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## "I Entered During the Day, and Came Out During the Night": Power, Environment, and Indigenous Peoples in a Globalizing Panama

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ESSAY

**“I ENTERED DURING THE DAY, AND CAME OUT DURING THE NIGHT”: POWER, ENVIRONMENT, AND INDIGENOUS PEOPLES IN A GLOBALIZING PANAMA**

*Oswaldo Jordan\**

For months now, the widow has clung to her tiny shack in this picturesque village above the Changuinola River—even when local officials and hydroelectric workers said she must leave, even when a bulldozer roared into her yard in the summer. “I will not go,” insists Isabel Becker, 59, a diminutive Ngobe Indian who lives in a dirt-floored home. “If the company wants to send police to kill me, go ahead.”<sup>1</sup>

The story of the Ngobe widow Isabel Becker, living in the Province of Bocas del Toro in Northwestern Panama, who entered at mid-day to an unknown business tower in Panama City, and was not able to leave that building until mid-night, may easily be interpreted as yet another of countless cases of local indigenous women being abused by the mighty power of corrupt governments and multinational corporations. For the casual observer, the same plot could be laid out in almost any country in the humid tropics: Indonesia, Malaysia, Nigeria, Brazil or Guatemala. Yet, under the surface of what Paul Farmer (2004) has called the

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<sup>1</sup> Ben Shors, MIAMI HERALD, Oct. 2, 2007.

“ethnographically visible,”<sup>2</sup> we can discover that the drama of Isabel is not simply an archetype of the continuous tragedy of indigenous peoples, but instead a reflection of a complex web of social relations, embedded in and creating of the legal framework of a national state that is simultaneously global and parochial, liberalized and oppressive, the booming Panama of the XXI century without the welfare state that sought for the protection of the Ngobe regime of *de facto* political autonomy in the 1970s.

Under this light, the story of Isabel is not yet another tragedy of any indigenous widow in a Third World country. Instead, the destiny of Isabel is an open-ended question about the place of the Ngobe womb in a globalizing economy, a question that demands a definitive answer from all of those who participate in this continuous struggle for power. In spite of the celebrated legal victories of indigenous peoples in Latin America, the case of Panama reveals a number of disturbing questions about the persistence of colonial relations between indigenous peoples and the descendants of the colonizers. The widow Isabel Becker appears not to have any place in a globalizing Panama of skyscrapers, beach resorts, and expanded waterways.

## I. Changing citizen regimes in Latin America

The end of the Cold War prefigured profound transformations in Latin American societies. With the legacy of a code-based legal system, and what many observers would call the burden of patriarchal, Catholic authoritarianism, every Latin American country, with the possible exception of Cuba, embarked upon a double transition from state-control into market economics, and from top-down authoritarian rule into liberal democracy in the 1990s. Inimical to

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<sup>2</sup> Paul Farmer, *An Anthropology Of Structural Violence*, CURRENT ANTHROPOLOGY 45 (2004), at 305.

this “modernization” of Latin American society was the dismantling of those corporatist structures that maintained an ingrained intertwining of state and society.<sup>3</sup> The marriage between popular organizations and centralized governments, allegedly based on class distinctions, was expected to recede in the wake of free enterprise and equal citizenship. State companies should be disaggregated and sold to private investors who would not only bring new technology and capital investment, but improve efficiency and overall customer satisfaction. In general, the structural (and social) adjustment of the Latin American economies was associated with lifting restrictions against private initiative and individual accomplishment.

In spite of this Washington Consensus that promised citizen equality and personal liberty, many social scientists perceived an unexpected rise of assertive “new” indigenous movements that emerged from the foundations of previous class-based organizations, such as peasant leagues and worker unions.<sup>4</sup> The 1990 Ecuadorian “General Uprising” and the Bolivian “March to La Paz” symbolized the arrival of these new social movements of a postmodern Latin America, the expression of suppressed identities that had been sequestered by leftist guerrillas and Marxist intellectuals many years before.<sup>5</sup> Under this scenario, the legal

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<sup>3</sup> DONNA LEE VAN COTT, *THE FRIENDLY LIQUIDATION OF THE PAST: THE POLITICS OF DIVERSITY IN LATIN AMERICA* 3 (2000); Willem Assies, *Indigenous Peoples and Reform of the State in Latin America*, in *THE CHALLENGE OF DIVERSITY: INDIGENOUS PEOPLES AND THE REFORM OF THE STATE IN LATIN AMERICA* 9-10 (Willem Assies, Gemma van der Haar & Andre Hoekema eds., 2000); DEBORAH YASHAR, *CONTESTING CITIZENSHIP IN LATIN AMERICA: THE RISE OF INDIGENOUS MOVEMENTS AND THE POST LIBERAL CHALLENGE* 65-66 (2005).

<sup>4</sup> Xavier Albo, 9 *El Retorno del Indio Revista Andina* 299-345 (1991).

<sup>5</sup> Kay B. Warren, *Indigenous Movements as a Challenge to the Unified Social Movement Paradigm for Guatemala*, in *CULTURE OF POLITICS, POLITICS OF CULTURE: RE-VISIONING LATIN AMERICAN SOCIAL MOVEMENTS* 165-66 (Sonia Alvarez, Evelina D’Agnino & Arturo Escobar eds., 1998).

recognition of special indigenous rights in several Latin American constitutional reforms—Nicaragua (1987), Brazil (1988), Colombia (1991), Ecuador (1998), Venezuela (1999)—was regarded as a major victory against the legal barriers that separated the descendants of the colonists from those of the colonizers.<sup>6</sup>

These new multicultural citizenship regimes granted special rights to indigenous peoples and Afro-Descendants without compromising the liberal principle of citizen equality and the sovereignty of the State.<sup>7</sup> Special indigenous rights should be acknowledged based on the historical claims of indigenous peoples (and in some cases Afro-descendants). Although not all of the Latin American countries adopted multicultural citizenship regimes, constitutional reforms at the national level were also paralleled by the development of an international regime of indigenous rights, beginning with the enactment of ILO 169 and culminating with the 2007 United Nations Declaration on Indigenous Peoples.<sup>8</sup> Even when national legislation did not explicitly recognize the rights of indigenous peoples, international human rights legislation bolstered their claims for territory and autonomy, as was demonstrated by the decisions adopted by the Inter-American Human Rights Court in favor of the Mayangna of Awas Tingni in Nicaragua and the Saramaka in Surinam. Even the World Bank and the Inter-American Development Bank (IADB), harshly criticized and held responsible for the plight of indigenous peoples in the 1970s, officially recognized indigenous rights and enacted special guidelines for the pro-

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<sup>6</sup> See generally COTT, *supra* note 3; Assies, *supra* note 3; YASHAR, *supra* note 3.

<sup>7</sup> See generally WILL KYMLICKA, *MULTICULTURAL CITIZENSHIP: A LIBERAL THEORY OF MINORITY RIGHTS* (1995).

<sup>8</sup> *INDIGENOUS PEOPLES AND DEMOCRACY IN LATIN AMERICA* 6-8 (Donna Lee Van Cott ed., 1994); see generally ALLISON BRYSK, *FROM TRIBAL VILLAGE TO GLOBAL VILLAGE: INDIAN RIGHTS AND INTERNATIONAL RELATIONS IN LATIN AMERICA* (2000).

tection of indigenous peoples in their development initiatives.<sup>9</sup> In legal terms, the multicultural revolution had been launched, and the new legislation promised to build a new framework for both citizen equality and cultural tolerance in Latin America.

In spite of the optimism of the 1990s, other social scientists have questioned the extent and the intent of multicultural reforms in the context of neo-liberal government policies.<sup>10</sup> According to Hale, what he called neoliberal multiculturalism is not only an incomplete response to racial discrimination and social exclusion, but may actually hinder the development of more ambitious initiatives, imposing the terms of participation and suppressing the expression of what would be called “extreme” opinions.<sup>11</sup> According to Diaz Polanco, multiculturalism is inimical to the construction of a global empire, in which the other is not only embraced, but refashioned by the forces of global capitalism.<sup>12</sup> As a new dawn of constitutional reforms extends through Latin America, indigenous peoples and their advocates are seriously questioning the capacity of multicultural citizenship regimes to accommodate ethnicity

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<sup>9</sup> See generally JONATHAN A. FOX & L. DAVID BROWN, *THE STRUGGLE FOR ACCOUNTABILITY: WORLD BANK, NGOS, AND GRASSROOTS MOVEMENTS* (1998).

