

# In the Belly of the Machine: Indigenous Mining Experiences in Panama



Rosie Simms  
Salma Moolji

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**Institution Contact Information:**

McGill University  
Panama Field Studies Semester  
McGill Department of Biology  
1205 Doctor Penfield  
Montreal, Quebec, Canada H3A 1B1

Centro de Incidencia Ambiental (CIAM)  
Supervisors: Felix Wing, Tania Arosemena, Mariana Mendez  
Urb. Los Ángeles, Calle Los Periodistas,  
Casa G-14 Planta Alta.  
Tel: 236-0866.

[info@ciampanama.org](mailto:info@ciampanama.org)

Smithsonian Tropical Research Institute (STRI)  
Report director: Roberto Ibañez  
Apartado Postal 0843-03092  
Panamá, Rep. de Panamá.

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## Executive Summary

Conflicts between indigenous peoples and multinational mining projects have become an all-too-common feature of the Latin American social landscape during the past twenty years. Although large-scale open-pit mining is still a young industry in Panama, several major concessions are slated for imminent development. The majority of these mineral deposits lie in indigenous or rural *campesino* territory.

Despite the fact that Panama has yet to develop mining to the extent of countries such as Ecuador and Guatemala, the tense relations between indigenous peoples and mining projects are already being manifested. Indigenous resistance has been articulated around various mine sites. However, the focal point of contention is Cerro Colorado, one of the world's largest remaining copper deposits. Cerro Colorado lies in the rugged mountains in the midst of the territory (*comarca*) of the Ngöbe, the largest indigenous population in Panama. For over 30 years, international mining companies have had intermittent presence in the area, undertaking exploration and prospecting activities. During these three decades of mining interest in Cerro Colorado, there has also been widespread Ngöbe resistance to the project. Today, with copper prices on the rise, there is renewed pressure to establish the Cerro Colorado mine, including from Canadian companies.

The friction between indigenous peoples and mining in Panama was recently propelled into national and international spotlight. In February and March 2011, massive Ngöbe marches and roadblocks were held to protest the approval of Law 8, which modified the 1963 Mining Code. The Ngöbe saw this law as a strategy to facilitate Cerro Colorado's exploitation by multinational mining corporations, without their consent. Ngöbe resistance successfully forced the government to cancel Law 8 and enter consultation with Ngöbe authorities.

Issues of inadequate consultation and consent have been a major concern fuelling indigenous peoples' resistance to mining development. There has been growing support among international bodies, including the Interamerican Court of Human Rights, for the formal concept of Free, Prior and Informed Consent (FPIC). FPIC stipulates that indigenous communities must have a concrete role in decision-making about any project that affects their territories. A central tenant of FPIC is that communities have the right to *give or withhold* their consent, a decision that must be respected by project developers.

This research seeks to consolidate Panama's framework of indigenous rights to consultation through international, national, and local commitments and legislation. It attempts to outline how political complexities complicate processes of consultation and consent in the case of the Ngöbe. Finally, it aims to assess how well consultation and FPIC have been translated into practice in the Ngöbe communities around Cerro Colorado. To address these themes, we performed an extensive literature review and interviews with indigenous rights lawyers and academics to establish the formal webs of rights and politics. The second portion of research involved interviews in Cerro Colorado communities to assess whether or not conditions of FPIC are being established on the ground.

In theory, Panama committed to recognizing FPIC by becoming a signatory to the 2007 United Nations Declaration on the Rights of Indigenous Peoples. Although FPIC is not incorporated into domestic Panamanian laws, certain national and *comarca*-level legislation makes reference to the necessity of obtaining consent from traditional authorities for natural resource development projects. Multinational mining companies operating within the country are obliged to adhere to these commitments.

The processes of consultation and consent for mining development are complicated in the case of the Ngöbe by the complex political system governing the *comarca*. Multiple lines of authority and political factions have rendered it unclear who is the legitimate authoritative body to act on *comarca* communities' behalf. This has been exacerbated by recent externally-imposed changes to the political system. Some perceive these changes as a means for the national government to obtain greater control in *comarca* leadership in order to guarantee Ngöbe authorities give consent for mining projects.

Field research testing the FPIC framework against the actual experience of Ngöbe communities found many discrepancies between paper and practice. Mining companies working in Cerro Colorado in the past operated with no community consultation whatsoever. One might expect that with increasing recognition of FPIC as an indigenous peoples' right and a business best-practice, these conditions would be better put to practice by modern mining interests in Cerro Colorado. However, we found that the "responsible mining" training sessions held in the *comarca* today have violated each of the terms of FPIC.

We hope that this research supports CIAM's work by building links to the *comarca* and by developing a clearer picture of what is happening in communities for whom they advocate. We aim for it to be relevant to Cerro Colorado communities to introduce the concept of Free, Prior and Informed Consent and to summarize the responses we received regarding their experiences with consultation. Finally, we hope this document will support Canadian awareness of the obligations and activities of Canadian companies operating in Panama.

## **Resumen Ejecutivo**

Los conflictos entre los pueblos indígenas y los proyectos multinacionales mineras se han convertido en una característica muy común del paisaje social de América Latina en los últimos veinte años. Aunque la minería a cielo abierto a gran escala sigue siendo una industria pequeña en Panamá, varias concesiones importantes están listas para desarrollo inminente. La mayoría de estos depósitos minerales se encuentran en el territorio de los campesinos y en las *comarcas* poblaciones indígenas.

A pesar de que Panamá no ha desarrollado la minería al nivel de los países como Ecuador y Guatemala, las tensas relaciones entre los pueblos indígenas y los proyectos mineros ya se manifiesta. La resistencia indígena se ha articulado en varias minas en Panamá. Sin embargo, el punto focal de la oposición a actividad minera es el Cerro Colorado, uno de los yacimientos de cobre más grande del mundo, la población indígena más grande en Panamá. Durante más de 30 años, las empresas mineras internacionales han tenido una presencia intermitente en el área, llevando a cabo actividades de exploración y prospección. Durante estas tres décadas de interés

minero en Cerro Colorado, también se ha generalizado la resistencia Ngöbe al proyecto. Hoy, con los precios del cobre en alza, hay nueva presión para establecer la mina de Cerro Colorado, en particular de la parte de las empresas canadienses.

La fricción entre los pueblos indígenas y la minería en Panamá fueron impulsadas recientemente en centro de atención nacional e internacional. En febrero y marzo de 2011, los Ngöbe llevaron a cabo masivas marchas y bloqueos para protestar en contra de la aprobación de la Ley 8, que modificaba el Código Minero de 1963. Los Ngöbe percibieron esta ley como una estrategia para facilitar la explotación de Cerro Colorado por las empresas mineras multinacionales, sin su consentimiento. La resistencia Ngöbe obligó al gobierno a derogar la Ley 8 y entrar en consulta con las autoridades Ngöbe.

El tema de consulta y consentimiento inadecuado ha sido una parte importante de la resistencia de los pueblos indígenas a los proyectos mineros. Ha habido un creciente reconocimiento entre los organismos internacionales, incluyendo la Corte Interamericana de Derechos Humanos, del concepto formal de Consentimiento Libre, Previo e Informado (CLPI). CLPI estipula que las comunidades indígenas deben tener un papel concreto en la toma de decisiones sobre cualquier proyecto que afecte sus territorios. Una parte central de CLPI es que las comunidades tienen derecho a dar o negar su aprobación por un proyecto, una decisión que debe ser respetado por las empresas y el gobierno.

Esta investigación busca consolidar los derechos indígenas a la consulta a través de compromisos internacionales, y legislaciones nacionales y locales. Se trata de definir cómo las complejidades políticas complican los procesos de consulta y consentimiento en la *comarca* Ngöbe –Buglé. Por último, se pretende evaluar si la consulta y CLPI han sido traducidos a la práctica en las comunidades Ngöbe alrededor del Cerro Colorado. Para abordar estos temas, se realizó una extensa revisión bibliográfica y entrevistas con los abogados de derechos indígenas y académicos para establecer los sistemas formales de los derechos y la política. La segunda parte de la investigación incluyó entrevistas en las comunidades de Cerro Colorado, para evaluar si las empresas mineras cumplen con las condiciones de CLPI.

En teoría, Panamá está obligado a reconocer CLPI por haber firmado la Declaración de las Naciones Unidas sobre los Derechos de los Pueblos Indígenas de 2007. Aunque CLPI no está incorporado en las leyes nacionales de Panamá, algunas legislaciones al nivel nacional y *comarcal* contienen referencia a la necesidad de consultar con autoridades tradicionales sobre proyectos en su territorio. Las empresas multinacionales mineras que operan en el país están obligadas a cumplir con estos compromisos.

Los procesos de consulta y el consentimiento para los proyectos mineros son complicados en el caso de los Ngöbe por el complejo sistema político que rige la *comarca*. Varias líneas de autoridad y fracciones políticas han resultado en que no está claro quién es el órgano legítimo de autoridad para representar las comunidades en la *comarca*. Esto se ha vuelto más complicado por los recientes cambios al sistema político Ngöbe. Algunos perciben estos cambios como un medio para que el gobierno nacional obtenga un mayor control en el liderazgo de *comarca*, con el fin de garantizar que las autoridades Ngöbe ofrezcan su consentimiento para proyectos mineros.

La investigación en la *comarca* mostro que en realidad las comunidades no han visto un proceso de CLPI y que hay muchas discrepancias entre la teoría y la práctica. Las empresas mineras que operan en el pasado funcionaron sin ningun consulta con las comunidades Ngöbe. Hoy, aunque hay mas consideración de FPIC, encontramos que las capacitaciones de "minería responsable" operando hoy en la *comarca* han violado cada uno de los términos del consentimiento previo, libre, e informado.

Esperemos que esta investigación apoye el trabajo de CIAM, dando una visión más clara de lo que está ocurriendo en las comunidades de la *comarca*. Esperemos tambien que este relevante para las comunidades de Cerro Colorado, introduciéndolas el al concepto de Consentimiento Libre, Previo e Informado, y dando un resumen de los sentimientos de las comunidades sobre sus experiencias con la consulta. Por último, esperamos que este documento sea para el conocimiento de los ciudadanos en Canadá sobre las obligaciones y actividades de las empresas canadienses operando en Panamá.

## **Project Work Hours**

Full work days in Panama City.....	28
Full work days in <i>comarca</i> .....	7
Additional field days (Villa del Carmen).....	3

## **Introduction**

*Host Institution: Centro de Incidencia Ambiental (CIAM) Panamá*

CIAM is a non-governmental, not-for-profit organization headquartered in Panama City. The organization is dedicated to defending Panama’s natural resources, with a mission of promoting environmental protection and increasing public participation in decision-making (CIAM 2011). A devoted team of young lawyers and engineers, CIAM is the only NGO currently involved in environmental litigation in Panama. They are working on a full spectrum of pressing issues facing Panama’s ecosystems, including marine and coastal protection, forest conservation, green urban planning, hydroelectric projects and monitoring mining concessions.

Through their “CONTAMINAS” campaign, CIAM is striving to put public spotlight on the risks of open-pit mining development in Panama. CIAM members played a central role in organizing against changes to the national mining code in February 2011, presenting a draft moratorium on open-pit mining during the legislative debates. They were cited in much of the press surrounding the contentious law change (see, for example, Gonzales 2011a). CIAM continues to push for sound mining regulation in Panama, working through both legal and public awareness channels.

### *Snapshot of Mining in Panama*

Panama, following in the trajectory of many other Latin American nations, is poised to open its doors to multinational mining corporations seeking to develop several large-scale mining projects throughout the country. Although to-date mining has comprised a small portion of Panama’s national economy, strong growth is projected in this sector (Redwood 2011). In 2009, mining contributed 1.4% of Panama’s GDP with a value of \$270 million (Redwood 2011). 2010 mining revenues increased by 6%, with mines and quarries generating a net income of \$286.8 million (Zea 2011). These figures will rise enormously – to upwards of \$220,228 million in mining revenues – if the proven mineral deposits in the country are exploited (CAMIPA 2011).

Maps from the National Bureau of Mineral Resources reveal a complex patchwork of mining concessions and applications covering much of Panama’s surface (See Appendix A). It is clear from these maps not only that Panama possesses vast mineral wealth, but also that this wealth has been discovered and marked for potential exploitation. International mining corporations are vying to gain access to Panamanian concessions, with Canadian companies at



the forefront of foreign mining investment in the country (Redwood 2011). What is less apparent from the concession maps, however, is the human dimension of these projects: the red concession areas indicating Panama's major mine sites fall predominantly in rural *campesino* and indigenous territories.

### *Contentious Overlap between Mining and Indigenous Territories in Panama*

“Most new areas of mining investment in Latin America are on inhabited land, and even when these areas are not directly inhabited, communities nearby are commonly affected by the inevitable environmental repercussions of mining...Thus mining investment, and resistance to it, is an increasing source of conflict in Latin America between poor and indigenous communities, on the one hand, and—typically—foreign mining corporations, on the other” (Gordon & Webber 2008).

Overlap between large-scale mining projects and indigenous territories is a pattern that has been replicated across Latin America, and Panama is proving to be no exception to this trend (Gordon and Webber 2008; OCMAL 2010). The Ngöbe people are currently at the focal point of confrontations between mining interest and indigenous territory in Panama.

With a population in 2010 of approximately 150 000, the Ngöbe are the largest indigenous group in the Republic of Panama (INEC 2010; Young and Bort 1999). Since the arrival and encroachment of the Spanish in the isthmus in the 1500s, the Ngöbe have inhabited the rugged mountainous interior of Western Panama. They are predominantly subsistence farmers (Young and Bort 1999). Until the 1970s, swidden agriculture was a sustainable means of food production to support the Ngöbe population. However, rapid population growth in the '60s and '70s led to land shortages and declining agricultural yields. These stresses spurred the Ngöbe's increasing participation in the wage economy as temporary laborers on banana and coffee plantations in neighboring provinces (Young and Bort 1999).

