Revista ABYA YALA

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CIESAS

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¡NO AL PROYECTO MINERO!
NO A LOS EMBALSES EN LA
COMARCA GNOBE BUGLE

REVISTA SOBRE ACESSO À JUSTIÇA E DIREITOS NAS AMÉRICAS

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EDITORIAL

CONTRIBUIÇÕES DAS CIÊNCIAS SOCIAIS DIANTE O AVANÇO DO NEOLIBERALISMO

"Abya-Yala: revista sobre acesso à justiça e direitos nas Américas" chega ao seu segundo ano de publicação em um cenário político caracterizado por amplas e profundas crises, que apenas reforçam a importância e a atualidade de fomentar o periódico enquanto veículo de produção e difusão de conhecimento no campo das ciências sociais e do pensamento crítico latino-americano.

Testemunhamos o avanço do neoliberalismo e suas consequências, tais como a intensificação das desigualdades sociais, o aumento da concentração de renda, a precarização das relações de trabalho, o aprimoramento do capitalismo com a financeirização dos mais variados aspectos relacionados à manutenção da vida, a evidenciação das forças conservadoras, por meio da vocalização de discursos de ódio, de demonstração de intolerâncias, de diversificação das formas de discriminação e preconceito, a negação do outro, o recrudescimento de políticas repressivas e opressoras, o retorno ao autoritarismo e ao militarismo, o acirramento, enfim, da disputa entre diferentes projetos de sociedade.

Vivemos um contexto em que as democracias e suas retóricas estão sendo desmascaradas pela sua incapacidade concreta de assegurar direitos que foram árdua e duramente conquistados por longos processos de luta e resistência histórica, dos quais participaram, ativamente, atores implicados com a justiça social, dentre os quais, destacam-se, os movimentos sociais.

Diante este cenário, as ciências sociais são provocadas a construir novas possibilidades, a rever conceitos, a formular novas teorias. São provocadas, acima de tudo, a engajar-se com a transformação da realidade na qual estão inseridas.

Este quarto número de Abya-Yala, o primeiro do ano de 2018, confirma seu compromisso com o pensamento crítico latino-americano e apresenta, em seu conteúdo, um rico conjunto de reflexões sobre os processos de resistência nas Américas face o avanço do neoliberalismo.

Confirmando sua estrutura interna, inaugurada quando da publicação de seu primeiro número, Abya-Yala apresenta às leitoras e leitores cinco seções: a primeira delas é dedicada a homenagear pensadoras e pensadores latino-americanos cuja produção seja significativa tanto sob o ponto de vista teórico, como sob o ponto de vista da reflexão crítica e engajada; a segunda seção veicula dossiê temático organizado por pesquisadoras e pesquisadores de referência no campo das ciências sociais nas Américas, e qualificado pelo sistema de dupla avaliação cega; a terceira dá vazão aos trabalhos recebidos pelo fluxo contínuo de submissão de artigos, igualmente submetido a rigorosa dupla avaliação cega; a quarta seção divulga obras de referência através da publicação de resenhas críticas; a quinta e última seção consiste na transcrição de entrevistas realizadas com pensadoras e pensadores latino-americanos.

Nesta edição, a homenagem é feita ao etnólogo Darcy Ribeiro, grande pensador brasileiro que dedicou sua vida a refletir-para-transformar não só o Brasil como, também, a América Latina. Sua trajetória, formação e atuação são apresentados no texto de autoria de Talita Rampin, professora da Universidade Federal de Goiás. Seu percurso teórico é destacado de forma a caracterizá-lo como expressão do pensamento latinoamericano que, como tal, parte das especificidades da região para, então, construir estratégias para superação das situações concretas de desigualdades, violências e opressões.

Essa mesma preocupação e engajamento para superação de situações concretas de violações permeia o dossiê temático organizado por Victoria Chenaut, Annapurna Devi Pandey e Laura R. Valladares. As organizadoras assinam o texto de abertura do dossiê, intitulado "*Procesos de resistencia, derechos colectivos y despojo de los bienes comunes en el neoliberalismo*", no qual problematizam o papel desempenhado pela academia, pelo ativismo social e jurídico, destacando-os como estratégias que podem contribuir para a construção de alternativas à discriminação, à radicalização e à violência que são

continuamente praticadas contra aquelas e aqueles que resistem ao avanço do neoliberalismo, nas mais diversas partes do mundo. Nesse sentido, destacam os processos de resistência que tem sido protagonizado por mobilizações Inter setoriais que envolvem movimentos sociais, a sociedade civil organizada, a comunidade acadêmica, dentre outros atores implicados com a defesa de direitos e justiças.

Maria Rocio Bedoya Bedoya, da Universidade de Antioquia, em "*Los impactos de las multinacionales mineras, el papel del Estado Colombiano y los procesos de resistencia en Marmato*", fornece a estrutura analítica necessária para que possamos compreender a dinâmica do sistema capitalista em sua fase atual, financeira. A partir do estudo dos processos de resistência no Município de Marmato, na Colômbia, a autora configura a estratégia de atuação de empresas multinacionais na América Latina frente a um modelo de desenvolvimento econômico – que é, também, político, social e cultural – que viabiliza o avanço de projetos extrativistas minero-energéticos devastadores sob o ponto de vista ambiental, territorial, social, político e econômico. Fica evidenciada, em sua análise, que a incidência das

multinacionais tem reconfigurado as estruturas e relações locais, modificando a atuação do Estado de modo a reorientar sua ação para a viabilização de empreendimentos que tem, como fundo, a exploração dos recursos naturais em regiões periféricas.

E é desde a periferia do sistema mundial, para além da espacialidade geossocial da América Latina, que Binay Kumar Pattnaik e Sanghamitra Patra dão continuidade às reflexões iniciadas por Bedoya Bedoya. Localizando seu olhar desde e para a Índia, os autores de "*Intercine between the Indian State and the Adivasis (Indigenous People) under Neo-Liberalism: A case of Lanjigarh Resistance Movement*", analisam outro processo de resistência, o movimento anti Vedanta em Lanjigarh, no distrito de Kalahandi, no interior do estado indiano de Odisha. O caso retratado envolveu uma situação em que 302 famílias *Adivasis* foram desabrigadas e seu território devastado pelo avanço das estruturas neoliberais materializadas em projetos de modernização. Nele, problematiza a imposição de um modelo de desenvolvimento e os seus reflexos para a população local, enfatizando as formas de resistência que foram adotadas pelas famílias e a

complexa relação que é estabelecida entre Estado, sociedade civil e população local.

Faye V. Harrison, por sua vez, em "*From Standing Rock to Flint and Beyond:Resisting Neoliberal Assaults on Indigenous, Maroon, and Other Sites of Racially Subjected Community Sustainability in the Americas*", analisa outra situação de resistência ocorrida em reação ao avanço neoliberal em busca de recursos, desta vez, hídricos. A partir dos processos de mobilização realizados pela tribo *Standing Rock Sioux*, na Dakota do Norte, Estados Unidos da América, em coalizão formada com ativistas de outras nações indígenas, incluindo representantes da Bacia Amazônica, de movimentos não indígenas e de organizações políticas como o Partido Verde e o *Black Lives Matt*er, as situações de violações dos direitos humanos experimentadas alcançaram projeção nacional e ganharam destaque no debate político nos EUA, assim como, a reflexão sobre as reivindicações a direitos coletivos que historicamente tem sido empreendidas pelos povos e movimentos afrodescendentes e indígenas, para além dos direitos à terra, ao desenvolvimento e aos recursos culturais.

Apesar das diferenças evidentes que emergem da localização geográfica desses dois casos analisados, persistem elementos em ambos que permitem identificarmos um mesmo padrão se repetindo na forma com a qual o capitalismo modula os padrões de desenvolvimento em nível mundial e, com eles, também os padrões de violações que são sistematicamente perpetradas contra os povos e os ambientes geossociais situados em regiões estratégicas, principalmente quando o são sob o ponto de vista dos recursos naturais.

Essa constatação nos leva a um imperativo que talvez represente um dos maiores desafios colocados para as gerações atuais: identificar esses padrões para que possamos construir alternativas viáveis para superá-los. Outro desafio, como bem aponta Anahy Gajardo em "*Between Support and Marginalization: the Process of the Diaguita's Re-emergence in the Age of Neoliberal Multiculturalism* (Chile)", é dimensionar os efeitos sociais e identitários do multiculturalismo neoliberal, em um contexto em que se mundializam não só as relações financeiras mas, também, se complexificam as relações jurídicas e de poder, inclusive na dimensão que

envolve os Estados, as empresas multinacionais e os atores não estatais implicados na realização de ações que, embora possam ser desempenhadas pelos Estados nacionais, acabam sendo relegadas a um plano que passa a ser ocupada por este novo ator. É nesse sentido que o sexto artigo do dossiê, "*The Role of Non State Actors in Ensuring Indigenous Right to Education in an Era of Neo liberalism: an Experiential Account from India*", de Navaneeta Rath e Annapurna Pandey, é desenvolvido.

Por fim, encerrando o dossiê, "*The Privatization of Environmental Discourse: Clean Development and Indigenous Territoriality in Western Panama*", de Osvaldo Jordan. Nele, o autor analisa o caso da Hidroelétrica Barro Blanco, no Panamá, problematizando os discursos e usos do desenvolvimento sustentável, provocando-nos a refletir sobre os paradoxos de sua contraposição aos direitos humanos e das populações locais. Afinal, quanto valem os direitos?

A mesma tônica de olhar crítico e apurado sobre a realidade neoliberal e as práticas que são assumidas neste contexto, permeia os artigos recebidos em fluxo contínuo pela revista. Em "*Cortes Superiores y Políticas de Acción Afirmativa: Aspectos de las*

Decisiones en Brasil y Contribuciones para Investigaciones Futuras", Ana Claudia Farranha enfoca as práticas judiciais, em especial, aquelas que são praticadas por cortes superiores em sede de apreciação jurisdicional de políticas de ações afirmativas. Edgar Belmont Cortés e Eduardo Aristóteles Ramírez, por sua vez, em "*Reeducar y Trabajar por Resultados: Polémicas Alrededor de la Profesionalización del Trabajo del Policía en Querétaro, México*", privilegiam a análise das mudanças notadas nas polícias desde os processos de modificações na forma pela qual é gerida e administrada a justiça no contexto mexicano.

A edição segue com duas resenhas críticas, sendo a primeira de Meztli Yoalli Rodríguez Aguilera, referente ao curta-metragem "*Semillas de Guamúchil*", e a segunda referente à obra '*De la "Vieja" a la "Nueva" Justicia Indígena. Transformaciones y Continuidades en las Justicias Indígenas de Michoacán",* publicada por Orlando Aragón Andrade no ano de 2016 e resenhado por Erika Bárcena Arévalo. Através dessas resenhas, a publicação cumpre outro importante papel no campo das ciências sociais: o da difusão de conhecimento já produzido, tornando acessíveis análises

promovidas por pesquisadoras e pesquisadores sobre a produção de outros pensadores e pensadoras latino-americanos. O número é encerrado com uma intrigante entrevista com Mercedes Olivera, realizada por Marisa Ruiz Trejo sobre os aportes da antropologia feminista em Chiapas, México, e as ausências de referências às mulheres no campo da produção do conhecimento.

Engajada, provocativa e crítica: esta é a quarta edição que compartilhamentos com o público leitor.

Desejamos a todas e a todos uma excelente leitura!

Rebecca Lemos Igreja, Maria Teresa Sierra Camacho, Fernando Dantas e Talita Rampin

HOMENAGEM A DARCY RIBEIRO

Tenho acompanhado por cartas e jornais o ambiente em nossa universidade e a perseguição aos colegas do Rio, de S. Paulo, Porto Alegre, numa odiosidade sistemática à cultura. Pelo que sei nossa casa começa a reagir, o pessoal de ciência começa a chegar e vai dando substância à instituição.

Trecho de carta de Darcy Ribeiro a Anísio Teixeira aos 11 nov. 1964

Em tempos em que a liberdade de pensamento, a autonomia de cátedra e a produção do conhecimento encontram-se ameaçadas, e em que as universidades públicas brasileiras resistem como espaços de mobilização e reflexão crítica frente a conjuntura de retrocessos no campo dos direitos no Brasil que é arrefecida em 2016, a presente edição de Abya Yala – revista sobre acesso à justiça e direitos nas Américas homenageia Darcy Ribeiro.

Mundialmente conhecido pelas suas amplas contribuições aos campos das ciências humanas e sociais, bem como, pela sua incidência política e educacional no Brasil, Darcy é uma dessas figuras humanas provocativas que consegue transcender o seu próprio tempo e adquirir uma vivência sempre atual. Com seu olhar sensível e reflexões acuradas, ele caminhou por diferentes áreas do conhecimento – antropologia, sociologia, educação, ciência política, entre outras – e constituir-se referência obrigatória em vários temas e estudos.

Para nós, do Conselho Editorial de *Abya Yala*, sua figura é duplamente importante: tanto pelo seu legado de estudos como pela sua decisiva incidência na viabilização de nossa Universidade de Brasília (UnB).

Nascido em 1922 na cidade de Montes Claros, localizada no Estado de Minas Gerais, Brasil, Darcy Ribeiro realizou seus estudos em Antropologia na Escola de Sociologia e Política de São Paulo, participou ativamente da vida política e cultural brasileira até falecer, em 1997, aos setenta e quatro anos, em Brasília, Distrito Federal, Brasil, vitimado pelo câncer contra o qual lutou nos últimos anos de sua vida.

Em um percurso biográfico que inclui dedicação profunda ao estudo com populações indígenas e gestão pública, encontramos passagens memoráveis, como a suas criativas e revolucionárias contribuições para inovação no campo de políticas públicas e educacionais. São exemplos disso a proposição de novos paradigmas institucionais universitários - com destaque para a projeção das instituições de ensino Universidade Estadual do Norte Fluminense, no Rio de Janeiro, e da própria UnB, em Brasília.

Suas primeiras contribuições no campo da gestão pública decorrem de sua atuação junto ao Serviço de Proteção aos Índios (SPI), no qual ingressou no ano de 1947 (e no qual esteve à frente da Seção de Estudos a partir de 1952) e para o qual convergiu sua formação acadêmica como antropólogo e etnólogo. Durante o período em que esteve vinculado ao SPI, Darcy teve a oportunidade de travar contato e conviver com diferentes povos indígenas e participar da fundação do Museu do Índio, vinculado à Fundação Nacional do Índio (Funai), em 1953, e da projeção do Parque Indígena do Xingu, em 1961, do qual participou enquanto funcionário do SPI

juntamente com os irmãos Orlando e Claudio Villas-Boas.

Nessas décadas iniciais a produção de Darcy é focada, sobretudo, no campo da antropologia. Destacamos "*Kadiwé*: ensaios etnológicos sobre o saber, o azar e a beleza", que foi publicado em 1950 após anos de sua vivência junto a comunidades indígenas, incluindo os índios *Kadiwé*, no Brasil.

Já a década seguinte, de 1960, é marcada por produções decorrentes de seu forte engajamento e militância política e educacional no Brasil, notadamente com sua participação no governo João Goulart. É desta década algumas de suas principais produções: "Plano orientador da Universidade de Brasília", 1962, instituição da qual, inclusive, foi o seu primeiro Reitor, e "A universidade necessária", 1969, obra escrita durante seu exílio.

A partir de 1970 vemos um Darcy educador atingindo o auge de sua potência analítica, para a qual convergiram suas experiências, suas resistências, sua criatividade. São obras desta lavra "*Propuestas - Acerca de la Renovación*", de 1970, "*Université des Sciences Humaines D'Alger*", de 1972; "La Universidad Peruana", de 1974; e "UnB - inversão e descaminho", de

1978. Esse período é marcado pela sua vivência estrangeira, em exílio, momento em que participou de importantes processos de reformas educacionais na Argélia, no Peru e na Venezuela.

Desde o exílio, Darcy alcançou a América Latina e travou contato com outras realidades, outras conjunturas e problemas persistentes. Desta diversidade reflexiva decorreu uma nova gama de publicações, então dotadas de acidez que lhe caracterizam a escrita até seus últimos escritos, tais como "Aos trancos e barrancos - Como o Brasil Deu no que Deu", de 1985; "América Latina: a pátria grande"; Nossa escola é uma calamidade", de 1984; "Universidade do terceiro milênio - Plano Orientador da Universidade Estadual Norte Fluminense", de 1993; "O Brasil como problema", de 1995; e o clássico "O povo brasileiro - A formação e o sentido do Brasil", de 1995. Sobre este último, paira o testemunho - destes que caracterizam as grandes personagens e personalidades históricas -, de que foi necessário ao Darcy Ribeiro fugir do hospital em que esteve internado para que tivesse condições de finalizar a escrita. Fugir, não: libertar-se.

Mas não foi apenas nos campos da educação, da antropologia e da sociologia que Darcy se notabilizou: ele também foi notável pela sua produção literária, sendo eleito para ocupar a Cadeira de número onze da Academia Brasileira de Letras no ano de 1992. Dentre seus romances destacam-se Maíra (1976), O Mulo (1981), Utopia Selvagem (1982) e Migo (1988).

No campo político, exerceu os cargos de Vice-governador do Estado do Rio de Janeiro durante o governo de Leonel Brizola, foi Senador pelo Estado Rio de Janeiro e Ministro de Estado, exercendo a chefia da Casa Civil durante governo de João Goulart, que foi duramente perseguido e interrompido pelo Golpe Militar de 1964.

Seu legado é hoje zelado pela Fundação Darcy Ribeiro (FUNDAR), sediada em Santa Teresa, no Rio de Janeiro, e pelo Memorial Darcy Ribeiro (Beijódromo), construído no campus da Universidade de Brasília em 2010.

Esta homenagem é também um conclame às companheiras e companheiros das diversas universidades públicas necessárias, que ousam pensar o Brasil como um problema e resistem às mais escalabrosas estratégias de criminalização da docência no ensino superior, da investigação crítica sobre nossa realidade, desde a qual recusamo-nos fechar os olhos para não enxergar o desmonte da inacabada democracia brasileira.

DOSSIÊ

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INTRODUCTION

Podemos hablar de dos décadas acumuladas en el debate acerca de los nuevos rumbos que ha tomado el modelo de acumulación capitalista y su largo caudal de impactos negativos para la soberanía nacional, el medio ambiente y los derechos colectivos de los pueblos indígenas. Esto último se expresa en el asedio y despojo de sus territorios, vulnerando la autonomía que las propias legislaciones nacionales e internacionales les han reconocido, así como sus derechos humanos y el derecho a un medio ambiente sano y sustentable. Esta es una de las grandes paradojas actuales, pues tenemos avances importantes en los sistemas de derecho nacionales e internacionales en materia de derechos humanos e incluso de derechos de la naturaleza, como es el caso de Bolivia; sin embargo, el giro extractivista que recorre América Latina e India, así como otros países (Svampa, 2012, Harvey, 2004) muestra que estamos ante un escenario profundamente devastador de estos derechos. Por este motivo, seguirá siendo fundamental que desde la academia y el activismo social y jurídico prosigamos analizando de forma crítica los entramados políticos y económicos que son la base de los nuevos despojos, así como sobre la discriminación, la racialización y la violencia contra los pueblos y líderes que cuestionan y luchan desde diferentes trincheras contra las nuevas formas de expropiación y saqueo de sus recursos y por tanto, del patrimonio biocultural que constituyen sus territorios.

En dicho contexto, este *dossier* de la revista *Abya Yala* aborda la problemática desde perspectivas y

entornos geográficos distintos como es el caso de Colombia, desde el cual María Rocío Bedoya, analiza el arribo de empresas mineras con la venia política y jurídica del Estado colombiano y los procesos de resistencia que se han generado en el caso del municipio de Marmato. Sostiene que el modelo extractivo minero se ha convertido en una actividad humana depredadora con alto impacto ambiental, territorial, social, político, económico, cultural y sobre los bienes comunes naturales. Por su parte, Anahy Gajardo discute los roles combinados de una empresa minera canadiense (Barrick Gold, proyecto Pascua Lama) y del Estado chileno en el proceso de (re)emergencia indígena de los Diaguitas en el Huasco Alto, al norte de Chile. La autora muestra cómo los programas de responsabilidad social de la empresa minera, creados para apoyar la "revitalización étnica" de los Diaguitas, han contribuido tanto a dividir a las comunidades indígenas locales, como a justificar una identidad indígena culturalizada y despolitizada, compatible con los intereses mineros y el proyecto del Estado. Desde Panamá, Osvaldo Jordán analiza el caso del proyecto hidroeléctrico Barro Blanco, ubicado en la comarca indígena Ngäbe-

Buglé. La construcción de esta presa, sustentada en los postulados del Protocolo de Kioto que se propone reducir el calentamiento global producido por la emisión de gases de efecto invernadero, implicó la resistencia y mobilización de la población indígena Ngäbe, cuyas tierras ancestrales fueron inundadas. El autor considera que las políticas estatales y los planes de desarrollo deben encontrar nuevas maneras de reducir el calentamiento global, pero al mismo tiempo respetar los derechos humanos y las concepciones del mundo y del territorio de los pueblos indígenas.

Por su parte Navaneeta Rath y Annapurna Pandey analizan la eficacia de los actores no estatales a través de las innovaciones inducidas por las Organizaciones de la Sociedad Civil con experiencia en educación en Odisha, India y discuten su adaptación en el medio local, así como el impacto que ejercen en el derecho indígena a la educación. El artículo concluye que los actores no estatales están cubriendo el vacío creado por la retirada del Estado y están jugando un papel importante en la gobernanza de los programas educativos que se llevan a cabo en las escuelas, con lo que han generado un impulso a los

mandatos constitucionales sobre el derecho a la educación. El artículo de Binay Kumar Pattnaik y Sanghamitra Panda, analiza los impactos y negociaciones del movimiento Anti-Vedanta en el estado de Odisha, India. Los autores reflexionan sobre el proceso de modernización en la identidad Adivasi, que pone en riesgo sus patrones culturales, formas de organización social y relación con el medio ambiente. Asimismo, muestran que el activismo social y los movimientos de resistencia tribal en contra del modelo neoliberal de desarrollo han ocasionado que el Estado se vea obligado a compartir el espacio con la sociedad civil organizada.

El artículo de Faye V. Harrison destaca las protestas contra el oleoducto Dakota Access Pipeline liderada por miembros de la tribu Sioux de Standing Rock en Dakota del Norte, USA. La autora analiza la centralidad de la soberanía indígena dentro de la lucha más amplia por los derechos humanos y la democracia, al mismo tiempo que señala las múltiples estructuras de alteridad que se despliegan en la relación entre el Estado y los grupos racializados de la población, como los pueblos indígenas y los afrodescendientes. De esta manera, ofrece un marco multisituado para comprender las convergencias y divergencias que se expresan en las historias y en las identidades de esta población, así como en sus reclamos por derechos. Con tal motivo, se recuperan experiencias de los Estados Unidos, Honduras y Surinam.

De esta manera, todos los artículos abordan tanto los procesos de resistencia, como la consolidación de vigorosos movimientos de protesta social que se han ido construyendo y fortaleciendo con el establecimiento de alianzas intersectoriales, conformadas por pueblos y organizaciones indígenas y afrodescendientes, miembros de la sociedad civil, ambientalistas, académicos y abogados, entre otros actores.

Otra de las grandes preocupaciones que son abordadas por todos los artículos son las mutaciones protagonizadas por los Estados nacionales que están retornando a modelos intolerantes y represores, situación especialmente grave por el giro conservador de derecha que a pasos agigantados va avanzando en el escenario mundial, ya sea mediante fraudes electorales, sonados casos de

corrupción o con el voto electoral de una ciudadanía desencantada con las formas que asumen la democracia, la política y las actuaciones de los políticos. Esta situación se ha traducido en el arribo de gobiernos pro empresariales, con el concomitante encogimiento de las soberanías nacionales en aras de garantizar los intereses de las grandes corporaciones internacionales, y uno de sus efectos es tomar medidas para la seguridización como política pública (Gledhill, 2014). Para Giorgio Agamben (2016) vivimos en un Estado de emergencia que se inscribe en un proceso que está haciendo evolucionar las democracias occidentales en Estados de seguridad, es decir, que las razones de seguridad han tomado el lugar de aquello que se llamaba, en otro tiempo, la razón de Estado. En el Estado de seguridad, este esquema se invierte: el Estado se funda en el miedo y debe, a toda costa, mantenerlo, pues extrae de él su función esencial y su legitimidad. Esto ha sido documentado en múltiples casos en los cuales se ha criminalizado la justa protesta de los actores sociales que se oponen a esta nueva fase de desposesión de los territorios indígenas, situación que está dejando una estela de líderes y autoridades comunitarias presos o

asesinados (AI,2017). Por estas condiciones se los ha calificado también como "Estados fallidos", caracterizados por una "desviación del poder", noción que alude a la forma de actuación de los Estados que protagonizan violaciones graves de derechos humanos, especialmente después de la celebración de múltiples tratados de libre comercio y la aprobación de reformas constitucionales que favorecen la puesta en marcha del extractivismo como alternativa para el denominado eufemísticamente "desarrollo".

En este sendero, un grupo de estudiosos nos hemos reunido en distintos espacios académicos para analizar los efectos y respuestas sociales contra estas situaciones, de tal suerte que los artículos que publicamos en este *dossier* son producto de nuestras investigaciones, y han sido debatidos en distintas reuniones académicas en donde nos hemos reunido. Las primeras versiones de estos artículos fueron presentadas en simposios organizados por la Comisión de Derechos Humanos de la Unión Internacional de Ciencias Antropológicas y Etnológicas (IUAES), celebrados en Dubrovnik (Croacia, 2014) y en Ottawa (Canadá, 2017), así como en los Congresos de la Asociación

Dossiê: ROCESOS DE RESISTENCIA, DERECHOS COLECTIVOS Y DESPOJO DE LOS BIENES COMUNES EN EL NEOLIBERALISMO

Latinoamericana de Antropología (ALA), realizados en México (2012) y Colombia (2014), y en el Congreso Mexicano de Antropología Social y Etnología (2016).

Un primer resultado de estas investigaciones se publicó en el número 28 de la revista digital *e-cadernos ces* del Centro de Estudios Sociales de la Universidad de Coimbra (Portugal) que coordinamos Victoria Chenaut y Laura Valladares, que se encuentra en línea en:

https://journals.openedition.org/eces/2261

Los artículos publicados en el presente *dossier* de *Abya Ya*la pueden leerse como una continuación de las cuestiones que abordamos en dicha revista de la Universidad de Coimbra, ya que estas publicaciones comparten grandes hilos conductores. Uno de los ejes que atraviesa los artículos publicados en el número 28 de *e-cadernos ces* es el análisis de la aplicación de las reformas legales que han emprendido los gobiernos, tanto los neoliberales de México (Valladares, Chenaut, Sierra, Gómez, y Casas y Morales) y Chile (González), como en los denominados progresistas, representados por Bolivia (López) y en

su momento Brasil (Neri da Silva), así como en el caso estudiado por Pandey en India. En ambos números temáticos nos interesó profundizar acerca de las paradojas de las políticas neoliberales, que han puesto el acento en el reconocimiento de la diversidad cultural y de los derechos indígenas, pero al mismo tiempo atentan contra los derechos colectivos territoriales a través del impulso brindado a las actividades extractivas, como es el caso de la minería, la explotación petrolera, la construcción de obras hidroeléctricas, el saqueo de maderas preciosas, etc. Éstas por lo general se autorizan dentro de los territorios indígenas sin realizar una consulta previa, libre e informada, según lo establece la Declaración de las Naciones Unidas sobre los Derechos de los Pueblos Indígenas (2007) y el Convenio 169 de la Organización Internacional del Trabajo (1989). Las investigaciones que hemos realizado las y los autores de estos números temáticos muestran los usos que se realizan del derecho, tanto por parte de los gobiernos nacionales y las grandes corporaciones, que han creado un nuevo marco jurídico que favorece las políticas extractivas, como las estrategias que llevan a cabo los pueblos

indígenas por la defensa de los bienes comunes y el territorio.

La aplicación de estas políticas sin consentimiento previo ocasiona la pérdida del control territorial de los pueblos indígenas, atentando contra sus derechos a la autonomía, lo que afecta su reproducción social, económica y cultural. De esta manera, se vulneran los derechos individuales, de género y colectivos, lo que genera reclamos y movilizaciones sociales por la defensa del territorio y de la vida. Al mismo tiempo, en su lucha por los derechos colectivos realizan un uso contrahegemónico del derecho, ante el despojo y la criminalización de la protesta que está teniendo lugar en diversos países. Por lo tanto, los conflictos se judicializan y el campo del derecho se convierte en una arena en la cual se disputan los bienes comunes, con resultados que no siempre son favorables para los pueblos indígenas. Esperamos con esta publicación seguir abonando al debate académico encaminado no sólo a reflexionar y a denunciar, sino a proponer soluciones frente al desastre medioambiental, de derechos humanos y colectivos que se ciernen en diversas zonas del planeta.

Nuestro aporte a este número de la revista *Abya Yala* se complementa con una entrevista realizada por Marisa Ruiz Trejo a la antropóloga feminista de México Dra. Mercedes Olivera, quien tiene una destacada trayectoria en el campo de la defensa de los derechos de género de las mujeres indígenas del estado de Chiapas, donde es fundadora y socia del Centro de Derechos de la Mujer de Chiapas A.C. Este Centro tiene como objetivo lograr el avance de la igualdad de género, clase y etnia, realizando diversas actividades como defender casos de violencia contra las mujeres con un enfoque amplio de los derechos humanos, así como promover el debate de temas relevantes y construir una plataforma permanente de investigación y análisis de las violaciones a los derechos de las mujeres. En esta entrevista Mercedes Olivera profundiza en su trayectoria vital, teórica y política, que son fundamentales para conocer su compromiso con la justicia de género.

Además, se presentan dos reseñas sobre cuestiones relacionadas con el amplio marco de los temas que se discuten en este *dossier*. Meztli Yoalli Rodríguez Aguilera reseña el documental "Semillas de Guamúchil"

(2016), dirigido por Carolina Corral Paredes, que muestra las historias de cinco mujeres que estuvieron encarceladas en un Centro de Readaptación Social del Estado de Morelos (México). Ellas relatan como acompañadas por la antropóloga R. Aída Hernández Castillo y la escritora Elena de Hoyos, pudieron reconocerse a sí mismas y adquirir una nueva forma de libertad, a través de los talleres de escritura que tuvieron en el penal.

Por su parte, Erika Bárcena Arévalo presenta una reseña del libro de Orlando Aragón Andrade titulado *De la `vieja´a la `nueva´justicia indígena. Transformaciones y continuidades en las justicias indígenas de Michoacán* (2016). La autora destaca los aportes de esta obra a la antropología jurídica y a la temática del pluralismo jurídico en México y América Latina, al realizar el autor un detallado análisis de las prácticas de las justicias indígenas, tanto antes como después de que fueron incorporadas al funcionamiento del Poder Judicial en dicha entidad, en virtud de las reformas judiciales que se hicieron a comienzos de este siglo.

En su conjunto, los textos que conforman este dossier brindan un panorama de las tensiones, contradicciones y desafíos que enfrenta el Sur global ante el avance del neoliberalismo y las políticas extractivistas.

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LOS IMPACTOS DE LAS MULTINACIONALES MINERAS, EL PAPEL DEL ESTADO COLOMBIANO Y LOS PROCESOS DE RESISTENCIA EN MARMATO

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RESUMO

Na atual fase do sistema capitalista, o modelo extrativista mineiro se converteu em uma atividade humana predatória com alto impacto ambiental, territorial, social, político, econômico, cultural e sobre os bens comuns naturais. Neste contexto, Colômbia orientou sua economia aos projetos extrativistas mineiro-energéticos adotando, como base do desenvolvimento econômico, a política pública da locomotora mineira.

O objetivo desta apresentação é analisar os impactos das multinacionais mineiras, o papel do Estado colombiano e as respostas da comunidade no Município de Marmato. Por isso, estudam-se os enfoques da acumulação por desapropriação, estudos de consciência jurídica, globalização contra hegemonia e teoria da identidade social; perspectivas que se analisam à luz do trabalho empírico realizado, no qual foram relevantes os testemunhos da comunidade de Marmato em relação à chegada das multinacionais a esse município, suas percepções acerca do papel das instituições, da política mineira e de suas representações em torno do conflito e dos processos de resistência.

Palavras-chave: Mineração. Colômbia. Impacto das multinacionais. Papel do estado. Resistência.

RESUMEN

En la actual fase del sistema capitalista, el modelo extractivo minero se ha convertido en una actividad humana depredadora con alto impacto ambiental, territorial, social, político, económico, cultural y sobre los bienes comunes naturales. En este contexto, Colombia ha orientado su economía a los proyectos extractivistas minero-energéticos adoptando, como base del desarrollo económico, la política pública de la locomotora minera.

El objetivo de este artículo es analizar los impactos de las multinacionales mineras, el papel del Estado colombiano y las respuestas de la comunidad en el Municipio de Marmato. Para ello, se estudian los enfoques de acumulación por desposesión, estudios de conciencia jurídica, globalización contra hegemónica y teoría de la identidad social; perspectivas que se analizan a la luz del trabajo empírico realizado, en el que fueron relevantes los testimonios de la comunidad de Marmato en relación con la llegada de las multinacionales a este municipio, sus percepciones acerca del papel de las instituciones y la política minera y sus representaciones en torno al conflicto y a los procesos de resistencia.

Pala Palabras clave: Minería. Colombia. Impacto de las multinacionales. Papel del Estado. Resistencias.

ABSTRACT

In the current phase of the capitalist system, the mining extractive model has become a predatory human activity with high environmental, territorial, social, political, economic, and cultural impact on the natural commons. In this context, Colombia has oriented its economy to extractive mining-energy projects adopting, as a basis of economic development, the public policy of the mining locomotive.

The objective of this paper is to analyze the impacts of mining multinationals, the role of the Colombian State and the responses of the community in the Municipality of Marmato. To this end, the approaches to accumulation due to dispossession, studies of legal conscience, globalization against hegemonic and theory of social identity are studied; perspectives that are analyzed in the light of the empirical work carried out, in which the testimonies of the community of Marmato were relevant in relation to the arrival of multinationals in this municipality, their perceptions about the role of institutions and mining policy and their representations around the conflict and the processes of resistance.

Keywords: Mining. Colombia. Impact of multinationals. Role of the State. Resistors.

INTRODUCCIÓN

El El Estado colombiano considera que los proyectos extractivistas que hoy son prioridad en sus políticas económicas, deben ser delegados al gran capital nacional y transnacional, dado que, por sus recursos financieros, técnicos, científicos y por su experiencia, es el único que garantiza productividad y, por ende, un "desarrollo sostenible". Para ello, construye una serie de dispositivos y declara la industria minera en todas sus ramas y fases como de "utilidad pública e interés social", con el único propósito de entregar los territorios a la voracidad del gran capital a través de diversas modalidades contractuales y pasando por encima de los intereses de los pobladores locales y de la regulación ambiental (Londoño Berrío, Bedoya Bedoya y Parra Barboza, 2017, pp. 132 - 133).

David Harvey, geógrafo y teórico marxista, participa del debate latinoamericano actual sobre el Neoextractivismo desde la lógica de la acumulación por desposesión en el marco del modelo de desarrollo neoextractivista que continúa profundizando la primacía del patrón productivo primario exportador con una acentuada lógica rentista, provocando grandes impactos socio-ambientales y acelerando las lógicas de acumulación por desposesión hacia nuevos ámbitos geográficos, lo que viene produciendo despojo y desplazamiento de comunidades campesinas y pueblos indígenas y afro descendientes de sus territorios tradicionales, lo que ha dado

lugar a importantes luchas de resistencia popular en estos años (Lander, 2014, p. 6).

Harvey toma las palabras de Henry Lefevre para afirmar que la larga supervivencia del capitalismo a pesar de sus múltiples crisis y reorganizaciones y de los presagios acerca de su inminente derrota, se debe, entre otras razones, a que este sobrevive a través de la producción del espacio (Lefevre, 1976). Por ello, ante la incapacidad del sistema para acumular a través de la reproducción ampliada, sobre una base sustentable, se dedica en la actual fase a la explotación de los recursos naturales, que hoy se expresa a través de crecientes intentos de acumular mediante la desposesión. Esta, según su conclusión, es la marca de lo que algunos llaman "el nuevo imperialismo".

Así las cosas, la acumulación por desposesión es una nueva fase del método de acumulación originaria que algunos autores denominan como el tránsito del Consenso de Washington al Consenso de las Commodities y que ha servido para mantener el sistema capitalista, mercantilizando ámbitos hasta entonces cerrados al mercado. Mientras que la acumulación originaria supuso la implantación de un nuevo

sistema, según la teoría marxista, al desplazar al feudalismo, la acumulación por desposesión tiene por objetivo mantener el sistema actual, repercutiendo en los sectores empobrecidos la crisis de sobreacumulación del capital (Harvey, 2004).

Uno de los argumentos de este autor para explicar este proceso, es el siguiente:

> El capital, en su proceso de expansión geográfica y desplazamiento temporal que resuelve las crisis de sobreacumulación a la que es proclive, crea necesariamente un paisaje físico a su propia imagen y semejanza en un momento, para destruirlo luego. Esta es la historia de la destrucción creativa (con todas sus consecuencias sociales y ambientales negativas) inscrita en la evolución del paisaje físico y social del capitalismo (Harvey, 2004, p. 103).

Claramente, las transacciones mercantiles y crediticias de este tipo pueden aliviar los problemas de sobreacumulación, al menos en el corto plazo. Ellas funcionan muy bien en condiciones de desarrollo geográfico desigual en las que los excedentes

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disponibles en un territorio, se compensan por la falta de oferta en otro lugar.

