CONTROVERSIES OF CONSENT: THE CONTRADICTORY USES OF INDIGENOUS FREE, PRIOR, AND INFORMED CONSULTATION AND CONSENT IN PANAMA

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A dissertation submitted to the

School of Graduate Studies

Rutgers, The State University of New Jersey

In partial fulfillment of the requirements

For the degree of

Doctor of Philosophy

Graduate Program in Anthropology

Written under the direction of

David McDermott Hughes

And approved by

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New Brunswick, New Jersey

October 2020

ABSTRACT OF THE DISSERTATION

Controversies of Consent: The Contradictory Uses of
Indigenous Free, Prior, and Informed Consultation and Consent in Panama

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This dissertation examines the right of Free, Prior, and Informed Consultation and Consent (FPIC) in western Panama, where Ngäbe Indigenous communities have long fought to protect their land from copper mines, hydroelectric projects, and other forms of development. Drawing on sixteen months of ethnographic and legal research between 2013 and 2016, I demonstrate that, like other forms of multicultural recognition, FPIC can be used by states to manage Indigenous dissent and rights-wash contentious projects. This management can take place through careful attention to the wording or procedural details of FPIC policies; or, it can occur through the ways in which consent-seekers and consent-givers exploit or circumvent conflict-prone community decision-making processes. However, while FPIC can be used to limit Indigenous rights, I also show how various groups of Ngäbe still defy and work within these constraints. More broadly, I show that the Western liberal conception of consent as autonomous free choice obscures ways in which consent embeds subjects in relations of power. By framing consent not as a sign of freedom but as a sign of power relations, I underscore how FPIC and other forms of multicultural recognition join together Indigenous peoples and states to collaboratively create the multicultural state.

Acknowledgements

This dissertation would not have been possible without the support of many people. First and foremost, I wish to thank my interlocutors in Besikó, who have welcomed, endured, and challenged me for nearly a decade. In particular, I owe thanks to the Besikó authorities who agreed to allow this research to take place in their district. I am humbled by their trust. I also owe a lasting debt of gratitude to my hosts, Fabiola Mendoza, Gerónimo Bejerano, Patricia Jiménez, and their extended families. Their hospitality, friendship, and thoughtful insights enrich my intellectual and personal life in ways beyond measure. And finally, Padre Gregorio Fernández has been a generous friend, colleague, and unparalleled example of spiritually and politically engaged scholarship and service.

Beyond Besikó, I am continually overwhelmed by the intellectual generosity and collaborative spirit of many in Panama's scholarly community. At the University of Panama, the ongoing guidance of Drs. Francisco Herrera and Ignacio Rodríguez—Francisco with regard to the history of Indigenous politics in Panama, and Ignacio on the nuances of Ngäbe language, culture, and politics—has been an extraordinary gift throughout my research. Dr. Luz Graciela Joly Adames, who generously shares her encyclopedic four-field knowledge of Ngäbe anthropology, has been an inspiration for her committed support of Ngäbe students at the Autonomous University of Chiriquí. And, dissertation committee member Julie Velásquez Runk has been an unmatched provider of pragmatic advice and perspective, as well as an exceptional role model for collaborative research with Indigenous communities in Panama.

I also wish to acknowledge the support of several institutions that have been essential to this research. In particular, the staff and volunteers of Fundación Nuestra Señora del Camino in San Félix provided a safe and welcoming home base during fieldwork. In addition, the Asociación de Antropología e Historia de Panamá has served as an ongoing source of intellectual inspiration and interdisciplinary collegiality. And crucially, I wish to thank the Smithsonian Tropical Research Institute for facilitating my research authorizations, and the Inter-American Foundation for funding this work through an IAF Grassroots Development Fellowship.

At Rutgers, I have been privileged to learn from and beside an inspiring community of socially engaged anthropologists. I am indebted to my advisor, David Hughes, for his unflagging support, good humor, and intellectual curiosity over eight years of coursework, field research, and even a successful contract campaign. I have been honored to bear witness to and participate in David's efforts toward a more equitable university. Angelique Haugerud has been an ongoing source of encouragement, theoretical and methodological insight, writing advice, and teaching inspiration. Dorothy Hodgson, a consistent mentor even after leaving Rutgers, has pushed me to sharpen my critical thinking skills, look for nuance and contingency rather than pat answers, and be bold in my intellectual engagements. Pam McElwee, who generously folded me into one of her writing projects, has been a model of theoretical rigor and scholarly collaboration, as well as an example of the potential for social science to move beyond critique to real-world applications.

In addition to my committee, numerous others at Rutgers have shaped me as a writer, teacher, and colleague. My cohort-mates, Marlaina Martin and Allison Bloom,

plus writing partners Tristan Jones, Nada El Kouny, Ellen Rubinstein, and Dawn Wells, have provided endless feedback, intellectual stimulation, and friendship. I also wish to thank: Donna Auston, Ulla Berg, Tim Bransford, Gabrielle Cabrera, Lissa Crane, Siad Darwish, Reecha Das, Deniz Daser, Hylke DeJong, Teresa Delcorso-Ellmann, Fred Foster, Daniel Goldstein, Andrés González, Karelle Hall, Sarah Hlublik, Nan Hu, Enrique Jaramillo, Meghana Joshi, Wenyu Liu, Alysse Moldower, Katie Orlemanski, Fulya Pinar, Alex Pritchard, Bridget Purcell, Jovani Reaves, Kate Riley, Safiena Salaman, Rob Scott, Raúl Rodríguez, Louisa Schein, Becky Schulthies, Erin Vogel, and Tim Weldon.

It is hard to find the words to express my appreciation for the enduring support of my husband, James, and our two extended families. This project would not have been possible but for their unconditional love, patience, and encouragement.

In closing, I wish to recognize and honor those in Panama and beyond who are working to ameliorate the effects of Covid-19 on the country's Indigenous populations. The pandemic has made the Ngäbe and other Indigenous peoples yet more vulnerable to the ongoing processes of colonization, dispossession, and systemic racism. In this context, it is more urgent than ever to provide sufficient, Indigenous-driven forms of aid, strengthen Indigenous rights, and support Native peoples' choices in governance and development.

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I. Consent: Simple Analogies

As the #MeToo movement gained steam in the middle of the 2010s, a video called "Tea Consent" circulated on social media (May 2015). Featuring two androgynous stick figures against a blank white background, the lighthearted video argued that checking for consent is as clear-cut as offering someone tea. A male narrator explained:

> If you're still struggling with consent, just imagine instead of initiating sex you're making them a cup of tea.
>
> You say, "Hey, would you like a cup of tea?" and they go, "Oh my god, I would love a cup of tea. Thank you!" Then you know they want a cup of tea.
>
> If you say, "Hey, would you like a cup of tea?" and they're like, "Er, you know I'm not really sure," then you can make them a cup of tea, or not, but be aware that they might not drink it, and if they don't drink it then – and this is the important bit – don't make them drink it. (May 2015)

By playing up the absurdity of forcing someone to drink a cup of tea, the video draws on the widespread idea that consent is a straightforward negotiation between two individuals: one person proposes something, the other person can choose to say yes or no, and the proposer must abide by whatever decision the chooser makes.

During fieldwork in Panama's Ngäbe-Buglé Comarca (a semi-autonomous Indigenous territory occupied by Ngäbe and Buglé peoples), I heard similar examples regarding the decision-making rights of Native groups. For instance, when I discussed my research permitting process with one Ngäbe official, he analogized, "To enter your house, I have to ask your permission." While the official meant to emphasize the obviousness of

the need for research permission, his example also reproduced the idea that the mechanics of consent are simple and clear-cut.

With clearly defined roles, straightforward rules of interaction, and unambiguous yes or no options, these analogies appeal to popular notions of individual autonomy and free choice. However, their apparent clarity obscures the social, political, and historical factors that inevitably influence how and what people choose, as well as the afterlives of those decisions. This complexity is especially true in the context of development projects in Indigenous territories, where, despite the increasing prominence of an international right known as Free, Prior, and Informed Consultation and/or Consent (FPIC), relations between project developers and Indigenous peoples are seldom as clear-cut as those of tea preparer and tea drinker, or houseguest and host.

This dissertation examines the right of Free, Prior, and Informed Consultation/Consent in western Panama, where the country's largest Indigenous group, the Ngäbe, have long grappled with how to assert their rights and make collective decisions over mining, hydroelectric dams, and other development projects. I demonstrate that FPIC—the right of Indigenous peoples to receive full information about a development project, and to be consulted or asked for their consent prior to a project's execution—can, like other policies of multicultural recognition, be used by states to manage Indigenous dissent and rights-wash controversial projects. At the same time, however, I also show how Ngäbe leaders challenge and work with these constraints in order to both expand their territorial rights and propel internal debates over culture and development. More broadly, I show how the Western liberal conception of consent as autonomous free choice obscures ways in which consent embeds subjects in relations of

power. An understanding of consent not as a sign of freedom but as a sign of power relations underscores how FPIC and other policies of multicultural recognition bind Indigenous peoples and states together to collaboratively generate the multicultural state.

II. Free, Prior, and Informed Consultation/Consent[1]

A. Historical Background

The principle of Indigenous Free, Prior, and Informed Consent (FPIC) has historical roots in the colonial era, when colonizing powers, competing to claim land and resources, used treaties with Native inhabitants to prove the colonizers' legal title to new territories (Doyle 2015, 1). While this practice theoretically recognized the sovereignty and territorial rights of Native peoples by obtaining their consent, in practice, the treaties were often obtained under duress and served to bring Native peoples under colonial control (Doyle 2015, 1-2).

After World War II, two global movements brought about the reemergence of the legal principle of Indigenous consent. The first was the anti-colonial movement, which argued that colonies and other subjugated minorities had the right of self-determination, meaning the right to "freely determine their political status and freely pursue their economic, social, and cultural development" (United Nations 1960, Article 2, Niezen 2003, 41, Moyn 2010, 84-119). However, as former colonies gained independence and the newly formed states worked to develop their economies and national identities, they typically declared Native lands to be national territory, and Native peoples to be populations that needed to be assimilated into national society (Niezen 2003, 36-41).

[1] To distinguish between forms of FPIC, I borrow Rodíguez-Garavito's (2011) practice of abbreviating Free, Prior, and Informed Consultation as FPIConsultation, and Free, Prior, and Informed Consent as FPIConsent. I use "FPIC" when discussing both terms together.

Consequently, in the 1970s, as it became apparent that post-colonial states could be just as repressive as colonial ones, a movement arose in favor of recognizing universal human rights (Doyle 2015, 1-2, Moyn 2010, 84-119, Niezen 2003, 36-44). Together, the concepts of self-determination and human rights, along with other factors such as the proliferation of human rights NGOs, helped propel the rise of the Indigenous rights movement in the 1980s, and the subsequent recirculation of the idea of Indigenous consent (Niezen 2003, 36-52, Doyle 2015, 1-2).

Nevertheless, FPIC did not emerge fully formed, but has instead undergone a series of changes as international consensus about the relationship of Indigenous peoples to their states has evolved. For example, the first international statement on Indigenous rights, the 1957 International Labor Organization's Convention 107, reflected not a concern for Indigenous self-determination, but "the prevailing political and philanthropic attitudes of the time, in which assimilation of "backward" societies into a nation-state was seen as the first necessary step for the prosperity and liberation" of Indigenous peoples (Niezen 2003, 38). This view is evident in language that declared that states should make development decisions for Indigenous populations, rather than allow them to make such decisions by themselves (ILO 2009, 173).

Eventually, following pressure from Indigenous peoples, this paternalistic approach changed to reflect more support for Indigenous self-determination. As a result, the subsequent ILO Convention 169 of 1989 requires states to "consult" Indigenous peoples, "with the objective of achieving agreement or consent to the proposed measures" (ILO 1989, Article 6). This "with the objective of achieving agreement or consent" language has since evolved into the even stronger phrase, "free, prior, and

informed consent," in the Report of the World Commission on Dams in 2000, and the UN Declaration on the Rights of Indigenous Peoples in 2007 (Cariño and Colchester 2010, United Nations 2007). However, many states and other entities continue to use versions of FPIC consistent with the older Convention 169 language. Today, FPIConsultation and/or FPIConsent policies are much-publicized (if not adhered to) stipulations in international biodiversity, intellectual property, and climate change treaties, as well as guidelines for international funders such as the World Bank, and industry organizations related to mining and forestry (Alexaides and Peluso 2002, Brush and Stabinsky 1996, Campese, Center for International Forestry Research., and International Union for Conservation of Nature 2009, IIED 2012, CIEL 2011, Casas 2004, Goodland 2004, Mahanty and McDermott 2013).

B. Defining FPIC

As the noncommittal wordiness of Convention 169's consultation "with the objective of achieving agreement or consent" phrase suggests, many Indigenous activists and representatives from states, industries, and international funders have put years of effort into clarifying, or obfuscating, what the words "free," "prior," "informed," "consent," and "consultation" mean. Representatives from the United Nations Permanent Forum on Indigenous Issues explain the general principles behind Free, Prior, and Informed Consent as:

i. Indigenous peoples are not coerced, pressured or intimidated in their choices of development;
ii. Their consent is sought and freely given prior to the start of development activities;
iii. Indigenous Peoples have full information about the scope and impacts of the proposed development activities on their lands, resources and well being;

iv. Their choices to give or withhold consent over developments affecting them is respected and upheld. (Tamang 2005, 13)

Or, as one Panamanian Indigenous lawyer paraphrased, FPIConsent means, "you can say yes or no." In contrast, he said, FPIConsultation means, "they ask your opinion." In other words, FPIConsent theoretically gives Indigenous groups the right to veto a project, while FPIConsultation means that developers must take community opinions into account as they carry out their project.

Despite this apparent definitional clarity, in practice, both consent and consultation are ambiguous terms that encompass a wide range of consultative or consent-seeking activities and Indigenous decision-making rights. For instance, in Canada, where courts have affirmed a concept known as "duty to consult" (a legal principle which obligates the Crown to consult First Nations prior to authorizing development projects on Indigenous lands), the principle itself refers to a range of state consultative activities, from notifying Indigenous peoples, to accommodating their interests, but definitively excludes the right of veto (Newman 2009, 16). Meanwhile, many entities, including some within the UN system, interpret "consent" as simply another way of saying "consultation"—a dialogue between Indigenous groups and states, which may or may not ultimately require Indigenous agreement. For instance, according to the UN Development Group, "Consultation and participation are crucial components of a consent process. […] This process *may* include the withholding of consent" (ILO 2009, 64; emphasis added).

Distinct regional uses of "consultation" also frustrate the search for a clear legal definition of FPIC. Writing in the context of extractive industries in Latin America, Tom Perreault (2015) notes that "consultation" (*consulta* in Spanish) can take several forms,

including: public referenda about a development project; negotiation meetings at which community members and industry and/or state officials come to agreement over compensation for a project; or informational public meetings about a project. And, complicating matters still further, he points out that *consulta* can also be used to refer to Free, Prior, and Informed Consent (Perreault 2015, 435-36).

Another factor that blurs the difference between FPIConsultation and FPIConsent results from how consent laws are interpreted in international human rights courts. In the Americas, the InterAmerican Court of Human Rights (IACHR) frequently sets hemisphere-wide precedents in international human rights law. However, the Court has vacillated on what kinds of circumstances require consent versus consultation, and whether consent and consultation include veto power. In particular, following the cases of *Saramaka People v. Suriname* (2007) and *Kichwa Indigenous People of Sarayaku v. Ecuador* (2012), the Court has indicated that consent is necessary in the case of "large-scale" developments that would have a "significant" impact on Indigenous property, while small-scale projects require only consultation (Verbeek 2013, 277). On one hand, this decision is a positive step for Indigenous rights in that it affirms the Indigenous right of veto in at least some cases; on the other hand, however, it creates more uncertainty around what constitutes a "large-scale" project with "significant" impact.

C. Consent and Power: Whom Does FPIC Benefit?

The definitional ambiguities of FPIConsultation and FPIConsent lead to a long list of scholarly critiques pointing out how both forms of FPIC can be easily manipulated by states and industry. For example, Perreault (2015) describes how in Bolivia, extractive

sector representatives held pro forma "consultas," meetings in which state and industry officials carefully limited community dissent in order to create the appearance of public participation. Meanwhile, in supposedly FPIC-friendly Philippines, Indigenous rights experts Joji Cariño and Marcus Colchester describe "the engineering of consent," in which project developers obtained consent not from the relevant communities, but by purchasing consent certificates from corrupt government employees (2010: 433). Still other writers have pointed out how industry, particularly the mining sector, has incorporated FPIC into Corporate Social Responsibility guidelines not necessarily out of concern for Indigenous rights, but in order to reduce financial risk, woo investors, or rights-wash unpopular projects (Laplante and Nolin 2014, Owen and Kemp 2014, Mahanty and McDermott 2013). In short, unwanted development projects often proceed despite the existence and execution of FPIC protocols.

If FPIC is supposed to give Indigenous peoples more power in development decisions, why does it sometimes fail at this task? For some Indigenous rights advocates, the answer lies in the fact that most FPIC policies are in fact policies of FPIConsultation rather than FPIConsent. They argue that FPIConsultation allows states and industry to mire Indigenous communities in the procedural minutiae of public consultations, and ultimately lets them ignore communities' wishes (Rodríguez-Garavito 2011). In contrast to FPIConsultation, FPIConsent, bolstered by popular portrayals such as "Tea Consent" and the comarca-as-house analogy, appears to enable a straightforward, autonomous declaration that produces definitive yes-or-no decisions. Consequently, the solution to recurring violations of consent under existing FPIConsultation seems obvious: simply switch to FPIConsent (Rodríguez-Garavito 2011).

However, these calls for FPIConsent instead of FPIConsultation fail to recognize that the popular imaginary of consent is highly reductive. The image of a clearly defined chooser who has the right to declare an incontrovertible yes or no overlooks the ways in which consent informs, and is informed by, power relations between and within groups of people. In fact, scholars writing on the conceptual origins of consent frequently describe it as a form of subjection to power. Western political philosophers trace the concept to Hobbes' (2018 [1651]) account of the origins of the social contract (the imagined terms by which people join together to form a society and a government). Hobbes describes men as autonomous, independent entities whose natural state is to be at war with one another, and who consent to be governed by a sovereign so that the sovereign will protect them from each other. In this formulation, consent means surrendering a measure of autonomy and submitting oneself to the sovereign's rule.

Responding to Hobbes, feminist writers show that the surrender of autonomy entailed by consent can be even costlier for those who belong to marginalized groups. Pointing out that Hobbes' account excludes women from the social contract, feminists describe a corresponding sexual contract, in which the members of the family consent to the rule of the father in order not to be killed by the father (Severance 2000, Das 2008). Consent to the sexual contract entails a relinquishing of freedom in the interest of self-preservation, underscoring how violence and inequality belie the freedom of choice associated with consent.

These observations reveal that consent is not a simple yes-or-no choice, but rather a decision that accounts for, and enrolls choosers in, existing power relations. This subjection to power can be overt, especially when considerations like state violence,

economic insecurity, and social and political marginalization constrain the decisions that Indigenous peoples can make. But the subjection to power entailed in consent can also be subtle. For example, writing in the context of research consent, medical anthropologists Klaus Hoeyer and Linda Hogle argue that, rather than determining what constitutes ethical behavior in each unique context, informed consent defines morality in terms of individual autonomy, and then "reduc[es] autonomy to procedural methods for stating a personal preference" (2014, 350). Informed consent thereby displaces the moral issues of, say, a European company conducting medical research in rural Pakistan, by substituting an apparent concern for research subjects' right of free choice (2014, 348). In the context of development in Indigenous territories, in which a mine or a dam may offer an impoverished community economic benefits at the cost of its land, health, or water supply, FPIConsent does not automatically mitigate the risks of a project, or correct the power imbalance between a developer and a community. Instead, it simply absolves the developer of moral responsibility by offering a community the right to choose between old and new versions of environmental and social vulnerability.

The ways in which consent enrolls subjects in the workings of power is also evident in how FPIC imagines decision-making processes within Indigenous groups. Drawing on the comarca-as-house analogy, what if a visitor wants to enter a house, but more than one person claims to be the owner? How do the owners come to agreement? Whose decision prevails? Writing about such scenarios in development projects in India, Katsuhiko Masaki notes that FPIC privileges a certain form of goal-centered, participative decision-making that attempts to identify the "shared will" of an Indigenous group (2009, 71). This model overlooks the internal power relations that result from

members' different social locations and political dynamics, relations that ultimately frustrate the possibility of determining a single will (Masaki 2009, 79). FPIC processes may thereby exacerbate tensions or inequities within Indigenous groups, potentially further marginalizing already vulnerable segments of a population.

D. Consent in Intent and Practice: Multicultural Recognition and the Fragile State

As these examples indicate, the subjection to power entailed in consent frustrates the simplistic proposer-chooser dynamic on which Indigenous rights advocates base their well-meaning calls for FPIConsent. According to Hoeyer and Hogle, this misalignment between consent imagined as a simple expression of autonomous free choice, and the messy workings of power in people's consent decisions in daily life, articulate two types of politics: "a politics of intent constantly enforcing an ideal 'informed consent' and a politics of practice generated by people trying to figure out what to do in its name" (2014: 349). The politics of *intent* pursues the "fantasy" that moral aspirations can shape local practice, while the politics of *practice* must comply, adapt, or circumvent these moral prescriptions in on-the-ground interactions.

In Panama, FPIC brings several sets of politics into conversation with one another. In terms of the "politics of intent," FPIC imbricates an aspirational politics of the state, which imagines the state as a benevolent entity that provides for all Panamanians adequately and equally; a politics of multiculturalism, which envisions a multicultural society that atones for histories of genocide and assimilation by embracing Indigenous cultural difference; and a politics of Indigenous self-determination, which proposes rectifying centuries of dispossession by protecting the political, cultural, and territorial

autonomy of Indigenous peoples. Together, these aspirational politics—expressed in campaign speeches, Indigenous anti-dam protests, and well-meaning public infrastructure projects—generate an imagined Free, Prior, and Informed Consultation/Consent in which the benevolent state ensures the realization of multicultural recognition by guaranteeing the self-determination of Indigenous peoples.

However, these "politics of intent" run up against a "politics of practice" shaped by the realities of state-making and multicultural governance in a country manipulated from inception by the United States. Anthropologists and other social scientists have long argued that states are not stable entities, but instead must be continually produced through practices such as maintaining a military, managing the economy, enforcing laws, and creating symbols of national culture and identity (Hansen and Stepputat 2001, 7-8). In other words, the state is not an actual structure, but a fragile combination of practices and symbols that produce state-like effects (Mitchell 1991). The Panamanian state is not a fixed thing, but an accretion of institutions (e.g., the National Police, the Ministry of the Environment), symbols (the national flag, images of the Panama Canal), and practices (speaking Spanish, voting). For most of the country's history as a nation, the reality of US control over five hundred square miles of Panamanian soil has meant that these "languages of stateness" have been exceptionally important, and difficult, to maintain (Carse 2014, 16, Hansen and Stepputat 2001).

In this context, Indigenous self-determination threatens the Panamanian state, potentially undermining its ability to manage territory, economic development, and national identity. In response to this danger, a politics of practice emerged that deploys multiculturalism as a strategy for managing Indigenous threats to state power. As a result,

similar to trends scholars observe in Australia, Canada, and elsewhere in Latin America, Panamanian multiculturalism came to legitimate new forms of state-sanctioned exploitation and control (Povinelli 2002, Coulthard 2014, Hale 2002, 2011). As I discuss below, the state has used multicultural recognition to neutralize Indigenous protest and facilitate large-scale development in Indigenous areas (Herrera 2012, Velásquez Runk 2012). Consequently, instead of a scenario in which the benevolent state uses FPIC to guarantee the sovereignty of Indigenous peoples and thereby fulfill the promise of a multicultural society, the fragile state may use ostensibly multiculturalist policies, including FPIC, to mitigate the risk posed by Indigenous self-determination. Multiculturalism can become a way for the Panamanian state to project an image of state power by portraying itself as the protector of cultural diversity and Indigenous rights, while also managing the threat that Indigenous rights represents to that power.

At the same time, however, the state's frailty, and its professed commitment to multiculturalism and Indigenous rights, do give Indigenous peoples leverage with which to hold it accountable, and openings in which to pursue their own agendas. Scott Richard Lyons (2010), an Ojibwe and Dakota scholar and professor of English, argues that even choices made under coercive circumstances still reflect the agency of the chooser. Lyons points to the example of the x-mark—the sign by which Native populations agreed to treaties with the US government—offering a reinterpretation of its usual significance as a symbol of Indigenous victimhood. He argues that, while the x-mark is a "contaminated and coerced sign of consent made under conditions that are not of one's making" (2013, 3), it also symbolizes the agency of Native peoples in the face of dramatic social upheaval. He writes:

> "The idea of an x-mark assumes that Indigenous communities are and have always been composed of human beings who possess reason, rationality, individuality, an ability to think and to question, a suspicion toward religious dogma or political authoritarianism, a desire to improve their lot and the futures of their progeny, and a wish to play some part in the larger world." (Lyons 2010, 12-13)

That is, even though the x-mark signifies a lack of power in the face of colonization, the decision to make the mark is still an agentive decision made by people who, weighing their alternatives, choose to affirm their belief in the future and their desire to take part in the world.

In addition to highlighting the agency of Indigenous peoples even in dire situations of exploitation, Lyons also reframes the choice the x-mark as a decision about culture *change* instead of culture *loss*. He points out that, while colonization is often blamed for Indigenous peoples "losing" their ways of life, in fact, people often make conscious decisions in favor of change (Lyons 2010, 32-33). Thus, while critics of multiculturalism lament the ways in which state recognition can alter Indigenous ways of being so as to reproduce colonial domination, it is also important to examine the ways in which these alterations reflect intentional calculations on the part of Indigenous peoples about what kinds of changes they choose to embrace and why (Coulthard 2014).

Furthermore, learning from Lyon's reframing of the x-mark from emblem of Indigenous subjugation to symbol of agency, it is also possible to reframe the x-mark from sign of colonial domination to evidence of state vulnerability. In the US, x-marks exist because, until the late 19th Century, the government forced Native tribes to sign away their lands via treaties, using the treaties to mimic the legal transfer of title between sovereign entities and thereby legitimate a process that was essentially theft (Rifkin 2009, 95-96). However, as Mark Rifkin explains, eventually the government shifted its

characterization of these groups from sovereign entities to "domestic dependent nations," which allowed it to cease treaty negotiations and simply claim the land as part of the United States (2009, 88, 96). Rifkin argues that a return to the x-mark, that is, a return to treaty negotiations, would lay bare the illegitimacy of US claims to Native lands, the tenuousness of US territorial sovereignty, and the violence required to maintain that sovereignty (Rifkin 2009). In this context, Indigenous consent, even when coerced, could drive a potent critique *of* power as well as a bondage *to* power, revealing the oppressive tactics necessary to maintain the fragile state.

In short, Lyons' reinterpretation of the x-mark suggests ways in which, despite their potential for state cooptation, FPIC and other forms of multicultural recognition do nonetheless offer openings to Indigenous peoples. Thus, I do not mean to argue that Indigenous peoples and their allies should give up on consent, FPIC, or multiculturalism. Rather, I highlight how some Ngäbe leaders respond to the risk of state cooptation by both challenging and working within the constraints of multicultural recognition, in order to advance their territorial rights and pursue their own in-group priorities. These leaders perceive state recognition not as part of the inexorable state cooptation of Indigenous peoples, but the logical and hard-fought outcome of years of Indigenous mobilization. They use these experiences of recognition to drive continued protest against mining, hydroelectric dams, and other development projects, but also to work with state representatives to resolve longstanding land disputes. And, looking inward, they draw on these experiences to animate internal discussions about culture, identity, politics, and development. In short, while FPIC and other forms of multicultural recognition may enable states to control Indigenous peoples, they also provide ways for Indigenous

peoples to use the state to advance their rights and drive community debates over their past and future.

III. Research Context

Early one morning during my first trip to the Ngäbe-Buglé Comarca in 2009, one of my hosts, Gerónimo Bejerano,[2] saddled two horses and asked if I would like to go on a tour. I was a masters graduate student, and I had recently arrived in the comarca town of Soloy to learn about the anti-mining and anti-dam campaign in which Gerónimo, his partner, Fabiola Mendoza, and many other local residents participated. Eager to see more of the area, I climbed onto one of the horses and we headed off in the dewy cool toward the main crossroads. At the intersection, we turned and followed the road uphill, out of the narrow mountain valley that shelters the town.

After about fifteen minutes of climbing, we stopped to admire the view. Looking west across a broad river valley, we could see rolling pastureland fall away to the Pacific Ocean on our right, while dark, forested mountains swelled to our left, back in the direction of Soloy. I thought we were simply enjoying the scenery until Gerónimo explained that we were looking at the boundary of the comarca, which separated the Latino ranchlands below from the variegated farms and forests of the Ngäbe mountains above. To me, still unaware of how Ngäbe struggles for land had written themselves across the countryside, the boundary was invisible. But Gerónimo spoke as if it were a bold black line drawn across the foothills.

[2] All names of research interlocutors are pseudonyms.

A. Panamanian Indigenous History

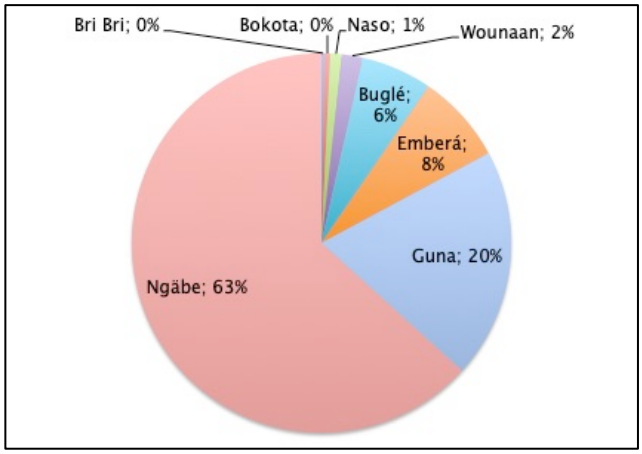
The Isthmus of Panama resembles a person lying back in a dentist's chair, leaning her head against Costa Rica to the west and resting her feet in Colombia to the southeast. The Panama Canal bisects the country just above the patient's bent knees, running southeast from the Caribbean to the Pacific. The capital, Panama City, gazes out on the Pacific Ocean from its vantage point at the southern end of the canal. The Central Cordillera runs the length of the country from Costa Rica to Colombia, dividing the country into a wetter, more mountainous side that overlooks the Caribbean to the north, and a flatter, drier side sloping to the Pacific on the south.

While it takes less than an hour to drive across the isthmus at its narrowest point along the canal, traveling east and west can be trickier. From Panama City, Costa Rica lies six hours west via the PanAmerican Highway; the banana plantations and tourist resorts of the northwest Caribbean coast are ten hours away via a windy road over the mountains; and Colombia, though geographically closer, seems even farther still because of the roadless jungle of the Darien Gap.

Since the arrival of Christopher Columbus in 1502, this mountainous, forested geography has made it difficult for rulers to subdue resident Native populations. In western Panama[3], some Indigenous peoples living in the flatlands of the Pacific coast were defeated by the Spanish in the early years of colonization, but many fled into the western cordillera, becoming the populations known today as the Ngäbe and Buglé (Torres de Araúz 1980, 69-75). When military force failed, the Spanish sought to pacify the Native populations via religious conversion, sending Catholic priests into remote

[3] Focusing on the Ngäbe, whose traditional lands lie in western Panama, this brief summary omits extensive scholarship on the history of Native peoples in eastern Panama.

