trade and frequent contacts with both the British and the Spanish spheres of influence.²

During most of the XIX century, Ngäbe interactions with British associates in the Caribbean and Spanish descendants in the Pacific were characterized by the absence of powerful actors such as central governments, organized churches and multinational corporations. According

² Trouillot (2002) provides a critique of the concepts of modernity and modernization arguing that they constitute “North Atlantic Universals” intimately associated with “geographies of imagination” and “geographies of management”. For this reason, in this paper allusions to modernity should instead be interpreted as the advance of North Atlantic capitalism associated with national imperial projects, especially after the XIX century.

to British merchant Orlando Roberts who lived for a period with the Ngäbe in the 1820s, they only had occasional contacts with the Spanish and the British, mostly for trade (Heckadon-Moreno 1987). However, by the 1880s, a new breed of actors would mold, distort and project the image of the Ngäbe in Panama and abroad – social scientists paving the way for North Atlantic investors, colonial powers and the banana emporium.³ A commercial agreement between French investors and the Government of the United States of Colombia for the construction of the Panama Canal facilitated the extension of the research work of Alphonse Pinart to Lower Central America.⁴ After Pinart, many foreign social scientists would continue visiting the Ngäbe for years to come.⁵

³ Among the first to visit the region, William Moore Gabb (1875) had been contracted by the Costa Rican Atlantic Railroad Company to examine the potential of the lands in the Caribbean for industrial production. Although he spent most of his time in the neighboring Talamanca Valley, he also referred to the Ngäbe as a group of semi-civilized people who lived further south.

⁴ In 1885, Pinart published his fascinating narration of his visit to Valle Miranda (or Valle del Guaymie). Sailing from the town of Bocas del Toro he entered the Cricamola River in 1883 to visit the Guaymie or Valiente Indians. After passing the village of Gobrante, he arrived to Jocuatabiti in the Valle Miranda. According to Pinart, the Ngobe considered this area their territory, and they did not allow any Afro-descendants or Europeans to live there permanently.

⁵ Written before the era of Panamanian indigenismo, the work of Henry Pittier deserves special attention. In 1912, Swiss naturalist and ethnographer Henry Pittier published an account of his visit to the Province of Chiriqui and the Ngobe Territory in National Geographic Magazine. In this publication, he calculated the number of Guaymi at 5,000, and asserted that they had been submitted to the influence of missionaries for an extended period of time.

Following the creation of the Republic of Panama as a separate political entity from Colombia, a new generation of nation-builders would be captivated by the indigenous peoples living on the Isthmus past and present, and would try to discover the roots of Panamanian identity in the cosmic mixing of these indigenous ancestors with the Spanish Conquistadors. They would construct the intellectual foundations of Panamanian indigenismo with a series of books that examined the indigenous question in the 1920s. Unavoidably, these works were imbued with the colonialism and scientific racism that prevailed during these times.⁶ However, they occasionally revealed a panorama of how the Ngobe were visualized by their mestizo neighbors in the Western Pacific, the main theater of the future conflict over the Tabasará dams including Barro Blanco.⁷

Ngäbe Social Change and the Rise of the Mama Tata

The work of Young (1971) constitutes the most comprehensive

⁶ With the exception of Reginald Gordon Harris, who actually was Director of the Biological Laboratory of the Biological Association of Long Island Cold Spring Harbor, none of these works truly conducted any comprehensive ethnography of indigenous groups in Panama.

⁷ The publications of Otto Lutz (1924), *Los Habitantes Primitivos de la Republica de Panama*; Reginald Gordon Harris (1926), *Los Indios de Panama*; and Manuel Maria Alba (1928), *Etnologia y Poblacion Historica de Panama*, were all dedicated to the patriarch of Panamanian education, Octavio Mendez-Pereira.⁷ As expressed by the Harris dedication: “con el sincero deseo de que como exponente de la cultura panameña, él aproveche toda oportunidad de contribuir a la conservación de estos indios que tienen un interés biológico y etnográfico tan extraordinario para los hombres de nuestros días y para la posteridad”

study of the Ngabe ethnic community until today, and documents the breaking point at which changes happened very rapidly. In accordance with his theoretical perspective, an impending crisis in the Ngäbe natural resource base would necessarily result in the transformation of traditional patterns of social interaction. In this regard, Young (p. 74-81) was the first to warn about the depletion of suitable agricultural land and the reduction of fallow periods in the Pacific, an observation upheld by Gjording (1994).

Young (1971) also commented about the trauma produced by the replacement of the previous local governors by a system of *corregidores* now appointed by non-indigenous mayors; and how the new structure that was imposed from above had shattered the existing patterns of authority, privileging literate individuals over those who had gained respect in the communities through traditional means (p. 202-212).

According to Priestley (1986), the 1960s brought an unprecedented wave of popular mobilization in Panama, precisely the times when Young was conducting his research. The Liberal welfare state that had managed and attenuated radical manifestations of nationalism as well as revolutionary ideals in the 1950s had succeeded in maintaining electoral democracy and ensuring economic growth; yet the country had also become strained by inequality, capitalization, and rampant political corruption. In rural Panama, land conflicts increased in spite of the efforts of the Catholic Church to promote limited land reform.⁸

⁸ In the 1960s, the Catholic Church of Panama launched Plan Veraguas in response to growing tensions and disparities in the rural countryside.

In the midst of all these tensions, the Ngäbe boundary with nonindigenous peasant communities constituted a particularly contested region as mixed-blood farmers encroached upon the Ngäbe Territory as a result of land accumulation and speculation by larger landowners to produce beef and other agricultural market products. Both Sarsanedas (1978) and Herrera (1989) agree that the construction of the Pan-American Highway between Santiago (Veraguas) and David (Chiriqui) accelerated the dispossession of Ngäbe lands. In the same lines, both Sarsanedas (1978 p. 46) and Guionneau-Sinclair (1988 p. 179-183) document movements organized by Ngäbe leaders in Nedrini to demand respect for their land rights. Camilo Ortega (personal communication) mentioned similar mobilizations in Kodriri, and Jose Cruz Monico r. i. p. (personal communication) also referred to these kinds of movements in the Pacific.

These grassroots mobilizations enhanced the capacity of the Ngäbe to express their aspirations in national society and created conditions for new forms of political organization in years to come. Yet, the most important political transformations in Ngäbe society were associated with the spiritual revival leading to the Mama Tata insurrection of 1965. According to both Sarsanedas (1978 p. 25-26) and Guionneau-Sinclair (1988), the first apparition of the Mother Mary (Mama-Kri)⁹ happened to Delia Sanjur in Sitio Prado in 1956. This was then followed by the apparition of Potrero de Caña (1959) to Cándida Jiménez; Tijera (1960) to Rufina and Ifigenia Flores;

⁹ In Ngäbere, Mama-Kri means the Great Mother as opposed to Mama-Chi or the Little Mother as the prophet Delia Bejarano herself came to be known.

and finally the great apparition of Soloy (1962) to Delia Bejarano (who came to be known as Mama-Chi). During this apparition, according to Mama-Chi, both Jesus and Mary asked the Ngäbe to separate themselves from the corruption of non-indigenous society, especially public education and trade with mestizos in the neighboring coastal towns. At the same time, the new spirituality called for abolition of centuries-long rituals such as *krün* (or *balsería* in Spanish) and the rites of passage. To sustain these social changes, Mama Tata leaders created their own schools where “students” would be educated by their elders in the new spirituality and Ngäbe worldview. This spiritual movement spread rapidly throughout the Ngäbe Territory upholding claims for an autonomous indigenous jurisdiction, in Panama commonly known as a *comarca indígena*.