<sup>10</sup> See generally Charles Hale, *Does Multiculturalism menace? Governance, Cultural Rights and the Politics of Identity in Guatemala*, 34 *JOURNAL OF LATIN AMERICAN STUDIES* 485-524 (2002); Otero Gerardo & Heidi Jugenitz, *Challenging National Borders from Within: The Political-Class Formation of Indigenous Peasants in Latin America*, 40 *CANADIAN REVIEW OF SOCIOLOGY AND ANTHROPOLOGY* 504-24 (2003); Otero Gerardo, *Global Economy, Local Politics: Indigenous Struggles, Civil Society, and Democracy*, 37 *CANADIAN JOURNAL OF POLITICAL SCIENCE* 325-47 (2004); HECTOR DIAZ-POLANCO, *EL LABERINTO DE LA IDENTIDAD* 23-56 (2006).

<sup>11</sup> Hale, *supra* note 10, at 485-524.

<sup>12</sup> DIAZ-POLANCO, *supra* note 10, at 23-56 (2006).

beyond the confines of mere cultural difference or what Stanley Fish labeled “boutique multiculturalism.”<sup>13</sup>

## II. Puente del Mundo y Corazon del Universo

Although Panama has never officially recognized multicultural citizenship in the National Constitution, the country has historically been heralded as a pioneer of indigenous political autonomy in Latin America. With no powerful landed oligarchy submitting the native masses to coerced labor, the staunchly Liberal Panamanian merchant elite—the same that wore British outfits in the mid-XIX century—advocated for equal opportunities for whoever capitalized the advantages that were provided by the cosmopolitan inter-oceanic passageway—Jewish, Chinese, Hindu, or Italian immigrants, they would all be welcomed in this land of unfettered opportunities.<sup>14</sup> In this respect, why should Panama be declared multicultural, like Nicaragua or Ecuador, if the country was by its very “nature” open to people of all “races,” faiths, and ideologies? In an intrinsically multicultural Panama, indigenous peoples and Afro-descendants, like European and Asian migrants, would all possess a corner in this crossroads of the world. No other time was this national myth more eloquently expressed than in the heated election for the presidency of the National Assembly in September 1999, when the new fe-

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<sup>13</sup> Stanley Fish, *Boutique Multiculturalism, or Why Liberals are Incapable of Thinking about Hate Speech*, 23 *CRITICAL INQUIRY* 378-95 (1997).

<sup>14</sup> For a historical account of the development of Liberal cosmopolitanism as a dominant ideology in Panama, see ALFREDO FIGUEROA-NAVARRO, *DOMINIO Y SOCIEDAD EN EL PANAMA COLOMBIANO (1821-1903)*: *ESCRUTINIO SOCIOLOGICO* 215-22 (Editorial Universitaria 1982); PETER SZOK, *LA ULTIMA GAVIOTA: LIBERALISM AND NOSTALGIA IN EARLY TWENTIETH CENTURY PANAMA* 13-34 (2001); AIMS MCGUINNESS, *PATH OF EMPIRE: PANAMA AND THE CALIFORNIA GOLD RUSH* 84-7 (2008).



male President Mireya Moscoso eagerly awaited the results of the election between Afro-descendant Haydee Milanes de Lay from Darien and Kuna indigenous legislator Enrique Garrido from San Blas. Regardless of the final outcome favoring Garrido, Panama had accomplished its ultimate destiny as a country of equal opportunities for people of all racial and ethnic backgrounds.<sup>15</sup>

With such a cohesive national myth, Panamanians have avoided explaining the virulent nationalism of the 1930s; the continued conflict between cattle ranchers and Ngobe indigenous peoples in Western Panama; and the Kuna insurrection of 1925, among other instances of ethnic conflict.<sup>16</sup> In particular, the Kuna insurrection of 1925 has been reinvented to signify the creation of an innovative Panamanian regime of indigenous political autonomy, and not as the violent reaction of indigenous peoples against the imposition of colonial rule by an assertive national state. The armed insurrection of indigenous leader Victoriano Lorenzo between 1899 and 1902 has also been transformed by nationalist writers into a “peasant” struggle against Colombian political domination. In spite of all the historical

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<sup>15</sup> The whole story was revisited by the Panamanian daily *El Siglo* on September 4, 2008. This newspaper reproduced the declarations of Haydee Milanes de Lay just a few days before the primary elections of the Revolutionary Democratic Party (PRD). On September 7, Balbina Herrera, whom Milanes de Lay had accused of bribing her to become the nominee for the presidency of the National Assembly in 1999, received the majority of the party votes to become the PRD presidential candidate for the upcoming general elections in May 2009.

<sup>16</sup> See Francisco Herrera, *The State-Indian Relations in Panama, 1903-1983* 88-89 (Masters Thesis, University of Florida, 1989) (referencing the historical conflict between cattle ranchers and Ngobe indigenous peoples); THOMAS PEARCY, *WE ANSWER ONLY TO GOD: POLITICS AND THE MILITARY IN PANAMA, 1903-1947* 88-89 (1998) (discussing the institutionalization of discriminator practices against West Indians, Middle Easterners, and East Asians); SZOK, *supra* note 14, at 110-14 (2001); JAMES HOWE, *A PEOPLE WHO WOULD NOT KNEEL: PANAMA, THE UNITED STATES, AND THE SAN BLAS KUNA* (1998) (discussing the Kuna Insurrection of 1925).

evidence supporting the claim that ethnic relations have been replete with different levels of political conflict in Panama, the hegemonic discourse of innate multiculturalism has permeated all layers of society, concealing a deeply skewed distribution of income in which indigenous peoples comprise the majority of the poor.

This historical legacy of uneven wealth distribution, that was associated with class, race and ethnicity, began fracturing the Panamanian political system in the 1960s, auguring an increased mobilization of indigenous peoples, peasant leagues, labor unions, student federations, and other popular organizations in the coming years.<sup>17</sup> In 1965, the proclamation of an independent Ngobe republic by the leaders of the Mama Tata revival movement reflected the malaise that plagued the country, only a year after student protestors had been massacred by US armed forces in the Canal Zone.<sup>18</sup> Like Isabel Becker of Charco de La Pava, the Prophet of Mama Tata, Delia Bejarano, was a Ngobe woman who was trying to draw the map of her own destiny. According to anthropologist Guionneau-Sinclair, she had recently left the banana plantations of Pacific Western Panama after many Ngobe labor organizers had been fired by the Chiriqui Land Company, a subsidiary of the United Fruit Company. An isolationist spiritual movement that was at the same time critical of the Ngobe traditions of polygamy, *chicha*<sup>19</sup> drinking and ritualized fighting,<sup>20</sup> Ma-

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<sup>17</sup> GEORGE PRIESTLEY, MILITARY GOVERNMENT AND POPULAR PARTICIPATION IN PANAMA: THE TORRIJOS REGIMES, 1968-1985 21-26 (1986).

<sup>18</sup> FRANCOISE GUIONNEAU-SINCLAIR, MOVIMIENTO PROFETICO E INNOVACION POLITICA ENTRE LOS NGOBE (GUAYMI) DE PANAMA, 1962-1984 74-125 (1988).

<sup>19</sup> The term *chicha* refers to a variety of fermented drinks that are used by indigenous peoples in Latin America.

<sup>20</sup> The Ngobe tradition of ritualized fighting, or *balseria*, was the most important trans-kinship ceremony before the advent of the Mama Tata movement in the 1960s. For a complete ethnography of this cultural

ma Tata called for the separation of the Ngobe from the corruption of Spanish-speaking society. For this reason, this movement sparked the political mobilization of the Ngobe who had been claiming for the legal recognition of their territorial rights during many years. After the unexpected death of the prophet in 1964, and the declaration of an independent Ngobe republic by her followers a few months later, the State response was the dispatch of a National Guard unit to the Ngobe territory under the command of Mayor Omar Torrijos Herrera. Here the official account of Guionneau-Sinclair presented an unexpected turn of events. Mayor Torrijos refused to repress the Ngobe protesters and fostered a dialogue with the indigenous leaders, who eventually decided to recognize Panamanian sovereignty. Had Torrijos not become the "supreme leader" of Panama four years later, the overarching implications of this episode would have probably not only been forgotten, but grossly underestimated.