Indigenous zones and setting up *reducciones*, mission towns where Catholic clergy worked to "civilize" Indigenous peoples through proselytization and communal labor (Torres de Araúz 1980, 75-81, Young 1971). This method had mixed success, with some Indigenous people returning to the mountains, and others staying and acculturating (Cooke 1982, Young 1971, 47-56).



Indigenous People	Population (2010)
Bri Bri	1,068
Bokota	1,959
Naso	4.046
Wounaan	7,279
Buglé	24,912
Emberá	31,284
Guna	80,526
Ngäbe	260,058

Figure 1. Indigenous Peoples in Panama
Scholars typically describe Panama as having seven Indigenous peoples. However, the national census records an eighth, the Bokota, who are usually otherwise grouped with the Buglé. See Velásquez Runk et al. (2011, 15-17) and INEC (2010b).

After the Spanish colonies declared independence from Spain in the first half of the 19th Century, the Isthmus of Panama was an on-again, off-again region of Colombia, with Panamanian elites often disgruntled with the conservative government in the distant capital of Bogotá (Fischer 1998, 80). In 1903, following a devastating civil war in Colombia, the US capitalized on Panamanian discontent and provided military support when a circle of Panamanian elites declared independence (Fischer 1998, McCullough 1977). In exchange for preventing Colombian troops from landing to quell the rebellion,

the US secured "near-sovereign powers" over a ten mile-wide swath of land, deeded in perpetuity, for the planned canal (Carse 2014, 94).

The United States wanted to keep Panama quiet and stable to protect its military and economic interests in the canal, and was not shy about intervening in Panamanian domestic affairs (Howe 1998). In addition, the US presence hampered Panama's development by dividing the nation in two, impeding the circulation of goods, labor, and political influence between the capital city on one side of the US-controlled Canal Zone, and the agricultural lands on the other (Carse 2014: 17). Chafing at the US presence, elites sought ways to build up state institutions, the national economy, and Panamanian national identity. To accomplish these tasks, early governments promoted a number of economic and "civilizing" efforts in remote Indigenous lands in eastern Panama, including: Christian evangelization; the establishment of schools; extractive activities like rubber tapping; foreign investment in plantation agriculture and mining; and small-scale agriculture by landless peasants (Howe 1998, Wali 1989, Horton 2006).

In 1925, the accumulated strife that these efforts had created amongst Guna villages on the Caribbean coast provoked them into armed rebellion (Horton 2006: 837, Howe 1998). The fledgling Panamanian government, lacking the resources to control the region, was forced to cede when the US decided to intervene diplomatically on the Gunas' behalf. In 1930, the government passed a law creating the Guna reserve of San Blas (now called Guna Yala), and eventually formalized this territory in 1953 by approving the comarca's charter and giving the Guna broad rights of self-rule (Howe 1998).

While the Guna rebellion helped bring about certain legal protections for Indigenous peoples, Panama's leaders still remained ambivalent about their Indigenous neighbors. This ambivalence is evident in the language of a number of national laws, which veered from statements acknowledging Indigenous territorial and cultural rights, to statements explicitly condoning assimilation, sometimes in the same document. For example, one progressive sentence in the 1946 constitution stipulated that, "The State will give special protection to campesino and Indigenous collectivities, with the purpose of integrating them in an effective manner into the national community, in accordance with their economic, political, and intellectual ways of life" (República de Panamá 1946, Article 94). The article specified that the integration of Indigenous peoples would take place while "conserving and developing the values of the autochthonous culture." A subsequent article was similarly progressive, acknowledging the importance of land rights to Indigenous peoples by declaring that the state would "reserve lands for Indigenous communities and prohibit their sale for any title" (Article 95). And yet, paradoxically, the same document also promised state funds to convert Indigenous peoples to Catholicism (Article 36), continuing the practice of "civilizing" Native peoples by indoctrinating them in the national religion.

Nevertheless, the success of the Guna spurred Panama's six other Indigenous peoples to demand their own territories. Like the Guna, other Indigenous communities also faced (and still face) increasing land loss resulting from government policies that enabled ranchers, loggers, and landless peasants to invade Indigenous regions (Wali 1989). These Indigenous demands gained some traction in the 1950s, resulting in laws establishing, at least on paper, comarcas for communities of Emberá, Ngäbe, and other

groups of Guna (Guionneau-Sinclair 1991). However, the government neglected to demarcate and charter the promised territories until, after further rounds of mobilization throughout the second half of the 20th Century, these Native groups finally won their comarcas in the 1980s and 90s (Herrera 2012, Wali 1989, Hernandez 1993b, a, 1995).

Today, five of seven Indigenous peoples possess comarcas, covering about twenty-two percent of Panama's land area (INEC 2010d). Together, the comarcas contain just over half of Panama's Indigenous population. Another forty percent is dispersed amongst forty-nine smaller parcels of land in eastern and northwest Panama. Most of these groups are currently awaiting collective title under a 2008 law that created procedures for recognizing collective lands located outside of the comarcas (Herrera 2012, República de Panamá 2008).

Figure 2. Comarcas by Area
Source: INEC (2010d) and Velásquez Runk et al. (2011)

B. Ngäbe Identity, Politics, and the Mama Tata Religious Movement

The largest of the country's comarcas belongs to the Ngäbe and to a much smaller Indigenous group known as the Buglé. Recognized in 1997 and chartered in 1999, the territory sprawls across western Panama from the Caribbean, over the cordillera, and down the Pacific slope to just above the PanAmerican Highway (República de Panamá

1997, 1999). It measures nearly seven thousand square kilometers (about 2,700 square miles), and contains a population of just under 157,000 people, with approximately two-thirds of these inhabitants residing on the Pacific side of the mountains (INEC 2010d). A network of roads climbs into the cordillera from the PanAmerican Highway, meaning that Ngäbe communities on the southern slope are much better connected to the rest of Panama compared with those on the nearly roadless Caribbean side. On the Caribbean slope, mountainous terrain and heavy year-round precipitation make road-building an expensive investment, one that the government has only recently decided to make (Rodríguez 2016).

As with Guna Yala, the Ngäbe-Buglé Comarca came into being as a result of years of abuse that Ngäbe experienced at the hands of outsiders. These experiences came to a head in the middle of the 20th Century, when the Ngäbe, whose livelihoods relied on subsistence agriculture, hunting, and fishing, felt increasing territorial pressure due to land invasions by Latino ranchers and a rapidly growing population that was trying to survive off of overworked and eroding soils (Young 1971). In order to supplement their struggling household economies, many Ngäbe men migrated to work on banana plantations in the coastal lowlands further west, in the process gaining exposure to non-Ngäbe society, goods, and practices (Guionneau-Sinclair 1987, Young 1971, Sieiro 1980 [1968]). In 1960, facing low wages, poor working conditions, and rampant discrimination, over a thousand of these Ngäbe banana workers launched a strike. They were summarily fired. They returned to their homes defeated and angry, but with a new sense of their capacity to organize (Guionneau-Sinclair 1987, 77).

Two years later, in 1962[4], a Ngäbe woman named Delia Bejerano, or Besikó in Ngäbere, who had been living on a banana plantation with her husband during the strike, announced that two supernatural beings had visited her home at the confluence of the Bravo and Florida rivers[5] near Soloy. One was the Virgin Mary, whom Besikó called Mama (mother), and the other was God, sometimes identified as Jesus, whom she called Tata (father). She reported that they had descended out of the sky on what looked like a motorcycle, and that the earth shook violently when they landed. The two visitors explained that they had come to ask the Ngäbe for a piece of land, in order to establish the reign of God on earth (Sieiro 1980 [1968]). They also gave a host of instructions for how Ngäbe should behave, including setting aside Saturday and Sunday for worship, uniting with other Ngäbe, abolishing a ritual sporting event called *balsería*, growing local breeds of crops and livestock, and ending the beating of women (Guionneau-Sinclair 1987, Sieiro 1980 [1968], Young 1971).

Anthropologist Francoise Guionneau-Sinclair (1987), who conducted research in the Ngäbe territory in the late 1970s and 80s, writes that Besikó's revelations point to a number of influences in Ngäbe life in the 1960s. That the encounter occurred at the confluence of two rivers invoked a familiar trope from Ngäbe cosmology, in which Ngäbe heroes often met supernatural beings near rivers. The motorcycle on which the two visitors arrived spoke to Besikó's time on the banana plantations, where workers frequently traveled by motorbike. God's request for a piece of land underscored the importance and scarcity of the resource in the Ngäbe territory. And the presence of the Virgin Mary, plus the admonitions to set Saturday and Sunday aside as holy days and to

[4] Young (1971) reports that Besikó's vision occurred in 1961, not 1962. My interlocutors reported that it took place in 1962.

[5] I have changed the names of the rivers to disguise the precise location of Besikó's vision.

abolish balserías (where alcohol was likely to be consumed), suggest the influence of Catholicism, Seventh Day Adventism, and other Christian denominations that Besikó might have encountered on the plantations or via missionaries.

Above all, Besikó was calling for a massive societal transformation built on a new sense of group identity. Phillip Young, who conducted fieldwork with the Ngäbe during the height of the original Mama Tata movement, writes that historically, Ngäbe social and political organization had been oriented around extended family networks, with Ngäbe distrusting those who fell outside the sphere of kinship relations (1971, 125). By preaching pan-Ngäbe unity, the Mama Tata movement expanded the historic kinship orientation outward, reconfiguring all Ngäbe as brothers and sisters (Guionneau-Sinclair 1991, 33-34, Young 1971, 216).

This identity was constructed in explicit opposition to broader Latino society. My host, Gerónimo, now in his 60s, remembered one Mama Tata prophesy foretelling that God would punish the Latinos by making the ocean waters rise to flood the lowlands where the Latinos lived, while the Ngäbe, who lived in the highlands, would be saved. At the time, Ngäbe families often sent their children to live with Latino families, where the youngsters would work as servants or farmhands, attend school, and become fluent in Spanish. Gerónimo had lived with and worked for a Latino rancher as a child, and recalled that many of his Ngäbe peers had been retrieved by their families and brought back to the territory in order to escape this impending flood.

The new identity taking shape was also grounded in the sanctity of Ngäbe land, and the primacy of the Ngäbes' right to this land. The centrality of land was evident both in teachings about how to care for and use it, and in explicit claims to territory. In terms

of care and use, one Mama Tata leader told me, “When Mama [and] Tata came to Besikó, they said, ‘It is necessary to take care of everything.’ Birds, water, all the animals of the forest, must be cared for. Should that not happen, the water will go away. Mama [and] Tata said that everything must be cared for.” At the same time, Besikó’s teachings were grounded in a specific geography of land conflict. Her declaration, “The area from the north of Cañazas in Veraguas, to the north of San Lorenzo in Chiriquí, is the land indicated for the work of God, especially the mountains of Tolé,” singled out regions where rates of land alienation by Latinos were especially high (Murgas 1963, in Sieiro 1980 [1968], 143-44, Gjording 1991, 49-51). Panama’s National Assembly had promised to create a comarca in this area at least twice, notably in Law 18 of 1952, and again in Law 27 of 1958, but the government had never officially demarcated the territory (Guionneau-Sinclair 1991, 99, 117). Besikó’s claim thus made a renewed demand for territorial recognition, and underscored the government’s failure to follow through on its promises.

Besikó died unexpectedly in 1964, just two years after her momentous vision. The following year, in 1965, several of her disciples consolidated the religious movement as a separatist political movement called the New Indigenous Order, which sought to create a Ngäbe state (Guionneau-Sinclair 1991, 35, Sieiro 1980 [1968], Young 1971, 217-224). At this moment in the Cold War, US-backed governments throughout Central America worried that communist insurgents were training and arming Indigenous and campesino guerillas in rural areas throughout the region (Sieiro 1980 [1968], 65). As word of the Mama Tata activities spread, the Panamanian National Guard reportedly feared that a similar communist plot was underway in their own country. To determine the nature and

extent of the apparent uprising, the National Guard, led by then-Major Omar Torrijos, marched into the mountains to where a New Indigenous Order gathering was taking place (Sieiro 1980 [1968], 66-70, Torrijos 1973). Instead of a communist revolt, they found a different kind of political challenge: Ngäbe demanding that the state recognize the "Guaymí[6] Republic." As one Mama Tata elder who remembered the period told me, they demanded a territory without any *sulia* (Ngäbere for "cockroach," also used to refer to Latinos and foreigners), ruled by an "authentic", "traditional" Ngäbe government, with no other religions but the Mama Tata faith.

Instead of arresting the movement leaders, Torrijos shrewdly recognized their authority by facilitating educational opportunities, government positions, and salaries for them; flying them around the country to meet other Indigenous leaders; and pledging to create an official comarca and provide necessary infrastructure (Herrera 2012, Torrijos 1973, 54-61, Sieiro 1980 [1968]). Photos from the era, documented in the Bachelor's of Education thesis of Felicidad Sieiro de Noriega (the wife of then-Lieutenant Manuel Noriega, who later served as dictator of Panama from 1984-1989) demonstrate the National Guard's efforts to use humanitarian aid to create the "state effect" in this remote corner of the country: A medic distributes prescriptions. A young Manuel Noriega surveys land for an airstrip. A National Guard platoon valiantly wades across a river to deliver medical supplies (Sieiro 1980 [1968]). Thus, the encounter between Torrijos and the New Indigenous Order inaugurated a long-standing strategy on the part of Torrijos to head off Ngäbe protest through tactics of personal and group recognition.

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[6] "Guaymí" is the term previously used for the Ngäbe

It is difficult to know just how widespread the movement was during Besikó's lifetime, or to gauge its influence across the comarca today. According Young, who began working in the territory shortly after Besikó's death in 1964, the faith had spread quickly and completely throughout the region (Young 1971, 212). He writes that interest waned when the movement turned to politics after the leader's death, but, nevertheless, a four-day Mama Tata meeting that took place in 1965 still attracted "hundreds" of people (1971, 132). In terms of current numbers, Mama Tata leaders with whom I spoke offered widely varying estimates of how many people continue to participate in religious gatherings. I attended a Mama Tata congress in 2016 that drew two hundred to three hundred people from all over the comarca. Perhaps one indicator of the movement's contemporary importance is that at that congress, two of the three Ngäbe representatives to the Panamanian National Assembly courted these voters by obtaining a helicopter and flying in from Panama City, landing on the nearby soccer field in dramatic swirl of dust.

In terms of the movement's legacy, Guionneau-Sinclair, who interviewed Mama Tata leaders in the area around Soloy beginning in the mid-1970s (two of my interlocutors spoke fondly of her), indicates that the political development of the Ngäbe people, and the subsequent territory-wide campaign for the creation of the comarca, are direct consequences of the Mama Tata religious movement (Guionneau-Sinclair 1991, 26-36). Meanwhile, Chris Gjording, an American priest and anthropologist who conducted research in the district next to Soloy around the same time as Guionneau-Sinclair, tells a different story. He writes that Mama Tata influence was declining in his area, and reports that Mama Tata followers opposed the comarca campaign because they believed that negotiations with the government constituted a concession to outsiders

(Gjording 1991, 287, 342). These apparently contradictory accounts may both be accurate, and reflect the fact that Ngäbe experiences, circumstances, and opinions vary widely across the territory. In any case, no matter how many Ngäbe actually take part in Mama Tata worship, Ngäbe leaders, activists, and sympathetic reporters have found that portraying the Mama Tata faith as the "traditional" religion of the Ngäbe produces a compelling story of Ngäbe cultural authenticity, and therefore a potent tool in internal and external politics (e.g., Swyter 2013).[7]

C. Omar Torrijos, Cerro Colorado, and the Fight for the Comarca

When Torrijos' Revolutionary Government overthrew the democratically elected president, Arnulfo Arias, in 1968, his new regime faced fierce opposition from many sectors of Panamanian society (Priestley 1986). General Torrijos had ambitious economic development goals, and also hoped to renegotiate the Panama Canal treaties with the United States, but knew that he needed to quiet dissent and win over the public in order to secure consensus for his agenda (Horton 2006, 855, Herrera 2012, 53, Wali 1989). One of his strategies for doing so was a tactic of corporatist multiculturalism, meaning that he opened up the oligarchy-dominated political system to groups like Indigenous peoples, campesinos, and Afro-Panamanians, while keeping careful control over their political participation (Horton 2006, Priestley 1986).

Using this tactic, Torrijos repeatedly promised Ngäbe leaders that he would establish a comarca, while his government persistently ignored Ngäbe efforts to demarcate and charter the territory (Gjording 1991, 60-62). The comarca issue became

[7] Gjording made a similar observation during his fieldwork in the late 1970s and early 1980s (1991, 288).

even more acute as Ngäbe realized that one of Torrijo's proposed development projects, a copper mine known as Cerro Colorado, and related hydroelectric facilities that would power the mine, stood to occupy several hundred square kilometers of land in the center of the territory (Gjording 1991, 1981). As Gjording explains, though Torrijos attempted to use the promise of a comarca to entice Ngäbe to accept the project, meetings with state officials to discuss Cerro Colorado instead revealed to Ngäbe that the government had no intention of creating the comarca, and that the officials cared little for their concerns about the mine. Moreover, Ngäbe realized that without the comarca, they would have no legal recourse against the impending dislocations and other problems the mine and dams might bring. Aided by the Catholic Church, they began organizing against the project in earnest, eventually gaining support from international Indigenous rights organizations (Gjording 1991).

Fortunately for the Ngäbe, the Cerro Colorado mine never moved past the exploration stage, in part because a number of economic factors deterred foreign investors, and in part because Torrijos, the project's chief booster, died in a helicopter crash in 1981 (Gjording 1991). Gjording, who finished his fieldwork in 1985 during the repressive rule of Torrijos' successor, Manuel Noriega, concludes his account of the Cerro Colorado episode with weary disillusionment about the possibility of a Ngäbe comarca (Gjording 1991, 251-54). To Gjording, it seemed that, without the project as a bargaining chip and catalyst for mobilization, the Ngäbe might never have enough leverage or organizing will to win territorial recognition.

However, in retrospect, perhaps the experience of coordinating amongst themselves and building external alliances to oppose Cerro Colorado, as well as a new

awareness of their vulnerability to such megaprojects, gave Ngäbe communities skills and motivation to secure their territorial rights. In the decade after the return to democracy in 1989, hearing reports of renewed interest in Cerro Colorado, Ngäbe intensified their organizing efforts (Hernandez 1996a). In 1996, representatives marched over four hundred kilometers from Chiriquí to Panama City to press for the comarca, and finally succeeding in winning the territory in 1997 (Hernandez 1996b, CONAPI 2003).

Curiously, though Torrijos never gave the Ngäbe their comarca, and though he was responsible for bringing the threat of mining to the territory, his gestures of recognition—that is, his efforts to appeal to Ngäbe by, and enroll Ngäbe in, reproducing the state through various "languages of stateness"—override any sense of resentment that might otherwise linger in Ngäbe collective memory. One elder, a renowned traditional hat-maker named Arturo Palacio, remembered how Torrijos established the territory's voting system, which allowed Ngäbe to vote closer to their homes instead of walking hours down the mountain to the nearest Latino town. Not only did this innovation make the polls more accessible and expand Ngäbe political participation, it also led to significant personal transformations for Arturo. "It's because of Torrijos that I know how to read and write," he said. He explained that Torrijos had sent him to school so that he could serve on the elections committee in his town. "Six years of night school. That's why I'll always be a *PRDista,*" he said, referring to himself as a loyal member of Torrijos' *Partido Revolucionario Democrático* (Democratic Revolutionary Party).

Further illustrating one of Torrijos' tactics for winning the support of young Ngäbe leaders, Arturo explained that the committee post, which he held for eight years, also paid extraordinarily well: $20 per day—an impressive amount of money at that time.

"Like a hundred, two hundred dollars today," he estimated. (His guess is accurate: $20 in 1965 amounts to $158 in 2017. By comparison, in the most recent census, ninety percent of comarca households still earned less than the poverty limit of $87.45 per month [Davis 2015] .)

Then, without my prompting him, Arturo mentioned how Torrijos had tried to develop Cerro Colorado. I asked him if he blamed Torrijos for exposing the territory to mining. "Actually, no," he said. "I am very independent. He sent me to study. Thanks to Torrijos, I learned." Thus, for Arturo, the political recognition that Torrijos accorded the territory by making voting more accessible was accompanied by a sense of personal recognition (and, presumably, financial security) that transformed his life. These acts of recognition were sufficient to excuse Torrijos for the sin of bringing mining to the territory.

Like Arturo, the rest of the Ngäbe-Buglé Comarca continues to vote overwhelmingly for the PRD, even when the rest of the country elects someone else (Tribunal Electoral 2009). When I asked people why they were PRDistas, some simply said it was *por Torrijos* (because of Torrijos), as if just saying his name provided enough explanation. Others explicitly told me it was because Torrijos gave them the comarca, even though Torrijos had been dead for almost twenty years by the time the comarca was chartered in 1999. In other words, Torrijos' tactics of recognition, though they abetted his mining agenda, profoundly shape how Ngäbe understand their territory, their rights, and their relationship with Panamanian politics. In turn, this positive association continues to inform Ngäbe expectations for what they can win from the state in terms of policies, social services, and territorial recognition.

D. Development and Rights

Today, although comarca status has helped Ngäbe secure their land rights, the Panamanian state still owns the territory's mineral deposits, waters, and other natural resources, leading to debates over how much input Ngäbe should have in government development plans (CONAPI 2003, 23, Article 48). Panama has signed but never adopted into law either the ILO Convention 169 or the UN Declaration on the Rights of Indigenous Peoples, meaning that, at least until recently, the country still affirmed the antiquated Convention 107 view that decisions should be made *for* Indigenous peoples rather than *by* them. Furthermore, until 2016, the right of Indigenous peoples to participate in development decisions was regulated under the National Environmental Authority's ambiguous environmental impact assessment regulations. The regulations require developers to hold public consultations regarding a project's impacts, and stipulate that, "consultation proceedings will aim to reach agreements with representatives of the community […]" (República de Panamá 1998, Article 103, Milano and Sanhueza 2016, 164-69). With no guidance on whom nor how representative these "representatives of the community" should be, nor what steps should be taken if a community objects to a project, developers who face resistance in one community can simply obtain the signature of a willing elected official in another.

This practice of "consent shopping" was blatantly evident in the case of a proposed copper mine called Cerro Chorcha, located on the continental divide north of Soloy. During my masters research (Thorpe 2010), Gerónimo, Fabiola, and many others explained how the mining company first sought permission for the project from elected officials in their district, which is called Besikó after the Mama Tata founder. When

Besikó proved too well organized against any kind of mining venture, the company then approached Ngäbe on the other side of the cordillera, where the leaders of a more isolated, more economically precarious area agreed to the project in exchange for community development assistance. The company's website stated that it had signed an agreement with "the Ngäbe," and boasted of its contributions to local social programs (Dominion Minerals Corporation 2009). Thus, the ambiguous consultation language allowed the company to obscure significant Ngäbe opposition to the project and claim to their investors that they had community support.

Besikó residents and environmental groups continued their anti-dam campaign, and in late 2009, the Panamanian National Environmental Authority finally rejected the project's environmental impact study, citing Ngäbe opposition and impacts on nearby conservation areas (Moore and Perez Rocha 2019). However, although the Cerro Chorcha saga appears to be an instance in which a government agency condemned an inadequate consultation procedure, a larger pattern suggests that, at least until recently, the state has had little interest in meaningful Indigenous consultation. For example, the last decade has seen the completion of two hydroelectric dams that Ngäbe communities strenuously protested. The Changuinola-75 project, once intended to power Cerro Colorado, was completed in 2012, displacing hundreds of Ngäbe whose homes lay outside the demarcated boundary of the comarca (Gjording 1981, Kennedy 2012, Finley-Brook and Thomas 2010, Jordan 2014). Another Cerro Colorado-related dam, the Barro Blanco hydroelectric project, began operating in 2017, displacing a Mama Tata community and flooding several hectares of comarca land (Gjording 1981, Mejía Giraldo 2017, Lopez and Castro de la Mata 2013). In both cases, Ngäbe complained that the dam

developers had not properly informed or consulted them; in both cases, the government allowed the projects to proceed anyway (Anaya 2009, Puentes Riaño et al. 2013).

The state's disregard for Indigenous participation has also been evident in recent legislative activities. In 2011 and 2012, the National Assembly tried to quietly revise national law to allow mining in the comarca (Bill et al. 2012, Velásquez Runk 2012). These attempts led to widespread protests in which Ngäbe blocked the PanAmerican Highway and brought the national transportation system to a halt (Bill et al. 2012, UNDP 2015, Anonymous 2015b). Eventually, after mediation by the UN, the National Assembly banned mining in the comarca and cancelled all mineral concessions (República de Panamá 2012). However, though the ban continues today in 2020, the government's most recent strategic plan omitted any mention of it. Instead, the plan observed that some of Panama's biggest mineral deposits are located in Indigenous territories, suggested that mining could help develop these "marginal areas," and called for reforming the national mining code (Gobierno de la República de Panamá 2014, 65-66). Thus, reading between the lines, the government remains alert to opportunities to change mining laws once again, in order to exploit the mineral wealth of the Ngäbe-Buglé Comarca. Hopefully, future legislators will learn from the 2011-2012 protests and remember to consult the Ngäbe first.

In August of 2016, Panama's National Assembly passed the country's first law of Indigenous Free, Prior, and Informed Consultation and Consent (República de Panamá 2016b). On one hand, the new law is a significant advance for Indigenous rights. Among other promising details, it creates a broad requirement for consulting Native peoples not only for projects that trigger an environmental impact study, but also for legislative and

administrative endeavors. This stipulation may help protect Indigenous peoples if the state once again attempts to revise the mining code. On the other hand, Indigenous peoples' decisions are not binding on the state, nor does the law gives guidance as to what should happen if a community opposes a project. Furthermore, critics argue that the law itself was created without community consultation, a fact that undermines its credibility as a legal measure that truly represents and protects Indigenous rights. These problems raise questions about how the law might fit into a larger pattern by which the state uses multicultural recognition to contain dissent and manage Indigenous peoples. And in turn, these questions reveal ways in which FPIC becomes a mirror that reflects larger national policies and state-Indigenous politics.

IV. Fieldwork Context and Methods

In a memory from my first research trip to the Ngäbe-Buglé Comarca in 2009, I recall waiting for the bus near the primary school in Soloy when a knot of curious nine- or ten-year-olds came over to size me up. "Are you here to buy land?" asked the bravest. Surprised by the unexpected question, I explained that I was there to learn about the Ngäbe fight against the Cerro Chorcha mine. The children gaped briefly, either processing this information, or perhaps taking mental notes on my appearance, my belongings, or my US accent. Then the young investigators trotted off, ready to report the day's observations to their friends and families, as I knew the children of my hosts, Fabiola and Gerónimo, often did.

Though the nosy youngsters thought they were extracting information, they also revealed a key piece of data that I, naively engrossed in the romance of my environmental

justice solidarity research, had overlooked. That is, despite my good intentions, I was still a *sulia*, a foreigner or outsider, and as such I represented the danger of land alienation. Even though comarca land is under collective title, meaning that no parcel may be sold to anyone who is not Ngäbe or Buglé, people often reported rumors of foreigners trying to buy up property from needy, nefarious, or unsuspecting neighbors. Whether or not these rumors are true, they illustrate two points of common knowledge in the comarca: land is precious, and foreigners want to take Ngäbe things. Therefore, even though I was in Soloy with the permission of a community anti-mining and anti-dam organization, I was, to people who did not know why I was there, an existential threat to Ngäbe territory.

Ngäbes' well-founded fear that outsiders—Latinos, North Americans, and even other Native peoples—might take their land, played a major role in research design. My ability to interview people, find out about community events, and attend public meetings, relied on introductions from trusted members of the community. Consequently, my hosts, Gerónimo and Fabiola, became my primary interlocutors and pathways to many other research participants.

This reliance on Gerónimo and Fabiola facilitated my research in many ways. Now adults in their late 60s, both had been sent to live with Latino families as children, which meant that they spoke Spanish fluently, had more education, and were more comfortable dealing with outsiders than their contemporaries who had never lived outside the comarca might be. Both had held jobs that required working with non-Ngäbe: among other positions, Gerónimo had worked for the Chiriquí livestock auction, and Fabiola had served as a project promoter for the local division of an internationally funded reforestation program. As a result of living and working between Ngäbe and Latino

cultures, they were able to interpret Ngäbe practices and beliefs to me more easily than might people with less experience seeing their culture through others' eyes.

However, this reliance on Gerónimo and Fabiola also constrained my research. Though the gregarious Gerónimo was skilled at coaxing people into talking, and was of the appropriate age and community stature to introduce me to Mama Tata elders, Ngäbe gender norms meant that he generally only facilitated my introduction to men. Meanwhile, the more reserved Fabiola was less inclined to draw attention to herself by introducing me around to casual acquaintances, and instead preferred to present me to a small circle of family and neighbors.

Through Fabiola, I became acquainted with one of her adult daughters, Patricia, a college student and entrepreneur in her mid 30s who was appointed to public office just before I began long-term fieldwork in September 2015. A tireless worker and clever orator, Patricia's name had been put forth because of her role in organizing the massive anti-mining and anti-dam protests of 2011 and 2012. Whereas Gerónimo connected me with men now in their 70s and 80s who oversaw the Ngäbes' consolidation and breakthrough as a political force in the 1960s, Patricia provided insight on and access to the current generation of leaders now in their 30s, 40s, and 50s.

I conducted dissertation fieldwork—consisting of semi-structured interviews and thousands of hours of participant observation—in the Ngäbe territory over 16 months between 2013 and 2016. Most of my interlocutors were current or former "leaders," meaning people who had been elected or appointed to public or traditional office, or who participated frequently in community events and protests. I focused on this group because their participation in civic life meant they were familiar with local issues that brought the

Ngäbe into dialogue with the state, and had sought out ways to be involved in this dialogue. Because of gender dynamics in the comarca, where it is more common for men to run for office and participate actively in public events than women (though this dynamic is rapidly changing), this meant that most of my interlocutors were men.

The majority of my ethnographic research took place in and around Soloy in the district of Besikó, an area known for its political activism since the rise of the Mama Tata movement. This activist history meant that many adults in the area had years of experience translating their demands into Spanish and into terms that non-Ngäbe could grasp. In turn, this experience meant that it was easier for me to ask about abstract Indigenous rights concepts in Besikó than it might have been in other parts of the comarca. In addition, serendipitously, the district government was attempting to bring about both a major infrastructure project (a water purification plant) and a culturally important land titling case, providing a backdrop for exploring consent and consultation in contexts other than that of large-scale mining and dam projects. I was thereby able to see how concepts related to Indigenous rights and multicultural recognition manifested themselves in government offices, religious gatherings, roadside protests, and public meetings as people considered these projects.

I complemented this on-the-ground data collection with internet and library research at the University of Panama and the Smithsonian Tropical Research Institute, where I collected primary and secondary source materials documenting state and international conservation and development efforts in the Ngäbe-Buglé Comarca. I also analyzed the texts of constitutions, domestic laws, court cases, and treaties, to document changes in the country's formal legal obligations regarding Indigenous rights. In addition,

I volunteered for a Chiriquí-based Catholic NGO that provides social services and educational workshops to Ngäbe from a neighboring comarca district. My volunteer work, which consisted of researching and developing training materials about organic agriculture for Ngäbe farmers, gave me a fuller picture of the contemporary development context, and helped me gain some insight into how Besikó differed from other areas of the comarca.