In 1997, after over twenty years of struggling with the government, the Ngöbe achieved constitutional recognition of their collective territorial rights (Servicio Paz y Justicia 1990; Young and Bort 1999). At 6,968 km<sup>2</sup> - roughly 8% of national territory - the Ngöbe-Buglé *comarca* spans three provinces and is the largest indigenous territory in Panama (Proyecto Agroforestal Ngöbe-Buglé 2002). When the *comarca* was created, however, the national government retained rights to develop subsoil resources in the area, which, “permits the government to authorize and pursue large-scale development projects on Indigenous lands and prevents effective Indigenous control of lands and resources” (Wickstrom 2001: 133).

In the midst of the rugged topography of the *comarca* lies a mountain that has for over 30 years attracted international interest and sparked intense controversy. Cerro Colorado is one of the world’s five largest remaining untapped copper deposits (Gjörding 1991), containing 1.12 billion tons of 0.64% copper mineralization (Redwood 2011). Various national and international mining corporations have had an intermittent presence around the Cerro Colorado site since the 1970s, undertaking exploration and prospecting activities (Gjörding 1991; Wickstrom 2001). Indeed, during the 1990s, 80% of the *comarca* was covered by mining applications, without Ngöbe consent (Young and Bort 1999). However, due to declines in the market price of copper, Cerro Colorado’s exploitation was rendered economically unviable and twice put on hold (Wickstrom 2001; Zea 2011). These past activities left visible scars on the natural landscape, including large cuts from mountainside, drilling platforms, and a road constructed to the mine site (Gjörding 1991; Nakoneczny and Whysner 2010). They also constituted significant disruptions to Ngöbe communities in the vicinity of the developments (for details on the environmental and social impacts of earlier mining exploration at Cerro Colorado, see report of Nakoneczny and Whysner 2010). Today, the Panamanian state company *Corporación de*

*Desarrollo Minero Cerro Colorado* (CODEMIN) owns the Cerro Colorado concession. With copper prices on the rise, 13 multinationals have expressed renewed interest in opening the project (Redwood 2011).

Outside of the *comarca*, two other major and imminent mine concessions also fall in watersheds inhabited by indigenous Ngöbe communities. Petaquilla's Molejon Gold mine, currently the only functioning mine in Panama, lies near the Ngöbe community of Nueva Lucha. Within the Inmet/Minera Panamá Cobre Panama concession there are two recognized indigenous "Project-affected Communities": Nuevo Sinaí and Nueva Lucha, with populations of 350 and 300 people, respectively (Golder Associates 2010). There are likely several additional Ngöbe households affected by these two projects which were not accounted for due to narrow definitions of what constitutes a 'community' and where impacts will reach. While these communities surrounding the Petaquilla and INMET mines are equally relevant to an analysis of indigenous mining experiences in Panama, the scope of this research limited our focus to the Ngöbe communities inside the *comarca* around Cerro Colorado.

#### *Development or "Social Contamination?": Indigenous-Mining Conflicts in Panama*

Broadly speaking, the mining industry and Ngöbe leaders and communities present very divergent views about the risks and benefits of establishing open-pit mining in indigenous lands. Apart from national economic gains, social development is frequently touted by mining proponents as a central benefit of projects in rural *campesino* and indigenous territories. Informants at CAMIPA, the Mining Chamber of Panama, highlight that majority of Panama's twelve proven mineral deposits fall in the areas with the highest national poverty levels, particularly the indigenous *comarcas*. Pro-mining parties maintain that mining will help mitigate

these conditions of ‘extreme poverty’ experienced by indigenous communities (CAMIPA 2011). For example, in a National Assembly announcement posted in *La Prensa* in February 2011, it was written: “Education and Health for Indigenous Areas: Communities where mining exploitation will occur will have access to higher royalties for infrastructural works, education and health centers, among other social benefits.”

CAMIPA members present mining as a form of alternative development and capacity-building for indigenous communities, emphasizing that mining will provide much-needed employment for local people during the ~30 years of useful mine life. They do acknowledge, however, that specialized positions will be filled by mining engineers and experts rather than local *comarca* residents, who lack the technical skills necessary to fill jobs that would become available. CAMIPA representatives advocate that mining can fill a development void in the *comarcas* that the government has failed to address. For instance, though improving roads and health clinics and supporting local artisans, mining companies can provide public services that have thus far been neglected in these communities (CAMIPA 2011).

Pro-mining advocates also argue that mining can enhance environmental management in indigenous areas. Mining is seen as a form of “environmental improvement” (CAMIPA 2011). Firstly, CAMIPA states that mines will cover a very small area of the country, citing the environmental footprint of all twelve major mining projects as 7210 km<sup>2</sup>, or 0.1% of Panama’s total land surface (Zea 2011). Mining projects are presented as a means to slow uncontrolled deforestation in rural areas by swidden agriculture (CAMIPA 2011; Zea 2011). A net positive environmental impact is thus achieved by providing local people with other means of generating income, reducing the need to practice swidden agriculture and harvest timber for fuel.

Reforestation efforts on the part of mining companies achieve additional environmental benefits (Zea 2011).

This positive view on mining in indigenous territory presented by government and industry is not shared by the majority of Ngöbe communities to whom the benefits purportedly accrue (Community respondents, April 2011). The Ngöbe have a long and ongoing history of resistance to mining development at Cerro Colorado. Exploration and prospecting activities in the region in the past were perceived as direct threats to Ngöbe land rights and livelihoods, and were met with opposition from neighboring communities (Gjörding 1991; Wickstrom 2001; Nakoneczny and Whysner 2010). In 2006, the Ngöbe General Congress ratified Resolution No. 4 and in a special meeting of leaders approved their complete opposition to medium- and large-scale mining projects in the *comarca* (Jórdan 2011).

In addition to issues surrounding territorial rights, Ngöbe are concerned that open-pit mining at Cerro Colorado will have a number of negative impacts, such as accelerated loss of culture and irreparable environmental damage with detrimental health consequences (Gjörding 1991; Nakoneczny and Whysner 2010; Community respondents 2011). Such consequences were apparent after initial exploration and operation in the 70s and 90s (Community respondents 2011). These concerns are further fortified based on the experiences of Ngöbe and *campesino* communities living in proximity to the operating Petaquilla mine. These communities have already seen tailings breaches into the river which supplies drinking water, witnessed fish kills, and experienced an increase in skin diseases. Furthermore, the community development projects promised by the mine yet remain unfulfilled (HIST 510 Lecture, 2011).

*Escalated tension and conflict: Law 8 & Events of 2011*

Always a point of controversy, the tensions between mining and indigenous communities in Panama rose to new levels with the approval of Law 8 on February 11, 2011, which reformed the existing 1963 Mining Code (Arosemena 2011; Comisión Comercio y Asuntos Economicos 2011). The revision of the mining code raised royalties from 2% to 5% of gross production, and permitted foreign state-owned mining corporations to directly invest in Panamanian mining concessions (Comisión Comercio y Asuntos Economicos 2011). This latter change was introduced to facilitate the financing of large-scale mining projects, which have massive start-up and operation costs (Comisión Comercio y Asuntos Economicos 2011). Some received this Law as a violation to Panama's national constitution, which carefully avoids foreign government ownership of land in light of American colonization and control of the Canal (La Prensa Locales 2010).

Law 8 was met with widespread resistance from the Ngöbe, who perceived the government's modification of the mining code as a strategy to accelerate Cerro Colorado's exploitation through facilitating foreign investment in large-scale mining projects (Community respondents 2011). Thousands of Ngöbe took to the streets in February in successive rounds of marches in San Felix and a four-day roadblock on the Transamerican highway, demanding that the government repeal the new legislation (La Prensa 2011). The Ngöbe's large marches were bolstered by an eruption of protests from other civil society groups in the capital city and across the country. These protests received extensive national media coverage; La Prensa, for example, had daily coverage of the Ngöbe's actions during the week of February 20th, 2011. The Ngöbe's massive direct actions proved effective; on March 3, President Ricardo Martinelli traveled to San Felix to announce that Law 8 would be cancelled, citing that 75% of Panama's population was

opposed to mining development (Gonzales 2011b). After three rounds of debate in the legislative assembly, on March 18, Law 313 was passed, effectively canceling the polemic Law 8 (Garrido and Loo 2011).

Ngöbe leaders have received the repeal of Law 8 as tentative victory, one step towards securing a ban on mining development in Cerro Colorado. The “Coordinadora por la Defensa de los Recursos Minerales y el Derecho del pueblo Ngäbe Buglé”, hereafter referred to as the Coordinadora, is a coordinating body that emerged during February’s protests to organize opposition and negotiate between Ngöbe and the government. The Coordinadora is adopting Law 8’s repeal as a platform from which to push through a new law placing a moratorium on all mining and hydroelectric projects in the *comarca* (Rodriguez 2011). These negotiations continue at the time of writing, April 2011.

The overlap and friction between mining and indigenous territories in Panama is the central theme driving the research of this report.

## **Research Objectives and Questions**

The purpose of the document is many-fold. Primarily, it serves as an aggregation of opinions and a collection of documents to support a greater understanding of the indigenous experience with mining in Panama, with special focus on Cerro Colorado. The research is meant to be relevant to CIAM’s mission; one central goal is that our work contributes to building stronger ties between mining-affected communities and their legal advocates. We also wish our research to be a useful resource for the Ngöbe communities around Cerro Colorado, providing information on their rights to Free, Prior Informed Consent (FPIC) through legislation at the local, national and international levels. The analysis of community members’ experiences with

mining companies' treatment of FPIC in the *comarca* is carried out with the aim of assessing how well theories and formal rights are being translated into practice. Finally, research on issues of political authority and legitimacy in the Ngöbe-Buglé *comarca* is important to develop an understanding of where *real* community consent in consultation processes should originate.

This paper is divided into three main sections, the first two based on relevant literature and the last on field-work carried out in the Ngöbe-Buglé *comarca*. The first section addresses *comarca* politics, with the objective of organizing the current situation and highlighting recent changes to the political system in relation to mining. The second reviews indigenous peoples' rights at the local, national and international levels, referring in particular to the right to Free, Prior and Informed Consent. The third section looks at the realities of FPIC in the *comarca*, and reviews findings on impacts of the ongoing mining consultation process in the Ngöbe communities around Cerro Colorado.

#### *Questions:*

This report is developed around some core questions to better understand the Ngöbe experience with mining in Panama. Questions essential to background information include: What is the history of *comarca* politics and how are recent political changes related to mining? What are indigenous peoples' local, national and international rights concerning consultation and informed consent? Questions then extend from theory to practice to understand the realities of the *comarca*. These questions include: Have the conditions of FPIC been met in the *comarca*? Are communities informed about the risks and benefits of mining? How has mining presence in the *comarca* affected communities?



*Justification:*

Mining is an issue that has lately appeared almost daily across the covers of Panamanian newspapers. From changes to the mining code and the massive protests that ensued, to CIAM's cases in the Supreme Court regarding constitutional violations, open-pit mining projects have attracted much controversy and will likely continue to do so provided the massive expansion expected in this industry. Building research and understanding of the current issues is important to provide baseline information for future reference as Panama's mining industry develops.

The specific topics explored are intended as a continuation of research started by McGill interns last year, and to maintain the links to *comarca* communities this former project fostered. Many aspects of the Cerro Colorado project, from the tangled web of *comarca* politics to the various sources outlining indigenous rights, are confusing and difficult to trace from the outside. This research attempts to clarify some of these complexities.

FPIC is a relatively new in the rhetoric of development and rights. While similar concepts of consent have been included in natural resource development even before the creation of the Carta Organica, FPIC with its base grounded in international policy is a solid tool for communities in conflict. Further justification for this report is to make FPIC more viable for the affected Ngöbe communities in explaining what the concept is and how the rights it entails can be exercised.

Finally, the paper is justified by the fact that Canada is home to the largest consortium of mining companies in the world. Indeed, the most prominent mining companies in Panama are all subsidiaries of or related to Canadian mining corporations. As Canadians, understanding the obligations and operations of our companies operating abroad is necessary to keep them accountable.

## Methodology

### *Study site:*

Field interviews for this research were carried out in the Ngöbe-Buglé *comarca* in communities surrounding Cerro Colorado. These communities are located within the Nedrini region and Nole Düima district of the *comarca*, in the watershed of the San Felix river (Proyecto Agroforestal Ngöbe Buglé 2002; See Appendix A). The district of Nole Düima had a population in 2010 of 12 582 (INEC 2010). The specific communities surveyed were Hato Chamí, Cuernavaca, Escopeta, Hacha, Caña Brava, Jengibre and Arriera. These are among the 17 communities estimated to fall in the immediate vicinity of the Cerro Colorado site (Rodriguez 2011). Some respondents were visiting from other *comarca* communities where we did not survey, including Rincón, Ratón, Cerro Puerco and Cerro Balsa. Chamí is accessible by vehicle from San Felix, Chiriqui (~1.5 hours). There is a vehicle road between Chamí and Cuernavaca, but it is predominantly traveled on foot. The remainder of these communities are linked by a network of footpaths, with roughly 0.5 - 3 hours walk time between the adjacent communities we visited. Outside of the *comarca*, additional interviews were carried out in Panama City.