### III. The Corporatist Legacy of the Torrijos Dictatorship

After an internal quarrel within the National Guard, Omar Torrijos Herrera emerged as the main leader of the so-called 1968 revolutionary process.<sup>21</sup> Like Velasco Alvarado in Peru, Torrijos redefined the contours of the State relations with indigenous peoples.<sup>22</sup> The persistence of indigenous territorial rights was formally recognized in the

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practice, *see* PHILIP YOUNG, *NGAWBE: TRADITION AND CHANGE AMONG THE WESTERN GUAYMI OF PANAMA* 204-12 (1971).

<sup>21</sup> STEVE ROPP, *PANAMANIAN POLITICS: FROM GUARDED NATION TO NATIONAL GUARD* 38-41 (1982); PRIESTLEY, *supra* note 17, at 26-27; WALTER LAFEBER, *THE PANAMA CANAL: THE CRISIS IN HISTORICAL PERSPECTIVE* 125-27 (1989); CARLOS GUEVARA-MANN, *PANAMANIAN MILITARISM: A HISTORICAL INTERPRETATION* 106-09 (1996).

<sup>22</sup> Herrera, *supra* note 16, at 94-99.

1972 Constitution, and the Kuna exception was adopted as a national model of political autonomy. Torrijos committed himself to the creation of *comarcas* for the protection of the collective lands of all indigenous groups in the country. The personal, direct and even occasionally affectionate relations between Torrijos and several of the main indigenous leaders have been recorded in numerous anecdotes of real or imaginary encounters between Torrijos and these ethnic leaders. As controversial of a figure as Torrijos was, both a candidate for the Nobel Peace Prize and at the same time accused of human rights violations; after the 1981 plane crash in which he prematurely died, it would be impossible to decipher his real intentions for developing such a close association with indigenous leaders.

As the head of a military dictatorship, Torrijos was reputed for declaring that he was not with the Left nor with the Right, but with the Panamanian people. As a result, the Torrijos government was composed of the most disparate characters that anybody could ever imagine, from a US educated and later to become Vice-President of the World Bank, Nicolas Ardito Barletta, to some of the most renowned communist intellectuals in the country. The eclecticism of the Torrijos coalition reflected both its intent, and its inherent contradiction. The General tried to create a powerful State that would incorporate all different sectors of society into a common struggle for national liberation and economic development. He came to practice what has been referred as *corporatism* in Latin America, ruling in response to organized groups both created and submissive to the national government. Under this model, the interests of indigenous peoples would be incorporated into state decisions, yet indigenous peoples would never be expected to act independently of government-defined national interests. In this regard, the indigenous, and other corporate interests, would always be considered secondary to the principal goal of recovering the Canal Zone from the control of the United States. In the same token, the Canal Zone

would be visualized as a national public good for the benefit of all Panamanians without any distinctions—the golden cup that was lost for many years and that would produce wealth for the rest of the country.

After the approval of the Panama Canal treaties in 1977, the second phase of the Torrijos government could be implemented, integrating the national territory into a coherent organic entity, in which all groups would contribute and receive benefits from the inter-oceanic passageway.<sup>23</sup> Indigenous peoples were certainly the poorest among all Panamanians, yet their territories were loaded with valuable natural resources that could be harvested for the welfare of the country. Timber, water resources for oil-free energy, and precious metals were all present in the Naso, Ngobe, Kuna, and Embera territories. Loyal to his promise, Torrijos would not demand the indigenous peoples to relinquish their lands using the threat of government repression. Instead, he directed his state bureaucracy towards the formal recognition of indigenous territorial rights through the creation of *comarcas*; yet he also expected that the indigenous peoples would contribute to the wealth of the nation by offering their natural resources. Apparently, Torrijos was not aware of the inherent contradiction of the policies that he was promoting, that once indigenous peoples were empowered and entitled to their lands, they would also be free to make their own decisions about the use of their natural resources, even against the alleged benefit of the rest of the country.

The bargaining approach promoted by the *Dictadura con Carino*<sup>24</sup> of Omar Torrijos led to the signing of the Farallon Accords, in which the Kuna of Bayano ac-

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<sup>23</sup> Herrera, *supra* note 16, at 107; ALAKA WALI, KILOWATTS AND CRISIS: HYDROELECTRIC POWER AND SOCIAL DISLOCATION 16-17 (1989); CHRIS GJORDING, CONDITIONS NOT OF THEIR CHOOSING: THE GUAYMI INDIANS AND MINING MULTINATIONALS IN PANAMA 31-35 (1991).

<sup>24</sup> “Dictatorship with Love”

cepted that their ancestral lands be flooded for the construction of the Bayano hydroelectric project in Eastern Panama.<sup>25</sup> In compensation for this extraordinary sacrifice, the State would provide the Kuna with health facilities and potable water; and would protect the existing forests for the Kuna to maintain their traditional culture and to continue with their subsistence economy. We would never know what the fate would have been of the Torrijos corporatist model of indigenous participation had his author survived into the 1980s; yet the future tensions that would be generated by this regime of corporatist citizenship were subsumed by the spontaneous expression of a Kuna woman during a meeting about the Bayano negotiations: “*Acaso Usted es Dios para prometer tanto*” (Franciso Herrera personal communication). No new indigenous *comarcas* were created during the lifespan of Torrijos, and after his death, all the internal contradictions of his revolutionary movement, and all the disparate forces that had been subtly repressed by his military corporatism emerged with sufficient pressure to confront indigenous peoples against the government bureaucracy of the Revolutionary Democratic Party (PRD).<sup>26</sup>

#### IV. A Struggle for Power: Indigenous Peoples against the Revolutionary Process

After the death of Omar Torrijos, his successors inherited many promises that were difficult to fulfill. Torrijos had committed his government with the Embera, the

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<sup>25</sup> WALI, *supra* note 23, at 81-84; Stephanie Wickstrom, *The Politics of Development in Indigenous Panama*, 30 *LATIN AMERICAN PERSPECTIVES* 48-49 (2003); Lynn Horton, *Contesting State Multiculturalisms: Indigenous Land Struggles in Eastern Panama*, 38 *JOURNAL OF LATIN AMERICAN STUDIES* 838-39 (2006).

<sup>26</sup> The Revolutionary Democratic Party, or PRD, was created by Omar Torrijos himself in 1978 as part of the democratic opening that followed the signing of the Panama Canal treaties.

Ngobe, the Bugle and the Naso for the creation of new *comarcas*; yet he had also embarked the country into a course of development that would demand the same land, energy and mining resources that were contained in the indigenous territories.<sup>27</sup> During the first years after the death of Torrijos, the bureaucracy of the Revolutionary Democratic Party (PRD)<sup>28</sup> engaged in simultaneous negotiations with the different indigenous groups for the creation of their *comarcas* and to obtain their approval for development projects. However, government officials soon encountered Ngobe opposition to the construction of hydroelectric projects in Tabasara and Teribe-Changuinola, and to the exploitation of the Cerro Colorado mines, located in the heart of the Ngobe Territory. As negotiations with the Ngobe stalled, the Government was only able to proceed with the creation of the Embera-Wounaan Indigenous Comarca in 1982.

The Ngobe negotiations collapsed in 1983 after unsolvable disagreements about the continuation of the Cerro Colorado mines and the limits of the *comarca* in the Veraguas region.<sup>29</sup> The failure of the negotiations coincided with a period of increasing turmoil in Panama, as the country approximated to the first direct general elections since 1968. General Manuel Antonio Noriega had defeated his main political opponents within the military, and was

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<sup>27</sup> John Bort & Mary Helms (eds.), *Panama in Transition: Local Reactions to Development Policies*. Museum of Anthropology, University of Missouri, Columbia 3-16 (1983); WALL, *supra* note 23, at 16-17; GJORDING, *supra* note 23 at, 31-35.

<sup>28</sup> Although there were high-ranking government officials involved in these negotiations, I have chosen to use the term bureaucracy to refer to all of them, since they were all part of a whole generation of Panamanian civilians who had developed their careers with the support of the military, and who typically occupied different positions in government service until the end of the "revolutionary process" with the US Invasion in 1989. During this entire period, actual political power resided in the hands of the military.

<sup>29</sup> Herrera, *supra* note 16, at 113-15.

prepared for seizing control of the government in favor of his candidate, former head of the World Bank for Latin America, Nicolas Ardito Barletta.<sup>30</sup> In fact, the revolutionary process had continued a decisive movement to the right that started during the last years of Torrijos. In spite of the boisterous populism of the military regime, the Generals were fully aware that Panama would soon have to implement the structural adjustment measures of the Washington Consensus, in order to salvage the indebted economy that they had inherited from the pharaohic projects of the 1970s.