Adicionalmente, se da una competencia internacional, que se intensifica crecientemente a medida que surgen múltiples centros dinámicos de acumulación de capital que compiten en el escenario mundial, en un marco de fuertes corrientes de sobre acumulación. Como no todos pueden tener éxito a largo plazo, o bien los más débiles sucumben y caen en serías crisis de devaluación, o bien estallan confrontaciones geopolíticas expresadas a través de guerras comerciales, monetarias o incluso militares. En estos casos, lo que se exporta es la devaluación y la destrucción como sucedió con el Este y Sudeste Asiático en 1997 y 1998 por parte de las entidades financieras estadounidense (Harvey, 2004, p. 106).

Otro enfoque importante en la investigación que ha dado lugar a este artículo, es el de conciencia jurídica, perspectiva que surge de las inquietudes de los distintos grupos de investigadores de Estados Unidos, con la llamada tradición crítica iniciada por el realismo jurídico, con el propósito de lograr una sociología jurídica que, además de ser empírica, tuviera el componente de la

crítica. El investigador se dirige hacia aquellas prácticas sociales concretas, cotidianas, en las cuales las normas jurídicas son estudiadas como elementos constitutivos de la realidad. El énfasis se pone en la rutina y no en lo excepcional; en lo social y no en lo institucional, y en las representaciones mentales (visión simbólica) que los ciudadanos corrientes tienen del derecho y las instituciones y no en el sistema coercitivo o promotor del derecho (visión instrumental), todos elementos comunes de este cambio de óptica (García Villegas, 2001, pp. 14-15). De allí la importancia del trabajo empírico realizado en la investigación en el que se indaga por las percepciones y representaciones de los habitantes de Marmato frente al conflicto con la empresa multinacional que se disputa el territorio y el oro para hacer minería a cielo abierto.

El tercer enfoque se refiere a la globalización contra hegemónica que, desde la perspectiva jurídica y política, no es otra cosa que las reformas jurídicas y respuestas sociales y políticas construidas desde abajo, los nuevos regímenes jurídicos internacionales, la oposición popular creciente a la ampliación de las instituciones neoliberales, la

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formulación de estructuras jurídicas alternativas por las redes transnacionales de activistas (RTA) y por las poblaciones más perjudicadas por la globalización hegemónica (Santos y Rodríguez Garavito, 2007, p. 8).

La cuarta perspectiva alude a algunos enfoques teóricos y metodológicos sobre los procesos de construcción de identidad colectiva, por considerarlos presupuestos relevantes en la configuración de la acción colectiva y los procesos de resistencia. En particular, se retoman algunos elementos teóricos de la identidad social, la identidad colectiva y cultural, los cuales se explican más adelante como presupuestos básicos de la acción colectiva y los procesos de resistencia.

Usando estas perspectivas teóricas como lentes potentes para el análisis, estructuraremos el artículo en cuatro partes: en la primera, examinaremos los impactos de las multinacionales mineras en el caso del municipio de Marmato en Colombia, a partir de reconocer el creciente dominio de las empresas transnacionales sobre la vida en el planeta en las tres últimas décadas; en la segunda, se analizarán los mecanismos del estado colombiano para alinearse con los intereses de las

multinacionales mineras y su papel frente a las estrategias usadas por estas para apropiarse de los recursos naturales; en la tercera, se estudian algunas perspectivas teóricas y metodológicas en aras de analizar el proceso de construcción de la identidad colectiva de los habitantes de Marmato, como un aspecto relevante para comprender la acción colectiva y los procesos de resistencia de esta comunidad; y, por último, se exploran los procesos de resistencia construidos por la comunidad de Marmato, en respuesta a los impactos provocados por el Código Minero de 2001 y por la llegada de las multinacionales mineras que han arribado a ese territorio a partir del año 2005.

Los impactos de las multinacionales mineras: el caso de Marmato, Colombia

En el último siglo y medio, con el avance del capitalismo global, los estados-nación han venido cediendo parte de su soberanía en cuanto a las decisiones socioeconómicas y las empresas transnacionales han logrado ir consolidando y ampliando su creciente dominio sobre la vida en el planeta,

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especialmente, en las tres últimas décadas. El avance de los procesos de globalización económica y la expansión de las políticas neoliberales han servido para construir un entramado político, económico, jurídico y cultural, a escala global, del que las grandes corporaciones han resultado ser las principales beneficiarias. (Ramiro Pedro y Gónzalez Erika, 2013, p. 1).

El historiador y profesor universitario Renán Vega Cantor, describe bien el papel de estas entidades supranacionales que actúan en connivencia con el Banco mundial, generando graves impactos sociales y ambientales:

> El Banco mundial (BM) tiene su sede en Washington, el 90% de sus miles de millones de dólares que otorga como crédito para fomento de inversiones se destinan a proyectos de las grandes empresas transnacionales, que esquilman los recursos, contaminan el medio ambiente, envenenan las aguas y destruyen a las comunidades campesinas, 80% de su presupuesto se invierte en países que tienen altas tasas de interés, lo que demuestra que no es precisamente una institución cuya finalidad sea luchar contra la pobreza como afirman sus ideólogos, sino que por el contrario es un generador mundial de miseria. La

presidencia del Banco siempre ha sido desempeñada por un ciudadano de los Estados Unidos que es a la vez, un directivo de una empresa privada (Vega Cantor, 2007).

Las compañías multinacionales[1] han pasado a controlar la mayoría de los sectores estratégicos de la economía mundial: la energía, las finanzas, las telecomunicaciones, la salud, la agricultura, las infraestructuras, el agua, los medios de comunicación, las industrias del armamento y de la alimentación. La crisis capitalista que hoy vivimos, no ha hecho sino reforzar el papel económico y la capacidad de influencia política de las grandes corporaciones, haciendo negocio con los recursos naturales, los servicios públicos y la especulación inmobiliaria, como con los mercados futuros de energía y alimentos, las patentes sobre la vida o el acaparamiento de tierras.

Las enormes ganancias acumuladas por las empresas

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[1] La empresa multinacional concentra la administración financiera y de gestión y solo descentraliza la producción, mientras que la empresa transnacional tiene la administración y las operaciones separadas de la empresa central u original, las transnacionales generan verdaderas empresas "clones" de sí mismas (tiene todas sus operaciones globalizadas). Los ejemplos típicos de estas empresas son los bancos, como el Santander.

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transnacionales tienen su origen en los mecanismos de extracción y apropiación de la riqueza económica que están en la base del funcionamiento del capitalismo. La creciente explotación de trabajadores y trabajadoras y la constante devaluación salarial, la presión ilimitada sobre el entorno en busca de materias primas y recursos naturales, la especulación financiera tanto con el excedente obtenido como con todo aquello que pueda ser comprado y vendido, la mercantilización de cada vez más esferas de las actividades humanas y la absoluta prioridad de la que gozan los mecanismos de reproducción del capital frente a los procesos que permiten el sostenimiento de la vida, han servido, efectivamente, para que los principales directivos y accionistas de las grandes corporaciones se conviertan en multimillonarios (Ramiro Pedro y Gónzalez Erika, 2013).

Dice David Harvey que en los últimos años, ante la caída de los niveles de consumo, el progresivo agotamiento de los combustibles fósiles y la rebaja de las tasas de ganancia del capital transnacional en los países centrales, las grandes corporaciones han puesto en marcha una fuerte estrategia de reducción de costes y, a la vez, han intensificado su ofensiva para lograr el acceso a nuevos negocios y nichos de mercado. Es lo que el geógrafo británico ha denominado acumulación por desposesión:

> Muchos recursos que antes eran de propiedad comunal, como el agua, están siendo privatizados y sometidos a la lógica de la acumulación capitalista; desaparecen formas de producción y consumo alternativas; se privatizan industrias nacionalizadas; las granjas familiares se ven desplazadas por las grandes empresas agrícolas; y la esclavitud no ha desaparecido (Harvey, 2004).

En este inquietante contexto, los conflictos socio ecológicos y las violaciones de los derechos humanos se multiplican por todo el mundo, lo que ha provocado un crecimiento de las luchas sociales en respuesta a todos estos impactos empresariales y del modelo económico. Hay que resaltar que en el desarrollo de la acumulación por desposesión, como afirma Harvey, el Estado, gracias a su monopolio sobre el uso de la violencia y su definición de la legalidad, desempeña un papel crucial tanto en el apoyo como en la promoción de estos procesos, aunque esto implique una contrariedad con los intereses colectivos. (Harvey, 2007, p. 165).

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En el caso de Marmato, el capital transnacional representado por la empresa canadiense Gran Colombia Gold arriba a este territorio en el año 2005, anunciando con "bombos y platillos" traer el progreso y la prosperidad para todos. Contrata un ejército de profesionales para convencer a todos de los beneficios y las ventajas que trae aparejada su llegada. Coopta autoridades locales, liderazgos naturales y trata de seducir con sus bendiciones hasta al Párroco de la localidad. Impone como estrategia la adquisición de decenas de títulos de mineros.

Consecuente con el designio de gran productividad y lucro, define que la explotación aurífera será bajo la modalidad de "cielo abierto", que supone de forma necesaria el desplazamiento de toda la población del casco urbano a un nuevo "asentamiento". A quienes se resisten a venderle, se les increpa por parte de la multinacional Gran Colombia Gold que "¡no hay alternativas!", que el proyecto es un hecho consumado, que cuenta con el aval de todas las autoridades, el respaldo del Derecho, y que ya muchos se han ido y los que quedan también lo están haciendo. Como se trata de aniquilar toda esperanza, la multinacional actuando en connivencia

con el gobierno local procede a cerrar las minas cuyos títulos ha adquirido, a dinamitar sus entradas, destruye los molinos que son la infraestructura necesaria para procesar el material del cual se extrae el oro de las minas de la región (Londoño et. al., 2017).

Las consecuencias no se dejan esperar, pues siendo la minería el eje de la actividad económica del municipio, con el cierre de algunas minas y la destrucción de los molinos, el desempleo termina azotando a miles de personas, circunstancia que se proyecta sobre el comercio y otras actividades que se vieron reducidas a su mínima expresión, afectando la seguridad ciudadana y las condiciones de bienestar de toda la población. Este escenario fue instrumentalizado por la multinacional para ratificar y pregonar a todos los vientos, que no había alternativa, que su proyecto definitivamente era una realidad, que no había marcha atrás. Algunos, abandonaron la región en busca de oportunidades, pero muchos otros, mineros de vocación, que aman esta actividad, que aprendieron este arte desde sus ancestros, resistieron permaneciendo expectantes en el territorio e incursionando en una serie de expresiones de resistencia, entre las

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cuales se destaca la retoma de las minas que permanecieron por más de seis meses cerradas, haciendo uso del amparo administrativo que concede la legislación minera colombiana.

El papel del Estado colombiano frente a las multinacionales mineras en Colombia

Algunos de los mecanismos utilizados por el Estado colombiano para alinearse con los intereses de las multinacionales mineras han sido: la restructuración institucional y normativa del sector, los cambios en las formas de contratación, la pérdida de estratificación minera al establecer los mismos requisitos para campesinos, indígenas y multinacionales para obtener una concesión minera; igualmente, la reducción y debilitamiento de las autoridades ambientales, la firma de tratados de libre comercio y los denominados batallones energéticos, mineros y viales, con el propósito de atraer la inversión extranjera de las empresas multinacionales del sector, desviando recursos públicos en favor de la seguridad de los privados y favoreciendo la defensa de las

multinacionales en contra de los derechos legítimos al territorio de las comunidades indígenas, campesinas y afro descendientes (Bedoya Bedoya, 2015), lo que ha provocado fuertes conflictos sociales, masacres y desplazamientos directamente relacionadas con esta política invasiva, muchas de ellas realizadas en connivencia de ejército, paramilitarismo y empresas (Corporación Nuevo Arco Iris, 2014).

Para la puesta en marcha de estos mecanismos, han sido determinantes: i) la reducción de la burocracia del Estado, ii) los procesos de descentralización y iii) los cambios en el diseño institucional. Evidencia de ello son los cambios en las formas de contratación (de contratos por asociación a contratos por concesión), donde el 100% de las operaciones mineras se pueden adjudicar al sector de la minería transnacional por medio del Decreto 1760 de 2003. (Ministerio de Minas y Energía, 2003). La contratación por concesión es oprobiosa puesto que la nación entrega un área de terreno a una compañía para su exploración, durante un periodo de tiempo que oscila entre los treinta años con capacidad de prórroga (Yepes, 2001). En este tipo de contrato, el Estado recibe un

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insignificante porcentaje de regalías sobre la producción. El contrato de Asociación, en cambio, posibilita una relación más simétrica entre la compañía y el Estado, teniendo en cuenta que el Estado es partícipe de la actividad minera, con voz, voto y capacidad de control en los comités de las asociaciones donde se toman las decisiones más importantes.

Así mismo, con la instauración de la Ley 685 de 2001, se da no sólo una reestructuración normativa sino institucional, puesto que los particulares son los llamados a ejercer la actividad minera mediante el contrato de concesión, eliminando el contrato en virtud de aporte (Congreso de la República, 2001); el Estado colombiano no es socio en la renta minera, con lo cual los ingresos derivados de la economía extractiva se restringen notablemente, y los conceptos de ingresos se restringen a canon superficiario[2]. Otro asunto que se debe agregar es el relacionado con el

actual Código Minero, este establece que la licencia para explotación del pequeño minero tiene una duración de 10 años y tiene una posibilidad de prórroga a 10 años más; mientras el contrato de concesión para la mediana y gran minería, establece un tiempo de explotación a treinta años con posibilidad de dos prórrogas a treinta años más, situación que a todas luces muestra el favorecimiento de los grandes privados en detrimento de los medianos y pequeños mineros y vulnera el principio de igualdad, esencial para la democracia.

En relación con la estratificación minera[3], la Ley 685 de 2001 eliminó la estratificación de explotación minera por escalas, con lo cual los mismos requisitos que se le exigen a una gran concesión minera para obtener las licencias, son exigidos a los pequeños mineros que desarrollan esta actividad como medio de subsistencia (Güisa, 2013). Y, en lo que tiene que ver con la reducción y debilitamiento de las autoridades ambientales, la fusión del Ministerio de Ambiente y el Ministerio de Vivienda (MAVDT) y el

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[2] Según la Agencia Nacional de Minería en Colombia, el canon superficiario es una contraprestación que cobra la entidad contratante sobre la totalidad del área de la concesión durante la exploración, el montaje y la construcción sobre las extensiones de las mismas que el contratista retenga para explorar durante el periodo de explotación, sin consideración a quien tenga la propiedad o posesión.

[3] La estratificación minera por escalas consistía en los requisitos diferenciales para obtener permisos ambientales o mineros, según se trate de pequeña, mediana o gran minería. (Decreto 2655 de 1988, artículos 15, 28, 29, 30, 45, entre otros).

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debilitamiento de las Corporaciones Autónomas Regionales -CAR-, reflejan la pérdida de capacidad técnica y operativa de estas. (Rodríguez Becerra, 2007).

En cuanto a los Tratados de Libre Comercio [TLC], Julio Fierro afirma que estos se han instaurado como herramientas de apoyo de políticas neoliberales que van en desmedro de los países en vía de desarrollo, donde el factor común es la expoliación del "Sur global" (Fierro, 2012). Esto debido a que dan apertura al capital trasnacional bajo unas condiciones excesivamente ventajosas para éste, ya que dotan a las trasnacionales de herramientas jurídicas para apropiarse de los recursos naturales de una manera negociada. En el mismo sentido se pronuncia Jairo Estrada, quien señala que los TLC dan cuenta de un proyecto de construcción de un orden capitalista privado, que regula relaciones entre empresas capitalistas privadas, en especial multinacionales, pero protegido con la forma estatal de la regulación y concedido con los mecanismos de protección que puede proveer el Estado (Estrada Álvarez, 2015).

Finalmente, es importante advertir que también el Estado colombiano ha jugado un papel relevante en el desarrollo e implementación de algunas estrategias impulsadas por las multinacionales mineras para apropiarse de los recursos naturales. Por ejemplo, algunos directivos de la institucionalidad oficial minera migran a las juntas directivas de empresas mineras, o viceversa. Tras esta maniobra, las empresas se hacen a beneficios notorios, pues estos funcionarios "nómadas", pueden en el ejercicio de su "facultad" aprovechar la discrecionalidad administrativa de su cargo, para direccionar, por ejemplo, beneficios privados en materia de legislación, vigilancia y control, adjudicación de concesiones, creación de barreras para las empresas competidoras, entre otros, sin que esto les acarree ninguna sanción (Orrego Pérez, 2017, p. 60).

De acuerdo con Orrego, el lobby o cabildeo es otra práctica que, a diferencia de la puerta giratoria, tiene como escenario privilegiado el Congreso de la República. En ocasiones esto se hace a través de la persuasión, la manipulación o el soborno, logrando influenciar la legislación a su favor, dando lugar a la preferencia de intereses sectoriales sobre el interés general, sin que a la mayoría de los congresistas esto les preocupe. Estas dinámicas

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están ligadas a la financiación de las campañas, al lucro de compañías y de partidos, y no se puede negar que afecta la democracia, contribuye a la captura regulatoria del Estado e incrementa la corrupción.

Como respuesta a estas situaciones, la comunidad de Marmato ha activado estrategias y formas organizativas diversas, tales como el litigio estratégico, las acciones colectivas y la denuncia pública, entre otras; conformando redes de solidaridad y cohesión entre distintos movimientos de indígenas, afros y campesinos; cualificándolos, compartiendo formas de lucha, sumando condiciones de empoderamiento local y generando planes de acción al interior del territorio, denunciando su situación a nivel nacional, regional y global, e incluso, forjando mayores niveles de incidencia política, que responden a esa necesidad de globalización contra hegemónica.

A continuación, nos aproximamos a algunas perspectivas teóricas y metodológicas que nos permitan comprender los procesos de construcción de identidad colectiva, y en particular, la manera como lo han hecho los habitantes de Marmato,

generando procesos de resistencia en respuesta a los distintos actores que históricamente se han disputado con ellos la riqueza aurífera que existe en ese municipio. En esta construcción se encuentran quizá, las claves para comprender porque un pequeño municipio de tan solo 9 mil habitantes, ha tenido la fuerza, la capacidad y el coraje para resistir a los grandes poderes económicos y políticos.

El proceso de construcción de la identidad colectiva en Marmato

La construcción del sentido de pertenencia está estrechamente relacionada con las interacciones sociales, la cultura y el contexto social macro y micro. El proceso de globalización ha generado, por un lado, nuevas identidades como resultado de la apertura de fronteras y, por otro, la reivindicación de lo propio por parte de ciertos grupos que se resisten a abandonar su cultura. Los Estados-nación enfrentan un gran desafío: la búsqueda de mecanismos a través de los cuales puedan convivir con esquemas simbólico-culturales diferentes y hasta contradictorios.

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Para analizar el proceso mediante el cual los habitantes de Marmato han construido su identidad colectiva, esto es, el proceso mediante el cual los sujetos construyen el sentido de pertenencia grupal, retomamos el concepto de identidad de Erickson y Tajfel como creadores de la teoría de la identidad social, la cual postula que el individuo como actor reflexivo pondera sus capacidades y potencialidades y se reconoce como miembro de un grupo (Erickson, 1977 y Tajfel, 2016). Así mismo, se revisan algunos planteamientos sociológicos y antropológicos sobre la identidad colectiva o cultural, entendida como el componente que articula y da consistencia a los movimientos sociales (Touraine y Melucci) citados por (Mercado Maldonado y Hernández Oliva, 2010), poniendo especial atención en los aportes realizados por Habermas sobre los factores decisivos en la construcción de la identidad colectiva en la sociedad moderna y que él ha denominado *la acción comunicativa* (Habermas, 1987).

También retómanos la propuesta metodológica de Fredrik Barth, según la cual se debe sustituir el concepto de etnia por el de etnicidad, que implica estudiar la identidad desde la perspectiva de los miembros del grupo, de tal manera que lo que identifica a un grupo no son los elementos culturales objetivos del mismo, sino aquellos que los sujetos consideran significativos (Barth, 1978). En este mismo sentido, se pronuncian Manuel Castells, Gilberto Giménez y Andrés Piqueras, para quienes la identidad colectiva es, ante todo, una construcción subjetiva, resultado de las interacciones cotidianas, y a través de las cuales los sujetos delimitan lo propio frente a lo ajeno (Castells, 1999 y Giménez, 2000 y Piqueras Infante, 1996).

En el caso de Marmato, la comunidad ha construido históricamente una identidad colectiva muy potente, en cuanto que la riqueza aurífera ha sido codiciada por distintos actores externos en diferentes momentos históricos (Gärtner, 2005): desde la colonia (la corona española), en la independencia (el capital inglés), durante la república (los capitalistas criollos -en particular los empresarios antioqueños conocidos con el gentilicio de "paisas") y actualmente, en torno a las amenazas y vulneraciones que han recibido por las reformas introducidas en el nuevo código minero (2001) y de las multinacionales que llegaron al municipio desde 2005 y que a lo largo

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de estos doce años han cambiado de nombre, pero no de prácticas.

Desde al año 2005 afloraron nuevos conflictos en el municipio debido a la llegada de la compañía canadiense Colombian Goldfields con el propósito de hacer exploración a gran escala; a finales de 2009 esta compañía vende sus derechos a la empresa canadiense Medoro Resources Ltda., que luego de fusionarse con otras empresas pasa a denominarse en el año 2011 como Gran Colombia Gold, empresa que a su vez compra a Mineros Nacionales, compañía de origen antioqueño que desde finales de los años 80 desarrollaba mediana minería en la parte baja del Cerro el Burro de Marmato. (Bedoya Bedoya, 2017, p. 14).

Para los marmateños, la minería es su ethos cultural, lo que aprendieron de sus ancestros, lo que saben hacer con arte y lo que quieren seguir haciendo. Así se refirieron diversos grupos de entrevistados en Marmato acerca del significado que tiene para ellos la minería.

Si bien, cada una de estas organizaciones tienen características y particularidades propias, en momentos álgidos en que se han sentido amenazados o vulnerados por las

multinacionales, se han unido en torno a un objetivo común: defender la minería como forma de vida y como actividad ancestral que se ha trasmitido de generación en generación.

[…] Para mí la minería es vida. Ya que nuestro sustento y nuestra forma de vida es a través de la minería siempre. Usted ve desde el más pequeño hasta el más viejito de Marmato... sólo sabe hacer minería. No sabe hacer más nada. Y gastarse la plata. No sabemos hacer más nada [risas]. Entonces es la forma de vida de nosotros. O sea, aquí la gente de Marmato no sabe hacer otra cosa. No le pregunte cómo se ordeña una vaca porque no sabemos. Sí, seguro, porque toda la vida es la minería, la minería (EP6).

[…] A nosotros nos dejaron de herencia el ser mineros. Nacimos siendo mineros, somos mineros y queremos terminar siendo mineros. Pequeños o grandes empresarios, pero queremos ser mineros, porque: primero, es un arte, es muy linda; segundo, es lo que nos gusta y sabemos hacer, y hacemos con más gusto, porque sabemos que nos nace. Ser mineros, ser estudiantes o ser maestros es un orgullo porque es algo que a uno le gusta. Y para nosotros ser mineros es lo que queremos, lo que tenemos y lo que sabemos hacer. No nos interesa hacer nada más porque de esto vivimos. Bien o mal,

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de esto vivimos […] gracias a Dios tenemos la voluntad, la fuerza y las capacidades para trabajar en la mina o en el molino, pero con mucho gusto (GF1, comunicación personal, noviembre 20, 2014).

Algunas de las estrategias de resistencia impulsadas por la comunidad de Marmato y que dan cuenta de la construcción de una identidad colectiva, han sido: i) la articulación con organizaciones y movimientos sociales, ambientalistas, políticos y académicos[4] en los contextos internacional, nacional, departamental y municipal; ii) estrategias normativas orientadas a la legalización de su actividad, mediante la solicitud de títulos mineros; iii) trabajo de divulgación y denuncia del conflicto territorial en el municipio, en diferentes escenarios y espacios públicos de debate a nivel nacional e internacional; iv) acciones de resistencia civil como marchas, paros cívicos y bloqueos de vías; v) espacios de reflexión y debate tales como talleres, foros, ciclos de conferencias, seminarios, reuniones de fortalecimiento comunitario e intercambio de experiencias que han

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[4] Durante los últimos seis años la comunidad de Marmato ha institucionalizado la reunión anual de marmatólogos, a la que concurren diferentes investigadores y académicos de diferentes universidades nacionales e internacionales, que ha hecho del caso Marmato su objeto de estudio.

servido como formación, capacitación y espacios de construcción de propuestas de solución a sus problemas. (Arias Hurtado, 2013, p. 597).

En los últimos años, estas resistencias se activan claramente a partir de la expedición del actual Código Minero de 2001 y de la llegada al municipio de Marmato de las multinacionales mineras (2005), pues antes de la expedición del nuevo código minero -Ley 685- (Congreso de la República, 2001) los mineros trabajaban en la parte alta del cerro el Burro mediante el sistema de cuotas existente legalmente en ese municipio desde 1954 mediante un decreto expedido por Rojas Pinilla, muchos de los barequeros pasaban a ser pequeños mineros de veta, se movilizaban por donde querían y no había ningún impedimento para comercializar el oro que lograban extraer de las minas, tenían pequeñas asociaciones para adquirir los explosivos necesarios para explotación del oro, pagaban su seguridad social, se sentían a gusto con su trabajo, a pesar de los riesgos que esta labor implica, incluso llegaron a ser considerados por el gobierno municipal y nacional como motores del desarrollo.

Con los cambios introducidos al código minero colombiano en el año

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2001, en función de atraer la inversión privada y extranjera de las empresas privadas y multinacionales, las condiciones de los mineros desmejoraron ostensiblemente por cuanto ya no tienen cabida en las nuevas políticas mineras, se les trata como ilegales, se les destruyen sus herramientas de trabajo, se les prohíbe comprar los explosivos para la explotación de oro, se criminaliza su protesta y se les exigen los mismos requisitos que a las multinacionales para poderse formalizar, a pesar de las asimetrías existentes en términos de sus condiciones económicas. Antes de estas reformas los mineros eran personas respetadas y respetables ahora se les estigmatiza bajo la etiqueta de criminales.

Los procesos de resistencia en el caso de Marmato, Colombia.

Las formas de resistencia que los habitantes de Marmato han ido construyendo como respuesta a la criminalización de su actividad minera, al modelo de desarrollo impuesto desde afuera, no discutido ni concertado con la comunidad residente y tributario de intereses muy ajenos a ella, vienen a constituirse en espejo en el que la

comunidad puede observarse para un ejercicio reflexivo que identifique las fortalezas que han hecho posible que todavía hoy tengan raíces en esta tierra. Además, porque la descripción y análisis de estas prácticas, producto de experiencias, corajes, valentías y sabidurías colectivas, sin lugar a duda pueden ilustrar a otros pueblos y comunidades que enfrentan injusticias similares. (Londoño et. al., 2017).

Por resistencia se asume el amplio repertorio de acciones, dinámicas, procesos y prácticas ejercidos de forma colectiva, que tienen como propósito explícito o implícito, confrontar el designio de la multinacional de apropiarse del territorio para imponer la explotación del recurso aurífero en Marmato a través de la modalidad de "cielo abierto", con el consecuente desplazamiento de la población y la destrucción de las fuentes de trabajo que hacen uso de formas artesanales y tradicionales para la extracción del metal. El contexto y su estrategia permite definirla como "globalización contra hegemónica", y claro testimonio de que "sí hay alternativas" culturales, políticas y económicas distintas al neoliberalismo, porque lo confrontado son construcciones humanas de orden

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histórico y social y no fenómenos de la naturaleza.

Boltanski y Chiapello (2002), afirman que:

> (…) Enfoques globales terminan a menudo dando una importancia preponderante a factores explicativos –con frecuencia de orden tecnológico, macroeconómico o demográfico– que son considerados como fuerzas ajenas a los seres humanos y a las naciones, que se verían de esta forma obligadas a padecerlos del mismo modo que se soporta una tormenta. Para este neodarwinismo histórico, las (mutaciones) se nos impondrían como se imponen a las especies: depende de nosotros adaptarnos o morir. Sin embargo, los seres humanos no sólo padecen la historia, también la hacen (p. 34).

En entrevista realizada al minero Mario Tangarife se destaca la importancia del poder de la organización y el trabajo en red, cuando afirma que

> Nos hemos dado cuenta que trabajando unidos, que los indígenas luchan por el pueblo, que los afros luchan por el pueblo y que nosotros [Asomitrama] también luchamos por el pueblo, entonces ahí no hay una diferencia ni política ni de color, ni

de religión, sino que la intención es solamente una, querer y tener nuestro pueblo por muchos años más (EP2, comunicación personal, noviembre 21, 2014).

Entre las organizaciones con papel sobresaliente en la resistencia, cabe mencionar al Comité Cívico Pro Defensa de Marmato, que articula liderazgos de muy diverso origen social y económico, con testimonio de un compromiso valeroso y auténtico por defender los intereses de toda la población. Así mismo, la comunidad indígena que viene en un proceso de reconstrucción de su identidad, recuperando su historia, su particular cosmovisión, su propio derecho, la autonomía de su gobierno (Grupo Focal, Indígenas, noviembre 21, 2014). Por supuesto, la comunidad afro, cuyas organizaciones y líderes han realizado un meritorio trabajo de conservación cultural que comprende la música, la danza, la historia, expresiones artísticas, mitos y leyendas (EP8, comunicación personal, noviembre 21 de 2014). Y la Asociación de Mineros Tradicionales de Marmato (Asomitrama), expresión organizativa singular que aglutina sin discriminación a todos los que le apuestan a un proyecto económico y

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social y que erige como eje teórico el apotegma de que "El oro de Marmato, es para los marmateños" (Grupo Focal Asomitrama, noviembre 22 de 2014). Todos ellos soñando con que el pueblo sea para los Marmateños.

En su proceso organizativo, se identifican hitos o momentos especiales: el primero, la respuesta organizada de la comunidad conformando plurales comités para afrontar el conflicto originado por el desplazamiento de tierra que sepultó de manera parcial la Plaza Santacruz, parque central del municipio de Marmato, circunstancia que propició una oportunidad para que poderes interesados en expulsar a la población del casco urbano –ubicado en el cerro El Burro-, corrieran a demonizar toda la zona como de "alto riesgo", pretexto que igualmente ha servido para justificar la omisión de políticas públicas con el objetivo de recuperarla.

El segundo, el acompañamiento de la feligresía al párroco local para resistir las ofertas de la multinacional de ayudar a la iglesia mayoritariamente católica a construir un templo monumental, a condición de hacerlo por fuera del casco urbano, trasladando todas sus pertenencias y servicios religiosos a la nueva sede ubicada en la

parte de El Llano (EP2, comunicación personal, noviembre 21, 2014).

El tercero, el trabajo cotidiano, paciente, colosal, para empoderar una representación sobre el significado de la presencia de la multinacional, de la adquisición paulatina por parte de ésta de los títulos mineros, del proyecto de explotación del oro a través de la modalidad de "cielo abierto", y de las consecuencias para el presente y las futuras generaciones, del carácter perentorio que, ante este estado de cosas, reviste el organizarse y resistir.

El cuarto, la jornada heroica con motivo del Paro Nacional Minero (17 al 24 de julio de 2013), en el cual gran parte de la población participó, marchó y se tomó las vías públicas, para denunciar la política nacional minera al servicio del gran capital, con el correlativo desprecio de los derechos y las necesidades de los colombianos. Jornada llena de riesgos, amenazas y violencias, pero también de solidaridad de los camioneros que transitaban por la vía, contó igualmente con la presencia del ESMAD (eufemísticamente nombrado como "Escuadrón Móvil Antidisturbios"), cuerpo de la policía nacional (Grupo Focal, Asomitrama, noviembre 22, 2014) y video realizado por los investigadores en 2016, que se

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puede ver en YouTube, en el siguiente link: (https://youtu.be/z5x8iAXAul0).

Y finalmente, el quinto, la recuperación de las minas cerradas por la multinacional, por parte de los "guacheros" confrontando la visión ortodoxa e institucional de una mina, la cual supuestamente le otorga al poseedor del título minero el derecho a usar y abusar de ella (como destruirla, cerrarla), para hacer prevalecer una visión de la Mina como campo que provee y debe permitir materializar el derecho al trabajo, y, por ende, generar ingresos para atender a las necesidades vitales (salud, alimentación, vivienda, servicios, etc.) para el minero y su familia, y como escenario de solidaridad, donde deber tener vigencia la función social de la propiedad.

Este trabajo solidario de las organizaciones de Marmato, fue el factor determinante para que se produjere el fallo de la Corte Constitucional respecto de la Mina Villonza, proceso en el cual los "guacheros"[5] que la habían recuperado se enfrentaron a la Alcaldía Municipal de Marmato, a la Agencia Nacional de Minería y a los intereses

multinacionales representados por Minerales Andinos de Occidente S.A. y la Gran Colombia Gold, y lograron que inicialmente se ordenara la realización del trámite de consulta previa, con la participación (libre, voluntaria e informada) del Consejo Comunitario de la parcialidad indígena de Cartama, los integrantes de las comunidades indígenas y afrodescendientes que habitan y/o ejercen "la actividad de minería tradicional, artesanal e informal" de la Mina Villonza. Y no obstante que luego la misma corporación declaró la nulidad del fallo[6], éste reviste importancia por las certezas que apuntala: la primera, que la factibilidad de éxito de los objetivos de la lucha está en directa correlación con la organización y la solidaridad de todos los actores cuyos derechos se encuentran amenazados por el modelo de desarrollo impuesto para la localidad. La segunda, el carácter dialéctico de la historia social define la condición provisional de toda victoria o fracaso, su reversibilidad, lo cual obliga a las comunidades y sus organizaciones a tener una permanente vigilancia sobre el

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[5] Mineros informales que quedaron cesantes de su trabajo por motivo del cierre de las minas y que se organizan para abrirlas nuevamente.

[6] Ver Corte Constitucional. Auto 583. (10 de diciembre de 2015). Magistrado ponente, Luis Ernesto Vargas Silva.

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proceso, afianzar los lazos solidarios y favorecer la constante movilización.

Respecto al papel del Derecho importa destacar los siguientes aspectos: la multinacional aduce tener amparo en el derecho constitucional y en algunas leyes que la desarrollan; las comunidades afro e indígenas aducen las mismas fuentes, con significados diversos, que conducirían a otras consecuencias; además, éstas también citan como fuente normas del Derecho Internacional de los Derechos Humanos y de la Organización de los Trabajadores.

Por otro lado, las comunidades nacionales albergan graves y serias dudas sobre el grado de compromiso del Estado y sus instituciones con sus particulares necesidades e intereses; sin embargo, se lo representan como espacio de lucha, en el cual no basta ni saber argumentar ni tener la razón, es perentorio además sumar la presión política del orden nacional e internacional. Sólo de esta forma se vislumbra la posibilidad de revertir la tendencia del derecho a legitimar los poderes hegemónicos para erigirlo en un recurso que aporte al empoderamiento y legitimación de los poderes contra hegemónicos de la globalización neoliberal.

La eficacia lograda por la resistencia del pueblo marmateño está asociada, en alto grado, a su relación con otras comunidades, pueblos y organizaciones que padecen y enfrentan conflictos similares, a la solidaridad del marmateño que tiene mucho de cultural, al papel desempeñado por académicos comprometidos con reforzar y consolidar los argumentos para las luchas del pueblo en diversos escenarios, a la valentía, el coraje, la inteligencia y la justicia de la causa de los marmateño y a la sabiduría de reconocer que se enfrentan a un contradictor o enemigo de peso.

Reflexión final a manera de conclusión

La re-valorización y apropiación del territorio por parte de los habitantes de Marmato, es sin duda el testimonio de la validez y pertinencia de las resistencias. Ello a través de muy variadas acciones individuales y colectivas, muchas de ellas silenciosas, que se ejercitan de forma cotidiana, sin que llamen la atención. Las prácticas de resistencia aquí tratadas y otras articuladas a los mismos objetivos, caben inscribirse en lo que Boaventura

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de Sousa Santos nombra como globalización contra hegemónica y en su configuración ha sido muy relevante el proceso de construcción de la identidad colectiva. Frente a este universo de poderes confabulados y convergentes, tanto internos (desde los poderes del Estado, la burguesía nacional, la fuerza pública, mercenarios, etc.) como externos (desde el BM, el FMI, la OMC, los países del centro del capitalismo que los representan), sólo queda un trabajo cultural que devele las falacias del modelo, desnude los reales beneficiarios, las nuevas formas de opresión y despojo que conllevan y, sumado a ello, un trabajo organizativo que aglutine a todos los perjudicados.

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INTERNECINE BETWEEN THE INDIAN STATE AND THE ADIVASIS (INDIGENOUS PEOPLE) UNDER NEO-LIBERALISM: A CASE OF LANJIGARH RESISTANCE MOVEMENT

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ABSTRACT

The Anti-Vedanta movement at Lanjigarh had rocked the interior district of Kalahandi in the Indian state of Odisha. It was a fiercely fought movement (2002-2014) by the Adivsis (Dongria Kondh) against state of Odisha and VAL the mining based heavy metal MNC licensed under neo-liberal policy. The project had displaced 302 Adivasi families and was to mine in the Niyamgiri mountains to which the Adivasis were attached for livelihood and religious-cultural purposes. The displaced hence rallied around issues of cultural threats, environmental threats and inadequate R&R (Rehabilitation and Resettlement) measures against loss of livelihood and natural habitat. The paper analyses empirically: (i) the threats posed to Adivasi identity by this so called modernization process by endangering their cultural patterns, social relations, economic organizations and pristine ecosystem. (ii) how the civil society guided the movement to ensure implementation of relevant legal provisions like, 5th schedule of the constitution, Article 244 (i), PESA 1996, FRA 2006 and Odisha scheduled areas act 1956 meant to protect Adivasis. (iii) the inherent paradoxes of this development discourse based on neo-liberalism; as the state imposes a kind of development model with its right to develop its subjects (by over riding the subjects' right to experience development differently). It concludes that the state is being forced to share space with the civil society as a result of neo-liberalism.