### *Research Methodology:*

This research involved two distinct components. The first was a literature review of a broad range of sources, including peer-reviewed journal articles, NGO and industry reports, press articles, legal documents, atlases and maps, etc. This research provided grounding in the legal frameworks for indigenous rights and the formal *comarca* political structure. It also was important to build an understanding of the current volatile context of mining in Panama and the events unfolding around Law 8.

The second portion of research involved in-person interviews to collect primary information. We began with interviews in Panama City with indigenous rights lawyers, academics, and some industry members to develop a picture of Panama-specific indigenous rights and issues, as well as to understand the perspectives of mining advocates. We then went into the *comarca* to assess the discrepancies between the formal rights and industry standards concerning consultation and Ngöbe communities' actual experience on the ground.

Our interviews in the *comarca* were based on a questionnaire with a consistent list of questions. These semi-structured interviews began with open-ended questions regarding peoples' general sentiment and experience with the Cerro Colorado mine, and then moved into a more structured list of questions addressing issues of Free, Prior, and Informed Consent. The latter questions were developed on aspects of FPIC outlined in reports from OXFAM (2010) and MacKay (2004). Despite the original list of formal questions, we also had space for informal conversations, dialogue, and further questions for clarification. The majority of interviews took the form of face-to-face interviews with individuals within a given household. We did perform some small group interviews, but tried to avoid this format due to divisions between those in favor and those against mining, which could have placed respondents in a group interview setting in an uncomfortable position.

In the *comarca* we were accompanied by a guide who was familiar with the communities and the trail networks, and who could translate, where necessary, between Ngäbere and Spanish. To identify which households to interview, we essentially employed a snowball sampling method through our guide, whereby one contact in a given community would suggest further contacts within that community and identify point-contacts in neighboring communities (ENVR 301 lecture slides, Fall 2009). Other interviewees were more 'randomly selected'; for instance,

individuals encountered along the walking trails. We ensured that both of us took separate notes on all interviews in order to compare our understandings afterwards and obtain the most complete comprehension of the interview possible. Most interviews carried out in Spanish were recorded for further reference.

We recognize that our methodology was limited in many respects; please refer to the Conclusion section of this report for a discussion of limitations and recommendations.

*Ethical Guidelines:*

We made every effort to align our research in the *comarca* with the ethical guidelines of McGill University's 2006 "Protocol for Research in Panama's Indigenous Communities," described below:

*1. Basic Guidelines:* Notions of power, equity, and respect provided the foundation of our approach to working with *comarca* communities. We recognize the importance of equitable sharing of information and will return our research results to the communities we visited. To the extent possible, our interviews were a two-way exchange of information and questions, without injecting our own opinions. We worked with awareness of, and respect for, local customs, language, traditions, and rules.

*2. Rights and Ownership:* This document was prepared in conjunction with CIAM and is available to McGill University. We emphasized that individuals and communities had ownership and rights to access the information they shared. With respect to access, we recognize communities' rights to physical possession of data and will return hard copies of documents to leaders in the communities we visited.

*3. Main aspects to be considered during the first meeting:* In our first meeting with authorities

we presented our full work plan, including the research objectives, methodology, time-line, and sample questions. Our proposal was presented in February, giving sufficient time for our *comarca* contacts to consider the project and suggest revisions before our field research in April.

4. *Consultations:* We welcomed, and will continue to welcome, community feedback and revisions to our research and methodology.

5. *Informed consent and confidentiality:* Informed consent and confidentiality were central to our interview methodology. Prior to commencing interviews we explained the purpose of our research and the destination of the information we gathered, and emphasized that participation was optional. We also respected respondents' anonymity unless otherwise requested. We had approval from *comarca* and Coordinadora authorities to carry out our interviews.

6. *Consent form:* We sought oral consent.

7. *Aboriginal knowledge:* We respect and recognize the value of Indigenous knowledge systems and the complementarity of traditional and scientific knowledge.

8. *Data processing, analysis and validation:* Our research results and report will be translated into Spanish and returned to leaders in the communities in which interviews took place.

Feedback and suggestions will be incorporated into revisions of the report.

9. *Right of opposition and inclusion of divergent views:* These points were also very important in the context of this research on a polarized issue. Our research is associated with an NGO working from a fairly strong anti-mining standpoint. However, we recognize and respect diverging views and did our utmost to emphasize that we were there to listen to and incorporate all perspectives from a neutral standpoint. We did not introduce our own opinions. We respected peoples' wish to abstain from participation.

10. *Translation and interpretation:* We worked with our interpreter and translator, a respected

General Congress member, from the early planning stages of our project.

*11. Management of research-time:* We adapted our time frame to the capacities and needs of the communities involved. This was important as our research fell in a very busy time for leaders and communities organizing around Law 8. We were thus flexible in the timing of our field research.

## **Results & Discussion Part 1: *Comarca* Politics**

### *The Question of Authority*

One of the most complex questions regarding mining in the *comarca* is authority. Who has the right to speak on behalf of the Ngöbe? How can all opinions be shared and respected? Since the creation of the Ngöbe-Buglé *comarca* in 1997, the complex web of the Ngöbe's political structure has made lines of authority unclear. These confusions surrounding Ngöbe authority have made it easier for the government and mining companies to manipulate the system and obtain consent from leaders who may be seen as illegitimate by the majority Ngöbe communities (Wickstrom 2001; Rodriguez 2011).

The dynamics of the Ngöbe political system, as it operates within the larger National system, are different in theory and in practice. This discrepancy between the formal structure as legislated and what is actually practiced is where clear, legitimate authority gets lost. Many of the originally-mandated authorities and positions in the *comarca* are not filled, and the role of traditional authority within the *comarca* is stronger than would be extrapolated from paper (Rodriguez 2011). Regardless of their actual authority, traditional leaders are increasingly left out of formal legislation, and have been for decades (Wickstrom 2001). The result is an ever-increasing gap between formal and informal power networks.

This section distills the *comarca*'s political structure in its formal sense, discusses the politics currently practiced, and then reviews recent changes to the system. The section will then draw a map to different lines of power, demonstrating the complexity of obtaining said authority as is necessary for mining operations.

*Formally Organizing the Comarca Political Framework:*

Law 10 of 1997 introduced a consolidated political framework to govern the *comarca*, theoretically providing a new dimension of political power to its inhabitants at the national level (Young and Bort 1999). The *comarca* structure was borrowed from the Kuna, whose were successful in having their political system recognized as legitimate by the Panamanian government (Jórdan 2011). The Ngöbe's move towards adopting a version of the Kuna's political system stemmed from strains on the existing Ngöbe organization, which was proving inadequate to fend off government encroachment on their territories. As Wickstrom (2001) describes, "The overall capacity the Ngöbe developed to work together by setting group-wide goals and organizing in defense of group-level interests was insufficient to allow them to deal effectively, as a society, with challenges imposed by outside political and economic systems" (62).

Threats to Ngöbe territory and dominant occidental ideas of power necessitated such a shift in organization and legitimization of the Ngöbe's political role. However, a looser traditional Ngöbe political apparatus existed long before the creation of the *comarca*. Historically, the Ngöbe organized themselves around family groups, nominating one member as a leader, usually the eldest male (Young 197; Jórdan 2011). In times of crisis, a *cacique* would be elected from among these heads to represent the larger group's interests. Thus, traditional

systems of power allowed more than one person to be an authoritative figure (Young and Bort 1999; Rodriguez 2011; Valiente 2011). This notion of multiple authorities is difficult to reconcile with Panama's modern political system, which seeks one singular opinion and leadership body to represent the *comarca* population (Jórdan 2011).

Authority and legitimacy are integral to dealing with issues such as mining. The Ngöbe must present themselves as a legitimate force to the Panamanian government, but also as legitimate to their own people and to their own traditions. While the UN Declaration on the Rights of Indigenous Peoples states the, "Urgent need to respect and promote the inherent rights of indigenous peoples which derive from political, economic and social structures," (UNFPII 2007), the *comarca* political system did require the Ngöbe to adopt a hybrid political structure, including the notions of central government taken from the dominant occidental culture.

The modern Ngöbe political system has been evolving since the 1960s, when the first Ngöbe local congress was implemented (Young 1979; Jórdan 2011). Throughout the 1970s, three regional *caciques*, traditional regional authorities, assumed positions of political leadership alongside the local congresses. Ngöbe representatives were first elected to positions at the national level in 1972 (Wickstrom 2001). The first Ngöbe General Congress was created in 1978, with the president of the General Congress representing the maximum *comarca* authority (Jórdan 2011). Thus, by the end of the 1970s, the total government structure of the *comarca* contained the general and local congresses three regional *caciques*, addressing legitimacy to the government and to Ngöbe tradition, respectively (Gjörding 1991). 1986 saw the first factions within the General Congress as it split into two entities, one congress responding predominantly to the national government and the other to Ngöbe communities (Jórdan 2011).



*Political Structure as Defined in the Carta Organica*

The Carta Organica outlines the formal political structure of the *comarca*. Articles 17-39 outline the responsibilities and logistics of the Congress system, the *cacique* system and other involved positions (CoNaPi 2003). Despite the formalized structure, practiced politics are somewhat confused. Wickstrom (2001) remarks that her findings on the Congress system varied by source, with election periods ranging from two to five years. This section takes a moment to visually outline the official *comarca* politics system, the practiced system, as well as to fill in those positions with their contemporary personnel.

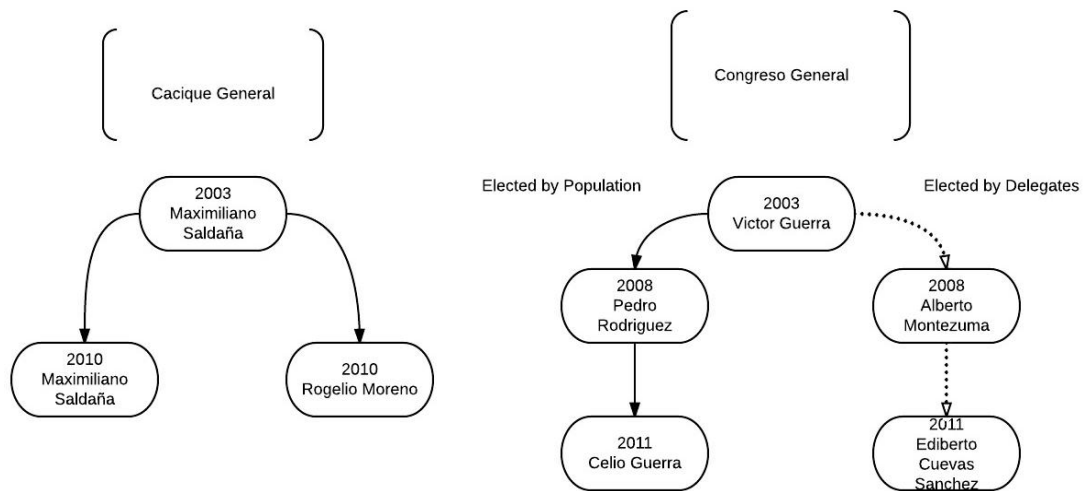
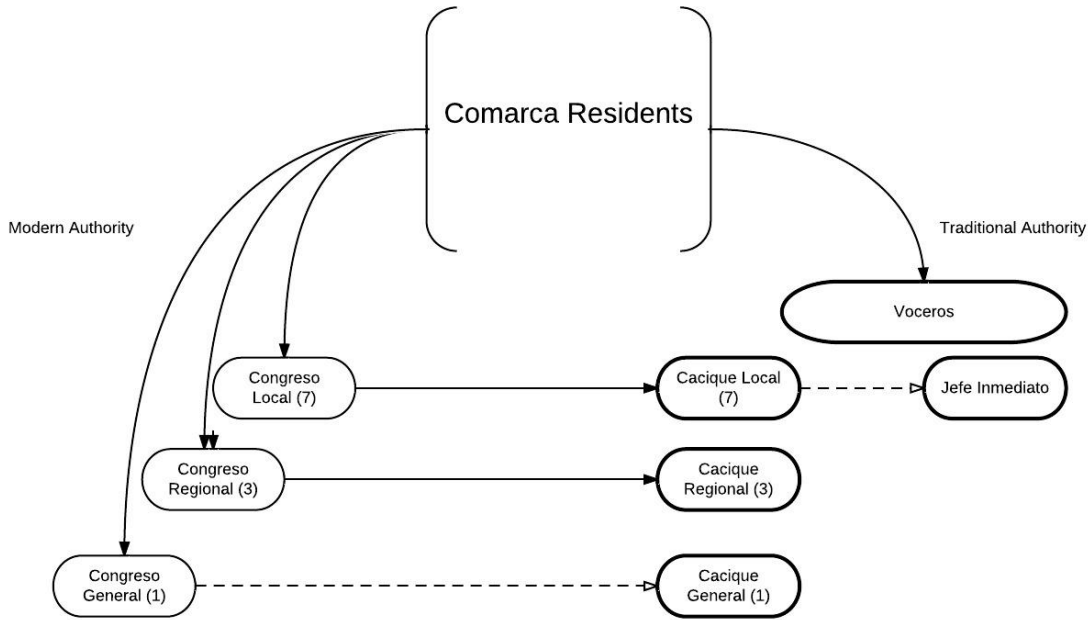


Figure 1: Chart of Ngöbe Political Authorities

Practiced Political Structure  
(Elections in Pueblo Nuevo)



New Political Structure  
(Government Changed Process)