With the rise of Mama Tata, the years between 1962-1964 represented the main rupture of the Ngäbe with fundamental social institutions that had sustained Ngäbe society since the times of Fray Adrian de Santo Tomas. After the expressed prohibition of Mama Tata, the *balseria* ceased to exist as the most important occasion for trans-kinship social interactions among the Ngäbe.¹⁰ In this ancient ritual, two Ngäbe kin groups came together at a site where ritual stick fights would happen in pairs for several days involving relations of friendship/competition between the two kin groups. That was also an important

¹⁰ Young (1976) himself provided the first academic interpretation of the ancient rite of *krün* or *balseria*. For him the ceremony might be the remnant of previous Pre-Columbian ritual competitions among chiefs. For the Ngäbe, *krün* represented cooperation and competition among rivals, a persistent topic in the Ngäbe worldview.

occasion for celebration, trade and even establishment of trans-kinship personal ties including the possibility of new marriages. Until today Mama Tata leaders argue that balseria brought violence and division, and not Ngäbe unity. According to Young (1971), beginning in 1962 the Mama Tata meetings replaced the balserias as the main occasions of trans-kinship relations among the Ngäbe.

Mama Tata was simultaneously a movement for Ngäbe concerted action despite any kinship differences; separation from external control; and internal social reform by replacing ancient rites and advocating for new forms of schooling and territorial protection. However, and unexpectedly, Mama Chi died in 1964 (possibly from disease) suddenly dividing the movement between traditional leaders (*sukias*) and younger people referred as “students” who preferred more overt forms of political action. The separatist movement rising from the Mama-Chi revelation eventually became explicit when the “students” declared an independent republic in 1965.

In the context of popular mobilization gaining steam in Panama during the 1960s, the prevailing response of the Liberal oligarchic governments was outright repression through the increasingly powerful National Guard.¹¹ For this reason, it should not be deemed surprising when a mid-career officer and regional head of

the National Guard in the province of Chiriquí, Omar Torrijos Herrera, was dispatched to the Ngäbe communities to suffocate the insurrection. According to several accounts of the episode including that of Guionneau-Sinclair (1988), Torrijos Herrera preferred dialogue to repression and dissuaded the “students” from continuing with the independence declaration.¹² What exactly happened with the Mama Tata movement after the uprising has never been entirely clear. According to Guionneau-Sinclair (1988), the *sukias* continued with the movement away from the public eye, and possibly at special cultural places such as those to be flooded by the Barro Blanco reservoir fifty years later.

Military Indigenismo, National Development and the Tabasará Dams

After mid-career officers of the National Guard gave a coup to seize control of the Panamanian government in 1968, the episode of the Mama Tata rebellion in the Ngäbe Territory came to symbolize the Torrijos proposal for a new kind of relation between the State and indigenous peoples. Although the government indeed had the armed capacity to crush the indigenous mobilization in 1965, the personal approach of Omar Torrijos Herrera had apparently opted for dialogue, bargaining and cooptation to bring indigenous peoples under the wing of the State.

¹¹ According to Percy (1998), the National Guard had become the main arbiter of Panamanian politics after the 1947 riots against the renewal of a lease for American bases in the country. Undeniably, this military/police institution had been demonstrating autonomy from the civilian oligarchy and represented a main avenue for social mobility among Panamanian poor families (Guevara Mann 1996, Ropp 1982).

¹² Sarsanedas (1978) and Gjording (1994) emphasized the special relation between General Omar Torrijos and the main leader of the Mama Tata movement, Samuel Gonzalez, in the 1970s. Sarsanedas even pointed out that this caused problems for cacique Lorenzo Rodriguez from Nedrini who felt disrespected by the preference of the General for the spiritual leader.

In spite of this so-called special relation, the alliance between indigenous peoples and the military government effectively demobilized the grassroots activism that was pressuring the government for land recognition in the 1960s; and gave a fatal blow to a vibrant and independent indigenous movement that already existed at the national level. In a congress held in Alto de Jesús in 1969, the Ngäbe officially adopted a system of three regional *caciques* for Kodriri, Nedrini and Ño Kribo building upon the pan-Ngäbe tendencies that were catalyzed by Mama Tata. The possibility of coalescing into a general congress similar to the Kuna *Onmeked* always remained a challenge for Ngäbe political organization that would be faced by younger members of this ethnic community in the 1970s with expectations, visions and aspirations less traditional than those of the original three regional *caciques*. When the first Ngäbe-Bugle General Congress was celebrated in Cankintu in 1978, General Torrijos himself attended this gathering and reiterated his promise to create an autonomous territory, the Comarca Indígena Ngobe-Bugle.

Besides any sympathy towards the Ngäbe, the General surely was preoccupied with another issue of national importance – the development of the Cerro Colorado Mining Project. According to Gjording (1994), Cerro Colorado represented one of the largest copper deposits in the world; and a considerable amount of energy would be required for the operation of the mining complex. In this scheme, the construction of two large dams on the Tabasará River was regarded as a complement to mine operations; and such level of intervention on the landscape, required acceptance from the Ngäbe people. Instead of forceful relocation, according to Herrera (1989),

Torrijos expected the Ngäbe to give their share for national development once their autonomous territory was legally recognized. A different narrative from peasants and indigenous peoples from Tabasará depicted General Torrijos talking personally with the people who were opposed to the dams, putting his hat on the table, and promising that those dams would never be built against the will of the people (Jordan 2010b).

After the unexpected death of Torrijos in 1981, and as government bureaucrats pressed for the construction of the Cerro Colorado Mine for the sake of national development, the Ngäbe instead organized a grassroots mobilization that would take their demands to the doorsteps of national authorities. In 1983, the first Ngobe-Bugle March for the Creation of a Comarca Indígena arrived into Panama City only to encounter a bureaucracy that had changed its tone, its approach and its style towards indigenous peoples. The tensions that were inherent in the right turn of the military “revolutionary” regime remained hidden beneath the surface until the tragic airplane accident that took the life of General Torrijos Herrera. His disappearance ended a military regime that sustained an indigenista policy of cooptation, integration and acculturation.

Political Crisis, Economic Reform, and the Creation of the Comarca

The Ngäbe negotiations collapsed in 1983 after unresolvable disagreements on the continuation of the Cerro Colorado Mine and the boundaries of the Comarca in the Province of Veraguas (Herrera 1989 p. 113-115). The failure of the

negotiations coincided with a period of increasing turmoil in Panama, as the country approached the first direct presidential elections since 1968. General Manuel Antonio Noriega had defeated his main political opponents within the military, and was preparing to seize control of the government in favor of his candidate, former head of the World Bank for Latin America, Nicolas Ardito Barletta (Lafeber 1989 p. 194-197). This unleashed a political crisis that withheld any major political and economic reforms in Panama during the 1980s, delayed the creation of any new comarcas, and led to the tragic invasion of the country by the United States in 1989.

The phantom of structural adjustment resurfaced soon after the US Marines began leaving a war-torn and devastated Panama in 1990. As former Torrijos supporters battled against the economic reform package of the first Minister of Economic Planning of the new democratic period, Guillermo Ford; indigenous peoples resumed their political mobilizations and reunified their leadership (Camilo Ortega personal communication) once again demanding the legal recognition of their territorial rights.¹³ Paradoxically, and reminiscent of similar developments in Peru, Argentina, Bolivia and Mexico in the 1980s and 1990s; the party of the Torrijos Revolution, the Revolutionary Democratic Party (PRD) inherited the mission to implement structural adjustment, and so it did with unexpected fervor. Despite the lack of a

¹³ The Ngäbe-Bugle General Congress was divided by the intervention of General Noriega in Ngäbe internal elections in the late 1980s. The General Congress was unified in 1989 with the election of Celestino Gallardo in Cerro Iglesias (Nedrini) only months before the US invasion. In 1992, Isidro Acosta replaced Gallardo in Alto de Jesus (Kodriri) (Bernardo Jimenez personal communication).

full-blown constitutional process, we can interpret the election of Ernesto Pérez Balladares (1994-1999) as the start date of a neoliberal citizen regime in Panama following Yashar (2005) and Van Cott (2005).