Key Words: Collective mobilization, Tribal resistance movements, New social movements, Civil society organizations, Neo-liberalism

RESUMO

O movimento Anti-Vedanta em Lanjigarh abalou o interior distrito de Kalahandi no Estado Indiano de Odisha. Foi um movimento lutado ferozmente (2002-2014) pela Adivsis (Dongria Kondh) contra o Estado de Odisha e VAL a mineração baseada em metais pesados MNC licenciado sob políticas neoliberais. O projeto deslocou 302 famílias Adivasi e foi para minerar nas montanhas de Niyamgiri aos quais os Adivasis eram atacados por subsistência e por propósitos religio-culturais. O deslocamento consequentemente reuniu ao redor questões de ameaças culturais, ameaças ambientais e inadequadas R&R (Re-habilitação e Re-assentamento) medidas contra a perda de subsistência e de habitat natural. O artigo analisa empiricamente: (i) as ameaças impostas à identidade Adivasi pelo tão chamado processo de modernização por ameaçar seus padrões culturais, suas relações sociais, suas organizações econômicas e seu ecossistema prístino; (ii) como a sociedade civil guiou o movimento de assegurar a implementação de disposições legais relevantes como o 5º planejamento da constituição, Artigo 244 (i), PESA 1996, FRA 2006 e planejamentos de áreas de Odisha ato 1956 importaram ao projeto Adivasis; (iii) os paradoxos inerentes desse discurso em desenvolvimento baseado no neoliberalismo; como o governo impõe um tipo de modelo de desenvolvimento com seu direito de desenvolver seus assuntos (por conduzir mais o direito aos assuntos a experienciar diferentemente o desenvolvimento). Conclui-se que o Estado está sendo forçado a compartilhar espaço com a sociedade civil como resultado do neoliberalismo.

Palavras-chave: Mobilização coletiva, Movimentos Tribais de Resistência, Novos movimentos sociais, Organizações da sociedade civil, Neoliberalismo.

RESUMEN

El movimiento Anti-Vedanta en Lanjigarh sacudió entre los años 2002 al 2014 el interior del distrito de Kalahandi en el Estado Indio de Odisha. Este fue un movimiento ferozmente combatido (2002-2014) por los Adivsis (Dongria Kondh) contra el estado de Odisha y VAL, el metal pesado basado en minería MNC, licenciado por la política neoliberal. El proyecto había desalojado a 302 familias Adivasis y minó las montañas de Niyamgiri, a las que los Adivasis estaban ligados para obtener su sustento y para propósitos religiosos-culturales. Los desplazados se movilizaron en torno a cuestiones como las amenazas culturales, ambientales y las medidas inadecuadas de R&R, contra la pérdida de medios de subsistencia y del hábitat natural. El artículo analiza empíricamente: (i) las amenazas impuestas a la identidad Adivasi por este proceso de modernización, que puso en riesgo sus patrones culturales, relaciones sociales, organizaciones económicas y ecosistema primitivo; (ii) las paradojas inherentes a este discurso de desarrollo basado en el neoliberalismo, en la medida que el Estado impone un determinado modelo de desarrollo (afectando el derecho de los sujetos de experimentar el desarrollo de forma diferente); (iii) como la sociedad civil orientó el movimiento para asegurar la implementación de disposiciones legales relevantes, tales como el quinto cronograma de la constitución, el artículo 244, PESA 1996, FRA 2006 y los Odisha scheduled areas act 1956, para proteger a los Adivasis. Concluye que el Estado está siendo forzado a dividir espacios con la sociedad civil como resultado do neoliberalismo.

Palabras clave: Movilización colectiva, Movimientos Tribales de Resistencia, Nuevos movimientos sociales, Organizaciones de la sociedad civil, Neoliberalismo.

INTRODUCTION

Over the past two decades, micro-social movements in India have become an important form of collective action by the people to engage in resistance as they act on behalf of common interests or values to which they strongly adhere to. However, the new social movements (here after NSM) theory emerged in response to the proliferation of social movements during the 1960's that were very different in form as the social movements previously known were like the, labor movement, peasant movement, Dalit movement, etc. These classical social movements were characterized by hierarchical structures, loyalty to one social group or class and were concerned mainly with economic goals. These movements were long drawn and were fought on the lines of classical Marxian thinking on class struggle.

Early 1980s onward micro movements in India have become points of convergence for diverse themes of protests that even resisted increasing commodification and monopolization of life supporting resources like land, water and forest, their sustainable use and unequal distribution, exploitative power relations behind this, the centralization of decision-making and disempowerment of communities caused by the development process. Movements by the landless, peasants, fishermen, adivasis / tribals and displaced people took up the issues of livelihood opportunities, dignity and Development. These people's movements are also against the violation of human rights, civil, political and natural rights which demanded systemic equality and justice within the larger framework of development. For example, the resistance movement

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against the Hirakud project at Burla, Sambalpur in 1960s and the similar resistance movement against the Rengali Hydel Project in the 1970s, the well-known Baliapal protest movement during 1985-1990 against the missile testing range, the save Gandhamardan Movement in the early 1980s at Baragarh district against the mining of Gandhamardan hills by the Bharat Aluminum Company (BALCO), the Gopalpur protest movement against export based Tata steel during 1995-96, the Chilika Banchao Andolan against the Integrated Shrimp Farming Project (ISFP) of Tata group and Govt. of Orissa in early 1990's, and the tribal resistance movement at Lower Suktel dam at Bolangir in 2005 are some of the micro-movements (typically resistant movements) that had shaken up the socio-political lives of Odisha the south eastern state of India.

Apart from the above mentioned resistant movements that swept the state of Odisha, the other micro social movements that shook India in the past decades of course those ones based on the mobilizations of the development induced displaced were: (1) the Narmada Bachao Andolan against the displacement of a large population caused by the Sardar Sarovar and other dams on river Narmada in the 1990s, and (2) the violent agitations at Nandigram and Singur in West Bengal against the land acquisition for a petrochemicals project and Tata's Nano car project respectively during the mid-2010s. If the (ex post facto) study by Baboo (1991) was the sole study of the resistance by the Hirakud dam oustees, the studies by Patel et al (1988), Patel (1989) and Routledge (1993) were those of Baliapal resistance movement. Similarly when the study of Samal (2002) was based on the Chilika Banchao Andolan, the studies by Baviskar (1995) and Dwivedi (1999 and

2006) were all based on Medha Patkar led Narmada Bachao Andolan. Lastly the studies of Sarkar (2007), Banerjee (2006) and People's Tribunal (2008) all portray the violent agitations at Nandigram and Singur villages.

Objectives of the study

The paper in hand is a study of tribal resistance movement of recent origin in the Indian state of Odisha which was against displacements caused by a mining based metal industry namely VAL at Lanjigarh.

(a) The paper aims to bring out the threats posed to *Adivasis* identity by the modernization process ushered in by the project. Having shown empirically the endangered, cultural patterns, social relations and economic organizations among the *Adivasis,* the paper also highlights the serious environmental and ecological threats posed by the project. So it explicates how this micro-movement became globalised by attracting environmentalists globally. **(b)** It also aims to show how the civil society organizations guided the movement to ensure implementation of relevant legal provisions like, 5th schedule of the constitution, Article 244 (i), PESA 1996, FRA 2006 and Odisha scheduled areas act 1956 meant to protect *Adivasis*. **(c)** The paper further aims to bring out the inherent paradoxes of the contemporary development discourse based on neo-liberalism, as the state unleashes a particular kind of development model with its right to develop its subjects (by over riding the subjects' right to experience development differently). Lastly to conclude the paper points out how the state is being forced to concede space to the civil society as a result of its neo-liberalist ideology.

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Methodologically speaking this is a qualitative exercise mostly based on data and information collected from both primary and secondary sources. Content analysis of the primary data is also used as an analytical tool. The paper is based on a case study of the micro movement which was in fact a resistant movement staged by the tribal people adversely affected by the upcoming mining based heavy industry in the interiors of Odisha. Further the paper is organized on the framework of new social movement perspective.

Lanjigarh's mining based Refinery Project

Lanjigarh is part of the Kalahandi district of Odisha. Tribal people like the *Dongaria Kondh, Kutia Kondh, Jharania Kondh* have lived in the Niyamgiri mountain range of Lanjigarh area from time immemorial. The *Kondhs* are a primitive tribe fully dependent upon forest products and forest based agricultural land for their subsistence. Again Kalahandi district (one of the three infamous KBK districts) has been notorious for its poverty and starvation deaths. Its rare distinction is its low agricultural productivity. It is also one of the poorest districts in the country. Because of its poverty it has been a hot breeding ground for the *Naxalites* (left extremist armed Guerrillas)

Vedanta Resources Plc (VRP) is a UK based MNC. The Company's original name was Sterilite Industries (India) Ltd. (SIL). In December 2003, it was launched in the London Stock Exchange as VRP in order to build Lanjigarh refinery in Kalahandi district of Odisha. The VRP was licensed for setting up of a refinery at Lanjigarh and mining of bauxite from the Niyamgiri Hill Range. It started working through its Indian subsidiary named Vedanta Alumina Limited (VAL), based in Mumbai. This company in order to feed its Lanjigarh refinery was to mine bauxite from the Niyamgiri hills jointly with OMC (Odisha Mining Corporation) as per the lease agreement signed between VAL and OMC in October 2004. Both VRP and the VAL are headed by a non resident Indian business tycoon, Anil Agarwal. The major share holders in VAL were Barclays, Deutsche Bank, Church of England, and ABN Amro. The aggregate investment of the project was approximately, Indian Rupees 40000/ millions at that time. For this purpose, 723.43 hectares of land was required by the VAL. Out of which 232.75 hectares was private and most of this land belonged to the *Kondhs*. Most of the lands are categorized as forest. According to the office of the Collector, Kalahandi, 12 villages of the Gram Panchayat Lanjigarh and Batelima will be affected by the proposed Alumina refinery at Lanjigarh. From these villages 60 families were to be displaced and 302 families will be affected as their land will be acquired for the project. But in reality the plant displaced 102 families from their homes. Another 1,220 'project affected' families lost either all, or parts, of their farmland. So far, the project displaced two villages partially and two completely and the list will add on. Out of the 64 displaced households in Jaganathpur village, most of them are *Kondhs* who had been cultivating there for generations. On 23 January 2004, four tribal villages, Borobhota, Kinari, Kothduar, Sindhabahali, and their agricultural fields, in south east Kalahandi district, were razed by VAL, where from the villagers were forcibly evicted. Lanjigarh movement was not only about its large scale displacement

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of tribal people, but also about the violation of environmental laws/ forest conservation laws as its proposed extensive mining in the Niyamgiri mountains threatens an entire ecosystem, implying even drying up of rivers flowing from the mountains. Further it is also about violation of 1996 Act of Panchayats Extension to Scheduled Areas (PESA).

VAL at Lanjigarh: With their mischief campaigns the local activists and groups with vested interests had already fed into the minds of the innocent *adivasis* and *dalits* that 'Vedanta is a thug' which is here to rub us of our resources and land. In view of the alleged illegal mining by VAL in the beginning the local activists had floated rumors that Vedanta is a monstrous MNC that is bribing key people in the Governments both at the center and the state. They tried to vindicate their stand by citing the hurried manner (over night) in which the application of VAL for diversion into forest land was cleared by the Ministry of Environment and Forest (MOEF) on 28th March 2005 (although denied in the first clearance of 22nd Sept. 2004 by MOEF). May be Vedanta also had shown dreams to the affected people that it would make honey and milk flow in their villages. While the implementation of the complete R&R package was a time taking affair the displaced people wanted immediate compensations and R&R benefits. Neither had then the access to any authentic information about the compensation and R&R measures proposed. This allowed vicious rumors to float around. Hence although the primary causes of the violent resistance were: (i) ecological threats, (ii) large scale human displacements, (iii) little gain of direct jobs, (iv) poor compensation packages, and (v) delayed implementation of R&R measures, and

(vi) cultural threats because of loss of habitat and sacred landscapes, the major secondary causes were the popular distrust with corporate/VAL as well as the state administration and too much of politicization.

Back drop of the movement

(a) Disinformation campaign for collective mobilization:

These large scale displacements have aroused protests among the affected people against these developmental projects. It is needless to emphasize that these collective protests have taken the shape of social movements. To perceive the phenomena as social movements, one may rely on Alain Touraine (1985: p.749-89), three principles that must co -exist in any social movement, namely: (i) the principle of (group) identity, (ii) the principle of opposition, (iii) and the principle of (involvement in) totality. And we observed the operation of the three principles of Touraine as the tribals made a categorical issue out of loss of their cultural identity, organized themselves in opposition to the developmental projects in question and the state that facilitates the projects, and lastly the tribal population involved itself in the movement in totality as it is a matter of livelihood and identity for them. The theoretical framework of classical social movement that entails perceiving collective action through mobilization in the direction of institutionalization, is considered to be inadequate in the present context because of the complexity of this movement and also considered to be unsuitable for the absence of any specific political ideology and class basis of this movement. Having fought on the ground initially the movement

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was later fought in the public sphere, i.e., in the media/ internet on behalf of the groups rendered destitute of development (symbolizing the psychology of underdogs).

Industrialization will open up employment opportunities to educated unemployed, and will generate work for the unskilled poor in the different unorganized and service sectors and in the near future the poor state of Odisha will overflow with milk and honey. This was the message disseminated from assorted quarters, the corporate, media, the government, the international aid agencies, the funded NGO's, and even the world-bank agents. But, from the beginning of these projects, the democratic state had maintained a stony silence on the questions of the exact nature of this project, how many villages were to be displaced completely or partially, or were to be affected directly or indirectly through this project and how many people will lose their homesteads, land, what will be the nature and extent of the rehabilitation and resettlement and what would be the nature and extent of environmental and ecological degradation, etc. The concerned corporate houses grossly underplayed the facts pertaining to displacement and environmental degradation and overplayed the facts pertaining to R&R. On the contrary the activist organizations and their ally NGOs overplayed the facts pertaining to displacement and environmental and ecological degradations but underplayed the R&R measures to come. The state and district administration along with the company officials launched an intensive public disinformation campaign to portray the resistance as misguided and manipulated the public opinion through media in favor of the projects. This is what Padel and Das (2008, p 594) called 'manufacturing of

consent'. However, there prevailed an environment of distrust for which both the sides were responsible. This was possible in the absence of authentic and complete information about the projects which was to come from the state Government / administration but it was silent.

(b) Politics of development and Politics of the movements

In the Niyamgiri area of Lanjigarh, local Congress and CPI-ML (particularly CPI-ML New Democracy, CPI-ML Red Flag and CPI-ML Liberation) leaders were active in the resistance movement. The project had provoked a serious political conflict between the political parties like the ruling BJD (Biju Janata Dal), and the opposition Congress. While the BJD advocates for the upcoming development in the area by revenue and employment generation through mega projects like VAL, the opposition parties point out the various adverse impacts on the ecosystem and biodiversity of Niyamgiri mountains although they support the industrial policy of the state in the legislative assembly. The politicization adds a new chapter when we heard that the local (Lanjigarh) tribal MLA, who was also Odisha's minister in charge of tribal development had been mobilizing tribal followers for staging a *dharana* (sit down on protest) in front of the Supreme Court of India in favor of the company at the time of hearing of the case. There was a rumor going on the area that 'Vedanta has been assured by an Oriya judge in the Supreme Court that the verdict will not go against the company if such a *Dharana* is arranged in New Delhi'. But in 2009 general election the Kalahandi Lok Sabha seat went to Congress. And there after the politicization of Lanjigarh project had

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become faster and intense. Mr. Bhakta Charan Das the then Congress MP from Kalahandi had been mobilizing support from congress leadership and pro-congress intellectuals at New Delhi against the project. Not surprisingly based on its Forest Advisory Committee report headed by N C Saxena the MOEF (Ministry of Environment and Forest), Government of India had withdrawn the environmental clearance for VAL (on 24th Aug. 2010) and tried to dump it. Two days later (on 26th Aug.) Mr. Rahul Gandhi, the then Congress general secretary made a huge rally at Lanjigarh and claimed that as the supporter of tribal people in Delhi their union Govt. had denied environmental clearance to notorious VAL for mining in the Niyamgiri range. Thus Congress led Union Govt.'s predetermined decision to stall VAL project rendered the Saxena committee report irrelevant or a mere ploy. Quickly the Govt. of Odisha assured VAL of alternative mining fields. Following this the MOEF issued two show cause notices on Sept. 01, 2010 to VAL alleging non-compliance of environmental conditions by its refinery plant and CPP both at Lanjigarh and threatened its closure (Financial Chronicle, Sept. 01.2010). On 3rd Sept 2010 Bhakta Das the Congress MP in a press conference at the state capital demanded the closure of VAL refinery (when on the same day the 'Save Vedanta day' rally was organized at Lanjigarh by BJD youth wing). Following the MOEF, on Sept.17, 2010 the National Environment Appellate Authority also suspended the environmental clearance to VAL that was granted to VAL in 2009 (Indianexpress.com: 18.9.2010). A desperate Odisha Govt. through OMC moved to the Supreme Court on April 2011 against MOEF's withdrawal of environmental clearance to VAL at

Lanjigarh for its bauxite mining at Niyamgiri hills. Thus VAL had become a prestige issue for the BJD the ruling party in Odisha, as the Govt. at the Centre led by Congress party was persuaded by Congress leaders from Odisha, precisely to discredit a non-congress Govt. in Odisha. Hence during Sept.10-12. 2010 the BJD activists sat on *Dharana* in front of the State Governor's office when the Central Govt. withdrew environmental clearance from VAL project at Lanjigarh but granted the same to the environmentally sensitive Polavaram project of Andhra Pradesh that had a Congress party Govt, in power. But interestingly in both the projects *Adivasis* were the Project Affected People. Having displeased the Vedanta group (through VAL) which is a powerful MNC (with strong political clout in UK and Europe) in the areas of mining, metals and oil rigging, the Congress led Union govt. had compensated Vedanta's losses otherwise by facilitating its majority equity stake in Cairns India Ltd (CIL) (by holding back the bidding by ONGC the central PSU giant in oil exploration) (TOI: Sept 25.2010).

Anatomy of Collective mobilizations and Violent resistance

The extent of repression was very high on the tribal people from all the corners, by the state administration/police, the CRPF and finally the local mercenaries of the VAL. Violence was inflicted on the tribal people because of their opposition to the mining based refinery project. The tribal people obstructed the project activities by the company, like land surveying, leveling, boundary wall construction, etc. Along

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with these activities they organized sit-in demonstrations (*Dharanas)*, protest public meetings, and protest-marches. The sequence of events involving the three movements is as follows:

Lanjigarh Movement (Chronology of major events):

The SIL (parent company of VAL) had signed MOU with the Govt. of Odisha in 1997 for the mining based refinery project at Lanjigarh. There were reports of land acquisition and illegal mining by the VAL in Niyamgiri Hills even before it got environmental clearance from the MOEF in September 2004, and it signed the formal agreement with the OMC in Oct 5, 2004 for mining lease.

22nd June 2002: The formal protest against mining based aluminum plant by VAL started on 22nd June 2002 when thousands of tribal people lodged written petitions to the Chief Minister opposing the Vedanta project at Lanjigarh in Kalahandi district.

26th June 2002: *Gram sabha* meeting by the DM was cancelled by the villagers of the Batelima and Lanjigarh panchayats who demanded to scrap the project.

23rd Jan 2003: The then DM of Kalahandi allegedly acquired no-objection for the land acquisition from the tribal Panchayats/ *Gram Sabha*.

March 2003: In March 2003, people resisted the survey work of the VAL several times and snatched the survey instruments. FIR was lodged. Police and tribal people clashed, and 7 people were arrested, police was counter attacked and arrested people were taken back by the villagers.

2nd April 2003: Lingaraj Azad, the state president, *Samajabadi Jana Parishad* (SJP) a movement organization, mobilizing the tribals for their struggle, was arrested by the police at Lanjigarh in the morning of 2nd April 2003 and subsequently violence broke out. Tribal people agitated and were attacked by the youth club (allegedly funded by Vedanta). The violence spread to village Basantapada, breaking houses, properties and unleashing terror. Violent protest by the affected people continued and police canned (*lathi* charge) tribal women on the road. Alleged mercenaries, of Vedanta continued to intimidate the villagers.

By the end of January 2004 the DM of Kalahandi, Saswata Mishra had persuaded several Kondh villages to accept the financial compensation and concrete houses from VAL. But a sudden order was issued to evict the villages and their houses were bulldozed even without the compensation apparently because of the refusal by the tribal people.

7th April 2004: *Niyamgiri Surakshya Samiti*, a movement organization of about 1000 tribal people, took a vow and engaged themselves in protection of the forest land and water from VAL. It has been formed by the people to protest against the sanction of lease of the Niyamgiri hills to the company. Hence it launched the *Vedanta Hatao* offensive.

27th March 2005: This series of events lead to the alleged murder of Sukra Majhi a Kondh leader.

11th November 2005: On this day, a big protest rally was organized by local tribal people at the gate of the VAL refinery at Lanjigarh.

5th December 2005: Protest was organized by the *Adivasis* from Rayagada and Kalahandi districts at state capital Bhubaneswar in front of the state Legislative Assembly on 5th December 2005.

16th May 2006: On that day, a huge meeting was organized in

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Lanjigarh where nearly 10,000 people from the affected districts of Rayagada and Kalahandi demonstrated against the construction of the refinery. Also the women network came forward to strengthen the protest.

3rd August 2006: Tribal activists of Lanjigarh movement reached London UK with NGO assistance and raised questions about violation of human and environmental rights at Lanjigarh area by the VAL. It created embarrassment for the Chairman and the CEO of VRP. Having seen the aggrieved tribal people of Lanjigarh at the shareholders meeting in London some share holders of VRP raised questions in the annual meeting (2005) and blamed the company for concealing information about the tribal protest.

23rd Nov 2007: By a ruling the Supreme Court of India had stalled the VAL mining project at Lanjigarh**.** Then the movement was lying low for almost two years as the Lanjigarh project of VAL was pending with the Supreme Court for clearance. Finally, on August 11, 2008 keeping aside the unfavorable recommendations of the Central Empowered Committee the Supreme Court gave a go ahead (with riders) to VAL for mining at Lanjigarh. By that time (in 2007) VAL's refinery plant at Lanjigarh had become operational despite the massive resistance.

20th October 2008: A mass convention was organized at Bhubaneswar the state capital by several movement organizations against the verdict of the apex Court that gave go ahead to VAL.

17th January 2009: More than 7000 people all over Niyamgiri region staged protest at Lanjigarh against the proposed mining based plant which was considered to be a mass convention against the Supreme Court verdict (Aug. 2008). Protesters were mostly *Dongaria Kondhs* who assembled at Samelbhata village and marched shouting slogans.

27 January 2009: Over 10,000 men, women and children formed a 17-kilometre-long human chain around Niyamgiri Mountain. People in the chain held placards saying 'Niyamgiri is Dongria Land. Vedanta cannot come here without our permission. We say No!'

25th July 2009: With renewed vigor the movement activists again organized a rally on at Lanjigarh where thousands of tribal people from the Niyamgiri mountain and Lanjigarh staged a protest against Vedanta's mining and refinery project that will destroy the sacred Niyamgiri mountain along with its perennial streams making rivers, and religious beliefs of thousands of *Dongaria Kondhs* and *Dalits.* Allegedly the company mercenaries came on motorcycles to stop the vehicles of senior activists and the activists had to retreat finally. Local police did not cooperate in this matter.

The then Lok Sabha MP from Kalahandi, Bhakta Charan Das of Congress party had worked as a go between the movement organizations of Lanjigarh and the Union Govt. and Congress leadership. After getting elected in 2009 Das had organized at Lanjigarh the Save Niyamgiri Convention on 6th June 2010 along with the movement organizations where he had roped in the noted environmental activist Vandana Shiva to speak.

On 12th Aug 2010 Shiva's Navdanya organized a conference at New Delhi in the Constitution club on 'Niyamgiri a test case for Forest Rights' where apart from environmentalist Shiva, Congress MPs like Bhakta Charan Das and Mani Shankar Iyer, and senior academicians like T K Oommen and Usha Ramanathan participated. As it looks Das had mobilized intellectuals at New Delhi to stall the Lanjigarh

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project of VAL. The *Donagria Kondh* leaders Lado Sikaka and Sana Sikaka were taken away on gun point allegedly by police (as they later on surfaced at the Lanjigarh police station) on 9th August 2010 while traveling by a vehicle to catch a train to New Delhi from Raipur, apparently to attend the above mentioned 12th Aug. Navdanya organized seminar where the congress MP, Das was to present them to media glare. Later the Kalahandi SP admitted that they were examining the Maoist links of Sikakas.

On the other hand to show its corporate social responsibility VAL had engaged itself with district authorities (Kalahandi) to launch a Malaria eradication programme in Lanjigarh area, an afforestation programme to make Lanjigarh greener, pineapple and bamboo cultivation programmes for the tribes, and some educational programmes for the locals like, good schooling in DAV-Vedanta international school, up-gradation of hospitals and water supply in Lanjigarh and most note worthy is its recent declaration to set up its first ever Science college at Lanjigarh for the education of the local people. But after the withdrawal of environmental clearance on 24th august 2010 and subsequent denial for expansion of the Lanjigarh plant by MOEF (later on vindicated by Odisha High court) VAL terminated services of nearly 2000 workers at Lanjigarh plant and the Communist Ghadar Party was organizing protests by uniting the terminated workers at Lanjigarh refinery.

On 11th July 2011 the MOEF finally withdrew its environmental clearance to VAL and the Lanjigarh resistance movement started to die. The consequent loss of purpose of the movement augured its faster decline. As Congress party hijacked the Lanjigarh movement, the credibility of Lanjigarh movement as a peoples' resistance movement came to be at stake. The voluntary impetus of the movement was slowly lost as the movement organizations like, *Lok Shakti Abhyan*, *Green Kalahandi, Samajbadi Jan Parishad,* etc were loosing interests and were to face more repression from the state police, as their genuine resistance could be treated as purely political acts (supporting Congress party).

July 28, 2012: INGOs namely the Amnesty International, Foil Vedanta and Survival International organized a huge protest rally at Westminster London, UK where the Hollywood film *Avatar* actors joined the protest.

August 28, 2012: A massive protest was organized in London UK against VRP's operations at Lanjigarh by INGOs like the Survival International, Foil Vedanta and the Amnesty International in front of its head office.

In 2012 due to non-availability of bauxite to VAL its Lanjigarh refinery plant faced crisis and was closed for seven months. It reopened in 2013 but by December 2012, another 75 technical staff of VAL had already resigned. OMC of Govt. of Odisha tried to lease out VAL the bauxite mine at Kodingamali Hills in adjoining districts of Koraput and Rayagada.

April 18, 2013: The Supreme court of India by reviewing its own earlier judgment for grant of environment clearance to VAL keeping aside the Voices of Niyamgiri tribal Panchayats restored full power on the *Gram Sabhas*/ Panchayats to accept or reject the acquisition of forest land for developmental purposes (as per the Forest Rights Acts 2006, a sub-section of PESA 1996). Accordingly, it directed the state Govt. of Odisha along with the Ministry of tribal affairs, Govt. of India to convene the *Gram Sabhas* of

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Niyamgiri area to vote on leasing out forest land to VAL. But all the 12 *Gram Sabhas* resolved the other way. This sealed the prospects of acquisition of forest land for mining by VAL at Niyamgiri. Thus FRA 2006 is found to be the most important institution to ensure the protection of interests of tribal communities in India.

On October 16, 2015 (*Business Standard, 16.10.2015*) VAL again lays off 300 of its workers at Lanjigarh plant. Because after the final denial by MOEF as well as the Supreme Court to grant a lease to VAL for mining the Niyamgiri hills to extract Bauxite, the VAL dismissed these employees from Lanjigarh plant who were recruited in anticipation of expansion of the plant capacity.

Feb 25, 2016: The Odisha state government persisted to gain access to the bauxite mine in the 18 *Niyamgiri* hills through a petition in the Supreme court. On 6 May 2016, the Supreme Court rejected this petition by the Odisha Mining Corporation seeking the reconvening of 12 *Gram Sabhas* in the *niyamgiri* hills to reconsider the mining proposal. The Govt. of Odisha has questioned the resolutions of the 12 *Gram Sabhas* of the Dongaria Kondh, Kutia Kondh, Maji Kondhs and other tribal communities on the basis of technical errors committed during the passage of the resolutions rejecting mining. It claims that tribal communities may have exceeded their powers by declaring an entire plateau, situated far away from the abode of Niyam-Raja as their sacred landscape. But in vain.

Disappearing Tribal Culture and identity; Objective (a)

The developmentalists often assumed that peoples' resistance movements occurred purely because of economic reasons, where as the reasons are much more complex, embracing economic, social and particularly cultural issues. The project planners had often wrong assumptions. Because violation of economic rights of the affected people might have proved to be a strong motivator for resistance, but a great deal of the moral content of the resistant movement is in fact derived explicitly from cultural issues pertaining to the rights of existence as cultural entities, of identity, of spiritual links to land and environment and of loyalty to mythological as well as historical ancestors. It would be sheer reductionism to attribute resistance solely to economics or for that matter to purely cultural concerns.

In the present context of discussion, cultural factors refer to: (1) Attachment to the place, and (2) Cultural identity. (1) Place of attachment refers to the bonding of the people to the place which provides for the very ontological grounding of a culture. Attachment to the place involves positively experienced bonds that often occurs without the awareness of the people. These bonds are developed out of the behavioral, affective and cognitive ties between the individuals and their groups residing in the same socio-physical environment. The process of getting attached to a place thus involves the behavioral, cognitive and emotional embedded-ness of individuals in forging the link between their socio-cultural and physical environments. Thus an attachment to a place virtually refers to a repository of embedded life

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experiences that are not separable from the feelings associated with the place. Further such attachments may transcend the unique experiences of individuals and involve a constellation of social relations and corresponding culture of the entire community (Oliver-Smith, 2001, p 61-69). Hence one of the strong cultural factors behind the resistance of the tribal people is alienation from the sense of attachment to their land.

(2) Native place signifies relationships between individuals as well as between individuals and their groups. Both as a repository of life experiences and type of human relations, place of attachment plays an important role in the formation, maintenance and preservation of groups' cultural identity. The feelings, memories, ideas, values and meaning associated with everyday life in a particular setting come to constitute an important dimension of a groups' identity (ibid). Hence owing to displacement from the native place the very identity of the tribal people is at stake. In this context becomes relevant is the notion of **BHITTA MATEE** found among the locals which connotes their generations of dependence on the land and their attachment to the land. This attachment provides the basis for tribal culture of particular variety typical to a tribe because it is the reflection of tribal emotions in the form of their dance, music, cosmology, belief system and hence tribal culture and subsequently tribal identity. Hence cultural factors such as the intimate connections between the physical environment and religion, cosmology and worldview, enacted through rituals and celebratory cultural events as narrated in folklore, play significant roles in building relationships of a group/ community with its traditional land. In effect the ties between people and their land base provide the ontological ground of a

cultural identity. Thus a sense of belonging to a place plays an important role in the groups' collective identity formation (as its history becomes contextualized). So is the case of these tribal groups of Lanjigarh whose religious life, cosmology and world view stands endangered owing to their displacement from their physical environment.

The inhabiting tribes in the project area are *Kondhs (Dongaria (preponderant), Kutia, Maji and Langia)*. It is needless to iterate that these tribes are the natives of the forest and mountains. Hence the identity of any tribal communities is associated with the forests, hills and mountains. The tribal identity is expressed through their distinct social organization and cultural forms (dress patterns, language, rituals, festivals, songs/ dances, and their spiritual life). Physical relocation of tribal population is a complex issue and have significant adverse implications for their identity, culture, and customary livelihood. Tribal culture, way of life, folklore, religious practices are inextricably linked with their relationship with nature. Tribal communities have their distinct identity which is different from the mainstream society. Displacement often leads to a sudden onslaught of dominant values threatening the very basis of their cultural identity. Because culture which is rooted in a particular place, cannot be easily 'reconstructed' in another place. Resettlement after displacement not only relocates groups/ communities in space, it also remakes them. Often the community is reconfigured in certain ways and the local culture is pressed for a change, as it gets linked to regional and national market systems. Visualization of this itself engenders resentment and subsequent collective resistance among the affected people.

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So is the case of indigenous people of Niyamgiri mountains.

In Lanjigarh area, the tribal culture has been associated with the Niyamgiri hill range. The *Dongaria and Maji Kondhs*, inhabitants of the area believe that, Niyamgiri is their place of origin and worship. *Niyam Raja* (king) is the deity of these tribes. *Niyam Raja* means the "Lord of the Dharma", (implying the Lord ensuring justice by providing livelihood opportunities to all) and the "Lord of Rule" / the "Lord of Law" (implying the Lord maintaining the pristine eco-system of Niyamgiri mountain range by regulating it through the laws of ecosystem. So it retains the thick green cover and maintains the rich diversity of flora, fauna by maintaining the hydrological cycle and weather in the area.) In the name of Niyam Raja the *Adivasis* maintained a taboo on cutting of trees. For them Niyamgiri is not just a range of mountains, it is a sacred landscape and has been worshipped as *Niyam Penu* (God) for generations by them (hence it has been protected so far). They considered themselves as *Jharnias* meaning protectors of mountain streams and hence will not allow rivers Nagavali, Bansadhara and tributaries to dry-up because of mining in Niyamgiri. But tribal religious life was endangered and transformed. Experiencing the invaders around them tearing their earth apart with earth movers, blasting of mountainous rocks and cutting down trees of the forest to earn money, negates tribes' sense of sacredness of nature which lies at the heart of traditional tribal religion. Thus the very act of opening up the belly of the earth for mining and construction activities undermine the traditional reverence to *Dharni Penu* (Earth God). The traditional beliefs, values, norms, and religious practices have come under fire and community festivals like the

ones for first fruit/ harvest of the various crops, Meria festival of sacrifice, etc that traditionally use to bring the villagers together are dying. The tribal religio-cultural life has under gone huge changes which tantamount to their 'detribalization'. For example, a woman who had just been removed from Kinari village to make way for Vedanta's refinery told "*Amoro devata ke bi nashta kole*"- they even destroyed our deities"- referring to the *Dharni vali* (Earth God stones) that form the centre of a Kondh village, which has been crushed into rubbles along with the houses. Padel and Das (2008: p 585-88) call this 'cultural genocide'.

Strained Kinship & Clan system: Lasting tensions have emerged within and between tribal families according to their varying stand taken on accepting the compensation and employment from the company. One of the biggest splits was between the six villages in Lanjigarh block; those who accepted compensation for their land (who were moved into Vedanta's housing colony) and those who refused the compensation (were left outside the refinery walls). The first group has lost the spatial community of a *Kondh* village once for all. Further, there has emerged a sense of distrust and tension within the tribal households as family members became suspicious of the other member of the family who received the lump sum amount as compensation. There were cases reported in this area when the family member who received the lump sum appropriated it, did not share it with others or gave only peanuts to other family members. Those displaced and put in settlement colonies away from their original place of habitation even find it difficult to maintain regular social interaction/ matrimonial relations with their community. Thus the social fabric of the tribal stands disintegrated.

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Having lost the unity of the community the indigenous people have experienced the penetration of money and alien culture to their social relations. Lastly when the *Adivasis* lost their land, and traditional homes, it is loss of livelihood too. They become dependent upon the non tribal others and get connected to the larger market economy in place of their own forest based subsistence economy. This dependency on external market puts the tribal people socially in a disadvantage position where they are engaged as menial workers of various kinds. That apart the tribal people who earlier by and large had lived in an egalitarian social structure now get connected to the larger caste Hindu society as low caste people and even as untouchables. Thus it is a clear case of social displacement too.

Role of the Civil Society in shaping the course of the movement; Objective (b)

According to Fuentes and Frank (1989: p 79-91), NSMs (New Social Movements) are people's struggle against systemic exploitation and oppression and for survival/ identity in a complex dependent society. These movements are instruments for democratic self-empowerment of people, organized independently of the state, its institutions and political parties and are a reflection of people's search for alternatives. In a nutshell, NSMs take place in the civil society/ cultural sphere for which they claim autonomy vis-à-vis the state. To Cohen (1985: p 700), civil society is seen 'in action terms as the domain of struggles, involving public spaces and political processes. It comprises the social realm in which the creation of norms,

identities, and social relations of domination and resistance are located.'

(1) Role of Intellectuals:

Social and environmental activists, freelancing writers/ journalists, anthropologists, sociologists, research scholars, film makers, human rights groups, not only visited the affected areas, but also prepared reports on the issues of contemporary resistance and the extent of state repression on the local people. There was massive reporting by freelancers in the press. The Council for Social Development (CSD), a Delhi-based organization, started a mission headed by Muchkund Dube (Ex. Foreign Secretary of India) in January 1999. Its aim was to study the situation of Lanjigarh protest, i.e., to dig out the ground realities and to formulate a Rehabilitation policy package. The team did an extensive survey of those areas, met persons from both the sides, those who support the VAL project and those who did not. Also they gathered information from various Govt. officials employed at the affected area and in the state secretariat, NGO activists and members. The report brought the reality of the bitter relationship between the victims and the state authority including the company officials. The mission found out that the movement initiators who were largely *Sarvoday[1]* workers

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[1] *Sarvoday* a Sanskrit word coined by M K Gandhi (1908) implied 'Upliftment of all' through nonviolence and self help. The later Gandhians like, Vinoba Bhave, Jaya Prakash Narayan, etc carried on Sarvodaya as a movement involving their followers/ workers encouraging popular self-organisation during the 1950s and 1960s, including *Bhoodan* (land donation) and *Gramdan* (village land donation) movements. Many groups descended from this

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were harassed by the state police. There were also evidences on the excessive use of coercive methods by the officials for the withdrawal of tribal people. The report brought out the state's step against the four local NGOs namely *Agragamee, Ankuran*, *Laxman Nayak Society*, *Weaker Section Integrated Development Agency* (WIDA) with the allegation for supporting this genuine movement of the tribal people. There was an upsurge in the number of reports/ studies by various national level participatory forums that have been involved in this grassroots movement through empirical studies/ surveys. Following are some of these:

Judicial Commissions, Tribunals or Similar Independent Reports on Violence Against *Adivasis,* Violating the Laws of Odisha [Examples only]

1999 Former Foreign Secretary Muchkund Dubey's independent commission from CSD examining claims of violence against Adivasis (11-18, Jan. 1999),

2005 Lawyers Field Mission, India's Peoples Union for Civil Liberties (PUCL), and

Independent civil society body,

2006 Chief Justice Bhargava's Tribunal, Published October 2006,

2006 Chief Justice of India Yogesh K. Sabharwal for the Supreme Court on Vedanta bauxite, violating the law and illegalities against Adivasis (pending).

