



Supporting Communication to the Special Rapporteur on the rights of indigenous peoples

Submitted on behalf of the Congreso General Ngäbe Bugle y Campesino

by Professor Daviken StudnIcki-Gizbert, McGill University, Montréal, Canada.

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Introduction

This report provide a synopsis of the events and facts relating to the infringement of the rights of political self-determination of the Ngäbe and Bugle peoples of central and western Panama as laid out in the United Nations Declaration on the Rights of Indigenous peoples (A/HRC/RES/15/14). It focuses its treatment on the Panamanian government's reform of the procedures for the election of political authorities of the Comarca Ngäbe Bugle.

The report is based on information gathered since 2009 on the recent boom in natural resource extraction (especially mining and hydroelectric development) from a range of sources: regular on-site visits to the Comarca Ngäbe Bugle; interviews with local Ngäbe leaders and residents, representatives of Panamanian NGOs and researchers; reports and academic publications; official documentation of the Ngäbe General Congress and the Panamanian government; as well as press and web-based reporting.

1. Electoral reform in the Comarca Ngäbe Bugle.

[a] Overview

On June 2nd, 2010 the Panamanian national assembly passed Decree 537 (subsequently ratified by President Martinelli on June 9th, 2010) that modified the existing Carta Organica that had hitherto provided the regulatory and procedural framework of the Comarca Ngäbe Bugle.¹ The reforms were undertaken without consultation with any relevant Ngäbé or Bugle authorities, thus violating the procedures established under Law 10 (March 7, 1997) and the charter established be Decree 194 of August 25th, 1999. They targeted electoral procedures in particular, abolishing the existing system in which political authorities of the Comarca were elected under elections organized by the Electoral Committee of the Ngäbe Congress and replacing it with a system organized by the Panamanian Government's Electoral Tribunal.

¹ The Ngäbe Bugle Comarca was established by Law 10 of the 7th of March, 1997. The Carta Organica was passed by the Executive Decree no. 194 on the 25th of August, 1999. Full texts of Law 10, Decree 194 and Decree 537 can be accessed from the site of the Government of Panama's Official Digital Gazetteer: www.gacetaoficial.gob.pa.



The formulation, passing, and execution of Decree 537 was repeatedly protested by existing authorities of the Comarca in a range of venues including correspondence with the Panamanian government, declarations to the media, and legal injunctions submitted to the courts. It has led to serious political divisions that compromise the capacity of the Ngäbe and Bugle to engage with outside actors such as the Panamanian government or private corporations.

The report finds that the passing of Decree 537 infringes upon the following rights of indigenous self-determination as set out by the UN Declaration on the Rights of Indigenous Peoples (UNDRIP):

-articles 3,4,5 regarding determination, self-governance, and political institutions;

-articles 18, 19, 20 regarding participation in decisions affecting rights and institutions;

The report also supports the view of members of the 11th Congreso Ngäbe Bugle, as well as that of other Panamanian researchers, that these reforms to the internal political institutions of the Comarca is linked to the Panamanian state's efforts to open the Comarca to large-scale natural resource projects, in particular the Cerro Chorchá and Cerro Colorado mining projects and the hydroelectric projects on the Tabasara, Changuinola and other rivers of the Ngäbe and Bugle territories.

[b] Antecedents and background

Political authority in the territories of the Ngäbe and Bugle has traditionally been shared between local, village-level, authorities and more regionally-based caciques. Engagement with the formal political institutions of the national states of Colombia (until 1903) and Panama was limited to the nomination of *gobernadores* and *corregidores* by central state authorities. In 1972 Ngäbe and Bugle peoples were able to vote for representatives who sit in the National Assembly. This marked the beginnings of a consistent participation in national party politics, a practice that continues today.