According to Hale (2002), these changes in citizen regimes could not be dissociated from a new form of state control over indigenous peoples that went beyond classical indigenismo - *neoliberal multiculturalism*. According to this perspective, governments would enact select legal reforms and implement multicultural provisions to quell stronger demands for social and economic changes, differentiating those indigenous peoples who were willing to settle for these limited changes with those who maintained their original demands. Restart of negotiations with the Ngäbe over the Comarca signaled the State desire to adopt multicultural provisions that would facilitate neoliberal governance.

In 1995, the Government presented a new proposal that reduced the limits of the Comarca even beyond the controversial bill that had been rejected in 1986 (Bernardo Jimenez personal communication). However, as an even younger generation assumed the Ngäbe leadership, a negotiating commission was created to try to reach an agreement with the Government. This commission was formed by Julio Dixon, Ausencio Palacio, Hermelindo Ortega (son of Camilo Ortega), Jose Ellington, Antonino Acosta and Alberto Montezuma. For these younger leaders, the approval of the comarca bill could not be delayed any longer and therefore an understanding had to be reached both with the Government and with the non-indigenous peasants (*campesinos*) and land-owners (*terratenientes*) who had been lobbying against the Comarca bill for almost twenty years (Ausencio Palacio personal communication).

During the final push for the creation of the Comarca, grassroots mobilization became a most decisive factor. In 1996, Ngäbe student Saturnino Aguirre was assassinated under very suspicious circumstances in the town of San Felix where a new company Panacobre, S. A. was trying to bring back the Cerro Colorado Mine (Bernardo Jimenez personal communication).¹⁴ In response, the Ngäbe organized a second march to Panama City only three weeks after the assassination. This second march departed from Sitio Prado (Kodriri) and was much larger than the 1983 mobilization. The elder caciques Jose Cruz Monico and Camilo Ortega participated in the march as well as younger Ngäbe prospective leaders such as Pedro Abrego and Bernardo Jimenez. The march did not only become a strong statement to the National Government, but also an internal sign of Ngäbe unity and mobilization capacity. On March 7, 1997, PRD President Ernesto Perez Balladares finally signed Law 10 that created the Ngobe-Bugle Comarca.

An in-depth analysis would be necessary to understand the reasons the architect of neoliberal economic reform in Panama, President Perez Balladares, finally passed the Comarca law. Although the Pérez Balladares (1994-1999) presidential administration delivered the promises of Torrijos Herrera for the creation of a Comarca, it was also responsible for enacting economic reform in line with the Washington Consensus, including the sale of national public utilities. The

¹⁴ According to Bernardo Jimenez, this crime has never been properly clarified. The assassination of Saturnino Aguirre occurred twenty six years after the death of Elias Claras also under unclear circumstances in Cerro Pelado (Kodriri). For the Ngäbe both Claras and Aguirre are considered martyrs of the struggle for the creation of the Comarca.

development of hydroelectric infrastructure throughout the country, under a new modality of private investment, represented an imminent threat to the integrity of indigenous territories and to the worldview of indigenous peoples. The course of collusion of the 1970s had then become the road to collision in the 1990s. The future of the Ngäbe ethnic community would now depend on the unavoidable confrontation between the capitalist logic of the new Liberal State, searching for business opportunities in every transaction including climate change mitigation; and the resistance of indigenous communities in places such as the cultural community of Kiabda along the Tabasará River.

The Protracted Conflict over the Tabasará Hydroelectric Dams

The creation of the Ngobe-Bugle Comarca through Law 10 of 1997 was regarded as the culmination of a forty-year Ngäbe struggle for land rights and self-determination. The triumphalism of the signing ceremony, however, concealed profound rifts within the Ngäbe leadership, divisions that had been accentuated by the negotiation process, and that would affect the capacity of the Ngäbe to fight decisively against large development project such as Barro Blanco.¹⁵ As mentioned

¹⁵ In addition to regional rivalries, the Ngäbe were deeply divided on fundamental questions such as loyalty to different political parties, religious affiliation, approval of development projects, and the extent that community justice should be implemented. In general, they had not reached a consensus on what position to adopt in front of an assertive State that promised “development” (or rather public infrastructure) if tourism, hydroelectric and mining projects were uncritically accepted in the Ngäbe Territory.

above, economic reforms enacted by President Pérez Balladares (1994-1999) allowed for private investors to undertake development projects at the national level. Following the privatization of the national electricity institute - Instituto de Recursos Hidráulicos y Electrificación (IRHE), a number of concessions and licenses for the generation of electricity were granted to national and foreign firms to build around the country, among them to Consorcio Tabasará, S. A., for the construction of two dams on the Tabasará River (Tabasará I and Tabasará II).

The original Tabasará dams were conceived as part of the ambitious scheme to power the Cerro Colorado Mining Project (Gjording 1994). As explained above, when these dams were proposed by the military government in the 1970s, there was widespread opposition to this initiative among the Ngäbe and poor mixed-blood peasants (*campesinos*) in the Province of Chiriquí. According to Dionisio Rodriguez (personal communication), Omar Torrijos Herrera himself heard the complaints of the Chiriquí peasants and Ngäbe indigenous peoples. After a long conversation, the General put his hat on the table and declared that they should not worry, that these projects would never be built. As with many other Torrijos promises, his personal commitment to respect the local opposition to the dams had fallen into oblivion years after his death. In the late 1990s, a group of local investors associated with prominent PRD figures had decided to harvest the power of the Tabasará waters. The first of the dams, Tabasará I, would affect the Ngobe-Bugle annexed area of the Corregimiento of Bakama, District of Muná in the Region of Kodriri where the cultural community of Kiabda was located; while Tabasará II was planned

to be constructed downstream in lands owned by poor nonindigenous peasants.

When the descendants of the same peasant and indigenous leaders that had talked to Torrijos suddenly realized the imminence of the Tabasará dams during the early months of the Mireya Moscoso administration (1999-2004), they began to mobilize to express their outright opposition to these projects (Berediana Rodriguez and Adelaida Miranda personal communication). For this purpose, they reached for the assistance of two government institutions that had been established by the Pérez Balladares administration to protect citizen rights and to guarantee fair competition in Panama after the neoliberal economic reform – the National Environmental Authority (ANAM), and the Office of the Ombudsman. Unfortunately, during the public hearings that were required as part of the consultation process for the approval of the Environmental Impact Assessments (EIAs), ANAM presided over what became a mockery of citizen participation. Consorcio Tabasará simply used public relations techniques to sell the benefits of the projects to the impoverished peasants and indigenous peoples, including unwarranted promises of employment. The Company even tried to utilize the wealthy landowners (*latifundistas*) to gain the support of the local authorities and to quell the opposition of the poor sectors of the population.

Faced with the lack of receptivity of the National Environmental Authority (ANAM), the peasants and indigenous peoples, now coalesced into the April 10 Movement (M-10) for the Defense of the Tabasará River, appealed to the National Ombudsman, Italo Antinori - who happened to be from the region impacted by the projects (Berediana Rodriguez and Adelaida Miranda

personal communication). Thanks to these inquiries, on June 6, 2000, the communities organized a general assembly with the Ombudsman and the Indigenous Affairs Committee of the National Assembly in the area affected by the Tabasará I hydroelectric project. As the local population expressed its grievances against the projects, the government officials began arguing among themselves and the meeting finished in the midst of discord and confusion.