The primary language of my research was Spanish. My lack of Ngäbere language skills limited my research in several ways. First, it meant that my interviews were limited to people who spoke Spanish fluently. Coupled with Gerónimo's tendency to introduce me to men and not women, this restriction meant that my interview pool excluded women over the age of approximately sixty, who, unless they had been sent to live with a Latino family as Fabiola had, were less likely to have become fluent in Spanish. Second, my lack of Ngäbere language fluency meant that I missed out on the content of Ngäbere speeches and side-talk at public events. In some cases, I asked acquaintances standing near me to paraphrase what was said, but I certainly missed the linguistic nuances that might have given me greater insight into Ngäbe cultural concepts and ways in which Ngäbe articulated their positions to other Ngäbe.

Acknowledging these linguistic limitations, and conscious of the unique history and dynamics of the district of Besikó, this dissertation does not pretend to discern or illuminate any sort of distinct Ngäbe cultural model for thinking about consent and consultation. Instead, this study is about how the Western liberal concepts of consent and consultation, and the larger practices of multicultural recognition within which they are embedded, are used by the Panamanian state and by some Ngäbe leaders and activists,

most of whom are from a historically and socially unique district. Having witnessed the salience of these concepts at political gatherings and protests elsewhere in the comarca and in Panana City, I believe my observations may reflect some commonalities amongst a certain political/activist class across the comarca. However, many other segments of the Ngäbe population, including people who live outside the comarca, members of other religious denominations, and communities on the more remote, less developed Caribbean side of the comarca, no doubt have different experiences and priorities.

V. Chapter Outline

Chapter Two addresses calls by Indigenous rights scholars and activists to replace Free, Prior, and Informed Consultation with Free, Prior, and Informed Consent. I discuss two instances in which consent and consultation were enshrined in law but also failed Panama's Indigenous peoples. In the first case, I discuss the recent construction of the Barro Blanco hydroelectric dam, and how the Supreme Court ruled that community consultation had been adequately done, despite the fact that there had been but a single consultation meeting, poorly advertised, outside the dam's impact zone, and in Spanish rather than Ngäbere. In the second case, Panama's new Free, Prior, and Informed Consent law, passed in 2016, supposedly recognizes Indigenous rights, but fails to specify what happens if an Indigenous group refuses to consent to a project. Rejecting the notion that FPIConsent will fix the problems evident in FPIConsultation, I show how both versions of FPIC allow states, developers, and other entities to use multicultural recognition to appropriate Indigenous lands and extend control over Indigenous peoples. I further argue that understanding how both forms of FPIC work—via a reliance on

procedural minutiae as evidence of fair and meaningful Indigenous participation—can help illuminate the strategies and stakes of Indigenous recognition and democratic decision-making in the context of neoliberal development.

Chapter Three describes my experience of obtaining research approval from Ngäbe authorities, a process in which I struggled to determine which of several possible sets of leaders I should approach for permission. The experience revealed that, though FPIC policies aspire to protect the right of Native peoples to make their own development choices, such policies set unrealistic expectations for collective decision-making. The Indigenous institutional structures responsible for making or shepherding these decisions may bear the marks of long histories of state intervention, or diverse group members may disagree over who has decision-making power and what the right decision is. This discrepancy between idealized and real-world decision-making processes has different effects for consent-givers and consent-seekers. For example, if an Indigenous group that has experienced state interference disagrees over who has decision-making power, they may be called dysfunctional, and thereby trigger further state intervention to "resolve" the disagreement. Meanwhile, researchers and developers can exploit these disagreements through "consent shopping"—choosing between various authorities to find one whose signature can fulfill regulatory requirements, disguise opposition to a project, and give the appearance of affirming Native self-determination. This ironic turn shows that FPIC and other forms of permission-seeking can be used to obscure the history, politics, and practices that enable outsiders' research and development agendas.

Chapter Four sets FPIConsultation in the context of a proposed water purification plant in Besikó. Because of the controversy surrounding Barro Blanco dam and its suspect community consultation, local and national officials organized several consultations about the purification plant, in Spanish and Ngäbere, with many hours dedicated to public feedback. Despite these efforts, community members continued to express vastly different ideas about what it meant to be informed about the plant; the scope and nature of information needed; and whether true community consultation was even occurring at all. These disagreements challenged conventional framings of FPIConsultation as a process in which experts from outside a community inform local residents about the "facts" of a project, and listen to community members' questions and opinions. Instead, plant opponents asserted the legitimacy of their own empirical knowledge about the project, pointing to historical and contemporary evidence of government treachery when it came to water projects in Ngäbe territory. The meetings thereby gave Mama Tata followers public venues in which to reaffirm the concerns and values that mattered most to their religious community, which in turn validated Mama Tata knowledge as a form of expertise rivaling that of government officials. As such, I argue that, despite the potential of FPIC and other policies of multicultural recognition to rubber stamp or rights-wash unwanted projects, FPIC processes may also provide platforms for community members to reframe projects in unanticipated ways, for unexpected purposes.

Chapter Five describes another instance in which Ngäbe assert their own priorities in the face of multiculturalist cooptation by the state. However, in this case, instead of challenging state expertise, Ngäbe used Panama's legacy of top-down, often superficial

multiculturalism to secure title to a culturally significant beach called Playa Zapotal. Drawing on examples from Panama's history of multicultural recognition, in which key Indigenous rights gains occurred at moments of acute state vulnerability, I argue that multicultural recognition is evidence not only of the state's ability to co-opt Indigenous claims, but also of state vulnerability to these claims. The state's cooptation of Indigenous movements, particularly General Torrijos' efforts to control Mama Tata leaders, show how multicultural recognition resulted from the need to control remote populations and manage the challenge they presented to state authority. More recently, public performances of Panamanian multiculturalism, such as encounters between national officials and Ngäbe at Playa Zapotal, show how the state relies on Ngäbe participation to project the image of a multicultural state. Ngäbe collaborate in these performances of stateness, producing the state through shows of both deference and defiance in order to advance their own political and territorial goals. Thus, this chapter demonstrates that, while practices of Indigenous recognition have brought with them the danger of political co-optation, cultural assimilation, and natural resource appropriation, they also lay bare the vulnerability of the state, and reveal the possibility of exploiting this vulnerability to produce meaningful Indigenous rights gains.

Chapter 2. Controversies of Consent: Multicultural Recognition, Development, and Free, Prior, and Informed Consultation and Consent in Panama

I. Introduction: A Questionable Community Consultation

On a gray day in July 2014, I found myself swimming fully clothed across a muddy river just south of the Ngäbe-Buglé Indigenous territory. I was crossing the Tabasará River with a small group of Ngäbe anti-dam activists in order to visit the hamlet of Kiad, whose residents feared they would soon be flooded out by the Barro Blanco hydroelectric project.

To get to Kiad, our group—six adults, two teenagers, and a tiny puppy—had met in the town of Tolé on the Pan-American Highway. From there, we drove half an hour up a dirt road to a small roadside shop, disembarked, and hiked another half hour across rolling cattle pasture to the Tabasará. At the river's edge, we paused to assess the moving water. The river was high from recent rains, and we had to choose: either walk upstream to a shallower spot and wade across through knee-deep water, or swim. The other adults decided to wade, and I was about to join them when one of the teens plunged in and swam across with the nervous puppy perched on her shoulders. Emboldened by her example, I pulled off my rubber boots and swam the ten or so meters to the other side. The rest of our party crossed on foot and rejoined us, and together we squished and squelched the short distance remaining to Kiad.

In Kiad, we changed out of our wet clothes and convened in an open-air classroom, where a resident caught us up on the latest Barro Blanco news. A few days

before, the Panamanian Supreme Court had ruled against the community members by declaring valid the dam's 2008 environmental impact study (Corte Suprema de Justicia 2014). In a lawsuit, residents of the inundation zone had argued that the national environmental agency and the dam developer, a company known as GENISA, had failed to comply with required community consultation procedures. For instance, GENISA had held only one public consultation, and held it in a town fifty kilometers away—a two-hour trip that included the swim, hike, and long dirt road we had just traversed. Furthermore, the meeting had been conducted not in Ngäbere but in Spanish, without the necessary linguistic and technical interpretation that residents needed to fully understand the project. Given these problematic details, three international environmental organizations had weighed in on behalf of the residents, writing to the court that, "The Panamanian State violated international law by not carrying out an adequate consultation, which in turn made it impossible to obtain the consent of the Ngäbe people […]" (Puentes Riaño et al. 2013, 21). But the court found that GENISA and the environmental agency had followed the letter of the law with regards to the number of consultations, the language used in the meeting, and a number of other procedural requirements—and ruled against the residents. The consultation had been adequate, and construction could continue.

The Panamanian government approved the Barro Blanco project in 2008 and construction began in 2011. Even after its completion in 2016, the dam has continued to be a focal point of Ngäbe protest because, like many such projects all over the world, it brings to the fore questions of national development, Indigenous self-determination, and

state and corporate treatment of Indigenous peoples. Questions such as: do governments have the right to allow a private company to flood an Indigenous territory? What obligations do states and companies have to communities that are about to lose their ancestral lands? What rights do Indigenous peoples have to make their own decisions about natural resources in their territories?

In international Indigenous rights law, these questions are addressed by a concept called Free, Prior, and Informed Consultation/Consent (FPIC), which supposedly guarantees Indigenous peoples the right to participate in development decisions that affect their lands and ways of life. Many critiques of FPIC have focused on the fact that most FPIC policies grant Indigenous peoples the right to free, prior, and informed *consultation*—meaning that Indigenous peoples have the right to provide input on a project—rather than *consent*, which in theory allows for Indigenous veto. Scholars point to how consultation is often inadequate for facilitating meaningful Indigenous participation, as it was when GENISA held its public meeting fifty kilometers away from the affected area and failed to provide Ngäbere translation.

In response to this problem, many writers call for stronger FPIC laws based fully on the concept of consent. However, calls to move from FPIConsultation to a supposedly stronger right of FPIConsent miss the bigger picture: both forms of FPIC are examples of how states, developers, and other entities use multicultural recognition to appropriate Indigenous lands and extend control over Indigenous peoples. Understanding how FPIC works—via a reliance on procedural minutiae to indicate fair and meaningful Indigenous participation—can help illuminate the strategies and stakes of Indigenous recognition and democratic decision-making in the context of neoliberal development.

II. Consultation or Consent?

Free, Prior, and Informed Consultation/Consent (FPIC) is the product of a multi-decade international movement to protect the rights of Indigenous peoples. Since its inception in the 1980s, FPIC has emerged as an important component of numerous treaties, policies, and bodies, including: the International Labor Organization's Convention 169 (1989), the UN Declaration on the Rights of Indigenous Peoples (2007), the Convention on Biological Diversity (2002), the UN Framework Convention on Climate Change (see IIPFCC and CIEL 2018), the World Bank Environmental and Social Framework (2017), and the InterAmerican Court of Human Rights (see Verbeek 2013). Because of this increasing importance, human rights scholars identify it as an emerging international legal norm, a concept that is becoming a standard inclusion in laws and policies worldwide (Doyle 2015, Ward 2011).

However, at the same time as FPIC has become an emerging norm, a growing literature describes a pattern of rights-washing, in which states and developers appear to obey FPIC rules (thereby assuaging critics and winning over shareholders) while steadfastly ignoring community opposition. In response to this pattern, scholars and human rights advocates often call for stronger laws and policies that better protect Indigenous rights. For many of these writers, one barrier to stronger human rights protections has been states' insistence on free, prior, and informed *consultation* instead of free, prior, and informed *consent*. Colombian human rights lawyer César Rodríguez-Garavito (2011) argues that FPIConsultation is problematic because it displaces the substantive territorial claims of Indigenous peoples in favor of legal proceduralism. By focusing on the procedural terms of community consultations (meeting locations,

agendas, attendance, and so on), states, companies, and entities like the World Bank appear to protect multicultural rights while continuing to pursue neoliberal development agendas. The Barro Blanco lawsuit, in which the Panamanian Supreme Court ruled that GENISA and the national environmental agency had complied with the letter of the law regarding public consultation, is just one example of this misplaced attention. As a solution, Rodríguez-Garavito and others call for dispensing with these procedural distractions, and instead instituting meaningful consent laws that would truly recognize the Indigenous right to veto projects.

I agree with Rodríguez-Garavito and other human rights experts that Indigenous peoples should be given a clear right to veto projects they do not want. However, it is also important to look beyond the consultation-versus-consent debate to examine the role of the two concepts in larger discourses of multicultural recognition, Indigenous rights, and free choice. Doing so reveals several insights about consultation, consent, and human rights more broadly. First, setting free, prior, informed consultation/consent within the larger context of Indigenous recognition reveals deeper problems with the idea that FPIC will magically level the playing field between states, corporations, and Indigenous peoples. Instead, FPIC, like other forms of multicultural recognition, relies on states to set the terms and conditions of recognition. As such, state actors write and enforce FPIC policies in ways that may not necessarily benefit Indigenous peoples. Second, as states develop and implement FPIC policies, be they policies that emphasize consultation *or* consent, proceduralism plays a key role. Many writers have pointed out that human rights regimes depend on proceduralism: its emphasis on form over substance creates a shared moral ground for human rights while providing states with the flexibility to

implement human rights policies in accordance with national priorities (Merry 2006). Free, prior, and informed consultation/consent is no different. Proceduralism is essential both to the writing of international FPIC language—leading to a blurry line between the terms "consultation" and "consent" in Indigenous rights treaties—and to the ways in which states write and enforce FPIC policies at the national level.

III. FPIC, Multicultural Recognition, and State Power

The past several decades have seen countries around the world shift from national policies of Indigenous assimilation to policies of Indigenous recognition. While many Indigenous activists and scholars embrace this turn toward recognition, others suggest that it simply authorizes the continued appropriation of Indigenous land and resources. In Latin America, scholars focus on how recognition abets neoliberal policies of privatization, free trade, and state retrenchment, and does so in ways that further marginalize already vulnerable populations. Using terms such as "neoliberal multiculturalism," Latin Americanists describe how states may use Indigenous recognition as an excuse for withdrawing services from commercially unproductive areas (Hale 2011), create Indigenous territories to neutralize Indigenous protest until states can develop remote regions (Herrera 2012), promote the superficial recognition of Indigenous culture to promote tourism (Horton 2006), or pass legislation protecting Indigenous intellectual property (such as artwork or botanical medicinal knowledge) in order to turn it into marketable commodities (Velásquez Runk 2012).

In North America and other English-speaking contexts, this critique of recognition focuses on how recognition extends not neoliberalism but settler colonialism,

the ongoing process of primitive accumulation predicated on the dispossession of Native lands (Coulthard 2014, Povinelli 2002). For example, Yellowknives Dene political scientist Glen Coulthard (2014) describes how, during negotiations with Northwest Territories aboriginal peoples in the 1970s and '80s, the Canadian government agreed to acknowledge aboriginal "cultural rights," such as hunting and fishing rights, but stubbornly refused to consider the groups' proposals to establish self-governing territories. Coulthard concludes that the land-claims process resulted in "a reorientation of Indigenous struggle from one that was once deeply *informed* by the land as a system of reciprocal relations and obligations […] to a struggle that is now increasingly *for* land, understood now as material resource to be exploited in the capital accumulation process" (Coulthard 2014, 78, emphasis in original). In short, state recognition fundamentally altered aboriginal ways of seeing the world, and did so in ways that enabled the expansion of settler colonialism.

Regardless of whether one sees multicultural recognition's goal as promoting settler colonialism or neoliberalism[8], these two strands of scholarship concur that states often rig multicultural recognition in order to perpetuate the capitalist dispossession of Indigenous lands. As Coulthard explains, contemporary forms of state multicultural recognition "[are] not posited as a source of freedom and dignity for the colonized, *but rather as the field of power through which colonial relations are produced and maintained*" (2014, 17; emphasis in original). Recognition reproduces relations of

[8] For a discussion of why the conceptual frame of settler colonialism is less common in Latin American scholarship, see Castellanos, M. Bianet (2017) Introduction: settler colonialism in Latin America. *American Quarterly* 69(4):777-81.

domination, with the more powerful partner in the relationship, the state, dictating the terms of recognition to its own advantage.

One example of how states and other entities control the terms of multicultural recognition for their own benefit lies with free, prior, and informed consultation. Geographer Tom Perreault (2015) provides a compelling analysis of government manipulation of public *consultas* in his account of mining consultations in Bolivia. He describes how industry and government representatives managed public dissent by controlling, among other elements, procedural details such as meeting agendas, discussion topics, and public comments (2015, 447-48). Through this careful management, these events became a "political performance" that aimed to "depoliticize extractive activities, defuse tensions, and enroll community members in state projects of resource extraction" (Perreault 2015, 434-35, following McNeish 2013). Perreault argues that state officials and others used procedural means to stage-manage supposedly democratic community deliberations, and thereby used consultation to legitimize controversial extractive projects.

In response to such examples of the cooptability of FPIConsultation, writers like Rodríguez-Garavito and others argue for FPIConsent, declaring that FPIConsent will put an end to the legal proceduralism that allows states to manipulate consultations. However, critiques of free, prior, and informed *consultation* as too procedure-bound greatly resemble critiques of *consent* in other contexts. In particular, scholarship on informed consent in medical and research ethics has shown that consent relies on the same the attention to form over substance as does consultation. Indeed, this focus on form is precisely what makes informed consent useful. As medical anthropologists Klaus

Hoeyer and Linda Hogle explain, informed consent "conjure[s] a stable image of a recognizable and manageable procedure with a particular moral appeal, while simultaneously serving as an empty signifier: an image onto which people can project very different hopes, concerns, and expectations" (Hoeyer and Hogle 2014, 347). According to Hoeyer and Hogle, this "stable image" is useful because it presents a supposedly culturally neutral process that appears to bridge the diverse moral and political contexts of, say, anthropological research in Panama and pharmaceutical research in Pakistan. Rather than determining what constitutes ethical research in each unique setting, informed consent defines morality in terms of the autonomy of the individual research subject, and then "reduc[es] autonomy to procedural methods for stating a personal preference" (Hoeyer and Hogle 2014, 350). In sum, researchers find informed consent useful precisely because its proceduralism appears to make it transferrable to a wide range of research environments.

Second, reflecting on the conceptual roots of consent, Western political philosophers note that, although consent connotes autonomy and free choice, to consent nevertheless also means to surrender one's freedom. In Hobbes' (2018 [1651]) account of the origins of the social contract (the imagined terms by which people join together to form a society and a government) Hobbes describes men as autonomous, independent entities whose natural state is to be at war with one another, and who consent to be governed by a sovereign so that the sovereign will protect them from each other. In this formulation, consent means surrendering a measure of autonomy and submitting oneself to the sovereign's rule.

Responding to Hobbes, feminist writers show that the surrender of autonomy entailed by consent can be even costlier for those who are not part of the dominant group. Pointing out that Hobbes' account excludes women from the social contract, feminists describe a corresponding sexual contract, in which the members of the family consent to the rule of the father in order not to be killed by the father (Severance 2000, Das 2008). As in the case of the social contract, consent to the sexual contract entails a relinquishing of freedom in the interest of self-preservation, but also underscores the violence and inequality entailed in some consenting relationships. Women consent to the sexual contract, but the fact that men set the terms of the contract, and the terms are to consent or be killed, ultimately throws into question the so-called freedom of choice associated with consent.

In settings in which Indigenous peoples may face physical violence or death if they refuse state development plans (e.g., Blitzer 2016), Indigenous free, prior, and informed consent evokes the stark terms of the sexual contract. Indigenous groups are rarely free, unfettered decision-makers on equal footing with governments and developers. Rather, factors such as state violence, economic insecurity, and social and political marginalization determine the ways in which disadvantaged communities can respond when developers approach them with a project. Moreover, though FPIConsent theoretically gives Indigenous peoples the right to decide their own development paths, it also means that groups must accept states' power to establish the contexts and conditions of this decision-making in the first place. Given the ways in which states have used proceduralism to manage community dissent in FPI*Consultation*, and the importance of proceduralism for other types of informed consent, it is unlikely that state-managed

FPI*Consent* policies will produce more substantive, meaningful expressions of Indigenous self-determination.

IV. Wordsmithing FPIC: Form Versus Substance

Legal proceduralism has also played a role in creating the consultation/consent debate itself. As anthropologists Jean and John Comaroff (2000) note, legal language provides an "ostensibly neutral medium" for negotiating unlike values in diverse societies. They write, "[T]he language of the law […] forges the impression of consonance amidst contrast, of the existence of universal standards that […] facilitate the negotiation of incommensurables across otherwise intransitive boundaries" (Comaroff and Comaroff 2000, 329). This observation is especially salient for international human rights regimes, which require the language of law to make states appear to be in agreement on incommensurable human rights values. In an example from the drafting of the United Nations Convention on the Elimination of Discrimination Against Women, an international women's rights treaty, anthropologist Sally Engle Merry (2006) observes that participating countries were finally able to reach consensus by "finding phrases that are vague and convoluted" (Merry 2006, 46). She writes, "Wordsmithing produced a single document despite gaping disparities in views […]. The surface of the text papers over intractable differences" (Merry 2006, 46). Merry concludes that the apparent consensus amongst states gave the women's treaty moral force, while vague wording gave each country room to implement human rights measures in accordance with domestic opinions, priorities, and politics.

Of course, Merry also notes that the ambiguous language of human rights treaties is useful not just for states, but for human rights advocates as well. It allows advocates to adapt local policies and campaigns to specific cultural contexts, and harness the appearance of moral consensus to capture the attention of sympathetic foreign audiences (Merry 2006). At the same time however, this hazy language also lets states appear to support international human rights norms, because those norms may be so nebulous as to require few, if any, substantive changes at home.

In the case of Indigenous rights treaties, the strategically blurry line between FPIConsultation and FPIConsent has enabled states to "paper over" stark differences of opinion regarding Indigenous political status. States and Indigenous groups have long debated whether Native peoples are minority groups just like any other internal minority, or whether they are autonomous political entities with the right to make their own decisions. As one might imagine, many states prefer the former, because they believe that acknowledging Indigenous autonomy could threaten state authority, or even open the door for Indigenous secession (Daes 2008). In order to deal with this point of contention, states have painstakingly wordsmithed free, prior, and informed consultation and consent language so as to leave each country ample room for its own policymaking.

In one example, the International Labor Organization Convention 169 (1989), widely cited as the first major international treaty to mention free, prior, informed consultation and consent, uses the two terms together. Article 6, for instance, states: "The consultations carried out in application of this Convention shall be undertaken […] with the objective of achieving agreement or consent to the proposed measures" (International Labor Organization 1989). Similarly, even in the 2007 United Nations Declaration on the

Rights of Indigenous Peoples (2007), which contains the most protective language of any international Indigenous rights document, linguistic form allows states to hedge on the question of consent. Although the Declaration uses "consent" in many articles, including on relocation, hazardous material storage, mineral extraction, and more, many states would only accept consent if the word "consult" appeared as well. As a result, the document is full of phrases like that found in Article 32: "States shall consult and cooperate in good faith with the indigenous peoples […] in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories […]" (Rodríguez-Garavito 2011, 287-88, United Nations 2007, Article 32). This formulation—states shall consult in order to obtain consent—allows states to demonstrate a commitment to Indigenous self-determination while leaving consultation as the de facto standard of Indigenous participation (Rodríguez-Garavito 2011, 288).

In turn, this ambiguous international rights wording authorizes similarly vague language at the national level. Early in my fieldwork, I visited a Panama City-based advocacy organization that promotes Indigenous causes and defends Indigenous interests. There, a dynamic thirty-something Emberá lawyer tutored me on the difference between consultation and consent. "Consultation," he said, writing the word on a whiteboard, "means they ask your opinion. You can't say yes or no." He next wrote, "consent." "Consent means you can accept or reject."

Despite this initially clear distinction between consultation and consent, as he continued, the line between the two grew hazy. For instance, he referred to the term "consultation" in one law from 1983, and then mentioned "free, prior, and informed consent" in another law from 2008. But instead of clarifying how these distinct terms led

to different outcomes for Indigenous peoples, he concluded by saying that the two laws use "consultation" and "consent" interchangeably, such that, as he put it, "the spirit of the regulations is the same."

If the spirit of "consultation" and "consent" is the same, does that mean that consultation is like consent, or that consent is like consultation? Panama's laws suggest the latter: consent, despite its connotation that "you can accept or reject," becomes simply another way of saying "they ask your opinion." For example, while national laws do include the term "free, prior, and informed consent," the specific wording of these laws leaves room for reinterpretation. In one instance, the 2008 law that the lawyer mentioned states, "government and private entities will *coordinate* with traditional authorities on plans, programs, and projects that are developed in their areas, *with the goal of guaranteeing* the free, prior, and informed consent of the indigenous peoples and communities" (República de Panamá 2008, Article 14, emphasis added). The law thereby gestures to the emerging global consensus in favor of free, prior, and informed consent, but retains the ambiguous language that shields the government from actually being required to obtain consent.

Examples from other Latin American countries show that wordsmithing allows even the definition of "consent" itself to be reimagined to suit states' interests. In a case from Bolivia, political scientists Lorenza B. Fontana and Jean Grugel write that ambiguous international FPIC language allowed the Bolivian government to narrowly interpret the circumstances in which Indigenous veto might be possible, such that the meaning of consent became not a right of refusal, but "the objective of reaching agreements" (Fontana and Grugel 2015, 256).

In short, the legal language of FPIC allows states plenty of room to implement consultation and consent in ways that work best for their own priorities. In the remainder of this chapter, I describe how the Panamanian government responded to Ngäbe protests of Barro Blanco dam by passing the country's first free, prior, and informed consultation/consent law. On the surface, the new law seems to be a marked advance for Indigenous rights in Panama. However, the changes that were made to the law between its initial proposal in 2014 and its final passage in 2016 reveal key instances of wordsmithing that fail to provide an Indigenous right of veto, subject Indigenous leaders to further state control, and ultimately preserve the state's authority in development decisions.

V. Born Out of State Violence: Panama's 2014 FPIC Proposal

The 2014 Supreme Court ruling about the Barro Blanco consultation was not Kiad residents' first experience with legal disappointment, nor was Barro Blanco the only development project threatening their territory (known as a *comarca*). In 2011, shortly after Barro Blanco construction began, the Panamanian National Assembly adopted a law that would allow foreign state-owned companies to invest directly in Panama's mining sector (Bill et al. 2012). Concerned that the law would open the copper-rich comarca up to mining, Kiad residents and thousands of other Ngäbe protesters blockaded the PanAmerican Highway at several strategic intersections in western Panama. The highway is the only road that connects Panama City with agricultural regions in the west of the country, and the only conduit for products arriving via land from other parts of Central America. Thus, after three days of stalled commerce, President Ricardo Martinelli, a

grocery store scion whose primary agenda was to attract international investment to Panama (Aldunate 2010), bowed to protesters' demands. He promised to "create a law that expressly prohibits mineral exploration and exploitation in the Ngäbe-Buglé Comarca and the protection of hydrological and environmental resources of the Ngäbe-Buglé Comarca" (Anonymous 2012). In addition, Martinelli convened a roundtable to discuss the future of Barro Blanco, but while the roundtable met, dam construction continued. In response, many Kiad residents and their neighbors occupied the entrance to the work site, impeding construction for several months (Hofbauer and Mayrhofer 2016).

Following Martinelli's pledge to prohibit mining and protect water resources in the comarca, the legislative committee working on the promised revision to the law duly included an article that would ban the sale of mining and hydroelectric concessions in the territory. However, when the bill came up for debate in the Assembly in early 2012, the article had vanished (Carbon Market Watch 2012). The new legislation once again allowed foreign direct investment in mining, leaving the comarca open to international mining companies.

As they had done in 2011, Ngäbe blockaded the PanAmerican Highway and brought the national transportation system to a halt, this time for over a week. As the protests dragged on, the national security forces grew more aggressive, firing rubber bullets that killed one person and injured dozens of others (Bill et al. 2012). Finally, the violence ended when the UN brought in a mediator. The protesters and the government agreed to a moratorium on all mining activities in the comarca, and another roundtable to determine the fate of Barro Blanco (Bill et al. 2012, UNDP 2015, Anonymous 2015b).

In the wake of these cycles of unrest, the National Assembly's Indigenous Affairs Commission introduced legislation for the country's first free, prior, and informed consultation and consent law. (Previously, FPIC had been included as a stipulation in other laws related to Indigenous peoples, such as land titling and environmental impact assessment, but had never been the focus of its own legislation.) Reflecting the recent abuses perpetrated by the Martinelli administration, the Indigenous Affairs Commission's representative, Ngäbe assemblywoman Crescencia Prado, wrote that the law was necessary in order to address "a pervasive and dangerous tendency on the part of governments to encroach on human rights and indigenous rights, often verging on illegality and illegitimacy, imposing authoritarian, anti-democratic forms and mechanisms" (Comisión de Asuntos Indígenas 2014: 3-4). The abuses could be prevented, she argued, if state agencies were required to ask indigenous peoples "to give their explicit permission first, before any project or program that may affect them can begin, or even before it is designed" (Comisión de Asuntos Indígenas 2014, 2). The Commission proposed sweeping rules that required the state to consult Indigenous peoples, with the goal of achieving consent, on all legislative or administrative measures and development plans and projects "that directly affect the collective rights, physical existence, cultural identity, quality of life, or development of Indigenous peoples" (Comisión de Asuntos Indígenas 2014, Article 2). Among other requirements, the legislation required consultations to be conducted in the Native people's own language as well as Spanish, and laid out step-by-step requirements for how state agencies should identify, inform, and support internal decision-making in the relevant Indigenous

communities (Comisión de Asuntos Indígenas 2014, Articles 3 and 7). Predictably, President Martinelli vetoed the bill (República de Panamá 2016a).

Just a few weeks after the bill's abortive introduction, Kiad residents learned that the Supreme Court had ruled against them and validated the contested Barro Blanco consultation. With the comarca now at least temporarily safe from mining, and the government supposedly negotiating with Ngäbe leaders about Barro Blanco's future, Kiad residents were unable to mount massive demonstrations like those that had taken place in 2011 and 2012. Nevertheless, they continued maintaining a protest camp near the construction site, and hoped that their lands might somehow be saved.

VI. A Completed Barro Blanco, a New President, and a New FPIC Law

In May of 2016, I stepped out of a pickup onto a dusty pullout along the PanAmerican Highway. Planted resolutely just a few car-lengths from the zipping traffic sat a compound of banners and plastic tarps, where dozens of Kiad residents and their neighbors had moved after being evicted from their protest camp in the now-filling Barro Blanco reservoir.

Padre Gregorio, a Catholic priest who was helping coordinate church support for the evicted residents, got out from behind the wheel of the pickup and we walked over to the huddle of makeshift dwellings. A man emerged to welcome us, and Padre Gregorio introduced him as Bartolomeo, one of the leaders of this group of protesters. Bartolomeo led us to a long table, where a woman handed us plastic cups of cacao, a chocolaty beverage used to welcome guests and for ceremonial purposes. Following Ngäbe custom,

we each drank four times, handing her the plastic cup, waiting for her to refill it, and sipping again.

As we drank, Bartolomeo told Padre Gregorio about the eviction. Members of the National Police had destroyed people's dwellings and scattered their livestock so that residents would not attempt to return to the inundation zone. "They even destroyed the chapel," he said, indignantly. He pulled out a cell phone and showed us grainy footage of a bulldozer crushing the chapel's zinc roof, benches, and wooden supports.

Another leader of the anti-Barro Blanco movement, a middle-aged woman named Cristina, came over and suggested that we go see the filling reservoir. Together we stepped into the cool shade of a teak plantation that bordered the highway. Then, walking a few steps further, we found ourselves in blazing daylight. All around us, the teak had been harvested, leaving a ring of weeds and shrubs. This green stratum continued downward until it met a zone of bare earth where bulldozers had scraped off all the vegetation. And a little further down, the imperceptibly rising water.