Beginning in the 1970s Ngäbe and Bugle, as represented by their caciques, began to mobilize politically to obtain a Comarca - a self-administered indigenous territory - along the lines of what had been secured by the Kuna between 1938 and 1953. It was in this context that the first General Congress of the Ngäbe Bugle was convened in 1979. Since then it has served as the representative political body of the Ngäbe and Bugle peoples, a role formalized in the law creating the Comarca Ngäbe Bugle (Law 10, 1997) and the decree regulating its political and administrative life (Carta Organica, Decree 194, 1999). Currently there are three levels of Congresses: local, regional and General Congress that represents the Comarca as a whole. Paralleling this structure are the caciques (local, regional and general). At the level of the individual community representation is assured by the *jefes inmediatos* (local chiefs) and *voceros* (spokespersons). (Please see Annex 1 for a schematic representation).

Even with the institutionalization that accompanied the formation of the Comarca, political practice has retained a good deal of fluidity and divergence. This is a reflection of the heterogeneous and



localized nature of Comarca society, the persistence of personalistic forms of political authority, the persistence of political rivalries between different groups of political actors, and the different degrees of external government involvement. In 1986 for instance the General Congress fissioned into two: one Congress formed under the supervision of the Noriega government and the PRD (Partido Revolucionario Democrático); the other Congress rooted in the communities and 'traditional' political networks. It has since recombined and split anew on various occasions.²

Finally, externally-driven natural resource development has occupied a looming presence in Ngäbe and Bugle politics since the 1970s. The various attempts to exploit the massive Cerro Colorado copper deposit provided important impetus to the creation of the Comarca as a means of establishing formal structures of self-determination. In the late 1990s other large scale projects were scoped and began development, including the hydro-electric projects on the Changuinola and Tabasara rivers and the Cerro Chorchá gold and copper mine. These projects have produced important stresses and divisions within the Comarca.

In 2009 the government of Panama announced its intention to revive plans to open the Cerro Colorado mine and began high-level talks with government authorities and corporations in Canada, Chile, South Korea and Singapore. In the same year representatives of Corriente Resources, a Canadian mining company with a track record of conflicts with the Shuar indigenous peoples of Ecuador, appeared in the area around the Cerro Colorado to begin running workshops on the benefits of mining for local communities. Caciques at the local and regional level, as well as the General Congress, formally demanded that the company remove its personnel. This demand was relayed to the Parliament of Canada. The company ignored these demands and assisted in the formation of a local organization - *Jádrán Nigwe Niren Ngwaire Ngöbe* - that appeared in Panama City and national media claiming its willingness to negotiate the development of the Cerro Colorado deposit.³ These challenges to the Comarca's political authorities contributed to the growing tensions associated with the reform of Panama's national mining laws and the protests and violence that followed.

[c] Decree no. 537

The Carta Organica of 1999 makes provisions for the collaboration between the Electoral Commission of the General Congress of the Comarca Ngäbe Bugle and the Electoral Tribunal of the Government of Panama for the election of political authorities of the Comarca.⁴ However, between 1999 and 2010 the Electoral Tribunal did not involve itself in any way and elections were organized

² Osvaldo Jordan-Ramos, *Indigenous Mobilization, Institutionalization and Resistance: The Ngöbe Movement for Political Autonomy in Western Panama*. (Ph.D. Thesis: University of Florida, 2010), 173, 185. See also Stephanie D. Wickstrom, "The Political Ecology of Development and Indigenous Resistance in Panama and the United States: a Comparative Study of the Ngöbe, Kuna, Zuni, and Skokomish Societies." (Ph.D. Thesis, University of Oregon, 2001)

³ The association remains active and is a vocal opponent of traditional Ngäbere authorities. <http://www.nbjadran.com/ngabes-repudian-prebendas-de-cacica/> [retrieved 10.06.2013]

⁴ Carta Organica, Articles 169-170, 173, 174.



and run internally according to the traditional system of congregating community representatives in a single location and public voting by lining up behind competing candidates.