During the coming months, and with the assistance of the Ombudsman Office, the people affected by the Tabasará projects began filing complaints against ANAM concerning the approval of the Environmental Impact Assessments (EIAs) (Berediana Rodriguez personal communication).¹⁶ Although the peasants and indigenous leaders did not have money to pay for legal action, a private lawyer, Jacinto Cárdenas, presented a lawsuit against the ANAM environmental impact resolution IA-048-2000 that approved the construction of the Tabasará II hydroelectric project.¹⁷ Based on this lawsuit, the Supreme Court ordered the temporary suspension of the hydroelectric project in December 2000, arguing that the national government

had violated the General Environmental (Law 41 of 1998) whose articles 96-105 called for the consultation of indigenous authorities before the start of any development projects affecting their territories. The legal victory of Tabasará II was interpreted as a major step forward in the protection of indigenous rights in Panama.

Although the Supreme Court had ruled for the temporary suspension of Tabasará II based on the lack of consultation with the affected Ngäbe population, the unexpected success of the grassroots mobilization of the M-10 generated decisive reactions from a Panamanian State that by that time was straying away from any alliance with indigenous peoples and popular organizations. In 2002, lawyer Jacinto Cárdenas desisted on the Tabasará lawsuit to avoid a conflict of interest after being nominated as deputy justice for the Supreme Court. As a result, Consorcio Tabasará began considering to start with the construction of the Tabasará dams (La Prensa, January 4, 2003).

In reaction to these events, on January 25, 2003, peasants and indigenous peoples blocked the Pan-American Highway demanding a meeting with President Mireya Moscoso herself (La Critica, January 26, 2003; El Siglo, January 26, 2003). The protest turned violent after the Governor of Chiriqui, Miguel Fanovich, came to the area instead of the President. Clashes with the Police led to the arrest of fifty-six people including women and children. Although seventeen of the protesters were accused of public disorder, these charges were later dropped after pressure from the Indigenous Affairs Committee of the National Assembly (La Prensa, January 28, 2003; La Critica, January 29, 2003).

Soon after the January 2003 demonstrations, the investors decided to

¹⁶ The General Administrator of ANAM, Ricardo Anguizola, also a native of Chiriquí Province, even attended a second general assembly with the affected communities convened for the month of July. As part of their campaign to voice their opposition to the projects, the peasants and indigenous leaders began organizing demonstrations to block the Pan-American Highway. Although these demonstrations were violently repressed by the Police and extracted a heavy toll from the protestors, the blockades served to attract the attention of the national media, and to put pressure on the government authorities to look for a peaceful resolution of this conflict.

¹⁷ Demanda Contencioso Administrativa de Nulidad interpuesta por el Lic. Jacinto Cárdenas (Expediente 665-00).

halt the Tabasará hydroelectric projects, and from that moment on, the Tabasará movement remained a reference point for national grassroots organizations struggling for the protection of their individual and collective rights from the abuses of the government and private investors. In spite of the apparent success of the Tabasará movement, over the next few months, the Moscoso administration began debilitating the multicultural provisions of the neoliberal citizenship regime consolidated during the Perez Balladares administration (1994-1999).

Most importantly, in 2003, the whole chapter of the General Environmental Law that called for the consultation of indigenous peoples was eliminated, and important modifications were also approved for Law 10 of 1997. In June 2004, the National Assembly also rejected the proposed law that created another comarca for the Naso indigenous people. Government officials realized that the development of mining, and hydroelectric projects could not be advanced without impediment when they also had to protect indigenous rights in the midst of neoliberal modernization. As private companies and government bureaucrats realized that indigenous peoples would not necessarily embrace neoliberal modernization, that limited multicultural rights would not be sufficient to manage demands for self-determination, the State adopted an unsympathetic position towards indigenous claims.

Greening the Tabasará Dams: The Barro Blanco Hydroelectric Project

When the son of Omar Torrijos Herrera, Martín Torrijos Espino (2004-

2009), assumed the presidency of Panama, the Ngäbe were passing through a complicated situation facing the imminent advance of mining and hydroelectric projects in their autonomous territory. Despite the creation of the Comarca, government agencies were reluctant to accept the possibility that the Ngäbe make decisions that were contrary to government plans. Under this context, the Tenth Ngobe-Bugle General Congress in Kuerima (Nedrini) in 2006 would be determinant for the viability of the Comarca nine years after the approval of Law 10. For the Kuerima Congress, the new PRD presidential administration of Torrijos Espino mobilized all of its political apparatus to defeat the incumbent Pedro Rodriguez, a *predicador* of Mama Tata, who had unexpectedly inherited the position from Victor Guerra after he had resigned to run for corregimiento representative in 2004. Government vehicles were transporting congress participants from the farthest reaches of the Ngäbe Territory, providing food, shelter, and logistical assistance for this massive event.

Unfortunately, for the government party, the results were not as expected. In a sudden turn of events, some of the supporters of the other candidates, including PRD supporters, coalesced behind incumbent Pedro Rodriguez who campaigned on three basic planks – no mines, no hydroelectric dams, and the installation of control posts in the access roads to the Ngobe-Bugle Comarca.¹⁸ The next

¹⁸ According to La Prensa, March 18, 2005, a mandatory fee of US\$ 0.50 per vehicle had been implemented in the road to Quebrada Guabo in Nedrini. This measure was supported by both the regional cacique, Rogelio Moreno, and the local legislator, Patricio Montezuma. Albeit controversial for outsiders, there is an unusual consensus among different authorities in the

course of events made a complete mockery of the PRD. All support was withdrawn from the General Congress, including the use of government equipment like the main electrical plant. Transportation was offered to congress participants to desert the meeting that was actually expected to extend for three additional days. As the number of congress participants sharply dropped and living conditions worsened literally from one day to the other; opposition politicians stepped in to take advantage of the PRD debacle, most importantly the leader of the new Democratic Change (CD) party, Ricardo Martinelli, soon to become president of Panama (2009-2014). Mr. Martinelli replaced President Torrijos Espino as the messianic provider to the General Congress with his surprise visit on Friday March 10, 2006.¹⁹

In 2006, the Torrijos Espino administration also allowed the cancellation of the Tabasará I concession and its replacement with a new concession under the name of Barro Blanco. The new concession awarded to a company of Honduran capital, GENISA. This new version of the hydroelectric plant affecting the Ngobe-Bugle Comarca did not only differentiate from Tabasara I for having a lower generation capacity, and

Comarca in favor of these control posts (La Prensa, December 27, 2006).

¹⁹ A few weeks later, in April 2006, Ricardo Martinelli accused the PRD government of leaving the Ngobe-Bugle General Congress without any food and transportation during the annual conference of the Asociación Panameña de Ejecutivos de Empresas (APEDE). This 2006 Annual Conference of Business Executives (CADE 2006) focused on the role of political parties in the promotion of democracy, and featured prominent representatives of all the officially registered political parties in the country. Ricardo Martinelli ran against PRD Balbina Herrera in the 2009 general elections, and became the President of Panama on July 1, 2009.

therefore a smaller reservoir; but also because of the new discourse that supported its convenience, profitability and environmental sustainability. As opposed to the Tabasara I and II dams Barro Blanco was portrayed as an unrivalled opportunity to decrease carbon emissions mitigating climate change, a new kind of justification for power dams around the world.²⁰

In 1997, the Conference of the Parties of the United Nations Framework Convention on Climate Change (UNFCCC) had created the Kyoto Protocol. Among its main provisions, a new carbon offset scheme was devised to operate under the direction and supervision of the UNFCCC Secretariat, the Clean Development Mechanism (CDM). The CDM allowed more developed, higher-polluting countries (Annex I) to buy Certified Emissions Reduction (CERs) from less developed, lower-polluting countries (Non-Annex I). Allegedly, lower-polluting countries like Panama would then have the capacity to use these revenues to compensate private companies like GENISA that were supposedly engaging in climate change mitigation and sustainable development. The creation of the Clean Development Mechanism (CDM), and specifically the inclusion of power dams as eligible projects, deeply divided environmental organizations between those who regarded this new market mechanism as an opportunity for doing business with the private sector, and those who considered carbon trading as a form of false solution to climate change.