We picked our way through the brush and dirt to the glassy surface and stared at the bright blue sky mirrored in it. Gentle ripples appeared now and then in the muddy water as oxygen-starved fish surfaced to gulp air. Cristina said it was the water speaking.

In April and May of 2016, Barro Blanco's completion led to a new, if more modest, wave of anti-dam protests. Bartolomeo, Cristina, and perhaps a few hundred other Ngäbe and solidarity activists were able to briefly block roads at multiple points across the country. After several days of these small protests keeping Barro Blanco in the news, the government admitted that it had neither consulted nor notified the Ngäbe

authorities that the dam would be "tested" and the reservoir filled. The filling was temporarily halted until an agreement could be reached (Anonymous 2016).

In August, apparently mindful of the dramatic 2011 and 2012 protests, and trying to distinguish his administration as more Indigenous-friendly than that of Martinelli, the new president, Juan Carlos Varela, signed into law a modified version of the Indigenous Affairs Commission's 2014 FPIC bill, now called Law 37. The law, titled "Establishing the prior, free, and informed consultation and consent of Indigenous peoples," is similar to the original bill, with several notable exceptions. These changes demonstrate the ways that linguistic form can mask the expansion of state power by creating the appearance of progressive human rights protections.

In the preface to the initial legislation, Assemblywoman Prado elaborated on what the right of free, prior, and informed consent meant to Indigenous peoples. Like the Emberá lawyer I had talked with at the Panama City advocacy organization, she argued that consent meant that Indigenous peoples could accept or reject a proposal. "[Indigenous peoples] have rights," she wrote, "including the right of free choice, the right to define their own priorities and plans, rights over their ancestral territories and resources, the right of self-government. And also the right to say "yes" or "no" to the plans, projects, and programs of others" (Comisión de Asuntos Indígenas 2014, 2). In Prado's words, then, free, prior, and informed consent meant the right to render a definitive decision on the fate of a development project.

Correspondingly, Article 1 of the 2014 bill put the legislation in conversation with international legal standards that protect Indigenous rights. The bill sought to establish the Indigenous right of consultation in a manner "directly conforming with the UN

Declaration on the Rights of Indigenous Peoples, approved by the General Assembly on September 13th, 2007, and the recommendations of the InterAmerican Court of Human Rights of the Organization of American States" (Comisión de Asuntos Indígenas 2014: 5). This stipulation was significant for two reasons. First, though Panama had signed the UN Declaration when it was finalized in 2007, the country's National Assembly had never ratified it. Incorporating the Declaration into the FPIC law would have, at long last, introduced it, and its more protective rights language, into Panamanian law. Second, recent InterAmerican Court of Human Rights rulings have further strengthened, and could continue to strengthen, international legal precedent for FPIConsent by establishing parameters for which Organization of American States members, including Panama, must obtain Indigenous consent rather than merely carry out a consultation (Verbeek 2013). However, these references to international law do not appear in the final version of Law 37. Instead, President Varela made a separate announcement that his government would consider adopting the less protective International Labor Organization Convention 169, which Panama had signed in 1989 but never ratified (Bustamante 2016). (Today in 2020, Panama has still not ratified Convention 169). Thus, Law 37 performed a bait-and-switch by appearing to embrace an international Indigenous rights standard, but delinking the Panamanian law from the international treaty obligations that created, and that could hold Panama accountable for, that standard.

In another example, two articles in the 2014 bill contained language that allowed for the possibility that Indigenous peoples might actually withhold consent. The original Article 2 explained that consultation was binding only for the state, not for Indigenous peoples, while Article 11 stipulated, "Should an agreement not be reached, state entities

shall take all necessary measures to guarantee the collective rights of the Indigenous peoples" (Comisión de Asuntos Indígenas 2014, 5-8). These two sentences were important because, as Prado noted, the right to "say 'yes' or 'no'" is often misinterpreted or misused by project promoters, who think that mere participation in a consent process signals a community's agreement with their proposal. She elaborated, "[project promoters] can also say that, because a community refuses to participate in a consent process, the community is behaving irrationally and the project should therefore move forward" (Comisión de Asuntos Indígenas 2014, 2-3). In other words, the law needed to explicitly protect communities in the event that they refused a project, or if they refused any participation in a consent process at all.

Unfortunately, these sentences disappeared from the final version. Instead, the article that corresponds to Article 11 in the new law replaces the text about guaranteeing Indigenous collective rights with a sentence obligating traditional leaders to register themselves with the national government: "The agreement between the State, companies, and traditional authorities of the Indigenous comarcas and communities […] is binding on both (*sic)* parties. As such, the traditional authorities must be duly registered with the Ministry of Government" (República de Panamá 2016b, Article 10). This measure is particularly concerning in the context of the Ngäbe-Buglé Comarca, where many Ngäbe I talked with accused the state and companies of manipulating internal politics in order to exploit Ngäbe resources. Traditional authorities are charged with protecting Ngäbe lands, livelihood, and culture, and are theoretically insulated from national politics by a requirement that they hold no affiliation with any political party (CONAPI 2003). However, as I discuss further in the next chapter, the traditional authority structure is still

vulnerable to state intervention. I witnessed one episode in which a number of representatives to the Ngäbe General Congress impeached their entire leadership board for signing an unpopular development contract, and held new elections to replace the leaders. After the elections took place, Panamanian government officials refused to certify the results on the grounds that the necessary procedures for calling a new election had not been followed. The General Congress was left with two competing leadership boards, one recognized by the state but not the representatives, and the other recognized by the representatives but not the state. This paternalistic state intervention (or in this case, strategic non-intervention) raises questions about what new consequences might arise from the requirement that traditional authorities register themselves with the national government.

VII. The Barro Blanco Accord: Protecting Consultation and Consent, Ignoring Indigenous Refusal

Law 37 undeniably fits the pattern identified by critics of multicultural recognition. The timing of the 2016 law, just as the muddy waters of the Barro Blanco reservoir dredged up memories of the 2011 and 2012 anti-Indigenous state violence, perhaps indicates President Varela's desire to build a Panama based on respect for Native peoples. However, the revisions to the text show how government officials narrowed the impact of the law, by, among other details, delinking it from the greater protections established by the UN Declaration and the InterAmerican Court of Human Rights, and removing protective language that accounted for the possibility of Indigenous refusal. In a move starkly resembling Coulthard's (2014) observation that multicultural recognition

binds Indigenous peoples more tightly to the colonial order, the new law instead requires Indigenous authorities to register themselves with the state, paving the way for new forms of government control.

Above all, proclaiming the new consent and consultation law a victory for Indigenous rights diverts attention from the fact that the state has continued to ignore the Ngäbes' insistent refusal of Barro Blanco. On August 17, 2016, fifteen days after Law 37 was passed, the government announced that it had reached an agreement with Ngäbe leaders about the future of the hydroelectric project. In this Barro Blanco Accord, representatives of the government and various elected Ngäbe authorities agreed, among other provisions, that GENISA would withdraw from operating the project; that after GENISA's debts were cancelled, the state would create a public company to run the dam; and that 51% of that public company would belong to the Ngäbe and 49% would belong to the state. In addition, fifty percent of the dam employees would be Ngäbe, with training programs to ensure a supply of skilled Ngäbe labor (Gobierno Nacional de Panamá 2016).

Despite these generous terms, many Ngäbe were incensed that their leaders would even consider negotiating with GENISA and the government. The elected officials who had signed were vilified as traitors and sell-outs, and the Ngäbe General Congress rejected the accord (Mejía Giraldo 2016). But, instead of taking this rejection seriously, the government painted the rejection as the product of an internal political dispute (Arcia Jaramillo 2016a). And, when Barro Blanco became fully operational in April of 2017, a government official from the national utilities agency justified its operation by blaming the Ngäbe General Congress for failing to file paperwork explaining its rejection of the

project (Mejía Giraldo 2017). Claiming, "To date, there has been not one document rejecting the agreement," the official thereby diverted attention from the state's human rights failures by pointing to Ngäbe leaders' supposed procedural ones (Mejía Giraldo 2017).

VIII. Conclusion: Who Sets FPIC Procedure?

Is Law 37 an advancement for Panama's Indigenous peoples? As I discussed above, the answer to this question depends on who holds the reins when it comes to devising and carrying out the procedures that bring Law 37 into force. The extent to which Law 37 will ensure the meaningful participation of indigenous groups will depend on the way the law is interpreted and implemented by government agencies. And even if future consultations engage more people, and do so more fairly and more effectively, should state implementers not make provisions for what happens when an indigenous community withholds consent, more conflict could result. That is, having been asked their opinion, communities may expect that their wishes and concerns will be respected. If they refuse a project but developers decide to proceed anyway, even more intense clashes than those seen in the case of Barro Blanco could take place.

Thus, expanding on with Hoyer and Hogle's (2014) observation that improving informed consent is a process of "asking for more of the thing you bewail exactly because it does not seem to work," Law 37 may add "more of the thing you bewail" in order to continue to keep it from working. The law perhaps fixes the problem of inadequate free, prior, and informed consent by adding more inadequacy. Indeed, Barro Blanco poignantly illustrates this problem: even as Law 37 was ostensibly meant to

correct the weak consultation procedures that enabled the dam to move forward, even as its passage was timed to assuage the anger generated by the un-consulted filling of the reservoir, the government still ignored the comarca's "no." Despite the Ngäbe General Congress' rejection of the Barro Blanco accord, the dam is currently generating electricity and Ngäbe farmland is under water.

On the other hand, returning to the point that proceduralism creates space for human rights advocates as well as states, a number of recent cases demonstrate how Indigenous communities have defied government attempts to control FPIC by running their own consultations. In one example, geographers J.P. Laplante and Catherine Nolan (2014) describe Guatemala's "*consulta* movement," in which over 78 Maya communities and approximately a million voters have participated in self-organized community consultations to protest hydroelectric projects and mining ventures. Laplante and Nolin observe that while the Guatemalan constitutional court has declared these consultations nonbinding on companies and the government, they may be effective if they produce a "boomerang pattern" (Keck and Sikkink 1999) by which local activism animates foreign activists and shareholders to hold international mining companies and the state accountable for ignoring community opposition. At the same time however, Laplante and Nolin also note that the consultas present such a significant challenge to state authority that Guatemalan legislators have recently considered measures for regulating them (2014, 243). Thus, the consulta movement suggests that the distinction between FPIConsultation and FPIConsent is less important than who organizes an act of community decision-making, under what conditions, and for what audience. In sum, Indigenous communities

in Guatemala demonstrate a path for sidestepping government control of FPIC, but also show how states can step in via procedural means to limit threats to state power.

Ultimately, those who support Indigenous rights (myself included) have no choice but to argue for "more of the thing we bewail." We have to press for stronger human rights language, including FPIConsent, because the legalistic language of human rights does, through its ambiguity, create openings for incremental advancements in rights. In order to take full advantage of those openings, and to prevent legal wordsmithing from simply becoming another opportunity for rights-washing, we must pay careful attention to the relationship between rights, recognition, and state power.

Chapter 3. "To Enter Your House, I have to Ask Your Permission": Getting Consent amidst Uncertain Political Authority

I. Introduction: An Anthropologist Goes Forum Shopping

On a humid morning at the beginning of my extended fieldwork stay in Panama, I went with my host, Fabiola, to request a research permit at the Besikó municipal office. Like many public buildings in the comarca, the office was a one-story cinderblock structure, painted light yellow and covered by a red zinc roof. Inside, a handful of public servants—men in dark trousers and freshly ironed collared shirts, women in traditional *nagua* dresses and stylish platform sandals—were settling into their small, cluttered offices.

Fabiola shyly poked her head into one of the rooms and said that we were there to meet with the mayor, whom she knew well, and the local cacique. After a few minutes, a thin, fifty-something man with a mustache emerged, greeted us both with a handshake, and introduced himself as the mayor. He ushered me into his cramped office, and Fabiola disappeared, her task as my character witness and connection-maker complete.

The mayor and I sat down, and I handed him my documents: a letter of introduction from my dissertation advisor, a two-page description of my project, and a copy of my passport. He looked over the papers through black-rimmed glasses as I nervously summarized my research on Free, Prior, and Informed Consultation and Consent. When I finished, he looked at me solemnly and thanked me for showing respect by coming and requesting permission.

He led me to the large meeting room, where the council president, the local cacique, and some other representatives were seated at a long table, preparing for a council meeting. The mayor drew a folding chair up to the table facing the officials, and invited me to have a seat. I felt like the subject of a deposition as I timidly repeated my presentation to this second somber-faced audience. But when I finished, as the mayor had done, the council president and other listeners took turns commending my decision to come to them for approval.

At some point over the course of the forty-five minutes that I had been in the municipal building, a decision was made to grant the research permit. The officials never formally voted or discussed the permit amongst themselves, but after they expressed their satisfaction with me for having requested permission, the mayor took me back to his office so that his secretary could write up my research permit. A short time later, the local cacique also appeared and handed me a permit signed and stamped by his superior, the regional cacique.

Then it was time for the council meeting. I returned to the meeting room and found myself a chair near the back. A dozen representatives and other meeting participants filed in, circulated around the room to shake everyone's hands in greeting, and took their seats.

The council secretary called the meeting to order, and soon it was my turn to introduce myself yet again. I passed out copies of my project description to the thirty-odd attendees and summarized my research for the third time. When I finished, the mayor rose from his seat at the front table and gave a short speech commending my decision to

ask for permission for my research, and urged the representatives to help me with my study.

As the meeting continued, several other participants made use of their floor time to commend me for my request. For instance, the treasurer—a man in his late thirties with a fresh haircut and crisp blue dress shirt—used some of the time allotted for his report to declare that my project should be an example of how outside businesses ought to ask permission to make money off the people of the district. Another representative agreed, saying, "We value our authorities. Thank you for having the consideration to come here and present yourself."

I was taken aback by this positive reception. After the suspicious stares and questioning I had experienced during previous visits to the comarca, I had been expecting an interrogation about who I was, who was funding my research, and what my motives were. However, the commentary in support of my permit-seeking indicated that Besikó authorities were not only interested in me and the topic of my research, but also in the fact that a foreigner had shown up to ask their permission. While for me, the point of the process had been to obtain a permit for my project, the council had focused on the larger affirmation of authority inherent in a foreigner's permit request.

The municipal officials' comments hinted at the challenges that Ngäbe leaders face in making decisions for Panama's largest Indigenous territory. With a population of 160,000 people spread over a mountainous, largely roadless territory of 6,500 square kilometers, a poverty rate of 93 percent, and against the backdrop of colonization and ongoing discrimination, governing, advocating for, and meeting the needs of the Ngäbe is

challenging (INEC 2010d, República de Panamá 2017). On top of these logistical and social factors, multiple branches of government, historical decision-making practices, and intervention by private developers and the state all complicate the question of which leaders have the authority to make what types of decisions. Who has the authority to approve a research project by a foreigner? Who signs contracts with international companies? Which leaders can make agreements between the Ngäbe and the Panamanian state, and how do comarca residents hold their leaders accountable for those agreements?

Uncertainties about decision-making in the comarca have allowed outsiders and the state to "forum shop" to obtain permission for controversial projects. Forum shopping refers to a tactic in the field of law in which plaintiffs choose between multiple legal institutions or jurisdictions in order to select the forum most likely to give them a favorable outcome (Juenger 1989). This practice is common all over the world, including in the US (where a judge once called it "a national legal pastime") (Wright 1967, 333, cited in Juenger 1989, 553). Anthropologists and other scholars apply the concept to societies in which legal pluralism is common, such as former colonial states where Indigenous peoples can use both customary and national legal systems to settle disputes (von Benda-Beckmann 1981).

My research permitting process had been a participant observation exercise in how to forum shop. A number of factors had led to this strategy. First, comarca law is silent on the topic of research permissions, so I was guided by the language of the Panamanian National Institute of Culture. The Institute of Culture permit requirements said simply that I must obtain permission from "Indigenous authorities," without

specifying whom in the comarca's triple-branched, multilayered authority structure to approach.

Second, while international researchers working with other, smaller Indigenous groups in Panama often obtain the permission of that group's General Congress (an elected body representing the entire group), the Ngäbe situation is somewhat different. Because of the Ngäbe General Congress' large size (340 voting delegates[9] versus 50 voting delegates for the next largest group, the Guna of Guna Yala), and because of the time and expense of travel for representatives coming from across the comarca, day-to-day decisions are usually made by a governing board elected by the membership of the General Congress (Tribunal Electoral 2010, Valiente López 2008, 234, CONAPI 2003). However, input from local contacts revealed that the current governing board's mandate to rule had been undercut by a controversial executive decree that gave the national government the power to intervene in Ngäbe elections (República de Panamá 2010). A permit from that body might therefore have the appearance of aligning me with the national government. Thus, in the end, on the advice of local contacts, I sought permits from regional and local officials in the region where my research was to take place.

A similar forum shopping process has, at least until recently, also been practiced by companies that want to do business in the comarca. For example, until Law 37 was passed in 2016, community consultation in the context of projects like mines and dams was monitored by the National Environmental Authority. The regulations required companies to hold public consultations regarding a project's impacts, and stipulated that, "consultation proceedings will aim to reach agreements with representatives of the

[9] In principle, the residents of each of the comarca's sixty-eight counties elect five delegates each to represent them at the General Congress. In practice, not every county always fills its five delegate seats. See Tribunal Electoral 2010.

community […]" (República de Panamá 1998, Article 103). With no guidance on whom nor how representative these "representatives of the community" should be, nor what steps should be taken if a community objected to a project, developers who faced resistance in one community could simply obtain the signature of a willing elected official in another. In effect, forum shopping became consent shopping—choosing amongst an array of community officials to find one whose signature could fulfill regulatory requirements, disguise intense opposition to a project, and give the appearance of collective consent.

These examples illustrate yet another challenge with Free, Prior, and Informed Consultation and Consent. That is, in addition to the linguistic details that allow states and developers to constrain FPIC processes through meticulous wordsmithing, the processes themselves take place in institutional settings that may also be managed so as to benefit the state or other entities. Indigenous authority structures may have been imposed by state or colonial governments, or recently layered on top of pre-existing decision-making practices. Set against the backdrop of national politics and systemic economic and social marginalization, these dynamics may lead to internal competition as people vie for resources, legitimacy, and power. Consent-seekers may knowingly or unknowingly be caught up in, exacerbate, or benefit from these dynamics.

In addition, because popular portrayals often depict Native peoples as homogeneous, united, and adhering to an idealized version of consensus-based decision-making, it is easy for people to claim that the signature of one Indigenous official represents the will of "the Ngäbe." For example, a hydroelectric company (or researcher)

that obtains the signature of any of the eleven Ngäbe caciques can declare to its investors (or institutional review board) that the project was approved by a "Ngäbe chief," without mentioning that the Ngäbe have many other authorities who may or may not agree with the project. In this context, forum or consent shopping helps the consent-seeker obtain a rubber-stamped project and a pro-Indigenous public image.

Thus, building on the last chapter, in which I showed how states manage Free, Prior, and Informed Consultation and Consent by attending to the linguistic and procedural details of FPIC policies, this chapter examines the decision-making structures and processes that inform the fulfillment of such policies. I show that idealized and oversimplified depictions of Indigenous decision-making belie the multilayered politics and moral considerations that, as with any group of people, inform who decides and how definitive those decisions are. In turn, I argue, these oversimplifications obscure the ways in which states, developers, and researchers participate in and benefit from these dynamics.

II. The Moral Politics of Intent in Indigenous Self-Determination, Development, and Research

Given the triple weight of colonialism, US intervention in Panama, and the role of researchers (and particularly anthropologists) in colonizing and objectifying Native peoples, policies of informed consultation, consent, or research permission take place against the moral backdrop of Indigenous self-determination. Writing on informed consent in the context of medical research, anthropologists Klaus Hoeyer and Linda Hogle (2014) make a similar observation, arguing that informed consent is founded in a

belief in the moral good of patient autonomy. For example, stories of the Tuskegee syphilis study or the medical experiments of the Nazis—examples common in accounts of the origins of informed consent—drive a sense of moral necessity. In turn, this moral necessity produces what Hoeyer and Hogle call a "politics of intent"—a political space focused on the intention of guaranteeing patient autonomy across all research settings.

At the same time however, because it is impossible to always guarantee patient autonomy in every research setting, informed consent policies also generate a "politics of practice,"—a politics aimed at complying with, adapting to, or circumventing patient autonomy in real life (Hoeyer and Hogle 2014, 347-350). Similarly, for FPIC, a politics of practice grapples with the challenge of how to realize Indigenous self-determination in settings where coming to a collective decision may be nearly impossible. For instance, in expansive areas like the Ngäbe-Buglé Comarca, where information often travels by boat, foot, and radio, the basic logistical challenges of collecting input from residents may be daunting. In addition, in many former colonial states, successive governments have imposed new political systems to facilitate state control of Native peoples, systems that may still enable state interference in Indigenous politics today. In addition, these structures may operate alongside pre-existing forms of Indigenous political organization, leading to confusion or competition amongst old and new forms of authority (for examples, see Colchester and Ferrari 2007, 5-13).

Furthermore, even if leaders do have the legal authority to make decisions on their constituents' behalf, that authority does not always mean that they have a clear mandate to decide one way or another. Writing about FPIC in the context of development in India, Katsuhiko Masaki explains, "Indigenous people are multiply positioned in a composite

society, and move around a range of perspectives, depending on whom they interact with, and what issue they attend to" (2009, 79). In other words, Indigenous groups, just like other groups of people, consist of members who occupy different social and political locations and therefore hold a range of opinions. Because of this diversity, populations may not share the same visions for the future of their territories. Ultimately, Masaki writes, it is ironic that FPIC upholds Indigenous self-determination by asking Native peoples to spend their time discussing the projects of outsiders (2009, 80).

In this context of overlapping authorities, uncertain mandates, and outsiders' projects, consent seekers and givers must figure out how to fulfill the moral intent of Indigenous self-determination. The resulting politics of practice may include tactics like forum or consent shopping, which give the appearance of complying with FPIC even while circumventing it. That is, when a developer demonstrates that he has permission from a cacique, even if that permission was obtained through forum shopping, the act of seeking permission nevertheless still affirms the cause of self-determination. By paying lip service to this cause, the developer draws attention away from the manner in which the permission was obtained, and appears simply to have complied with its intent.

Consequently, to suggest that FPIC protects the right of Native peoples to make their own development decisions via culturally appropriate institutions and processes is to tell only part of the story. "Traditional" forms of authority may bear the mark of state interference, or group members may disagree over who has decision-making power and what the right decision is. Moreover, when researchers and developers make use of these discrepancies through forum or consent shopping, their behavior reveals that FPIC and other forms of permission-seeking may not actually *protect* Native self-determination so

much as they give project promoters a way to *signal support* for Native self-determination. This signaling nods to the moral urgency of Indigenous rights while obscuring the history, politics, and practices that enable others' research and development agendas.

III. A History of State Intervention in Ngäbe Leadership and Authority

Ngäbe history underscores the fact that what counts as "traditional" decision-making practice may bear the heavy imprint of colonial or state power. The Ngäbe have had at least five different forms of political organization since Columbus' arrival off the coast of Panama in 1502. The earliest recorded organizational pattern, described by Spanish missionaries, was not a rigidly hierarchical society but one loosely organized by kinship, with groups of extended family living near one another in small hamlets. In peacetime, caciques had only nominal power, and served mainly to lead communities in times of war (Young 1971, 45-47). Ngäbe historical memory tells of powerful caciques who ruled over their ancestors, but if this hierarchical organization ever existed, it disappeared before or shortly after the Spanish arrived (Young 1971, Young and John R. Bort 1979).

By sometime in the 19th Century, a second form of political organization took hold as Spanish or Colombian rulers attempted to extend their control. They replaced the minor Ngäbe chiefs with Native governors, creating a system in which the government recognized prominent Ngäbe men and gave them responsibility for maintaining order and mediating between Ngäbe and Latinos (Young 1971, 202). Anthropologist Philip Young, who conducted fieldwork in the Ngäbe territory beginning in the 1960s, reported that this

system was considered the "traditional" form of Ngäbe government amongst his interlocutors at this time (Young 1971, 46).

Then, in the 1950s, the Panamanian government abolished the governor system and instituted a third system, that of appointed Ngäbe judges, called *corregidores*, who had the same responsibilities as the former governors, but who were also required to be literate and to live in the same *corregimiento* (county) over which they presided. According to Young, these requirements upset traditional practices of dispute resolution in two ways. First, men who could read and write were younger than those who had typically been appointed as governors, meaning that they had not yet earned the social stature necessary to command the respect of their constituents. Second, Ngäbe had previously avoided arbitrating disputes in which family members were involved, a practice that the residence requirement now made all but impossible (Young 1971, 203).

Young wrote that this situation had the effect of separating authority—meaning the state-granted decision-making authority bestowed on younger men—from power—the power that Ngäbe society granted men who had risen to prominence through traditional means (Young 1971, 203-04, Young and John R. Bort 1979). Customarily, men gained prestige through behaviors that earned them the respect of others: being an industrious farmer and sharing harvests with family members, showing good judgment in handling disputes, hosting large ritual sporting events, called *balserías*, and demonstrating physical prowess as a balsería competitor (Young 1971, 210-212). When Young conducted fieldwork in the 1960s, he wrote that Ngäbe still usually relied on these respected men, not the corregidores, to settle disagreements. In cases where people did appeal to a corregidor, if a corregidor emitted an unfavorable decision, disputants

practiced a version of forum shopping: they would simply wait and bring up the matter again with the next corregidor (Young and John R. Bort 1979, 202-03).

In the fourth system, instituted in 1968 or 1969[10], the political figure of the cacique reappeared under the Revolutionary Government of General Omar Torrijos. Torrijos professed to be sympathetic to the country's Indigenous peoples, and encouraged them to organize themselves so that they could establish comarcas and manage their own affairs. (Young and Bort noted that this move also conveniently facilitated the regime's dealings with these loosely organized, dispersed populations [1979, 94]). According to geographer Peter Herlihy (1995), Torrijos commissioned a Guna cacique named Estanislao López to help the Indigenous peoples coordinate amongst themselves and develop more structured internal political systems. In 1969, López reportedly organized a pan-Indigenous congress where the Ngäbe, Buglé, Emberá, Wounaan, and Naso discussed the Guna political model of regional caciques and congresses (Herlihy 1995, 83-84, Howe 1998, 297). The first four of these groups soon instituted this model in their own territories, with the Ngäbe electing three regional caciques, one for each of the Panamanian provinces that constituted the Ngäbe territory (Herlihy 1995, Young and John R. Bort 1979).

However, to say that "the Ngäbe" elected three regional caciques is to present a misleading picture of who and how many Ngäbe were involved in this decision. Philip Young and John Bort wrote that the people they talked with shortly after this congress occurred had no idea how the decision to adopt the new system had come about, nor who had actually elected their supposed leaders. Though the Revolutionary Government had

[10] Young and Bort (1979) date the cacique system to 1968, while Herlihy (1995) writes that it began in 1969.

quickly recognized the caciques as the official spokespeople of the Ngäbe, most Ngäbe themselves distrusted or were simply indifferent to the new chiefs. The anthropologists estimated that no more than a third of the Ngäbe population actually supported the caciques at any given time (Young and John R. Bort 1979, 88-95).

Torrijos (1973) himself corroborated the slow uptake of the cacique system in a speech he gave to Ngäbe leaders in Soloy in the early years of his regime. He began by affirming the government's commitment to giving the Ngäbe a comarca, but, he admonished listeners, in order to manage their own territory, they needed to follow the Gunas' example and obey their leaders[11]. The Gunas, he said, kept careful control over their people, punishing men who drank away the paychecks from their work on the banana plantations and who did not send money back to their families (behaviors that Ngäbe men were often derided for in Panamanian society—see Bourgois 1988). He concluded, "Here we have made two commitments: the Government has committed to help you with what you have requested and you have committed to organize yourselves and work more as a group and in a more orderly fashion" (1973, 60). Torrijos was, in effect, acknowledging that efforts to unify the Ngäbe under the new caciques had not yet turned the Ngäbe into the well-organized Guna. But, rather than reexamining his strategy for intervening in Ngäbe affairs, he pinned this failure on supposed Ngäbe disorganization and disorder.

In 1972, Torrijos' government layered a fifth form of political organization on top of the caciques and the corregidores. A new national constitution instituted the election of representatives, people who were supposed to represent the national government in each

[11] Ironically, he was instructing the Ngäbe to emulate a people that had once taken up arms against the Panamanian state. See Howe (1998) for a discussion of the Guna rebellion of 1925.

of the country's 505 counties, vote in the National Assembly, communicate local needs to the central government, and administer local solutions to these needs (República de Panamá 1972, 90-98, Young and John R. Bort 1979). For the first time in history, the Ngäbe elected their own spokespeople to participate alongside their fellow Panamanians in the national government.

Nevertheless, according to Young and Bort, although the representatives were the government's official authorities in the Ngäbe territory, the state preferred to deal with the Ngäbe through the caciques, angering the representatives. In addition, representatives also struggled for authority with the men who served as the caciques' local delegates, called *jefes inmediatos* (immediate chiefs), who had risen to prominence through traditional means. And, undermining the power of both the caciques and the representatives, Ngäbe continued to align themselves primarily with their kin groups rather than non-kin leaders, and continued using long-standing deliberative practices to deal with difficult group decisions. Young and Bort explained that decision-making had historically been consensus-based and non-confrontational, meaning that controversial issues often required many successive meetings over an extended period of time in order to come to agreement. If an agreement could not be reached, they wrote, the deliberators might simply drop the issue, having quietly made "a decision not to decide" (Young and John R. Bort 1979, 77-78). Consequently, even as Ngäbe political organization began to change, kinship alliances and drawn-out decision-making processes—complete with the possibility that a decision might never be reached—continued (Young and John R. Bort 1979, 94). In short, the advent of the national representative system close on the heels of

the cacique system, and layered on top of historical kin-group relations and decision-making practices, created a messy new map of state and territorial power.

The three political figures that emerged in the late 1960s and early 1970s—representatives, congresses, and caciques—remain today, with some modifications. When the comarca was created in the late 1990s, each of the three positions became part of a different branch of comarca governance (see Figure 1). The representatives were incorporated into the administrative branch, which corresponds with the administrative structures of Panama's provinces. Instead of serving in the National Assembly, the representatives now participate alongside *alcaldes* (mayors) in what is essentially a town council, while three regional *diputados* (deputies) represent the comarca in the National Assembly, functioning like congressional representatives do in the US. Rounding out the administrative branch is the governor, who, as with the governors of the non-Indigenous provinces, is appointed by Panama's president and serves as a liaison between the comarca and the national government (CONAPI 2003).

In addition to the administrative branch, comarca government also consists of a collective decision-making branch, composed of local, regional, and general (comarca-wide) congresses. The congresses are responsible for promoting economic and social development, and ensuring the survival of the Ngäbe and Buglé cultures. To do so, they pass regulations, monitor the work of state agencies and other entities within the comarca, and, in the case of the General Congress, approve national and international development projects (CONAPI 2003). Since the congresses meet sporadically (for example, the charter stipulates that the entire General Congress meets once every five years, while the lower level congresses more frequently), they are led by governing

boards—consisting of presidents, vice presidents, secretaries, and spokespeople—who are responsible for making day-to-day decisions and calling special sessions when important issues merit wider deliberation (CONAPI 2003).