The trigger for the recent involvement of the Panamanian state was the elections of January 2010 in which 8000 people gathered to form the General Congress and elect the Cacique General (Rogelio Moreno), and the Caciques of the three regions (Eugenio Juárez for Ño Kribo, Angel Pita for Kodri, and Celestino Mariano Gallardo for Nedrini). One of the losing candidates for the position of Cacique General, Silvia Carrera, protested the election to the Electoral Tribunal. Soon thereafter, the director of Indigenous Affairs of the Ministry of Government and Justice, José Isaac Acosta, upheld this challenge and declared that a new set of elections would be held.⁵

This was the immediate precedent for the passing of Decree no. 537 that substantially reforms the Carta Organica as passed by Decree no. 194. Inter alia it removes ch. 5 "Of the electoral process of the Comarca" and replaced it with a new system of elections in which eligible voters would vote for delegates who in turn would vote in leaders to the Congress and slate of Caciques. Elected authorities of the Comarca protested that Decree no. 537 was passed without consultation with them or the general population of the Comarca.⁶ A few information sessions were held after Decree no. 537 was passed. Officials of the Electoral Tribunal declared that these served to clarify doubts and misunderstandings as to the new regulations but did not construe these exercises as a form of consultation.⁷ Finally, in September of 2010 the Minister of Government and Justice, Roxana Méndez declared that she would not accept any modification of Decree no. 537.⁸

The Decree marginalizes the authority of the General Congress and other authorities of the Comarca in the running of elections, stressing the "need to recognize the Electoral Tribunal's exclusive responsibility over the election of traditional authorities".⁹ The Decree ends with an additional article stating that "the Electoral Tribunal is given the authorization to organize and regulate the elections of delegates to the general, regional and local congresses" and that "the Electoral Tribunal will be the only competent authority to resolve any controversies resulting from any election."¹⁰

An election of delegates under the new system was held on the 24th of October, 2010. These delegates then elected leaders to the Congress in March 2011 and the new Caciques (General, Regional and Local) in September 2011. Existing authorities of the Comarca called for a boycott of the new system. Voter participation was low - 23.9% of eligible voters compared to the 72%

⁵ Human Rights Everywhere, Informe sobre las elecciones a delegados para los Congresos General, Regionales y Locales de la Comarca Ngäbe-Buglé (24 de Octubre). (Panama, 2010).

<http://www.hrev.org/procesos2/mision-de-observacionelecciones-en-la-comarca-ngabe-bugle/> [retrieved 04.11.2010]

⁶ Text at: http://www.thepanamanews.com/pn/v_16/issue_10/Ngobe_Bugle.pdf.

⁷ Jorge Bravo, "Elecciones en la comarca Ngöbe Buglé: un nuevo reto para el TE" <http://www.mundoelectoral.com/html/index.php?id=544>.

⁸ Human Rights Everywhere, *Informe sobre las elecciones a delegados*, 15.

⁹ Decree 537, preamble.

¹⁰ Ibid, art. 60.



participation rate of the national election in May of 2009 - and the percentage of blank or spoiled ballots was high - between 7.6% and 16% depending on the region.¹¹ Furthermore many *corregimientos* did not vote for any delegates whatsoever (27 or 39% of the total did not present delegates for the election of the Congreso General, 40 or 68% did not do so for the Congreso Regional, and 35 or 60% did not do so for the Congreso Local).¹² The October elections for delegates took place with only one notable incident: an altercation between protestors and the Panamanian National Police when the former tried to block the entry of a delegation of representatives of Chilean and Peruvian mining companies on a prospective visit of the Cerro Colorado area.¹³

[d] Observations

Decree no. 537 created a new system of elections for the Comarca Ngäbe Bugle and in so doing created a new set of political authorities. This was done without consultation with existing authorities nor with the population of the Comarca more generally. In the view of many people interviewed between 2010 and the present this constituted a unilateral imposition on the part of the Panamanian government. Some interviewees were not opposed to a reform of the Comarca's electoral system *per se*, but strongly objected to the manner in which it was created.