2010 Report of the four member committee (MOEF, GOI) for investigation into the proposal submitted by the Odisha Mining Corporation for Bauxite mining in

movement continue to function locally in India even today.

Niyamgiri ,August 16, 2010, By Drs N C Saxena, S Parasuraman, Promod Kant and Amita Baviskar

2010 Do not Mine Us Out of Existence, bauxite mine and refinery devastate lives in India, by Amnesty International. UK.

2012 Vedanta's perspective Uncovered, Policies cannot mask practices in Odisha, Amnesty International.UK

(2) Role of Activists (voluntary) organizations:

The painstaking efforts of activists in these movements (social, legal, environmental and human rights) to highlight the various ground level issues of the tribal and similar marginalized communities are remarkable. These micro-movement groups were adopting the effective and innovative methods of organizing *Padayatr*a to raise consciousness among people to mobilize them. The activists from the various movement organizations in these trouble torn areas were organizing *Padayatras* (protest walk or peace walk), *Dharana* (peaceful sit on), to unite the tribal groups by sharing a common perspective and concern for specific issues. They organized their protest walks and moved through affected villages, invoked *adivasis* and mobilized their opinion, in favor. As the *adivasis* were facing problems like alienation from their land, home and livelihood and harassment by the Govt. officials and mercenaries of the company it became easy to muster their support.

Apart from NGOs, there emerged several grassroots level activist / movements organizations may be at the behest/ inspiration of NGOs to mobilize the affected population. Noteworthy among the movement organizations in the said disturbed area of Lanjigarh were: *Niyamgiri*

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Surakhya Samiti (NSS) Lanjigarh (the main social movement organization, SMO), *Niyamgiri Bachao Samiti* (NBS), *Chasi Mulia Adivasis Sangha of Rayagada/ Koraput*, *Loka Shakti Abhiyan* (LSA) of Lanjigarh, *Geen Kalahandi, Niyamgiri Surakhya Abhiyan* (NSA), *Samajbadi Jana Parishad* (SJP), *Kalahandi Sachetan Nagarika Manch, etc at* Lanjigarh. These activist (voluntary) organizations are although independent organizations/ forums but in order to meet their common goal, to fight out the giant mining company, they often coordinated their own activities in this area and at times worked in a consortium manner. This was possible because of their unity of purpose.

Activists working with the people of Lanjigarh like, Bhagban Majhi were booked under National Security Act (NSA). Non-bailable warrants had been issued for some of the activists like the Prafulla Samantara President of *Lokashakti Abhiyan Odisha*, Achyut Das President of the NGO *Agragamee* and other activists. Also at Bargarh, Samata Bhawan, the office of the *Samajbadi Jana Parishad* was not spared by the police. In Lanjigarh, the arrested movement leaders were Nayan Dash and Lingaraj Azad, state president of *Samajbadi Jana Parishad*. The activists of the Lanjigarh movement who took lead were Daising Majhi, Bhim Majhi, tribal women leader Maladi Majhi, communist leader Gananath Patra, Rajendra Sarangi, Bhagbat Prasad Rath, Dhabaleswar Nayak, Santosh Mallik, Rajendra Bharati, Satyabadi Nayak, B. Thakur, Srikantha, Snehansu and Siddharth Naik. All of them were not *adivasis* but were locals who stood united and consistently sought the ouster of the VAL from Kalahandi.

Social activists like Prafulla Samantra, the president of the

Odisha unit of the *Loka Shakti Abhiyan*, said that 'political parties are trying to gain political mileage through this issue instead of fighting for the cause of the tribal people'. The activists of these tribal movements are branded as anti-development, anti-social, anti-national, anti-modern, unscientific, extremists, and idealistic. The activists include many movement intellectuals who offered ideological and intellectual support to these movements. That apart they have indulged in extensive networking with leftist/ Socialist and *Sarvoday* intellectuals, green activists along with the civil liberties and human rights activists from outside the state. Because of this intensive networking such activists/ intellectuals from outside the state often came to Odisha to take part in the popular protests rallies, conventions/ seminars, media briefings and paved the way to the Supreme Court, national media and forums. Further these national activists/ intellectuals also provided for the linkages to the international organizations (e.g. Amnesty International and the like) and international media, publications and forums that would give a sympathetic hearing and coverage to the movements. Even there are evidences to suggest that in the areas of Lanjigarh the interior tribal dominated areas the Christian missionaries too were directly extending support to this movement. Not surprising that on 5th Feb 2010 the Church of England declared to withdraw its 2.5 million pounds worth investment from the VAL's mining project certainly at the instigation of Christian Missionaries working in this remote tribal belt on the ground that VAL is indulging in violation of human rights, endangering indigenous tribes, wild life and environment (BBC News, South Asia Feb 5, 2010). Further the state administration has stumbled upon

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evidences of Naxalite involvement in these movements. As if these were not enough for the disadvantage of the state the politics of the movement has revealed of late a different shade that refers to the involvement of an older and subtler political forum that aimed at carving out a separate state of *Koshal* out of Odisha's western districts involving Kalahandi.

(3) (a) Role of Local NGOs:

The Non Governmental Organizations (NGO) as a phenomenon emerged in India in late 1970's and early 1980's. The NGOs were receiving funds from inside and outside the country to do state approved developmental work in the rural areas. Some of the NGO's entered into the South-western areas of Odisha in 1980's. The main six NGOs were *Agragamee, Laxman Nayak Society*, *Ankuran* and *Weaker Section Integrated Development Agency* (WIDA), *Vasundhara* and *Sanhati.* These had been working among these indigenous people of Kalahandi for more than two decades by organizing various literacy programmes, imparting training in watershed management, implementing Govt's pro-poor policies, fomenting awareness among them regarding their legal and constitutional rights, augmenting introduction of new technologies in agricultural practices, and forming grassroots people's organizations. That apart these NGOs fuelled the movement by secretly funding and giving legal assistance to the SMOs. In spite of heavy repressive measures from the government those NGOs continued to support the movement. Many NGOs like *Agragamee, Ankuran*, etc were derecognized, their funding from the state Govt. was discontinued. The Central Govt. and other aid agencies

were informed adversely to stop funding these NGOs. Their offices were raided by police, employees were arrested, FIR and criminal cases were filed against many NGO workers. These litigations drained their time, scanty resources and motivations. Even these NGO workers faced physical harassment and threats. On a meeting of NGOs to discuss the project related issues convened by the Southern Revenue Divisional Commission of Odisha on the 1st week of July 1999, *Agragamee* did not participate. *Ankuran* made a statement in the meeting that "we will help the Govt. in installing the project if it withdraws its decision of deregistering our organization". Later *Ankuran* denied the statement through a rejoinder. The other noteworthy local NGOs which worked for the tribal people and support the resistance movement were*: Friends of Tribal Society (FTS), Deshapremi Jana Samukhya (DJS), Kalahandi Sachetan Nagarik Mancha,* and *Jala, Jungle O Zamin Surakhshya Manch.*

(3) (b) Role of International NGO's

Apart from local NGO's there were also some International NGO's involved with the movements against this mining based project. Some of these INGO's were ACTION AID, CARE INDIA, HIVOS, AMNESTY INTERNATIONAL, FOIL VEDANTA and SURVIVAL INTERNATIONAL. The Action Aid with the help of *Sanhati* helped some tribal leaders to go to Delhi to give press statements protesting against the project. After sponsoring their visit to Delhi, the NGO's issued a different suitable press statement regarding funding the visit as it was to address the issues regarding the proposal to confer full power to *Gram Sabha* (Village Council) on land acquisition issues and not dealt with the

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movement issues. The Amnesty International (2010) had pointed out the issue of Human rights violations and serious environmental concerns (referring to soil degradation by red mud, air and water pollutions caused) in case of Lanjigarh VAL project. INGOs like Foil Vedanta and Survival International had been organizing a series of Anti-Vedanta protests in London particularly in front of the corporate head office of Vedanta just before the AGM of Vedanta share holders. To embarrass the VAL management the Foil Vedanta activists had made series of demonstrations over the years as the Blue (*Naavi*) tribe of *Avatar* (James Cameron's English Film) facing extinction, thrown mud at the doors of corporate office, spread red ink/color as blood on the doorsteps of Vedanta corporate office, and even demanded derecognition of the Vedanta shares in the London Stock Exchange. For seven years, Survival International along with Foil Vedanta organized these demonstrations at the AGM of share holders of the VRP in London, UK. These organizations also launched an international campaign, encouraging major shareholders of VRP to disinvest in the company until it withdraws from Niyamgiri. Witnessing the company's atrocious treatment of the indigenous people and its involvement in the blatant violation of human rights, some international investors like the Norwegian Government Pension Fund, Martin Currie, the Church of England and Marlborough Ethical Fund sold out their stocks in the company as mark of disassociation with VRP. In December 2008 Survival International, put forward a complaint to the UK National Contact Point under the Specific Instance Procedure of the Organization for Economic Co-operation and Development (OECD) Guidelines for Multinational Enterprises. Following

the global reach of these INGOs on March 10, 2011 – the prestigious *London Review of International Law*, (Volume 1, Issue 1, 2013, 63–98) carried an article indicating the conflict between the Dongria Kondhs and VRP in the context of violation of international law.

Thus the roles of NGOs in these resistance movements could be summarized as follows: (i) Dissemination of relevant information, (ii) Awareness building among the affected people, (iii) Forming grassroots level activist organizations, (iv) Strategy building for mobilization, playing through media in a controlled and cleaver manner, (v) Funding the movement both directly and indirectly, and (vi) Extending expertise for negotiation with powerful and knowledgeable adversaries like state and company officials. We would strongly agree with the view that NGOs' guidance and involvement in these movements have certainly not allowed these to fall into the folds of Maoists' armed struggle that has spread its tentacles in these tribal dominated districts of Kalahandi and Koraput in Odisha. Hence this movement remained within the limits of civil society. But these INGOs in fact globalised this resistance movement by stapling it with protest groups from many African (Zambia, South Africa, Namibia) and South Asian (Bangladesh, Sri Lanka) countries.

Role of Mass Media in the State of Odisha:

In the present days of global connectivity through internet, no resistance movement is fought in isolation. It's receiving well brand imaging and media coverage in every part of the country. It cannot be

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alienated from the world of media, through which these micro-movements seek to expand their domain of influence. The news of repression and intimidation of the *Adivasis*, social-legal activists and the protest of the marginalized people against the mining projects all over Odisha became the focus of both the national and international media attention. The coverage of the movement was wide in the electronics media but the electronics media is not free from politics as the TV channels (O TV, E TV Oriya, DD Oriya, Kanaka TV, Nakshatra TV, etc) by and large followed their own party lines as it becomes a question of credibility of a state Govt. (BJP and BJD coalition then). The local print media (news papers in vernacular/ Oriya) had a great role to play in these movements. As these movements were highly politicized the print media also followed their broad party lines. The only leading Oriya daily that had been giving almost unbiased coverage of the movements was '*The Samaj'* (Oriya daily published by the Servants of People Society). '*The Sambad'* (Oriya daily from Eastern Media) toed the line of Congress party, while *The Prajatantra* and *The Dharitri* other leading Oriya dailies had been tacitly toeing with the lines of BJD and BJP the then ruling parties in the state.

Oriya print media had become active again 2010 in matters of displacement based resistance movements in the state, particularly in Aug-Sept 2010 when the MOEF denied environmental clearance to Odisha's biggest ever FDI based export oriented steel plant POSCO in Jajapur district, to the Vedanta university project at Puri (there by closing it) and to VAL's mining at Niyamgiri. After the withdrawal of second phase environmental clearance to VAL on 24th August 2010 by the Congress led Union

Govt., (two days later) on 26th August 2010 Rahul Gandhi the then Congress General secretary made a huge rally at Lanjigarh and did tribal appeasement by taking credit for stalling the VAL project at Lanjigarh. *The Sambad*, the Oriya daily came out with a strong editorial on 28th Aug.2010 supporting the Congress led union Govt.'s decision for withdrawal of environmental clearance. *The Samaj*, the other major Oriya daily took a dig at the MOEF for making a 'hat trick' against Odisha's developmental projects (on 22nd August 2010). But the *Dharitri* the other major Oriya daily went a step ahead to expose the double standard of MOEF which having denied three major clearances to Odisha state ruled by a non-Congress Govt., goes ahead to clear the environmentally sensitive Polavaram's Indira Sagar dam project in the adjoining state of Andhra Pradesh which has a Congress Govt. In fact the Polavarm dam project of Andhra Pradesh on rivers *Saveri* and *Sillor* that flow from the Malkangiri districts of Odisha was likely to displace large number of *Adivasis* in the densely forested areas of Malkangiri in Odisha. Govt. of Odisha's formal protest against this project had been brushed aside and clearance had been extended by the MOEF. Hence the question raised in media was, if for *Adivasis* displacement at Lanjigarh the VAL project was denied clearance, how the Polavarm project (in Andhra Pradesh) was cleared which is also to displace large number of *Adivasis* in the adjoining Malkangiri district of Odisha. The BJD activists were having a *Dharana* in front of the Odisha Raj Bhavan during September 10-12, 2010, against this move of the union Govt. Again on 12th Sept 2010 BJD had a huge rally at Malkangiri against the Polavarm dam project. The *Dharitiri*, the *Prajatantra* and the *Samaj* were giving extensive coverage to anti-

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Polavaram protests in Odisha during the 2nd weak of September 2010 as a fall out of the non-clearance to three of Odisha's big projects by the Congress led union Govt.

This battle was also fought in the internet where the movement organizations and their sympathizing intellectuals run websites giving news about the movement and portraying their views on regular basis. Environmental Protection Group (EPG) Odisha has such a website that carries numerous articles with legal, economic and environmental implications of the project. *niyamgiri.net*, *MinesandCommunities.org*, *Kashipur.info*, *kashipursolidarity.tripod.com*, *orissametals.com*, *resist.org.uk/*, *survivalinternational.org,* etc are some of the other important internet based websites that transmit information/ news about the project and the movements. Even web materials prepared in French and German are posted for Canadian audience and Deutsch bankers of Vedanta to restrain Alcan India and VAL respectively. Of course many of their write-ups were in fact emotional, highly subjective, some times distorted and vehemently one sided. The quality and volume of propaganda material released through internet and print media particularly for Lanjigarh movement has been vicious. As a result international environmental activists have made bee line to Lanjigarh to save its tropical forest and primitive tribes (as blue colored *Naavi* Tribes of *Avatar* film of Hollywood).

Why this tribal resistant movement be treated as New Social Movements

This movement meets most of the theoretically identified features of NSMs, such as:

(1) The rise of NSMs in recent decades is to be attributed to the rise of various strong interest groups (e.g. displaced tribal groups, in this context) and also to the near total absence of macro-movements, i.e., working class movement, peasant movement, trade union movements and the like. NSMs in India have often erupted due to the multiple modernities and identities, which are essentially centered around local issues (e.g., scrapping the project and protecting the tribal cultural identity). NSMs are also conceived as non-party political forums, based on grassroots popular initiatives, and single issue based anti-state movements (Oommen, 2001: p 1-16). These are also distinct as they operate almost wholly outside the traditional political party system.

2. The newness about the new social movement is that these are opposed to the tyranny of the state Govt. (e.g., repressive measures of the Police administration in Odisha, in this context) without questioning the very existence and legitimacy of the state power. These also do not intend to directly takeover power by overthrowing the political regime. Neither did these questioned the Indian state as the Naxals/ Maoists do.

3. The intermediary institutions (i.e. civil society institutions like, activist (voluntary) organizations, NGOs/ INGO, as well as media) play a significant role in fomenting this movement and also bring this movement into fruition. NSMs are mostly civil society based as the

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network of civil society activist organizations involving mass media work in coalition (e. g network of NGOs and movement organization, in this context) for attaining the specific objectives.

4. These are essentially anti-systemic (e.g. against development induced displacement, in this context) and not anti-regime movements. The social movements emergent of conflicts over sharing natural resources like land/ forest, water etc, concerns for ecology/ environment, human rights, cultural identity, etc can be seen as the causes of eruption of such new social movements (as all these are true in case of this movement).

5. In the developing countries, NSMs work even toward attaining distributive justice in sharing economic resources and services (e. g, adequate compensations and R&R measures for those displaced, in this context) as these essentially revolve around values.

6. Ideologically, the encouraging features of these NSMs are mostly their being less orthodox and less doctrinaire by nature (e.g. no ideological overtone in this resistance movement at Lanjigarh). In addition to this, NSMs characteristically have no obsession to capture state power but they do aim at bringing about change in state apparatus and various social institutions.

7. NSMs have never been substitutes, as class struggle in India within the factory and over the land and its productions are still important today. Instead of replacing classical movements, the NSMs have supplemented them, as the latter have emerged in newer areas where the former have not emerged (e.g. Naxalite/ Maoist movement in contemporary Odisha which is a class-based/ classical kind of movement, is being tacitly supplemented by this micro-movement

with the help of *Chasi Mulia Adivasis Sangha*)

8. NSMs remain effective by retaining their identity, engaging parties in dialogue, yet remaining outside their control. Again, the NSMs in India, unlike those in the west have no mass participation, rather have thinner and local support bases only (e.g., Lanjigarh movement is locality based without involving the lager population of the Kalahandi district and the state.)

9. Multiple actors like, intellectuals, activists, students (middle class) and also the affected population itself play lead roles in these movements (e.g., movement intellectuals and activists, in this context). And those who direct these movements are mostly middle class based intellectuals. The actors from the middle class try to bring about changes through different means such as scholastic writings, mobilizing people in a methodical/ strategic manner, using media in their favor and the like (e.g. extensive reporting on this micro-movement in newspapers, magazines and journals).

10. May be, because of their middle class preponderance, the NSMs function in a non-hierarchical manner. Some also argue that while middle class plays the facilitating role, and the lower class (e.g., affected population consisting of mostly tribal people, some *dalits* and few general, in this context) at the grassroots level participates in large numbers in NSMs (D'monte, 1989; p 19).

The other features of NSMs spelled out by Frank and Fuentes (1987: p 1503-1510) that are found to be in match with the tribal resistant movements of Odisha under study, are as follows:

11. These movements have little or no membership ties (i.e. party

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membership), and have a spontaneous interest base. In spite of their variety what is in common to all NSMs is that these are mobilized on the basis of morality, justice and a social power for a particular purpose.

12. These movements have their own life cycles that of course are shorter in duration (e.g. not more than a decade in this case).

13. NSMs mostly develop specific objectives for themselves and do not live beyond their specific objectives. 14. NSMs generally evolve in grassroots politics and grassroots collective actions. Often these initiate micro-movements of smaller groups targeting localized issues with limited institutional base. These movements take the help of existing intermediary institutions (NGOs) and in the course of time produce organized democratic associations. But various associations, i.e., voluntary associations and non party political forums and ideological groups also set the stage for such movements (e.g. convergence of efforts of movement organizations, NGOs and political organizations, in this context).

15. NGOs are seen as one of those new legitimate actors within civil society that promote people's participation, through motivation, people's mobilization and people's empowerment. NGOs mobilize people for movements and give rise to formation of various pressure groups and other intermediary institutions like popular grassroots (village level) organizations to sustain the movement for longer period (e.g., formation of grassroots level movement organizations).

16. The success and impact of NSM lie in its efforts in disseminating information through intense campaigns and in cultivating networks of contact maintained and through leaflet writings, informal gatherings, organizing

discussion forums, etc (Crook et al,1994: p 154). These movements are articulated through catchy slogans, icons, and appeals. These networks use ICT for effective and rapid communication, diffusion of movement related information. This network based communications through ICT yields snowballing effects and far reaching outcomes. (The most notable outcome of this resistant movement was, the Comprehensive R&R Policy formulated by the Govt. of Odisha dated May 20, 2006 as it had no such policy prior to this, except a draft version of July 2005).

17. Usually these NGOs share a set of common beliefs pertaining to their cause/ concerns. Pointing out the fact that NGOs do play a decisive role in initiating movements, Edwards and Hulme (1992: p 24) argue that the unified efforts of grassroots organizations can coalesce into movements. When the movements get consolidated and institutionalized, these results in formation of various new organizations/ institutions. Thus NSMs can be seen as a network of groups and organizations that are unified by shared conceptions, beliefs, ideals and specific goals by deliberate attempts on the part of the groups and organizations to ally themselves with one another through joint actions, coalitions, umbrella groups, etc. and so forth. At times NSMs consists of networks of collective actors (activist organizations/ NGOs) that may, under certain circumstances, even be able to forge themselves into large scale organizations like the *Niyamgiri Surakhya Samiti (NSS)* which the Social Movement Organization (SMO) in this context.

Indigenous People under Neoliberalism contextualized, Objective (c)

Analysis of this resistant movement engenders new traits of discourse on development in developing countries that could be possible because of the relent less struggle by the PAPs guided by the civil society organizations. Following are some of the traits: *(i) Right to develop and right to development***:** The post colonial nation states have acquired a moral right to develop and have worked assiduously to expound the influence of both the state and the market through major investments in infrastructure addressing national priorities. It is assumed that the citizens of the nation would assert their right to development through these institutions of mass society and private property. Hence there is a convergence of the moral right of the state and that of the citizens. However, this convergence is not a logical necessity. Because the citizens may also articulate alternative model of development based on their rights to development and stress for small scale undertakings that have lower pollution levels, that address local priorities and that respects the local cultural autonomy. Citizens also perceive the necessity of seeking more (than what is existing) rights to participate in decision making that affects their lives and community under this model. This duality of rights resulted in micro-movements of this kind in contemporary societies.

(ii) Financial and technical versus social sustainability: A mere deployment of a Cost Benefit Analysis (CBA) and other project feasibility technique are certainly not enough for sustainability of the project. The matrices of CBA dealing with economic parameters have already proven to be harbinger of dooms day as these fail to answer the ethical question as to how to measure in economic terms the misery and sufferings of displaced people. Hence to ensure sustainability, CBA must include the new parameters/indicators, like loss of social networks/kinship networks, emotional and psychological costs and the cultural costs of displacement involving the project. Besides, the negotiation for R&R between the conflicting parties need to be done like that of the industrial collective bargaining on equal footings. Hence a social cost benefit analysis that is inclusive of the subjective as well as the objective costs is alone to be considered appropriate. That apart a comprehensive and viable R&R Policy has now taken a somewhat different twist to be known as stake holders approach wherein the affected population is being treated as one of the stakeholders. Therefore, an inclusive development needs to recognize the local peoples' rights over the local natural resource bases and their participation in the projects' R&R measures.

Of late the movement has died out at Lanjigarh after the final judgment of the Supreme court of India. This boosted the moral of the CSOs as the court battle was fuelled by them. As this was a movement by the DID people their degree of mobilizations show strong correlation with the extent of politicization of the movement by non-ruling political parties in connivance with civil society organizations (activists organizations and NGOs). These worked as intermediary organizations between the political parties and the DID people. Their mediating role gives a grass roots touch/grassroots connectivity to the movement. Further their role as torch bearers make the movement more intense and more effective. The

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emergence of civil society in India is concomitant to its neo-liberalism embraced in the early 1990s. Of course neo-liberalism is all about the structural reforms of economies which essentially targets the financial and labour markets to open-up. This change in the institutional structures of the economy reduces the role of the government and creates space for the private sector. This further gets reflected in the social sector and created space for the non-profit/ voluntary sector to rise. It opened door for operations of INGOs/ activist organizations from abroad. Thus as the former socialist state tried to be more efficient and ensure effective delivery under neoliberal economy after structural adjustment, the scope of its activities shrunk. The shrinking role of Govt. created space for the increasing role for CSOs. Neo-liberalism enabled India to globalize its economy (through slow and steady liberalization process) open the door for FDIs. Through this opening up of the Indian economy came the VAL as a mining FDI subsidiary of VRP the Britain based MNC. Thus the neo-liberalism in India opened the doors for MNC/ FDI as well as for INGOs/ oversea activist organizations. This created space for the CSOs from within as well as from outside. But being inherently antagonistic both the CSOs and international Capital are often working for cross purposes. So the mushrooming CSOs are often treated by the state as vested interests (as they often represent local interests which would be displaced by the entry of FDI) not as conscientious altruists. Internecine between the state and the *Adivasis* thrived the CSOs. Nevertheless a vibrant civil society in the post liberalized India is pushing the state to corner and is acquiring more space for itself which otherwise means the civil society is claiming to share power with the state. But the question of legitimacy of the CSOs to share power with state sans popular mandate is intriguing.

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FROM STANDING ROCK TO FLINT AND BEYOND: RESISTING NEOLIBERAL ASSAULTS ON INDIGENOUS, MAROON, AND OTHER SITES OF RACIALLY SUBJECTED COMMUNITY SUSTAINABILITY IN THE AMERICAS

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ABSTRACT

Protests against the Dakota Access Pipeline led by water protectors from the Standing Rock Sioux Tribe in North Dakota have brought human rights violations related to Indigenous sovereignty, environmental justice, and sustainable development into the foreground of political debate in the United States. The struggle at Standing Rock has been strengthened by a coalition formed with activists from other Indigenous Nations, including representatives from the Amazon Basin, and from non-Indigenous movements and political organizations such as the Green Party and Black Lives Matter. This article reflects upon the centrality of Indigenous Sovereignty within the broader struggle for human rights and democracy in their most inclusive and substantive senses, especially in societies whose development has been built upon the violence of colonial expansion, white supremacy, and heteropatriarchy. The article also situates Indigenous rights within regimes of multiple articulated alterities in which the subjugation and dispossession of Indigenous and Afro-descendant peoples have been historically differentiated yet intertwined in the Americas. The article offers a multi-sited framework for understanding the convergent and divergent points of reference in the logics of Indigenous and Afro-descendant identity, the relationship with the State and Market, and connections to the material and spiritual resources of land. Attention is directed to cases in the United States, Honduras, and Suriname (including those of communities that define themselves as "Afro-Indigenous") in which some notion of common ground, affinity, or alliance with past or present-day Indigenous peoples has been mobilized in Afro-descendants' collective claims on rights to land, development, and cultural resources.

Keywords: human rights; Indigenous; democracy; supremacy; heteropatriarchy.

RESUMO

Protestos contra o acesso ao Gasoduto de Dakota liderado por protetores da água da tribo Standing Rock na Dakota do Norte trouxe violações dos direitos humanos relacionados à soberania Indígena, justiça ambiental e desenvolvimento sustentável ao primeiro plano do debate político nos Estados Unidos. A luta em Standing Rock foi reforçada por uma coligação formada por ativistas de outras Nações Indígenas, incluindo representantes da Bacia Amazônica, de movimentos não-Indígena e de organizações políticas como a Green Party e o #BlackLivesMatter (#VidasNegrasImportam). Este artigo reflete sobre a centralidade da Soberania Indígena dentro da luta mais ampla pelos direitos humanos e pela democracia em seus sensos mais inclusivos e substantivos, especialmente em sociedades cujo desenvolvimento foi construído sobre a violência de expansão colonial, a supremacia branca e o heteropatriarcado. O artigo também situa direitos Indígenas dentro de regimes de alteridades múltiplas articuladas, nas quais o subjugamento e a desapropriação de povos Indígenas e Afro-descendentes foram historicamente diferenciados ainda interligado nas Américas. O artigo oferece um enquadramento multi-localizado para o entendimento da convergência e divergência de pontos da referência na lógica identitária de Indígenas e de Afro-descendentes, a relação entre o Estado e o Marcado, e conexões aos recursos materiais e espirituais de uma terra. A atenção é direcionada aos casos nos Estados Unidos, Honduras, e Suriname (incluindo aqueles das comunidades, as quais se definem como "Afro-Indígena") na qual alguma noção básica de solo, afinidade, ou aliança com povos Indígenas do passado o do presente tem sido mobilizada nas reivindicações coletivas Afro-descendentes ao direito à terra, ao desenvolvimento e aos recursos culturais.

Palavras-chaves: direitos humanos; indígenas; democracia; supremacia; heteropatriarcado

RESUMEN

Las protestas contra el acceso al gasoducto de Dakota, lideradas por los protectores del agua de la tribu Standing Rock en Dakota del Norte han conducido al primer plano del debate político en Estados Unidos las violaciones de los derechos humanos relacionadas con la soberanía indígena, la justicia ambiental y el desarrollo sostenible. La lucha en Standing Rock fue reforzada por una coalición integrada por activistas de otras Naciones Indígenas, incluyendo representantes de la Cuenca Amazónica, de movimientos no Indígenas y de organizaciones políticas como la Green Party y el #BlackLivesMatter (#VidasNegrasImportam). Este artículo trata sobre la centralidad de la soberanía indígena en el marco de la lucha más amplia por los derechos humanos y la democracia en sus sentidos más inclusivos y sustantivos, especialmente en sociedades cuyo desarrollo fue construido sobre la violencia de la expansión colonial, la supremacía blanca y el heteropatriarcado. El artículo también sitúa los derechos indígenas dentro de regímenes de alteridades múltiples articuladas, en las cuales el subyugamiento y la desapropiación de pueblos Indígenas y Afrodescendientes en las Américas fueron históricamente diferenciadas a pesar de encontrarse interconectados. El artículo ofrece un encuadramiento multilocalizado para el entendimiento de la convergencia y divergencia de puntos de referencia en la lógica identitaria de Indígenas y de Afrodescendientes, la relación entre el Estado y el Mercado, y las conexiones a los recursos materiales y espirituales de la tierra. La atención se centra en los casos en los Estados Unidos, Honduras, y Surinam (incluyendo aquellos de las comunidades que se definen como "Afro-indígenas ") en los que alguna noción básica de suelo, afinidad, o alianza con pueblos Indígenas del pasado o del presente ha sido movilizada en las reivindicaciones colectivas de los Afrodescendientes relativas al derecho a la tierra, al desarrollo ya los recursos culturales.

Palabras claves: derechos humanos; indígena; democracia; la supremacía; heteropatriarcado.

The mass protest that the Standing Rock Sioux are leading against the Dakota Access Pipeline in the United States has brought to the world's attention how this particular infrastructural development project, along with others like it, inflicts economic, environmental, and spiritual violence against the fundamental human rights of indigenous people as self-determining entities recognized by international law and policy. The Dakota Access Pipeline's failure to consult, gain the consent of the Sioux, and seriously consider their legitimate worries concerning potential hazards to their community's water supply "conflicts with the international human rights standards, norms, and principles found in the Vienna Convention, Geneva Conventions, international criminal law, humanitarian law, and the International Climate Agreement (Paris)" (Red Owl Legal Collective, 2016).

The water protectors' mass demonstrations, which are less than a mile outside of Standing Rock Reservation, have attracted representatives from other U.S.-based Native American tribes and even indigenous communities and movement organizations from the Amazon. There has also been the physical presence and practical solidarity of environmentalists, antiracist activists, and others who see themselves as allies in the struggle for indigenous peoples' rights and the struggle against the interlocking oppressions that adversely affect Native Americans' life chances and well-being. Among the allies who have made their presence felt at Standing Rock are demonstrators involved in Black Lives

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Matter or the Movement for Black Lives (Mays 2016). The significance of building mutual alignments between the struggles of Native Americans and African Americans is clearly reflected at Standing Rock as well as in Native American activists' expressions of solidarity with African Americans who are navigating the lead-poisoned water crisis in Flint, Michigan. According to Kyle T. Mays, an urban historian of Black and Saginaw Anishinaabe heritage, working against the grain of conventional assumptions about their distance, divergence, and conflicting interests, Black and Indigenous activists have been reimagining the possibilities for mutual solidarity in the way they have engaged with the water politics of Flint and Standing Rock. Mays writes that

> before Black Lives Matter went to Standing Rock, Indigenous people from Detroit went to Flint. [Hip-hop] [a]rtists like SouFy and Sacramento Knoxx, both Anishinaabe and from southwest Detroit, made protest songs to bring awareness to the FlintWaterCrisis; they also donated water and supplies to the residents of Flint. These Native people have and continue to work in solidarity with New Era Detroit and other Black organizations. Moreover, the Little River Band of Ottawa [based in northwest Michigan] also donated $10,000 to assist with the FlintWaterCrisis. These actions show that Black–Indigenous solidarity is real, not rhetorical (Mays 2016).

This article reflects upon the centrality of Indigenous self-determination and the freedom of Afro-descendants across the African diaspora within the broader struggle for democracy and human rights in their most inclusive and substantive senses. These objectives are especially relevant in societies, such as those in the Western Hemisphere, whose historical development has been built upon the violence of colonial expansion, white privilege and supremacy, and heteropatriarchy. The article argues in favor of situating indigenous rights within the context of regimes that are structured around the logic and articulation of multiple alterities (i.e., otherness, differences) in which the subjugation and dispossession of Indigenous and Afro-descendant peoples, among others, have been historically differentiated yet intertwined in varying contexts across the Americas. The article aims to offer a multi-sited framework for understanding convergent and divergent points of reference in the formation and experience of Indigenous and Afro-descendant identities, their relationship with the state and market, and their connections to the material and spiritual resources of land. Our attention will be directed to cases in the United States, Honduras, and Suriname and will also include consideration of communities that define themselves in terms of the hybrid category of "Afro-Indigenous." In the cases to be discussed, some notion of common ground, affinity, or alliance with past or present-day indigenous peoples has been mobilized in Afro-descendants' collective claims on rights to land, development, and cultural resources. Toward these ends, new insights will be offered for understanding some of the concerns and nuances related to recent trends in the dynamics of new social movements whose motor force is driven by struggles for indigenous and Afro-descendant peoples' human rights and dignity.

Standing Rock and Indigenous Rights in U.S. Politics

The Standing Rock Sioux are a part of the Great Sioux Nation (the *Oceti Sakowin*), with which the United States Government signed the Fort Laramie Treaties of 1851 and 1868. Those historic, purportedly legally-binding agreements codified the indigenous right to self-determination and extended those rights to control of a portion of the traditional territories over which the Sioux exercised stewardship long before colonial expansion deprived them of most of their land and resources. In the historical consciousness and social memory of the Sioux Nation, those 19th century treaties continue to exercise legal authority and efficacy today, in protecting their control over the land and the resources upon which their sociocultural, spiritual, economic, and overall ecological well-being depends. The U.S. government has regularly breached the terms of those treaties, yet claims to be a paragon and leader of liberal democracy in the world community.

Since his January 2017 inauguration, U.S. President Donald Trump has demonstrated his support for the corporate interests and profit-above-people practices of the Dakota Access, LLC, "a Delaware limited liability company [which is a subsidiary of the Energy Transfer Partners, L.P. This limited partnership business is] authorized to do business in [the state of] North Dakota and [to construct]… the 1,172-mile-long Dakota Access Pipeline … intended to transport crude oil from the Bakken Shale of North Dakota to refineries in Patoka, Illinois" (Red Owl Legal Collective, 2016, p. 1, footnote 1). A former stockholder in Energy Transfer Partners, Trump sought to undermine the temporary moratorium that in 2016 the federal government, with former President Barack Obama's approval, placed on completing the construction of the pipeline adjacent to the unceded traditional territory of the Great Sioux Nation. With most of the pipeline already built, the specific area affected by the 2016 moratorium is located in the vicinity of the Standing Rock Reservation around the Lake Oahe, a reservoir created by a government-built dam on the Missouri River more than 50 years ago. This is the main water source for the Standing Rock Sioux Reservation community. The lake's vulnerability to being contaminated by oil leaks is one of the main environmental objections the Sioux are making against the pipeline. Other objections have to do with the pipeline's violating the spiritual integrity and sanctity of burial sites and other culturally significant landmarks on the territory upon which a Euro-American settler colonial regime encroached in the past and continues to do so in the present.

Beginning in July 2016, the Standing Rock Sioux Tribe took its grievances and numerous appeals to federal court. Initially, the U.S. District Court for the District of Columbia, the nation's capital, ruled that the U.S. Army Corps of Engineers had not complied with the law when it granted a permit to the Dakota Access Pipeline without having undertaken a review of the potential environmental hazards. The court, however, did not concur with the Sioux tribe's argument for an injunction to block further construction of the pipeline. In its October 11, 2017 ruling, it decided not to arrest the pipeline's construction while the Army Corps completes its environmental review by April 2018. In response to the disappointing news, Mike Faith, the Standing Rock Sioux Chairman lamented: "From the very beginning of our lawsuit, what we have wanted is for the threat this pipeline poses to the people of Standing Rock Indian reservation to be acknowledged. Today,

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our concerns have not been heard and the threat persists" (Earthjustice 2017).

Compliance with the Declaration of Indigenous People's Rights?