The ANAM administration between 2004-2009 had

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<http://www.aida-americas.org/our-work/climate-change/dam-no-more-truth-about-large-dams>
<https://www.internationalrivers.org/blogs/246/large-scale-power-projects-undermine-the-cdm>
<http://unfccc.int/cop8/se/kiosk/cm2.pdf>

disproportionate expectations about the potential of Panama to obtain revenues from carbon trading, saying at some point that the country could become “a world leader in climate change mitigation”.²¹ This unexpected turnaround originated from the participation of key ANAM officials in the promotion of “green business” related to the implementation of the United Nations Framework Convention on Climate Change (UNFCCC); in particular, the Clean Development Mechanism (CDM) of the Kyoto Protocol. The use of the CDM scheme to justify the progress of the Barro Blanco hydroelectric plant and other power dams around the country was intended to give greater legitimacy to a battered industry that had been severely criticized around the world; and that was now presented as an opportunity to uphold the implementation of best practices and mitigate climate change.²² Based on these considerations, ANAM accelerated the approval of the Barro Blanco environmental impact assessment (EIA) in 2008 without taking into consideration the strong opposition against the dams in the

²¹ The head of ANAM, Ligia Castro, and her deputy administrator, Eduardo Reyes, were very active in the fight against climate change and the promotion of carbon trading, making this international policy a cornerstone of their work at ANAM between 2004-2009.

https://impresa.prensa.com/economia/Panama-centro-regional-carbono_0_1616088557.html

https://impresa.prensa.com/mundo/Creditos-carbono-causan-incertidumbre_0_1405359526.html

<https://www.caf.com/media/3144/Sinergia22.pdf>

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²² In 2000, the World Commission on Dams (WCD) had issued a very critical assessment about the social and environmental impacts of these infrastructures around the world.

<https://www.internationalrivers.org/campaigns/the-world-commission-on-dams>

Ngäbe communities of the District of Munä, Kodriri region, Comarca Ngobe-Bugle. ANAM officials were so convinced that carbon credits would better the fate of the indigenous communities that they even included a clause in the EIA approval resolution promising to share revenues from carbon trading with the affected communities. The sons and daughters of the same peasants and indigenous peoples who believed the promise of Omar Torrijos Herrera watched in disbelief how his descendants pushed for the damming of the Tabasará against their widespread rejection of any dams on this River that was captured in the phrase “Tabasará Libre”.

Once secured the approval for the EIA, GENISA moved forward in validating the Barro Blanco hydroelectric project as eligible for the CDM.²³ According to UNFCCC rules, this procedure had to be completed by a third party; in this case, Spanish firm AENOR located in Barcelona. The validation process included a public consultation period in which stakeholders could send comments about the Project Design Document (PDD), a highly technical document that was available online, and only in English.²⁴ Understandably, in 2008 this procedure was strange for the affected communities who never sent comments, and possibly did not even notice the validation process. A year later, a second validation process was initiated by AENOR after the promoting company GENISA had decided to increase the generating capacity of the dam to 28.84 MW.

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<https://cdm.unfccc.int/Projects/DB/AENOR1261468057.59/view>

²⁴https://cdm.unfccc.int/filestorage/B/O/L/BOLWGNA7FS4YKM23JCHPQ695ZIU8ET/Barro%20Blanco%20PDD%20v3.08?t=UW18cDgze m90fDBXqV9v8I6Y_sgSeOz4SR_E

While all these transactions happened in the UNFCCC web site, the affected peasant and Ngäbe communities continued their opposition to Barro Blanco far removed from decision-maker centers in different European cities. An unexpected approximation happened when officials from the European Investment Bank (EIB) contacted interested stakeholders in Panama in June 2009 to assess the possibility of financing the hydroelectric project. Confronted with strong arguments about lack of consultation as well as environmental harm, bank officials replied that the Project was preferable to electricity generation with fossil fuels, and therefore served the higher purpose of mitigating climate change.

As the 2009 electoral campaign neared, the prospects for indigenous autonomy in Panama were not optimistic.²⁵ The morale of the PRD collapsed when the Democratic Change (CD) candidate Ricardo Martinelli obtained 60% of the national vote for the presidential seat in alliance with Juan Carlos Varela of the Panameñista Party. As the new presidential administration was inaugurated, the role of the state was expected to downsize and move further ahead along the neoliberal pathway. In spite of his neopopulist rhetoric, Martinelli (2009-

2014) had made it clear that he would strive to create new incentives for private investment, including an unapologetic push for mining and a new law for private land titling in coastal areas. When a third march to Panama City was organized by the Ngäbe leadership in September 2009, President Martinelli refused to meet with the protestors, and instead delegated this responsibility to the new Director of Indigenista Affairs, Jose Isaac Acosta, a former M10 activist and CD candidate for the Kodriri seat in national congress.

Continued Conflict and the Collapse of the Democratic Change

The first major clash between the Ngäbe indigenous people and the Martinelli government happened in July 2010 after protests erupted throughout the country against a new bill that weakened a number of environmental, labor and human rights regulations. Since all of these changes were grouped together into a single bill, they were aptly referred as *Ley Chorizo*, or *Sausage Law*. The protests against this bill left a heavy toll on human lives and injuries, most importantly in the town of Changuinola in the Province of Bocas del Toro, where the armed forces clashed for days against demonstrators from SITRAIBANA, the banana workers union. For the casual observer, this seemed to be a classical conflict between the State and labor unions; yet SITRAIBANA members happened to be majority Ngäbe, and they were heavily repressed based on their ethnic identity as documented in a special report by the National Human Rights Network (Red Nacional de Derechos Humanos).

Confronted with the unexpected strength of this grassroots reaction, the

²⁵ That same year Naso and Ngäbe leaders from Bocas del Toro filed a petition to the World Bank Inspection Panel against the National Program for Land Administration (PRONAT) jointly financed by the World Bank and the Inter-American Development Bank (IADB). Although the main purpose of that program was to promote private land titling, the World Bank had included a component for the delimitation of protected areas and indigenous territories. The indigenous leaders argued that PRONAT had failed to recognize their land rights. This request responded to the World Bank's indigenous policy following the structural changes discussed by Fox and Brown (1998).

Martinelli government was pressed to repel the bill and start a dialogue table mediated by former head of the UN system in Panama, Isabel de Saint Malo. Later in the same year, the Government presented another highly controversial bill that modified the Mining Code to facilitate the construction of the Cerro Colorado Mine. Once again, the Ngäbe leadership reacted very strongly against this government initiative coalescing into the Coordinadora Ngäbe para la Defensa de los Recursos Naturales (hereafter referred as the Coordinadora) that organized mobilizations and roadblocks on the Pan-American Highway in early 2011.

Once again, the Martinelli administration exceeded itself in the use of power as was documented by the National Human Rights Network; and then later stepped back to start a new negotiation process. There appeared to be a Janus-faced government that pushed for neoliberal reform and privatization without consultation, and then backed up for dialogue extemporaneously. Public figures in the governing coalition seemed to be equally divided between hard-liners and negotiators; and the Panameñista Party of Vice-President Juan Carlos Varela assumed most of the political cost of negotiation.²⁶

After the massive 2011 mobilization, an agreement was reached between the Government and the

²⁶ In late 2008 Juan Carlos Varela from the Panameñista Party was actually expected to run against Ricardo Martinelli of the Democratic Change (CD). Months later, they forged an alliance to run together against PRD candidate, Balbina Herrera, who was accused of having ties with the international ALBA coalition promoted by Hugo Chávez from Venezuela (a suspicion that was never confirmed). The ensuing agreement came to be known as the Pact of La Cresta in reference to the residence of the US Ambassador in Panama (La Prensa, January 24, 2009).