The lack of participation or consultation in the crafting and administration of the new electoral system infringes on following rights set out in the UNDRIP:

Art. 4: "...the right to autonomy or self-government in matters relating to their internal and local affairs..."

Art. 5: "...the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions..."

Art. 18: "...the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions."

Art. 19: "States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them."

Art. 20: "...the right to maintain and develop their political, economic and social systems or institutions..."

Secondly, the creation of parallel Congresses and *Caciques* creates a serious political division within the Comarca. Confusion as to who were the legitimate authorities is a common theme recorded in

¹¹ Human Rights Everywhere, *Informe sobre las elecciones a delegados*, 13, 14.

¹² Human Rights Everywhere, *Informe sobre las elecciones a delegados*, 17.

¹³ Human Rights Everywhere, *Informe sobre las elecciones a delegados*, 21.



McGill

Department of History
and Classical Studies
Faculty of Arts

Département d'histoire
et d'études classiques
Faculté des arts

interviews with people across the Comarca. This is a grave problem as it undermines the capacity of the Ngäbe and Bugle peoples to effectively attend to their affairs and advance their collective interests. It is all the more problematic in the current context of serious conflicts with the Panamanian state over mining and hydroelectric development. Authorities elected under the pre-existing system and other close observers of the Comarca believe that in this regard the Decree no. 537 was a deliberate tactic on the part of the government to weaken the capacity of the Ngäbe and Bugle to oppose unwelcomed forms of development within their territories. Members of the 11th General Congress of the Ngäbe Bugle Comarca point to the settlement reached between the Cacica General Silvia Carrera (elected under the new system) and the government in March of 2012 that, while it cancelled existing mining concessions, left the door open for continued hydroelectric development.