In January 2017, President Trump "signed an executive memorandum directing the Army Corps of Engineers 'to review and approve in an expedited manner' the [Dakota Access] pipeline 'to the extent permitted by law and as warranted'" (New York Times, 2017). In the first several months of his term, Trump reversed the environmental policies that former President Barack Obama's administration put into place on climate change, and will likely undermine the liberal concessions that the former administration made toward complying with the terms of the United Nations' Declaration on the Rights of Indigenous Peoples, a non-binding but morally significant agreement and international standard that went into effect in 2007 without the signature and ratification of the United States along with Canada, Australia, and New Zealand/*Aotearoa*. Since then, however, all four countries have decided to support the Declaration. The United States' opposition to it was reversed, or perhaps softened, in 2010, when Obama and Susan Rice, then the U.S. Ambassador to the United Nations, publicly proclaimed the federal government's endorsement of indigenous rights. However, what did that endorsement really mean?

Social critic Four Arrows (*Wahinkpe Topa*, also known as Don Trent Jacobs), a prolific Native American scholar activist of Cherokee ancestry, emphasizes the unlikelihood that the government will comply with the true spirit and substance of the Declaration, given its contradictory track record (Four Arrows, 2011; Four Arrows, no date). He admits that there are reforms that the Administration has backed (e.g., establishing college scholarships, settling water rights lawsuits, and addressing grievances against the Department of Agriculture's discrimination against native farmers and ranchers). However, he points out that, despite these cursory reforms, "next to nothing has…happened to change the dismal health, violence, poverty, and educational problems on American Indian reservations" (Four Arrows, 2011 [accessed 2017]).

He goes on to claim that: "Private industry still trumps tribal sovereignty," and in the past several years, beginning under President Obama, for the first time in more than thirty years, the State Department has stipulated that citizens of Iroquois or Haudenosaunee Confederacy Nations (i.e., the Onondago, Mohawk, Seneca, Oneida, Tuscorora, and Cayuga) have to hold U.S. passports when traveling internationally. This new ruling was tested in the case of the Iroquois Lacrosse Team. As Four Arrows explains,

> There are many reasons the Iroquois honour their own passports. One has to do with national pride and identity. Another is that the team is competing as a sovereign nation and the competition requires evidence of their own national identity. The Iroquois have been allowed to use their own passports for decades after an agreement among the US, British, Canadian, and other governments.
>
> Why didn't the president—or one of the cabinet members who ha[d] supposedly been instructed to consider Indigenous perspectives and [complying with]… the decision to support UNDRIP—intercede? (2011)

This is Four Arrow's way of saying that the United States' claim to support the UN Declaration for the

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Rights of Indigenous People is a "nonevent."

Citizenship, the Carceral State, and Human Rights

Black Lives Matter demonstrators supporting the water protectors at Standing Rock are part of a movement that mobilizes against the militarized force of police, who defend the security of corporate property, white public space (Page and Thomas 1994), and the state. A parallel situation exists in the case of the encampment at Standing Rock. State sanctioned and complicit violence in the United States has racializing effects within a society organized around the logics and articulations of multiple alterities and modes of producing otherness, through which anti-blackness and anti-indigeneity are manifested along with systemic biases against other racially profiled and surveilled bodies. The latter category implicates the darkening and stigmatization of categories of immigrants presumed to be problem populations, notably, segments of the Latina and Latino (or "Latinx") communities, especially Mexican and Central American migrants, but also Muslims presumed to be potential radical jihadists. The State's war on terror and on undocumented migration along with the longstanding war on crime (and drugs), which is often translated into a war on black and brown people in ghetto and *barrio* communities, feeds into the workings of the neoliberal securitization of the state. This process is increasingly associated with the consolidation of a carceral state that is theorized in critical studies of mass incarceration and the prison industrial complex (Marable, Steinberg, and Middlemass 2007). The securitized state administers the integration of the

terror industrial complex (Rana 2016), the immigrant retention or immigrant industrial complex (Golash-Boza, 2009; Ho and Louky, 2012), and the prison industrial complex (Davis, 2003). These three spheres of the penal justice system are rarely addressed together as interrelated facets of the carceral state. An integrated approach is being explored in some recent work on the expansion of police power in the politically manufactured moral panic over private safety and national security (Harrison 2013a, page 4).

The carceral state has grown in tandem with the neoliberal minimalization of the government's responsibility for providing safety nets, social welfare, and other supports for the socioeconomic rights that are delineated in the International Covenant on Economic, Social, and Cultural Rights, one of the two covenants comprising what is called the International Bill of Rights along with the Universal Declaration of Human Rights. The status of economic, social, and cultural rights are still highly contested as universal human rights, although the international human right regime now insists that they are indivisible and interdependent with civil and political rights, considered the negative, first generation rights of individuals (UN Chronicle 2009). They protect individuals from the negative excesses of State power and are enshrined in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. These instruments continue a long democratic legal tradition that dates back to the England's Magna Carta (1215) and Bill of Rights (1689), France's Declaration of the Rights of Man and of the Citizen (1789) and the United States' Declaration of Independence (1776) and Bill of Rights (1789), which represented the first ten

amendments to the U.S. Constitution. The rights delineated in the International Covenant on Economic, Social, and Cultural Rights have been considered positive, second-generation rights (UN Chronicle, 2009). The third generation of human rights encompasses collective rights, such as those related to indigenous self-determination, economic development, natural resources, and a sustainable and healthy environment. These rights are considered to be largely aspirational and have generated a great deal of debate. They are, however, central to the goals and objectives of indigenous and Afro-descendant movements throughout the Americas.

Third generation rights have been difficult to codify and enforce in legally binding documents. Some legal scholars strongly argue that only negative civil and political rights have legitimate status as universal human rights, because most states lack the material wherewithal to deliver positive rights. The indivisibility and interdependence of both negative and positive rights, however, have been recognized by the UN General Assembly since it issued The Declaration on the Right to Development on December 4, 1986 (UN General Assembly 1986). According to Article 6.2 of the Declaration: "All human rights and fundamental freedoms are indivisible and interdependent; equal attention and urgent consideration should be given to the implementation, promotion and protection of civil, political, economic, social and cultural rights".

The principle of indivisible and interdependent rights was reinforced in the 1993 Vienna Declaration and Program of Action, which resulted from the World Conference on Human Rights. Since those interventions, the definition of human rights has been expanded, as indicated on the website of the UN Office of the High Commissioner for Human Rights, where it clearly states that:

> All human rights are indivisible, whether they are civil and political rights, such as the right to life, equality before the law and freedom of expression; economic, social and cultural rights, such as the rights to work, social security and education, or collective rights, such as the rights to development and self-determination, are indivisible, interrelated and interdependent. The improvement of one right facilitates advancement of the others. Likewise, the deprivation of one right adversely affects the others (UN Office of the High Commissioner of Human Rights).

The legality of indigenous people's rights, which together constitute dimensions of collective sovereignty, is embedded in international law and progressively codified in UN covenants, conventions, and in softer instruments whose role in the human rights regime is more informal but morally significant. There are also important regional conventions and declarations, such as those ratified through deliberations within the Organization of American States (OAS) and, since June 2016, the American Declaration on the Rights of Indigenous Peoples. The American Convention on Human Rights is the central treaty that guides the workings of the Inter-American Commission on Human Rights and the accompanying Inter-American Court on Human Rights. Court judgments play a significant role in contributing to the legal framework and establishing legal precedents that support the claims-making process that Indigenous and Afro-descendant claimants undertake. As we shall see, important precedents in human rights

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court cases have had implications for both of these oppressed populations and their movements for social, economic, and environmental justice.

Regimes of Multiple Racialized Alterities

The analysis here draws on Peter Wade's (2010) concern that *Indígena* and Afro-descendant predicaments are rarely analyzed within a common framework that implicates differential yet interconnected facets of structural racism with its variegated processes of racialization. Building upon his notion of "structures of alterity" (Wade, 2010, p. 37), this article argues that an adequate analysis of Indigenous, Black, and Latinx human rights violations in the United States and in other settings needs to be placed within the context of the *multiple* structures of alterity that configure the relationship between the state and racially othered groups. Within the context of U.S. race and ethnic relations, this approach is an alternative to the once-dominant bipolar perspectives on the "Negro problem" in which black-white relations have been conventionally distinguished from all other ethno-racial relations. There has been considerable resistance to situating Native American and African American predicaments on the same critical analytical terrain (Mays 2016). In this respect, studies of Indigenous and African-descended populations in the United States and in Latin American contexts have developed roughly parallel approaches.

A multiple alterities framework permits the analysis of both similarities and differences across the various social locations and sites of lived experience in which ethno-racial identity formation occurs. This framework is attentive to the plural trajectories followed and the strategies deployed in claiming citizenship and human rights, especially when the strategies and tactics are based on forms of identity that are collective and resonate with concerns expressed in "third generation" human rights. The extent to which collective or group identity is corporate or based on a unified communal subject position varies considerably among Afro-descendants in the Americas. Anthropological research has documented the corporate character of social and economic organization and of political authority among, for instance, rainforest Maroons in Suriname, whose moral and legal status within the national body politic is that of a distinct people and not merely a group or confluence of individuals (Price 2011). Their struggle for human rights gives priority to communally-based territorial sovereignty.

Indigenous & Afro-Descendant Convergences & Divergences across Time & Space

A multiple alterities approach to interrogating indigenous rights within the U.S. context could very well lead to a scrutiny of the intersection, interrelationship, and, in some instances, the overlap that exists between Indigenous and other ethnic peoples' rights, such as those of populations classified as Latinx or "Hispanics." This issue is especially significant in those instances in which Latin American immigrants are of mainly indigenous background, such as the case of Guatemalans of Maya descent and heritage (Burns, 1993, 2001; Hiller, Linstroth, Vela 2009). However, the more neglected

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intersection between Indigenous and Afro-descendant peoples' rights in the United States and across the Americas will be examined instead. A few cases will be highlighted that should stimulate rethinking along neglected lines of inquiry.

Today, the environmental injustices that preoccupy the water defenders at Standing Rock, North Dakota resonate strongly with the environmental racism that many African American communities confront in both rural and urban settings in the United States, whether in the 2005 Katrina catastrophe in New Orleans, Louisiana and in the surrounding Gulf Coast or in Flint, Michigan, where in January 2016 a federal state of emergency was declared because lead levels in the water supply had reached critical poisonous proportions. The health and the life of residents had become endangered in that disproportionately African American populated rust-belt city of blight, economic displacement, and food deserts.

The rights to life and well-being are also constrained by yet another environmental factor, and that is the factor of violence, which exists in a continuum of structural and intersubjective modalities (Scheper-Hughes, 2002; Scheper-Hughes and Bourgois, 2004). The threat of anti-black extrajudicial killings, whether by police who are rarely held accountable or by armed citizens in fear of black crime (e.g., George Zimmerman in the 2012 Trayvon Martin case), has reached crisis proportions and is being vigorously debated in the public sphere. It is important to point out, however, that Native Americans actually suffer the highest per capita rate of police killing than any other segment of the US population. Although less than 1% of the country's total population, Native Americans killed by law enforcement

are nearly 2% of all police killings. Statistically, this is the highest rate that any group experiences although the aggregate numbers are small (*Indian Country Today,* 2016; see also Voice of America, 2015). Public awareness of this trend is virtually nil.

Intersecting Histories

Historically, relations between American Indians and African Americans (and Amerindians and African descendants more broadly) have varied across time and space. The history of inter-group relations, whether focused on conflicting interests or on alliances, has been greatly neglected. The historian and anthropologist Jack D. Forbes (Powhatan-Renapé and Delaware-Lenape) redressed this silencing of the past (Trouillot, 1997) in his seminal *Africans and Native Americans: The Language of Race and the Evolution of Red-Black Peoples* (Forbes, 1993), a text that takes a decolonial turn from the conventions of Native American and African American studies, which have historically been treated in separate silos.

In the U.S. context, the history of inter-group alliances is exemplified most clearly in the Seminole and Black Seminole confederacy which developed in the state of Florida in the 18th and early 19th centuries. The Seminoles and their Black Seminole allies fought against the U.S. Army in three Seminole Wars during the first half of the 19th century (Howard 2002). An anthropologist who studied the impact of fugitive African Americans on the Lower Creek population that eventually became Seminoles in Florida was Laurence Foster, whose 1931 doctoral dissertation focused on Black-Indian relations in the U.S. southeast (Foster 1931). His multi-sited ethnohistorical

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and ethnographic research, conducted most intensively in 1929-30 followed the migratory path mixed groups of Seminoles had taken from Florida to Mexico, Texas, and Oklahoma. The communities that settled in the United States were affected by racial discrimination. Laws in Oklahoma made it illegal for Indians to marry persons with any African ancestry. That worked against the close ties that once existed between Black and "Red" Seminoles.

The anthropologist and ethno-historian William S. Willis, Jr. (1963) wrote about the ways that the 18th century government administration used tactics of divide and conquer in its colonial expansion strategies, pitting Indians against Blacks, who when enslaved were likely to run away from plantations and seek refuge in the wilderness beyond the borders of the plantation zone. To offset the possibility of Indians providing shelter to Maroons (fugitives from slavery), the army and civilian government in the colonies and later in states like Georgia fomented antagonisms between the two subordinate groups, who together outnumbered the Euro-American settlers and, if united, could potentially jeopardize the feasibility of the colonial status quo and political economy. The white colonial authorities enlisted Indians in the role of capturing and returning runaways, and they inculcated within Africans the fear and distrust of Indians. Later in the context of the westward expansion of U.S. settler colonialism, African Americans were conscripted in the frontier army as "Buffalo Soldiers" to fight "renegade Indians," who resisted the Euro-Americans' displacement, pacification and reservation practices, whose effects were often genocidal (Deloria 1984; Dunbar-Ortiz 2015).

More recent trends in historical research on "Afro-Indians" or "Black Indians" demonstrate that inter-group mixing was not uncommon, although disincentives were imposed from above, stigmatizing Black-Native families and denying them recognition as indigenous (Miles, 2015 [2005]; Brooks, 2002). The one-drop rule or hypodescent jeopardized the legal status of native communities with mixed-heritage, especially those with Black admixed members. White admixture did not carry the same stigma, a symptom of the hegemonic weight of white supremacy even in "Indian country." The wedge constructed to divide Indigenous people and Africans had a negative effect on families and on the rights of African descendants who were once legally recognized citizens of those Indian nations originally concentrated in the southeast which settler colonialists characterized as the five "civilized" tribes. These so-called civilized natives of the Cherokee, Chickasaw, Choctaw, Creek, and Seminole nations were incorporated into the plantation mode of production, which depended on the exploitation of enslaved laborers. When coercively removed westward to Oklahoma territory (via the "Trail of Tears"), these tribes were accompanied by their freedmen, who were recognized as citizens in post-bellum (i.e., post-Civil War) treaties between the U.S. government and the tribal polities. Decades later and into the present era, that citizenship would come to be contested. Older generations of African American freedmen, however, often had competence in Indigenous languages and cultures, reflecting ethnic if not "racial" commonalities shared with their Indigenous counterparts (Sturm, 2002).

Recently, there have been a number of court battles over the status of the descendants of freedmen, their rights to Indian benefits and the tribal

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ballot, and access to heritage archives and other resources because of their de jure, treaty-based citizenship within Indian nations dating back to the aftermath of emancipation. Even when Indian ancestry has been a component of the Freedmen's court claims, it has rarely been adequately documented. When the Dawes Rolls determining tribal membership were compiled, as was stipulated by the 1887 Dawes Act which converted communal land ownership into individualized allotments, freed African Americans were usually presumed to be (only) Black rather than Indian by virtue of the prevailing "one-drop" rule, even when their families included members who were recognizably Indians. Mixed-heritage individuals were not included on the Dawes Roll but on a separate list for freedmen. Genealogical information on Black Indians' ancestry and heritage was, therefore, not recorded in those cases (Native Heritage Project, 2014; Sturm 2002). This partial, skewed documentation contributed to the erosion of freed people's eligibility for substantive citizenship, since the Dawes Roll is the legal point of reference determining eligibility for tribal membership and belonging.

By the 1980s, the Cherokee Nation amended its legal criteria for citizenship, denying Freedmen's votes in tribal elections (Cherokee Phoenix, 2006). At that time, voting rights were determined by blood quantum. This required the documentation of descent from someone listed on the Dawes Rolls as "Cherokee by blood." This rule change disenfranchised the descendants of Cherokee Freedmen.

Today, more African Americans are publicly claiming their Indigenous heritage and organizing around their cultural and legal interests as Indians or Black Indians. This trend is gaining momentum at a historical moment when hegemonic racial classifications and the cultural principle of hypodescent are being questioned and resisted. Federally recognized Indian tribes do not necessarily welcome African descendants' claims to Indigenous ancestry and rights to tribally administered resources and services. The Descendants of Freedmen of the Five Civilized Tribes Association is one organization that has advocated for African Americans whose foreparents' status as Freedmen was recognized by the 1866 treaty. After many years of back and forth litigation, a U.S. District Court ruled that the historic treaty had indeed granted Freedmen "all the rights of native Cherokees" (PRI [Public Radio International] 2017). In the judgment rendered in the *Cherokee Nation v. Nash* case,

> The Cherokee Nation can continue to define itself as it sees fit but must do so equally and evenhandedly with respect to native Cherokees and the descendants of Cherokee freedmen. By interposition of Article 9 of the 1866 Treaty, neither has rights either superior or, importantly, inferior to the other. Their fates under the Cherokee Nation Constitution rise and fall equally and in tandem. In accordance with Article 9 of the 1866 Treaty, the Cherokee Freedmen have a present right to citizenship in the Cherokee Nation that is coextensive with the rights of native Cherokees (PRI, 2017).

The Cherokee Nation's legal counsel has issued a statement that it will respect the rule of law and will not seek to appeal the court's decision.

Afrodescendant and indigenous convergences in the circum-Caribbean

The Garifuna of Honduras

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In other parts of the Americas, Afro-descendant and Indigenous contact and interaction have been integral to many societies' historical development, particularly in the Caribbean and Latin America (Forbes, 1993; Wade, 2010). A key example is the Garifuna or Black Caribs whose heritage is Arawak, Carib and African. The Garifuna's unique ethno-genesis resulted from an alliance between Maroons and Caribs who resisted European domination in St. Vincent in the Eastern Caribbean. In 1797 the British forcibly relocated them to Central America, where their descendants are now found along the Atlantic or Caribbean coast, from Belize (formerly British Honduras) to Nicaragua, with communities found in Guatemala (Gonzalez 1988) and Honduras (Anderson, 2009). There are also other indigenous populations with documentable (albeit understated or denied) African heritage, but the Garifuna are the most iconic case of dual African and indigenous cultural heritage, reflected especially in their language, which is of Arawakan origin. Some Garifuna in Honduras even define themselves as indigenous, Afro-Indigenous, or autochthonous. Others emphasize their blackness and align themselves with other Afro-descendants. These alignments are also reflected in the wider regional networks to which Garifuna civil society organizations and social movements belong (Anderson, 2009).

The activists who emphasize the ethnically autochthonous character of the Garifuna seek to expand the meaning of Indigenous so that it is not conflated with or restricted strictly to Indian. By claiming autochthonous status, Garifuna activists have asserted their identity and social location as "long-standing occupants of territory who bear non-European linguistic and cultural 'traditions' and the same collective rights as indigenous peoples" (Anderson, 2009, page. 124). The language and ideology of autochthony have facilitated the Garifuna's pursuit of a political agenda perceived as equivalent to that of indigenous people in their common preoccupation with issues related to rural communities' vulnerability to displacement and to having their communal rights to land discounted. These convergent interests lie at the heart of the politics of indigeneity, despite the fact that the two populations have been differently racialized as Black and Indian.

According to Mark Anderson, mobilizing around an indigenous rights paradigm or model has enabled the Garifuna to

> address cultural and linguistic oppression and claim rights to cultural and linguistic difference. It helped turn stereotypes of Garifuna primitiveness into valorized traditions. The paradigm brought to the fore the problems of access to land and resources, rendering rural communities the center of political concern. Like (other) indigenous peoples, Garifuna would mobilize an image of themselves as stewards of the environment, protecting that which Western modernity destroyed. Indigeneity thus provided a language through which collective claims could be made and heard; it made Garifuna a collective subject that the state and other actors could recognize as legitimately distinctive. Garifuna, though identifying and identified as Black, became 'visible' as a collective subject to the state, indigenous and environmental organizations, international NGOs, multilateral institutions, and the public media by appearing in the same metacultural frame as indigenous peoples (Anderson, 2009, page 134).

During the 1990s, Hondoran multicultural discourse, as reflected in

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"legislation and presidential accords[,] employed the phrase 'etnias autóctonas'." Later, the legal language shifted to *"pueblos indígenas y afrohondureños,"* recognizing that state policies on the indigenous should also include or apply to Afro-Hondurans. These shifts in government policy and action resulted from the relatively effective mobilizations the Garifuna undertook to be recognized as a distinct people politically and legally convergent with indigenous citizens. This approach gave them greater leverage in combatting displacement from ancestral territories whose communal stewardship was being eroded by the increasing encroachments from real estate development, projects in tourism and agribusiness, and mestizo peasant land occupation (Anderson, 2009, page 27, 225).

Although the relationship between blackness and indigeneity continues to be debated, the Garifuna's status as a distinct people is firmly established in Honduras' multicultural regime. Their collective subject position is no longer questioned, even when it is argued that the Garifuna can be more accurately characterized as *mestizos*— that is, as descendants of Caribbean Island Arawaks and Caribs as well as of black Africans (Anderson, 2009, page 137) in a society in which the hegemonic category of *mestizo* is traditionally reserved for descendants of Spaniards and Indians.

The Maroons of Suriname

Another historical case of Afro-descendant and Indigenous contact and exchange which did not lead to a Garifuna-like cultural and linguistic fusion, is found in the case of Maroon societies, especially those of Suriname's rainforest Maroons, formerly referred to as "Bush Negroes." Richard Price (2011) has thoroughly documented how Maroons developed some aspects of their adaptation to the rainforest from their contact with their indigenous neighbors, who were sometimes allies but often rivals over land, resources, and women. During what is called the historic "First-Time," when the Saamaka (called Saramaka in the literature), for instance, fought against the 18th century Dutch colonialists for their autonomy, there was a paucity of women runaways (Price, 2002; 2011). Consequently, Maroons raided indigenous villages for women whom they abducted to adopt into their settlements. Price recounts a number of stories about Amerindian women whose Saaamaka descendants retain the "memory" of their partial indigenous ancestry, which is integral to their sense of authenticity as sovereign rainforest inhabitants and communal stewards of ancestral territories.

Claiming Collective, Tribal Rights: Important Legal Precedents

The struggles of Afro-descendants often have implications, legally and politically, for indigenous peoples—and vice versa. One clear instance of this lies in Surinamese Maroons' petitions to the Inter-American Commission on Human Rights and the subsequent litigation for rights via the Inter-American Court of Human Rights (Price, 2011). The Maroons filed their grievances against the "destructive resource exploitation that the state and transnational corporations promote in their relentless pursuit of development at the expense of Maroon and indigenous wellbeing" (Harrison, 2013b, page 128). The court judgments have been important legal precedents that have benefited indigenous and tribal human rights

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claims. As we shall see, tribal status is roughly equivalent to the autochthonous status that Garifuna have achieved in Honduras.

Richard Price's (2011) award-winning *Rainforest Warriors: Human Rights on Trial*, along with many articles in legal journals (e.g., Antkowiak, 2007), have documented how the Ndjuka and particularly the Saramaka/Saamaka have taken their rights claims to the Inter-American Court on Human Rights and won important judgments. Three consequential Surinamese Maroon cases are: the 1993 *Aloeboetoe et al. v. Surname*; the 2005 *Moiwana v. Suriname* case, which built upon the 1993 case as well as the 2001 *Awas Tingni v. Nicaragua* (which was the "first binding judgment recognizing indigenous peoples' property rights as being grounded in custom," page 102); then in 2007 the *Saramaka People v. Suriname* case, which was made around the time of a shift in favor of indigenous rights due to the ratification of the UN Declaration on the Rights of Indigenous Peoples. Each of these cases (which implicated the Suriname state for military incursions, massacres, and economic and environmental assaults against Maroon communities) built on earlier judicial precedents, taking the question of communal self-determination a step further in human rights jurisprudence.

There has been a mutuality and symbiosis between indigenous (Amerindian) and tribal cases. Key indigenous cases that have been particularly relevant to the jurisprudence are: *Awas Tingni v. Nicaragua*, 2001; *Yakye Axa v. Paraguay*, 2005; and *Sawhoyamaxa v. Paraguay*, 2006. The more recent judgment for the 2012 case of the *Sarayaku v. Ecuador* clearly drew upon the 2007 Saramaka case, which set an

important international precedent for stipulations of consent and prior consultation (Fasken Martineau, 2012). According to one source:

> The standard regarding the need to obtain consent of indigenous peoples has already been established by the Inter-American Court in the sentencing of the case *Saramaka v. Surinam*, in which the court said that whenever large-scale development or investment plans have a significant impact within indigenous territory, the State has the obligation to consult, but also to obtain free, prior and informed consent, respecting their culture and traditions (Amazon Watch, 2012).

Tribal Designation Recognized

Drawing on jurisprudence developed from earlier court precedents and established policies such as the World Bank Group's policies on indigenous and tribal peoples adopted in 1982 (Price, 2011, page 210), the Inter-American Court strengthened the determination that the Saramaka constituted a:

> tribal community whose social, cultural and economic characteristics are different from other sections of the national community, particularly because of their special relationship with their ancestral territories, and because they regulate themselves, at least partially, by their own norms, customs, and/or traditions (Price 2011, page 212, quoting the Court).

According to ESCR-Net [or the International Network for Economic, Social, Cultural Rights] caselaw database, "The Court decided [on November 28, 2007] that although the Saramakas were not an indigenous community, they had certain resemblances with traditional indigenous communities and therefore enjoyed the same rights. As a

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consequence, they did not need a title in order to own the lands (possession was sufficient)" (ESCR-Net, no date).

Price writes that some legal scholars claim that the Saramaka case "was the first binding international decision to recognize tribal peoples' rights to the natural resources located in their lands, indicating that tribal peoples are more akin to indigenous communities than they are to other ethnic, linguistic, or religious minorities" (Price, 2011, page 234). However, Price explains that the Suriname Maroons gained recognition as "tribal peoples" before the 2007 decision. Their tribal character was acknowledged in the 1993 judgment of *Aloeboetoe v. Suriname*, which was informed by the Court's use of definitions in ILO (International Labor Organization) Convention No. 169, "a treaty ratified widely in the Americas and which applies to both indigenous and tribal peoples" (Price, 2011, page 234). Moreover, in *Moiwana Village v Suriname*, the court recognized and "upheld Ndjuka Maroon land and resource rights, though in a more limited context than in *The Saramaka People v. Suriname*" (Ibid.).

Broader Implications of Human Rights Court Judgments

According to Price, the broader implications of the 2007 decision and the Interpretive Judgment issued the very next year is

> that for the first time the Court addressed a people's *corporate* (collective) rights, instead of viewing them merely as an aggregation of individuals or as a community/village. In this case, the Court established the Saramaka people's right to recognition as a corporate legal identity, despite the lack of such a possibility under

current Suriname law. In addition, the Court awarded monetary damages for the first time to an indigenous or tribal people for a State having caused environmental harm to its lands and resources (2011, page 235).

Territorial rights include "recognition of '*their right to manage, distribute, and effectively control such territory,* in accordance with their customary laws and traditional collective land tenure system'" (page 235). Price points out that indigenous and tribal peoples (whose territories contain "large stretches of rainforest") should be participants in negotiating policies and programs related to climate change, the reduction of carbon dioxide emissions ("caused by deforestation," page 236), and the development of low carbon development strategies. This can only be the case if states can be held accountable to the human rights principles emphasized in *The Saramaka People v. Suriname* and the UN Declaration on the Rights of Indigenous Peoples. However, it is much more common for indigenous and tribal peoples to be excluded from these high stakes discussions. This continues to be the case in Suriname, where the government and the transnational corporations with which it colludes have refused to comply with the Court's ruling (Price, 2012; Human Rights Brief, 2013). The 2012 French edition of Price's book ends with an updated and expanded afterword in which the author provides details on the ways that the Republic of Suriname has repeatedly repudiated the Inter-American Court's mandates. His discussion underscores the limitations of the international neoliberal human rights regime.

Concluding Remarks

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Indigenous peoples and Afro-descendants have had trajectories of struggle that at times overlap or intersect in significant ways. It is important to recognize the convergences as well as the divergences in these histories and in present-day predicaments that inform human rights politics and legalities. The interrelationships and interdependence between black and indigenous struggles are transnational in salience and scope. We need to map them from Standing Rock and Flint to San Jose, Costa Rica where the Inter-American Commission and Court on Human Rights does its adjudication, juridical work that is absolutely necessary but clearly insufficient, as the outcomes of positive judgments have revealed. The international community has to find more effective ways enforce human rights law by compelling states, transnational corporations, and global civil society to comply with the judgments and recommendations of regional and international human rights courts. Otherwise, the international human rights regime, as it is constituted now, cannot effectively operate to curtail the persistence of a global status quo in which humanity, human rights, and human dignity are—despite the universalist claims to the contrary—differentially calibrated. This results in some lives mattering more than others due to the racialized workings of modes of sociopolitical disciplining and tactics of population management that result in the division of the world's population into full humans, not-quite-humans, and nonhumans (Weheliye 2014).

We are facing many crises throughout the world, but those of highest priority are ecological and political-economic, implicating environmental injustices along with widening disparities of power, wealth, health, and life expectancy. The survival and sustainability of the Earth and human life are seriously at stake. The world's growing disparities cannot be adequately interrogated without the critical insights provided by an intersectional understanding of racializing processes. Indigenous and Afro-descendant communities are among those that bear the brunt of the convergent crises that these processes engender. The movements that have arisen from these peoples' predicaments can potentially offer decolonial visions and sensibilities for forging paths toward a more humane and sustainable future. Engaged scholars should be encouraged to illuminate and give voice to those critical insights.

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BETWEEN SUPPORT AND MARGINALIZATION.
THE PROCESS OF THE DIAGUITA'S RE-EMERGENCE
IN THE AGE OF NEOLIBERAL MULTICULTURALISM (CHILE)*

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ABSTRACT

Long regarded as an ethnic group extinct since the 16th century, the Diaguita of Chile re-emerged as an indigenous people in the early 2000s in the midst of their struggle against extractivism. Although they did not exist 15 years ago in legal terms and were socially invisible, they are now the third most important indigenous group in Chile, after the Mapuche and the Aymara. This paper analyses the combined roles of a Canadian mining company (Barrick Gold, Pascua Lama project) and the Chilean state in the process of this group's re-emergence in the Huasco Alto region of northern Chile. In particular, it shows how the social responsibility programs of the mining company (CSR), set up to support "the ethnic revitalization" of the Diaguita, contribute both to divide local indigenous communities and to justify a culturalized and depoliticized indigenous identity, compatible with mining interests and the state's project to conciliate neoliberal and multiculturalist policies.

Key words: Neoliberal multiculturalism, extractivism, indigeneity, corporate social responsibility (CSR), Chile, Pascua Lama.

RESUMO

Considerados extintos no século XVI, os Diaguitas de Chile reemergiram como povo indígena no começo da década de 2000 em um contexto de tuta contra o extrativismo. Apesar de eles não existirem há 15 anos em termos legais e eram socialmente invisíveis, são hoje em dia o terceiro grupo indígena mais importante do Chile, depois dos Mapuches e dos Aymaras. Este artigo analisa os papéis conjuntos de uma empresa de mineração canadense (Barrick Gold, projeto Pascua Lama) e do Estado chileno no processo de reemergência indígena deste grupo em Huasco Alto, ao norte do Chile. Particularmente, mostra como os programas de responsabilidade social (RSC) da empresa de mineração, criados para apoiar a "revitalização étnica" dos Diaguitas, contribuíram tanto para dividir as comunidades indígenas locais como para justificar uma identidade indígena culturalizada e despotizada, compatível com os interesses mineiros e com o projeto de Estado de conciliar a perpetuação de uma economia neoliberal com o desenvolvimento de políticas multiculturais.

Palavras-chave: Multiculturalismo neoliberal, extrativismo, povos indígenas, responsabilidade social corporativa (RSC), Chile, Pascua Lama.
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RESUMEN

Considerados extintos en el siglo XVI, los Diaguitas de Chile (re)emergieron como pueblo indígena a principios de la década del 2000 en un contexto de lucha contra el extractivismo. Si bien no existían hace 15 años en términos legales y eran socialmente invisibles, son hoy día el tercer grupo indígena más importante de Chile, después de los Mapuches y los Aymaras. Este articulo analiza los roles combinados de una empresa minera canadiense (Barrick Gold, proyecto Pascua Lama) y del Estado chileno en el proceso de (re)emergencia indígena de este grupo en el Huasco Alto, al norte de Chile. En particular muestra cómo los programas de responsabilidad social (RSC) de la empresa minera, creados para apoyar la "revitalización étnica" de los Diaguitas, han contribuido tanto a dividir a las comunidades indígenas locales como a justificar una identidad indígena culturalizada y despolitizada, compatible con los intereses mineros y el proyecto del Estado de conciliar la perpetuación de una economía neoliberal con el desarrollo de políticas multiculturales.

Palabras claves: Multiculturalismo neoliberal, extractivismo, pueblos indígenas, responsabilidad social corporativa (RSC), Chile, Pascua Lama.

INTRODUCTION

Almost all Latin American states[1] have now ratified the International Labour Organization's Indigenous and Tribal Peoples Convention no. 169 (1989), one of the most important international instruments regarding the rights of indigenous peoples. Just 30 years ago, most of these countries were still caught within an assimilationist paradigm, a legacy of colonial representations and policies. In the 1990s, however, they introduced unprecedented political and legal reforms aimed at recognizing indigenous peoples and the multicultural character of their nations[2]. This process, initiated by the indigenous peoples themselves and supported by an international movement to recognize their rights (Niezen, 2003; Schulte-Tenckhoff, 1997; Morin, 2009), led to the emergence of the indigenous category as a potentially positive contemporary mark of identity. However, in the 2000s, many scholars brought to light the paradoxes and limitations of the multiculturalist model in Latin America when combined with neoliberal policies (Boccara, 2010; Gros, 2011; Hale, 2004, 2005, 2006; Lehmann, 2016; Park and Richards, 2007; Speed and Sierra, 2005; Yashar, 2005). Neoliberalism – in the sense assigned to it by Foucault in 1979 (2004) and reaffirmed by the Comaroffs (2009, p. 120-121) – is a doctrine aimed at establishing an economic model and a mode of governmentality in which the state and society are subordinate to market principles. What Charles Hale (2005, 2006) called neoliberal multiculturalism corresponds to a mode of governmentality which, while implementing measures of recognition of and support for indigenous peoples, limits their expression to the framework imposed by neoliberal policies. These polices orient the action of the state and its agents not only in economic matters but also in all spheres of society, including social, cultural and identity-related ones. In other words, neoliberal multiculturalism is characterized by the establishment of relatively clear support policies towards indigenous peoples who are not at odds with the neoliberal societal project while at the same time

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[1] The holdouts are Cuba and Uruguay.
[2] Bolivia went further and enshrined his plurinational character in its Constitution.

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marginalizing those who do not conform to it.

In this article, I argue that the contemporary process of re-emergence of the indigeneity of the Diaguita of Huasco Alto (northern Chile) is emblematic of the social and identity effects of neoliberal multiculturalism and of the stakes underlying new expressions of indigeneity in the 21st century, in a context of the internationalization of the rights of indigenous peoples, economic globalization, the weakening power of states and the rise of multinationals.

Long regarded as an ethnic group extinct since the 16th century, the Diaguita of Chile re-emerged as indigenous people in the early 2000s in the midst of their struggle against the controversial Pascua Lama mining project promoted by the Canadian-based company Barrick Gold, the world's largest gold mining company.

Recognized legally as an indigenous people by the Chilean state in 2006, the Diaguita have gone within the space of 10 years from the status of an extinct and voiceless civilization to that of living people fighting for their rights[3]. In this article, I show how the combined actions of public authorities and the mining company, as well as the internationalization of the struggle against the Pascua Lama project, have contributed not only to the re-emergence and strengthening of the Diaguita identity but also to the construction of an indigeneity compatible with the extractive neoliberal model and to divisions between local organizations laying claim to an indigenous identity. More generally, the conflictual context of the

emergence of Diaguita indigeneity deserves highlighting insofar as it reveals tensions that are observed across the world between indigenous peoples, states and extractive corporations and because of the issue that indigeneity represents today for all stakeholders, including mining companies. In this article, I will emphasize the ambiguous role being played by the mining company, combined with that of the state, in the dynamics of (re)construction of Diaguita indigeneity, as the Diaguita are both the primary opponents of the corporation and, at the same time, among the preferential beneficiaries of the company's corporate social responsibility activities.

A major binational project, located at high altitude in the Andes at the border between Chile and Argentina, Pascua Lama first attracted international attention in 2005 because of Barrick's initial proposal to "transplant" three glaciers that cover gold and silver deposits (Li, 2017). At a time when climate change has become a global issue, this "detail" provoked a wide-ranging mobilization against this project, pitting the citizens of this rural and agricultural region, civil society organizations and environmental NGOs and/or those advocating for rights for indigenous peoples against the state and the world's most powerful gold-mining company.

This article is part of a qualitative research and inductive approach at the crossroads of political anthropology and indigenous studies. It relies to a large extent on empirical data produced by a long-term field survey. Between December 2006 and March 2014, I had several occasions to do fieldwork in the Huasco Alto, for a total duration of about one year. In addition, between 2014 and 2017, I effectuated "delocalized" fieldwork by actively

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[3] For more information on the chronology of this process of legal recognition, see Campos Muñoz (2005) and Gajardo (2009).

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participating, from Montreal (Canada), New York (United States) and Geneva (Switzerland) in international meetings concerning indigenous issues[4]. These events allowed me to accompany and observe the struggle against extractivism of some diaguita leaders at the international level. This fragmented and multi-site fieldwork led me to take a long-term look at a social process that evolves rapidly over time and that includes issues which would have been difficult to identify within the framework of short-term fieldwork. The data that I present in this article are a synthesis resulting from the cross analysis of data from floating observations, participant observation, non-directive and semi-directive interviews, and from scientific literature as well as from the print media and the Internet. I made observations and conducted interviews with actors occupying different and sometimes divergent positions in local social structures and politics.