Coordinadora (San Félix Accord) to forbid mining and hydroelectric concessions within the Comarca (Pedro Abrego personal communication). This created uneasiness among private investors and government officials who regarded this measure as a violation of juridical security; particularly, for concessions that had already been granted such as the Cerro Colorado Mine and the Barro Blanco hydroelectric project. Under this context, the dialogue approach of the Panameñista and CD governing parties served less to solve protracted conflicts than to gain time and legitimacy for government decisions that were already taken. In this regards, dialogue, like the CDM, became a cleansing mechanism to promote development projects, and the discourse of a green economy served this cause with effectiveness and credibility, especially among mainstream environmental organizations that had forged strong economic ties with the business community.

Likewise, the ecological packaging with which the violation of the human rights of indigenous communities in projects like Barro Blanco were cleaned up served as a justification for international financial institutions to undertake hydroelectric ventures as lesser evils in comparison with dirty fossil fuel electricity generation. Based on this premise, the Executive Board of the Clean Development Mechanism (CDM) approved the registration of the Barro Blanco hydroelectric project in 2011. Shortly before, the development banks of The Netherlands (FMO) and Germany (DEG) had decided to rescue the financing of the Project after GENISA had withdrawn its request for financing from the European Investment Bank (EIB). In late 2010, the Ombudsman of EIB was preparing a

field trip to the affected Ngäbe communities as part of an investigation into compliance with social and environmental guidelines that had to be suddenly suspended when GENISA retrieved its request for financing.²⁷ Apparently, communications were not as efficient among these public finance institutions, or the approval of the carbon credits lent the Barro Blanco dam the cloak to be considered viable as a sustainable development and carbon mitigation initiative despite the strong opposition of the local communities.

The beginning of the Barro Blanco construction work in 2011 motivated a new cycle of mobilization on the part of the affected communities. The M10 occupied the entrance of the Project between March and May of that year bringing public attention and obstructing the continuation of construction work. To this action of resistance, the Government of Panama responded with the preferred new practice for whitening environmentally damaging projects: The initiation of dialogues without real guarantees that would allow the advance of construction work; the distraction and division of the communities; and, eventually, lead to the use of force to quell continued citizen protest. Indeed, this happened, for the first time in Barro Blanco, in May 2011, when the armed forces occupied the easement of the Pan-American Highway after the M10 had abandoned the protest site for dialogue. Public officials unilaterally left the dialogue table, and sent the armed forces to the entrance of the Project preventing the reinstatement of the M-10 protest camp, and safeguarding the uninterrupted entry

and exit of machinery, equipment and staff of the promoting company.

Between 2011-2014, and as the construction work progressed, the protest actions of the M10 and other groups against the construction of the Barro Blanco hydroelectric project were incessant. They were responded intermittently with cyclical periods of excessive use of force as in the second national mobilization of the Ngäbe people against mining and dams in February 2012, and endless sessions of supposed dialogues that were disguised with technical discussions, mostly behind closed doors and regrettably with the facilitation of the United Nations system. The 2012 mobilization had been stronger than the one happening the year before leaving at least two people deceased, and prompting the meditation of the Catholic Church and the United Nations. As the dialogue continued for weeks without reaching agreement on thorny questions like Barro Blanco, some sectors in Panama including progressive organizations began differentiating between those people who were willing to reach agreements, mostly led by the new Ngäbe General Cacique, Silvia Carrera; and other Ngäbe who maintained their claims without giving up any concessions. The former were then portrayed as rational actors, and the latter as radicals with all the implications that label had on the credibility of those leaders. At that point, in time, the M10 sided with the position of the General Cacique, and therefore was qualified as a “rational actor”.

Based on that rationality, the dialogue table was divided in two: A larger table to discuss details of decisions that had already reached consensus, most importantly banning mining in the Comarca. The other dialogue table looked at issues on which

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<http://www.eib.org/about/accountability/complaints/cases/sg-e-2009-11-barro-blanco-hydroelectric-project%20.htm>

consensus had not yet been reached; figuring prominently the Barro Blanco hydroelectric project. Based on this decision, and with the exclusion of sectors of the Ngäbe leadership opposing to this methodology, an agreement was signed between the Coordinadora, the General Cacique, the National Assembly, and the Ministry of Government in March 2012. Based on that agreement, Law 11 of 2012 was passed banning mining on the Comarca Ngäbe-Bugle and establishing a special procedure for the approval of hydroelectric projects. That procedure involved a share of revenues for the Comarca (5%), and a referendum, but did not apply to the Barro Blanco concession granted before that date.

Since the new law did not cover Barro Blanco, a separate dialogue table was maintained about Barro Blanco with UN mediation and with the participation of the Coordinadora, and the local, regional, and general caciques. Although the M10 was not technically a participant, they were allowed to observe the dialogue sessions that occurred at closed doors in the UN headquarter offices in Panama City. Unfortunately, these conversations did not reach any conclusions although they produced important technical information that demonstrated that Ngäbe communities would be severely affected by the Barro Blanco reservoir.²⁸ During the long dialogue sessions, there were two critical aspects in which the M10 diverged from the Government and even the facilitators: 1. Who should represent the communities? 2. And, how to ensure compliance with international

standards and norms for the protection of indigenous and human rights?

In the first case, the National Government always opted to interpret the participation of the affected communities based on a European representative model, which found no support in the customary law of the Ngäbe people, and not even in the relevant Panamanian legislation. In particular, the Government of Panama made a risky interpretation of the authority of the caciques, who lack unilateral decision-making powers and administrative functions according to both Ngäbe customary law and national legislation. On the other hand, the Panamanian Government decided to ignore and manipulate the legitimate authority of the Ngäbe-Bugle General Congress, the highest decision-making authority regarding development projects according to the spirit of Law 10 of 1997. As explained above, the General Congress was created in 1978 as a space for participation and consensus decision-making according to Ngäbe customary law and worldview (Jordan 2010a).

The inappropriate use of the signatures of caciques and individual members of the congress boards, denying the legitimate rights of the communities directly affected to participate, also helped to reinforce attempts to wash the image of the territorial dispossession of the Ngäbe people with unauthorized signatures and agreements. This happened in contravention of the best international standards requested by UN Special Rapporteur James Anaya in his report on the Status of Indigenous Peoples Rights in Panama (2014);²⁹ in particular, the principle of Prior, Free

²⁸http://www.pa.undp.org/content/panama/es/home/library/crisis_prevention_and_recovery/peritaje-independiente-de-la-represa-de-barro-blanco--panama--re.html

²⁹ <http://unsr.jamesanaya.org/country-reports/the-situation-of-indigenous-peoples-in-panama>

and Informed Consent (CLIP). Although international organizations like the UN, and even the Dutch and the German development banks, were also expected to abide to these standards, they comfortably leaned on a limited number of signatures to interpret that an agreement had already been reached with the affected population.

The possibility of reaching agreements with indigenous representatives saving the complications of long discussions in community assemblies was inherent to advancing financial transactions necessary for market-based conservation instruments such as the CDM. The consensus decision-making that characterize many ethnic communities becomes expensive and unpredictable for financial investors and engineering firms, including the actual possibility that a project be rejected with all the losses associated with opportunity, reputation, and transaction costs. If Ngäbe customary law had been followed in dialogues occurring between 2011-2015, most possibly project cancellation would have been the outcome considering that the M10 and the larger population in Munä always maintained that the dam was unacceptable.