Rather than preparing the stage for a controlled transition to civilian rule, the 1984 elections initiated a period of profound political instability as news spread that the elections had been rigged by the military.<sup>31</sup> Although the first structural adjustment package was eventually defeated when popular mobilizations appealed to the legacy of social conquests bequeathed by the military; the internal quarrel within the rank and files of the PRD further debilitated the legitimacy of the government. Combined with the burden of the debt crisis, this crisis of governance foreclosed any possibility of discussing the issue of the indigenous *comarcas*, and delayed even the promotion of the ambitious national development agenda of the 1970s, that included roads, dams and mining complex. During this period, however, the increasing participation of a new generation of Westerly-educated indigenous leaders in the ranks and files of the PRD, reinforced the corporatist structures that had been laid out by Torrijos and his leftist supporters – also called *La Tendencia*.<sup>32</sup> As the power of the military was eroded by brutal repression and accusations of corruption, most indigenous leaders remained loyal to the

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<sup>30</sup> LAFEBER, *supra* note 21, at 194-97.

<sup>31</sup> *Id.* at 196-98.

<sup>32</sup> *La Tendencia* referred to a group of PRD members who identified themselves with Marxism-Leninism and other leftist tendencies.



revolutionary process, hoping that the protection of their collective lands would be achieved through the creation of *comarcas*. In spite of all the unresolved controversies about the use of natural resources, these indigenous leaders assumed that the corporatist agenda would be resumed once the crisis with the United States was finally resolved. The onset of the American intervention to oust Noriega in 1989, however, did not lead to a new coalition between the government and indigenous peoples, but instead to a complete reinvention of the Panamanian state along the lines of privatization and individualism. The odds were thrown against the continuation of any form of *de facto* indigenous political autonomy, and in favor of the private exploitation of natural resources by international corporations.

#### V. Indigenous Comarcas and Development Projects in the New Liberal Era

The phantom of structural adjustment resurfaced after the US Marines began leaving a war-torn and devastated Panama in 1990. The claims of PRD anti-imperialists were absolutely confirmed as they battled against the economic reform package of the first Minister of Economic Planning of the new democratic period, Guillermo Ford; and against George Bush himself during his infamous visit to Panama City in 1992.<sup>33</sup> Apparently, the party of the people was not willing to sanction the dismantling of the Torrijos legacy of corporatist governance, and was opposed to what they called the return of the oligarchic rule that had dominated the country before the 1960s. In this context, indigenous peoples resumed their political mobilizations,

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<sup>33</sup> See Michael Wines, *THE NEW YORK TIMES*, June 13, 1992 (noting that George Bush made a stop in Panama on his way to the Earth Summit in Rio de Janeiro. He was greeted by large demonstrations, in which prominent PRD figures protested in the streets against the 1989 U.S. occupation, including presidential candidate for the upcoming 2009 general elections, Balbina Herrera).

once again demanding the legal recognition of their territorial rights. In 1993, the Governor of Panama province was held by the Kuna of Bayano, who claimed for the fulfillment of the Farallon Accords and for the creation of their *comarca* seventeen years after their lands had been flooded by the rise of the Bayano reservoir.<sup>34</sup> Faced with widespread opposition at many different fronts, the postwar government of Guillermo Endara adopted a conservative stance—the implementation of the Washington Consensus would only be advanced until the limits imposed by the political and social instability that had been left in the country by the US military action.

Paradoxically, and reminiscent of similar developments in Peru, Argentina, Bolivia and Mexico in the 1980s and 1990s; the party of the Torrijos Revolution, the PRD, inherited the mission to implement structural adjustment policies, and so they did with unexpected fervor. The new President Ernesto Perez Balladares was commissioned with the daunting task of lifting the PRD out of the ashes of the US invasion. A former banker, minister of economy and Noriega rival, Perez Balladares moved the pendulum away from military corporatism and into what he called the “modernization” of the Panamanian economy. Under the neo-liberal reforms, the promises of Torrijos to the Bayano Kuna were completely buried, as the Bayano Corporation was abolished, public utilities were privatized, and the former Directory of Community Development was eliminated. Even the Ministry of Economic Planning was transformed into the Ministry of Economy, signaling the disappearance of the welfare state of centralized planning and state protagonism in national development.

As a well-educated adherent to neo-liberalism, Perez Balladares, however, understood that private investment required the creation of regulating institutions, like

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<sup>34</sup> Horton, *supra* note 25, at 842-43.

the *Ente Regulador de los Servicios Publicos* (ERSP)<sup>35</sup> and the *Autoridad Nacional del Ambiente* (ANAM),<sup>36</sup> that would ensure free competition, citizen rights and business accountability. These moderating reforms, however, lagged behind the rapid elimination of government-owned corporations. Worried about the future of their collective lands in the midst of the private allocation of natural resources, the Ngobe and the Bayano Kuna increased their mobilization, which ultimately led to the creation of their respective *comarcas* through Law 10 of 1997 and Law 24 of 1996, respectively. How would these autonomous regimes fare in an era of private investment and deregulation?

The creation of the Ngobe-Bugle<sup>37</sup> and the Madungandi<sup>38</sup> *comarcas* during the Perez Balladares administration revealed the contested legacy of the Torrijos corporatist model. The same party that had defended national sovereignty and the incorporation of the marginalized populations in the 1970s had now dismantled public corporations and set the stage for the arrival of new private actors. In compensation for the Torrijos promises, or perhaps as a recourse to demobilize the indigenous population,

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<sup>35</sup> The Ente Regulador de los Servicios Publicos (ERSP), or Public Services Regulatory Entity, was created through Law 26 of 1996 and became responsible for concessioning the provision of national public services like electricity and telephone and for protecting customers against the potential abuses of private corporations.

<sup>36</sup> The Autoridad Nacional del Ambiente (ANAM), or National Environmental Authority, was created by Law 41 of 1998, and became responsible for approving environmental impact assessments, enforcing environmental norms, and granting concessions for the use of natural resources, such as timber and water resources.

<sup>37</sup> The Bugle is a very small indigenous group (<10,000) with strong cultural affinities with the Ngobe. Therefore, they decided to conform a single *comarca* with the Ngobe. A similar request was turned down by another indigenous group, the Naso.

<sup>38</sup> The Bayano Kuna *comarca* was officially denominated *Comarca Indigena Kuna de Madungandi*.

Perez Balladares had paid the historical debt to the Ngobe and the Bayano Kuna with the creation of the *comarcas*. However, his government had also ensured that article 48 of Law 10 of 1997 would limit the autonomy of the Ngobe by denying their right to decide on the use of natural resources; and that article 21 of Law 24 of 1996 guaranteed the user rights of the non-indigenous colonists that had invaded the Kuna lands after the construction of the Bayano hydroelectric project. Instead of receiving an unrestricted support from the party of the Revolution, indigenous leaders were forced to negotiate the terms of their political autonomy; and many indigenous leaders unrelentingly accepted these compromises as members of the PRD government party. Such a contradiction revealed the inherent limitations imposed by the corporatist model of citizenship. In the 1970s, indigenous peoples were considered part of the Revolution and supporters of the anti-colonial struggles intimately associated with the welfare state of Omar Torrijos; yet in the 1990s they would be auctioned to the best bidder during the process of privatization.

The creation of the Kuna Comarca of Wargandi in 2000 by the new presidential administration of Mireya Moscoso (1999-2004), precisely during the congressional presidency of the Kuna legislator Enrique Garrido, marked the epitaph of the alliance between the government and indigenous peoples. In spite of all the implicit references to multiculturalism during the inauguration of Mireya Moscoso, the aspirations of indigenous peoples conflicted with the projections of government officials for economic growth and national development. The development of hydroelectric infrastructure throughout the country, under a new modality of private investment, represented a direct threat to the integrity of indigenous territories and to the worldview of indigenous peoples. The course of collusion of the 1970s had become the road to collision in the 1990s, and the future of Isabel Becker and many other Ngobe widows

would be pending on the unavoidable confrontation between the capitalist logic of a renewed state bureaucracy and the resistance position of indigenous communities. In this process of dissociation, indigenous leaders who had initiated their political careers hands in hands with the Torrijos corporatist model of citizenship would be captured by their double loyalties, exposed and discredited in the face of growing grassroots opposition to the privatization of their indigenous territories.