Neoliberal multiculturalism: the case of Chile

> (…) while Chile was the first Latin American state to embrace neoliberalism, it has been one of the last to embrace multiculturalism (Richards, 2013, p. 108).

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[4] *From May 29th to June 1st, 2014, I participated in the Permanent People's Tribunal (PPT) on the Canadian Mining Industry (Hearing Latin America), held in Montreal. In May 2014, I attended the United Nations Permanent Forum on Indigenous Issues (UNPFII) at the UN Headquarters in New York. And at the end of November 2017, I was at the 2017 United Nations Forum on Business and Human Rights held at the UN Headquarters in Geneva.*

In terms of its inherent logic, neoliberal multiculturalism presents common aspects, irrespective of the context in which it is implemented. Nevertheless, it can take a specific form depending on the history and characteristics of the country and the region where it is adopted. Widely known as a pioneer in the implementation of neoliberalism in Latin America, Chile has gone, within a decade, from an assimilationist neoliberal dictatorship (1973-1989) to a multiculturalist neoliberal democracy which, in comparison to other Latin American countries, was late in implementing measures for the political recognition of indigenous peoples and their rights. Because of this, some authors prefer to describe Chile in terms of multicultural neoliberalism (Boccara and Bolados, 2008; Bolados, 2010) instead of neoliberal multiculturalism.

It was during the so-called *Concertación* period (1990-2010) that Chile formulated the bulk of its policy towards indigenous peoples. In 1993, a few years after the end of the dictatorship, the government promulgated Law 19.253 (*Ley Indígena*). This law laid down a new framework designed to ensure the protection and development of indigenous peoples, *etnías indígenas* according to the terminology of the state. As a consequence of this law, the *Corporación Nacional de Desarollo Indígena* (CONADI) – the state body responsible for promoting, coordinating and executing public policy in favor of indigenous people – was set up in the same year. Adopted in a context of democratic transition, economic stabilization and reformulation of the myth of Chile's cultural homogeneity, this law marked a historic turning point in the state's willingness to pay its historical "debt" (*deuda histórica*) to its

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indigenous populations and to adopt a policy of "new treatment" (*Nuevo Trato*) towards them. Along similar lines and in the context of a controversial political debate on the drafting of a new Constitution and on the recognition of indigenous peoples, Chile ratified ILO Convention no. 169 in 2008 and, in the same year, adopted a "Social Pact for Multiculturalism" (*Pacto Social por la Multiculturalidad*). In general terms, the implementation of this new public policy concerning indigenous peoples was linked to a significant extent to the emergence of a new discourse on the multiculturality of the Chilean state, which is itself in line with the current international rhetoric of cultural diversity and with advances in international law on indigenous issues (Gajardo, 2009, p. 115). After more than a century of assimilationist policies, these developments have led to a radical change in the regimes of representation of diversity, allowing ethnicity to emerge not only as a beneficial modality of self-(re)presentation, but also as a legitimate resource for the conquest of rights (Baeza, 2012, p. 125).

In parallel with these measures, which formed part of the state's decision to break with the policies of the previous regime, the country has pursued and developed the neoliberal economic policies implemented during the dictatorship years. They have included the implementation of a series of political agreements and legal norms promoting and authorizing the development of extractive projects (Carruthers, 2001; Tecklin et al., 2011), most of which are located on indigenous territories or on territorial spaces claimed by them (Barrera-Hernandez, 2005; Budds, 2009, 2010; Yañez and Molina, 2009). In direct opposition to the public policies in favor of indigenous peoples provided for in Law 19.253 (Aylwin, 2005), the approval accorded to these projects has led to an increase in socio-environmental conflicts involving indigenous communities (Cuenca, 2012; Yañez and Molina, 2009), who saw and still see in these measures a continuation of a policy aimed at destructuring them through the destruction of their ecological and social environment.

It is thus in this context, briefly described here, that the process of re-emergence of the Diaguita indigeneity, the Pascua Lama mining project, and the movement opposing this project all developed simultaneously in the early 2000s in the same physical, social and political space (Huasco Alto). Huasco Alto is a rural area composed of two agricultural valleys (Transito Valley and San Felix Valley, both in the Huasco river basin), located in a semi-mountainous region in northern Chile (Atacama region, Alto del Carmen municipality), at the edge of one of the most arid deserts in the world.

An emblematic case of indigenous re-emergence

Although they did not 'exist' 15 years ago in legal terms and were socially invisible, the Diaguita are now the third most important indigenous group in Chile, after the Mapuche and the Aymara (Aravena Reyes 2014: 1; Instituto Nacional de Estadísticas 2012: 11; Casen, 2017).[5]

While several contemporary cases of ethnogenesis have been documented in Latin America in recent

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[5] Estimated at about 45,000 persons. It should be pointed out here that these 45,000 persons were enumerated across Chile on the basis of family names and self-identification. This figure is therefore not an estimate of the number of Diaguita in Huasco Alto. However, it is in this region that the process of re-emergence began.

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decades (French Hoffman, 2009; Robin Azevedo and Salazar-Soler, 2009; Olivera, 2016; Boullosa-Joly, 2015), the process of re-emergence of the Diaguita of Chile stands out for its speed, its scale and the context of the struggle against extractive projects in which this process is taking place.

Decimated by war and disease after the arrival of the Spanish conquistadores[6], gradually wiped out culturally and linguistically during colonization, the Diaguita of Chile were long considered an extinct people, who supposedly disappeared during the 16th century and who left behind only physical traces of their pre-Columbian period (Ampuero, 2011). Historically, before the arrival of the Spanish settlers, they would have occupied a territory corresponding today to Coquimbo region and part of Atacama region.

Archeologists have long asserted that the Diaguita ethnonym had been given through a "scientific decree" by the Chilean historian Ricardo Latcham (1928) to all the peoples who lived in this region of northern Chile because of their supposed similarities with the Diaguita of the Argentinean Northwest, especially with respect to language and material culture. In any case, all through the colonial era, the terms used to designate the natives of this part of the country were generic: 'Indians', *Indios*, or 'naturals', *naturales*. The latter were subject to the *encomienda* system, i.e., put at the service of a settler who has received a *título de merced* for services rendered to the Spanish crown, or forcibly regrouped in *Pueblos de Indios*. With the constitution of the Chilean Republic, the institutions of the *encomienda* and the *Pueblos de Indios* were abolished, and the *Indios* were

then considered Chilean citizens (Molina, 2014).

Since their presence was no longer documented in a specific or differentiated way, the administrative and legal traces of their existence faded away and eventually disappeared, until their resurgence at the dawn of the 21st century. Consequently, the Diaguita of Chile were, until recently, an object of research for archeology and ethnohistory, but not a subject of study for socio-anthropology, whose primary focus is on contemporary societies. The emergence, at the end of the 1990s, of a movement based on the claiming of an identity around the categories of "indigenous", "ethnic" and the "Diaguita" ethnonym, came as a great surprise to academic and political circles and proved to be a little disconcerting to them.

On August 28, 2006, a few months into her first term as President of Chile (from March 2006 to March 2010), Michelle Bachelet signed Law 20.117, which brought the Diaguita within the ambit of Law 19.253. In this way, the Diaguita joined the eight other "indigenous ethnic groups" (*etnias indígenas*) officially recognized by the Chilean state in 1993: Mapuche, Kawashkar, Yagan, Aymara, Quechua, Atacameños, Colla, and Rapa Nui.
This legal recognition of the Diaguita in 2006 was described by President Bachelet as "an act of historical justice", signifying "the putting behind of several years of assimilation and denial of the fundamental identities of our pluralist Chile", thus manifesting "the history of one of our native peoples" (Bachelet, 2006).[7] The act of recognition took place at the La Moneda Presidential Palace in Santiago de Chile during an official ceremony attended by

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[6] Diego de Almagro and Pedro de Valdivia arrived in the region in 1536 and in 1540 respectively.

[7] Original in Spanish.

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a large Diaguita delegation formally invited by the government.

The process that led to the legal recognition of the Diaguita and the group's assertion as an indigenous people was not only speedy but complex as well. It involved a number of actors with interests that were both conflicting and shared, and highlighted the necessity of analyzing emerging indigeneity and the issues it raised in a contextual, relational and systemic way by articulating the political, legal, territorial, socio-environmental and economic stakes. As such, while there were several contextual factors to be taken into account, the development of the Pascua Lama mining project in the same territorial space and temporality appeared as a significant, if not fundamental, element in understanding the nature of this process and the associated issues. Indeed, among the first opponents of the Pascua Lama project were actors who identified themselves as Diaguita and mobilized for their legal recognition and/or for the defense of their ancestral territory, threatened by the mining project. Today, nearly 15 years after the start of the project, the Diaguita are the main opponents of Barrick and, at the same time, among the privileged beneficiaries of the company's corporate social responsibility programs, which appears to be an ambiguous but unavoidable actor.

The movement of opposition to Pascua Lama

The Pascua Lama project has provoked a significant social movement of opposition consisting, on the one hand, of actors concerned about the environment, who base their arguments on the issue of water, protection of glaciers and a fragile ecosystem and, on the other hand, of actors looking at the project primarily from an indigeneity perspective, who are concerned by the social and cultural impact of the project on the Diaguita way of life and by the preservation of ancestral territory.

The movement of opposition to Pascua Lama spread nationally and internationally, especially between 2005 and 2009, and has engendered a particularly strong reaction in Canada, home to the mining company's headquarters in Toronto. The project's characteristics, combined with the size of the opposition movement and widespread media coverage through the internationalization of the struggle, have given an emblematic dimension to this conflict and contributed to the strengthening of the re-emerging indigeneity.

The fear is that, when operational, the Pascua Lama mine will lead to the deterioration of three glaciers (Esperanza, Toro I and Toro II) and to pollution and water scarcity, in an area in which water is not only already in short supply but essential to the region's agricultural, pastoral and mining activities. This verdant and fertile valley in the middle of a semi-desert environment is characterized by subsistence farming and pastoralism, small-scale commercial agriculture (small producers of lemon, avocados, mangoes, etc.), as well as by agro-industry (most notably the production of grapes for export). These activities all depend directly on the supply of water from the glaciers and high mountain lakes, which function as the region's water reservoirs.

Despite the significant level of social mobilization against Pascua Lama, this project received environmental approval by the Chilean authorities for the first time in April 2001 and, following modifications to the project, a second time in February

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2006, with the condition that the glaciers be left absolutely undamaged. Construction of the mine began in May 2009 but, due to several technical difficulties and legal obstacles, it has fallen behind schedule. In 2013, the project was stopped, when a court halted construction over environmental concern. Later that year, Barrick shelved the project citing massive cost overruns and nose-diving metal prices. In January 2018, Chile's environmental authority ordered the permanent closure of the Chilean side of the mine. Following that, Barrick announced plans for a joint venture with Chinese Shandong Gold Group in order to build an underground mining operation[8], which it says would reduce the overall environmental impact. According to the most recent information (April and May 2018), the Canadian company "suspended work on the pre-feasibility study for a potential underground project" because it did not meet "its investment criteria and will focus on adjusting the project closure plan for surface infrastructure on the Chilean side of the project, in accordance with legal requirements"[9]. In addition, Barrick announced that the company "will continue to assess opportunities to reduce project risks while maintaining Pascua-Lama as a development option in the future if the economy improves and related risks can be mitigated"[10].

The Diaguitas Huasco Altinos Agricultural Community

In Huasco Alto, the Diaguitas Huasco Altinos Agricultural Community[11] (hereinafter referred to simply as the Agricultural Community), also known locally as *Estancia*, *Estancia Los Huascoaltinos*, or simply *Los Huascoaltinos*, is the first and foremost organization to oppose the Pascua Lama project. It has done so on the basis of its indigenous ancestry and land claims since the Pascua Lama project is planned to be located on a portion of the ancestral territory claimed by this community, which holds a private property title – *título de dominio* – over a territory of about 380,000 hectares, of which 140,000 are under litigation. On this same basis, the Agricultural Community is also opposed to other mining projects (including Nueva Unión[12], a joint venture of Goldcorp and Teck companies) and agro-industrial development projects.

Led by Sergio Campusano[13] since 2004, the Agricultural Community brings together 260 families from the Transito Valley who live in a mountainous rural environment practicing subsistence farming, goat and cattle husbandry, and, since relatively recently, commercial fruit production. Even though the practice of transhumance is in decline, several families still leave during the summer and live for several months in the

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[8]See:
https://www.barrick.com/investors/news/news-details/2018/Barrick-Provides-Update-on-Pascua-Lama-Project/default.aspx (Retrieved May 11, 2018)
[9] See:
https://www.barrick.com/investors/news/news-details/2018/Barrick-Reports-First-Quarter-2018-Results/default.aspx (Retrieved May 11, 2018)
[10] Idem.

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[11] Known in Spanish as the Comunidad agrícola diaguita Los Huascoaltinos.
[12] *Nueva Unión* is a 50/50 joint venture between Teck and Goldcorp that combines their previous projects *Relincho* and *El Morro*. It is one of the largest undeveloped copper-gold-molybdenum project in the Americas.

[13] The community's president is re-elected periodically at its general meeting.

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valley's upper part, adopting a semi-nomadic way of life (Gajardo, 2009, p. 118).

Members of this community began formally identifying themselves as indigenous in August 2006, when they added 'Diaguita' to the community's name and when the state recognized the Diaguita as a distinct indigenous group in national legislation. However, the Community's territory has traditionally been inhabited by families of predominantly indigenous ancestry and its history stretches back to the early days of colonization. The organization has changed its name and status on several occasions over time. Numerous historical studies have shown that the contemporary physical boundaries specified in the title deed of the Agricultural Community correspond to those of the former *Pueblo de Indios du Guasco Alto*, a territory in which cultural practices, family names and toponymic elements of the societies which occupied this territory prior to the arrival of the Europeans have been preserved to this day (Molina et al., 2005; Pizarro et al., 2006). Furthermore, it was mainly on the basis of the study of this community that, in 2006, the Chilean state approved the amendment recognizing the Diaguita as indigenous peoples (Molina, 2013).

According to Molina and al. (2005), the region's indigenous populations were initially confined by the Spaniards to this remote valley that was difficult to access. The territory would later become a safe haven that would escape the various measures of reduction and usurpation of the indigenous lands implemented during the colonial period and later during the Chilean Republic. In 1903, the territory was registered as *Estancia Los Huascoaltinos* and, in 1997, with the Diaguita not yet having been recognized, the status of the *Estancia* was legalized as an "agricultural community", a community organization typical of this northern Chilean region, governed by a specific law (Decreto con fuerza de ley no. 5).

However, although the Community's land title was legally registered in the relevant land registries by the Chilean state and even though, at the individual level, the majority of *Estancia* members had a family name of indigenous ancestry and were recognized as such by CONADI, the status of "indigenous community" within the meaning of Law 19.253 was denied to this community in 2006 because it was already registered as an "agricultural community". It should be noted that, for this community, the family name is not considered a determining criterion of inclusion in or exclusion from the group, in contrast to the criteria defined by the indigenous law. In a similar way, while the organization is not legally recognized as indigenous, community leaders say that they "do not need the law to be defined as indigenous, because in their own eyes they are indeed indigenous" (Gajardo, 2009, p. 118).

What is important for them is to be the title-holders of a *derecho de estancia*[14] and, above all, to live in and protect the community territory, to share its destiny and a way of life associated with the ecosystem of which they believe they are "the guardians". They challenge the use of the term "ethnicity", used by the state in 2006 as part of the legal recognition process, and prefer instead to use the terms

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[14] This term refers to the right to occupy a portion of the common territory of the Agricultural Community. Among the Huascoaltinos, this right is transmitted from generation to generation and is registered in the name of the head of a family. A member of the community wishing to sell his *derecho de estancia* can do so only with the approval of the entire Community.

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"people" and "community" to identify themselves. One of the main characteristics of this organization is that it adopted, very early on in the history of the conflict with Barrick, a strategy of opposition to the project based on its indigeneity, judicialization and the internationalization of the struggle, as well as the patrimonialization of its territory. Therefore, while indigeneity is considered an element that reinforces the social cohesion of the group and a part of its history, it represents, above all, the possibility of mobilizing internationally recognized legal instruments to oppose the Pascua Lama project and affirm their right to self-determination, beyond the recognition accorded by the Chilean state. By choosing the legal path and emphasizing indigeneity, this community has quickly distinguished itself from the strategies adopted by other regional organizations that are also opposed to the Pascua Lama project, strategies that are based on environmental protection and the mobilization of citizens at the social level.

In 2007, the Agricultural Community filed a complaint with the Inter-American Commission of Human Rights (IACHR) against the Chilean state for having approved the Pascua Lama project on its ancestral territory without following the principle of free, prior and informed consent (FPIC). In 2009, IACHR declared the complaint to be admissible. Even though the case is still ongoing, the process of judicialization and internationalization of the struggle has already contributed in a significant way to the strengthening of the community and of legitimizing its indigeneity.

However, in its fight against the Pascua Lama project, the Agricultural Community is also being confronted by another adversary, all the more difficult to pin down since it brandishes the same weapon and adorns the same "armor": indigeneity. Indeed, since the legal recognition of the ethnic group in 2006 and by virtue of Law 19.253, new Diaguita communities have been formed in the Huasco Alto area. These new communities, created by the state and supported by Barrick in their efforts of cultural revitalization, have a contentious relationship with the Agricultural Community, with which they do not share the same interests.

Between support and marginalization

> The company offered a training course [curso de capacitación]. This was part of its corporate social responsibility, but attendance lists and photos were distributed. Later, these same lists and photos were used [in company publications and in the local press] as evidence of a process of consultation with the indigenous population (Excerpt from an anonymized interview with a CONADI collaborator, March 2014).[15]

Increasingly coming under criticism for environmental damage, violations of human rights and of the rights of indigenous peoples (Anaya, 2013; Yañez and Molina, 2009), many multinational mining companies now implement sustainable and social development programs designed to help the communities affected by their projects, in support or as replacement of existing or non-existing state structures.

In Huasco Alto, Barrick has invested significant resources in implementing social and sustainable development programs with the aim of establishing a relationship of trust and partnership with local communities and

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[15] Original in Spanish.

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ensuring their support (Barrick, 2012). One of the significant characteristics of the social responsibility activities undertaken by this multinational in the region is that several of these activities have been implemented within the framework of Public Private Partnerships (PPP), in close collaboration with public authorities. Barrick has thus financed several infrastructures and local developments projects traditionally devolved to the state.[16]

Since the mid-2000s, Barrick has oriented a significant portion of its social and community development activities towards a specific category of the Huasco Alto population: the Diaguita, which it has made true symbols of its social responsibility policy. For this reason, the Diaguita, and in particular indigenous women, figure prominently in several of the company's publications and on its web pages. In the "human rights" section of its 2008 Annual Report, Barrick noted that one of its "biggest and most rewarding commitments"[17] was with the Diaguita ethnic group in the Huasco valley, with whom its "community relations team worked unceasingly to foster constructive and mutually beneficial relationships, which represent opportunities for the social, educational, and economic advancement of this indigenous people" [18] (Barrick, 2009, p. 78).

Building a culturalized and depoliticized Diaguita

In a first phase (between 2004 and 2010), Barrick maintained and developed a special relationship with one type of Diaguita organization in particular: Diaguita Cultural Centers, *Centros culturales Diaguitas*. Composed of members of the region whose main shared feature is an indigenous family name, these Cultural Centers received the support of CONADI as soon as they were created, in the early 2000s, in the context of their efforts to obtain legal recognition. After the inclusion of the Diaguita in the indigenous law in 2006, these Centers were considered the legitimate representatives of the ethnic group by the state, in preference to the Agricultural Community, with which these centers have a contentious relationship.[19] In contrast to the Agricultural Community, the Cultural Centers did not make any territorial claims and adopted the state's terminology of identifying themselves (*etnia Diaguita*). It is because of this that, in an article published in 2009, I referred to this group as "Diaguita without territory". The discourse of this group focused in general on the difficult living conditions in economic terms (access to education and health care, etc.) and was strongly tinged with nostalgia for an idealized past, including for its associated traditions. In this sense, for this group, the issue of indigeneity was the ability both to restore an identity that had been denied, neglected and destroyed over the course of history and to benefit from the affirmative action measures provided for by law in favor of recognized

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[16] Construction of roads and public infrastructure, scholarships, social assistance funds, funding of vocational training and setting up of businesses, funding of educational and medical infrastructure, programs to combat poverty, etc.

[17] Original in Spanish.

[18] Idem.

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[19] It must be noted that several members of the Agricultural Community are nevertheless affiliated to a Cultural Center.

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indigenous peoples (Gajardo, 2009, p. 118).

Along with state support, these Cultural Centers also received the support of Barrick for their activity of "rescuing" (*rescate*) their culture and of (re)inventing traditions, by relying on the work of experts (historians, anthropologists, archaeologists, etc.), on oral memory, and on the iconographic and media worldview of the prehispanic Andean world and on the figure of the "Indian" in its entirety.

In practical terms, Barrick has set up and funded workshops for weaving, ceramics, medicinal plants and indigenous cooking, as well as intercultural and bilingual education projects in some of the schools in the valley. Often organized in partnership with the local municipality within the framework of the PPP established by Barrick, these activities have an objective of helping the Diaguita "re-learn their culture", in the words of an anthropologist I interviewed in the field.

In the small village of Juntas de Valeriano, where Barrick has a substantial presence, the company has built a weaving workshop. The goal is to help indigenous women develop micro-entrepreneurship projects by producing items for sale to tourists and, at the same time and with Barrick's support, to contribute to the revitalization and preservation of their culture. Among many other activities, the company has also made available special funds to encourage indigenous micro-entrepreneurship, funded scholarships (managed by the state) and established a technical advisory and financial assistance service to help indigenous people navigate the process for obtaining CONADI's indigenous certificate, *Certificado de calidad de indígena*, and the social benefits associated with it. In 2007, Barrick published a book on the ethnic group,

presenting the group's main historical and cultural characteristics and the recent process of its recognition by the state. Written by an anthropologist employed by the company (Barrick, 2007), this book was distributed to schools and libraries in the Atacama Region as the reference book on Diaguita ethnic group through an agreement reached in 2008 between the company, the Ministry of Education and the Cultural Centers.

Barrick's support for the cultural revitalization of the Diaguita may, at first sight, seem useful or relevant or, at worst, harmless in its social and cultural dimensions. However, it is hard not to wonder about the political scope of these programs, developed in partnership with the state, in an environment of conflict against the company and of tensions between different organizations laying claim to the same indigeneity, in a country in which the territorial issue is the primary cause of discord between indigenous peoples, the state and extractive enterprises.

This policy is characterized by relatively clear support for indigenous peoples who do not make territorial claims, such as the Cultural Centers, which have thus received recognition and support from the state and Barrick for the implementation of cultural recovery programs. As long as the "Indians" stick to weaving, culinary specialties, singing and dancing to traditional music, etc., they follow the "politically correct" program of the state of promoting cultural diversity. If, on the other hand, they claim self-determination and territory, they become undesirable "savages" (Gajardo, 2009, p. 120). Barrick's active support for this type of program can thus be seen in a new light: to contribute to the construction of a culturalized, folklorized and

depoliticized indigeneity that is disembodied from its territorial anchorage. In other words, a passive, conflict-avoiding and accommodating identity that does not represent a potential threat to the development of the mining project.

Toward an indigeneity compatible with the mining company's interests

> Indigenous communities are springing up like flowers around mining projects[20] (anonymized interview of a CONADI official, March 2014)

In a second phase (2010 to 2016), the company began interacting with the new Diaguita indigenous communities, which were formed gradually under the indigenous law and succeeded the Cultural Centers as groups legitimized by the state. The first Diaguita indigenous community of Huasco Alto was created in April 2007. In March 2014, there were 17 indigenous communities, corresponding to localities or specific places.[21] With each community's members electing their own local leader, the communities formed, in 2010, the Diaguita Communal Council (for the Huasco Alto region) and the Diaguita Regional Council (for the entire Atacama region). Until 2016, the elected president of both these bodies was Solange Bordones, with a public title of "cacique" of the Diaguita people (*pueblo Diaguita*). This latter term represents a marked difference from that of "ethnic group", used earlier by the Cultural Centers, and

this change placed them in a situation in which they were competing with the Agricultural Community.

It is important to note that in Chile, the term 'indigenous community' designates an organizational form specific to the indigenous law. It is a legal entity and has a structure based on the bureaucratic organization and logic of the state.[22] These characteristics also apply to all indigenous peoples in the country, and can be used, *inter alia*, to access a range of socio-economic benefits and projects allocated by the state and other parastatal agencies. In Huasco Alto, the creation of these new "legal" communities, i.e., legally recognized by the state, is therefore a response to a pragmatic necessity for the Diaguita to meet the criteria of definition of indigeneity fixed by CONADI, since these entities do not correspond in any way to a form of organization that is part of a historical continuity.

Barrick's relationships with these new indigenous communities are more ambiguous and complex. On the one hand, they are inseparable from the context of the bad press the company has received. Mired in a series of legal and technical challenges, faced with a complaint lodged with the IACHR, accused of causing irreparable damage to the glaciers and of being the cause of the drying up of rivers, faced with an increase in project cost, suspected of buying the support of politicians and a part of the local population with "gifts" and by funding local projects, the company is also well behind schedule in the construction of the mine, thus also disappointing the expectations of certain economic circles.

On the other hand, the indigenous issue has evolved nationally and internationally, and this has had

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[20] Original in Spanish.
[21] In 2017, the number of indigenous communities created under Law 19.256 increased further. In addition, many communities have been created outside Huasco Alto, in various regions historically occupied by the Diaguita.

[22] Article 9 of Law 19.253.

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local ramifications. In 2007, the UN Declaration on the Rights of Indigenous Peoples was adopted and Chile ratified the ILO Convention no. 169 in the subsequent year. In April 2009, the Special Rapporteur on the rights of indigenous peoples, S. James Anaya, visited Chile and his report included a chapter that was especially critical of the corporate exploitation of natural resources. In 2013, he published a special report on the issue of indigenous peoples and the extractive industry around the world. In such a context, communities are gradually acquiring greater experience and expertise in indigeneity, its language and issues. They are thus progressively able to integrate discursive elements and strategies derived from national and international indigenous law into their discourses.

Finally, at the local level, individual requests to CONADI to be recognized as Diaguita exploded. This is leading to an increase in the number of new indigenous communities in the region and of "community leaders".

On the whole, this second phase is characterized by the emergence of territorial claims by these new indigenous communities, a judicialization of their relations with Barrick, and the emergence of a new lexical register for self-identification, more in line with the international language of indigeneity: "people" (*pueblo*), "indigenous" (*indígena*) and "community" (*comunidad*), instead of the term "ethnicity" (*etnia*) used earlier by the Cultural Centers. In addition, the geographical origin is often appended as a qualifier to the ethnonym: "of Huasco Alto" (*del Huasco Alto*).

These elements are interesting to note because they attest to the influence of the language of transnational indigeneity on the construction of local identity. More importantly, they have

the effect of creating a situation that makes many external observers[23] confuse the new communities created by the state with the Agricultural Community, even though they are organizations opposed to each other that follow strategies that are different or even completely divergent. This confusion has enhanced the legitimacy and visibility of the new communities to the detriment of the Agricultural Community. However, even though the new communities are legally recognized, they suffer from a "credibility gap" due to the absence in their discourses of territorial claims and because of their alleged association with the state and the mining company.

In any case, in this second phase, the legal communities and Barrick entered into a process of dialogue and negotiation in which the state gradually gave place to lawyers and/or anthropologists employed by the company and/or indigenous organizations, who have to fulfill sometimes contradictory requirements: safeguarding the interests of both parties. It was in this context that in 2013, twelve of these new indigenous communities (as well as three associations[24]) hired lawyers to file petitions on their behalf against the Pascua Lama project on the grounds that the project poses a significant risk of pollution of the region's rivers.

Against all expectations, in April 2013, the Copiapo Court of Appeal ordered the temporary and immediate suspension of the project. This decision, ratified by the Supreme Court in July of

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[23] Especially the media that regularly report the struggle against the Pascua Lama project.

[24] According to indigenous law, indigenous associations, *asociaciones indígenas*, designate the voluntary grouping of at least 25 indigenous persons around a common interest, generally linked to the development of cultural and/or educational, economic or professional activities (Article 36, Law 19.253).

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the same year, states that Barrick will only be able to resume construction of the mine once it has made the necessary technical changes. It also recommends that Barrick implement a process of consultation with the legally recognized indigenous communities. At about same time, in May 2013, the Chilean environmental authorities fined Barrick 16 million dollars after finding irreversible damage to the surface of the glaciers due to dust emissions from the site of the mine.

Covered extensively by the national and international press and described by many media commentators as a "historic victory of an indigenous people over a mining giant", these events had the effect of raising the profiles dramatically of these newly formed indigenous communities and their lawyers.

As a consequence of these events, Barrick and the indigenous communities entered into an informal process of negotiation, which culminated in May 2014 with the signing of a Memorandum of Understanding (*Acuerdo de entendimiento*), valid for a period of six months. In this document, the company acknowledged its mistakes and expressed its willingness to "initiate a dialogue in good faith with the communities and the persons who make up the Diaguita people" (Compañia minera Nevada Spa-Barrick and all, 2014). Through this MoU, the company agreed to provide the signatory communities with technical and environmental information on the Pascua Lama project (as well as the necessary financial or material resources), with the aim of reaching an agreement in a second stage to continue the mining project and, at same time, to guarantee the interests and rights of indigenous communities, for example by instituting payments of indigenous

royalties (*royalties indígenas*) (Ortiz, 2013).

This MoU was described by some media commentators as an unprecedented agreement since it was in conformity with ILO Convention no. 169 and one that could pave the way for a new era in relations between indigenous peoples and mining companies. It also gave Barrick the opportunity not only to create favorable conditions for the continuation of its project and to position itself internationally as a company implementing an especially responsible and innovative policy, but also to contribute to the construction and legitimation of a non-confrontational and willing-to-negotiate indigeneity: "These are reasonable groups; they do not want to make noise or create a scandal," [25] according to Lorenzo Soto, the lawyer for these new communities (quoted by Ortiz, 2013).

In this sense, this MoU can also be seen as the result of Barrick's strategy to improve its tarnished public image and, at the same time, to weaken or marginalize the Agricultural Community, the main indigenous organization opposed to the Pascua Lama project. Indeed, through this MoU, the new indigenous communities claimed an ancestral territory for the first time: that of the Agricultural Community, which they denounced as "usurpers" and which they are considering suing.[26] The new territorial claims put forward by these communities are not only in line with the legal framework defined by the state, but also favor the company's interests and undermine the Agricultural Community's legitimacy. This new configuration, a direct consequence of

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[25] Original in Spanish.
[26] Interview with Solange Bordones conducted in March 2014.

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the indigenous policies implemented by the Chilean state since the return to democracy, is causing an internal division which weakens the struggle against mining projects and which is leading to a conflict between indigenous organizations. While, initially, the conflict against Barrick paradoxically strengthened the identity of the Agricultural Community, the emergence of the new legal communities is destabilizing it and goes to the heart of its very reason to exist: its territory. In the end, ethnicity seems to be a versatile but double-edged tool: on the one hand, it appears to be the best legal tool for the defense of indigenous territories when confronted by extractive projects and, on the other, it can also be used by companies to improve their public image and help shape an indigeneity that is compatible with their interests.

Conclusion

Like elsewhere in Latin America, the analysis of the process of re-emergence of the Diaguita of Chile in the context of the conflict against the Pascua Lama project reveals the inherent logic of neoliberal multiculturalism (Boccara, 2010, 2011; Boccara and Ayala, 2012; Hale, 2006) or ethnocapitalism (Comaroff and Comaroff, 2009) that has prevailed in this country since the end of the dictatorship, irrespective of the political hues of the country's successive governments.

In such a context, the challenge and the role of the state and private enterprises are to contribute simultaneously and jointly to the construction and legitimation of an indigeneity which not only does not hamper extractive projects in the territories claimed by indigenous peoples, but also turns them into participants of these projects and active entrepreneurs of their own culture, territory and identity, to be treated thenceforth as negotiable capital and resources (Babadzan, 2013; Comaroff and Comaroff, 2009).

In the case of Huasco Alto, the indigenous peoples – in this case, the Diaguita Cultural Centers, and subsequently the new communities created by the state – become veritable "living showcases" of the state's multiculturalist policies, in accordance with the new international rhetoric of recognition of cultural diversity. For its part, through its social responsibility activities, the mining company sees its image, and therefore its field of action, enhanced. On the other hand, in accordance with a "win-win" and "empowerment" rationale, actors claiming to belong to an indigenous group who become willing participants in the game of neoliberal multiculturalism are rewarded with the legitimation of their identity (Boccara, 2010) and a set of social and/or economic benefits that enable them to become competitive players in the identity market. Identities then become resources that can be mobilized in the conquest of political power and economic benefits (Poutignat and Streiff-Fenart, 1995).

In this sense, the members of the Cultural Centers and of the new indigenous communities embody the figure of the "*indio permitido*", described by the anthropologists Charles Hale and Rosamel Millaman (Hale, 2004) as the indigenous subject who, as long as he does not contradict the dominant policies, benefits from the legal recognition and the support of the structures of the state and its agents. In contrast, indigenous actors who do not conform to this model are delegitimized, discredited or, more radically, declared illegal (Boccara,

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2010, p. 12), as is the case, to some extent, of the Diaguitas Huasco Altinos Agricultural Community.

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THE ROLE OF NON STATE ACTORS IN ENSURING INDIGENOUS RIGHT TO EDUCATION IN AN ERA OF NEO LIBERALISM: AN EXPERIENTIAL ACCOUNT FROM INDIA

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ABSTRACT

Neo liberalism under globalisation makes an all-around attack against state intervention and promotes privatisation. Contrary to it, rising consciousness for inclusion and protection of human rights demands ensuring opportunities to all by increasing access, equality and quality. Education is a basic human right. But inclusive education in India is still a myth. Odisha , a constituent state of Indian federalism and housing 62 tribes has witnessed its limitations in universalising education at a micro level, particularly in the interior physically delinked tribal areas. Under such a situation, the non-state actors have come forward to substitute and to supplement the state action. The present paper by adopting an exploratory design and resorting to qualitative method has tried to document the empirical experiences gained from the field on the effective innovations launched by a CSO. The objective of the paper is to indicate the efficacy of non-state actors through CSO induced innovations experimented in the sample schools under empirical study, its adaptation by the local milieu and impact on the indigenous right to education. The paper concludes that the non-state actors have come up in a great way to fill up the vacuum created by the withdrawal of state and are going to play a significant role in the governance of the flagship programmes and giving a fillip to the constitutional mandates.

Keywords: neo liberalism; intervention; privatisation;

RESUMO

O neoliberalismo no contexto da globalização ataca de todas as formas a intervenção estatal e a privatização. Contrário a isso, o aumento da consciência para a inclusão e proteção dos direitos humanos demanda o asseguramento de oportunidades a todos, aumentando o acesso, a equidade e a qualidade. Educação é um direito humano básico. Mas a educação inclusiva na Índia ainda é um mito. Odisha, um estado constituinte do Federalismo Indiano que abriga 62 tribos testemunhou sua limitação em universalizar a educação a um nível micro, particularmente no interior de áreas fisicamente desvinculadas tribais. Abaixo de tamanha situação, os atores do não-estado vieram adiante a substituir e suplementar a ação do Estado. O artigo apresentado, por adotar um design exploratório e recorrer ao método qualitativo, tentou documentar as experiências empíricas obtidas no campo nas inovações efetivas lançadas por um CSO. O objetivo desse artigo é indicar a eficácia de atores não-estatais por inovações induzidas experimentadas nas escolas sob estudo empírico, sua adaptação pelo meio local e seu impacto no direito à educação dos indígenas. O artigo conclui que atores não-estatais vieram com uma ótima maneira de preencher o vácuo criado pela retirada do estado e irão representar papéis significativos na governança de programas principais e darão um impulso aos mandatos constitucionais.

Palavras-chave: neoliberalismo; intervenção; privatização; direitos humanos; educação;

RESUMEN

El neoliberalismo en el contexto de la globalización ataca de todas las formas la intervención estatal y la privatización. Contrariamente a esto, el aumento de la conciencia para la inclusión y protección de los derechos humanos, demanda garantizar oportunidades para todos, incrementando el acesso, la equidade y la calidad. La Educación es un derecho humano básico, pero la educación inclusiva en la India sigue siendo un mito. Odisha, un estado constituyente del Federalismo Indio que alberga a 62 tribus, dio cuenta su limitación en universalizar la educación a un nivel micro, particularmente en el interior de áreas tribales físicamente desvinculadas. Por detrás de esa situación, los actores no estatales incursionaron para sustituir y suplementar la acción del Estado. El artículo presentado, por adoptar un diseño exploratório y recurrir al método cualitativo, pretende documentar las experiencias empíricas obtenidas en el campo en las innovaciones efectivas lanzadas por un CSO. El objetivo de este artículo es analizar la eficacia de los actores no-estatales a través de inovaciones inducidas por las CSO, experimentadas en las escuelas bajo estudio empírico, su adaptación al medio local y su impacto en el derecho a la educación de los indígenas. El artículo concluye que actores no estatales arribaron con el objetivo de llenar el vacío creado por la retirada del Estado y jugarán papeles significativos en la gobernanza de programas principales y darán un impulso a los mandatos constitucionales.