The question then became why the M10 continually favored a dialogue strategy, and the Government continued with this approach cyclically despite unwillingness to cancel the hydroelectric project. In the case of the Government, and the promoting company to a lesser extent, there was the expectation that the Ngäbe would eventually settle for a financial exchange for the loss of their lands and other damages; according to them that was a logical option considering the advance of the Project. However, the M10 believed in the dialogue option following a different motivation, essentially conviction that their

arguments were stronger, and therefore their reasons for project cancellation would eventually have to be recognized. The Government and other international actors searching for some sort of “rational” settlement never considered that the lands of the cultural community of Kiabda, Corregimiento of Bakama, District of Munä, Kodriri Region; could not possibly be exchanged for money; because they had a value that transcended any material consideration according to Mama Tata spirituality.

According to the families of Kiabda and neighboring communities, the petroglyphs along the Tabasará River contained ancestral signs that had been interpreted years after the Mama Tata revelation. Based on these signs, a uniquely Ngäbe system of reading and writing had been developed that not only represented better Ngäbe language, but was also tied to spirituality. This reading and writing system was taught year round at the school of the cultural community of Kiabda; and every dry season, in the month of January, pilgrims gathered at the inscribed stones for Mama Tata ceremonies.

Although M10 leaders held high expectations that national law would favor their cause, the Supreme Court of Justice of the Republic of Panama denied all of the legal remedies filed by the M10 to prevent the flooding of their collective lands and the protection of their livelihoods and sacred places in the Tabasará River. These legal actions included an administrative nullification against the environmental impact assessment (EIA), a request for protection of constitutional guarantees, and an appeal for annulment against the resolution approving a “forceful easement” on the collective lands of the Ngäbe families of Bakama.

Unfortunately, the legal figure of a “forceful easement” as a new form of “clean expropriation” of collective lands

represented one of the latest contributions made by the continued resistance of the M10 to the twisted jurisprudence of Panama in relation to the rights of indigenous peoples.³⁰ This juridical option appeared in Law 18 of 2013 to solve the complex situation of forcing the use of collective lands for the sake of national interest. At that moment, the National Authority for Public Services (ASEP) could not use the same procedures applied for individual land titles, because the Comarca legislation (Law 10 of 1997) did not allow for expropriation of the collective lands of the Ngäbe. Therefore a new law was created to allow the use (and eventual destruction) of these lands without an actual expropriation, and under the elusive concept of an easement on collective lands.

Based on this dubious interpretation of national law and constitutional rights, ASEP issued an announcement that the authorities would enter into the farms of the Bakama families during the dry season of 2014. In reaction, a number of protest camps were set up in the areas to be flooded by the reservoir by the M10 and other protest groups. During this period, and in the midst of a bitter electoral campaign, Ngäbe protestors faced the National Police on a daily basis trying to prevent the occupation and destruction of their farms. After a highly unstable period (2009-2014), it was not easy to predict what the

³⁰ Ever since the Supreme Court of Justice provisionally suspended the construction of the Tabasará II hydroelectric project in 2000, there have been many other instances in which the National Assembly has altered the national legislation to allow the advance of hydroelectric projects on the Tabasará River. As stated above, these included modifications to the General Environmental Law (Law 41 of 1998) and the Law that creates the Ngäbe-Bugle Indigenous Comarca (Law 10 of 1997).

position would be of the different presidential candidates if they won the general elections. The surprise victory of the Panameñista candidate, Juan Carlos Varela, offered some hope, as he was a main opponent to Ricardo Martinelli after being pushed to leave the government coalition in 2011.³¹

New Promises and Failed Dialogues for Clean Development

When the new Varela government offered an opening for dialogue, and ANAM suspended construction of the Barro Blanco dam temporarily in early 2015, the M10 supported the creation of an Indigenous Commission to engage in conversations with the fledgling administration.³² As the UN was convened by the Government to facilitate this dialogue, and project cancellation was not ruled out as a possibility at the outset, the M10 position shifted from direct resistance into assertive argumentation. Based on these premises, the dialogue happened between February-May 2015 with specific sessions focusing on the social, economic, environmental and cultural aspects of the Project. For each of these themes, the Indigenous Commission also including the three local, regional, and general caciques as well as the Mayor of Munä, contributed information, comments, and argumentation against the continuation of the hydroelectric project. At some point, the National Government that

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https://www.prensa.com/getzalette_reyes/fricciones-previas-ruptura-alianza_2_3194700501.html

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<http://www.pa.undp.org/content/panama/es/home/presscenter/pressreleases/2015/02/21/se-instala-mesa-de-di-logo-sobre-proyecto-hidroelctrico-barro-blanco.html>

was represented by several ministers called upon the promoting company, GENISA, to listen to the grievances of the affected communities. All dialogue sessions happened in the Catholic missionary center of Tolé, and were open for observation to any person deciding to listen to the different interventions.

After a number of extended sessions, it was clear that the M10 was requesting project cancellation; but the Government was unwilling to assume the costs of such a bold move. A sector of Ngäbe protestors mainly grouped in the M22 movement had decided not to participate in the dialogue, expressing distrust against the caciques and even against the M10. However, the M10 had sided with “rational” actors willing to dedicate long hours with UN mediation to convince the Government this project should not move forward. By April 2015, it appeared that the Government blamed the promoting company GENISA for all of the ills of the Project as well as for the animosity of the local communities. Based on that conviction, now Vice-President and head of the government negotiating commission, Isabel de Saint Malo, offered continuation of the hydroelectric project only replacing the promoting company. At such point, the dialogue essentially came to a halt as the Indigenous Commission strongly rejected this option. In response, the Government proposed the creation of a technical commission to search for alternatives to continue with the Project.

Days before the final collapse of the dialogue, the daily *La Estrella de Panamá* referred to a letter from FMO, DEG and BCIE warning the Government of Panama of the potential consequences that project cancellation could have on the international

investment climate.³³ This letter went in hand with the prevailing position of business sectors in Panama who expressed deep concern about the juridical security of foreign investors, and the ripple effects that might originate from the cancellation of Barro Blanco.

In the face of continuous denial of their own juridical security for collective ownership of Comarca lands, the M10 had no other option than appealing to public opinion and to international human rights bodies trying to elicit a boomerang effect as described by Keck and Sikkink (1998). In 2014, they had filed a petition to the new Independent Complaint Mechanism (ICM) of FMO, who released a joint report with DEG on May 29, 2015. According to this report, “while the [loan] agreement was reached prior to significant construction, significant issues related to social and environmental impact and, in particular, issues related to the rights of indigenous peoples were not completely assessed prior to the [loan] agreement.”³⁴

Although this public recognition at the international level represented a pyrrhic victory for M10 when most of the Barro Blanco dam was already completed, and the Government was not willing to consider the possibility of project cancellation, this statement also revealed the pitfalls of the deceptive discourse of clean development for climate change mitigation. Based on the universality of human rights, UN bodies such as the UNFCCC Secretariat had to ensure that all their activities complied with UN conventions for the protection of human rights. In addition, the CDM purpose was allegedly not

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<http://laestrella.com.pa/panama/nacional/bancos-expresan-preocupacion/23864070>

³⁴ <https://www.fmo.nl/independent-complaints-mechanism>

only climate change mitigation, but also sustainable development. Evidently, the harm soon to be caused to the communities, their livelihoods and sacred sites ran against both principles of human rights and sustainable development.