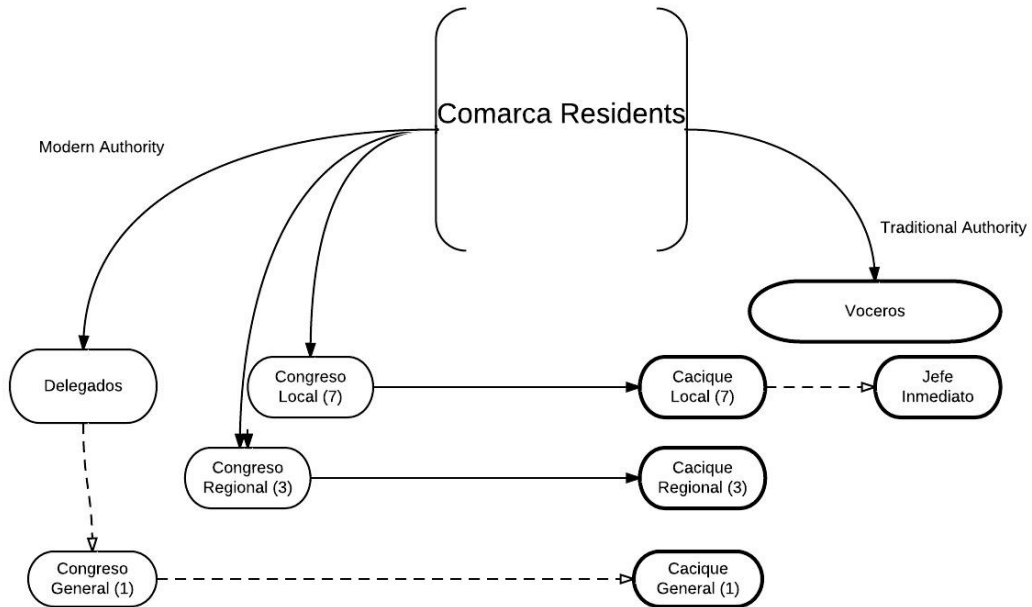


Figure 2: Chart of Operating Political Structures

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### *Comarca Politics in Action: Caciques and Traditional Authority*

In 2003, Maximiliano Saldaña became the first *cacique general* for the Ngöbe-Buglé *comarca* (Jórdan 2011). As described above, this position of maximum traditional authority, held for six years, had been created through Article 25 of the 1997 Carta Organica (CoNaPI 2003). However, prior to 2003, the position had never been necessary or implemented. At the time, Saldaña was one of three *caciques regionales*, and, although less popular than the other two *caciques*, he garnered the position being the oldest of the three (Jórdan 2011).

In January 2010, traditional authorities held the second general elections in the history of the *comarca* for the positions of *cacique general, regionales, y locales* (HREV 2010). In this election, Rogelio Moreno was elected into the position of *cacique general* and thus became the *comarca*'s maximal traditional authority. However, the legitimacy of his election was questioned. Voter turn-out was low, with only 8000 people attending the elections (HREV 2010). Furthermore, Moreno is under 40 years old, the minimum age required under the Carta Organica for the *cacique general* (Valiente 2011). Maximo Saldaña, the *cacique general* since 2003, who should have retired in 2009 after 6 years in the position, called the elections illegitimate, as did another of the *cacique general* candidates, Silvia Carrera (HREV 2010; Jórdan 2011).

It is here that the Electoral Tribunal (ET) enters the picture. Those in opposition to Moreno's selection as *cacique general* claimed that the elections were illegitimate since they were not supervised by the ET. While the Carta Organica does state in Article 25 that, "The Electoral Tribunal will *supervise* the elections in which *caciques* will be elected by popular democratic vote through their respective congresses," (CoNaPi 2003) the ET had never been involved in any of the *comarca*'s elections during the past eleven years (HREV 2010). Similar to other unfilled positions created by the *Carta Organica*, this section of legislation simply hadn't

been implemented. Thus, in March 2011, the government called for new *cacique* elections (for the period 2011-2017), which will take place in September, 2011 (Cumbrera 2011). Until then, both Saldaña and Moreno sport the title of *cacique general* (Cumbrera 2011). However, Moreno is not recognized by the Electoral Tribunal and has been denounced by members of the General Congress (Rodriguez 2011).

### *Comarca Politics in Action: the General Congress*

Traditional congress elections in the early 2000s were held by direct vote, whereby at the election site voters would form lines behind their candidate of choice. The candidate with the longest line was the winner of the election (Rodriguez 2011).

In 2006 congress elections, the national government for the first time intervened actively in *comarca* politics, openly backing a candidate who lost to Pedro Rodriguez, the candidate supported by the majority of the Ngöbe population. This effectively blocked further intervention of the central government in the Ngöbe Congress (Jórdan 2011). The 2006 General Congress is seen by some as the last truly legitimate Ngöbe congress free of government influence (Jórdan 2011).

Attempts were made again on the part of the government to intervene in Ngöbe politics in the 2009 congress elections. The 2009 elections were controversial and marked the beginning of a deepening divide within the General Congress leadership. For the first time, as per the goals of the national government, the Ngöbe traditional system of direct vote for Congress presidential candidates was replaced for a system of *delegados* (Jórdan 2011). In this new structure, the general population elects delegates who in turn elect the president of the Congress and select the *cacique general*. Further problems with the election surfaced as the government's efforts to

restructure the system continued. The traditional Ngöbe voting age of 15, respected by the Panamanian government through the Carta Organica, was raised to 18 (Valiente 2011). Furthermore, the elections were held in a remote location, and transportation was offered to those who supported government-backed candidates. As Jórdan described, “The candidate whose supporters arrive at the election is the candidate who wins.” These changes introduced by the government were rejected by much of the Ngöbe population, and only ~22% of the population turned out to vote (Jórdan 2011).

The ultimate outcome of this 2009 election was the creation of two congresses. The first was headed by Alberto Montezuma, recognized by the government as the president of the General Congress, but regarded as an illegitimate leader by many Ngöbe. The second congress was presided by Pedro Rodriguez, elected separately by direct vote with popular community support. Thus, the *comarca* entered an era with two General Congresses which governed until 2011 elections, one under community-backed Rodriguez and the other under government-recognized Montezuma.

#### *Conflicts of 2010 & 2011: Changes to the Carta Organica:*

Due to denouncement of the legitimacy of the January 2010 elections of Rogelio Moreno as *cacique general*, as discussed above, the Carta Organica was modified to increase the role of the ET in organizing Ngöbe elections. In June 2010, the Director of Indigenous Politics of the Ministry of Governance and Justice, himself Ngöbe, announced that the Carta Organica had been changed through Legislative Decree 537, increasing the Electoral Tribunal’s role in Ngöbe elections (HREV 2010). Decree 537 allowed the ET to intervene in Ngöbe elections to a far greater degree than the purely support and *supervision* role provisioned in the original Carta

Organica. According to Jorge Bravo, Deputy Director of Information and Public Relations - Electoral Tribunal of Panama, Decree 537 means that, “The election of delegates for each congress will be, for the first time since the establishment of the *comarca*, a faculty of the Electoral Tribunal.”

Some argue these changes are harmonized with the goals of the original Carta Organica, and that the ET is simply fulfilling the legal role it was always intended to perform (Cumbrera 2011; HREV 2010). The argument of the ET is that the reforms were done in a genuine attempt to reduce redundancy and confusion in the Ngöbe congresses; for instance, to ensure that only one General Congress exists (Bravo 2010). However, Decree 537 was passed in a vacuum, without consultation at the community level or with the Congresses of Rodriguez and Montezuma. This change to the Carta Organica is a strong point of contention for the Ngöbe (Rivera 2011; Rodriguez 2011). Many traditional authorities were deeply upset with Decree 537, seeing it as a threat to political autonomy and a violation of their rights to be consulted on any changes that would affect *comarca* electoral process (HREV 2010; Rodriguez 2011). Their subsequent calls for the repeal of Decree 537 have been ignored by the government.

In July 2010, the Electoral Tribunal announced that the elections for delegates to the Congresses would be held on October 24, 2010 (HREV 2010). Traditional authorities in turn called on the Ngöbe to boycott this government-sponsored election for the reasons discussed above. The October elections were the third attempt of the government to gain control over the *comarca* congresses, as previously described for 2009 and 2006. Entering the elections in October 2010, there existed duplicates of each of the *comarca*'s maximum authority, with Alberto Montezuma and Pedro Rodriguez as presidents of two General Congresses. The October

elections for *delegados* were poorly attended (~23.9%) with widespread boycotts called for by traditional authorities (HREV 2010).

These government-recognized delegates in turn in March 2011 elected Edilberto Cuevas Sánchez as the president of the General Congress. With others receiving this election as illegitimate, a counter election was held in Pueblo Nuevo March 6th-10th, 2011. The counter-election elected Celio Guerra by direct vote as the new president of the General Congress (Rodriguez 2011). Thus, despite the ET's wish to simplify *comarca* leadership, two General Congresses continue to persist, one seen as legitimate by the government, and the other recognized by many communities and traditional authorities (Cumbrera 2011).

*Linking these Changes to Mining Development in the Comarca:*

Changes in Ngöbe authority been synchronized, perhaps not coincidentally, with trajectories of mining interest at Cerro Colorado. Original consolidation of power within the *comarca* coincided with the discovery of mining deposits in Cerro Colorado, during the Torrijos regime in the 1970s (Wickstrom 2001). More recent political changes have occurred simultaneously with increasing international interest in Cerro Colorado (Redwood 2011) and revisions to the national mining code.

By backing candidates who then garner authoritative positions in *comarca* politics, the national government is able to influence decision-making in the *comarca* (Jórdan 2011; Zea 2011). Although these government-backed authorities are not necessarily recognized by the majority of the Ngöbe population, they are seen as legitimate in the eyes of the government, which can then exercise control over the *comarca*. Many view this jockeying of power as an intentional manipulation directly related to mining and resource extraction. At the elections in

October 2010, 60% of 136 Ngöbe voters interviewed saw a direct relation between political manipulation and external economic interests, such as mining (HREV 2010).

Community members of Chamí noted that some of the delegates to the government-recognized General Congress are also employees of the pro-mining “responsible mining” training groups. It is the General Congress which, according to the Carta Organica, must be consulted with about natural resource projects (see “Law 10 & *Comarca*-level Legislation,” below). These delegates furthermore elect the *caciques*, tying the whole system into one feeding loop of power. This loop then serves to eliminate resistance from other political leaders, and officially diminishes the power of those who might otherwise be seen as legitimate Ngöbe authorities. It also creates a divide between the official and unofficial power structures, one responsible to the government and the other to the people. It is important to note, however, that community members do not unanimously connect the recent political divisions to power and authority regarding mining issues. Some see these as separate and unrelated issues while others perceive a deliberate link between the recently modified politics and interest in Cerro Colorado.

## **Results and Discussion Part 2: Indigenous Rights to Consultation in Natural Resource Development**

“Much large-scale economic and industrial development has taken place without recognition of and respect for indigenous peoples.’ rights to lands, territories and resources. Economic development has been largely imposed from outside, with complete disregard for the right of indigenous peoples to participate in the control, implementation and benefits of development.”

“*Indigenous people and their relationship to land.*” UN Doc. E/CN.4/Sub.2/2001/21. Quoted in MacKay (2004).



## *Overview*

At the heart of conflicts between indigenous communities and foreign mining companies is a lack of community consultation and participation in decision-making processes. A survey of thirty-eight mining related human rights controversies carried out by the International Council on Mining and Metals (ICMM) found that, "...complaints regarding companies' failure to conduct meaningful consultations or obtain community consent for project were widespread, underlying nearly fifty percent of community concerns" (Laplante and Spears 2008: 76). In the Panamanian context, the Ngöbe's dissent has been driven in large part by the fact that government and mining companies have never sought their consent concerning Cerro Colorado or Law 8 (Community respondents 2011).

Various protocols have been developed at the international, national, industry, and *comarca* levels which formally outline indigenous peoples' rights with respect to natural resource development in their territories. From a business perspective, too, it has become an increasingly important 'good practice' for mining companies to take into account the rights of indigenous communities (ICMM 2010; Amazon Watch 2011). As a report released by Amazon Watch (2011) describes, "In the 21st century respecting indigenous rights is not just a moral imperative but also a business necessity" (1), citing financial losses associated with reputational damage, legal challenges, and operational difficulty from social unrest when indigenous rights are disregarded. The ICMM (2010) further reiterates that mining companies risk losing government and stakeholder support and can face operational setbacks when they fail to include affected indigenous communities in their mining planning and development.

## *What is FPIC?*

The right of indigenous peoples to Free, Prior, and Informed Consent (FPIC) with regards to any development projects that affects their territories is a central concept being discussed and debated by international human rights organizations, NGOs, governments, and industry. FPIC is a collective right of indigenous communities that, "...envisions that local communities are informed about development projects in a timely manner and given the opportunity to approve or reject a project prior to the commencement of operations" (Laplante and Spears 2008: 87). Whereas a process of consultation simply requires that companies are receptive to community views, FPIC requires that indigenous communities are active participants in decision making processes and have the ability to reject the proposed project at any stage of development (Laplante and Spears 2008; Oxfam 2010; Amazon Watch 2011).

*Free* implies that communities have the right to give or withhold their consent for a project free from force, manipulation, coercion or pressure by any outside entity (OXFAM 2010). *Prior* signifies that consent must be given or withheld prior to the authorization of the use of land for development, or before a project becomes an "economic or political inevitability" (Amazon Watch 2011: 5). *Informed* means that communities must be provided with all relevant information in a format that is accessible and easily understood, including in their traditional language. Communities must also be able to have access to information from third party sources, independent of that provided by project developers or government (OXFAM 2010). For a comprehensive list of information that should be provided to a community facing mining development, refer to the OXFAM (2010) report pgs. 16-17 and McKay (2004) pgs. 34-35. *Consent* means that indigenous communities are able to give or withhold their approval of a project at each stage of the project's development according to a decision-making process selected by the community itself (OXFAM 2010). Overall, FPIC, "means recognizing the right

of communities to reject extractive industry projects and a corresponding acceptance by extractive industry companies that they may have to walk away from projects, even when in “possession of full, state-sanctioned rights of access and extraction” (Laplante and Spears 2008: 22).