Palabras clave: neoliberalismo; intervención; privatización; derechos humanos; educación

INTRODUÇÃO

Globalisation has become a phenomenal syndrome since the end of the twentieth century. Neo liberalism is a powerful political and economic dogma under globalisation. As an ideology it promotes forceful defence of private property, competitive markets and 'individual freedom', in addition to an all-around attack against state

intervention (Harvey, 2005). The world is facing contradictions in the years following globalisation. On the one hand, the rise of neoliberal philosophy is making the state a receding player in the process of development and welfare. On the other hand, the rising consciousness for inclusion and protection of human rights has made the global commitment to ensure opportunities to all by increasing access, equality and quality. This paradox has

led to the upsurge of civil society organisations as organized non-profit organisations in countries of Asia, Africa and Latin America (Salamon and Anheier, 1997) which rank low in human development indicators. These CSOs have come both as supplements to and substitutes for state led development interventions. The present paper is a reflection on the role of non-state actor in ensuring right to education accorded by the state. The case is an account from India.

The Prologue

The transformative role of education remains unchallengeable and unquestionable. To Sen (2011) education is a basic right that every human being should have, to reduce the insecurities of life and to increase their capabilities to have a better quality of life with freedom of choice. Keeping the huge dividend education yields for enriching the human resource and economic progress, it gets priority in all national agendas. India is no exception to it.

India is a signatory to all the landmark international conventions on education which includes the Universal Declaration of Human Rights (1948), The World Conference on Education for All (Jomtein,1990),the Dakar Framework for Action, EFA(2000),the MDG(Millennium Development Goal) 2000 and the SDG,2015. India has made provisions in the Constitution, legislated ambitious policies and designed flagship programmes to spearhead education with a goal to achieve quality with equity in education and to universalise primary education. The Right of Children to Free and Compulsory Education Act 2009(popularly called Right to Education Act or RTE Act) was legislated in August 2009, which came into effect on April 1, 2010 is a watershed in the efforts at universalising elementary education in the country. The flagship programmes like the District Primary Education Programme (DPEP) and the *Sarva Sikshya Abhijan* have made concerted provisions to remove the existing barriers to make education reach each child within the age group of six to fourteen.

Irrespective of the policy intents and implementations, universalisation of elementary education (UEE) in its totality is still an elusive goal in India. Still there are left outs of the system of

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primary education. Educational marginalisation is a well recognised phenomenon among the indigenous population. The Scheduled Areas and Scheduled Tribes Commission constituted by the Government of India in their report of 1960, referred to the tribes as indigenous. Education is a basic human right and so also a fundamental right of the indigenous population. But, standardised curriculum, language barrier, delinked content and culture, teacher apathy along with illiteracy, poverty keeps the tribal children in India in the neglected zone of education. This prevents the indigenous children's right to education.

The state has witnessed its limitations in universalising education at a micro level, particularly in the interior physically delinked tribal areas. Macro policies have little micro impact. The studies of (Jaiswal, 2011, Idler, 2015, Bhamra et.al.2015) substantiate the role of non-state actors in complementary governance. According to Jaiswal the growing disillusionment and the resultant discontent among the masses have brought the non-state actors to the forefront of development in the developing countries like India. To Idler, non-state actors have greater acceptance at the grass root. People

accept their authority without any challenge. So, they have come as viable substitutes and sometimes vibrant supplements for the weak states. Gradually, they are becoming competitors with state in the control of power and in the exercise of authority. To Bhamra et.al., non-state actors are non-sovereign entities that exercise significant economic, political and social roles in development at sub-national, national, and in some cases international levels without any direct, obligatory directions from a state. The need for micro intervention is fully realised by the policy planners since the last few decades. For the micro interventions the non-state actors are identified as the best facilitators. The non-state actors supersede the state actors in terms of their popularity among the people. As they work at the grass root level, they use persuasion in the place of coercion, have empathy towards the local milieu, adopt a door step campaign approach, use people specific and community specific strategies, have a flexi approach in their implementation principles, respect the voice and the versions of the people and give a heavy weightage to the felt needs of the people and gear efforts to make the programmes people centric in

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character, they become more acceptable by the people. This acceptance is followed by people's cooperation and they are today accepted for their marked success in driving development in the tribal areas.

The history of tribal development programmes in India records the failure of the Government to achieve cent percent success in implementing the mega education programmes in tribal areas. This has led the government to invite non-state actors to take over the responsibility. To cite some examples the Government's initiative to strengthen girls' education in the low literacy districts particularly in naxal affected areas and in areas inhabited by Primitive Tribal Groups (PTGs) is an ambitious programme with minimal success rate. In the entire country, 54 identified districts in 12 States and 1 Union Territory where the ST population is 25% or more, and ST female literacy rate is below 35%have been earmarked. The programme is now shifted to the responsibilities of the local NGOs who have a greater access to the households and better motivating capacity and trust among the people. Another scheme for coaching the tribal children for various competitive examinations have also been given to

some of the NGOs proactive in arranging educational support services for this marginalised group to have a marked success. The vocational training programme for tribals was introduced in 1992-93 which could not make much head way under the state has now been pushed into the court of the non-state actors in the tribal areas to reach the target group in a desired manner. The Government of India has launched a scheme to provide grant- in -aid to the voluntary agencies to ensure the overall development of the tribes by designing and driving social sector development. All these efforts have given an ascendancy to the non-state actors to occupy a prominent place in the development of the tribes in the country. **Added to the field reality,** under the sway of neo liberalism and increasing privatisation, the state resources in terms of capital and manpower are limited. Hence, the responsibility has been taken up by non-state actors. The non-state actor highlighted in the present paper is a Nongovernmental organisation operating at the grass level.

Paper background: The present paper is the outcome of a research study conducted by the presenters in a tribal

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dominated panchayat of Mayurbhanj district of the state of Odisha, a province with a sizable number of indigenous populations (22.85%) in India. Further tribals constitute 56.6 per cent of total population of the district of Mayurbhanj and the district houses 53 tribes out of 62 tribal groups of Odisha. The major tribes living in Mayurbhanj include the Santals, Kolha, Bhuyan, Bathudi Bhuyan, and Gond. The district is declared as the fully scheduled district of the State.

Profile of the locale of our Study: The study was concentrated in the Kaptipada block of the district. Kaptipada Block is a tribal dominated block of the district.

The block has the second highest rate of Scheduled Tribes (85.57%) in the district. The share of households living below (national) Poverty Line

(BPL) is of 72.63 % which is again a startling figure justifying the study.

Searchlight of the Paper: The paper puts the searchlight on the following points:

➢ To study the repercussions of the school enrichment programmes geared by Sikshasandhan, a lead non-state actor committed to the cause of universalising elementary education by enhancing access, equity and quality among the tribal children.

➢ To identify the effectiveness of specific innovations in education that can be adopted in the long run to increase school friendly approach among the tribal children among whom educational apathy is a long persisting syndrome.

Research Focus: Keeping the aforesaid objectives, the present paper concentrates on projecting the class room and school enriching programme taken up and the innovations introduced by the CSO in this remote tribal panchayat and the subsequent response of the children to them.

Research Design: The study opted has adopted an exploratory design to conduct the field study. Exploratory

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design is applied to assess the nature of classrooms, materials prepared and used and the class room organisations and transactions, to take note of the progress of the students in the post intervention introduced period in terms of their interest generated, learning outcome, attendance position, involvement degree and capacity building.

Research Methods Used and Research Tools Applied

There is a heavy reliance on primary method to take a field view of the situation. For collecting primary information, the research team decided to adopt qualitative method to mine out in depth information and observation of the situation. School visits, participant observations of the class room organisation, class room transactions, delivery system, and teacher taught interaction and interrelationship, interaction with teachers have been undertaken.

Research Results:

Sikshasandhan launched a two pronged venture in Noto panchayat. They are one at community level and the other at school level to bring

transformations in the elementary educational scenario of the panchayat and to make education tribal children friendly. By this it has increased tribal children's access, equity to elementary education adding quality to it. This is a great leap towards ensuring rights to the indigenous children.

Children within primary school age group in this tribal block who are the first generation learners are the main target group of the project intervention. So, care has been taken by Sikshasandhan to make learning child centric, properly communicative, contextualised, interactive and interesting to ensure continuity in education by the child. In this regard, care was taken to design the content carefully, deliver it contextually, to use local language as a medium of instruction to avoid any traumatic school experience and fascinate the child to school.

The baseline survey conducted before the launching of the project by Sikshasandhan in 2011 pointed out that 28% children in 6-14 age group were never enrolled in Noto and out of the enrolled girl's share was only33%.Never enrolled, out of school and drop out children were tracked and their needs were identified. They were

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brought into the fold of primary schooling by enrolment and their regular attendance was ensured.

Unattractive school ambiance, standardised curriculum (Haseena and Mohammed, 2014), language barriers (Sridhar 1996), non vocationalisation, lack of contextualisation (Seshadri, 1993), the missing link between education and local culture are some of the powerful factors that have proved disastrous to bring tribal children to schools.

Cultural transition from home to school dismays the tribal children. To avoid the lost feeling of a tribal child in the school environment, the NGO has tried to replicate the tribal environment in the school premises. It has taken care to align and not to alienate the tribal child through the creation of such ambiance within the school premises by creating a theme based garden in all the project intervention schools. The gardens are found to be projecting various value based practices of life like respecting parents, together to school, helping the blind, encouraging the practice of yoga in everyday life. The tribal flora and fauna is recreated in the premises of the schools with zoos having figures of birds and animals. Through this, the children are made

acquainted with the animals and gather impression about their living style and their habitation. A picture taken is projected here to have an impression of the innovation done by the non-state actor to drift the tribal child to the school itself. It has tried to substitute the cage and concrete culture of the school with a green culture and through that providing educational content and emotional contentment to the children.

Another field observation relates to renovated class rooms in the project schools. Class rooms have been renovated in terms of arrangements not only to make them attractive for the tribal child, but also to make them novel, image building and memory stimulating for the child.

In traditional government schools attendance positions on record

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are maintained and the child responds to the teachers call by saying "Yes Sir" and "Yes Madam". But a deviation was noted from this stereotype in the project schools. The CSO has built up attendance display boards in each class rooms where each student claim by himself/herself by writing "I have come" written in Oriya language as "Moon Asichi". This provides a distinct feeling to the child. Further, on the left side the day wise attendance and on the right side, the month wise attendance position for each child is projected. They are religiously maintained. All these are done to generate an attraction for the child to imitate his friend who is quite regular in the class. Role model building is promoted for developing the desire and practice of regular attendance in the class room. A photograph from a model school from Bisoi is attached here.

focused attention on the meaning of quality and laid out a framework for conceptualising quality that had at its centre on teaching and learning (UNESCO, 2005:36). Taking the spirit of the document the non-state actor under study is found to have introduced innovations and departure from the traditional mode of teaching to ensure quality learning output among tribal children. Teaching through demonstration to have better learning output and to have a visual impact on the child has been introduced in the schools. The CSO adopted schools have taken care to preserve the required the teaching learning materials in every class room, so that the teacher can make an easy access to them and utilisation of these materials become off and on. This stimulates the child's interest in the teaching content.

The 2005 Global Monitoring Report, titled The Quality Imperative,

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Learning process that brings together cognitive, emotional and environmental influences and experiences for acquiring, enhancing or making changes to one's knowledge, skills and world view is designated as real learning (Hariharan, 2011). Books and lecture cannot envisage this. So, it is marked that the Non-state actor has successfully avoided the mechanical use of books, lecturing styles in the classrooms to remove the book phobia of the child. Odia letters are posted on the walls of the classroom, so that the attention both conscious and unconscious can be focussed on them. They can spontaneously create a mental image in the child. No reference to book which is thought to be tedious is being made. Demonstrative education with picturisiation and image building in the child's memory is resorted to. Countings are taught not through mechanical manner or rote memorisation, but through the use of symbols and bids and sticks. The glance of this can be obtained from the photo below.

The system of school and higher education in India has not responded to the prospects and challenges of its multilingual ethos (Mohanty 2008). Tribals in every corner of the country have a native language of their own, totally different from the mainstream language. Language has been located as a major reason for the increased dropout rates and higher rate of detention in tribal areas(Talukdar ,2013, Shukla 1994)ʾ As the children speak a different form of language and the teachers speaks another form, it becomes very difficult for the child to understand what is taught in the class and what the teachers really expects of them. This finally becomes a strong reason for their drop out. To address such challenges, the CSO has ensured that chart papers in Ho language are hanged on the walls of the project school class rooms to provide a referral impression to the

child. This is done to create an inter link between the state language and the local language that will make language transition in the child smoother. For the words, the Ho words are written with Odia correlates.

Tapping creativity is at the very core of quality education. Creativity of the child is accommodated on the walls of the class rooms. Drawings and paintings done by the children are also placed on the walls of the class room to provide a sense of recognition to the child's potentiality and create a role model formation in other children to exhibit their inner potentialities. The child is allowed to take pride in his/her own creation. This adds to the dignity of the child.

It was strongly felt during the school surveys that the non-state actor has tried to preserve the tribal culture of the locality by bringing the folk stories, local heroes and leaders into the class room by putting them on chart papers and pasting them on the walls to keep

them alive in the memory of the tribal child. Contextualisation of education by relating it to the locally available products and processes has also been attempted by the organisation. This is done to give reference to the context and allow the child to use them while he is called for reproducing the story and to enable the child to recapitulate the story by self in his/her free time. The picture of the chart paper represents the earnest effort made by the organisation through planners and teachers to contextualise tribal education and enhance the learning output.This has enabled the nonstate actor to ensure the indigenous right to culture.

To make mathematical calculations easy and to break the icy fear for calculation, the organisation has envisaged that every classroom to be accomplished with a board containing different Mathematical signs like (+,-,%,<,>,/=,)This is done to enhance the acquaintance the child with signs.

To stimulate the reading habit and craziness for books and knowledge gain in the child, each class room is enriched with a small library which is totally unimaginable in a tribal locality and a remote possibility in a government run school. The library contains autobiographies of tribal leaders, short story books, books containing children's songs, cartoons books. Different models made by mud by the students also adorn the class room depicting the creative ability of the children. Student assessment profiles are placed on the tables of the teachers where regular monitoring of the progress of a child is recorded.

Thus, under Sikshasandhan's initiative for innovative education, the school premises are redesigned suiting to the mental imagination of the tribal children and have become a point of attraction for them. The class rooms have their own uniqueness and remain different from traditional class rooms. They are designed to ease the teachers, ease the students, to provide a different classroom ambiance, to recognise the creativity of the child and at the same time to make continuous evaluation of the child to overcome the lacunae if any.

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Class room innovations and renovations have contributed significantly to change the attitude of the children towards schools. They have become attracted towards the class room; their creativity becomes the treasure of the classroom. They are found to be proactive within the premises of the class and enjoy their right to education, development and participation.

The sitting arrangements:

Class room arrangements in the project schools of Noto cuts across the usual gender based sitting and the line arrangements in sitting of the children in the class rooms. The students are trained to sit in a circular manner. The teacher locates himself/ herself in the middle. This is done to reduce the distance between the students themselves and the teacher and the taught. In some classes, students form their own groups and sit. The teacher is flexible to move from one group to the other and monitor the activities of the group. Group activities are given precedence over individual activities. A cooperative class room is generated. This connects the class room practice to the tribal culture. This observation was noted during the class visits. The snaps

below provide an impression of the group learning class environment.

It is noted that this sitting arrangement creates an informal in-group and primary group situation where the child feels spontaneous to interact. The teacher becomes an equal, but not a superior to the children. The informality is interest stimulating among tribal children for whom discipline, rigorous system of sitting for hours have no result , but brings resentment. This allows them to move and relax and they enjoy this type of group sitting and learning becomes

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easily acceptable. This no doubt stirs better participation and development of the indigenous children.

The instruction process:

The entire edifice of education is tied to the instructional process. The NGO has ensured unconventional teaching practice and instruction styles adopted by the teachers in the classroom. There is no table chair arrangement for the teachers to avoid the feeling of superiority and subordination. The teachers sit or stand amidst the children or in between the two groups while instructing. It was noted that this system is evolved by the organisation to avoid the instructional pattern of education and develop a participatory mode of teaching. Further, the schools have departed with the feudal mode of teaching carrying the British legacy and resorted to the traditional Gurukul style of teaching.

The process of teaching is observed to be informal but insightful. The teacher adopts a different mode of instruction like giving exhaustive idea about people, places, animals and asking the tribal children to clarify them and using sticks to demonstrate addition and subtraction instead of rote memorisation.

Teachers try to create a liberal class room atmosphere to remove fear and rigidities of a traditional classroom and make the indigenous children feel the classroom enjoyable and fulfilling. These feelings are boosters to their learning. Learning among these children

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is taking a speedy take off with quality learning performance.

The procedures adopted in class room transaction:

Indigenous right to education demands quality learning. Enough effort has been geared by Sikshasandhan to develop materials to aid classroom transactions. The NGO has tried to substitute the monologue of the teachers by image demonstration by the teachers and active participation of the students. The photo above is captured from Bandha Sahi , a class room flooded with charts and locally developed letters on cards. They provide a mind triggering situation to the tribal children. Learning has become effective through participatory joyful method. This has a positive impact on changing the attitude, perception and participation of the local indigenous group towards education and asserting their right to education.

Use of bilingual TLMs in Class room transactions:

An increasing number of researchers strongly advocate the use of the mother tongue or home language as medium of instruction in early stages of education. This assumes greater significance in the context of education of tribal children because their mother tongue is often quite distinct from the prominent languages in the state or regional languages. ST children face problems wherever teachers do not speak their dialect at all. From the perspective of language, it is desirable to have a local teacher from the same tribal community (Jha and Jhingran, 2002). Orissa took the initiative to develop a comprehensive strategy for education of tribal children as early as 1997. The state has initiated a number of activities for addressing the quality improvement of tribal education. But the Non-state actor under description became a pioneer in the recruitment and training of local tribal language teachers in the project schools and introduction of bi lingual TLMs. The locally prepared and the local language based TLMs are used in class room transactions to level up the learning achievements of the tribal children, to

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eradicate from their minds the inhibition arising from language barriers creating communication gaps and to generate in them a better understanding leading to interest generation for teaching. The researcher noted the following significant innovations in classroom transactions. It is assumed that learning becomes faster and stronger in mother tongue. So, a number of Ho language based TLMs are found to be in frequent use in the class rooms.

This makes the correlation stronger and the remembrance easier. The children are repeating the words with teacher. As they are acquainted with the Ho words and the pronunciation of it is followed by the Odia correlate, their association becomes stronger and transition becomes meaningful and efficient to Odia language. This is a spectacular scene in all the project schools. The process of teaching is systematised. It is done through four stages depicted below.

- First, the teacher is found reading out and the students listening.

- At the second stage, the teacher reads out and students move their fingers on the words.

- In the third stage, the teacher and the students jointly read out.

- At fourth stage, the students read out and the teachers listened to them by rectifying the mistakes.

Use of bi lingual TLMs is made a mandate for every project school of Noto panchayat by the NGO. To provide some live demonstration, the following pictures taken from the field are given. These pictures have been taken from Dekhachaturie New primary school. Both these pictures develop a visual impression of the letter, letter related picture, the name of the picture in HO language and then in Odia and finally in English.

In this picture the Teacher of Dekhachaturie School makes an innovative attempt to recognise the odd numbers and even numbers, first he writes on a paper the odd numbers, Then he makes whole in between the odd numbers and put the even numbers in between the whole. This gives an easy identification of the even and odd numbers**.**

These pictures have also been taken from Dekhachaturie New primary school. Here the children are being taught about different words in one letter. In the second clipping, the TLM is about the basic understanding of the geographic situation of the village. The smallest circle stands for the smallest unit i.e. the village and the greater ones for panchayat, block, district, country, world, respectively.
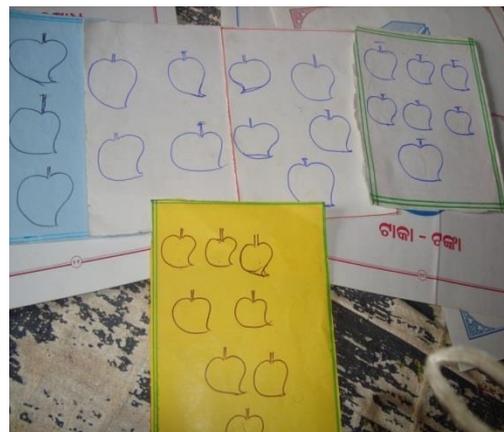
These cards make easy for the children for counting the number in the initial learning phase.The learning achievement is noted to be spectacular among the children.

Discussion of day to day activity: In the intervention induced

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schools, a noted feature in the class room transaction relates to the sharing of daily experience by the children. The teachers in the sample schools are found to be summoning the students to share their day today experience in the class. In traditional teaching, there is absolutely no sharing of experience by the children. Teachers only disseminate the knowledge which the students have to accept and students are kept at the receiving end. So, the discussions become more matured, monotonous and students lose interest as the discussions do not pertain to their age and level of maturity. The children are encouraged to share their experience in Odia language in the class before their peer group which helps in developing their language competency and their ability of organised presentation. The idea is to allow the children to carry their own experience of the situations they encounter in their day today life and to express them in words before others. This helps in providing a vent to the child and allowing him to get a forum for collective sharing and at the same time developing language competency and getting an opportunity for organising his expressions into words. In the study it is also observed during this sharing process, a teacher helps

students to learn new concepts and ideas in ways that connect to their prior understandings and ways of looking at the world. Finally, eroding the inhibition for a public speech is also served by this practice.

This picture taken from Bhandha Sahi Primary School class that portrays a girl named Nirupama Mahanta standing in front of others near the board sharing her experience with her class mates. The teacher of the class is supplementing and substituting some words for her which not only enlightens her, but her class mates and ensure them language competency and to interplay with Odia vocabulary. This is an ongoing feature of regular classroom transaction and emerging as an effective mechanism for language transition and personality building of the child by instilling self confidence in him/her. This ensures the indigenous child the right to education and participation in a

great way by building leadership, self confidence in the children.

Contextualization of their environment in learning process:

State run schools impart a standardised curriculum. Deviations are little marked on the part of the teacher to relate the content with the context. So many concepts emerge foreign to the children and they shed their interest in the stuff taught. But, one of the most startling observations of classroom transaction relates to the correlation brought between context and content of the teaching. There is an attempt to pick up examples from the surrounding environment of the child to make his understanding better and to stir his imagination through concrete realisation. This makes the study grounded in the imagination and memory of the child. In the study, the researchers found that in classrooms, children are given examples from their own environment. This helps in connecting the content of education to their life experience, which makes understanding of a subject solid and lasting.

This drawing of examples has a demonstrative effect and helps in easy comprehension and enjoying the content. The above photos depict the class room transaction where the teacher is found teaching environmental science with leaves and flowers collected from the child's local environment. The children are found with rapt attention looking towards the teacher who is providing them a life demonstration of the plant life. This type of contextualisation of text and teaching is practised in all the project schools to provide a better learning experience to the child. The project schools are trying hard to substitute rote memorisation to identification and contextualisation. This ensures a better learning to the child and in his/her daily life the child identifies them and understands their utilitarian value and their life processes.

Connecting Knowledge to Creativity:

Tribal schools lack expensive smart class rooms like urban schools. So, they adopt innovations to capture the interest of the students. Tribal children's' lack of interest and apathy for education stems from the illiteracy of their parents, poverty of their households, instruction methods of class rooms, primers and their content etc. So, interest generation figures significant in the scheme of innovative education and is adhered to by the model schools.

The aforeplaced photos indicate the materials i.e. the chart papers

distributed to the children along with colours whereby they are given an opportunity to express their creativity. In the second photo, the teacher is engrossed in teaching science with the model of a human skeleton. The teacher is found to have prepared a human body model with clay and the children are given clay to make prototype models of the human organs. This makes science education an exciting experience and long enduring.

In the third photo the children are put into open air and given the chance to manipulate clays to make models. They are found in jolly moods with serious spirits in making the clay modelling. This style of teaching ignites the tribal child's mind and makes learning participatory yielding rich dividends. Thus, the non-state actor has been able to capture the attention and motivate the tribal students sufficiently

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towards school and studies which was difficult on the part of the state actor.

Avoidance of routine and rigour: Another noteworthy and out of routine practice, the CSO ensures is the non-adherence to standardised routine. On demand basis from the student's side, the subjects are taken up by the teacher. Thus, absolute liberty is given to the children in the class room to decide the subject to be taught which is a non standard practice, but resulting in freedom of choice of the children. This liberates them from superimposition and becomes interest generating in nature.

Not only routine is avoided, but rigour is excluded as a practice in the project operated school classrooms. Every 15 minutes teaching is followed by a ten minutes gap. This provides breathing space and ignites interest and incubation in the child and learning is found to be well adapted and well established.

Vocationalisation of education:

Learning needs to be leading to opening of livelihood opportunities by enskilling the children. The teacher in the model schools adopted by the NGO are found to be taking initiative to teach the students trades like carpentry,

drawing and painting, clay work, making of objects and toys out of waste material like match boxes, rappers of the chocolates. The following pictures well testify these activities ongoing in the schools.

The photos bear the testimony of the vocational education imparted to the children and the products prepared by them. Children are found to be taking pride in displaying these works. They develop skill in the child which he/she can make use of in real life.

The evaluation process: The evaluation process followed is different and unparalleled under innovative education intervention introduced by Sikshasandhan. It is continuous and meticulous. There is no one time

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examination system. The aim is to make an all round development of the child on a continuous manner. So, the child is observed by the teachers on day today basis. All his activities, attitudes and achievements are recorded to evaluate his progress.

Record maintenance for every child:

Class room reception of the children is not uniform and this brings differentiation in their level of class room participation and performance. Identification of the child's potentiality, daily learning achievement and long term difference in the child's attitude, activities, achievements and monitoring the missing points are some of the focus of innovative class room transaction initiated by Sikshasandhan. The teacher undertakes a close observation of the child and maintains a record for every student separately in the class. In that record the student's achievements and failures, pictures they have drawn, story written by them are all well documented. This provides a real growth chart of the intellectual development of the child. This enables the teacher to rectify the rupture points and give a better direction to the child on a one to one basis. The researchers

also went through the individual profile maintained by the teachers for the children.The assessment profiles are found to be well organised and regularly maintained. The teacher enters his/her minute observations of the child's progress. This provides an estimate of the learning achievement of the child.

Weak students are not ignored: Weak students are in the neglected zone of traditional class room. They sit dormant and rarely capture the teacher's attention. The reverse is the scenario in an innovative class room created by Sikshasandhan. The teachers are instructed to avoid peer performance comparison and they virtually do so in their daily transactions. Teacher assesses the student in terms of their individual learning achievements and group comparisons are substituted by self comparisons, seeing the child in retrospect and prospect.

Extracurricular and Out of the Box Activities promoted:

Extracurricular activities are heavily insisted upon in the tribal schools of Noto today. Particularly dance, music, drawing and painting, sports and games are promoted and students are given training for developing skill in such areas.

peer learning are taken from Hudi Sahi , New Primary School.

The photo depicts the extracurricular activities floated for the children. The picture depicts a drama performed by the students which is enjoyed by the students and teachers.

Sikshasandhan has introduced certain out of the box ideas into practice. One among them is **peer learning**. Though the term appears to be loose, the NGO has nicely translated it into practice. It is felt that children follow the language of their friends fasters than griping the language of their teachers. Realising this, peer learning is promoted in the project schools to make leaning easier and better. The photos below well demonstrate peer learning situations.

In facilitating the peer learning process, the teacher selects a student as a teacher. The research team observed that by this learning the students are learning with much interest and are raising more questions. The clippings of

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The interest, attention and action are rapt without fear or apprehension. Here learning is not an imposition, but one of an easy acceptance. Better participation is ensured as children take it in a play way manner.

Another out of box practice introduced by Sikshasandhan relates to exposure visit. Here the children are taken out of their school to other school or meet at a common place and they exchange their ideas with children of other schools and exhibit their own talent. Talent hunts are done and exposure visits serve as eye opener for the tribal children and broaden their vision.

Siksahasandhan facilitates summer classes for the students at Noto Panchayat which is unique in keeping the students in touch with studies and maintain the habit of school going without break. In the tribal areas because of breakthrough in summer vacation, the students lose their interest and forget the studies that they have learned in course of time. This brings additional burden for the language teachers to re motivate the children again to get back to schools. These summer classes are held in the morning from 6.30 am to 9 am and are anchored by the language teachers. In the summer classes, the student from all classes study under one roof. These classes are not strictly devoted for studies, but they essentially organise local games and other co curricular activities. The photo placed below is taken from the summers classes organised at Hudi Sahi school.

Research Insights Gained: The study now makes a presentation of the research insight gained from the field.

• CSO activities are on rise and are to be encouraged to make development a reality. The activities undertaken by Sikshasandhan are a glaring example of it. The longitudinal study made by the presenters after a span of five years feels the difference in the tribal dominated area. The educational apathy among children and community has totally been eroded and a new wave of enthusiasm has appeared among the locals barring age to make

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education reach everyone as a basic human right.

• The non enrolment and drop out has come down to zero level which is an unimaginable feature in a tribal area. Enrolment and retention have reached 100 percent over the last four years. Taking the baseline data of 2011, the picture is captured at the end of the fourth year, 2015.

Indices of Mapping Educational Scenario	Baseline Figure (2011December)	Present Figure (2016 March)	Percentage of ecrease /Increase
Never Enrolled and drop out	357		100
Enrolled	822	20	11.9
Retention		60	100
Regular attendance (6 days perweek)	287	08	181.5

Source: School records collected from the field inApril, 2016

The changes are depicted graphically in number and percentage.
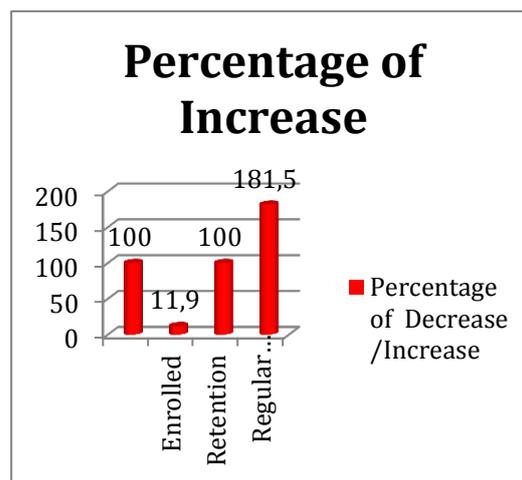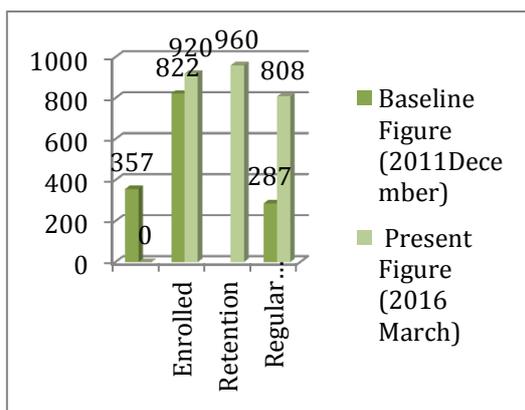
• The Non-state actor's intervention impact is also noted on changing the gender orientation in the tribal block. The tribal community in Noto had a very negative attitude towards educating their girls. But, the scenario has changed due to the intervention of Sikshasandhan. So in this context, the base line data in relation to girls' enrolment was compared with the 2016 March end data and the figures are presented in table below.

Scenario of Girls' Enrolment in the Schools in Noto Pachayat

Year	No. Enrolled	Percentage of Increase
2011	320	
2016	399	24.7

Source: School records collected from the field in April, 2016

This is presented graphically below.
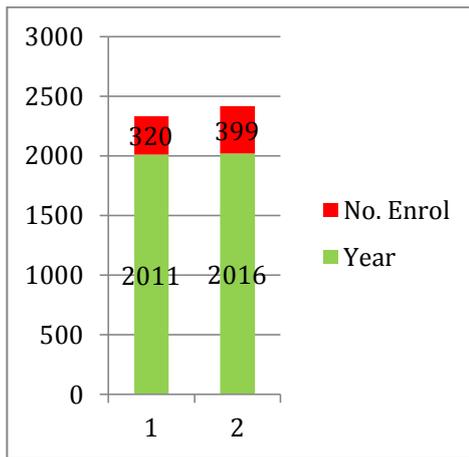
This increased enrolment among girls has reduced the rate of child marriage and increased the mean age at marriage to above 18 years and has made the girl children enjoying their right to education. It is expected to be impacting the reproductive health, arrest child labour among girls, their trafficking and the overall empowerment of girls and women of the community.

• The Non-state actor has introduced series of innovations in the class room itself to make it alluring for the child. The innovations are noted in Classroom arrangements, in the sitting arrangements, the instruction process, in the procedures adopted in class room transaction by the teachers in these schools, in the interaction between teachers and students, in the evaluation process, in extracurricular activities and

in adopting and implementing out of the box learning process adopted.

• In the post Sikshasandhan intervention period, the number of teachers, use of child centric pedagogy, the adoption of improved class room practice, use of mother tongue as medium of instruction and for class room transaction has increase phenomenally. The CSO has taken adequate care to position more teachers in the schools and equip them with skills to handle tribal children and keep their motivations high to areest drop out. They have contributed tremendously to the effectiveness of class room transaction and learning performance of the tribal children. This is indicative from the table below.

Table No.4.4

The change in Teachers' Position and Classroom Practice

l No.	Index	Baseline figures (Dec 2011	Figures March (2016)	Change
	Number of teachers	25	27	+8%
	Teacher attendance	48%	85%	+37%
	Teachers adopting improved classroom practices	2/25	11/27	+40%
	Teachers using child-centred pedagogy	1	10	+9
	Teachers teaching in mother tongue	0	10	+10

Source: Field Data, 2016

- Children's learning output is spectacular. Every tribal child is well versed with what is being taught and is able to interact in a smart and smooth manner. This symbolises quality education percolating to tribal areas.

Thus, the interventions undertaken by Sikshasandhan seem to be quite appealing. There is a qualitative and quantitative leap in the parameters of educational development in elementary education. Infrastructure has been changed; educational practices have witnessed a dramatic turn resulting in increase in enrolment, school attendance, decrease in non retention and drop out. All these are healthy step forward to make RTE a ground reality in the tribal dominated inaccessible hilly tracts of Noto panchayat.

Concluding Lines: Thus, the paper concludes that non-state actors are coming into the development landscape in a big manner in the neoliberal era. They are not only supplementing the state functions, but in many cases are better substitutes for them. They can make the indigenous people enjoy their rights. The non-state actor described in the paper well signalises the relentless efforts it has launched to make global commitments and Constitutional mandates a reality. They are the translators of the government Flagship programmes into a programme of success. They are going to be the anchor of the SDG goals in the years to come.

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

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ABSTRACT

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

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

RESUMO

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

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

RESUMEN

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

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

INTRODUCTION

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

By Rio plus 20, the rising discourse of a "Green Economy" has extended to many policy areas such as forestry, water conservation and climate change (Tienhaara 2014, Goodman and Salleh 2013). Unfortunately, this global trend oftentimes overlooked social and environmental externalities such as encroachment of indigenous territories and disruption of indigenous worldviews. In many regards, the international environmental movement divided itself during the period between those movements and organizations that preferred alliances with the private sector (public-private-partnerships) and those who questioned the capacity of the capitalistic economy to respond effectively to global environmental challenges (Brand 2012, Prudham 2009, Lertzman and Vredenburg 2005). More recently, academics from different continents have begun questioning the capacity of political concepts such as "development" and "sustainable development" to satisfy human needs, aspirations and different conceptions of what may constitute a "good life" (Khotari et al. 2014).

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

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

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

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

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

Had external actors who expected to create profit examined the

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

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

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

The Ngäbe Struggle for Land in Historical Perspective

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

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

Whereas in the Caribbean Ngäbe settlements extend into the coastline and

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

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

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

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

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

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

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

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

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

Ngäbe Social Change and the Rise of the Mama Tata

The work of Young (1971) constitutes the most comprehensive

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

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

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

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

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

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

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

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

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

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

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

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

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

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

In the context of popular mobilization gaining steam in Panama during the 1960s, the prevailing response of the Liberal oligarchic governments was outright repression through the increasingly powerful National Guard.[11] For this reason, it should not be deemed surprising when a mid-career officer and regional head of the National Guard in the province of Chiriquí, Omar Torrijos Herrera, was dispatched to the Ngäbe communities to suffocate the insurrection. According to several accounts of the episode including that of Guionneau-Sinclair (1988), Torrijos Herrera preferred dialogue to repression and dissuaded the "students" from continuing with the independence declaration.[12] What exactly happened with the Mama Tata movement after the uprising has never been entirely clear. According to Guionneau-Sinclair (1988), the *sukias* continued with the movement away from the public eye, and possibly at special cultural places such as those to be flooded by the Barro Blanco reservoir fifty years later.

Military Indigenismo, National Development and the Tabasará Dams

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

An in-depth analysis would be necessary to understand the reasons the architect of neoliberal economic reform in Panama, President Perez Balladares, finally passed the Comarca law. Although the Pérez Balladares (1994-1999) presidential administration delivered the promises of Torrijos Herrera for the creation of a Comarca, it was also responsible for enacting economic reform in line with the Washington Consensus, including the sale of national public utilities. The development of hydroelectric infrastructure throughout the country, under a new modality of private investment, represented an imminent threat to the integrity of indigenous territories and to the worldview of indigenous peoples. The course of collusion of the 1970s had then become the road to collision in the 1990s. The future of the Ngäbe ethnic community would now depend on the unavoidable confrontation between the capitalist logic of the new Liberal State, searching for business opportunities in every transaction including climate change mitigation; and the resistance of indigenous communities in places such as the cultural community of Kiabda along the Tabasará River.