In spite of these irreconcilable contradictions, the UN representation in Panama continued its engagement in the Barro Blanco controversy using funds provided by two UNDP cooperation projects.³⁵ After August 2015, and based on an agreement signed by the three caciques, a series of technical meetings were held closed doors, and without the participation of the M10 that then began to be represented as a radical group refusing to engage in dialogue. It was not clear, whether these meetings would lead to a new agreement, or if they allowed the continuation of the Project. However, that same month ANAM lifted the temporary suspension of the Project, and issued a fine against GENISA

In April 2016, M22 protestors who had previously moved their protest camp close to the dam site were notified that flooding would happen in the next few days; no such meeting happened in the Bakama communities to be directly flooded by the reservoir. For this reason, they were surprised when ASEP issued an announcement on Sunday May 22 saying that “test flooding” would start two days later. Protests erupted by Ngäbe people living in different parts of the country when the M22 protest camp was forcefully removed on the evening of May 23.³⁶ As the waters rose towards Bakama, the M10 families maintained their position

that they would never leave, or accept any payments for their sacred lands. After finally sending an official delegation to Kiabda, in June the Government announced that the “test flooding” would be temporarily suspended until an agreement could be reached with the caciques.³⁷

On August 19, flooding resumed now nearing the stones with the ancestral signs revered by Mama Tata. Three days later a signing ceremony organized by the Government in the capital of the Comarca, Buäbdi, ended up in a fiasco.³⁸ Although the document was signed by the three caciques, the ceremony took hours to complete when the local and regional cacique were surrounded by Ngäbe people, mostly women, asking them to explain the content of the document. As tensions rose, the ceremony was moved from an open air setting to the hall of a local school with a line of guards separating the caciques, UN representatives, government ministers, and President Varela from the furious audience. Right when the agreement was being signed protestors threw rocks to the main table finishing the ceremony.

In the coming days, protests erupted in the entire country, especially in the Pan-American Highway along the Comarca and in the distant province of Bocas del Toro. The worst police repression occurred in the community of Gualaquita, Bocas del Toro, where followers of Mama Tata had concentrated to protest against the completion of the flooding.³⁹ As the

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<https://info.undp.org/sites/registry/secu/SECUP/ages/CaseFile.aspx?ItemID=22>

36 <https://intercontinentalcry.org/wp-content/uploads/2016/08/BARRO-BLANCO.-INFORME-DDHH-22-6-16.pdf>

37

https://www.tvn-2.com/nacionales/Suspenden-llenado-de-prueba-proyecto-Barro-Blanco_0_4517548271.html

38 <https://news.mongabay.com/2016/08/photos-panama-revives-stalled-dam-over-strong-indigenous-opposition/>

39

<http://www.telemetro.com/nacionales/enfrentam>

waters of the reservoir covered the engraved stones, community trails, dwellings, water sources, forests and farms, the M10 inhabitants of Bakama clung to their decision to remain in their territory regardless of the arbitrary flooding. At this point, the national media highlighted the virtues of the agreement by which a third party was expected to replace GENISA in the operation of the dam, and the Comarca was destined to receive a share of the revenues regardless of the opposition of the local communities (15%).

The celebration was short-lived when the Ngäbe-Bugle General Congress voted against approval of the agreement on September 17, 2016.⁴⁰ This decision closed off the possibility of replacing GENISA as an operator of the dam; and left the Government of Panama at an uncomfortable position in front of international financial institutions and human rights bodies. For this reason, the decision of ANAM to retrieve the letter of approval for Barro Blanco to receive carbon credits should not come as any surprise.⁴¹ Announced at the Twenty Second UNFCCC Conference of the Parties (COP22) in Marrakech, Morocco, in November 2016, the decision of ANAM to revoke the approval of the Barro Blanco hydroelectric project for the

ientos-Bocas-Toro-Barro-Blanco_0_947905574.html
https://www.tvn-2.com/nacionales/paso-Gualaquita_0_4561043880.html
<http://otramerica.com/radar/barro-blanco-acuerdo-acuerdo/3455>

40 <https://news.mongabay.com/2016/10/barro-blanco-dam-in-limbo-after-ngabe-bugle-congress-rejects-agreement/>
https://www.prensa.com/provincias/Congreso-General-Bugle-Barro-Blanco_0_4577542238.html

41 <https://carbonmarketwatch.org/2016/11/10/press-statement-in-landmark-decision-panama-withdraws-un-registration-for-barro-blanco-hydrodam-project/>

Clean Development Mechanism (CDM) could be interpreted as a strategy to clean the record after the absolute failure of a negotiated solution. The logic behind market-based environmental transactions was an exchange between two parties who were willing to give up in order to receiving a benefit. When a party is not willing to concede what they consider sacred and irreplaceable, the scenario of a successful win-win game is impossible, and ultimately reluctant actors may be considered irrational, at least for those others seeking to maximize profit.

Since the filling of the reservoir, three major floods have happened in the Bakama communities; and mosquitoes, disease, mud, lack of water and motivation, strain living conditions. Despite this dismal situation, the Ngäbe communities refuse to leave their collective lands even when they are living literally at the edge of the water. The Mama Tata celebrations at the Kiabda stone engravings have ceased to happen again, at least in the last two years.⁴² However, the communities have remained loyal to their own determination of living along the Tabasará River; not accepting solutions from outside forces and selling the lands of their forbearers.

In April 2018, the new complaint mechanism of UNDP – Social and Environmental Compliance Unit (SECU), issued a draft report about the participation of this agency in the process of dialogue between 2015-

⁴² At some point, Government officials argued the rocks would be uncovered every year during the dry season when the Mama Tata pilgrimage usually happened. Regrettably, this never happened in 2017 and 2018, and areas uncovered in those seasons were completely unusable because of the large mud deposits accumulating in the reservoir.

2016.⁴³ The report stated that: “UNDP did not meet requirements for due diligence, transparency, consultation/consent, and Indigenous Peoples rights after the Roundtable Dialogue was concluded, in approximately June 2015” (p. 4 iv). Clearly, the Ngäbe have not yet been able to remove all the dirt thrown up on their land. At least, however, and for the moment, they have been able to leave much of that unclean development in evidence.

Conclusion

Barro Blanco warns against the pitfalls of market environmentalism when confronted with an indigenous vision of life with different values, preferences and expectations. Although environmental problems represent urgent challenges at the global level, any solutions must recognize power differentials, non-capitalistic perspectives and cultural difference, thus avoiding the risk of becoming new forms of environmental imperialism in the XXI century.

After the debacle of the Clean Development Mechanism (CDM) of the Kyoto Protocol, currently superseded by yet undefined new mechanisms suggested in the Paris Agreement (2015), the environment and development community must reexamine the actual transformative capacity of the discourse of a green economy. As stated by Wanner (2015), “greening the economy and associated strategies of green growth divert attention from the social and political dimensions of sustainability and issues of social and international justice”.

In spite of the UN carbon certification being terminated with the withdrawal letter of the Government of Panama; the labeling of the Barro Blanco dam as a form of sustainable and clean development served to conceal a clear instance of “green grabbing”. Despite the appearance of dialogue, the rightful owners of the land were ultimately dispossessed through forceful means when the floodwaters began to rise (Fairhead et al. 2012). Whether this will represent a tendency in new “ecological distribution conflicts” throughout the world remains to be seen (Martínez-Alier 2016); yet the construction and eventual deconstruction of a discourse of clean development sends warning signs that should not be disregarded.

In the historical conflict between the Ngäbe indigenous peoples and the Government of Panama, greening became a failed strategy to justify expropriation and commodification of natural resources. As much as evangelization and civilization were utilized in the past, continuous conflict over natural resources will probably generate new discourses and rationalities that will clash with indigenous worldviews, interests and preferences. This seemed to be the ultimate goal of the ideational battle over the Tabasará dams that spanned more than forty years, and more than seven different government administrations from every major political party in Panama. The outcome was possibly known and assumed by the M10 protestors since the very beginning, both in the streets and in the dialogue tables. However, the discussion continues as of how you define development, quality of life and happiness from different perspectives.

⁴³https://info.undp.org/sites/registry/secu/SECU_Documents/SECU0004_Draft%20Investigation%20Reportfcb7d7c8c5384d829d0eefed714e7846.pdf

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