## VI. The Bonyic Hydroelectric Project and the Unfulfilled Promise of the Naso Comarca

Although the Ngobe and the Bayano Kuna *comarca* negotiations dominated most of the government discussions and media coverage about indigenous issues during the 1980s and 1990s; most Panamanian citizens ignored the existence of another group of distinct indigenous peoples living close to the border between Panama and Costa Rica, the Naso (also called Teribe in Panama and Terraba in Costa Rica). Before the Mizkitu invasions of the XVIII century, the Naso had constituted the most numerous indigenous group living in what today is the Caribbean Province of Bocas del Toro in Northwestern Panama. Their historical territory, and their ferocious resistance against the Spanish colonization, had been avidly recorded by the Franciscan missionaries that had traveled from Costa Rica to evangelize this frontier.<sup>39</sup> Possibly for multiple reasons that have never been properly investigated, the Naso population declined drastically; and their substantial demographic recovery was not possible until the mid-twentieth

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<sup>39</sup> For information about the colonial history of the Naso, see Fernandez-Guardia, Ricardo 1969 *Resena Historica de Talamanca*. Imprenta Nacional, San Jose, Costa Rico; BURTON L. GORDON, A PANAMA FOREST AND SHORE: NATURAL HISTORY AND AMERINDIAN CULTURE IN BOCAS DEL TORO 39-40, 152-57 (Boxwood Press, 1982); Castellero-Calvo *supra* note 14, at 291-310.

century. By that time, the Naso territory had been reduced to encompass only the Lower Teribe and the Upper San San river watersheds in Panama, as well as an isolated community in the Southern Pacific of Costa Rica.<sup>40</sup> The Naso had lost most of their vast historical territory, yet they had been able to maintain their language and their distinct form of political organization—a monarchy.

With such a reduced number of people,<sup>41</sup> and hundreds of kilometers away from Panama City, the Naso enjoyed *de facto* autonomy and absolute control of their ancestral territory during most of the XX century. However, they would eventually be reached by the prolonged arms of the Torrijos Revolution.<sup>42</sup> During the 1970s, the Teribe-Changuinola watershed was identified as the most important national reserve for hydropower generation in the whole country. As a matter of fact, the revolutionary government had planned to develop this area after the completion of the Bayano hydroelectric project. Since the Naso were also demanding legal recognition of their territory, once again Omar Torrijos committed himself personally with King Simeon Santana to grant *comarca* status to the Naso lands.<sup>43</sup> As Panama fell into political and economic chaos after the death of Torrijos, the promise of a Naso *comarca*, as well as the ambitious plans to build a gigantic hydroelectric complex in the Teribe-Changuinola, were left dormant for over a decade. Only after the “economic modernization” of Perez Balladares had begun to appear in the horizon, were the Naso lands brought back to the memory of decision-makers in Panama City. As a matter of fact,

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<sup>40</sup> According to Gordon this group had been relocated by the Franciscan missionaries in what today is the Costa Rican town of Terraba. Gordon, *supra* note 39, at 39.

<sup>41</sup> Today the Naso number around 3,000 people.

<sup>42</sup> Jason Paiement, *The Tiger and the Turbine: Indigenous Rights and Resource Management in the Naso Territory of Panama* 64-66 (2007) (Ph.D. dissertation, McGill University).

<sup>43</sup> Personal communication with Adolfo Villagra.

even before the privatization of the government-owned electric company, *Instituto de Recursos Hidraulicos y Electricificacion* (IRHE), a group of local entrepreneurs had asked the Government of Panama for a concession to construct the first of the dams of the Teribe-Changuinola hydroelectric complex, that would be located on the Bonyic River, a tributary of the Teribe River.

The return of government plans to exploit the Teribe-Changuinola watershed for hydropower generation revived the Naso struggle for the creation of a *comarca*. Since the Naso had previously rejected the proposal of the Ngobe to form a single *comarca*, their collective lands were not included in Law 10 of 1997.<sup>44</sup> This confronted the Naso with the difficult challenge of negotiating a *comarca* of their own with the national government. The political tensions associated with the irruption of external actors in the Naso Territory, from Ngobe colonization to government aid to the advent of the Bonyic Project, had ruptured the traditional political organization, creating a rift between King Cesar Santana and his nephew Luis Tito Santana.<sup>45</sup> After many months of internal disputes, Cesar recognized Tito as the legitimate King. Tito arrived with the promise that he would achieve the ultimate aspiration of the Naso, the recognition of their collective lands as a *comarca*. For this purpose, Tito recurred to the remnants of the corporatist governing structures that had been left by Torrijos, perhaps unaware than in this new period of neo-liberal multiculturalism, the interests of indigenous peoples would be completely secondary to private investment and national economic growth.

In 2001, the World Bank approved a loan contract with the Government of Panama for a countrywide landti-

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<sup>44</sup> Personal communication with Jose Cruz Monico.

<sup>45</sup> Paiement, *supra* note 42, at 133-35.

tling program.<sup>46</sup> The Land Administration Program (PRO-NAT) involved the delimitation and demarcation of indigenous lands and protected areas, as a corrective measure to avoid the privatization of these collective areas by the voracious land market. The World Bank contractors and associated government bureaucrats expected that the protection of the Naso lands would proceed uneventfully, without any major hurdles. In fact, in 2003 the limits of the Naso lands had already been identified and mostly agreed upon by the Bank consultants, government officials, and Naso authorities. A few months later, draft legislation would be proposed to the National Assembly for the declaration of the Naso Tjer-Di Indigenous Comarca. Had unexpected events never occurred, the Naso lands would have probably been declared a *comarca* during the presidential administration of Mireya Moscoso, like had previously happened with the Wargandi Kuna Comarca in 2000. However, the unanticipated purchase of the Bonyic concession by the Empresas Publicas de Medellin (EEPPM), a Colombian utilities company, once again destabilized the Naso traditional governance structures, and in this case, led to a crisis of representation that would be much more pronounced, prolonged, and vicious than any previous conflicts in the Teribe River.

In November 2003, several members of the Naso Council<sup>47</sup> declared that they were opposed to the construction of the Bonyic Project without the creation of the *Comarca*, and accused King Tito Santana of having been

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<sup>46</sup> Project Information Document No. PID8082. Panama—Land Administration Project (PAPE 0595) ([www.worldbank.org](http://www.worldbank.org)).

<sup>47</sup> Besides the King, the traditional Naso governance structure is formed by the Naso Council and the Naso Assembly. The Council is a special deliberative and advisory body composed of representatives of the eleven official Naso communities. The Assembly is considered the highest decision-making body, and is formed by all the Naso people who are considered adults according to Naso traditional norms.



bribed by the hydroelectric company.<sup>48</sup> Initially, the Naso tried to solve this controversy internally, and in February 2004, the different factions had agreed to form an ad hoc commission to examine the questions of the Comarca and of the hydroelectric project. Unfortunately, King Tito decided to ignore this agreement, and a few weeks later, he removed the President of the Naso Council, Adolfo Vil-lagra, and several other prominent Naso leaders from the ad hoc commission. In response, on May 30, the dissenting group called for a Naso General Assembly, and announced the overthrow of King Tito Santana, proclaiming his uncle Valentin Santana as the new King of the Naso. These events occurred only a few weeks after Martin Torrijos, the son of former General Omar Torrijos Herrera, had been elected as the new President of Panama. Even before the official transfer of power, however, in June 2004, the National Assembly voted against the law project that created the Naso Comarca. This congressional decision signaled a reversal of the previous government policy of protecting indigenous *comarca* lands, and suggested that the historical alliance between the government and indigenous peoples was finally over.

In spite of the negative signs given by the National Assembly during the last days of the Moscoso administration, the election of another Torrijos as President raised incredible expectations among the Naso and many other indigenous peoples around the country. Before the transfer of power, the Naso held talks with indigenous leaders associated with the PRD and even agreed on the designation of the new Director of Indigenous Affairs of the Ministry of Government and Justice.<sup>49</sup> In addition, a few weeks before the swearing of the new national government on September 1st, the supporters of both Tito and Valentin Santana agreed on holding elections within the Naso community to

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<sup>48</sup> Paiement, *supra* note 42, at 135-43.

<sup>49</sup> Personal communication with Felix Sanchez.

solve the existing crisis of legitimacy. They expected that the new PRD authorities would certify the winner of these elections, a mechanism that had proven successful during the previous controversy between Cesar and Tito Santana.