Translating FPIC from paper to practice is a challenging and often imperfect process. For example, it is difficult to identify what constitutes an affected community and who can legitimately give or withhold consent on a community’s behalf (Laplante and Spears 2008; Amazon Watch 2011). This latter issue is particularly sensitive in the Ngöbe-Buglé *comarca*, where there is a great deal of overlap and rivalry between different levels of leadership, as described in the preceding section. An incident in February 2011 concerning Law 8 illustrated how these complexities and multiple lines of authority convoluted a process of consultation and consent. On February 21, Rogelio Moreno, claiming to be the *cacique general*, signed Decree 30 with the government, in which it was promised that mining exploitation would not commence in Cerro Colorado until 2014 (HREV 2011). The government needed a single figure that could give consent on behalf of the Ngöbe and identified Moreno as the best candidate (Jórdan 2011). This was met with uproar from the General Congress and the Coordinadora, whose members stated that Moreno was an illegitimate leader, had failed to consult with anyone before signing the Decree, and had no right to speak on behalf of the Ngöbe (Mojica 2011; HREV 2011).

### *International recognition of Indigenous Rights to Consultation*

Indigenous peoples’ rights to FPIC are now recognized in various international protocols. The first groundwork for FPIC was established in the International Labor Organization Indigenous and Tribal Peoples Convention No. 169, ratified in 1989 by 20 countries (ILO 2006).

Article 15(2) of the convention explicitly mentions the need for Free and Informed Consent if community relocation is necessary for a development project to proceed. Article 6(2) outlines that consultation, “shall be undertaken, in good faith and in a form appropriate to the circumstances, with the objective of achieving agreement or consent to the proposed measures” (ILO 2006). Signatory states to the ILO Convention No. 169 are bound to incorporate the treaty into their domestic law, and it is enforceable through international courts and UN treaty bodies (Amazon Watch 2011). However, Panama is not a signatory to the ILO No. 169 convention, the consequences of which will be described in greater detail below. Ngöbe leaders are aware that Convention No. 169 would provide them with stronger legal safeguards against development of Cerro Colorado without consultation and consent. Included in the list of twelve points in the Coordinadora’s proposed new law for the *comarca* is the provision that Panama ratify the ILO convention (Rodriguez 2011).

In 2007, the United Nations Declaration on the Rights of Indigenous Peoples was ratified by 143 member states, including Panama (UNPFII 2007; Turner 2011). Article 32(2) of the declaration explicitly outlines Indigenous communities’ rights to FPIC in the following statement:

“States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of their mineral, water or other resources” (UNPFII 2007).

The UN Declaration on the Rights of Indigenous Peoples is a non-binding agreement carrying greater moral than legal force. Thus, Panama is obliged in ‘soft-law’ to recognize indigenous peoples’ right to Free, Prior, and Informed Consent for mining development projects

in the country. However, this 'soft-law' obligation operates with neither concrete authority nor enforcement.

Over 17 international bodies have endorsed FPIC, including the UN Committees on Human Rights and Economic Cultural and Social Rights, the Convention on Biodiversity, and the Inter-American Commission on Human Rights (IACHR) (MacKay 2004). Article 235 of the 2011 IACHR report *Indigenous and Tribal Peoples' Rights Over Their Ancestral Lands and Natural Resources* states that prior consultation and consent must be part of "any development, investment, exploration or extraction plan which can directly or indirectly affect indigenous peoples' capacity to effectively use and enjoy their lands, territories and natural resources."

While these declarations and conventions represent a step towards formalizing indigenous peoples' right to control development in their own territories, they have occurred simultaneously with significant revisions in the mining laws of several countries in response to trade liberalization (Downing et al. 2002). These two changes often act in contradiction to one another, with one increasing protection of indigenous rights and the other facilitating the entry of mining companies into indigenous territory. Panama is a prime example of this situation: the recent Law 8 would have allowed foreign state-owned mining companies to directly invest in Panamanian concessions. This would permit foreign companies to control large mining projects in Panama, including on land within the *comarcas*. At the same time, Panama is a signatory to the UN Declaration on the Rights of Indigenous Peoples, in which Article 26 states that, "Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired" (UNPFII 2007). Such conflicting commitments are not easily reconciled.

### *Non-State Entities and FPIC*

International human rights law has been predominantly geared towards state actors; however, elements of contemporary law suggest that non-state actors must also comply with international human rights obligations (McKay 2004). Several industry organizations and individual corporations have adopted principles on community consent and FPIC. These are of varying strength and contain some significant loopholes.

The World Bank Group (WBG), a major financier of large-scale development projects, is one entity that has adopted a weak stance on FPIC. From 2001-2003, the WBG underwent an Extractive Industries Review examining its role in the oil, gas, and mining sectors. This review recommended that the WBG adopt a mandate of only backing projects that follow FPIC, stating that FPIC legitimately determines where companies have social license to operate (McKay 2004; Laplante and Spears 2008). However, the WBG did not accept the recommendations of the EIR, and released a weaker statement, requiring only that the projects it finances have “broad community support” and “broad acceptance” (McKay 2004; Laplante and Spears 2008). This removes affected communities’ ability to withhold their consent and exercise veto power over development decisions.

The ICMM has taken a similar stance on Free, Prior and Informed Consent to that of the WBG. In its *Good Practice Guide to Working with Indigenous Communities*, the ICMM states that member companies should have “Broad community support for new projects or activities” (24). This report explicitly mentions that the ICMM does not endorse the *consent* element of FPIC, citing concerns about undermining national sovereignty by granting indigenous peoples decision-making power over natural resource development projects. The Prospectors and

Developers Association of Canada (PDAC) also has released a statement on FPIC in its “e3plus: A Framework for Responsible Exploration” document. This document states that *in certain circumstances* (unspecified), FPIC requires companies to seek and obtain formal permission of indigenous groups before they begin any operations in indigenous territory.

CAMIPA, the Mining Chamber of Panama, does not have a formal position on FPIC, believing this to be a government responsibility (CAMIPA 2011). However, CAMIPA interviewees stated that since the state owns all sub-soil resource rights in Panama, indigenous groups do not have the ability to prevent mining development in their lands. The CAMIPA representatives emphasized that the Panamanian government retains full decision-making power over mining development, but acknowledged that some process of consultation and agreement-making must be held with affected indigenous communities.

#### *What Does this Mean for Panama?*

Piecing together the above information yields a complex picture of the rights indigenous peoples in Panama have to FPIC and the obligations of multinational mining companies operating in the country. The ICMM (2010) recognizes that: “Where FPIC for Indigenous Peoples has been legally provided for by national governments, ICMM members are expected to always comply with the law” (2). Similarly, PDAC (2009) acknowledges that, “Explorers should be aware that, when dealing with indigenous and tribal groups, in some countries it is necessary to meet the requirements for (FPIC) as defined in national legislation or by the provisions of international treaties” (15).

Had Panama ratified the legally-binding ILO Convention No. 169, any national or international company operating in the country would be obliged to recognize FPIC in the case

of community relocation, and to adhere to concrete indigenous consultation commitments. However, Panama has only ratified the soft-law UN Declaration on the Rights of Indigenous Peoples, which is non-binding. Thus, foreign companies operating in the country are not legally required to meet FPIC despite Panama's signing of the UN Declaration (Wing 2011). What is required in Panama, Under Article 1 of the Civil Code, is that foreigner entities must follow Panamanian hard-law (Wing 2011). The following section will briefly outline these laws which exist at the national and *comarca* levels regarding consultation and FPIC.

#### *Consultation in Panama's National Laws:*

Overall, there has been a weakening of national laws guaranteeing the rights of indigenous populations in Panama throughout the past ten years (Valiente 2001).

*To begin, hidden in Law 15 of 2001 were modifications of the original laws of the Carta Organica.* Whereas before the Carta Organica stated that consultation and environmental impact assessments were required for *any* project affecting the *comarca*, Law 15 stipulated that only projects falling 100% within *comarca* boundaries require an environmental impact assessment.

In 2003, Law 18 was passed, canceling many of the articles of Law 41 of 1998, the General Environmental Law. Law 41 had safeguarded indigenous peoples' rights to consultation with respect to natural resource development in their territories (Alvarado 2011). As was the case in 2003, these were hidden cancellations (Valiente 2011). The key articles that were eliminated were Articles 63, 96, 98, 101, and 102. Article 63 had stipulated that any development projects in the *comarcas* had to be done with in conjunction with the community and with community participation. Article 96 stated that ANAM would coordinate with traditional indigenous authorities on any issue related to environment and natural resources in the *comarcas* (Alvarado



2011). This article signified that it was not possible to carry out activities within the *comarca* without the consent of authorities and indigenous communities (Alvarado 2011). Article 101 stated that any commercial or industrial enterprises within the *comarca* required authorization from the qualified authority. Finally, Article 102 described that lands within the *comarcas* are inalienable and cannot be seized; furthermore, that communities can only be relocated from their lands with prior consent.

Today, aside from the *comarca* law, discussed in depth below, the remaining national legislations pertaining to consultation are those articles of the General Environmental Law which were not cancelled in 2003, and the Law of Transparency (N° 6 de 2002). Combined, these require that indigenous peoples are consulted in the case of legislative initiatives which affect their rights, such as Law 8 (Turner 2011).

#### *Law 10 and Comarca-level Legislation*

Ch II, Article 9 of the Carta Organica states that the lands delineated by the *comarca* are the collective property of the Ngöbe-Buglé for their cultural, economic and social well-being. Private appropriation or transfer to any other title is prohibited (CoNaPI 2003). Chapter 6, Article 48, concerning the development of mineral deposits in the *comarca*, states that for these projects to proceed:

“The state and the concessionary will develop a disclosure program, such that the authorities and the indigenous communities would be informed and are able to voluntarily add their viewpoints on said projects, in which they have to guarantee the rights of the population through benefits and compliance with sustainable development principles and ecological protection, with their [authorities and indigenous communities] participation” (CoNaPI 2003).

A subsequent paragraph of Article 48 outlines that impact assessment studies of mining projects must account for social impacts, and that these studies must be approved by indigenous authorities. Article 57 of Chapter 4 further states that the Ngöbe-Buglé General Congress must submit to referendum any projects of mineral exploitation, while taking into account international conventions, the national Constitution, and other laws (CoNaPI 2003). Thus, although the Carta Organica does not explicitly mention FPIC, the above articles indicate that the Ngöbe must be included in the decision-making process concerning mining developments affecting their territory. The General Congress is described as the entity whose consent must be sought.

The Ngöbe Coordinadora has recently taken a new stance of Article 48 with the ultimate aim of eliminating it altogether. The reasoning behind this move is this: if the government approves the new law that the Coordinadora is requesting to place a moratorium on any future mining projects in the *comarca*, Article 48 will become obsolete. If mining is completely prohibited in the *comarca*, no studies or consultation should be necessary. Article 48 would be inconsistent with the moratorium and could be seen as an entrance point for companies to slip around the mining ban and reopen discussions about resource extraction (Rodriguez 2011).

### **Results & Discussion Part 3: Ngöbe Communities and Consultation: The Reality in the *Comarca***

Based on interviews with community members and leaders in the region surrounding Cerro Colorado, it became clear that mining companies operating in the region in the past (1970s-1990s) and current ‘responsible mining’ training sessions have violated each of the terms of Free, Prior, and Informed Consent, as outlined above. Furthermore, the Ngöbe’s rights to consultation and consent on natural resource development projects, as contained in national laws

and Law 10, have been largely ignored. Although none of the respondents were familiar with the formal term “Free, Prior, and Informed Consent”, there was a strong sentiment that they were being treated inequitably and that their rights were being trespassed upon.

Several respondents expressed that companies undertaking prospecting and exploration activities in Cerro Colorado throughout the 1970s-1990s “never had permission from anyone” to enter the area. Their statements are supported by the research of Wickstrom (2001), who found that, “Neither the Panamanian government nor the companies interested in establishing a mine at Cerro Colorado consulted with the Ngöbe before beginning work in the area” (51). It is worth nothing that FPIC was not a well-developed concept during these earlier prospecting phases, nor had Law 10 been established. Thus, the Ngöbe had little formal recourse through which to expose the companies’ complete disregard for community consultation and consent.

Although there are no corporations currently involved in mining activity at Cerro Colorado, for the past two years “responsible mining” training sessions have been hosted throughout the communities near the mine site. Offered as often as once per week, these training sessions are run by a consortium of members of *Kokopelli* (also known as *Clarke Educational Services*), an indigenous stakeholder relations agency based in Canada and Panama City. According to the *Kokopelli* website, their mission is to, “Work directly with industry to build sustainable, respectful and responsible relationships with Indigenous communities and other stakeholder groups” ([estudio507.com/kokopeli/english/about\\_us.html](http://estudio507.com/kokopeli/english/about_us.html)). In the communities we visited, there was some uncertainty among respondents as to whether “el Chileno” and “el Canadiense” hosting the trainings were working independently or on behalf of a specific corporation. However, there are some explicit ties between these sessions Canada’s Corriente Resources. For instance, included in materials distributed during the trainings was a “Corriente

and Ngöbe partnership” presentation, which includes a section on why it is important for the Ngöbe to make an agreement with Corriente resources.