Geopolitical Unit	Administrative Branch	Collective Branch	Traditional Branch
Comarca	Governor	General Congress	General Cacique
3 Regions	3 National Assembly Deputies	3 Regional Congresses	3 Regional Caciques
7 Districts	7 Mayors	7 Local Congresses	7 Local Caciques
68 Counties	68 Representatives 68 Corregidores		68 Immediate Chiefs
Communities			Spokespeople

Figure 3. Authority Structure of the Ngäbe-Buglé Comarca
The first column on the left shows the geopolitical units of the comarca. The second column describes the administrative branch of the comarca, which corresponds with the administrative structure of Panama's provinces. The third column shows the collective decision-making bodies, and the right-hand column indicates the caciques and their local representatives. Most positions are elected, with the exception of the governor (appointed by the President of Panama), corregidores (appointed by the mayors), and immediate chiefs (nominated by the spokespeople for appointment by the local caciques). Adapted from CONAPI 2003 and updated with the most recent county numbers (CONAPI 2003, 19, Martínez 2019).

The third branch consists of the "traditional" authorities: the local, regional, and general caciques, plus the county-level jefes inmediatos, and community-level authorities known as *voceros* (spokespeople). According to the text of comarca law, these authorities are in large part figureheads, responsible for representing the Ngäbe and "coordinating and cooperating" with other authorities, rather than emitting resolutions and approving projects (CONAPI 2003, 15, Article 27). However, practicing its own version of forum

shopping, the state has continued to negotiate with the Ngäbe through the caciques, thereby perpetuating confusion over the question of who has the authority and mandate to make decisions on behalf of the Ngäbe (see Ngabe-Bugle: El Ejercicio de Sus Derechos "Ngäbe-Buglé: El Ejercicio De Sus Derechos a Las Instituciones Propias Y a La Consulta Y Consentimiento Libre, Previo E Informados" 2012, Ábrego 2014, Saldaña 2014, Arcia Jaramillo 2016b, Mejía Giraldo 2016).

In the resulting confusion, the state can shift attention to Ngäbe internal politics rather than accept responsibility for its role in controversial projects and policies. For instance, after the General Congress rejected the 2016 Barro Blanco accord, newspaper accounts reported Panama's vice president as declaring that the government was willing to work with the Ngäbe leadership on a new agreement, as long as "the Barro Blanco project was not mixed with internal comarca politics" (Arcia Jaramillo 2016a). By drawing attention to comarca politics at the same time as the vice president pledged to work with the Ngäbe, the official made the state appear reasonable, patient, and pro-Indigenous, overlooking the fact that the government had played a role in those politics in the first place.

To further complicate the question of territorial authority, in 2010, the National Assembly amended the comarca charter in ways that would have weakened the General Congress and the caciques, allowed government interference in internal elections, and made it easier for the government to manipulate comarca decisions (República de Panamá 2010). The Supreme Court finally ruled the modifications illegal in 2016, but the intervening six years in which the law was operational created further confusion about

the decision-making responsibilities of the governing boards and the caciques (Corte Suprema de Justicia 2016).

This turbulent history of comarca governance underscores the irony of FPIC's emphasis on "culturally appropriate" or "traditional" Indigenous decision-making. The older, nonhierarchical, consensus-based system by which Ngäbe deliberated and acquired authority was poorly suited to the state's need for Indigenous leaders who could make definitive decisions and exercise control over their own people. Alerted to the supposed inadequacy of one "traditional" system, Ngäbe leaders were encouraged to adopt another. Today's "traditional" congress and cacique structure, borrowed from the Guna, was quickly sanctioned by the state, and now provides a convenient way for various entities to appear to obtain Ngäbe consent, and supplies a handy scapegoat when outsiders' actions stir up controversy.

IV. The Consequences of Forum Shopping

In July 2016, as I was nearing the end of extended fieldwork, I interviewed a member of the recently elected governing board of the Ngäbe-Buglé General Congress. The governing board had been selected by their fellow congressional representatives in March, and by May had been caught up in managing the fallout from the filling Barro Blanco reservoir. Wanting to hear the board's perspective on the hydroelectric project, I made an appointment with one of the officers, Antonio Cruz[12], and met him at a rambling compound of comarca government offices near the southern edge of the territory.

[12] A pseudonym

The fifty-something Cruz showed me to a seat in his office and sat down across from me at his desk. The gathering rainy-season storm clouds outside the window cast the unlit room in semi-darkness. I described my research topic, showed him my research permits for the district and region where I had been working, and explained that I had been conducting fieldwork since September of the previous year.

Cruz quickly gave me a stern look. Had I gotten permission from the previous General Congress?, he asked. Why had I not presented myself before the Congress when he and the other leaders were installed in March?

I meekly explained that, since I was working in one particular district and region, not the entire comarca, I had only gotten permission from the district council and the regional cacique.

Upon hearing my explanation, Cruz stood, opened a filing cabinet, and pulled out a slim green book containing the text of the 1997 law that established the comarca and the 1999 executive order detailing the comarca charter. He reseated himself behind his desk and commenced with an impromptu lesson on comarca law. “To enter your house, I have to ask your permission.” His analogy rhetorically reversed our roles to ask me, how would *you* feel if I went into *your* house without permission? His example reminded me that I was an intruder on Ngäbe land, an accusation that referenced hundreds of years of Ngäbe experiences of colonization and land theft.

Then he began reading from the charter, pointedly noting places where caciques were subordinate to the General Congress: “The constitution of the comarca says that the General Congress is the highest authority. Only the Congress can sign international agreements.” He continued, “Only the General Congress can create commissions.

Caciques cannot create commissions." "The caciques can propose laws, the Congress approves them." "The Congress can sue the state for violating the law; the caciques cannot do so." And so on.

Looking up to make sure I was paying attention, he summarized, "The General Congress is the source that must be consulted in every situation. Because there are good projects, and there are bad projects." He read a little further and then stared at me again. "You have to take to your country a message for those who wish to come to Panama. If someone from your country asks where they need to go, the first thing is to come *here*," he said, emphatically pointing down at the desk. Otherwise, he warned, "projects are canceled, they are rejected because the permission process has not been done."

He continued reading from the charter as I sat nervously in front of him, dutifully taking notes on comarca law. Finally, he stopped reading and softened slightly. "You didn't know," he said tolerantly. We agreed that I would atone for my error by presenting a report on my work to the Congress when it met the following March.

Given the history of state and corporate forum shopping in the comarca, Antonio Cruz's reasons for declaring that I should have obtained permission from the General Congress were clear. In a situation in which multiple parties continue to muddle the question of decision-making, my forum shopping had problematically affirmed the authority of a lower level cacique and district administrative officials rather than that of the General Congress. In short, even though I had attempted to avoid the authority issues created by the 2010 comarca elections law, Cruz's response reminded me that I was still

participating in a larger conversation about the nature of authority, power, and self-determination in the comarca.

V. Discussion: Re-examining Ngäbe "Disorganization"

In their discussion of medical research consent, Hoeyer and Hogle write that, "informed consent has become so ubiquitous thanks to an ability to conjure a stable image of a recognizable and manageable procedure with a particular moral appeal, while simultaneously serving as an empty signifier: an image onto which people can project very different hopes, concerns, and expectations" (2014, 347). Extending this observation to Free, Prior, and Informed Consent and Consultation, FPIC likewise conjures an image of a straightforward, morally sanctioned procedure: a united group of Native people coming to a definitive decision about the future of their territory. Cruz's house metaphor reproduced this image by casting the comarca as a building with a single owner, and the decision facing that owner as an uncomplicated choice of granting or denying entry. His analogy portrays FPIC as both a concept that is simple to understand, and as a task that is easy to carry out.

However, this depiction sets unrealistic decision-making expectations that Indigenous groups cannot always meet. The implausibility of reaching a definitive collective decision about a controversial project is especially evident in the case of the Ngäbe-Buglé Comarca, where, in addition to the logistical challenges of collecting input from a large, dispersed population, the territory has long grappled with the consequences of state intervention in Ngäbe decision-making processes. These interventions have resulted in a triple-branched comarca authority system where permission-seeking

anthropologists and consent-seeking developers can shop for signatures and still appear to affirm the Indigenous right of self-determination.

These dynamics are not unique to the Ngäbe-Buglé Comarca. For one, "forum shopping" is common all over the world, even in international human rights law, where the existence of multiple overlapping human rights treaties and tribunals allows individuals to present claims even in multiple venues at the same time (Helfer 1999). Moreover, all groups of people hold a diversity of opinions and disagree with decisions their leaders make for them. As Torrijos' speech indicates, Panamanian society has at times looked down on the Ngäbe for their reputed disorganization, particularly in contrast with the seemingly well-organized Guna.[13] US scholars have participated in this pathologization of Ngäbe political organization, characterizing its kinship-based system as "maladaptive" to the needs of contemporary Panamanian politics (Young and John R. Bort 1979, 82, Gjording 1991, Wickstrom 2003). And yet, as the United States' own history and current political situation makes clear, evidence of so-called disorganization amongst the Ngäbe—a polarized public, competition for power, leaders' lack of a clear mandate to rule—is simply everyday politics in many places around the world.

Amidst these commonalities, one factor that is specific to the Ngäbe (though not necessarily unique amongst Indigenous peoples) is the way in which the Panamanian state has repeatedly intervened in Ngäbe politics in order to manage the territory's residents and resources. The state's recent attempt to control elections outright via the 2010 comarca charter amendment perpetuate the appearance of Ngäbe "disorganization"

[13] Anthropologist James Howe's (1998) exhaustive history of the 1925 Guna rebellion reveals that the Guna were not always as unified as they are now portrayed to be. When Panama declared independence from Colombia, the Guna suffered years of internal conflict over whether they should declare allegiance to Colombia or to Panama, and to what extent to assimilate into Latino Panamanian society.

and distract from the state's role in creating and taking advantage of these dynamics. In this context, the expectation that Indigenous peoples will be able to come to a collective decision unfairly sets groups like the Ngäbe up for scrutiny, ridicule, and further marginalization when their politics turn out to be just as contentious as politics everywhere else.

Consequently, even as FPIC supposedly protects the right of Native peoples to make their own development decisions, such policies may also have unexpected secondary effects. For example, when an Indigenous community that has experienced state interference disagrees over who has decision-making power and what the right decision is, they may be called dysfunctional, and thereby trigger further state intervention. Meanwhile, researchers and developers who exploit these disagreements through forum shopping may be lauded, as I was, for affirming the Indigenous right of self-determination. This ironic turn suggests that FPIC and other forms of permission-seeking may not actually protect Native self-determination so much as they use it to conceal the history and politics that propel others' research and development agendas at the expense of Native peoples.

Chapter 4. "The Truth Must Come Out": The Contested Parameters of a Panamanian Public Consultation Process

I. Introduction: "Informed" Consent, Public Health, and the Information Deficit Model

The town of Orilla del Río[14] lies in the mountains of southwest Panama, perched on several steep hills that overlook the confluence of the Bravo and Florida Rivers. To attend high school or see a doctor, Orilla del Río residents must endure a bumpy forty-five minute ride in the back of a crowded transport truck to get to the district capital of Soloy. One day, after dropping some other passengers and me in town, instead of continuing uphill to the next hamlet, the truck turned around in front of a chain and a long white banner that blocked the road. In blue spray paint, the banner announced in Spanish, "The Ngäbe-Buglé People and the Besikó Organization Say No to Projects – Like Hydroelectrics, the Orilla del Río Purification Plant and Others." Several women and men stood around and behind the sign, their stern faces reinforcing the "Say No" of the banner.

Members of the Mama Tata religious movement had learned that the national government was planning to build a water purification plant on the nearby river upstream from town, and had blockaded the road to prevent survey or construction vehicles from accessing the proposed site. The spray-painted slogan made two controversial claims: first, the phrase, "Projects – Like Hydroelectrics, the Orilla del Río Purification Plant and

[14] The name of Orilla del Río has been disguised to protect the identities of those involved in the anti-water purification plant campaign. However, I have opted not to disguise Besikó, the district, and Soloy, the district seat, because they are easily identifiable from government and media publications about the water purification plant.

Others," indicated that Mama Tata followers put the plant in the same category as hydroelectric dams, which were widely hated across the comarca. In particular, Ngäbe in a nearby community were fighting a hydroelectric project known as Barro Blanco, which would soon become operational and displace dozens of families. The banner's mention of dams thus claimed that the purification plant would be another Barro Blanco. Second, the mention of "The Ngäbe-Buglé People and the Besikó Organization" suggested that far more people opposed the project than actually did. In fact, many of the residents of Besikó (the district in which Orilla del Río and Soloy were located) supported the plant, leading to disagreements between neighbors who wanted the project and those who objected.

As I discussed in Chapter Two, one of the issues that Ngäbe had raised with regard to Barro Blanco dam was that of informed consultation. Ngäbe residents claimed that the dam developer violated national community consultation policy by holding a single consultation meeting, outside of the affected area, in Spanish instead of Ngäbere, and failing to notify residents (Puentes Riaño et al. 2013). In the case of the Besikó water purification plant, the question of whether residents had been adequately consulted rose again, with Mama Tata followers alleging that they were not consulted about the plant. But unlike Barro Blanco, and in fact because of Barro Blanco's notoriety, local and national officials organized several meetings in the affected communities, in Spanish and Ngäbere, with many hours dedicated to public feedback. Despite these efforts, community members continued to express vastly different ideas about what it meant to be

informed about the plant; the scope and nature of information needed; and whether true community consultation was even occurring at all.

These disagreements over the water purification plant challenge conventional framings of informed consent and consultation. Legal scholars and activists typically describe informed consultation as a process in which developers from outside a community inform local residents about the details of a project. In this process, expert outsiders possess "factual" information, which they transmit to lay community members. Meanwhile, community members possess questions, opinions, or perceptions, which they share with project developers in order to (hopefully) influence project planning. This formulation presents the knowledge of external professionals as "fact-based" expertise while neutralizing the knowledge of community members by portraying it as "cultural beliefs."

However, in Besikó, the project was conceived, and community consultation run, by local elected officials who were intimately aware of and accountable to local political and cultural dynamics. Any pretense that officials could somehow "inform" community members by giving them "facts" (for example, cost, project lifespan, waterborne illness statistics) about the project, and that these officials would be able to neutralize community responses as "cultural beliefs," encountered fierce resistance from plant opponents. Instead, plant opponents asserted the legitimacy of their own empirical information about the project, pointing to historical and contemporary evidence of government treachery when it came to water projects in Ngäbe territory.

These contests over information underscore the fragility of official knowledge, and undermine popular assumptions about how and what kinds of information end up

mattering to FPIC processes. Opponents' interpretations of "informed" and "consultation" underscored a contentious debate over what counted as expert knowledge and what it meant to be asked one's opinion, revealing that community members were deliberating over a wider range of concerns and social issues than simply the project's merits. While local and national government officials approached the meetings as opportunities to convince residents of the project's desirability, the meetings gave Mama Tata followers public venues in which to reaffirm the concerns and values that mattered most to their religious community. In turn, this reaffirmation validated Mama Tata knowledge as a form of expertise rivaling that of government officials. As such, the Besikó water purification plant demonstrates that FPIC processes provide platforms for community members to reframe a project in unanticipated ways. In short, well-intentioned consultations cannot simply focus on education and dialogue, they must account for the divergent types of knowledge, concerns, and expertise of community members.

II. Background: When Clean Water Creates Controversy

The Orilla del Río water purification plant was part of a national development plan called "Basic Sanitation 100/0," which took place during the administration of Juan Carlos Varela from 2014 to 2019. Although the vast majority of Panamanians—ninety-two percent—already had access to potable water, many rural areas, including the Indigenous comarcas, still depended on untreated or unreliable sources of water (Gobierno de la República de Panamá 2014). The sanitation plan aimed to fill this gap by providing potable water to an additional 300,000 people in underserved areas. Since poor

water quality and inadequate sanitation can cause significant health problems (Prüss-Üstün et al. 2008), the plan was an important step toward improving rural public health. Potable water was an especially critical need in the Ngäbe-Buglé Comarca, where poverty, malnutrition, and limited health services exacerbated residents' vulnerability to water- and sanitation-related illness.

Under the sanitation plan, the government announced it would build two water purification plants in the comarca: one in the district of Ñurum, and one in the district of Besikó (CONADES 2015). But though the Besikó plant was part of the national sanitation campaign, the mayor of Besikó asserted to me that the initial idea had come from local authorities, who had presented the proposal to President Juan Carlos Varela during a presidential visit to Soloy in late 2014 or early 2015. Local officials and residents had for several years called on the state to address water supply problems (Ariel Montenegro 2014, Cortez 2014, Lorenzo 2014), and hoped that the new Varela government would finally follow through.

In March of 2015, at a meeting of national officials in the Ngäbe-Buglé capital of Llano Tugrí, the head of the National Sustainable Development Council (CONADES) announced that the government would fund the potable water project, at that time imagined as a relatively small, $1.2 million upgrade of the existing Soloy aqueduct (Anonymous 2015a, Peña 2015). The following month, CONADES staff announced via Twitter that they had visited Soloy to explain the project, posting a picture of a modest gathering of about a dozen participants (CONADES 2015). By July of 2015, the Besikó proposal had been joined by another proposed water purification plant in Ñurum, and had grown in scope from a $1.2 million project serving only Soloy, to a $30 million project

serving eight nearby communities in the comarca and in the neighboring province of Chiriquí (González 2015). In July, a number of Ngäbe authorities, including the governor of the comarca, the cacique general (the comarca's highest elected traditional leader), and several local officials, reportedly accompanied the CONADES director on site visits to Ñurum and Besikó to identify locations for the construction of the two plants (González 2015).

Construction on the Ñurum plant, which would reportedly provide potable water to twenty thousand people in twenty-six communities in the comarca and the neighboring province of Veraguas (Gobierno de la República de Panamá 2017), proceeded without incident. But the Besikó plant, projected to benefit another twenty thousand residents (CONADES 2016, CONAGUA 2018), sparked debate. A significant factor in this opposition was that the district was the spiritual center of the Mama Tata religion. In 1962, an Orilla del Río woman named Besikó, for whom the district is named, had a vision of two supernatural beings. One was the Virgin Mary, called Mama, meaning mother, and the other was someone Besikó called Tata, meaning father (Ngäbe I talked with sometimes referred to Tata as God, and sometimes as Jesus). Mama and Tata told Besikó that the Ngäbe should unite in solidarity with one another, eschew Latino possessions and customs, and worship God. If they did, God would bring his reign to earth and defeat the enemies of the Ngäbe (Sieiro 1980 [1968]).

The Mama Tata religious movement spread rapidly through the comarca. At the time, Ngäbe were experiencing an acute shortage of farmland due to land-grabbing by Latino[15] farmers, and Ngäbe men had recently lost an important source of wage labor

[15] In Panama, "Latino/a" refers to Panamanians of mixed Spanish and Indigenous ancestry, similar to the term "mestizo/a" elsewhere in Latin America.

when they were kicked off banana plantations following an unsuccessful labor strike (Guionneau-Sinclair 1987). In the midst of this economic and social insecurity, Besikó's teachings gave the Ngäbe a sense of group identity and hope for a future in which Ngäbe were no longer victimized by Latino-dominated society (Guionneau-Sinclair 1987, Young 1971).

Today, the teachings of Besikó, and in particular the idea that Ngäbe should protect their land and water from outsiders, underpin a strong anti-dam and anti-mine sentiment in the comarca.[16] Thus, when the government first announced that the water purification plant would require a "mini" dam to power the plant in this remote, unelectrified part of the country, Mama Tata followers in Besikó were on high alert. They worried that the purification plant was actually part of a government scheme to finally install a hydroelectric project in the comarca. Although subsequent versions of the project swapped the mini-dam for the installation of electric lines, Mama Tata believers were still offended that comarca water would be shared with nearby Latino communities, and that this water would be taken from a location that was of foremost importance to the Mama Tata faith.

These factors explain why some Mama Tata followers would insist that the basic sanitation plan hid sinister motives to appropriate Ngäbe water, and why they mounted a vocal resistance to the water purification project. Their resistance took various forms, from the roadblock in Orilla del Río, to marches in the street, to pointed questions and

[16] There are no data on how many Ngäbe identify as followers of the Mama Tata movement, but I found Mama Tata beliefs about protecting Ngäbe resources from outsiders to be common even amongst people who formally identified as members of other religions. The anthropologist Phillip Young, who conducted fieldwork in the Ngäbe territory during the original movement, said that the movement had such a widespread impact that every Ngäbe, even if not directly involved, was at the very least influenced by Mama Tata doctrine (Young 1971, 212).

impassioned speeches at community meetings. In this tense atmosphere, the extensive efforts on the part of national officials and local Ngäbe leaders to convince the protestors that the plant was not "Barro Blanco Number Two," simply became further evidence that the government was trying to steal Ngäbe water. Community meetings about the plant, meetings that officials imagined would inform and educate Mama Tata followers, instead became venues for followers to assert their own interpretations of the government's actions, and to argue for the continued salience of Mama Tata teachings.

III. Beyond the Information Deficit Model: Information, Expertise, and Social Ties

Scholars and human rights advocates argue that states, corporations, and/or researchers must attend to political dynamics and social factors within Indigenous communities in order to carry out meaningful free, prior, and informed consultation or consent. This literature, while helpfully highlighting factors that contribute to community decision-making, presumes that FPIC processes are always characterized by sharply defined stakeholder roles: the state versus the "community," or those who are "outside" versus those who are "inside" a distinct cultural group. Written for an imagined audience of outsiders, these characterizations frequently assume that knowledge transfer is unidirectional, that people on the outside inform those on the inside.

But what about instances in which the people who initiate projects and manage consultations are not outsiders but Indigenous officials—representatives of the state who are local residents and cultural insiders? As FPIC becomes more common worldwide, and as more Indigenous communities develop their own internal governance structures or run their own FPIC procedures (see Erazo 2013, Fredericks 2017), it is important to

interrogate these stereotyped stakeholder roles, and to understand how they play out in locally initiated development projects. In particular, what purpose might these outsider-insider categories serve for those who are on the inside contemplating projects proposed by others who are also on the inside? How might these categories manifest themselves in community consultations, and to what ends?

In Besikó, this outsider-insider trope was salient to water purification plant opponents, who used the outsider category as a foil for their own Ngäbe values and priorities. However, while this strategy had worked well in the struggle against Barro Blanco dam, in which outsiders were clear antagonists, in Besikó, the task of unifying local residents against the plant was more challenging. In contrast with Barro Blanco, many residents supported the purification plant, and the project had been proposed by local officials. The fact that many of their neighbors were inclined to accept the plant raised the stakes for Mama Tata followers, who risked accusations that they were standing in the way of their community's health. Thus, framing the conflict in terms of outsiders versus the community was both harder to achieve than in the case of Barro Blanco, and even more important.

To accomplish this line-drawing, Mama Tata followers mobilized the Ngäbe category of *sulia* ("SOO-li-a": literally, "cockroach;" a derogatory term for Latinos and foreigners), which refers to non-Ngäbe people, things, and customs. Ira Bashkow (2006) describes a similar category in Orokaivan communities in Papua New Guinea, where the category of "whiteman" served as a stereotyped counterpoint to Orokaivans' own moral universe. Like the "savage slot" in Western culture (Trouillot 2003), the "whiteman" category helped Orokaivans interpret their experiences of development and modernity,

showing them who they were as Orokaivans by demonstrating who they were not. For Ngäbe, the sulia category serves the additional purpose of reminding them that outsiders pose an existential threat to the Ngäbe people. Anti-plant Mama Tata followers used this category to invoke historical and contemporary experiences of Ngäbe dispossession, a tactic that helped them consolidate opposition to the project and promote Mama Tata beliefs as an antidote to sulia oppression.

To remind Ngäbe listeners of the line between sulia and Ngäbe, Mama Tata followers directed their complaints at the state, focusing on the primary state-community point of encounter: informed consultation. Informed consultation relies on two core assumptions: a) a community simply needs enough information in order to make the best decisions for itself, and b) a community should and/or will trust the expert information that is provided to it. However, scholars in science and technology studies (STS) have long critiqued this "information deficit" model (Irwin and Michael 2003, 19-40), arguing that it overlooks the extent to which public trust of official information depends on how peoples' social identities position them vis-a-vis government officials, experts, and other publics (Wynne 1980). In one study, Brian Wynne (1992) describes how English sheepfarmers viewed government scientists as both arrogant (pretending to know a lot when they knew little) and conspiratorial (hiding information). While these two views seem contradictory—how can scientists know nothing and also know secret information?—Wynne points out that they worked in tandem to "deconstruct and delimit the authority of the social control which science represented" (Wynne 1992, 294-95). When the farmers felt that the government scientists challenged their agricultural

expertise and thus their social standing, they framed scientific knowledge in ways that limited the scientists' power.

In short, official knowledge can be contested by publics who see this knowledge as a challenge to their identities. Contrary to accounts of the state as exerting its power through official knowledge (e.g., Foucault et al. 1991, Scott 1998), this knowledge is vulnerable to challenge, and often coproduced by state agents and lay publics (Jasanoff 2005, Mathews 2011). This vulnerability in turn highlights the riskiness of forms of consultation that rely on government officials "informing" local publics: performances of expert knowledge on the part of the state may elicit counter-performances of other forms of knowledge, in an attempt to assert the primacy of other ways of knowing.

Sociolinguist Summerson Carr refers to these performances of expert knowledge as "enactments of expertise": performances whose success relies on "casting other people as less aware, knowing, or knowledgeable" (2010, 22). This emphasis on expertise as performance rather than as quantity or type of knowledge destabilizes assumptions about who counts as an expert and who does not. The displays of knowledge that Mama Tata followers produced were as much "enactments of expertise" as those of government officials, and competed to demonstrate the correctness and legitimacy of Mama Tata knowledge over official knowledge.

In competing with official knowledge, Mama Tata followers deployed enactments of expertise that raised doubts about two different aspects of informed consultation. First, they questioned the kinds of knowledge that supposedly indicated being "informed" about the water purification plant, asserting that Mama Tata understandings of nature and of sulia made them better informed than plant supporters. Second, they challenged the

official mode of knowledge delivery—consultation—by maintaining that they had never been consulted, despite the many community meetings government officials held to discuss the project. Like Wynne's English sheepfarmers, they recast the officials as both conspiratorial and arrogant, as both knowing that the plant was part of a sulia plot to steal Ngäbe water, and as unwitting dupes of sulia schemers. In contrast to these officials, the Mama Tata followers were experts at spotting government treachery. By challenging government knowledge and casting it as the product of sulia deception, Mama Tata followers reminded Ngäbe of the urgent need to protect comarca resources, and ultimately reinforced the validity of Mama Tata knowledge.

IV. A Tale of Two Meetings: Public "Consultation" in Soloy and Orilla del Río

Two contrasting water purification plant "consultations" (I leave the word "consultation" in quotations to emphasize its debatedness) illustrated how community members approached information and the concept of consultation in drastically different ways. The first meeting I attended took place in Soloy in October of 2015. With a population of approximately 4,100 people, Soloy was one of the most densely inhabited towns in the comarca (INEC 2010d), such that a Peace Corps friend referred to it as a "Ngäbe city" compared to other settlements he had visited. A number of amenities beckoned villagers down from the surrounding mountains, including a health center, a municipal government office, a Catholic mission offering various social services, and a paved road with direct bus service to the regional hub of David. But perhaps the most significant attractions were several schools, including a public elementary school, a privately funded elementary school run by the Bahai Church, a public general high

school, and a specialized high school agronomy program. These educational opportunities drew children from all over the region, and many of the town's houses were actually second or third residences for slightly more financially secure families—those who were able to cobble together enough cash to buy building supplies and pay for school and living expenses while also maintaining farms up in the mountains.

In contrast to Soloy, the smaller, more remote Orilla del Río—where the second meeting took place in June 2016—had a population of around 3,000 people (INEC 2010d), had no high school or health center, and was only accessible by foot, horse, or hardy 4x4 truck. However, it did have an elementary school, and local residents had heard a rumor that they were on the list to receive a new "model school" (including, incongruously, an artificial turf soccer field)—an improvement meant to highlight the government's commitment to rural education. Overall, education outcomes were slightly lower in Orilla del Río: students completed on average just three years of education compared with Soloy students' four, and thirty-four percent of the Orilla del Río population was classified as illiterate compared with twenty-four percent in Soloy (INEC 2010c).

In contrast to these differences in population, educational opportunities, and means of transportation, Soloy and Orilla del Río had similar experiences when it came to water availability. Historically, most comarca residents were accustomed to having ready access to naturally occurring water sources. Panama's central mountain range captures moist air blowing across the isthmus from the Caribbean, resulting in abundant year-round rainfall on the Caribbean slope, and distinct wet and dry seasons on the Pacific slope, where both Soloy and Orilla del Río are located (Linares, Ranere, and Jay

I. Kislak Reference Collection (Library of Congress) 1980, 7-11). Yet even during the dry season, residents on the Pacific side were able to protect themselves against potential water shortages and water-borne illness by situating their homesteads far apart, and in places with access to multiple springs (Fitzgerald 2009, 2019). The constant presence of water reveals itself in Ngäbe stories and rituals, such as the creation chant that proclaims, "God sings, 'my house is wet'"—reminding listeners that the world God gave the Ngäbe is full of water (Fitzgerald 2009).

However, as the Ngäbe population has grown and people have moved to towns like Soloy and Orilla del Río for access to school, work, and social services, water availability and quality have become less reliable. Particularly as climate change makes rainfall patterns increasingly erratic, the need for reliable potable water will grow ever more pressing.

In Soloy and Orilla del Río, these needs were met to some extent by town water systems that tapped local springs, providing supposedly potable water[17] to approximately forty percent of each population (INEC 2010a). Households that could afford to buy PVC piping could connect themselves to the town lines, while others made use of centrally located communal spigots. However, the systems were vulnerable to the vicissitudes of weather, livestock, and human carelessness. Some summers, the springs dried up, but even when water was plentiful, accidents happened. In one instance, a passing SUV crushed a PVC pipe exposed after a heavy rainstorm, cutting off water to my host family's Soloy neighborhood for months. In another, a neighbor's giant pig climbed onto my hosts' outdoor sink to steal a bar of laundry soap, his quest for a sudsy snack ending

[17] At least one study found Soloy's town system to contain bacteria indicative of fecal contamination. See Halpenny, et al. 2012.

in a cracked spigot. This unreliability meant that people frequently washed clothes and bathed in the nearby river, and consumed water from small springs scattered about the hillsides. Thus, on one hand, residents were familiar with the idea that water could be a convenient (if capricious) public service, and on the other, they knew that nature usually provided for their water needs somewhere, for free.

Soloy: "We're here in the light of day because we know this will benefit the community"

It was against this backdrop that community members convened to discuss the proposed water purification plant. The Soloy meeting took place on the shady open-air basketball court of the local high school. The meeting was coordinated by my host sister, a public official in her late thirties I will call Patricia, who had been appointed by President Juan Carlos Varela to help execute national programs and serve as a liaison between the national government and the comarca. Wearing a freshly ironed *nagua* dress and a traditional broad-brimmed hat, she took the center seat at the folding table set up at one end of the court.

Officially, this consultation should perhaps have been organized not by Patricia, but by the highest elected body in the territory, the Ngäbe General Congress. The comarca charter stipulates that all projects must undergo an environmental impact assessment carried out under the auspices of the General Congress, and that the assessment must include community consultation (República de Panamá 1997). However, several factors make this requirement all but impossible to fulfill. First, the General Congress has no budget or personnel with which to carry out such an assessment, and as far as I was able to ascertain, has never been able to comply with this requirement.