During the first months of the Torrijos administration, the followers of Valentin Santana invited the national authorities to mediate in the Naso governing crisis.<sup>50</sup> As opposed to the very personal style of the late Omar Torrijos, these communications were never responded by the PRD bureaucracy. The supporters of Valentin Santana did not actually realize that the new administration had thrown its lots in favor of Tito Santana and the Colombian company until the month of December. Then, the Deputy Minister of Commerce, and the Deputy Minister of Government and Justice, both participated in a public ceremony in the town of Changuinola to sign the compensation agreement between Tito Santana and EEPPM for the construction of the Bonyic Project. Confronted with such a betrayal by the same PRD party that they had trusted for several decades, the Naso leaders reclaimed their *de facto* autonomy regime, and forcefully expelled Tito Santana from the Naso Territory on January 5, 2005.

During the next months, government officials from the Ministry of Government and Justice finally began organizing elections within the Naso Territory.<sup>51</sup> However, these conversations stalled over the specific provisions of the electoral statute. Whereas supporters of Valentin Santana demanded the use of the same rules that had governed the election of Tito Santana, government bureaucrats insisted on the implementation of a new statute that would prevent several supporters of Valentin from participating in the elections, particularly young people under eighteen years. When no agreement was reached after several weeks of negotiations, the supporters of Valentin Santana decided

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<sup>50</sup> *Id.*; Paiement, *supra* note 42, at 151-52.

<sup>51</sup> Paiement, *supra* note 42, at 156-59.

to boycott the elections since they considered that these elections were in violation of Naso customary law (*usos y costumbres*). As a result, on April 3rd, Tito Santana was reelected as King of the Naso running as a sole candidate, although with less than half of the voting population that was included in the electoral list that had provoked the controversy.

Since the elections did not solve, but aggravated the Naso conflict, the contours of the neo-liberal multicultural State that had replaced the Torrijos corporatist model finally became entirely visible. When the followers of Tito Santana tried to occupy the Naso government headquarters in the community of Siey Llik, around twenty heavily armed police units were dispatched into the Teribe River by the national government to uphold this operation.<sup>52</sup> Reminiscent of Omar Torrijos Herrera forty years before, the police officer that was responsible for the armed contingent decided to dialogue with the Naso leaders and refused to forcibly evict the supporters of Valentin from the Naso government seat. As a result, the official inauguration of Tito Santana occurred in the backyard of a house located along the Teribe River, after which the “King,” his Council and the accompanying government delegation all traveled back to his place of exile outside the Naso Territory. Although the Police had refused to exercise the state monopoly over the legitimate use of force, the neo-liberal multicultural State of the 2000s had demonstrated that in this struggle for power, the government was not willing to tolerate those indigenous leaders who challenged the sovereignty of the State, and instead would support leaders like Tito Santana who were subservient to the demands of international capital and government-defined national interests.

Although the supporters of Valentin Santana had appealed to those regulatory institutions that had been es-

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<sup>52</sup> Paiement, *supra* note 42, at 160-62.

tablished by the Perez Balladares administration as formal mechanisms to defend citizen rights within a neo-liberal state model; neither the Ombudsman Office nor the Public Services Regulatory Entity (ERSP) nor the National Environmental Authority (ANAM) were capable of representing the interests of the Naso as if they were equal citizens within a neo-liberal State, let alone protecting any special minority rights within a multicultural framework. The Ombudsman Office visited the Naso Territory and provided assistance for the peaceful resolution of the conflict during early 2004; yet when the controversy escalated, this Office did not have any effective means to protect citizen rights and/or special minority rights. The ERSP, that was created with the purpose of regulating public utilities, did not have any mandate to mediate in conflicts between private companies and people affected by development projects. And finally, the National Environmental Authority (ANAM) that could have rejected the Environmental Impact Assessment of the Bonyic Project, that was planned to be constructed within the Palo Seco protected area,<sup>53</sup> preferred to ignore the demands of the hundreds of Naso who traveled to the town of Changuinola to participate in the public hearing of the Project in June 2005. As the State no longer provided the corporatist means of participation that characterized the former Torrijos period; and yet did not implement neither equal citizen rights (neo-liberal) nor special indigenous rights (multicultural); the Naso leaders threatened to renounce en masse to the party that they had supported for so many years, the Revolutionary Democratic

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<sup>53</sup> The Naso Territory overlaps with two nationally protected areas, the Palo Seco Forest Preserve and the La Amistad International Park (PI-LA). Both of these areas are part of the internationally-recognized La Amistad Biosphere Reserve. The Bonyic hydroelectric project was planned to be constructed within the boundaries of Palo Seco, and according to environmentalists, this Project would also affect the ecosystems of the La Amistad International Park, which is also a UNESCO World Heritage Site.

Party (PRD) of General Omar Torrijos and of his son, current President Martin Torrijos.

In 2005, the Naso expressed their opposition to the imposition of a King and of a hydroelectric project by the same neo-liberal multicultural State that had rejected the creation of their *comarca* a year before. This tense situation could have escalated into more direct and serious confrontations had the international regime of multicultural citizenship rights not intervened to stifle the conflict. In July, and after several months of discussions, the Private Sector of the Inter-American Development Bank (IDB) decided to stop considering for financing the Bonyic Hydroelectric Project.<sup>54</sup> The withdrawal of the Bank represented an unforeseen victory for the followers of Valentin Santana, and an unanticipated defeat for Tito, the national government and the Colombian company.<sup>55</sup> Facing an unresponsive neo-liberal multicultural State, the Naso had sought for accountability and the recognition of their special rights as indigenous peoples at the international level.<sup>56</sup> As the Ngobe widow Isabel Becker inadvertently continued tendering her cacao groves, the dark cloud that was looming over the heads of the last surviving Naso migrated northeast to the Ngobe Territory in the neighboring Changuinola River. As the thrust of capitalist development forbade the explicit recognition of the Naso *de facto* regime of political autonomy; the Ngobe, who had successfully

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<sup>54</sup> Letter from Robert Montgomery of the Inter-American Development Bank (IADB) to Osvaldo Jordan (Alianza para la Conservacion y el Desarrollo), Aaron Goldzimer (Environmental Defense), and Jose Yunis (Natural Resources Defense Council).

<sup>55</sup> Paiement, *supra* note 42, at 163-67.

<sup>56</sup> For a general discussion about transnational advocacy networks, see MARGARET KECK & KATHRYN SIKKINK, *ACTIVISTS BEYOND BORDERS: ADVOCACY NETWORKS IN INTERNATIONAL POLITICS* (1998); for a discussion of the special policies of international banks towards indigenous peoples and environmental conservation, see also FOX & BROWN, *supra* note 8, BRYSK, *supra* note 8 (for current discussions about the internationalization of indigenous struggles).

mobilized against the Teribe-Changuinola hydroelectric complex in the early 1980s and had been granted their *comarca* status in 1997, were expected to pay back for this favor to the successors of Omar Torrijos.

### **VII. Teribe-Changuinola ten years after the Comarca: Redefining the Ngobe Struggle for Territorial Rights**

“We are against the neocolonialism of the transnational corporations that try to destabilize politically and create complications in the economic life of the country, when they are confronted with the legitimate demands of the Sovereign in defense of its natural resources,”<sup>57</sup>

According to an unofficial story told repeatedly by Ngobe grassroots leaders, the Ngobe of Valle de Risco in the District of Changuinola rejected the proposal to belong to the Ngobe-Bugle Indigenous Comarca when Law 10 of 1997 was finally drafted by the Perez Balladares administration. The position of the Ngobe of Valle de Risco angered many of the other Ngobe leaders that were struggling for their territorial rights, yet Valle de Risco and several other communities in the Changuinola and Bocas del Toro districts in the Province of Bocas del Toro were granted a special status as annex areas of the Comarca.<sup>58</sup> In spite of the decision allegedly made by the inhabitants of Valle de Risco and of the other annex areas to part away from the rest of the Ngobe people, several Changuinola leaders have occupied very prominent positions in the now institutional-

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<sup>57</sup> Omar Torrijos Herrera, *Respuestas a Garcia Marquez*, Ediciones, Reforma Educativa, Panama (1975) (cited in Jose de Jesus Martinez, *Ideario Omar Torrijos*, 113 (Osvaldo Jordan trans., Editorial Universitaria Centroamericana. 1982)).