We were informed that since the conflicts surrounding Law 8 in February 2011, these training sessions have been limited to two communities where local support is stronger. Although the training sessions are not a mining project per se, they comprise a large mining-related presence currently working in the *comarca*, and thus we believe an assessment of their treatment of FPIC is relevant. Our interviews revealed their work has some significant incompatibilities with the terms of FPIC, as discussed below.

*Free: Communities have the right to give or withhold their consent for a project free from force, manipulation, coercion or pressure by any outside entity (OXFAM 2010).*

Numerous respondents throughout the communities we visited emphasized that the training sessions involve bribery and manipulation. Those who attend the meetings are offered free meals; for people who can face hunger as a daily reality, the promise of a free food is a strong incentive to attend the pro-mining trainings. Several respondents stated that they believe people go to trainings solely for this reason. Those who attend are also offered monetary benefits; we were told that Ngöbe *promotores*, who go on to promote “responsible mining” outside of the trainings, receive a salary of \$340-450/month. One man recalled how a training session leader had come to his home on three separate occasions, offering him a salary of \$300 if he would agree to attend the meetings and become a promoter. He recounted that the leader had assured him a better quality of life with this money. In a context where money can be in short supply, financial benefit is another compelling reason to attend trainings. One informant mentioned that those in favor were of mining were offered money through the trainings to appear

at February's Law 8 legislative debates in Panama City to present their pro-mining position. Others in opposition to the law did not have the means to travel to the debates. Another respondent mentioned that the leaders of the trainings offer to provide women's support (in what capacity unspecified), but only to those families attending the meetings.

Based on these community members' comments, it cannot be said that the "responsible mining" work being implemented in the *comarca* is free of coercion. The training sessions appear to be taking advantage of certain of the Ngöbes' vulnerabilities by offering scarce resources, namely food and money, in exchange for attendance. A further issue concerns the true intent of the trainings. Numerous respondents mentioned that in order to obtain food, attendees must first sign and give their national ID number. Many believed these signatures were then being used by the training leaders to falsely imply free consent and prove that thousands of Ngöbe are in favor of mining. The sentiment in the communities visited was that vast majority are in opposition to mining development in the *comarca*, and that only 18-50 individuals still attend the trainings. Conversely, at a Canadian Standing Committee on International Trade conference in November 2010 concerning the Panama-Canada Free Trade Agreement, one of the responsible mining training leaders cited that 2000 Ngöbe attend the trainings and that Canadian companies are well-received in the *comarca* (See: [www2.parl.gc.ca/HousePublications/Publication.aspx?DocId=4838619&Language=E&Mode=1&Parl=40&Ses=3](http://www2.parl.gc.ca/HousePublications/Publication.aspx?DocId=4838619&Language=E&Mode=1&Parl=40&Ses=3)). The majority of respondents with whom we spoke perceived these tactics as "trickery", "lies", "illegal" and even as a form of "conquest".

These statements from Ngöbe community members about financial bribery and access to support if they attend the trainings are not isolated incidents. In the Amazon Watch (2011) guide to FPIC, it is reiterated that, "Numerous testimonies from affected indigenous peoples report

offers of money, or threats of withholding basic services such as a school or a health post, if they do not agree to a proposed development project” (6).

*Prior: Consent must be given or withheld prior to the authorization of the use of land for development, or before a project becomes an “economic or political inevitability” (Amazon Watch 2011).*

The response from community members was overwhelmingly that the “responsible mining” training leaders had never sought consent before entering the *comarca* and beginning work. Several respondents emphasized that the training facilitators had entered two years prior without permission and without community members or leaders knowing about it.

*Informed: Communities must be provided with all relevant information in a format that is accessible and easily understood, including in their traditional language. Communities must also be able to have access to information from third party sources, independent of that provided by project developers or government (OXFAM 2010).*

According to the majority of community members interviewed, the training sessions also fall short on the *informed* part of the FPIC equation. Two informants described that training leaders introduce the sessions as a forums to present information, not to convince people in favor or against mining development. However, many respondents expressed frustration that they were only being told about the benefits of mining. This was supported by a quick review of some of the materials that one respondent had saved from the training sessions, which described job creation and community benefits but did not address mining risks. Several respondents mentioned that when they posed questions about risks surrounding Cerro Colorado’s

development, they were informed that mining would have zero impacts. One respondent described that he was told that although mines in the past operated poorly, modern technologies would mitigate all contamination. Having witnessed outfall from the exploration phases of Panacobre in the 1990s, during which sedimentation increased in the San Felix River and many fish died, he was skeptical about these claims to “mining without impact”. Another interviewee stated that when he posed a question about community relocation, perhaps the most sensitive aspect of mining development and the most direct threat to livelihoods, the response was that relocations “were a lie”. One respondent related that in the session he attended, mining was barely discussed. Rather, the discussion focused on *comarca* development (improved schools, health centers, roads, etc), and mining was subsequently presented as the only means to achieve that development. Overall, the people with whom we spoke were untrusting of the one-sided information being presented; as one woman stated: “We need to know the reality.”

The sessions are held in Spanish, not the native Ngöbe Ngäbere language. The information pamphlets distributed were also all in Spanish. These resources are not easily understood by those individuals who do not speak Spanish or cannot read and write. All respondents stated that the government has not provided any mining-related informational resources to the communities we visited. While some environmental groups have come to the *comarca* to give presentations on the negative impacts of mining, one informant expressed frustration that they do not have access to third party experts to explain the project better, such as geologists, biologists, and engineers.

We were told that the trainings are “a strategy that people do not understand,” and that people are vulnerable because they do not have resources or education to verify the validity of the information they are receiving. Several interviewees stated that they did not have a great deal

of knowledge or felt unclear about what mining development at Cerro Colorado would entail. There was keen interest expressed in knowing more about the actual impacts and benefits for indigenous peoples at existing mines in Panama and in other countries.

It is difficult for communities to assess the validity of information provided in training sessions. Discrepancies exist even in provided factual information. *Promotores* propagate that it is possible for communities to obtain 50% of the total profits of the Cerro Colorado mine. Again, this 50% claim was rejected as preposterous by many interviewees, who stated that the government had never shown any interest in supporting the *comarca*'s development. Some compared the figure to the promised returns from the construction of the canal, which have yet to materialize. Indeed, this figure seems questionable, considering that the Panamanian state mining royalties remain at only 2%.

Additionally, we found that inaccurate information is being presented about the Ngöbe's rights to consultation and a process of consent. The preceding section of this report made it clear that indigenous people *do* have rights to consultation enshrined in international agreements and some national legislation. However, a Corriente presentation from the training sessions essentially states that the Ngöbe do not have any rights to Cerro Colorado and that, "Neither the *comarca* law or the general environmental law requiring consent from indigenous authorities applies to Cerro Colorado because the concession agreement predetermines the bypass of both laws" (see Appendix B).

*Consent: indigenous communities are able to give or withhold their approval of a project at each stage of the project's development according to a decision-making process selected by the community itself.*



It was reiterated in almost every interview that the training sessions did not have consent to be in the area from communities or from the legitimate Ngöbe leaders. One woman described this as “total imposition.” Interviewees highlighted that the General Congress was the legitimate authority to give or withhold consent, in conjunction with regional and local leaders and communities. Again, however, the question of *who* can give consent is complicated by the divisions and multiple lines of authority in the Ngöbe political framework. In an effort to exercise their right to withhold their support for the trainings, Ngöbe leaders have written to Martinelli and to Canadian parliament demanding an end to the sessions (Rodriguez 2011). Since their ability to withhold consent has not been respected, the Ngöbe have an ongoing history of using direct action to impede the continuation of these projects in their territory.

*Impacts and response to the “responsible mining” trainings:*

Beyond the violations of FPIC described above, these training sessions have set in motion a series of side effects in the communities we visited around Cerro Colorado. One set of effects are the progressively more obvious divisions that have grown between those who are in favor and those against the mine. Related to these divisions are conflicting opinions on notions of development in the *comarca*, and whether or not development can be best satisfied through mining or alternative means.

The issue of community divisions arose in several interviews concerning the “responsible mining” training sessions. Many noted that the divisions did not affect personal relationships, and that regardless of peoples’ positions on mining, fellow Ngöbe were considered as brothers and sisters. However, others described aggressive verbal exchanges and accusations between people holding differing opinions on mining. One woman mentioned that these divisions had

made dynamics difficult within her own family. From our brief *comarca* visit, we did perceive there to be starkly contrasting positions and some strong tensions running between groups in favor and against Cerro Colorado's development.

Escaping poverty was the main reason offered in support of mining at Cerro Colorado. Some individuals saw exploitation at Cerro Colorado as a means to a better quality of life, through the proposed developments that mining would bring. However, the lens through which poverty is viewed is very divided. Many respondents mentioned how difficult their daily life is, but also that it is a life of dignity in a healthy and intact natural environment. The majority of interviewees did not see mining as a route to community development, stating that mining companies are full of empty promises, as witnessed by the previous two expeditions in the 1970s and in 1997 (Nakoneczny and Whysner 2010). The issue of whether or not mining would bring beneficial development to the *comarca* was a clear point of contention that arose from our conversations.

The training sessions were described as everything from an opportunity to an act of colonization. After attending three sessions, people were awarded a laminated certificate certifying that they were informed about "sustainable mining". After five training sessions, the only benefits that could be outright stated were driving lessons. Otherwise, the general sentiment was that the training session certificates were providing a false sense of value. Some respondents felt that no real training or skills had been transferred that would improve the Ngöbe's chance of employment if a mine were ever to open. For instance, elderly people who would likely never participate in mining work were given certificates in exchange for their names and small tokens.

What was clear from our interviews was that while the majority of communities are rejecting mining development at Cerro Colorado, they are committed to alternative visions of

development. Improved roads, schools, health clinics, and communications are highly sought after. The predominant alternative means of development discussed was through support for improved agricultural technology and practices. Apart from steady migration from the *comarca* to plantations and cities, swidden agriculture is still primary method of food production and income. Many see their agriculture as soon or already unsustainable, and there are movements towards organic farming and engaging with international coffee markets (Rodriguez 2011). This type of development was mentioned as the most favorable alternative to mining development in the *comarca*.

## **Conclusion**

Ultimately, the people that live around Cerro Colorado are the stakeholders with the most important decisions to make regarding mining in their community. In order to make an informed decision about Cerro Colorado, they must have access to reliable information regarding the risks and benefits of developing the mine. Further, the political structure at the national level must be harmonized such that people representing the true wishes of the community have the opportunity to do so. Yet, many of these conditions are lacking currently. As field research revealed, authority which is legitimate to the community is not legitimate in the national structure. Information is not freely accessible, and mining activity in the *comarca* has had a myriad of repercussions including extensive community divisions.

Determining who has authority in the *comarca* is an ever more complicated task. Yet it is necessary knowledge for the companies that wish to obtain legitimate permission for their activities. As politics at the national level continue to get more complicated, and authority is dispersed through different lines, it becomes difficult realize the Ngöbe's wishes. People know

who they trust to represent their opinions, yet those individuals remain unacknowledged by the government, and are increasingly pushed out of the national political sphere.

Those authorities also have the right to give or withhold consent for mining operations within the comarca. Such decisions represent the sentiments of the community. However, the most compelling conclusion drawn from our field research is that these communities do not have access to the information they need to make informed decisions about mining in their communities. FPIC is blatantly lacking in the comarca. Despite the relative novelty of the concept of FPIC, various local and national structures theoretically provide rights to consultation and consent which have also been disregarded. Further, authorities trusted by the people have not validated the presence of mining companies in the comarca.

Communities are becoming increasingly polarized over mining. Similar consequences of mining activity have manifested in the extensive divisions of communities around Coclesito, and have begun to surface around Cerro Colorado. Some people honestly believe that mining is the best option for their development and to get out of poverty. They see opportunities economically and socially, which outweigh the negative impacts they face. Their trust lies in the promised development and in the minimal information about the risks of mining provided by companies like *Corriente* and *Kokopelli*.

Nothing, however, is so clear - so black and white. While some people are stalwart in their positions, adamantly advocating for or against the mine, many sit slightly to one side. With a real demonstration of benefit or harm, these people could change their opinion. Further, sentiments regarding politics within the comarca are even more murky and cross-overs between supporting different political groups, pro- or anti-mining are too numerous to categorize. There is a theme of

pro-mining, pro-government vs. anti-mining, alternative-government though this is not necessarily the rule.

What the communities do want is honesty. *Comarca* residents want to be included in the decision-making process, during which they can make informed decisions. There is want for unbiased information about the true risks and benefits of mining. They want to be the ones to make decisions; to choose or reject living in the belly of the machine.

### *Limitations*

This report has some limitations, especially considering that many of the questions proposed were answered through field work. Difficulties and potential sources of bias in the field work component ranged from language to the existing tensions within the *comarca*. Political limitations surrounding the events of Law 8 meant that we were not able to go to the *comarca* as many times or as early as we would have liked. Planned trips were postponed due to a Decree by the Martinelli government ordering all foreigners to leave the *comarca* in March. This tense situation made earlier visits unfeasible.

When we did arrive, recent political upheaval meant that residents were immediately wary of our presence and skeptical of our purposes, particularly because we are Canadians. As discussed in our *Ethics Code*, people's uncertainties were eased by our earnest attempt to understand their situation regardless of their position. Our promise to return information to the *comarca* also proved to be an important point to gain trust.

Having an interpreter presented both opportunities and challenges. The interpreter allowed us to conduct interviews with a wide variety of people, including those that only spoke Ngäbere. We were also better able to navigate the communities around Cerro Colorado.