Second, because of a long history of interference by the Panamanian government, Ngäbe often question the decisions of the General Congress, and accuse their leaders of colluding with developers and the government. As such, even if the Congress were able to conduct an environmental impact assessment, its outcome would likely be suspect in the eyes of many Ngäbe. Third, given Ngäbes' strong sense of regional identity, it is likely that a top-down General Congress decision to intervene in the work of the district government would be highly controversial. Thus, in practice local governments were left to do the best they could when it came to community consultation. And Patricia, a well-known anti-dam and anti-mining activist as well as high-ranking official, was a logical choice to oversee the meeting.

To Patricia's right at the table sat one of the area's caciques (an elected leader responsible for protecting Ngäbe land and culture), and at the far end sat the councilwoman for Soloy. On Patricia's left sat two Latino men: the director of the National Council for Sustainable Development (CONADES), which was overseeing the implementation of the Basic Sanitation Plan, and one of his staff. To one side of the table stood the president of the local water committee, whose job it was to keep the existing aqueduct infrastructure operating smoothly, and who was in charge of running the current meeting. At least thirty people—a mix of schoolteachers, parents, residents, and other CONADES staff—sat in rows of chairs facing the head table or stood on the edges of the court.

After a brief call to order by the water committee president, the first two people to speak were Latino teachers (because of a lack of educational opportunities in the comarca, there are few professional Ngäbe teachers). The first was a woman who taught

science at the elementary school in Soloy. She explained that the primary school often had no running water, which meant that students and teachers could not wash their hands, nor could the school staff prepare meals for the children. This latter point was significant because many students walked long distances to come to class, and the absence of school meals meant that they might not have anything to eat from the time they left their houses early in the morning until their return home in the afternoon. Another teacher, a man who had come all the way from Orilla del Río, said that even though he and many other teachers were not Ngäbe, they had the right to clean water because they too lived there. Claiming that the river was dangerously polluted, he attested that the water purification plant would "guarantee the health of the entire population."

Coming from educated professionals whose job it was to care for children, these comments may have carried special weight for many in the audience. Not only were the teachers authority figures who had more education than most Ngäbe parents, their speeches tapped into common Panamanian discourses about rural poverty, inadequate rural schools, and dirty rural and Indigenous spaces. Many Ngäbe listeners would have recognized these allusions from media coverage or previous experiences with state interventions, which often cast Indigenous peoples as the poverty-afflicted targets of piecemeal government or nonprofit schemes—like the rumored model school in Orilla del Río—to fix entrenched poverty and systemic discrimination. Recognizing these widespread tropes of underdevelopment, many listeners would have concurred with the teachers that not having potable water (and therefore having to drink dirty water) was a sign of poverty, and that it was admirable that the government was finally offering a solution.

But not everyone agreed. After the teachers spoke, a Ngäbe man gave a speech admonishing the audience about the need to protect water sources. These comments initially struck me as being in support of, if slightly tangential to, the water purification plant—after all, I thought, providing clean water would seem to complement water protection efforts. But then I heard him use the terms *hidroeléctrica* (hydroelectric dam) and *potabilizadora* (water purification plant) interchangeably, signaling that he put the plant in the same category as a detested dam. I later learned Ngäbe would have understood the comments about water protection as references to the Mama Tata teaching that global calamities like drought would occur if Ngäbe did not protect their water and land from outsiders. For the speaker, "protection" not only meant keeping water supplies clean and available, it meant safeguarding Ngäbe water for Ngäbe only.

In response to this allusion to Mama Tata teaching, several people from the Mama Tata seat of Orilla del Río spoke up in favor of the project. One man introduced himself as a member of a parents' committee, and stated emphatically that the community wanted the project. He alleged that during meetings that had been held in Orilla del Río, those who spoke against the project were not actually from the community, but were from Mama Tata villages in other parts of the comarca. Many Ngäbe have strong kinship-based regional identities, which sometimes serve as the basis for divisions between locals and those who are from other areas. In one example, my host, Fabiola, told of having been kicked out of a local artisan's cooperative because she was not from Soloy, even though she had lived in Soloy for close to thirty years. In another instance, when Patricia found out that other Soloy residents had given me the surname "Soloygöbu," the Ngäbere last name of people from Soloy, she promptly renamed me after her mother's place of

origin (a town several hours' walk away), which Patricia considered her own hometown even though she herself had been raised in Soloy. Thus, the possibility that people from outside Orilla del Río were supposedly standing in the way of clean water would have rankled many residents.

Following the comments from Orilla del Río parents, Patricia spoke from her seat of honor at the head table. She reminded everyone that area residents had taken part in the massive anti-mining and anti-dam protests that had blocked the PanAmerican Highway in 2011 and 2012. If the "rebellious" (as she put it) people of Soloy thought that the plant was a dam, she said, a huge crowd would be at the meeting to protest. Instead, the sparse attendance indicated that the community found the project acceptable. However, she allowed, the decision was not hers to make, but the community's. She exhorted everyone present to be spokespeople for the project and explain to the community that it was not a hydroelectric dam. She concluded by bringing her own activist reputation to bear, reminding people that she had been "in the fight" (*en la lucha*) against Barro Blanco, and that she would be the first person to reject the project if it were a dam.

After Patricia gave her comments, the National Director of CONADES launched into a detailed explanation of the project, beginning with an emphatic declaration that the project was not a hydroelectric dam. He clarified that, whereas a previous version of the plan had proposed a "*mini hidroeléctrica*"—a mini-dam—to generate electricity for the plant, CONADES had responded to community concerns by redesigning the plans so that a dam would not be needed. Instead, electric lines would be extended up to Soloy from the main transmission lines that ran along the PanAmerican Highway south of the

comarca. This modification meant that Soloy would receive not only clean water, but electricity as well. He then discussed the minutiae of the project, including the cost of the iron pipes and the expected 20-to-25-year lifespan of the plant.

As he talked, his speech grew faster and more staccato. “We’re here in the light of day because we know this will benefit the community,” he said, emphasizing the transparency with which CONADES sought to carry out the project. If this were a matter of a sacred site, he said—alluding to the fact that the filling of the Barro Blanco reservoir would soon flood ancient Ngäbe petroglyphs—that would indeed be of grave concern, but this project was about providing potable water. He said emphatically, “I will sign any document this very day,” vowing that the project would be exactly as he described.

Following the presentation by the CONADES director, a Ngäbe doctor from the health center spoke about the need for the water purification plant. He claimed that eighty percent of medical cases at the health center were due to the use of non-potable water contaminated with excrement. Given this fact, he said, “I just don’t get who could be opposed [to the project]. I just don’t get it.” His professional testimonial resonated with the CONADES director and his colleague, for the two Latino men leaned forward in their seats, excited to hear this medical professional giving concrete evidence about the need for the plant.

After other participants asked the CONADES director questions about which communities would be served by the plant and whether the plant would provide jobs, the Soloy councilwoman spoke up from her end of the table to promise that “we,” meaning those at the meeting who supported the project, would commit “ourselves” to educating (*orientar*) those who were against the project. The CONADES director then encouraged

those who were against the project to explain why they did not want it, so that their concerns could be answered point by point. Together, the director and the councilwoman's comments suggested that the officials were not interested in acting on public concerns, but rather sought to show why people's concerns were unfounded.

In response to this call for opposing viewpoints, a man wearing a green t-shirt stood up to speak. He began by identifying himself as a politician with the Democratic Revolutionary Party, the political party of the late dictator General Omar Torrijos, and the party to which most Ngäbe belonged. Reading from prepared notes, he explained that he was concerned about the protection of the forests above the river, and that he worried about a countrywide, or even global, drought. While this commentary about forests might have seemed irrelevant to the discussion of the water purification plant, many Ngäbe would have noticed the Mama Tata themes of protecting Ngäbe resources and avoiding global calamities like drought. In concert with his green shirt and political party membership—green, signifying nature, was an important Mama Tata color, and Omar Torrijos was one of the first national leaders to recognize the Mama Tata movement—the man's speech signaled his allegiance to Mama Tata ideals. The CONADES director, faced with the reality that these comments were incommensurable with the "fact"-based questions he was prepared to answer, was conspicuously silent.

In contrast to the politician's cautionary Mama Tata appeal, the next speaker had several concrete questions. Explaining that he did not have a job, the man asked, how much am I going to pay for water? How much will the community have to pay? The director responded by asking him rhetorically, how much is it worth to you to have water at home twenty-four hours a day, thirty days a month? He continued by explaining that

the government subsidized the water, such that in rural communities, households paid just two to three dollars per month.

A woman wearing an orange nagua interjected to point out that being sick also had a cost. The Ngäbe doctor chimed in, reminding the audience that being admitted to hospital was very expensive. The woman continued, saying that the people up in the mountains shouldn't be condemned for their cultural concerns, but that they should be made aware (*concientizado*) of how to avoid polluting the water. Her comment turned the Mama Tata speakers' comments about water and forest protection back on them, portraying them as uninformed yokels who were the ones responsible for polluting the water in the first place.

The doctor picked up on this theme and began to criticize what he saw as the hypocrisy of Mama Tata followers. With sardonic humor, he claimed that, despite the Mama Tatas' supposed rejection of outside goods and customs, they often asked him to prescribe them medications (Mama Tata believers were said to prefer traditional botanical remedies), and did so by messaging him on WhatsApp. Many in the audience laughed. Do they walk to Veraguas?, he continued rhetorically, referring to the next province over. No, they take the bus! Another wave of laughter swept the crowd. As he made fun of Mama Tata followers for taking the bus, he gestured with car keys in one hand, communicating both wealth—few people in the comarca had cars—and busy importance, as if he had just rushed over from the health center (a five-minute walk away).

When the laughter subsided, the CONADES director returned his focus to the man who had asked about the cost of water. "This is not Barro Blanco Number Two," he

said emphatically. The director asked the man to come to a meeting in Orilla del Río and ask the same questions there, so that the people there could hear the full story and be completely informed about the purification plant. The meeting adjourned with this appeal, resonant with the information deficit framework, that people come share their views and questions at a future meeting in Orilla del Río so that the Orilla del Río residents could have complete and accurate information about the project.

Orilla del Río: "The intent of the project is to enslave us"

Nine months later, in June of 2016, I attended a subsequent meeting about the purification plant, this time in Orilla del Río. I rode to the meeting in the back of one of the 4x4 pick-ups that serviced the rutted route connecting Orilla del Río with Soloy. In the truck with me were my host parents from Soloy, Gerónimo and Fabiola, one of the area caciques, and a dozen other meeting-goers. (Patricia did not attend, as she had been fired from her government position in late 2015 and replaced with someone more loyal to the Varela government.) Gerónimo, Fabiola, and the cacique were attending because they supported the water purification plant, and worried that Mama Tata followers would prevent the plant from being built. Gerónimo and Fabiola identified as Catholics, but as adults in their 60s, they had grown up during the rise of the Mama Tata movement, and had family, close friends, and neighbors who were Mama Tata believers. Moreover, their decades of involvement in the comarca demarcation struggle and anti-mining and anti-dam protests, movements propelled in part by Mama Tata activism, had often aligned them with Mama Tata believers and given them an appreciation for the ethnic identity- and sovereignty-focused tenets of the faith.

We disembarked at the crossroads in Orilla del Río, just a few hundred feet from the grave of Besikó. The Mama Tata roadblock was still in place, preventing passage up the road to the next village. The district government had clearly invested time and effort into organizing the event, because we could see that a sturdy wooden stage had been built, complete with a gas-powered generator, speakers, and a microphone. The mayor and several other local elected officials sat at a table on the stage or stood nearby. Approximately a hundred spectators—far more than had attended the Soloy meeting—milled around the stage, sat on the shady embankment across the road, and gathered in front of the small shops scattered around the intersection.

Many attendees scowled at me, suspicious that I had something to do with the water purification plant (why else would a *sulia*, an outsider, take an interest in this meeting?), or perhaps connecting me with Patricia, Gerónimo, and Fabiola. I asked the local officials if I could present myself and explain why I was there. As the meeting got underway, the master of ceremonies called me up to the stage. In faltering Ngäbere, I tried to present myself and explain my research. "Ti edtaba, ti muae," I stuttered into the microphone, attempting to use the traditional "my brothers, my sisters" greeting with which I had heard many Ngäbe begin speeches. I switched to Spanish and explained that I was studying the right of free, prior, and informed consent, which, I said, meant the right to say yes or no to projects like the purification plant. I attempted to translate "consent" into Ngäbere, stumbling over the phrase Fabiola had taught me: "Ti tä mä tui gae," which meant, "I want to know what you think." The audience laughed at my attempt. I wrapped up my speech and stepped down from the stage.

One of the first speakers was the cacique with whom I had ridden to Orilla del Río. He started by mentioning a reviled cacique who had signed off on the detested Barro Blanco hydroelectric project. In contrast with the disgraced cacique, he said, "You're not going to find my name on any document." Having thus professed his loyalty to the Ngäbe and his hatred of Barro Blanco, he turned his attention to the matter of the purification plant. Although he had attended the Soloy community meeting in October 2015, he offered a *mea culpa* about the consultation process, saying, "There was no consultation, it's true. Today is a consultation. It is a dialogue about what we ought to do. The community should have been consulted." He then explained that there was a difference between a *mini*-hydroelectric dam (emphasizing the "mini"), large mining or dam projects, and a water purification plant. "Those who knew had to *blidte juntado*" he said, code-mixing the Ngäbere word for "to talk" with the Spanish word for "together" to emphasize the idea of a collective discussion. Those in the know should have explained "the benefits, what are the advantages. We needed to inform ourselves."

He continued, "I am not against [the project]. Among us all, [we should] analyze the projects. If there is a project, first there must be a public consultation." To communicate the mundane, benign nature of the plant, he said, "In Panama City, sometimes they take to the streets when there is no water. But never have I heard of people taking to the streets because of a water purification plant. They tell me it's normal." He closed with a warning that this chance to have potable water might not happen again for a long time: "There will not be another opportunity."

When the cacique finished, the master of ceremonies, an animated Ngäbe man I didn't recognize, took the microphone from him and continued with the theme of the

meeting being a consultation, saying, “The decision rests in the hands of the people.” He then reminded everyone that the Ngäbe had fought for many years to be able to make their own decisions. He added, “They have the right to protect (*velar por*) what is theirs. They have the right to analyze it.” He then said, “If we don’t consult, we fail.” His speech, while seeking to appease the listeners by acknowledging their rights, their ability to analyze the “facts,” and the government’s responsibility to consult, also sought to reinforce government authority by emphasizing the paternalistic obligations that “we” (public officials) bore to “they” (the audience). He concluded, “The Ngäbe people *do* have rights.”

Following his mention of rights, a woman got up and spoke. “The people have the right to say yes or no, and the people know to which projects they will say *yes*, and to which they will say *no*.” I noticed that she was using the “right to say yes or no” language that I had used earlier, borrowing my professional-sounding terms to legitimate her argument. Her emphasis on the “no” implied that everyone in the audience believed the Ngäbe would say no the project.

Then it was the mayor’s turn to speak. He started out by addressing the Mama Tata followers. “I am not against anyone here,” he said. “You are Mama Tata, I too am Mama Tata.” Next to me, Fabiola, who had known the mayor for many years, laughed skeptically at this claim. “You have the right to protest, but peacefully, not closing the street. This is against the law, those rocks in the street. Mama Tata, you are religious, I am also religious. Enough is enough.” Then he switched to defending the consultations that had been carried out: “A consultation has already been adequately done.” He

continued by arguing that the project would benefit everyone, concluding, “Let us support projects that are good.”

By this time, I could distinguish who in the crowd supported or opposed the plant based on which comments they clapped for. People offered loud, demonstrative applause for statements with which they agreed, and pointedly withheld applause from statements with which they disagreed. These divisions were especially evident when a Mama Tata preacher began to speak. While his lecture was solely in Ngäbere, and I understood little except for the words *sulia*, *hidroeléctrica*, and *potabilizadora*, I saw that plant opponents clapped energetically and often. (Gerónimo later told me that the speech had included derisive comments about my inability to speak Ngäbere.) The master of ceremonies, perhaps acknowledging the preacher’s popularity here in the Mama Tata seat, let him talk far longer than any other speaker.

After the preacher concluded his lengthy remarks, a reserved-looking woman who was one of the leaders of an anti-purification plant group called Mírono Crono (named for a mythical Ngäbe hero) climbed to the stage. Alternating between Spanish and Ngäbere, she elicited frequent applause from the anti-plant contingent. “We have the right to participate because we elect you,” she said in Spanish. “There are things that are being hidden. The truth must come out.” The plant opponents clapped loudly. “We don’t want *any* projects in the comarca,” she said forcefully. She then segued to everyone’s most hated project, Barro Blanco: “They want to negotiate over Barro Blanco because they received payments for new houses,” she said, suggesting that some Ngäbe in the Barro Blanco area had agreed to the project in exchange for houses. She continued, saying that Ngäbe needed to continue the fight “until we see the president’s signature”

promising that the dam would not be built. This time there was loud applause from the entire the crowd. Barro Blanco was everyone's common enemy.

She continued, reading a resolution that Mírono Crono had passed a few days earlier, stating that "The entire Mama Tata community of Besikó […] declare ourselves to be against all projects and the water purification plant. […] No private company shall be allowed within the comarca, in order to keep the area free from pollution."

After the hearty applause died down, the master of ceremonies attempted to counter her well received speech. He said, "If someone is against [the project], then they need to have an alternative proposal." Those in the crowd who supported the purification plant clapped loudly.

The Mírono Crono leader responded. Our proposal, she said, is "emphatic cancelation of the project!" The anti-purification plant contingent clapped loudly and enthusiastically.

Another member of Mírono Crono got up to speak. He began by begging forgiveness for not speaking Ngäbere, avowing that "my mentality is more *indio* than you all." *Indio* means "Indian" and is often used as a slur by Indigenous and non-Indigenous alike. I had heard Ngäbe use it to refer to themselves and other Ngäbe when they wanted to call attention to behaviors or opinions they viewed as backward, or as in this case, characteristics that supposedly distinguished Indigenous people from Latinos. Given the man's age (he appeared to be in his late forties or early fifties, a generation that was largely raised speaking Ngäbere at home), his lack of Ngäbere language skills suggested that he was either Ngäbe and had grown up outside the comarca, or that he was a Latino who had married into a Ngäbe family. The fact that he knew to offer a disclaimer about

his lack of language skills indicated that he was familiar with the Ngäbe language ideology that viewed Ngäbere proficiency as an indicator of authentic Ngäbe identity.

"The project itself is not bad, but the intention of the project is harmful," he said, to loud applause from the plant opponents. Speaking to the officials on the stage, he said, "You all at this table, you say that you are Mama Tata [believers]. When you say this, you are speaking of Besikó, and this project will bear the name of Besikó." He implied that constructing the purification plant in Besikó would desecrate the name of the Mama Tata founder. Still speaking to the officials he said, "You refused to consult the community. You say, 'Consulting the community is a waste of time.'"

Then he switched to a common Mama Tata theme, the idea that others were trying to do away with the Ngäbe. He said, here we are fighting amongst ourselves while they are thinking of how to finish us off. They have a plan to finish us. A plan to take our water away from us. The anti-purification plant crowd clapped loudly. He started describing what he had seen on the CONADES website, that CONADES explained plans for a second water intake location, and that some of the water would go to places outside the comarca.

His tone turned sinister. "The intent of the project is to enslave us," he said, implying that free water was essential to Ngäbe freedom. "There are many things that have not been said [about the project]." He continued, saying, if they are not giving us complete information, how can we inform ourselves? Furthermore, he claimed, not just the people of Besikó were opposed to the project, but people in all three regions, because: "It is a threat to the comarca. If it happens anywhere in the comarca, it is a threat."

He returned to the role of the officials in addressing this threat to the comarca. “A solution must be sought,” he said. “Here are the authorities. It is up to them to find a solution.” In order to prevent what he called “a second Barro Blanco,” he called on the authorities to hold another meeting to reconsider the information.

When the clapping died down, Antonio Cruz, a leader from the governing board of the General Congress (the comarca’s highest governing body) took the microphone. Having won office in a contentious election just four months earlier, he appeared to be trying to assert his authority and court Mama Tata voters. Repeating the cautionary rhetoric of the previous speaker, he warned, “The Latinos are our worst enemy. They never supported the creation of the comarca.” He continued with another example of how Latinos were trying to steal from the Ngäbe: “The Latinos are learning traditional medicine in order to take it for themselves.” But, he continued, mockingly, “when they have diarrhea, they take something for a headache, and we know very well that that’s not going to work.” In making fun of Latinos’ supposed inability to use Ngäbe medicines, he unknowingly paralleled the Ngäbe doctor’s criticism of Mama Tata followers who sought out Western medications.

He continued by arguing that the General Congress was the highest authority in the comarca, and that in violation of the law, the Congress had not been given any document about the purification plant. Next, he drew further distinctions between Ngäbe and outsiders, claiming that other countries were suffering with pollution, and stating that it was important to find ways for the Ngäbe to live in a healthy environment. He closed by asserting that sulia had always wanted to hold the Ngäbe back, prompting cries of “That’s right!” from the anti-purification plant contingent.

The meeting continued, but, anticipating a crush of travelers when the meeting concluded, Fabiola, Gerónimo and I decided to return to Soloy when the next transport truck pulled up. It was clear from the dramatic speeches and divided crowd that no easy resolution to the conflict lay in sight.

V. Debating What It Means to "Be Informed"

These two meetings were distinct in attendance, content, and tone. For the Soloy meeting, despite its location in the district's largest town, the audience was relatively small. Most speakers supported the purification plant, including a number of highly educated individuals, such as the doctor, schoolteachers, and the CONADES officials. Several of these speakers were Latinos, and the meeting was conducted almost entirely in Spanish. In addition, the meeting served to both educate community members about the project through the explanations of the CONADES officials, and to allow residents to talk about why they supported or opposed the plant.

In contrast, the Orilla del Río crowd was at least three times larger. Many of the speakers addressed the crowd in Ngäbere, and except for the elected officials, most of the people who spoke were critical of the water purification plant. Moreover, whether intentionally or by happenstance, the meeting served mainly for community members to share their concerns that the plant was harmful, to criticize public officials for not consulting them, and for officials to defend their actions and insist that the plant was a worthwhile project.

Beyond the basic differences between the two meetings, the attendees also positioned themselves differently with regard to several themes. The first theme was that

of the primary purpose of the water purification plant. For instance, most people who spoke in Soloy assumed that the purpose of the plant was simply to provide clean water and improve public health. By contrast, speakers in Orilla del Río questioned the true nature of the plant, arguing that, as one person put it, "The intent of the project is to enslave us." Thus, although officials at both meetings vowed that the plant was not "Barro Blanco Number Two," the purpose of the project remained highly contested.

The fact that the fundamental purpose of the water purification plant could be questioned led to further disagreement about a second theme: what it meant to be informed about the project. Here, I use "be informed" in both senses of the phrase: to be given information, and to be knowledgeable or "well informed." For the Soloy attendees, being informed referred to being given information about the technical details of the project, such as how much the water would cost, and the fact that the plant would rely on electricity delivered via power lines and not via a mini-hydroelectric dam. In addition, being "well informed" meant understanding the health risks of contaminated water, the impact of drought on water supplies, and the logistics of feeding schoolchildren when there was no clean water.

Alongside these examples of practical information, people in Soloy also indicated that being informed, as in the sense of being a knowledgeable person, referred to whether or not someone believed that the purpose of the water purification plant was to improve public health. Speakers' calls to educate (*orientar*) and make Mama Tata followers aware (*conscientizar*) revealed an assumption that being informed meant knowing that the plant was necessary and in the public interest. In this context, the two Mama Tata speakers

who emphasized the need to protect Ngäbe resources were painted as *un*informed, and in need of education.

Meanwhile for many in Orilla del Río, the discussion of being informed revolved around far different types of information. First, "being informed" referred to the fact that officials supposedly were *not* giving complete information, that they were intentionally keeping the community in the dark. Second, it referred to *knowing* that the officials were withholding information, and third, to knowing that the project was a government plot. Echoing the English sheepfarmers' "arrogance theory" and "conspiracy theory" (Wynne 1992), the female member of Mírono Crono warned, "There are things that are being hidden. The truth must come out." She simultaneously criticized the officials for hiding details, and demonstrated her own awareness of the concealment. She and other speakers sought to distinguish themselves as knowledgeable people by suggesting that being informed meant knowing that the water purification plant was part of a government plan to "take our water away from us." Thus, in arguing that the purpose of the project was to "enslave" the Ngäbe, the Orilla del Río residents asserted that they were in fact better informed about the government's motives and tactics than were their plant-supporting neighbors.

Another theme on which meeting attendees expressed divergent points of view was that of consultation. From early 2015 through late 2017, officials held a number of community meetings about the water purification plant, some of which took place in Orilla del Río.[18] However, despite these meetings, attendees and officials in Orilla del

[18] The Besikó mayor asserted to me that at least fifteen meetings had been held; the CONADES director claimed in a press interview that at least eight meetings had been held (Abrego 2017); between the two meetings I attended and four others that were documented online by CONADES and other attendees, I know there to have been at least six.

Río debated whether or not the community had been consulted. In one instance, the Latino speaker alleged, "You refused to consult the community. You say, 'Consulting the community is a waste of time.'" In direct rebuttal, the mayor insisted, "A consultation has already been adequately done." Meanwhile, other officials professed ambivalence about whether consultation had occurred. In one case, the cacique, who had attended the earlier meeting in Soloy, said, "There was no consultation, it's true. Today is a consultation. It is a dialogue about what we ought to do. The community should have been consulted." On one hand, his statement agreed with the anti-dam speakers that there had been no consultation. But at the same time, he attempted to classify the current meeting itself as a consultation, and to define consultation as a community dialogue. In short, Orilla del Río meeting-goers, including public officials, communicated a range of opinions about what consultation was, whether it had occurred, and whether it was happening in that very moment. And that debate continued even a year later, when press coverage of a protest against the purification plant showed Orilla del Río residents repeating the allegation that the community had never been consulted (TVN Noticias 2017).

Through these debates over what it meant to "be informed" and whether consultation had occurred, meeting-goers in both Soloy and Orilla del Río sought to establish boundaries between those who trusted the government and those who did not. In the Soloy meeting, this boundary manifested itself in terms of who marshaled what kinds of evidence. People who believed that the project was beneficial pointed to evidence like illness rates, the inability to feed schoolchildren, and cost. Meanwhile, plant opponents shared their knowledge that projects that endangered Ngäbe resources imperiled the Ngäbe people. Faced with this completely incommensurable type of evidence, plant

supporters attempted to delegitimize Mama Tata knowledge by alleging that plant opponents were not from the community, or in the case of the Ngäbe doctor's comedic riff, that Mama Tata followers were inconsistent and hypocritical. In doing so, they implied that plant opponents were uniformed, and therefore needed to *be* informed by project supporters.

However, in reality those who opposed the plant did *not* need to be informed; indeed, they never argued with the basic points that dirty water causes illness, or that it was desirable for the school to provide lunch to hungry children. They did not disbelieve this evidence. Rather, they understood that these types of evidence communicated trust that the project was what the government said it was.

In Orilla del Río, this boundary between who believed the government and who did not was even clearer. Plant opponents had several pieces of evidence at their disposal. First, the Ngäbe had centuries of historical experience with death, enslavement, and dispossession at the hands of outsiders. Second, they had direct experience of this dispossession with Barro Blanco dam and other recent hydroelectric and mining projects. Third, the speaker who said he had studied the CONADES website confirmed their fears that the water would be shared with people outside the comarca. To Mama Tata followers and many other Ngäbe, water within comarca limits belonged to the Ngäbe, and any act of taking water out of the comarca to give to outsiders was theft. The fact that the officials at the meeting never addressed this aspect of the project then became still more evidence of their intention to hide information from plant opponents.

Other details further validated this knowledge by playing up conspiracy/arrogance explanations of sulia behavior. In one example, Antonio Cruz, from the General

Congress, described outsiders as scheming to steal Ngäbe botanical knowledge, but not being clever enough to use this knowledge correctly. In another, if Gerónimo's account of the Mama Tata preacher's speech is accurate, even my own lack of Ngäbe linguistic knowledge was marshaled as evidence of sulia ignorance.

Meanwhile, some officials tried to counter this evidence with other types of information, like the cacique who pointed out that Panama City residents viewed water purification plants as normal. Others, like the mayor, attempted to transcend the boundary drawn by Mama Tata knowledge by claiming to also be a Mama Tata follower. However, speakers rebutted these attempts by, for example, claiming that being a Mama Tata believer meant not sullying the name of Besikó with a project that enabled the theft of Ngäbe water.

Sometimes these Mama Tata knowledge claims worked. At the very least, they made community residents reexamine the extent to which they trusted the national government. On a return trip to Soloy in 2019, with the water purification plant nearly complete, I asked Patricia for her thoughts on how the whole affair had turned out. She was disillusioned by the fact that the water and a portion of the water taxes would be shared with the Latino town down the mountain from the comarca. "It's not fair," she said. "It's as if you have a dairy cow and then someone else takes the milk for themselves."

Moreover, she remained suspicious of the government's intentions. Especially worrisome, she said, was the way that the government had connected Soloy to the national energy grid. "Why is the government putting in another triphasic line?" she asked rhetorically, referring to the type of electric system that had been installed. "The

triphasic cable has two objectives." She explained that, because the government had connected Soloy to the main transmission lines from the PanAmerican Highway, and not from the nearby Sábalo dam just outside the comarca, she was worried that the government was indeed installing the infrastructure to carry energy away from a future dam near Soloy. "By itself, it is a water purification plant. But we don't know if they are going to privatize the area." She repeated, "Yes, the triphasic cable has two objectives: to bring energy and to take it away." Thus, even though Patricia herself had been involved in promoting the project, the plant opponents' cautionary assertions of Mama Tata knowledge resonated with Patricia's own understandings of Ngäbe vulnerability to outsiders, leaving her uneasy with the final results.

VI. Conclusion: Competing Forms of Information and Expertise

These disagreements—what the purpose of the plant was, what it meant to be informed, and whether consultation had occurred—challenge conventional framings of informed consent and consultation. For instance, regarding the term "informed," the legal and activist literature on FPIC usually refers narrowly to the benefits and consequences of a proposed project. But Besikó residents showed that "being informed" meant being fluent in broader sets of historical, cultural, and scientific factors. In addition, the pro- and anti-purification plant parties sought to delimit the relevant scope of information so as to prove that they themselves were informed while their opponents were not. For instance, by explaining that the majority of cases in the health clinic were attributable to poor water quality, and by implying that the Mama Tata were misinformed hypocrites, the Ngäbe doctor in Soloy attempted to restrict the range of relevant information to a

Western understanding of biomedical health. In response, speakers in Orilla del Río challenged these constraints, seeking to shift the scope of information to include Mama Tata teachings, collective memories of historical oppression, and contemporary experiences of natural resource appropriation.

These dynamics show that community debate about a project may not revolve around the desirability of a given project, but around meta-discussions of what and whose information is most trustworthy. In a similar vein, the act of consulting itself can be subject to meta-discursive disagreement about whether consultation is truly taking place. In turn, both of these meta-discursive disputes show how broader dynamics of expertise and authority come to shape FPIC proceedings. For example, supporters of the water purification plant, many of whom were well educated or held elected office, were able to easily mobilize certain markers of conventional expertise. The doctor spoke authoritatively about the incidence of water-borne illness; Patricia marshaled her own experience as an activist; the CONADES director provided information about cost and project longevity. Meanwhile, those who opposed the water purification plant demonstrated a different kind of expertise by referencing other aspects of historical and contemporary Ngäbe experience. Amongst those contemporary experiences, Barro Blanco loomed as a still-raw example of how the government allegedly sought to steal Ngäbe water. Less than one month prior to the Orilla del Río meeting, the dam company, GENISA, began filling the reservoir behind Barro Blanco (Arcia Jaramillo and Rivera 2016). Aware of these recent events, the plant opponents used Barro Blanco to push back against the expertise of the CONADES and Ngäbe officials, wielding the dam as evidence of their own superior knowledge of Ngäbe oppression at the hands of the state.