ANNEX 1: SCHEMATICS OF NGABE BUGLE POLITICAL INSTITUTIONS

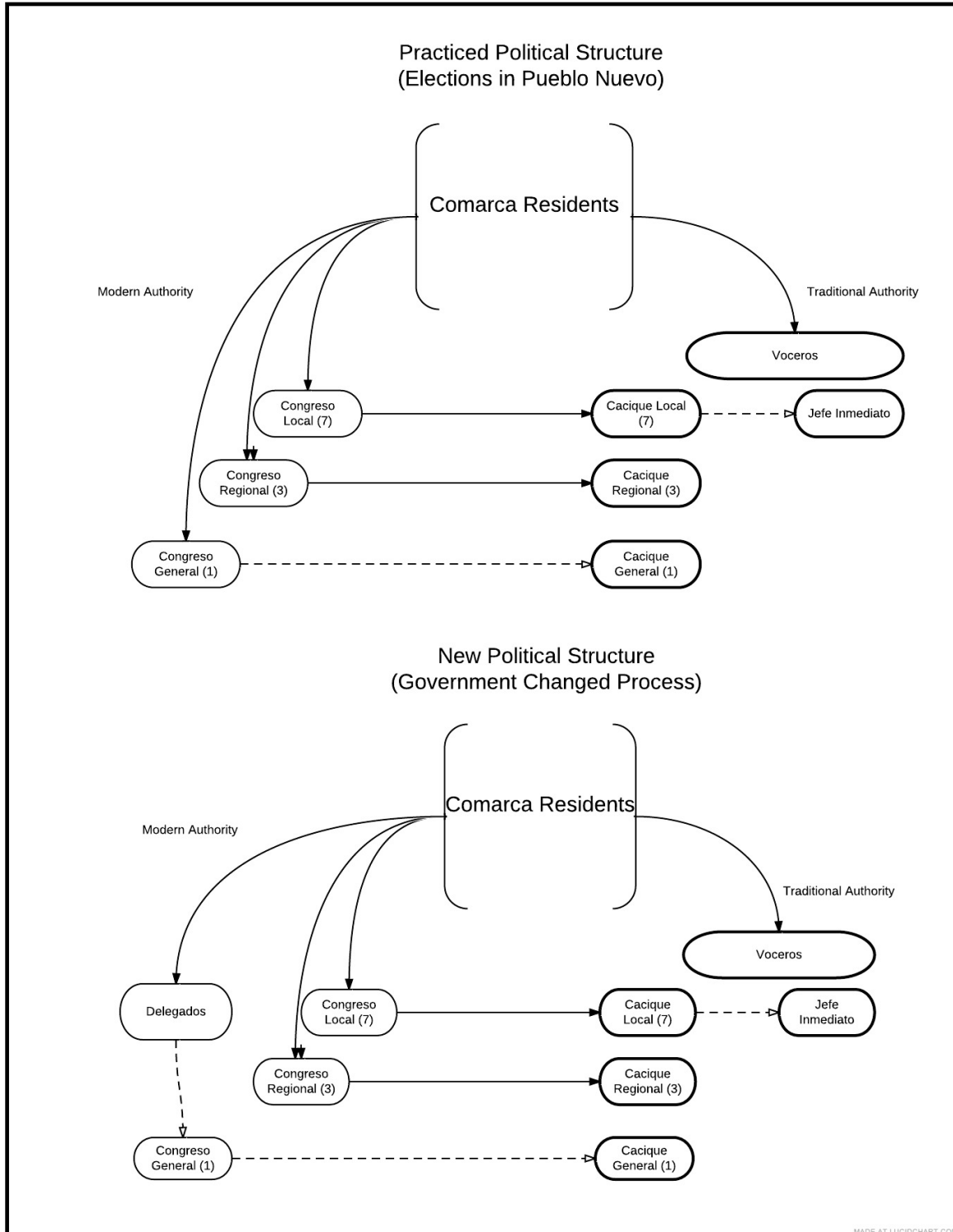


Figure 1: Pre-existing and new electoral systems in the Comarca Ngäbe Bugle (from Simms & Moolji, 26).

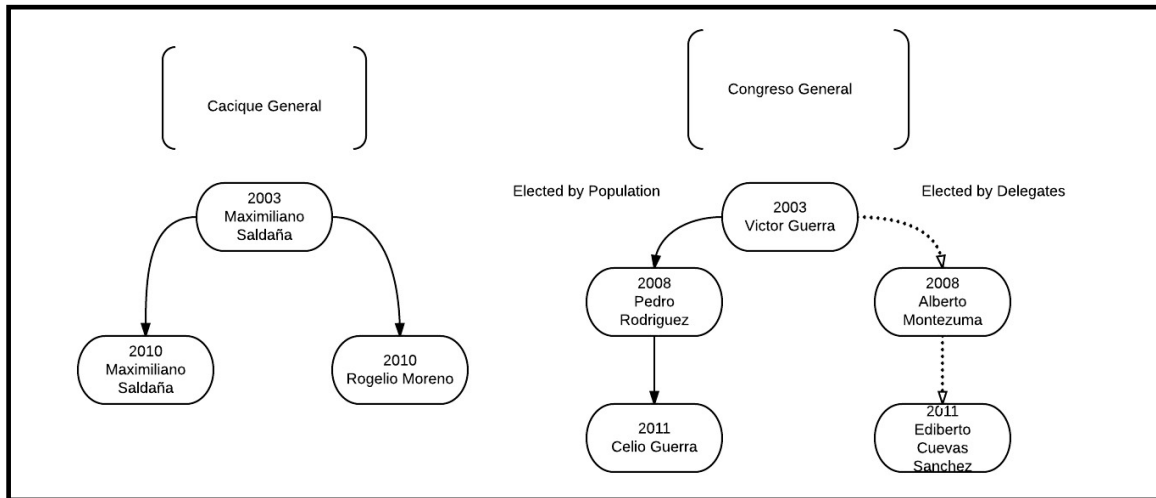


Figure 2: Two parallel governments of the Comarca Ngäbe Bugle (from Simms & Moolji, 25).