However, we must recognize our interpreter's notably strong position against mining as well as his political affiliation. The effects of this manifested in the specific people we were taken to interview, and resulted a weighted interview pool, heavily on the anti-mining side. While most of the community members are anti-mining, it was more difficult to speak with those in favor of mining. We do not doubt the natural necessity of defending one's own position; however, conversations with pro-mining people also often included some anti-mining rhetoric as well as directed questions from our interpreter. Difficulties with language also meant that interviews conducted in Ngäbere are based on the translations provided by the interpreter. While we fully trust that accurate translations were made, certainly some context and nuance was lost in the double translation of interviews from Ngäbere to Spanish then from Spanish to English.

The range of factual information gathered was also incredibly varied. Everyone has a slightly different opinion of what is happening and a different idea about how the community feels about it. Information in the *comarca* is also not readily available. Walking between communities is the most common mode of transportation. Information is carried mostly by word of mouth and as one community leader commented, he had to climb to the top of the nearest mountain just to get cell phone reception for cases where he did want to communicate longer distances. The result of this is a telephone transmission of information, passed from person to person and very difficult to verify.

Additional time would have allowed a more extensive look at the indigenous experience with mining in Panama, including at the Inmet and Petaquilla mines around Coclesito. Mining companies have recently had a greater presence in this area than around Cerro Colorado. A review of the rights neighboring communities received, the impacts they have seen, and the role

consultation played in the development of natural resources is relevant to the current situation in Cerro Colorado.

### *Recommendations*

This document is a starting ground for future research and action. The overwhelming conclusion drawn is that communities around Cerro Colorado do not have sufficient, if any, access to information. The general population has some idea of what the risks of mining are based on initial attempts to exploit Cerro Colorado. However, the main sources of information available to the communities come from the “responsible mining” training representatives, who describe only development benefits, and from environmentalists who infrequently visit the *comarca* to demonstrate the negative affects of mining. There is no compilation of documents that is easily accessible to all community members.

Many community members commented their uncertainties, citing trust as a central issue with the little information they do have. The mining company may very well provide development and benefits, though past experience suggests otherwise. The exact environmental impacts are also not divulged in training sessions. Community leaders expressed a wish to be presented with all the facts then left to make decisions for themselves, rather than being swayed with biased information.

A recommendation for a very important future step is to compile such resources. These resources should include CIAM’s cases in the supreme court, legal documents, references, case studies of mines in other countries, information about mining companies and other relevant data. This compilation then needs to be accessible, available perhaps in every school or with community leaders distributed throughout the *comarca* and free for anyone to view. Further, round-table

discussions should be held to share information with those that do not understand the library whether due to language barriers or to illiteracy.

## Works Cited

- Alvarado, Alexis. 2011. "Los Derechos Indígenas en la Legislación Ambiental Panameño." Fundación Dobbo Yala: XIII Taller de Conocimiento Indígena y Medio Ambiente.
- Amazon Watch. 2011. "The Right to Decide: the Importance of Free, Prior, and Informed Consent." pgs. 1-8.
- "Ambientalista rechaza planes de explotación minera." *La Prensa Locales*, 27 Mar. 2010. <http://mensual.prensa.com/mensual/contenido/2010/03/26/uhora/local/2010032619003944.asp>
- Arosemena, Tania (CIAM). 2011. Cuadro Comparativo: Modificaciones al Código Minero.
- Bravo, Jorge. 2010. "Elections in the Ngöbe Buglé Reservation: a New Challenge for the Electoral Tribunal." Mundo Electoral. Year 3 Number 9. Available: <http://www.mundoelectoral.com/html/index.php?id=594>.
- Camara Minera de Panama (CAMIPA). In-person interview, Panama City, 03/13/2011.
- Canadian Standing Committee on International Trade. 2010. "Minutes of Proceedings: Meeting No. 36, November 29, 2010." Available: [www2.parl.gc.ca/HousePublications/Publication.aspx?DocId=4838619&Language=E&Mode=1&Parl=40&Ses=3](http://www2.parl.gc.ca/HousePublications/Publication.aspx?DocId=4838619&Language=E&Mode=1&Parl=40&Ses=3). Accessed 02/28/2011.
- Centro de Incidencia Ambiental (CIAM) Panama. 2011. "Mision y vision: Quienes Somos." Available: <http://www.ciampanama.org/quienes-somos>. Accessed 04/15/2011.
- Comisión Comercio y Asuntos Economicos. 2011. "Proyecto de Ley N° 277, Por la Cual se Reforma el Código de Recursos Minerales." Asamblea Nacional de Panama.
- Coordinadora Nacional de Pastoral Indígena (CoNaPI). Ni Ngöbe Nünadi Kóre: El Pueblo Ngöbe Vivirá Siempre. Panama: CoNaPI Fundación Magis, 2003.
- Cumbrera, Santiago. "Ngäbes Defenderán Autonomía" La Prensa. 13 de marzo de 2011.
- Downing, Theodore, C. Garcia-Downing, J. Moles and I. McIntosh. 2002. "Finding Common Ground: Indigenous Peoples and their Association with the Mining Sector." Mining Minerals and Sustainable Development Project - International Institute for Environment and Development. pgs 11-44.



- ENVR 301: Environmental Research Design. "Archives and Interviews." Lecture Slides, McGill University, Fall 2009.
- Garrido, Elizabeth and Manuel Vega Loo. "Martinelli sanciona derogación de Ley 8; ya está en 'Gaceta Oficial.'" La Prensa. 18 de marzo de 2011.
- Gjörding, Chris N. Conditions Not of Their Choosing. Washington and London: Smithsonian Institution Press, 1991.
- Golder Associates. 2010. "Socio-economic Baseline Study: Community Profiles". Environmental and Social Impact Assessment of the Mina de Cobre Panamá, Annex XX. . Prepared for Minera Panamá. pgs 55-57.
- Gonzales Pinilla, José. (a): "Presentan Anteproyecto de Moratoria para la Explotación Minera" La Prensa. 25 de enero de 2011.
- Gonzales Pinilla, José. (b): "Martinelli echa para atrás Ley 8." La Prensa. 4 de Marzon de 2011.
- Gordon, Todd and Jeffery Webber. 2008. "Imperialism and Resistance: Canadian Mining Companies in Latin America." Third World Quarterly. 29(1): 63-87.
- Gricel Mojica, Yaritza. "Indígenas siguen en pie de guerra." La Prensa. 23 de febrero de 2011.
- HIST 510: Environmental History of Latin America. McGill University Course Lecture, 2011.
- Human Rights Everywhere (HREV). 2010. "Informe Sobre Las Elecciones a Delegados para los Congresos General, Regionales, y Locales de la *Comarca* Ngöbe-Buglé." Panama City, Panama. pgs 1-31.
- Human Rights Everywhere (HREV). 2011. "Informe Preliminar Sobre Violaciones a los Derechos Humanos en las Jornadas de Protesta Contra la Reforma Minera en Panamá, enero-marzo 2011." Panama City, Panama. pgs. 1-27.
- Instituto Nacional de Estadística y Censo (INEC). 2010. 'Estadística y Censo. Compendio estadístico de Panamá : año 2007-2009' Contraloría General de la República. Dirección de Estadística y Censo. Ciudad de Panamá, Panamá.pgs 48-50
- Inter-American Commission on Human Rights (IACHR) (2011). "Indigenous and Tribal Peoples' Rights over their Ancestral Lands and Natural Resources." Section VII: State Obligations in the Context of Development and Investment Projects and Extractive Concessions over Natural Resources that Affect Ancestral Territories. Available: <http://cidh.org/countryrep/Indigenous-Lands09/TOC.htm>.
- International Council on Mines and Metals (ICMM). 2010. "Good Practice Guide: Indigenous Peoples and Mining." pgs. 1-120.

International Labour Organization (ILO). “Database on International Labor Standards: C169 Indigenous and Tribal Peoples Convention, 1989.” Available: <http://www.ilo.org/ilolex/english/convdisp1.htm>. Accessed 03/09/2011.

Jórdan, Osvaldo. In-person interview, Panama City, 02/03/2011.

Kokapelli. 2001. “About Us.” [www.estudio507.com/kokopeli/english/about\\_us.html](http://www.estudio507.com/kokopeli/english/about_us.html). Accessed 02/07/2011.

Laplante, Lisa and Suzanne Spears. 2008. “Out of the Conflict Zone: the Case for Community Consent Processes in the Extractive Sector.” Yale Human Rights & Development Law Journal. 11: 69-114.

La Prensa. 2011. “Bloqueo de Vías en la Interamericana: Dan Ultimátum a Martinelli.” La Prensa. 25 de febrero de 2011.

MacKay, Fergus. 2004. “Indigenous Peoples Right to Free, Prior and Informed Consent and the World Bank’s Extractive Industries Review.” Sustainable Development Law & Policy. 4(2): 1-42.

McGill University. 2006. Protocol for Research in Panama’s Indigenous Communities.

Nakoneczny, Leysha & Kathleen Whysner. 2010. “In the Heart of the *Comarca*: Understanding the Environmental and Social Impacts of Mining the Cerro Colorado Deposit.” ENVR 451 Final Report, CIAM Panama.

National Bureau of Mining Resources. 2011. Concesiones y Solicitudes Mineras, enero 2011. Data available: <http://www.mici.gob.pa/detalle.php?cid=16&sid=53&id=1412>.

Observatorio de Conflictos Mineros de América Latina (OCMAL). 2011. Available: <http://www.conflictosmineros.net/>. Accessed 02/20/2011.

OXFAM. 2010. “Guide to Free, Prior and Informed Consent.” pgs 1-32.

Prospectors & Developers Association of Canada (PDAC).2009. “e3 Plus: A Framework for Responsible Exploration.” pgs. 1-32.

Proyecto Agroforestal Ngöbe-Buglé. Atlas de la Comarca Ngöbe-Buglé. San Félix, Chiriquí: Proyecto Agroforestal Ngöbe-Buglé, 2002.

Redwood, Stewart. 2011. “The Sun Rises on Mining in Panama.” Mining Journal. pgs 16-20.

Rivera, Sandra. “Ngäbes rechazan injerencia del TE en elección de *cacique*.” La Prensa. 14 de abril de 2011.

Rodriguez, Octavio. In-person interview, San Felix, April 8, 2011.

- Servicio Paz Y Justicia – Panama. Los Ngöbe y su Lucha por la Tierra. Panamá: Centro de Investigacion y Docencia de Panama (CIDPA), 1990.
- Tribunal Electoral. 2011. Notas sobre las elecciones del congreso general, según *comarca* indígena Ngöbe. Panama. Tribunal Electoral, Departamento de Estadísticas.
- Turner, Anayansi. “El Derecho a la Consulta de los Pueblos Indígenas.” La Estrella. 27 de febrero de 2011.
- United Nations Permanent Forum on Indigenous Issues (UNPFII). 2007. “United Nations Declaration on the Rights of Indigenous Peoples.” Available <http://www.un.org/esa/socdev/unpfii/en/declaration.html>.
- Valiente, Aresio. In-person interview, Panama City, 02/03/2011.
- Wickstrom, Stephanie D. 2001. “The Political Ecology of Development and Indigenous Resistance in Panama and the United States: a Comparative Study of the Ngöbe, Kuna, Zuni, and Skokomish Societies.” PhD Dissertation, University of Oregon. pgs 1-395.
- Wickstrom, Stephanie D. 1998. “La naturaleza y los recursos naturales: La política y el desarrollo en comunidades indígenas de Panamá.” Arlington, Virginia; Inter-American Foundation.
- Wing, Felix. In-Person, Panama City, 03/10/2011.
- Young, Philip D. “Ngawbe: Tradition and Change among the Western Guaymí of Panama.” Urbana: University of Illinois Press, 1971.
- Young, Philip D. and John R. Bort. 1979. “The Politicization of the Guaymí.” Journal of the Steward Anthropological Society. (1) 101-119.
- Young, Philip D. and John Bort. “Ngöbe Adaptive Responses to Globalization in Panama.” In William Loker, ed., Globalization and the Rural Poor in Latin America. Boulder, CO: Lynne Reiner Publishers, 1999. pp. 111-136.
- Zea, Mary Triny. “Debate Minero: ¿Conviene Extraer Minerales?” La Prensa. 15 de marzo de 2011.