<sup>58</sup> Law 10 of 1997, Article 4; Law 69 of 1998, Article 8; Executive Decree 194 of 1999, Articles 12-14.

ized Ngobe-Bugle governing structure.<sup>59</sup> Loyal to the legacy of Omar Torrijos, most of them were members of the PRD; and like the Naso of the neighboring Teribe watershed, they also expected that the government of Martin Torrijos would favor the interests of indigenous peoples, as was vociferously proclaimed by his father and by other important PRD figures in the Province of Bocas del Toro. As a matter of fact, shortly after the transfer of power, several Ngobe leaders of Changuinola were assigned to key positions in the regional government bureaucracy, including the regional administrator of ANAM, Ngobe leader Valentin Pineda from Valle de Risco.

When a small company, Hydroteribe, S. A., organized the public hearings for the environmental impact assessments (EIAs) of three hydroelectric projects proposed in the main stem of the Changuinola River in the vicinity of Valle de Risco (Chan 75, Chan 140 and Chan 220); the Ngobe leadership was confronted with the same conflict of interests that had haunted a whole generation of indigenous leaders after the approval of Law 10 of 1997. Most of the people directly affected by the projects, including the Ngobe widow Isabel Becker, never attended the public hearings, and were completely unaware of the implications of these projects that were presented by *chui* who spoke the language of the Conquest.<sup>60</sup> Another group of more politically active Ngobe leaders had already organized gatherings to oppose the projects since October 2004. Yet, there was also a critical sector of the Ngobe leadership that remained committed to what was sold as a “state” project, and who envisioned the benefits that would be provided for

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<sup>59</sup> Law 10 of 1997 provided for the creation of several official positions at the Comarca level, such as the Governor, caciques, congress presidents and council coordinators. Besides, international cooperation also produced important salaried positions that were usually occupied by Ngobe with strong political connections.

<sup>60</sup> The word *chui* refers to non-indigenous people, especially mixed-blood *mestizos*.

“the poor” by such an outpour of financial investment. Regardless of these internal divisions, the three hydroelectric projects appeared to be a fantasy until ANAM approved the EIAs in October 2005. A few months later, a major North American corporation, Allied Energy Services (AES) from Arlington, Virginia, would claim ownership of the three hydroelectric projects, and would walk hand in hand with government officials, including Ngobe leaders, to promise benefits that would surpass any of the early utopias of General Omar Torrijos.

From the beginning, the Changuinola projects suffered from a pathology that would only be imaginable in the context of the persistent memory of Omar Torrijos among the indigenous population: They were sold simultaneously as government-sponsored state projects in the same corporatist tradition of the 1970s, but also as private initiatives originating from neo-liberal economic modernization. As the former category, the projects should be supported wholeheartedly by the government bureaucracy, including the Ngobe leaders, and by the local communities, in the same way that the Kuna and the Embera had relinquished their ancestral lands for the welfare of the nation during the construction of Bayano Project in the 1970s. However, as purely private initiatives, the State was not responsible for any compensations or liability negotiations, and government institutions would only be limited to a minimal regulation of private corporations according to the Perez Balladares institutional reforms of the mid-1990s. As AES moved decisively into the Changuinola River, and visited the Ngobe communities with gifts and monetary offerings of all sorts, many of the indigenous leaders that were previously opposed to the hydroelectric projects began working for the Company; or receiving contracts for their lands, their houses, and other kinds of services. The internal division of the Ngobe population reached its zenith in the Valle de Risco gathering of May 2006, in which those who supported the hydroelectric projects were denied the opportu-



nity to participate in the meeting by those who opposed hydroelectric development.<sup>61</sup>

The Valle Risco gathering also marked the irruption of the neo-liberal multicultural State into the Changuinola conflict. In this meeting, the people opposed to the projects announced a series of demonstrations in the dam sites (including Bonyic) on June 5, World Environment Day. A few days before this date, however, the Government deployed police forces all around the Changuinola District, searching for specific Naso and Ngobe leaders; and cordoned off the entrances to the communities of Valle de Risco and Nance de Risco to control access to the dam sites.<sup>62</sup> Although these government abuses were denounced to the Ombudsman Office, there has never been any official pronouncement about these irregular activities. During the coming months, AES began negotiating individually the relocations for an estimated 100 families that would be “directly” affected by the Chan 75 reservoir, without the official participation of any government institution.<sup>63</sup> However, local government officials, including several Ngobe leaders, participated in the public events organized by the Company, signaling that the projects had the blessing of the government as if they were state business.

According to Isabel Becker, on January 3, 2007, she and several of her family members were transported by AES representatives to Panama City for a tour of the capi-

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<sup>61</sup> Officially, the Valle Risco meeting was also expected to be attended by Naso and Bribri leaders, and was therefore called Naso-Ngobe-Bribri Congress. The Bribri is a different ethnic group that also lives in the Changuinola District between the Naso Territory and the Costa Rican border.

<sup>62</sup> Personal communication with Felix Sanchez and Pedro Abrego.

<sup>63</sup> The ANAM resolutions approving the environmental impact assessments for the three projects established that Chan 75 should be constructed before Chan 140 and Chan 220. The number of people affected by the Chan 75 project has never been officially determined, and AES only takes into consideration the communities of Changuinola Arriba, Guayabal, Valle Rey, and Charco de La Pava.

tal. After some shopping in the morning, however, they were all taken to the headquarters of AES, where the widow Isabel, who does not speak Spanish and does not know how to read and write in any language, was asked to sign an agreement conceding her lands to the hydroelectric company. As Isabel struggled against her inevitable destiny, many hours passed before she finally accepted to print her thumb into a document that she could not understand. Many days later, Isabel would refuse to abide to this agreement, when AES employees insisted that she needed to leave her place for safety reasons. During this prolonged stalemate, no government institution assumed any responsibility for the plight of Isabel, as well as of hundreds of other Ngobe who were being pressured to renounce to their land rights; not even the regional head of ANAM, Valentin Pineda, who supervised the nationally protected area in which Isabel lived and where the hydroelectric project was planned to be constructed.<sup>64</sup> Ironically, according to several community leaders, the Palo Seco Forest Preserve was the main reason that most Ngobe of the Changuinola River Watershed had been denied the opportunity to register their land rights years before. They had been told that they were living within a protected area.

The drama of Isabel grew increasingly tense, as the company maintained that she had to leave her property. Changuinola Mayor, Virginia Abrego, also an Ngobe, intervened in the controversy, at some point even holding Isabel against her will in her “new house” in the town of

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<sup>64</sup> The Chan 75, Chan 140 and Chan 220 hydroelectric projects are also located in the Palo Seco Forest Preserve. Like in Bonyic, environmental organizations argue that these projects will not only affect this reserve, but the La Amistad International Park (PILA), a World Heritage Site that protects the headwaters of the Changuinola River. In spite of this argument, in May 2007, ANAM signed a contract with AES granting an administrative concession of 6,215 Hectares of the Palo Seco Forest for the construction of the Chan 75 hydroelectric project.

Changuinola.<sup>65</sup> Between July and October, many other government officials visited the widow, claiming that they represented the government and that Chan 75 needed to be constructed for her own welfare and for that of the rest of the country. In contrast with the Kuna and the Embera during the Torrijos years, no community meetings were ever held to discuss the relocation plans, and no public negotiations ever occurred between the government and the affected communities.<sup>66</sup> The Ombudsman Office did visit the area in several occasions, but never took any commitment to act on behalf of Isabel or of any other of the Ngobe residents of the Changuinola River. The Ombudsman officials withheld the claims of the Company that this was an entirely private transaction between an illiterate Ngobe widow, who did not speak Spanish, and a multinational corporation based in the vicinity of Washington, D. C. After many months of continued harassment and of unrelenting suffering, on October 19, Isabel finally accepted to print her thumb into a new agreement that like the previous document, she did not understand. Less than a week later, she would be escorted away from her farm by the National Police, while AES executives and government officials gloriously celebrated the inauguration of the construction of the Chan 75 project in a nearby location. On October 19, the National Public Services Authority (ASEP), the

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<sup>65</sup> That same day, July 21, 2007, a bulldozer had stormed into Isabel's property. From the impression, she had fainted, and municipal authorities had taken her to the town of Changuinola supposedly for medical attention. After she left the physician, she was carried to a house in the outskirts of Changuinola that had been acquired by AES for her temporary relocation. After crying for the whole night, she was finally taken back to her house in the Changuinola River on the following day.