The fact that the officials had to repeatedly insist that that the plant was not "Barro Blanco Number Two" demonstrates how just effective this constant challenging of state expertise was.

Even my own expertise was subject to challenge. When I introduced my research in Spanish and faltering Ngäbere as being about "the right to say yes or no," meeting-goers assessed me to be an educated, wealthy *sulia* who took a suspicious interest in a controversial local development project. Some of my expertise was apparently welcome, as when a female speaker used my "right to say yes or no" phrase to declare that the Ngäbe said "no" to the purification plant. However, my inability to speak Ngäbere was indicative of my lack of Ngäbe cultural expertise, and the Mama Tata preacher used this evidence to diminish my authority in the eyes of other meeting-goers.

These insights speak to how purification plant opponents came to question both the basic information and the public participation processes that took place in Besikó. Local and national government officials assumed that they could convince community members of the project's desirability by creating opportunities for education and dialogue. Instead, the meetings gave Mama Tata followers public platforms for reaffirming the concerns and values important to them as a community of believers. In turn, this process of affirmation validated and upheld Mama Tata knowledge as a form of expertise rivaling that of elected officials, water purification plant supporters, and a foreign anthropologist. In sum, the Besikó example demonstrates that the information deficit model that underlies free, prior, and informed consent and consultation misses critical social dynamics that influence public decision-making. Instead, FPIC processes

may end up revealing the fragility of official knowledge by setting the stage for counter-performances of other types of expert knowledge.

Chapter 5. Cultivating the Multicultural State: Performing Multicultural Recognition at Playa Zapotal

I. Introduction: The Meaning of Salt

I was eating a meal with one of my hosts, Fabiola Mendoza, when out of the blue she pointed to a small plastic bag and declared that it was sea salt, direct from the ocean. I knew that Fabiola usually seasoned her meals with salt branded "Crisal" or "Panasal," which she purchased in one-pound bags at one of the tiny neighborhood shops. Sea salt, then, was something out of the ordinary. But why call my attention to it? Did she want me to comment on the flavor? Uncertain of what to make of this announcement, I told her that the salt was delicious. She seemed satisfied and said no more.

Several months later, the significance of Fabiola's sea salt comment finally crystallized when I learned of a beach called Playa Zapotal. People in Fabiola's district, called Besikó, had used Playa Zapotal for generations, descending to the Pacific to spend the hot summers fishing, playing in the waves, and harvesting salt. Fabiola's partner, Gerónimo, a man in his sixties, remembered how his father would round up the children and set off down the mountain, traveling for most of a day on foot or horseback. Once at the beach, the family would make camp and stay for weeks, enjoying a break from the baking summer temperatures inland.

Ngäbe have probably been harvesting salt on the Pacific Coast for hundreds of years. Historical and archaeological evidence indicates that the ancestors of the Ngäbe once occupied most of western Panama, their lands stretching from the Caribbean Sea in the north to the Pacific Ocean in the south (Cooke 1982). The Spanish launched many

attacks on these settlements, and in 1517 eventually defeated the Indigenous communities living in the southern plains along the Pacific. These defeated groups then fled into the mountains, where they successfully repelled the Spanish for three centuries (Cooke 1982). Today, Ngäbe call the mountains their home, but remember that their ancestors' lands once stretched from sea to sea. During the dry months of December through February, when agricultural responsibilities lighten and schools let out for the summer, the residents of Fabiola's district exercise their claim to the Pacific coast by going salt harvesting at Playa Zapotal.

Ngäbe use the Ngäbere word, *rien* (to cook), or the Spanish words *cosechar* (to harvest) or *cultivar* (to cultivate, to grow a crop), to describe the process by which one makes salt. All of these terms serve as a reminder that time and labor is necessary to turn ocean water into something edible. Months after our initial salt conversation, Fabiola took me to see this cooking process. In a shady spot set back from the ocean, someone had erected a six-foot tall enclosure of palm fronds to block the wind. Inside the enclosure were two metal barrels that had been sawn in half lengthwise. Each barrel half was propped up like a trough on a low pile of rocks. One barrel was empty except for some residual salt crystals, but the other was full of milky water that circulated gently, evaporating into the air as a fire burned within the pile of rocks. On a nearby table sat the finished product: a huge mound of coarse white salt. Thus, when Fabiola had pointed to the small bag of sea salt, she had been calling my attention to the effort and expertise that went into producing the salt, and to the land on which that effort and expertise had for generations been exerted and honed. Fabiola's sea salt was not just a savory condiment; it was a treasured inheritance that signaled the land and labor that went into its making.

The older residents of Besikó remember that Panama's populist dictator, General Omar Torrijos, granted Playa Zapotal to the district in 1972, a promise memorialized in exceptionally precise language in the comarca charter:

> The area of Zapotal, in the district of San Lorenzo, which Ngäbe comrades from the district of Besikó have for many years utilized for the purpose of salt-gathering, is to be included in the territory of the Ngäbe-Buglé Comarca. Per the agreement made between General Omar Torrijos (RIP), the brothers Gilberto and Nicolás Álvarez[19], and the Ngóbe-Buglé leadership in 1972, the parcel consists of an area of thirty-three hectares. It is located on the Pacific Coast, and its rules of usage and administration will be decided internally by a commission under the direction of the Local Congress of the District of Besikó. (República de Panamá 1999, Article 15)

The historical circumstances and measurements of Zapotal are more specific than those of any of the other areas that remained to be demarcated, some of which are simply referred to as "the islands" (República de Panamá 1999, Article 12). This exacting language is a legacy of Torrijos' unique relationship with Mama Tata leaders in Besikó in the late 1960s and 70s. During his rule from 1968 to 1981, Torrijos used a policy of multicultural recognition to incorporate Indigenous peoples into Panamanian politics and national identity, while also pursuing large-scale mining and hydroelectric projects in Indigenous areas. One such project was a massive open-pit copper mine, called Cerro Colorado, that was to have been developed in the heart of the Ngäbe mountains (Gjording 1991). According to local residents, the General promised Playa Zapotal in compensation for another coastal site further east, which was to have been used as a smelter facility and depot for the mine (see Gjording 1981). (Cerro Colorado was never developed because of a downturn in world copper prices in the 1980s.)

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[19] The Álvarez family owned Playa Zapotal, and still own the adjacent parcels.

Despite Torrijos' promise, and despite long years of protest by Ngäbe leaders, state officials never formally surveyed Playa Zapotal's boundaries. Even when the Panamanian National Assembly established the Ngäbe-Buglé Comarca in 1999, the government never demarcated the beach. Panamanian historian Francisco Herrera (2012) explains that wealthy landowners had sought to make sure that the comarca's boundaries did not interfere with their ranching and agricultural interests, and that because of opposition from eleven neighboring landowners, seventy-seven Indigenous and campesino communities were ultimately excluded from the comarca. Parts of these communities, including Playa Zapotal, became "annex areas"—un-demarcated fragments of Ngäbe territory that technically belong to the comarca, but whose borders Ngäbe residents and their Latino neighbors continue to debate (Jordan 2014, Herrera 2012, 55).

In the decades since Torrijos made his promise, Ngäbe have continued to visit the shore for summer salt production. Over time, the coastline transformed, the nearby river outlet shifted, the mangroves grew up, and local agricultural uses changed from cattle ranching to oil palm. In addition, as nearby beaches began to prove their tourist potential, real estate prices rose. Recently, Ngäbe beach-goers alleged that the neighboring Latino family had been threatening them, destroying their summer shelters, and erecting fences on Ngäbe land. Worried that the family might try to take over the land or sell it for tourism development, a committee of Ngäbe leaders and residents organized to demand that the National Authority for the Administration of Lands (ANATI) finally recognize their land rights by officially demarcating the parcel's boundaries and issuing a formal collective title.

In chapter two, I argued that Free, Prior, and Informed Consultation/Consent reproduces the trap of multicultural recognition, ostensibly giving Indigenous peoples a voice in development, but ultimately allowing individual states to control Indigenous participation. I concluded that chapter with the observation that even though Indigenous recognition may be easily co-opted by the state, forms of recognition can nevertheless provide openings for Indigenous peoples to push back against this cooptation and assert their own development concerns and priorities. In chapter four, I described one such instance of pushback, in which Mama Tata believers marshaled evidence from history and collective memory to contest official definitions of expert knowledge and consultation.

In this chapter, I describe another instance in which Ngäbe assert their own priorities in the face of multiculturalist cooptation by the state. However, in this case, instead of challenging state expertise, Ngäbe used Panama's legacy of top-down, often superficial multiculturalism to secure title to Playa Zapotal. Torrijos' recognition of Mama Tata leaders in the 1960s and 70s, as well as the more recent demarcation of the Ngäbe-Buglé comarca in 1999, can certainly be read as instances of cooptation, and indeed bound the Ngäbe closer to the state bureaucratically, politically, and in their identity as Panamanians. At the same time however, these events also set Ngäbe expectations for what they could expect from their state, and established binding commitments that Ngäbe could use to justify future land claims. These experiences have empowered Ngäbe politics in a way that, two generations later, enabled Besikó residents to hold ANATI accountable for Torrijos' forty-year-old promise.

In turn, these examples speak to ways in which state power is fragile and incomplete. That is, multicultural recognition is evidence not only of the state's ability to co-opt Indigenous claims, but also of state vulnerability to these claims. Panama's history of multicultural recognition demonstrates that Indigenous peoples made significant gains at moments in which the state was struggling to extend its authority over people and territory. The state's cooptation of Indigenous movements, particularly General Torrijos' efforts to control Mama Tata leaders, show how multicultural recognition resulted from the need to control remote populations and manage the challenge they presented to state authority. More recently, public performances of Panamanian multiculturalism, such as encounters between national officials and Ngäbe at Playa Zapotal, show how the state relies on Ngäbe participation to project the image of a multicultural state. Ngäbe collaborate in these performances of stateness, "cultivating" the state through shows of both deference and defiance, in order to advance their own political and territorial goals. Thus, this chapter demonstrates that, while practices of Indigenous recognition have brought with them the danger of political co-optation, cultural assimilation, and natural resource appropriation, they also lay bare the vulnerability of the state, and reveal the possibility of exploiting this vulnerability to produce meaningful Indigenous rights gains.

II. Multicultural Recognition: Elite Cooptation and State Fragility

Multicultural recognition has many different manifestations all over the world. In Latin America, it typically refers to policies and processes that aim to rectify generations of genocide, assimilation, and dispossession, by recognizing Indigenous rights and broadening Indigenous participation in society (Sieder 2002). Examples of

multiculturalist policies include establishing Indigenous territories, protecting Indigenous customs and institutions, providing education and health services, and seeking Indigenous consent to development policies that affect their land and resources (Sieder 2002). However, though multiculturalism is an important step toward redressing centuries of anti-Indigenous violence, it is not immune from criticism. As I discussed in chapter two, Indigenous studies scholars often describe multiculturalism as a way in which settler societies force Indigenous peoples into prescribed modes of recognition, so as to continue to appropriate Native lands and resources (Povinelli 2002, Simpson 2014, Coulthard 2014).

These critiques are especially apt in Panama, where state multiculturalist policies emerged in the context of the military dictatorship that ruled the country from 1968 until 1989. General Omar Torrijos, who led Panama's National Guard to overthrow a democratically elected president in 1968, inaugurated a form of "corporatist multiculturalism," meaning that he sought to incorporate Indigenous peoples into politics while keeping a tight rein on their political participation (Horton 2006, Priestley 1986). However, even though Indigenous activism has been, and continues to be, controlled and co-opted by the state, the country's history also demonstrates that many episodes of Indigenous recognition occurred in the context of profound state instability. Panama's example suggests that critiques of multiculturalism, which typically portray cooptation as evidence of a unidirectional exercise of state power upon Indigenous peoples, might also engage productively with ways in which the cooptation of Indigenous claims can be evidence of state vulnerability. In particular, the ways in which Panamanian politicians, public officials, and Indigenous citizens deploy multiculturalism reveal the extent to

which such policies rely on, and are therefore vulnerable to, the collaboration of Indigenous peoples in producing the imaginary of the multicultural state.

Like salt at Zapotal, states must be cultivated: they require labor in order to take shape and maintain the appearance of a solid structure. Social scientists have long argued that states are not stable entities, but are instead constantly produced through universal sets of practices and symbols. Thomas Blom Hansen and Finn Stepputat call these practices "languages of stateness" because they communicate what the state is and does to those who live and work within it (2001, 5). Hansen and Stepputat divide these languages into two categories: "practical languages of governance," and "symbolic languages of authority." The first three are practices that reproduce the state as an entity that governs and disciplines: 1) the claim to territorial sovereignty, maintained through military and police; 2) the management of knowledge about the state's populations; and 3) the provision for the wellbeing of this population. The second three languages reproduce the state as the imagined center of power: 1) the establishment of law and legal discourse as the basis of state authority; 2) the materialization of the state in signs like buildings, monuments, and uniforms; and 3) the symbolic creation of national territory and national cultural institutions (Hansen and Stepputat 2001, 7-8). In other words, the state is not an actual structure, but a combination of practices and symbols that produce state-like effects (Mitchell 1991).

Indigenous demands for recognition challenge many of the practices and symbols that create the effect of the state. Regarding the "practical languages of governance," Indigenous land claims may challenge the state's assertion of territorial sovereignty, and Indigenous demands for better schools many call into question the state's ability to

provide for its citizens' wellbeing. Regarding the "symbolic languages of stateness," emblems of territorial autonomy, such as flags, may challenge the state's ability to visually signal its authority over Indigenous lands. Often, Indigenous demands relate to both of these sets of languages. For example, calls for bilingual education may question the state's ability to provide social services for its citizens, while also disputing the role of the state in reinforcing a monolingual national identity through public education.

In Panama, scholars have typically focused on the state's responses to these challenges as evidence of how the state uses multicultural recognition co-opt Indigenous claims. Francisco Herrera, a scholar who worked for the government during the 1970s and 80s when the current comarca structure was developed, writes that the comarcas became part of a larger strategy to contain Indigenous political mobilization while the state consolidated its ability to control its people and resources. He argues, "The state has had, and continues to have, the goal of neutralizing social demands by conceding territory whilst it strengthens its structures of political and social control. For the political elite, these concessions are but temporary" (Herrera 2012, 48). Similarly, sociologist Lynn Horton (2006) suggests that, although recent Indigenous mobilizations held the potential to make Panama more inclusive and democratic, "this multiculturalism has also been adopted as a project of elites, and as such, potentially a means to constrain more transformative change and advance economic and cultural agendas of neoliberalism" (2006, 855).

However, while these examples demonstrate ways in which multicultural policies neutralize Indigenous claims or human rights protections, they also illustrate how multiculturalism is used to disguise the fundamental frailty of the Panamanian state.

Throughout Panama's history, moments of Indigenous recognition have occurred during periods in which ruling elites struggled to deploy languages of stateness—and in particular, attempted to manage territory, control people, or shape national identity in the shadow of the United States. For instance, Panama's first Indigenous mobilization occurred in 1925, when Guna Indigenous communities from the eastern Caribbean coast took up arms against Panamanian colonists and security forces (Howe 1998). The fledgling national government—Panama had won its independence just two decades earlier, in 1903—lacked the resources to put down the uprising, and was forced to cede when the US intervened on the Gunas' behalf. The government eventually granted this territory, known as Guna Yala, formal charter in 1953 and gave the Guna broad rights of self-rule (Howe 1998). The Guna were successful because the Panamanian state did not have the capacity to successfully deploy the "practical languages of governance"—in this case, military might—to exert its control over this remote, densely forested corner of the country. Moreover, although the Guna Yala case predates the advent of multiculturalism in that state policy toward Indigenous peoples remained firmly integrationist, it shaped the future of Panamanian multiculturalism by setting a precedent for what Indigenous peoples could demand from the state, and how to go about obtaining it (Guionneau-Sinclair 1991).

Forty years later, the Ngäbe also gained recognition by challenging Panama's languages of practical and symbolic stateness at a vulnerable time in Panama's history. In 1965, during the height of the Cold War and in the midst of a tense period in US-Panama relations, the Mama Tata religious movement consolidated itself as a separatist political movement called the New Indigenous Order, which sought to create an independent

Ngäbe state (Guionneau-Sinclair 1991, 35, Sieiro 1980 [1968], Janson Pérez 1997). As word of the Mama Tata activities spread, the Panamanian National Guard feared that communist guerillas were gathering in the mountains to overthrow the government. Hearing that, as Torrijos put it later, "these men refused to sing the National Anthem, singing another anthem, they refused to raise the flag and were raising another flag, they refused to listen to the authorities […] because they had their own authorities," then-Major Torrijos was sent to investigate (Torrijos 1973, 65-70, Sieiro 1980 [1968]). When Torrijos and his soldiers discovered that the Mama Tata followers were not communist guerrillas but a different kind of political challenge, he shrewdly recognized the authority of the movement leaders by facilitating educational opportunities, government positions, and salaries for them; flying them around the country to meet other Indigenous leaders; and pledging to create an official comarca and provide necessary infrastructure (Herrera 2012, Torrijos 1973, 54-61, Sieiro 1980 [1968]).

When Torrijos' Revolutionary Government took power in 1968, his new regime faced fierce opposition from many sectors of Panamanian society (Priestley 1986). Torrijos had ambitious economic development goals for his country, and also hoped to renegotiate the Panama Canal treaties with the United States, but knew that he needed to quiet dissent and win over the public in order to secure consensus for his agenda (Horton 2006, 855, Herrera 2012, 53, Wali 1989). A number of multiculturalist strategies helped him gain public support, ranging from the symbolic—discursively broadening the traditionally mestizo Panamanian national identity to include Indigenous peoples and Afro-Panamanians—to the practical—such as reinforcing the authority of certain

Indigenous leaders in order to facilitate state management of these groups (Horton 2006, 837-38, Herrera 2012, Priestley 1986).

These tactics were on full display in an undated speech Torrijos (1973) gave in front of Ngäbe leaders in Soloy in the early years of his regime. The speech began with a series of comments that depicted the new Panamanian state as pro-poor and racially inclusive (Torrijos 1973, 54-55). After these professions of inclusion, the final two thirds of the speech instructed the Ngäbe on how to be proper Indigenous subjects—thereby revealing ways in which they were frustrating the state's ability to manage them. Torrijos exhorted them to obey their leaders, to register themselves and obtain national identity cards, to drink less so that they were more reliable workers on the banana plantations, to send more money home to their families, and to organize themselves to start an agricultural cooperative.[20] He concluded, "Here we have made two commitments: the Government has committed to help you with what you have requested and you have committed to organize yourselves and work more as a group and in a more orderly fashion" (Torrijos 1973, 60). By suggesting that the government was willing to help the Ngäbe if only they would organize themselves better and practice more self-discipline, Torrijos subtly disguised the limits of state control by declaring Ngäbe politics and culture to be pathologically ungovernable.

[20] While these instructions sound integrationist rather than multiculturalist, they in fact accorded with changes Mama Tata leaders themselves sought, including more centralized leadership, sobriety, and agricultural modernization (Guionneau-Sinclair 1991). Guionneau-Sinclair (1987; 1991) explains that these plans reflect the influence of various Christian denominations on the Mama Tata founder, Mama Chi, as well as the relatively advanced level of education of New Indigenous Order leaders (several were schoolteachers).

When the dictatorship ended with the US military ouster of Torrijos' successor[21], General Manuel Noriega, in 1989, the return to democracy revealed new facets of state fragility. In particular, the newly opened political climate "led to intense competition between Panamanian political parties, rooted less in ideological differences than in struggles for control of state resources, power and individual prestige" (Horton 2006, 843). The party of the military regime, the Democratic Revolutionary Party (known as the PRD), found itself having to compete with rival parties for Indigenous votes. As a result of this new competition, during the first PRD administration post-dictatorship, President Ernesto Pérez Balladares (1994-1999) approved the demarcation of Emberá-Wounaan, Guna, and Ngäbe-Buglé comarcas (Herrera 2012, 55). Not to be outdone, the subsequent president, Mireya Moscoso (1999-2004), from the rival Panameñista party, approved another Guna comarca in 2000. The Indigenous groups won their comarcas as each political party attempted to command the symbolic capital of the multiculturalist state in order to win Indigenous votes.

In sum, Panama's rulers have long used multicultural recognition to manage Indigenous populations. From the days of the dictatorship, when Torrijos courted Indigenous leadership in order to co-opt potential dissent, Indigenous recognition has helped extend state control over remote territories and peoples. At the same time, however, these moments of multicultural recognition occurred at times of acute state fragility, revealing that efforts to control Indigenous peoples belie ways in which the state must be cultivated through constant maintenance and reproduction. In the next section, I

[21] Torrijos died in a plane crash in 1981. He was succeeded by two other military leaders before Noriega took control in 1984 (Koster and Sánchez 1990).

examine this maintenance and reproduction through performances of multiculturalism by both state officials and Ngäbe residents of Besikó.

III. Performing Stateness through Multicultural Inclusion

In March of 2016, I listened over the radio as Panama's new president, Juan Carlos Varela, and his ministers convened a cabinet meeting in the town of Kankintú, on the Caribbean side of the Ngäbe-Buglé comarca. With a population of about five thousand inhabitants, Kankintú is one of the largest communities in the Ngäbe-Buglé Comarca (INEC 2010c). But it is also one of the more remote: unlike towns on the better-connected Pacific side of the territory, no roads connect Kankintú to the rest of the mainland. Area residents go to school, visit the health center, and do their shopping by hiking the muddy footpaths that lead into town. Panama City lies four hours by boat, then twelve hours by bus, away.

The presidential visit was heavy with significance. First, despite the town's remoteness, or perhaps because of it (what better place to simultaneously perform multicultural inclusion and territorial reach than a remote Indigenous community?), Kankintú features prominently in Panama's multiculturalist history. Omar Torrijos spoke at the first National Indigenous Congress there in 1972, as well as at the first Ngäbe-Buglé General Congress in 1979, moments still proudly commemorated on Kankintú's municipal website (Jordan 2010, 171-176, Municipio de Kankintú 2017). In other words, by bringing his cabinet to Kankintú, Varela was emulating the grand multiculturalist gestures of Panama's now-venerated former dictator.

Second, the cabinet meeting occurred during Varela's first year in office, when Ngäbe, other Indigenous groups, and the country at large, were watching to see whether the new president would fulfill his populist campaign promises. The Ngäbe would be especially critical: the majority of comarca residents had not voted for Varela, who was from the Democratic Change party, but for the candidate from the PRD, which had dominated comarca politics since the Torrijos era. In addition, Barro Blanco Dam was nearing completion, and Ngäbe wondered if, after the state-sanctioned violence of the previous administration, this new government might finally heed their calls to terminate the project.

The cabinet meeting temporarily transformed the isolated community into a buzzing metropolis as Kankintú overflowed with press and visitors from other parts of the country. One Ngäbe politician from the Pacific side of the comarca later told me that he had attempted to go, but every single available boat to Kankintú was filled to capacity. Photographs of the event captured spectators crowding the wooden benches of the pavilion where the meeting took place. Schoolchildren welcomed the dignitaries by tying colorful traditional headbands around their foreheads, while teenagers, grave-faced with nervousness or concentration, performed a traditional *jegui* dance by stomping to the rhythm of gourd maracas (*Metro Libre* 2016).

After the opening festivities, the president and his ministers announced their intention to bring development to the Caribbean side of the comarca. They discussed investments amounting to four hundred million dollars, including a forty-six kilometer highway over the mountains; computer labs that would provide internet access for local residents; new primary schools to replace the precariously built "shanty schools"

(*escuelas ranchos*) so common in this impoverished zone; and a new rural hospital instead of the poorly equipped health center (*Metro Libre* 2016).

The second day of the visit brought more promises. Varela toured the region and met with representatives of other Indigenous groups from around Panama. He and the representatives then signed an accord agreeing to review the International Labor Organization Convention 169, a binding international agreement which protects the rights of Indigenous and tribal peoples. Panamanian Indigenous leaders had been urging the government to ratify the Convention since its signing in 1989. Varela committed to facilitating a working group to "find out the pros and cons of the convention and evaluate its workings in the countries that have ratified it" (Bustamante 2016). The pledge prompted fanfare from the press and cautious optimism from Indigenous leaders and their allies.

Reflecting on the ways in which Panama's leaders use multiculturalism to pander to voters and secure elite political agendas, it is easy to view political pageants like these with cynicism. Indeed, Ngäbe are well aware they are being used. When news of the impending presidential visit broke, the newspaper *La Opinión Panamá* quoted a local official named Máximo Quintero as saying, "In Kankintú we don't know what this thing is, this Cabinet (…) and the day that the president arrives, we'll finally find out. This is the first time in all administrations ever that the president and his ministers have come, because after the campaign they never come back" (Alvelo 2016). More recently, Padre Gregorio, a Catholic priest who has worked in Soloy for over a decade, made a similar observation about the 2019 elections to choose Varela's successor. He noted that all the

candidates had made a point to visit the comarca, and that images of Indigenous peoples had featured prominently in campaign material. “All the photos and videos—the percentage from when they were in the comarca…” he said dryly. He briefly shifted into first person to voice what Ngäbe were saying: “‘They use us for their campaign and forget us when they win.’ People noticed it. And criticized it.”

But while these multiculturalist performances are largely superficial when it comes to acknowledging Indigenous cultural difference and strengthening the rights of Indigenous peoples—for instance, today in 2020, Panama has still not ratified ILO Convention 169—they are still full of meaning. For one, they reveal that the state is vulnerable, that geographic distance, cultural difference, and economic instability challenge the state’s ability to secure its command of the “practical languages of governance” and the “symbolic languages of authority” that create the effect of the state (Hansen and Stepputat 2001, Mitchell 1991). In this context, multiculturalist performances allow candidates and elected officials to disguise this vulnerability by cultivating the image of the state as an entity with the means and authority to provide for its people, guarantee their rights, and negotiate with other states.

Such performances do not necessarily need to convince in order to work. As Andrew Mathews writes, “officials and their audiences share understandings of the state as a dangerous illusion” (Mathews 2011, 10-11). He explains, “The state is not only a set of social structures, such as those optimistically represented by organizational charts; it is also the meanings attached to state power. This means that state-making requires continuous performance, a work that is always contested and never done” (Mathews 2011, 10). In Mathews’ field site in rural Mexico, state-making occurred as Indigenous

loggers and state forestry officials collaborated to generate official statistics about timber production in Mexico. These performances of official knowledge produced the appearance of state power in this remote corner of the country, a mirage that benefitted officials and loggers alike.

Similarly interested in performances that co-produce stateness, Veena Das describes the process of state-making as "a series of partnerships in which state and community engage in self-creation and maintenance" (2004, 251). For example, she notes that when people forge official documents, they simultaneously undermine state power (by circumventing legal procedures for obtaining such documents), and reproduce state power (by affirming their importance) (Das 2004, 227). Thus, even forgers collaborate in producing the authority of the state, because it is this authority that makes their forged documents valuable.

While Das focuses on how these performances enhance state power, Mathews' example serves as a reminder that such performances can enhance community power as well. The Indigenous community members in his field site benefitted financially from their participation in the performance of state power. So too do forgers benefit from their ability to reproduce state authority. Thus, even as Ngäbe may be skeptical of the illusion of a caring, multicultural state, they may still draw on these performances for their own ends, reproducing the state in order to extract personal and collective benefits from it. In essence, Ngäbe and the politicians that woo them are all cooks or cultivators of the state, working together to create the appearance of state authority and power.

IV. Performing the Multicultural State at Playa Zapotal

These collaborative performances of stateness were on full display in Besikó residents' efforts to title Playa Zapotal. As part of its campaign, the Besikó district council—similar to a town council in the US—decided to hold its February 2016 council meeting at the beach. To help local residents make the long journey down from the comarca to the beach, the council hired trucks to transport people to the site. The council also summoned a number of regional and national functionaries—the regional police chief, transportation officials, land titling officials, and environmental technicians—from Panama City and from the provincial capital of David. By asking the functionaries to make the trip to Zapotal, the council was forcing these representatives of the state to simultaneously recognize the Ngäbe land claim, and to further legitimate the claim through their official presence.

I rode to the meeting in the SUV of Fabiola's daughter, Patricia Jiménez, a well-known comarca official. Patricia was bringing a generator and sound system to the event, and the generator fuel sloshed around in its container as we navigated the rutted access road. Her fourteen-year-old son, who was serving as her sound engineer, kept his arm draped across the back seat to steady the giant speaker.

Young oil palms stretched out in scrubby rows on either side of the car. Two men, every part of their bodies except their faces covered to protect them from the blazing sun, used machetes to prune branches and brush from the five-foot-tall palms. From the back seat, Fabiola remarked that the road used to be surrounded by forest, with plenty of shade for travelers walking to the beach.

After a dozen bumpy kilometers, we lurched through a tunnel of vegetation and suddenly found ourselves staring at the ocean from a grove of mango trees. Patricia

parked the vehicle and left to shake hands with the Ngäbe dignitaries, while her son unloaded the sound equipment and lugged it over to a large clearing. Three wooden tables had been placed end to end to make a long head table, with six chairs set up behind it. Several rows of metal folding chairs had been set out for council members. About 150 spectators staked out vantage points on the periphery of the seating area.

Many Ngäbe attendees were dressed in traditional attire: women wore brightly colored traditional dresses, called *naguas*, and the men's button-down dress shirts bore traditional appliquéd triangle designs. Some people wore customary broad-brimmed woven hats, and nearly everyone carried the traditional net bag, called *chakara* or *kra*. In short, they were dressed to identify themselves as Ngäbe at this encounter with regional and national officials.

One by one, several white trucks emblazoned with agency names rumbled up to the clearing. Out stepped dozens of men and women (most of whom Ngäbe would have identified as Latinos because of their lighter skin) from the National Police, the Transport Authority, ANATI, the Aquatic Resources Authority, and so on. They milled around, greeting each other and shaking hands with the Ngäbe leaders. The regional police chief was ushered to a seat at the table between the mayor and the president of the district council.

When it seemed that most of the visiting officials had arrived, the district secretary called the meeting to order and requested that someone to open the occasion with a prayer. "Is there a Mama Tata here to offer the religious invocation?" he asked. After a pause, a middle-aged woman stepped forward, knelt in the dirt, covered her eyes,

and chanted a prayer in Ngäbere. Most in attendance, including the Latino functionaries, bowed their heads.

When she finished the prayer, the secretary read the meeting agenda and then announced the portion of the meeting known as "courtesy of the chamber." Courtesy of the chamber was a time for anyone to speak who wished to bring anything to the attention of the council. It functioned as an open call for both guest introductions and for constituents to present issues they wanted their councilors to address. Since it was an open call, the issues were often diverse, invoking a range of local problems and concerns.