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# Appendices

## Appendix A: Maps

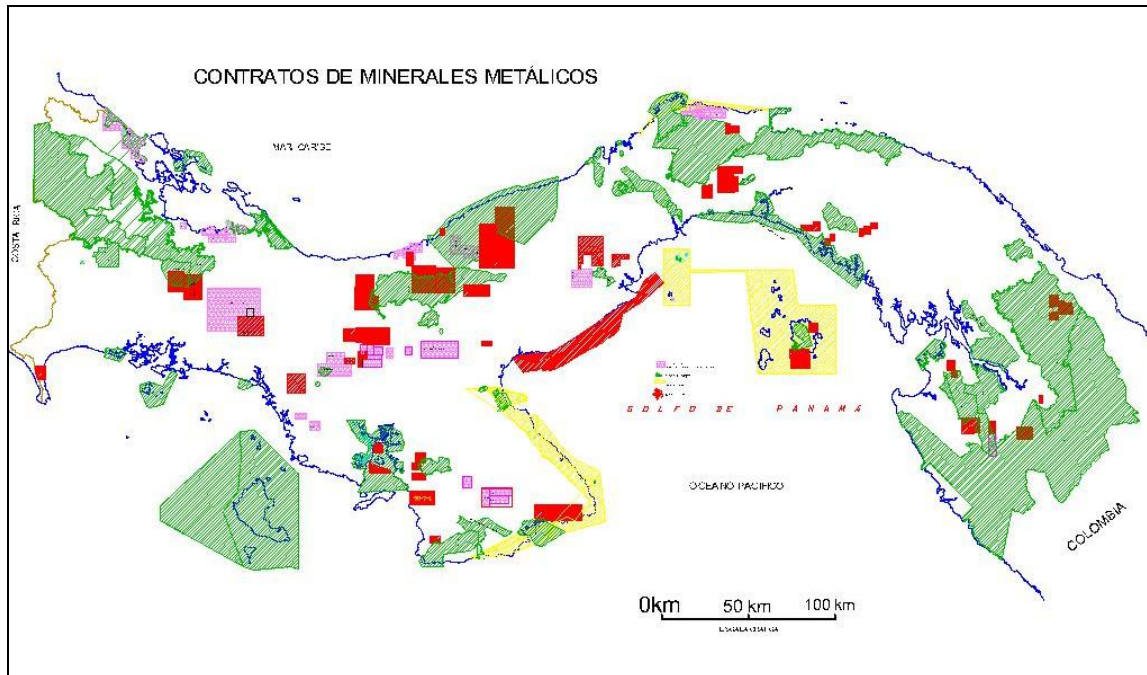


Fig 1: Mineral Concessions in Panama, January 2011. *National Bureau of Mining Resources.*

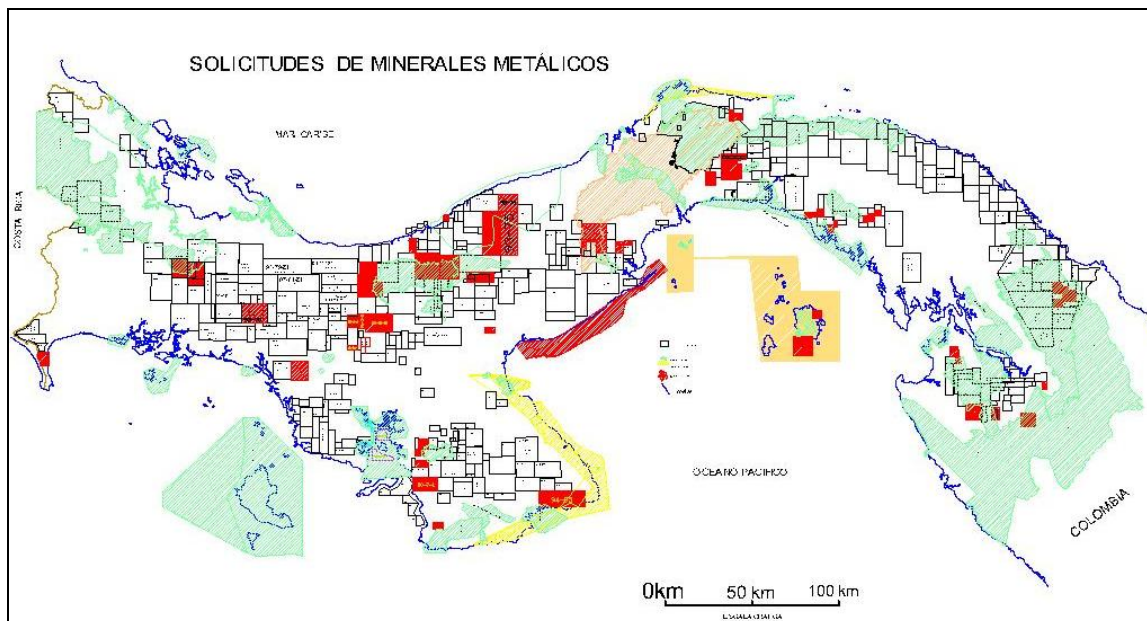


Fig 2.: Mineral Applications in Panama, January 2011. *National Bureau of Mining Resources.*



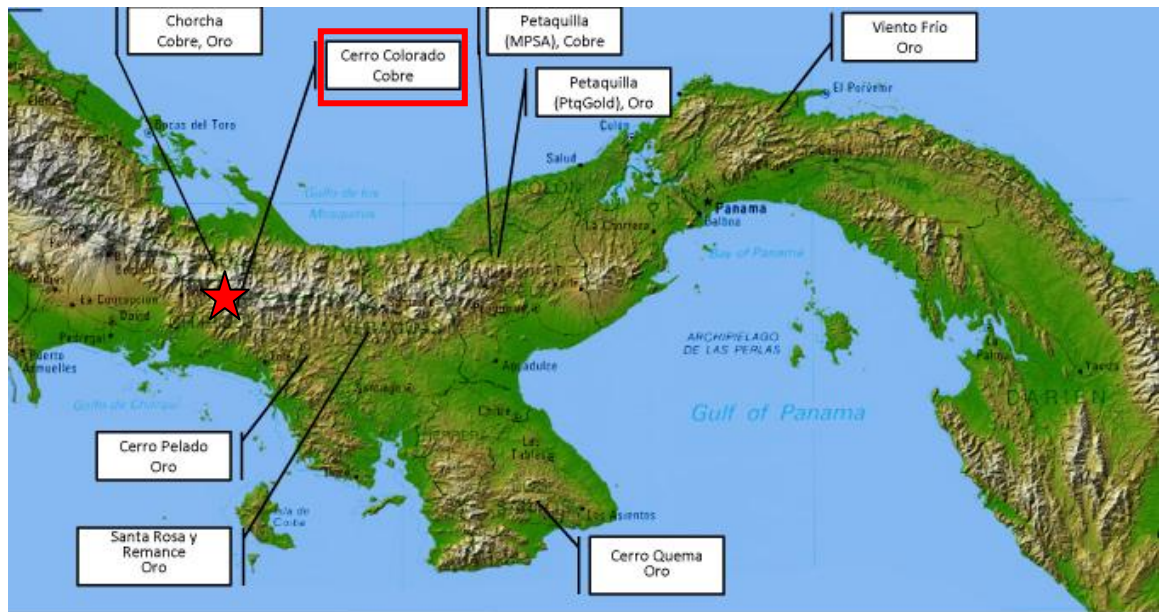


Fig. 3: Major mine sites in Panama, showing Cerro Colorado's location. *National Bureau of Mining Resources*

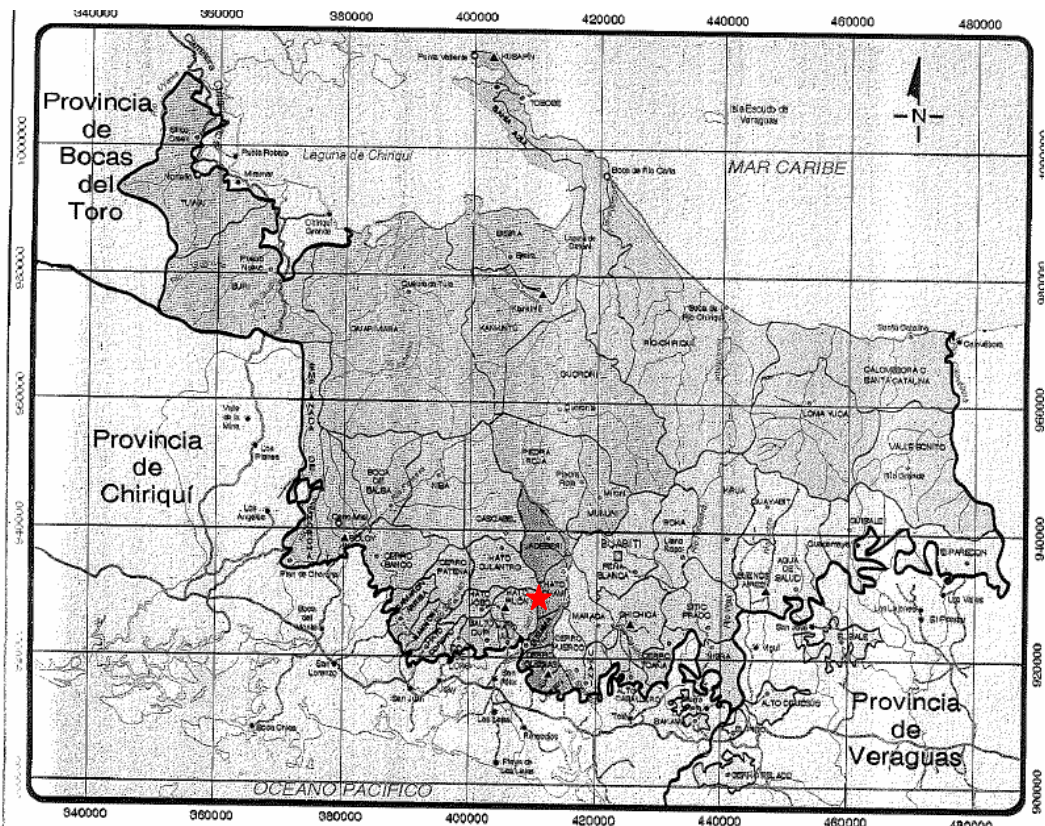


Fig. 4: Cerro Colorado's approximate location within the Ngöbe-Buglé comarca. *Proyecto Agroforestal Ngöbe-Buglé, 2002.*



**Appendix B: Photos from Comarca Fieldwork, April 2011**



Fig 5: Cerro Colorado, with the communities of Escopeta and Cuernavaca in the foreground.



Fig 6: Striking blue pigment in a creek-bed: evidence of the mountain's rich copper deposits.

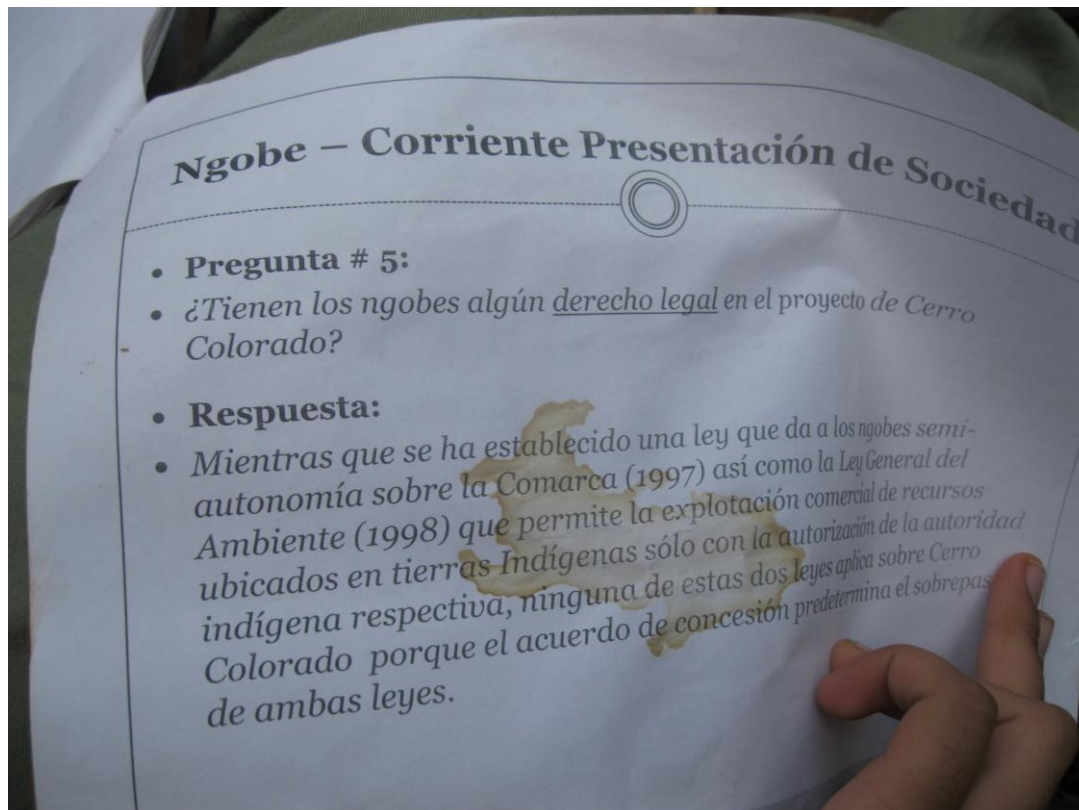


Fig. 7: Information handed out in a Corriente presentation describing the Ngöbe’s lack of rights to consultation regarding Cerro Colorado.

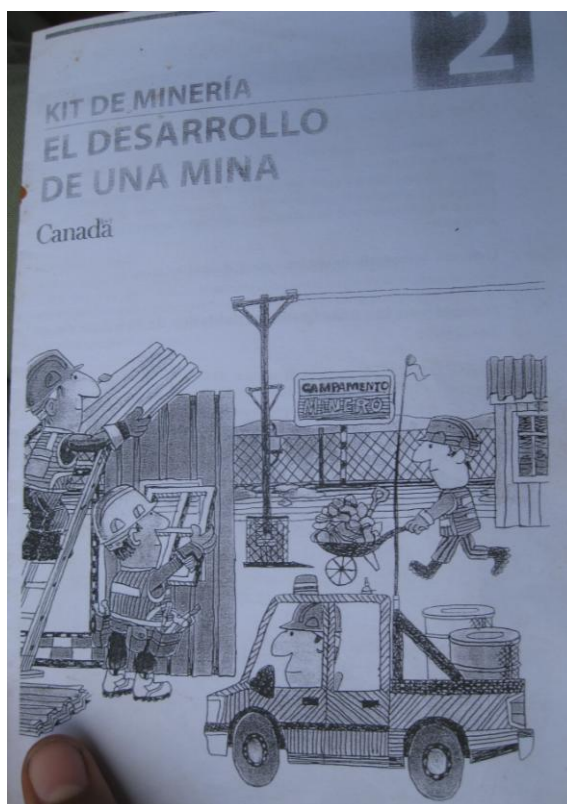


Fig 8: Canada’s presence around Cerro Colorado is manifested in this handbook presented during “responsible mining” training sessions.