<sup>66</sup> The ANAM meetings held in August and November 2007 limited themselves to presenting the relocation plans that had been proposed by AES and allegedly revised by ANAM. The Company always maintained that compensation agreements should be negotiated individually, and not collectively. *See* Cultural Survival Quarterly, Winter 2007 (detailing a complete report about the November meeting).

successor of the Public Services Regulatory Entity (ERSP), had issued resolution AN 1228-Elec, declaring the Changuinola projects of public and social interest.<sup>67</sup>

In contrast with the Naso relentless opposition to the same governing party that had allied itself with indigenous peoples in the 1970s, the Ngobe leadership had succumbed to a combination of government offerings, private enticements, and direct coercion. The same government that had promised to protect the indigenous lands as *comarcas* under the Torrijos model of corporatist citizenship had now demanded the continued loyalty of indigenous peoples, even when government officials negotiated their collective lands with private corporations. The Chan 75 hydroelectric project, and the tragedy of Isabel Becker, revealed the monstrosity of the neo-liberal multicultural citizenship regime that had been adopted by the Panamanian State in the 1990s. Special indigenous rights and universal human rights would only be respected in the boutique fashion described by Stanley Fish (1997). Indigenous peoples would indeed make excellent characters for postcards and multicultural displays. Yet, confronted with the contradictory national/private interest of business and government, the institutional mechanisms established by Perez Balladares to regulate private investment and protect citizen rights would be rendered completely ineffective, and the collective land rights of indigenous peoples would have to be relinquished peacefully to the lures of money, or forcibly to the batons of the National Police.

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<sup>67</sup> Law 10 of 2006 had restructured the Public Services Regulatory Entity (ERSP) into the National Public Services Authority (ASEP).

### VIII. Rolling back the State: Neo-liberal Multicultural Citizenship and the Disempowerment of Indigenous Peoples in Globalizing Panama

The cases of the Naso and of the Ngobe of Western Panama illustrate the profound transformations that have been happening in the relations between indigenous peoples and national governments after the process of neo-liberal state reform and structural adjustment. For many authors, these dislocations provided an impetus for the increasing mobilization of indigenous peoples in the 1990s, and for constitutional reforms that incorporated notions of multicultural citizenship.<sup>68</sup> In spite of the significance of a “politics of recognition,” however, the adoption of models of neo-liberal multicultural citizenship ultimately concealed the power inequalities that existed between indigenous peoples and other political actors, like multinational corporations.<sup>69</sup> Such a deceiving attempt at recognizing without empowering can be complicated by two aggravating situations that proved tragic in the two cases described above. First, the symbolic persistence of notions of corporatist citizenship even during those situations in which the legal framework and the political praxis denounced the existence of a completely different playing field, the transition from the welfare state of the 1970s to the neo-liberal regimes of the 1990s. Initially, the Naso tried to recur to the corporatist structures of the 1970s, but when they felt betrayed by the PRD government, they reclaimed the *de facto* regime of political autonomy that had allowed them to survive through centuries of ethnic wars, Catholic evangelization, and the encroachment of international capitalism. In con-

<sup>68</sup> COTT, *supra* note 3, at 1-35 (2000); Assies, *supra* note 3, at 9-16; YASHAR, *supra* note 3, at 54-82 (2005).

<sup>69</sup> See generally Hale, *supra* note 10, at 485-524 (2002); Gerardo Otero, *Global Economy, Local Politics: Indigenous Struggles, Civil Society, and Democracy*, CANADIAN JOURNAL OF POLITICAL SCIENCE 37 (2): 325-347 (2004); DIAZ-POLANCO, *supra* note 10, at 32-56.

trast, the Ngobe leaders of the District of Changuinola preferred to ally with the governing party, even when that implied abandoning a grandmother like Isabel Becker, leaving her alone to fight against forces that she could not even comprehend.

In addition to the persistence of corporatist loyalties, the collapse of those institutions that had been created by the neo-liberal state to equilibrate the power of business and citizens left indigenous peoples vulnerable to the temptations of capitalism and to the violence of a State that was simultaneously absent and omnipresent. The dispatch of police forces to the Naso Territory was only the prelude to the outright occupation of the neighboring Ngobe Territory a year later. Whereas state officials did not acknowledge any responsibility in the process of relocation of Chan 75, they actively participated in the siege of Isabel Becker, arguing that the project was important for her own benefit and for that of the “nation.” The Office of the Ombudsman proved completely ineffective in both cases. The National Environmental Authority (ANAM) essentially delivered the management of the Palo Seco Forest Preserve to AES, and ignored the claims of the hundreds of Naso who traveled to the town of Changuinola to express their opposition against the construction of the Bonyic hydroelectric project in 2005. The Public Services Regulatory Entity (ERSP) never intervened on behalf of the people affected by the hydroelectric projects, and instead issued a resolution upholding the continuation of the Chan 75 project even after the case of Isabel Becker had become known in the media nationally and internationally.

In Panama, the prospects for indigenous peoples under a neo-liberal multicultural citizenship regime are completely dismal. Not only are the corporatist mechanisms of popular participation of the former Torrijos years no longer available, but in these times of a new and younger Torrijos, indigenous peoples have also been denied the possibility of equal citizenship rights or of special multicult-

tural provisions beyond the mere recognition of cultural difference and boutique expressions of uniqueness. Under these circumstances, indigenous peoples were only left with the collective titles that they had obtained during the period of corporatist citizenship, with the uncertain possibility of reaching to the international regime of multicultural citizenship, or with the alternative of recurring to their pre-existing regimes of *de facto* political autonomy. Yet, even these persistent spaces of autonomy are also increasingly under siege as the tentacles of private business and government bureaucracies extend into the *comarca* lands themselves.<sup>70</sup> The Naso decided to reclaim their *de facto* political autonomy in January 2005, following the examples of the Lacandon Mayas in 1994, the Ngobe in 1964, and the Kunas in 1925. Yet, the question still remains of how long would the neo-liberal multicultural State tolerate these challenges to its purported national sovereignty, and when would they respond using what Weber avidly defined as the monopoly over the legitimate use of force. Isabel Becker did not wait for this dreadful moment, and walking over the footprints of millions of indigenous women in countless places and endless times in history, she chose a dignifying exit of her beloved homeland, as opposed to the stoic voicing of her complains, or the humiliating loyalty of the Ngobe bureaucrats of the governing party. Since there is no place for her in the Panama of skyscrapers, beach resorts and expanded waterways, she would rather abandon her lands than betraying her ancestors for the rewards of private payoffs or government positions.

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<sup>70</sup> In 2006, a group of North American speculators obtained a concession over the whole Caribbean Coast of the Ngobe-Bugle Indigenous Comarca. As the Damani Beach Project created divisions even among those Ngobe leaders loyal to the PRD, this dreadful precedent sent warning signs that indigenous collective lands were not safe even within the limits of the *comarcas*.

## Epilogue

In November 2007, seven Naso protestors were detained in the Teribe River as they blockaded the advance of the machinery of the Empresas Publicas de Medellin (EPPM). The Company had obtained financing for the continuation of the Bonyic hydroelectric project, yet the Naso continued defending their *de facto* regime of political autonomy. In February 2008, seven other people were taken to jail for the same reason, and between April and September, there were several violent confrontations between the followers of Tito Santana and Valentin Santana over the continuation of the Bonyic Project.

In December 2007, hundreds of Ngobe protestors occupied the property that had belonged to the Ngobe widow Isabel Becker to stall the continuation of the Chan 75 hydroelectric project. On January 3, they were violently repressed by the National Police that persecuted protest organizers into the neighboring communities and in the mountains of the La Amistad Biosphere Reserve. After that date, the Chan 75 area has been permanently occupied by the Police, controlling access to the communities and escorting AES machinery to work on any Ngobe family property, even against the will of the rightful owners of that land. On March 7, 2008, Alianza para la Conservacion y el Desarrollo (ACD) and Cultural Survival presented a petition to the Inter-American Human Rights Commission (IAHRC) for the protection of the human rights of the Ngobe population of the Changuinola River. As this paper was finished, AES continued building the hydroelectric project a few meters away and against the opposition of the Ngobe residents of Charco de La Pava. When an AES employee asked Ana Castillo, the only daughter of Isabel Becker to have remained in the community, to leave her house, she said that “she did not want money, but to live in



her land, that her grandparents had lived in these lands, that she will never go and that she will always protect her house.”<sup>71</sup>

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<sup>71</sup> Declarations of Ana Castillo taken by human rights lawyer Karine Rinaldi between September 27-28, 2008.