The first several presenters were all from the regional or national government, and took pains to demonstrate their deference to the Ngäbe. The first speaker was the regional head of the national police, a Latino man decked out in a navy blue uniform. From his place of honor between the mayor and the council president, he explained that he had been invited by the council to provide an update on police activities in the Ngäbe territory. The official explained that the police had recently decided to consolidate the territorial police force, which had previously been divided into three regions, into one unit for the entire comarca. He said that the force was working toward "one hundred percent police presence," and cited the need for better road and transit policing, more attention to drug trafficking in remote regions where drug smugglers were known to operate, and closer coordination with the Ngäbe traditional police force, known as the Bukodai. Making an oblique reference to past violence between the police and Ngäbe anti-dam and anti-mine protestors, he concluded by reassuring the crowd that the officers would cooperate with the comarca's political and traditional authorities: "[In terms of] the concerns the populace has about the national police, we are obedient (*estamos*

sumisos) to the mayor's office, the [traditional] authorities, the population. Let me allay your fears."

Next to speak was a tall, heavyset Latino man in jeans and a short-sleeved button down shirt, who introduced himself as the director of ANATI's National Geographic Institute. He also presented a petite blonde woman, who explained her role as the representative from ANATI's Indigenous Lands Office. ANATI and its cartographic team would take the lead on the technical aspects of mapping and titling the parcel when they and the council agreed on a date for the demarcation to take place. The Geographic director wrapped up, declaring, "We are at your service."

After these declarations of respect and good will from the regional and national officials, several Ngäbe community members lodged complaints about comarca transportation issues. A network of privately owned buses and trucks provided transport between remote comarca communities and cities like David, where many Ngäbe traveled daily to work, study, and shop. This network was managed by the National Transport Authority, which set the number of bus concessions available for any given route. A man demanded that the Transport Authority revoke the comarca transportation concessions currently held by Latino-owned companies and issue those concessions to Ngäbe companies. He declared that one of the Latino bus companies was taking advantage of the Ngäbe by making them ride a *diablo rojo* ("red devil"—an old school bus imported from the United States) instead of upgrading to an air-conditioned Coaster. The audience applauded energetically. The diablo rojo in question had a faulty transmission, poor suspension, and lacked air conditioning, which, combined with its Latino ownership, made it the most grumbled-about transport option in the district.

Moreover, the speaker continued, giving a comarca concession to Latinos is like giving a Chiriquí concession to someone from Veraguas (Chiriquí and Veraguas are provinces that abut the comarca, each with strong regional identities). Again the audience members clapped vigorously in affirmation. Riding the wave of frustration with the Latino transport operators, who were widely perceived as disrespectful to Ngäbe riders, a woman chimed in, "If we give them their daily bread, they ought to give our people good service!"

After two additional speeches about transportation, the Geographic director, perhaps observing the fractious feeling in the crowd, addressed the audience again to clarify ANATI's role and presumably try to preempt any outrage that might be directed at his agency. He stated that previous attempts to demarcate Playa Zapotal had been delayed not by ANATI, but by the Latino neighbors, who had filed a lawsuit to protect land they viewed as theirs. He emphasized that ANATI had not given the land to anyone, the agency had simply passed the information to the relevant authorities.

His statement did little to mitigate the building sense of indignation toward Latinos. When the courtesy of the chamber period ended and it was time for the elected officials and invited guests to address the points that had been raised, many speeches focused on Playa Zapotal and the transportation situation, with both issues serving as examples of how Latinos were taking advantage of the Ngäbe.

One of the first Ngäbe officials to address the crowd was the local traditional chief, whose responsibility it was to spearhead the effort to title Playa Zapotal. He began in Ngäbere, a linguistic choice that immediately signaled to everyone present that the content of his speech was meant for in-group listeners only. In addition, his use of

Ngäbere indexed his Ngäbe cultural authenticity, and communicated his aptness for, and commitment to, his official charge as protector of Ngäbe culture and guardian of Ngäbe cultural values. The content of this speech clearly resonated with Ngäbe listeners, for a woman near me spoke up with an enthusiastic "Así es!"—That's right! Then he switched to Spanish for the benefit of the visiting government representatives: "We cannot keep waiting. If the Spaniards hadn't come, we wouldn't be here. Who sold this land? What Ngäbe sold this land? This is Ngäbe-Buglé land," he said emphatically. His implication was clear: the land had been stolen by the Spanish, and now here the Ngäbe were, having to beg for it back.

He then took up the transportation issue, this time speaking only in Ngäbere. While I did not understand much except for words like *transporte* and *sulia* (the Ngäbere word for outsider or foreigner), the crowd's enthusiastic clapping suggested that he was reiterating the calls for more Ngäbe transportation concessions, and criticizing Latino concession owners who took advantage of the Ngäbe.

After another round of fiery speeches discussing the transportation issues, the two representatives from the Transport Authority—a Latino man from the regional office and a Ngäbe man from the comarca office—finally spoke up to clarify the responsibilities of their agency. The regional official began by explaining that the Transport Authority was charged with looking out for the route concessionaires as well as the riders, and therefore had to balance the needs of both groups. Then the comarca official explained that the Authority set the number of concessions by examining the ridership needs of each route, to make sure that each route generated enough income for the concessionaires while

providing an adequate level of service to customers. In short, no changes could be made to a route without careful study.

After the Transport officials delivered their explanation, the Geographic director returned to the microphone to respond to the local chief's statements about Playa Zapotal. "I ask for your patience," he said to the crowd. "Nothing good has ever been easy." He explained that it was important that they follow the correct protocol, including inviting the Latino family, the environmental agencies who monitored mangrove and beach habitats, and the police, to take part in the land survey.

In response, a councilwoman in her late thirties said exasperatedly, "This problem has existed since before I was even born. Those who live here are in danger every day," because of the alleged harassment from the Latino family. She then switched to the transportation issues, reiterating the call for more Ngäbe to be given bus routes.

After the councilwoman spoke, another councilor observed to the audience that many of the regional and national representatives had retreated into the shade, away from the sun-drenched central meeting space. He reproached the visiting officials, saying, "We are not here to talk amongst ourselves," meaning amongst other Ngäbe—even though many speakers were in fact delivering lengthy orations in Ngäbere. "The police officials, ANATI, the Transport Authority, have come in order to ignore us." "Eso! Eso! That's right!," called members of the crowd. "They ask us to be patient," the councilor continued, referencing the ANATI official's comments. "We're through with patience!"

Another councilman, this one in his fifties, also took up the patience theme: "We have to have patience to walk," he said, explaining that he had left his village at two in the morning in order to trek on foot to Playa Zapotal. To further underscore the extent of

his sacrifice, he said that he had made the long journey despite being ill, because, “Playa Zapotal is the comarca’s.”

At nearly three hours into the meeting, I had also moved to the shade on the side of the meeting area, near the Geographic director and the Besikó mayor. I was hungrily watching the director eat his chicken-and-rice lunch, which he had bought from one of the entrepreneurial cooks set up nearby, when another councilwoman repeated that the government officials had left the center meeting area and appeared to be ignoring the speeches. “I’m still here,” he said quietly and exasperatedly.

The meeting continued for another hour, with the councilors and other Ngäbe officials speaking passionately about the persecution of the Ngäbe by the Spanish and now the Latinos, criticizing the discriminatory transportation system, and demanding that Zapotal be titled.

As the meeting wound down and people began to disperse to find lunch and shade, the Geographic director spoke again, saying, “I am here with you all till the end.” Echoing the councilman’s story of waking up early and sacrificing his health to walk to Zapotal, the director explained that he had arisen at five a.m. to be there, and that even though he had recently had a heart attack, he had endured the heat to hear the Ngäbe out. He repeated, “I stayed until the end because I like to listen to the people.”

The event concluded with plans for two subsequent meetings: representatives from ANATI, the Aquatic Resources Authority, and the National Police would meet the comarca authorities back at Zapotal in one month in order to survey the parcel; and the Transport Authority officials would come to Soloy in ten days to discuss the transportation issues.

The next month, as promised, the regional and national officials arrived at Zapotal to meet a smaller audience of approximately seventy-five Ngäbe: district officials, traditional chiefs, Mama Tata followers, and a committee of residents that was overseeing the titling effort. Half a dozen Mama Tata men who called themselves Warriors of God (*Guerreros de Dios*) watched the proceedings from one side of the meeting area. They carried imposing carved wooden swords, which they said were for the purpose of defending their religion, and by extension Playa Zapotal, from sulia.

To everyone's disappointment, as the meeting began, the petite blonde woman from the ANATI Indigenous Lands Office explained that attempts to contact the Latino neighbors had failed, which meant that the assembled group would be unable to survey the property as planned. However, the meeting would still provide an opportunity to set a new date, answer questions, and identify any potential issues that might arise.

This time, the local chief—who had declared at the previous meeting, "We cannot keep waiting. If the Spaniards hadn't come, we wouldn't be here"—adopted a more conciliatory tone. He gave a brief summary of the historical events leading up to the current conflict, and then stated, "We do not want problems with the neighbors. We do not want a confrontation. We want to live in peace. We hope that both sides can be at peace."

The councilwoman in her late thirties, who at the previous meeting had responded to the Geographic director's call for patience by exasperatedly reminding the crowd, "Those who live here are in danger every day," was also more conciliatory. She reiterated that people's lives were at risk, but then her speech became an entreaty. "I beg you for your help," she said to the state officials. "Check the archives for a solution, a document

that might legalize this situation." She then expressed a desire to work collaboratively, saying, "We are going to look for a solution with the greatest urgency."

The Geographic director affirmed her statement, repeating, "We are going to look for a solution." His colleague from the Indigenous Lands Office added that they would give Zapotal the highest priority possible.

The meeting shifted into question-and-answer format, in which state officials explained the survey process, and Ngäbe attendees asked questions or jotted down information. The Geographic director unrolled a long satellite image of the beach and pointed out various features of the coastline that the group would examine as they surveyed the parcel. People clustered around the map, snapping photos with cell phones or taking video as the director spoke. An official from the Aquatic Resources Authority explained that areas like wetlands and mangroves would not be titled because they were protected ecological zones. The Indigenous Lands Office representative explained that after the land was surveyed, the local officials would need to follow up with the appropriate government offices in order to amend the comarca charter. She said earnestly, "Let's keep in touch, let's stay in communication. You have lost a little faith, but we will try to get it back."

Eventually, the assembled group settled on a new date for the survey, about ten days in the future. Then the conversation turned laudatory, with several Ngäbe officials and titling committee members giving brief speeches congratulating the national officials on their hard work. When the meeting concluded, the Ngäbe attendees and the national representatives spontaneously began snapping photographs together to document the meeting, posing while shaking hands or standing formally next to each other. The

Warriors of God asked me to take pictures of them with a police captain and his men. The photos captured the Warriors and the police assembled in a line, with the leader of the Warriors, a Mama Tata elder, and two police officers standing in the middle, gravely shaking hands.

The land survey took place ten days later as planned (I was unable to attend). After the survey was complete, Besikó residents spent two more years shepherding the claim through the bureaucratic process of amending the comarca charter so that it included the new parcel. They finally received formal collective title to Playa Zapotal in October 2018.

V. Cultivating the State by Titling Territory

The two Zapotal meetings, though different in tone, both served to cultivate the state in that small piece of Ngäbe territory. Some performances of collaborative state-making were obvious in that they explicitly acknowledged the authority of the state: the Besikó mayor and council president ushering the regional police chief to a seat of honor between them at the table; the conciliatory, grateful speeches of the Ngäbe as they addressed the ANATI officials at the second Zapotal meeting; the photo op with the Warriors of God and the National Police. Other acts of state-making were more subtle, but perhaps even more indicative of the state's power. For instance, the very act of summoning the national titling officials to legitimate the Ngäbe land claim ultimately affirmed the state's control over who would win the beach. Similarly, the decision to invite the Transport Authority representatives acknowledged the agency's decision-making power, even as the councilors complained that that power had been applied in a

discriminatory fashion. Indeed, most of the Ngäbe demands, no matter how passionately or defiantly delivered, reified the state by acknowledging its authority to respond to those demands. They demonstrated how, as Erica Weiss has pointed out, any public challenge to the state allows the state to use "the moment of refusal as an opportunity to conscript individuals into recognizing the authority of the state" (2016, 352-53).

At the same time, the state that the Ngäbe and the visiting officials were co-creating was squarely multicultural. Panama's history of Indigenous recognition, and particularly the Varela government's avowed commitment to Indigenous peoples after the violence of the previous administration, furnished the Ngäbe with a political opening in which to deploy the languages of stateness on behalf of Ngäbe authority. Echoing the New Indigenous Order's challenge to the Panamanian state, the Ngäbe attempted to appropriate the state's authority over bureaucratic and military functions by summoning the regional and national functionaries to a remote location in the presence of the militaristic Warriors of God. In addition, attendees' traditional Ngäbe attire, the Mama Tata prayer to open the meeting, and the frequent use of Ngäbere rather than Spanish as the language of council business, inserted symbols of Ngäbe identity in place of the customary dress, religion, and language of Latino Panamanian-ness. Moreover, the speeches about historical dispossession and ongoing discrimination from Latinos, as well as the councilors' rebukes of the visiting officials for ignoring the Ngäbe, challenged the state's self-presentation as inclusive and nondiscriminatory in attending to the needs of its citizens.

Furthermore, just as the Ngäbe councilors showed deference to the regional and national officials, the visiting representatives likewise made shows of respect to the

Ngäbe. The police chief, at the same time as he explained that the National Police were expanding comarca surveillance, declared that his officers were obedient to the Ngäbe people. The Geographic director attempted to prove his good intentions by demonstrating that his commitment to listening to the Ngäbe superseded his own care for his health. And the ANATI Indigenous Lands representative was solicitous toward Besikó listeners, acknowledging that they had lost faith in the state and that her agency was committed to helping them regain it.

Thus, the Ngäbe and the visiting officials worked together to reconstitute the state as an entity that could exercise authority over Ngäbe territory, but that was also deferential to Ngäbe needs and claims. In turn, this collaboration generated certain rewards for both parties. ANATI, as Varela would do a month later Kankintú, used the encounter with the Ngäbe to burnish the image of the multicultural state. After the first meeting, ANATI (2016) published a news release detailing its visit to Chiriquí, complete with a photo of its officials speaking to the crowd at Zapotal. The text of the release did not mention the beach's cultural significance to the Ngäbe, nor the forty years that the Ngäbe had struggled to have the land titled. Instead it highlighted ANATI's role in training Ngäbe officials, mediating Ngäbe land disputes, and legitimating Ngäbe land claims. The meeting and the residents of Besikó became a scenic backdrop for a display of state authority over, and solicitude towards, Indigenous peoples.

In like fashion, the Ngäbe officials also used the regional and national visitors, and the larger state they represented, to demonstrate their own authority and political skill. Especially in the first meeting, in which many councilors spoke at length in Ngäbere, it was clear that the speeches were not directed at the visitors but at other

Ngäbe. Indeed, aside from delivering messages of respect and helping set dates for future meetings, the main purpose of the (mostly Latino) visiting officials seemed to be to serve as props for Ngäbe discussions about the wrongs committed by the Spanish and Latinos. As the Ngäbe functionaries held forth on in-group concerns like transportation concessions, they performed knowledge and skills that demonstrated their fitness for public office: their familiarity with constituents' needs and concerns, their ability to take action on those priorities, and their cultural fluency with Ngäbe language, concepts, and ways of thinking. In this context, when the Ngäbe officials summoned the visitors to Zapotal and then remonstrated them in front of Ngäbe listeners, the Ngäbe officials inverted the state-over-comarca, Latino-over-Ngäbe power dynamic. They thereby produced a spectacle that empowered the Ngäbe audience, and ultimately demonstrated their own worth as leaders.

Thus, regarding the charge that multicultural recognition can be co-opted by the state, the events at Zapotal demonstrate that cooptation cuts both ways. The state certainly used the meetings to affirm both its practical control over Ngäbe land, and its symbolic authority as a champion of national multicultural identity. However, it also had to collaborate with the Ngäbe to in order to reap this benefit. The fact that the regional and national representatives drove to Zapotal, signaled their deference to Ngäbe authority, and patiently allowed themselves to be used as props for Ngäbe politics demonstrates that, as Das suggests, state-making is "a series of partnerships in which state and community engage in self-creation and maintenance" (2004, 251). And because multicultural state-making is a joint effort, certain aspects of this cooperative performance can escape the state's attempt to control and co-opt. As a result, Ngäbe

audience members and officials were able to use the meetings to pursue their own political agendas, challenge the state's multiculturalist narrative, and momentarily upend established power relations. Consequently, though Ngäbe cannot help but reinforce and recreate the state at the moment they challenge it, they also reveal the state's reliance on, and hence vulnerability to, the same people it seeks to manage.

Admittedly, as the country's largest Indigenous group, the Ngäbe are unique in their electoral power and visibility, and hence in their ability to hold the state accountable for its multiculturalist promises. In addition, the district of Besikó stands out when compared to other Ngäbe communities because of its history as a center of Ngäbe political mobilization and state engagement. Other Indigenous groups have not had as much success in leveraging the state's multicultural promises to win territory or settle ongoing land disputes. For instance, in 2018, the Naso, a much smaller group whose traditional lands lie to the northwest of the Ngäbe-Buglé Comarca, found their hopes for territorial recognition trampled yet again when President Varela vetoed the bill that would have finally created their hard-fought comarca (Rutherford 2019). And they are not the only ones awaiting recognition: as of 2018, approximately twenty-five Indigenous land claims are still awaiting title (Anonymous 2018).

Nevertheless, multiculturalism has meant that new performances of Panamanian stateness are available to the Ngäbe, performances that cultivate the state in order to secure Ngäbe territory and temporarily invert established power dynamics. In short, while other writers have described certain Indigenous groups as engaged in a "radical refusal" of state multiculturalist cooptation (Hale 2011), Ngäbe in Besikó have instead chosen to

leverage multiculturalism to legitimate their political authority, animate their own political agendas, and secure title to a precious, salty territorial inheritance.

Chapter 6. Conclusion: Leveraging Recognition for Choice, Critique, and Mobilization

I. Indigenous Rights, State Power, and Multicultural Recognition

This dissertation examines the right of Free, Prior, and Informed Consultation and Consent in western Panama, where Ngäbe have long worked to assert their land rights and make collective decisions about copper mining, hydroelectric projects, and other forms of development. I demonstrate that, like other forms of multicultural recognition, FPIC can be used by states to manage Indigenous dissent and rights-wash contentious projects. This management can take place through careful attention to the wording or procedural details of FPIC policies; or, it can occur through the ways in which consent-seekers and consent-givers use and circumvent community decision-making processes. However, while FPIC can be used to limit Indigenous rights, I also show how various groups of Ngäbe still defy and work within these constraints. In one instance, members of the Mama Tata religious movement amplified internal debates over culture and development by questioning the definition of community consultation; in another, a community gained literal ground by formalizing title to a land claim long disputed by Latino neighbors. More broadly, building off these examples, I show that the Western liberal conception of consent as autonomous free choice obscures ways in which consent embeds subjects in relations of power. By framing consent not as a sign of freedom but as a sign of power relations, I underscore how FPIC and other forms of multicultural recognition join together Indigenous peoples and states in collaboratively creating the multicultural state.

In Chapter Two, I began by addressing the distinction between Free, Prior, and Informed *Consultation* and Free, Prior, and Informed *Consent*. Scholars and activists have framed this distinction as a crucial point in efforts to strengthen FPIC laws, suggesting that FPIConsent supposedly offers more protection than FPIConsultation. However, I argue that this difference is largely meaningless because both forms of FPIC operate in the same way: both forms attempt to ensure Indigenous participation in development by focusing on compliance with procedural minutiae rather than the actual substance of Indigenous opinions.

This attention to procedure rather than substance played an important role in two recent FPIC-related events in Panama. In the first case, that of the Barro Blanco hydroelectric project, the Supreme Court ruled that community consultation had been adequately carried out, despite the fact that there had been but a single consultation meeting, poorly advertised, outside the dam's impact zone, and in Spanish rather than Ngäbere. Because the dam developer had complied with the state's minimum procedural requirements, the court allowed the project to proceed over the sustained objection of nearby communities. In the second case, careful wordsmithing between the draft and final text of Panama's new Free, Prior, and Informed Consultation and Consent law significantly narrowed the law's protections by failing to specify what would happen if an Indigenous group refused to consent to a project. In this case, attention to small changes in wording produced a document that appeared to support FPIConsent while simply reinforcing FPIConsultation. Thus, close attention to the legal proceduralism inherent in the design and execution of both forms of FPIC reveals that states, developers,

and other entities carefully craft and interpret Indigenous rights policies in order to mitigate and manage their effects.

Following this discussion of how FPIC laws are written and interpreted, in Chapter Three, I examined the topic of how these laws might play out in community decision-making processes. Using my own experience obtaining comarca research permissions as a window onto how outside developers secure approval for their projects, I described how I went "forum shopping" to find leaders likely to support my permit. The experience revealed that, though FPIC policies attempt to honor "traditional" or "culturally appropriate" authorities and forms of deliberation, they may also disadvantage or further marginalize Indigenous communities by setting unrealistic expectations for collective decision-making.

The unexpected consequences of these expectations were especially evident in the comarc, where, since the colonial era, the Ngäbe have experienced at least five different forms of political organization. The older, nonhierarchical, consensus-based system by which Ngäbe used to deliberate and acquire authority was poorly suited to the state's need for Indigenous leaders who could make definitive decisions and control their own people. Because of the supposed inadequacy of this "traditional" system, Ngäbe leaders were encouraged to adopt another. Today's "traditional" congress and cacique structure, borrowed from the Guna, was quickly sanctioned by the state, and now provides a convenient way for the state and other entities to appear to obtain Ngäbe consent. When the state or others stir up controversy, such as by acknowledging the authority of the General Cacique over that of the General Congress, the resulting conflicts lead to the Ngäbe being labeled "disorganized," and subsequently trigger further state intervention.

Meanwhile, researchers and developers can exploit these disagreements through forum or consent shopping, and thereby appear to affirm the cause of Native self-determination. This ironic turn shows that FPIC can be used to obscure the history, politics, and practices that enable outsiders' development agendas at the cost of Indigenous rights.

In Chapter Four, I turned from discussing how states and developers use FPIC, to analyzing how local residents use it in community consultations. I described how, in public meetings about a contentious water purification plant, Mama Tata followers used the events to reaffirm the concerns and values that mattered most to their religious community, which in turn validated Mama Tata knowledge as a form of expertise rivaling that of government officials. As such, I argue that community members can expand or divert FPIC processes from the narrow constraints that officials attempt to place on them, turning them into platforms for other issues and agendas.

The water purification plant in question was located in the historic seat of the Mama Tata religious movement, a movement focused on protecting Ngäbe land and culture from outside threats. Because of this dynamic, and because of the controversy surrounding Barro Blanco dam, local and national officials organized several consultations about the project, in Spanish and Ngäbere, with many hours dedicated to public feedback. Nevertheless, community members continued to disagree about the project and about the consultation process, raising objections about what it meant to "be informed"; the scope and nature of information needed; and whether true community consultation was even occurring at all. These disagreements inverted conventional framings of FPIConsultation as a process in which experts from outside a community inform local residents about the "facts" of a project. Instead, plant opponents asserted the

legitimacy of their own empirical knowledge, pointing to historical and contemporary allegations of government-sanctioned water theft. The meetings thereby gave Mama Tata followers public venues to assert the relevance, urgency, and validity of their own beliefs, both to each other, and to Ngäbe who viewed their movement with skepticism. Consequently, I argue that FPIC processes may enable or influence other types of community discussions beyond the limited scope of a particular project.

Finally, in Chapter Five, I turned from FPIC to the larger multicultural context in which FPIC takes place. Scholars argue that states often use multicultural recognition to co-opt Indigenous rights claims, a tactic that Chapters Two and Three certainly confirm. However, in this chapter I move beyond this argument to show that multicultural recognition is evidence not just of state power but of state vulnerability. Drawing on historical examples of Pananamian multiculturalism, as well as recent land titling meetings between community members and state officials, I show that the state relies on the collaborative performances of Ngäbe residents and Latino officials to reproduce the state in Ngäbe territory.

Glimpses of the state's fragility often break through in moments of Indigenous recognition. For example, General Torrijos' acknowledgement of Mama Tata leaders in the late 1960s and early 1970s occurred as he worked to establish his authoritarian government and win public support for new Panama Canal treaties with the United States. More recently, as Ngäbe leaders sought to formalize title to a culturally significant beach, multicultural performances by Ngäbe and government officials—Mama Tata prayers, angry speeches by Ngäbe, shows of respectful listening on the part of officials—reveal how the state relies on Indigenous participation to project the image of a

multicultural state. Ngäbe help produce the state through shows of both deference and defiance, in the process advancing their own political and territorial goals. Thus, this chapter demonstrates that, while multicultural recognition does bring with it risk of state co-optation, it also lays bare the vulnerability of the state, and creates the possibility of exploiting this vulnerability to produce meaningful Indigenous rights gains.

II. Deconstructing FPIC in Panama

This analysis complicates many assumptions about Free, Prior, and Informed Consultation and Consent. Although many people have worked to clarify the meaning of "free," "prior," "informed," "consultation," and "consent," many examples from the Ngäbe-Buglé Comarca show that these terms defy easy definition. For instance, "free," which the United Nations Permanent Forum on Indigenous Issues (UNPFII) defines as, "Indigenous peoples are not coerced, pressured or intimidated in their choices of development," falls apart in light of feminist critiques that consent enrolls choosers in existing power relations (Tamang 2005, 13, Das 2008, Severance 2000). For example, considerations like state violence, economic insecurity, and social and political marginalization constrain the decisions that Indigenous peoples can make. These constraints are even more apparent in situations where states control the writing and enforcement of FPIC laws, or in which "traditional" Indigenous decision-making processes have come about through decades of state interference.

Meanwhile, criteria like "prior"—meaning "prior to the start of development activities"—and "informed"—"full information about the scope and impacts of the proposed development activities"—face scrutiny as well (Tamang 2005, 13). For

instance, Mama Tata followers in Besikó framed projects like Barro Blanco and the water purification plant within a longer history of dispossession, undermining the assumption that "prior" can ever simply refer to an arbitrary moment before a project begins. Instead, "prior" invokes a longer history of unconsulted, nonconsensual colonization, a history that no consultation or consent process can ever be truly "prior" enough to overcome.

Likewise, in extending the timeframe of priorness, the Mama Tata followers also challenged the type and scope of information that was necessary to "be informed" about a project. Legal scholars and activists typically describe informed consultation as a process in which expert outsiders transmit "facts" about a project to lay community members, while community members share their questions or perceptions with project developers in order to influence project planning. This formulation presents the knowledge of external professionals as "fact-based" expertise while neutralizing the knowledge of community members by framing it as "beliefs" or "opinions." But in Besikó, plant opponents asserted the legitimacy of their own sources of empirical information, including the historical memory of colonization and their own recent experience of government duplicity in the case of Barro Blanco. Government officials' inability, reluctance, or refusal to discuss these types of information signaled that they were hiding details from, rather than informing, the public.

Finally, regarding "consultation" and "consent," evidence from Panama shows that both terms are vulnerable to attack on procedural grounds. For instance, Mama Tata believers linked the definition of "consultation" to the procedural expectation that such events should involve informing the community. In their eyes, since they were never properly informed about the water purification plant, consultation never occurred.

Though officials held meeting after meeting, because they appeared intent on convincing the Mama Tata believers rather than delivering the kind of information the believers wanted, the believers continued to insist that they had not been consulted.

Similarly, "consent" can also be challenged over procedural inadequacies. The UNPFII interprets "consent" to mean, "[Indigenous peoples'] choices to give or withhold consent over developments affecting them is respected and upheld" (Tamang 2005, 13). However, in the context of the Ngäbes' triple-branched, multilayered governance structure, *whose* choice ought to be upheld? The state's long history of intervention in Ngäbe decision-making, and its recent missteps in appearing to favor one branch of leaders over another, have made procedural disputes like the one arising out of the 2016 Barro Blanco accord nearly inevitable.

III. Anthropology and the "Emerging Norm" of FPIC

Despite these challenges, FPIC is nonetheless an "emerging norm" in international law (Doyle 2015). Given that fact, what role can anthropology play in documenting its emergence? One avenue of research is to look at FPIC's successes. While it is easy to identify and critique FPIC violations—after all, such cases make for dramatic headlines in the international media—there may be dozens or hundreds of examples of "successful" FPIC processes that never receive attention. For instance, the Guna recently considered taking part in a climate change mitigation project that would have involved setting aside forested areas and selling the carbon storage potential of those forests on the global carbon market (López 2013). The project was proposed by a US company called Wildlife Works Carbon, which engaged the Guna in a two-year FPIC

process that even included taking Guna representatives to see a Wildlife Works demonstration project in Kenya. After lengthy deliberations, the Guna rejected the proposal and ultimately decided to ban all future such projects from their territory (López 2013). While I did not study the case in detail, the example suggests that FPIC may be well suited to situations in which an Indigenous group has strong internal decision-making institutions, the national government respects the group's autonomy to deal with foreign companies, and the project promoter has a business model that adequately anticipates the long lead time and expenses of informing and building trust with its potential hosts. Future research could shed light on other conditions that enable FPIC to succeed; how or whether participants experience "successful" FPIC processes in relation to their broader right of self-determination; and how these processes influence, or are influenced by, in-group agendas and politics.

On a related note, even when FPIC processes fail to provide binding legal protections for Indigenous groups, they can still "succeed" in other ways, such as drawing resources and attention to a community's plight. For example, Laplante and Nolan (2014) describe Guatemala's "*consulta* movement," in which over 78 Maya communities and approximately a million voters have participated in self-organized consultations to protest hydroelectric projects and mines. Laplante and Nolin observe that while Guatemalan courts have declared these consultations nonbinding, the events can nonetheless produce a "boomerang pattern" (Keck and Sikkink 1999) by which local activism animates foreign activists and shareholders to hold international mining companies and the state accountable. Future research could examine similar extra-

juridical practices and effects of FPIC, studying the possibilities and limits of its symbolic, representational, and organizational power.

A third avenue of research would be to study FPIC's implications for marginalized non-Indigenous communities. As I discussed in Chapter Two, Panama's public consultation requirement for Indigenous areas used to be included under the environmental impact assessment process that most developers had to undertake for any new project. This requirement meant that the process of public consultation was essentially the same in Indigenous areas as it was in any non-Indigenous zone. Now that the new Free, Prior, Informed Consultation and Consent law is in place, Indigenous peoples have new protections that other similarly vulnerable populations, such as rural peasants and some Afro-Panamanian communities, do not have. Future research could examine the differential effects that FPIC has on Indigenous peoples and those who are excluded from such protections.

IV. Leveraging Recognition

Ultimately, FPIC, like all forms of political recognition, can be a tool for both controlling and empowering vulnerable groups. On one hand, it allows states to set the terms of Indigenous participation in development; on the other, it gives Indigenous peoples opportunities to challenge state power in expected and unexpected ways. Therefore, following the example of Ngäbe leaders in Besikó, I do not argue that Indigenous peoples and their allies should give up on FPIC, consent, or multiculturalism. Rather, I highlight the creativity and resourcefulness with which Ngäbe leaders respond to the risk of state cooptation. These leaders perceive recognition not as proof of the

unrelenting state domination of Indigenous peoples, but the logical and hard-fought outcome of years of protest. They leverage forms of recognition to drive ongoing campaigns against unwanted development, but also to work with state representatives to settle longstanding land claims. And, looking inward, they draw on these experiences of recognition to animate internal discussions about culture, identity, and politics.

Thus, returning to Scott Richard Lyons' (2010) re-examination of the x-mark—the sign by which Native peoples agreed to treaties with the US government—Besikó's leaders demonstrate that even choices made under coercive circumstances still reflect the agency of the chooser. That is, even though many forms of FPIC, and state recognition more broadly, produce highly constrained decision-making circumstances for Native peoples, they also generate the conditions for Indigenous choice, critique, and mobilization.

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