The Protracted Conflict over the Tabasará Hydroelectric Dams

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

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

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

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

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

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

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

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

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

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

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

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

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

Soon after the January 2003 demonstrations, the investors decided to

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

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

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

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

Greening the Tabasará Dams: The Barro Blanco Hydroelectric Project

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

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

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

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course of events made a complete mockery of the PRD. All support was withdrawn from the General Congress, including the use of government equipment like the main electrical plant. Transportation was offered to congress participants to desert the meeting that was actually expected to extend for three additional days. As the number of congress participants sharply dropped and living conditions worsened literally from one day to the other; opposition politicians stepped in to take advantage of the PRD debacle, most importantly the leader of the new Democratic Change (CD) party, Ricardo Martinelli, soon to become president of Panama (2009-2014). Mr. Martinelli replaced President Torrijos Espino as the messianic provider to the General Congress with his surprise visit on Friday March 10, 2006.[19]

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

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

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

The ANAM administration between 2004-2009 had

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

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

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

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

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

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

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[21] The head of ANAM, Ligia Castro, and her deputy administrator, Eduardo Reyes, were very active in the fight against climate change and the promotion of carbon trading, making this international policy a cornerstone of their work at ANAM between 2004-2009.
https://impresa.prensa.com/economia/Panama-centro-regional-carbono_0_1616088557.html
https://impresa.prensa.com/mundo/Creditos-carbono-causan-incertidumbre_0_1405359526.html
https://www.caf.com/media/3144/Sinergia22.pdf

[22] In 2000, the World Commission on Dams (WCD) had issued a very critical assessment about the social and environmental impacts of these infrastructures around the world.
https://www.internationalrivers.org/campaigns/the-world-commission-on-dams

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[23]
https://cdm.unfccc.int/Projects/DB/AENOR1261468057.59/view
[24]https://cdm.unfccc.int/filestorage/B/O/L/BOLWGNA7FS4YKM23JCHPQ695ZIU8ET/Barro%20Blanco%20PDD%20v3.08?t=UWl8cDgzem90fDBXqV9v8I6Y_sgSeOz4SR_E

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

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

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

Continued Conflict and the Collapse of the Democratic Change

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

Confronted with the unexpected strength of this grassroots reaction, the

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The question then became why the M10 continually favored a dialogue strategy, and the Government continued with this approach cyclically despite unwillingness to cancel the hydroelectric project. In the case of the Government, and the promoting company to a lesser extent, there was the expectation that the Ngäbe would eventually settle for a financial exchange for the loss of their lands and other damages; according to them that was a logical option considering the advance of the Project. However, the M10 believed in the dialogue option following a different motivation, essentially conviction that their arguments were stronger, and therefore their reasons for project cancellation would eventually have to be recognized. The Government and other international actors searching for some sort of "rational" settlement never considered that the lands of the cultural community of Kiabda, Corregimiento of Bakama, District of Munä, Kodriri Region; could not possibly be exchanged for money; because they had a value that transcended any material consideration according to Mama Tata spirituality.

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

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

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

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

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

position would be of the different presidential candidates if they won the general elections. The surprise victory of the Panameñista candidate, Juan Carlos Varela, offered some hope, as he was a main opponent to Ricardo Martinelli after being pushed to leave the government coalition in 2011.[31]

New Promises and Failed Dialogues for Clean Development

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

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

[31]
https://www.prensa.com/getzalette_reyes/fricciones-previas-ruptura-alianza_2_3194700501.html

[32]
http://www.pa.undp.org/content/panama/es/home/presscenter/pressreleases/2015/02/21/se-instala-mesa-de-di-logo-sobre-proyecto-hidroel-ctrico-barro-blanco.html

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

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

Days before the final collapse of the dialogue, the daily *La Estrella de Panamá* referred to a letter from FMO, DEG and BCIE warning the Government of Panama of the potential consequences that project cancellation could have on the international investment climate.[33] This letter went in hand with the prevailing position of business sectors in Panama who expressed deep concern about the juridical security of foreign investors, and the ripple effects that might originate from the cancellation of Barro Blanco.

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

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

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[33]
http://laestrella.com.pa/panama/nacional/bancos-expresan-preocupacion/23864070

[34] https://www.fmo.nl/independent-complaints-mechanism

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

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

In April 2016, M22 protestors who had previously moved their protest camp close to the dam site were notified that flooding would happen in the next few days; no such meeting happened in the Bakama communities to be directly flooded by the reservoir. For this reason, they were surprised when ASEP issued an announcement on Sunday May 22 saying that "test flooding" would start two days later. Protests erupted by Ngäbe people living in different parts of the country when the M22 protest camp was forcefully removed on the evening of May 23.[36] As the waters rose towards Bakama, the M10 families maintained their position

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

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

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

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35 https://info.undp.org/sites/registry/secu/SECUP ages/CaseFile.aspx?ItemID=22
36 https://intercontinentalcry.org/wp-content/uploads/2016/08/BARRO-BLANCO.-INFORME-DDHH-22-6-16.pdf

37 https://www.tvn-2.com/nacionales/Suspenden-llenado-de-prueba-proyecto-Barro-Blanco_0_4517548271.html
38 https://news.mongabay.com/2016/08/photos-panama-revives-stalled-dam-over-strong-indigenous-opposition/
39 http://www.telemetro.com/nacionales/enfrentam

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

The celebration was short-lived when the Ngäbe-Bugle General Congress voted against approval of the agreement on September 17, 2016.[40] This decision closed off the possibility of replacing GENISA as an operator of the dam; and left the Government of Panama at an uncomfortable position in front of international financial institutions and human rights bodies. For this reason, the decision of ANAM to retrieve the letter of approval for Barro Blanco to receive carbon credits should not come as any surprise.[41] Announced at the Twenty Second UNFCCC Conference of the Parties (COP22) in Marrakech, Morocco, in November 2016, the decision of ANAM to revoke the approval of the Barro Blanco hydroelectric project for the

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

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

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

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ientos-Bocas-Toro-Barro-Blanco_0_947905574.html
https://www.tvn-2.com/nacionales/paso-Gualaquita_0_4561043880.html
http://otramerica.com/radar/barro-blanco-acuerdo-acuerdo/3455
40 https://news.mongabay.com/2016/10/barro-blanco-dam-in-limbo-after-ngabe-bugle-congress-rejects-agreement/
https://www.prensa.com/provincias/Congreso-General-Bugle-Barro-Blanco_0_4577542238.html
41
https://carbonmarketwatch.org/2016/11/10/press-statement-in-landmark-decision-panama-withdraws-un-registration-for-barro-blanco-hydrodam-project/

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

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2016.[43] The report stated that: "UNDP did not meet requirements for due diligence, transparency, consultation/consent, and Indigenous Peoples rights after the Roundtable Dialogue was concluded, in approximately June 2015" (p. 4 iv). Clearly, the Ngäbe have not yet been able to remove all the dirt thrown up on their land. At least, however, and for the moment, they have been able to leave much of that unclean development in evidence.

Conclusion

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

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

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

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

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

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CORTES SUPERIORES Y POLÍTICAS DE ACCIÓN AFIRMATIVA:
aspectos de las decisiones en Brasil y contribuciones para investigaciones futuras

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RESUMEN

Discutir el tema de la acción afirmativa es uno de los desafíos que Brasil viene enfrentando en las últimas décadas. Desde los movimientos que llevaron a la afirmación en el contexto constitucional del racismo como crimen que no admite fianza, las políticas de cuotas, sea en la universidad o en el servicio público, Brasil tiene recorrido un largo camino. En este sentido, esta intervención tiene el propósito de iniciar una discusión que nos auxilie para comprender como políticas definidas en el ámbito del Poder Ejecutivo de Brasil son interpretadas por las Cortes Superiores Nacionales (Supremo Tribunal Federal – STF y Superior Tribunal Federal – STJ)

Palabras claves: cotas raciales, acciones afirmativas, racismo, Cortes Superiores, Brasil

RESUMO

Abordar o tema da ação afirmativa é um dos desafios que o Brasil vem enfrentando nas últimas décadas. Desde os movimentos que levaram à afirmação no contexto constitucional do racismo como um crime que não admite fiança, das políticas de cotas seja na universidade ou no serviço público, o Brasil percorreu um longo caminho. Neste sentido, esta intervenção tem o propósito de iniciar uma discussão que nos ajude a entender como políticas definidas no âmbito do Poder Executivo do Brasil são interpretadas pelos Tribunais Superiores Nacionais (Supremo Tribunal Federal - STF e Supremo Tribunal de Justiça - STJ).

Palavras-chave: cotas raciais, ações afirmativas, racismo, Tribunais Superiores, Brasil

ABSTRACT

Addressing the issue of affirmative action is an important challenge that Brazil has been facing in recent decades. From movements that led to the affirmation in the constitutional context of racism as a crime without possibility of bail, and of quota policies whether in universities or the public service, Brazil has come a long way. In this sense, this intervention is intended to initiate a discussion that helps us understand how policies defined within the scope of the Executive Power of Brazil are interpreted by the National Superior Courts (Supreme Federal Court - STF and Supreme Court of Justice - STJ).

Key words: racial quotas, affirmative actions, racism, Superior Courts, Brazil

Discutir el tema de la acción afirmativa es uno de los desafíos que Brasil viene enfrentando en las últimas décadas. Desde los movimientos que llevaron a la afirmación en el contexto constitucional del racismo como crimen que no admite fianza, las políticas de cuotas, sea en la universidad o en el servicio público, Brasil tiene recorrido un largo camino. En este sentido, esta intervención tiene el propósito de iniciar una discusión que nos auxilie para comprender como políticas definidas en el ámbito del Poder Ejecutivo de Brasil son interpretadas por las Cortes Superiores Nacionales (Supremo Tribunal Federal – STF y Superior Tribunal Federal – STJ)

Así, esta intervención se estructura en tres puntos principales: a) Cómo el tema de las acciones afirmativas se estructuró en Brasil, a partir de la década de 1990 y cuál es el contexto en los días actuales; b) El tema acciones afirmativas en el Supremo Tribunal Federal y el Supremo Tribunal de Justicia - principales aspectos a ser destacados; c) Elementos que nos ayuden a pensar investigaciones en estos temas en Brasil y en Colombia.

El tema de las Acciones Afirmativas en Brasil: iniciativas del Poder Ejecutivo

Para iniciar, he traído un panorama de Brasil en la década de 1990 y el tema de la acción afirmativa. Como muestra de este escenario se tiene el reconocimiento por la Constitución Federal de 1998 del racismo como crimen que no admite fianza. Esta decisión culminaba un largo proceso en que el movimiento negro, consideraría el racismo existente en el orden político brasileño y abría una serie de posibilidades para las acciones afirmativas en la década siguiente. La década del 2000 puede ser considerada un marco importante en la ampliación de estas políticas. La I Conferencia Mundial contra el Racismo, la Discriminación Racial, la Xenofobia y las Formas Conexas de Intolerancia, realizada en Durban en 2011, trajo un conjunto de decisiones, las cuales, propugnan por la construcción de políticas de igualdad racial. En esta perspectiva, Brasil fue de los países que tuvo una gran delegación representante en los encuentros y cuyo trabajo puede ser identificado en la presentación de un proyecto de estatuto de igualdad racial (Ley 12.288/2010), aprobado sólo hasta el año 2010.

En esta ley se propone la universalización de los programas de acciones

afirmativas en los más diversos campos de la política pública brasilera, sea con relación a las políticas educacionales, el mercado de trabajo, la salud, el esparcimiento y el deporte. Se trata de un documento que tiene por objeto "garantizar a la población negra la protección de la igualdad de oportunidades, la defensa de los derechos de oportunidad y las demás formas de intolerancia étnica" (art. 1 °). Esta norma cuenta con una perspectiva que cohíbe las prácticas discriminatorias como aquellas relativas a la promoción de la igualdad racial. Se puede decir, que este documento demuestra un avance en el tema de las acciones afirmativas en la esfera pública brasilera.

Además de la aprobación del Estatuto de la Igualdad Racial en 2010, es posible identificar también una serie de iniciativas que van a promover las acciones afirmativas en la vida pública brasilera. Desde el punto de vista de la expansión de las políticas de acciones afirmativas en la enseñanza superior, el panorama que tenemos, según Silva es el siguiente (2016):

- La experiencia pionera de la *Universidade do Estado do Río de Janeiro* (UERJ) y la *Universidade Estadual do Norte Fluminense* (UFF) las cuáles en los años 2000 crearon sus programas de cuotas mixtas, social y racial.
- La *Universidade de Brasilia* (UnB) también fue pionera en las universidades de enseñanza superior (Ifes), pues optó por cuotas raciales exclusivas. Esta opción fue objeto de la acción de juzgamiento constitucional denominada *Arguição de Descumprimento de Preceito Fundamental* (ADPF) #186, que cuestionaba el programa de cuotas con criterio racial en la UnB y que será discutido más adelante.
- En 2012 fue sancionada la llamada

ley de cuotas (ley número 12.711/2012), donde todas las instituciones federales de enseñanza superior y de enseñanza técnica de nivel medio, pasaron a ser obligadas a reservar mínimo la mitad de sus cupos para estudiantes que hayan cursado integralmente la etapa anterior en escuelas públicas. De estos cupos, el mínimo porcentaje correspondiente a la participación de auto-declarados negros, pardos e indígenas en la Unidad de Federación (UF) deben ser designados para estos grupos.

- Según el censo de educación superior 2011 del *Instituto Nacional de Estudos e Pesquisas Educacionais Anisio Teixeira* (INEP), habían 103 Ifes responsables por 927.000 matrículas en cursos de graduación presencial, el 16% del total de matrículas en esta modalidad.
- Adicionalmente, según el mapa de acciones afirmativas en Brasil (INCTI, 2012), existían cuarenta instituciones de enseñanza superior (IES) estatales o distritales y tres municipales con programas de acción afirmativa en 2012.

Además de las acciones afirmativas de negros en IES, en los últimos años, se establecieron medidas similares para el ingreso de nóminas de personal de administración pública. Asi, se cita:

- *Programa Nacional de Ações Afirmativas* (PNAA – Decreto 4228/2002), creado en 2002, cuyo objetivo era instituir un sistema de reserva de cupos para el ingreso en el servicio público y para prestadores de servicio en algunos órganos - Ministerio de Desarrollo

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Agrario; Ministerio de Justicia; Ministerio de Cultura; Ministerio de Relaciones Exteriores, con el programa de acciones afirmativas del Instituto Rio Branco; y el Supremo Tribunal Federal (STF). Informaciones que evalúan el Programa demuestran que este prosperó en algunos Ministerios, por ejemplo, el Ministerio de Relaciones Exteriores (MRE), sin embargo, en otros ni fue colocado en práctica. (SILVA, 2016; OSORIO, 2006)

- El programa de acciones afirmativas del Ministerio de Relaciones Exteriores (Programa de Acción afirmativa del Instituto Rio Branco - Beca Premio de Vocación para la Diplomacia). Este Programa se constituía inicialmente, "en la concesión de becas de estudios para candidatos afrodescendientes seleccionados por medio de pruebas y entrevistas. El objetivo era proporcionar a estos candidatos medios para que pudiesen costear la preparación para el concurso de admisión en la carrera diplomática" (Silva, 2016, p. 12). Hasta el año 2011, el programa había beneficiado 268 candidatos, teniendo como resultado directo la aprobación de diecinueve becarios (Silva y Goes, 2013).

- En el año 2010, el Ministerio de Relaciones Exteriores innovó al incluir en el concurso público para diplomacia, la reserva de cupos para candidatos negros (10% de candidatos), en la primera fase del concurso. Sin embargo, las desigualdades de acceso a la enseñanza y bienes culturales de la población negra han demostrado que, a pesar del mecanismo de inserción,

el número de titulados negros es aún reducido. Analizando la cuestión, Silva (2013) afirma:

No final de 2010, o mencionado programa foi ampliado com a assinatura de portaria pelo então Ministro das Relações Exteriores, embaixador Celso Amorim, que instituiu 10% de vagas adicionais na primeira fase do concurso destinadas a candidatos afrodescendentes. No entanto, a intervenção do Estado na tentativa de igualação de oportunidades no acesso à carreira diplomática para brancos e afrodescendentes encerra- se nessa primeira fase (no chamado Teste de Pré-Seleção). Nas etapas subsequentes do concurso, as notas dos candidatos são zeradas e todos enfrentam as agruras de um dos mais difíceis exames para o ingresso em carreiras típicas do Estado. Como resultado, em virtude da imensa desigualdade na formação escolar e acadêmica de negros e brancos no país, dez anos depois do início do PAA do IRBr, permanece extremamente reduzido o número de afrodescendentes na carreira diplomática. Em termos objetivos, a invisibilidade do negro na carreira diplomática brasileira, sobretudo nos escalões superiores do Itamaraty, é ainda um fato perceptível a qualquer observador externo.

- En el año 2005 fue creado el *Programa Pro-equidade de Gênero e Raça*, lanzado en ese mismo año, el cual, insta a las organizaciones participantes a realizar diagnósticos y determinar metas y planes de acción para la eliminación de la desigualdad de género y raza en sus nóminas. En la cuarta edición del programa (2012), 57 empresas y entidades públicas y privadas fueron contempladas con el sello, como reconocimiento de las acciones desarrolladas. Por otra parte, el programa trae el enfoque del medio ambiente de trabajo, no

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restringiéndose ni concentrándose en acciones afirmativas para el ingreso de minorías o públicos específicos.

• En el año 2014, el Gobierno Brasilero aprobó la Ley 12.990/2014 que instituía "reserva a los negros del 20% (veinte por ciento) de los cupos ofrecidos en los concursos públicos, para cargos efectivos y empleos públicos en el ámbito de la administración pública federal, de las autarquías, de las funciones públicas, de las empresas públicas y de las sociedades de economía mixta controladas por la Unión (Brasil, 2014)". Esta ley es el resultado de la iniciativa del Poder Ejecutivo Federal a través del Proyecto de Ley (PL) 6738/2013. Se parte de la sub-representación de la población negra en ese espacio. Silva (2014) destaca que:

As desigualdades raciais no mundo do trabalho reafirmam-se nas ocupações no setor público, quer em termos de rendimento, distribuição entre os níveis de atuação federal, estadual e municipal, ou, ainda, no que se refere à distribuição das carreiras. E conquanto exista jurisprudência favorável a ações afirmativas com critério racial, inclusive sobre reserva de vagas em concursos públicos, o tema ainda enfrenta muitos questionamentos acerca de uma possível afronta à meritocracia ou sobre a necessidade de conjugar suas diretrizes com critérios de renda. A reserva de vagas não exime os negros de conquistar aprovação em todas as fases dos concursos públicos a que se candidatem. Apenas os candidatos habilitados nos certames e, por conseguinte, considerados aptos a ocupar determinado cargo ou emprego público estarão propícios a se beneficiar da reserva de vagas. (p. 18 e 19)

Otro estudio, se refiere al tema de la

identificación en Ferreira (2016). En este sentido, el autor describe el proceso de debate en la PL 6738/2013, destacando enmiendas y discusiones ocurridas en la Comisión Parlamentaria de la Cámara Federal. La conclusión estriba en el sentido de reconocer la importancia del instrumento legal, pero al mismo tiempo, funciona como un método estadístico en la medición de desigualdad racial existente en el servicio público nacional, pues no es capaz de suprimir todas las necesidades colocadas por cuestiones político-jurídicas.

El balance que esas informaciones nos ofrecen nos lleva a la siguiente conclusión: en Brasil hay iniciativas de acciones afirmativas para la población negra, pero se nota la ausencia de acciones estructurantes, que combinen, ingreso, permanencia, promoción y cambio institucional tanto en la administración pública como en el acceso a otras políticas públicas.

Pistas para entender la judicialización de las acciones afirmativas en Brasil.

Aunque se identificó a lo largo de los años 2000 un conjunto de políticas dirigidas a la implementación de las recomendaciones llegadas de la Conferencia de Durban (2001), se observa una larga tendencia a la judicialización en aspectos relativos de acciones afirmativas en el Brasil. En este sentido, en esta sección se presentan aspectos concernientes a ese proceso. Por lo tanto, trabajaremos con unas acciones específicas: el Habeas Corpus 82.424 –RS y la *Ação por Descumprimento de Preceito Fundamenta[1]l*

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[1] La *Ação por Descumprimento de Preceito Fundamental*, fundamentada en el Articulo 102, §1º, de la Constitucion Federal y en la Ley nº 9.882/99, cuyo objetivo es evitar lesion al princípio fundamental de Derecho.

no. 186.

En el habeas corpus número 82.424-RS, decidido en el 2003 por el Supremo Tribunal Federal, conocido como el caso Ellwanger, se discute el concepto de raza. Siegfried Ellwanger, escritor y editor que fue condenado en segunda instancia por el crimen de antisemitismo y por publicar, vender y distribuir material antisemita. La sentencia tuvo por base el art. 5º, inciso XLII, de la Constitución brasileña, el cual afirma que "la práctica del racismo constituye un crimen que no admite fianza e imprescriptible". El impetrante alegaba que los judíos no eran una raza, solicitando que la Corte retirara la connotación de discriminación racial, por la que fue condenado.[2]

El STF (Supremo Tribunal Federal) analizó el caso, posicionándose a favor del reconocimiento del racismo en la esfera pública brasilera. En este caso, una de las reflexiones realizadas por el STF se refiere a

> O ponto referencial da raça é o racismo, não o contrário. A realidade da raça, portanto, está em se reconhecer que um grupo foi tratado com uma distinção negativa, não importando o suposto fundamento científico desse tratamento, ou seja, não importando a cientificidade dos argumentos sobre a existência da raça (BRASIL, 2004).

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[2] Sobre este aspecto ver Lafer, 2005 & Farranha, Piza &Queiroz, 2017

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Vale destacar los votos de los ministros envueltos en el análisis del caso:

Ministro	Teor do voto
Voto del Ministro Moreira Alves	El Ministro era el relator del caso. Su argumento consistió en que "los judíos no pueden ser considerados una raza", por esto, no se podría cualificar el crimen por discriminación, por el cual fue condenado Siegfried Ellwanger, el delito de racismo. Asi, concedió el Habeas Corpus, declarando extinta la punibilidad del acusado, pues ya habría operado la prescripción del crimen."
Voto del Ministro Maurício Corrêa	El argumento del Ministro contradijo al voto del relator, al negar el Habeas Corpus, con el argumento de que, "la genética prohibió el concepto tradicional de raza y que la división de los seres humanos en razas se deriva de un proceso político-social originado de la intolerancia de los hombres."
Voto del Ministro Celso de Mello	El Ministro acompaño el voto disidente, afirmando que "solo existe una raza: la especie humana". E indicó que: "Aquel que ofende la dignidad de cualquier ser humano, especialmente cuando movido por razones de origen racista, ofende la dignidad de todos".
Voto del Ministro Gilmar Mendes	El Ministro mantuvo la decisión que negó la orden de Habeas Corpus, por entender que "el racismo configura el concepto histórico y cultural basado en referencias supuestamente raciales, incluyendo el antisemitismo". Los argumentos del Ministro, también afirmaban que "no se puede atribuir la primacía de la libertad de expresión, en el contexto de una sociedad pluralista, en relación con otros valores como los de la igualdad y la dignidad humana". En ese contexto, el texto constitucional estableció el racismo como un crimen no susceptible de fianza e imprescriptible.
Voto del Ministro Carlos Velloso	Carlos Velloso también denegó el Habeas Corpus, por considerar que el "antisemitismo es una forma de racismo. Según el Ministro, em los libros publicados por Ellwanger, los judíos son percibidos como raza, porque existen puntos en que se habla de "inclinación racial y parasitaria de los judíos", lo que configuraría una conducta racista, prohibida por la Constitución Federal.
Voto del Ministro Nelson Jobim	El Ministro Nelson Jobim juzgó que Ellwanger no edito los libros por motivos históricos, pero como si como instrumentos para producir el antisemitismo. Para el, ese es un "caso típico" de fomento del racismo, por esto acompaño la decisión que negaba el Habeas Corpus.

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Voto de la Ministra Ellen Gracie	La Ministra Ellen Gracie uso la definición de raza presente en la Enciclopedia Judía, en la cual "la concepción de que la humanidad está dividida en razas diferentes se encuentra de manera escueta e imprecisa en la Biblia, donde, sin embargo, como ya acentuaban los rabinos, la unidad esencial de todas las razas es sugerida en la narrativa de la creación y el origen común de todos los hombres". Asi, la Ministra negó la orden.
Voto do Ministro Cezar Peluso	El Ministro Peluso siguió a la mayoría de los votantes y voto por la negación del Habeas Corpus. Uno de los principales argumentos que uso consistían en que "la discriminación es una perversión moral, que pone en riesgo los fundamentos de una sociedad libre", adujo.
Voto do Ministro Carlos Ayres Britto	El Ministro tuvo una posición favorable al impetrante, pues entendió que no existe una justa causa para la instauración de acción penal contra Ellwanger. En su voto, Britto absolvía, entonces, al reo, por atipicidad del delito, porque la ley que tipifico el crimen de racismo fue promulgada después de Ellwanger haber cometido el delito.
Voto del Ministro Marco Aurélio -	El Ministro Marco Aurelio también concedió el Habeas Corpus, defendiendo la tesis de la libertad de expresión. En su opinión, solamente se estaría configurado o crimen de racismo se Ellwanger, en lugar de publicar un libro "em el cual expone sus ideas acerca de la relación entre los judíos y los alemanes en la Segunda Guerra Mundial, hubiese distribuido panfletos en las calles de Porto Alegre con mensajes de tipo „muerte a los judíos", „vamos a expulsar estos judíos del País", „alisten armas y vamos a exterminarlos". Pero nada de esto sucedió em el caso en juzgamiento". Según el Ministro, Ellwanger se limitó a escribir y difundir la versión de la historia vista con sus propios ojos.
Voto del Ministro Sepúlveda Pertence.	El Ministro Sepúlveda Pertence opto por negar el Habeas Corpus al editor gaúcho. Aduce el Ministro, "la discusión me convenció de que el libro puede ser instrumento de la práctica de racismo". Este fue uno de los argumentos utilizados por el Ministro

Fuente: STF (2003) Elaboracion: Própia

De esta decisión, es importante destacar como la manifestación de la Corte se da en el sentido de reparar los prejuicios histórico-sociales de un grupo social y no entrar en el debate de la biología o genética sobre el término "raza". El contenido histórico-social emergido de la decisión de la Corte, es central en este punto. Apartándose de esta forma, de las tesis de la libertad de expresión, la falta de pruebas, la prescripción y, asumiendo la discusión de raza no desde el punto de vista biológico, sino desde el punto de vista social, como un signo y, por lo tanto, llena de disputas en torno de lugares en el contexto social.

Otra acción que merece ser destacada es la ADPF 186. En esta ocasión se trató de una acción judicial impetrada por el Partido de los Demócratas – DEM, denominada *Arguição de Descumprimento de Preceito Fundamental*, esta cuestionaba los actos que instituirían el sistema de reserva de cupos con base en el criterio étnico-racial (cuotas), en el proceso de selección para el ingreso a la Universidad de Brasilia (UnB). Los autores alegaron la trasgresión a los arts. 1º, caput, III, 3º, IV, 4º, VIII, 5º, I, II, XXXIII, XLI, LIV, 37, caput, 205, 206, caput, I, 207, caput, y 208, V, todos de la Constitución Federal.

La decisión del Supremo Tribunal Federal – STF fue unánime en no acoger las solicitudes de los impetrantes[3]. Los fundamentos establecidos por la Corte

son los aspectos que pasamos a analizar en la secuencia de este texto.

El primer argumento esbozado por la decisión en comento se refiere a la **Igualdad Formal** *versus* **la igualdad Material.** En este sentido, el voto del Relator, Ministro Ricardo Lewandowski, apunta en un principio por, no solamente garantizar la igualdad formal, sino también por posibilitar la garantía de la igualdad material o sustancial "a todos los brasileiros y extranjeros que viven en el País". Afirma que para tal garantia:

> O Estado pode lançar mão seja de políticas de cunho universalista, que abrangem um número indeterminado de indivíduos, mediante ações de natureza estrutural, seja de ações afirmativas, que atingem grupos sociais determinados, de maneira pontual, atribuindo a estes certas vantagens, por um tempo limitado, de modo a permitir-lhes a superação de desigualdades decorrentes de situações históricas particulares[5] (SUPREMO TRIBUNAL FEDERAL – STF. 2012, p.4)

El segundo argumento se refiere a la **Justicia Redistributiva,** aquí el relator indica que el concepto se encuentra definido en la obra de John Rawls y consiste en el "direito à isonomia em igualdade de possibilidades, sobretudo no tocante a uma participação equitativa nos bens sociais". Destaca que modelo constitucional brasileño no se mostró ajeno a este concepto y que, en el caso de estudio, se trata de tomar en consideración la posición de los grupos entre sí, sin perder de vista la perspectiva de la inclusión social de la población que estuviesen "históricamente marginalizadas" (SUPREMO TRIBUNAL FEDERAL – STF. 2012, p.8)

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[3] Se resalta aquí los argumentos del Ministro Gilmar Mendes que acogió el pedido, pero, destacó la necesidad de perfeccionar el modelo, considerando la dimensión de la identificación. Sobre eso ver IPEA, 2013.

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El tercer argumento se refiere a las **Políticas de Acciones Afirmativas,** en el cual el Ministro relator retoma los fundamentos del concepto en varios autores citados y determina los aspectos importantes, a saber: a) el nacimiento de las acciones afirmativas, que comúnmente reputan su origen a la tradición norte-americana, es originario de la India, a través del *Government of India Act.,* del gobierno de Mahatma Gandhi, destacándose así, como esa legislación estableció la discriminación positiva para las denominadas *Scheduled Castes* y de las *Scheduled Tribes* (Scs & STs) que constituía cerca del 23% de la población estratificada de la Índia y previa una serie de medidas que componían esta legislación (p. 11); b) apunta que el STF en otras situaciones ya había juzgado precedentemente la promoción de acciones afirmativas. Asi, cita los siguientes precedentes: MC-ADI 1.276-SP, Rel. Min. Octávio Gallotti, a ADI 1.276/SP, Rel. Min. Ellen Gracie, o RMS 26.071, Rel. Min. Ayres Britto y la ADI 1.946/DF, Rel. Min. Sydnei Sanches e a MC-ADI 1.946/DF, Rel. Min. Sydnei Sanches.

El voto avanza en el argumento de comprender lo que es el **Criterio para Ingreso.** De esta forma destaca los artículos constitucionales que garantizan el acceso a la educación como un bien universal, a saber el artículo 206, incisos I, III e IV, indican que los principios de la "igualdad de condiciones para acceso y permanencia en la escuela"; "pluralismo de ideas"; y "gestión democrática de la enseñanza pública" como mediación de este acceso y el artículo 208, V, que, según el Relator "consigna que el acceso a los niveles más elevados de enseñanza, de la investigación y de la creación artística será efectivada "según la capacidad de cada uno".(p.13). El argumento reconoce que el legislador constituyente tuvo en mente la perspectiva de mérito para salvaguardar el ingreso a la Universidad Pública, pero, también se debe combinar las diferentes perspectivas y trayectorias sociales, las cuales posibiliten hacer de la universidad pública un sitio plural y democrático. El Ministro cierra las consideraciones sobre este punto aseverando que:

> Diante disso, parece-me ser essencial calibrar os critérios de seleção à universidade para que se possa dar concreção aos objetivos maiores colimados na Constituição. Nesse sentido, as aptidões dos candidatos devem ser aferidas de maneira a conjugar-se seu conhecimento técnico e sua criatividade intelectual ou artística com a capacidade potencial que ostentam para intervir nos problemas sociais.
>
> Essa metodologia de seleção diferenciada pode perfeitamente levar em consideração critérios étnico-raciais ou socioeconômicos, de modo a assegurar que a comunidade acadêmica e a própria sociedade sejam beneficiadas pelo pluralismo de ideias, de resto, um dos fundamentos do Estado brasileiro, conforme dispõe o art. 1º, V, da Constituição. Ademais, essa metodologia parte da premissa de que o princípio da igualdade não pode ser aplicado abstratamente, pois procede a escolhas voltadas à concretização da justiça social. Em outras palavras, cuida-se, em especial no âmbito das universidades estatais, de utilizar critérios de seleção que considerem uma distribuição mais equitativa dos recursos públicos. [6] (SUPREMO TRIBUNAL FEDERAL – STF. 2012, p.18)

Posteriormente, se discute la

Adopción del Criterio Étnico Racial, destacando si habría un criterio biológico para identificar la existencia de una raza. Conforme las tesis ya expuestas en este artículo, el voto del Relator concluye que el sentido de raza es justificable históricamente para comprender procesos de desigualdad estructural que marcan algunas sociedades. Asi afirma:

> Cumpre afastar, para os fins dessa discussão, o conceito biológico de raça para enfrentar a discriminação social baseada nesse critério, porquanto se trata de um conceito histórico-cultural, artificialmente construído, para justificar a discriminação ou, até mesmo, a dominação exercida por alguns indivíduos sobre certos grupos sociais, maliciosamente reputados inferiores.
> Ora, tal como os constituintes de 1988 qualificaram de inafiançável o crime de racismo, com o escopo de impedir a discriminação negativa de determinados grupos de pessoas, partindo do conceito de raça, não como fato biológico, mas enquanto categoria histórico-social, assim também é possível empregar essa mesma lógica para autorizar a utilização, pelo Estado, da discriminação positiva com vistas a estimular a inclusão social de grupos tradicionalmente excluídos. (SUPREMO TRIBUNAL FEDERAL – STF. 2012, p.18)

Se indica, continuando con su raciocinio, el papel de la consciencia étnico racial como un factor de exclusión, para demostrar la importancia de la adopción de programas de acciones afirmativas en las universidades, como forma de corrección de las desigualdades estructurales ya mencionadas; destaca el papel integrador de la universidad; enfrenta las cuestiones relativas a la auto y hetero identificación; la reserva de cupos o el establecimiento de cuotas; la transitoriedad de las políticas de acción afirmativa para decidir, en los siguientes términos:

> Isso posto, considerando, em especial, que as políticas de ação afirmativa adotadas pela Universidade de Brasília (i) têm como objetivo estabelecer um ambiente acadêmico plural e diversificado, superando distorções sociais historicamente consolidadas, (ii) revelam proporcionalidade e a razoabilidade no concernente aos meios empregados e aos fins perseguidos, (iii) são transitórias e prevêem a revisão periódica de seus resultados, e (iv) empregam métodos seletivos eficazes e compatíveis com o princípio da dignidade humana, julgo improcedente esta ADPF.

Frente a estos argumentos, los términos del debate sobre la constitucionalidad de las acciones afirmativas en las universidades públicas han sido reconocidos como legítimos y amparados por el ordenamiento jurídico. El trabajo del Ipea publicado en la secuencia de la decisión de la ADPF 186 muestra otros posicionamientos de la Corte Constitucional en el sentido de reconocer el papel de este instrumento. El documento señala los siguientes pasos:

> Três de maio de 2012, Ação Direta de Inconstitucionalidade (ADI) no 3.330: por maioria dos votos, julgou improcedente a ADI ajuizada pela Confederação Nacional dos Estabelecimentos de Ensino (Confenen). A ação questionava a Medida Provisória no 213/2004, convertida na Lei no 11.096/2005, que instituiu o Programa

Universidade para Todos (ProUni); Nove de maio de 2012: Recurso Extraordinário (RE) no 597.285: questiona sistema de reserva de vagas adotado pela Universidade Federal do Rio Grande do Sul (UFRGS), que destinava 30% das vagas a candidatos egressos de escola pública, como subcotas para negros. Foi negado provimento pela maioria, e a única divergência foi manifestada pelo ministro Marco Aurélio, ao ponderar que, ao contrário do critério racial, não avaliava como válida a utilização do critério baseado na rede de ensino de origem da formação educacional do candidato (pública ou privada). (IPEA, 2013)

En agosto de 2012 entro en vigor la Ley 12.711 que estableció que las instituciones federales de educación superior, vinculadas al Ministerio de Educación, reservasen, mínimo el 50% de sus cupos para personas que hubiesen cursado la secundaria en establecimiento educativo público. Estableció, también, en su artigo 3º., que estos cupos deberían ser ocupados, por curso y turno, por auto declarados negro, mestizos e indígenas, en proporcional al mínimo igual al de negros, pardos e indígenas en la población de la unidad de la Federación donde está instalada la institución, según el último sondeo del Instituto Brasileiro de Geografía y Estadística (IBGE), teniendo esta directriz pacificada, las practicas ya desarrolladas por varias instituciones de enseñanza superior en lo que concierne al uso de programas de acciones afirmativas para el ingreso da población negra a la enseñanza superior.

Otra manifestación de la Corte Superior - STJ - en el tema de acción afirmativa se refiere al recurso de *«mandato de segurança»* (RMS) 26.089-PR, cuyo relator fue el Ministro Felix

Fisher. Se trató de un recurso de *«mandato de segurança»*, en el cual, la ley de cuotas para el servicio público en el estado de Paraná no fue observada en concurso para el cargo de enfermero del Hospital Universitario del Oeste de Paraná, teniendo en cuenta que la convocatoria no aplicó el porcentaje de cuotas establecido por la legislación estatal. El concurso fue anulado y los aprobados iniciaron acciones judiciales cuestionando la ley de cuotas estatales. El Tribunal deJusticia de Paraná se pronunció a favor de la legalidad de la ley estadual que asegura las referidas cuotas; este posicionamiento fue ratificado por el STJ que, por medio de su sección 5 aprobó el informe del Ministro Felix Fisher. Uno de los apartados de la decisión a ser destacados es el siguiente:

> Duas noções do princípio da igualdade têm sido recorrentes nos textos constitucionais: a de igualdade formal e a de igualdade material. A primeira é a necessidade de proibir ao Estado o tratamento discriminatório, ou seja, de proibir todos os atos administrativos, judiciais ou expedientes normativos do Poder Público que visem à privação do gozo das liberdades públicas fundamentais do indivíduo com base em critérios arbitrários. Na segunda acepção, sustenta-se que, além de não discriminar arbitrariamente, deve o Estado promover a igualdade material de oportunidades por meio de políticas públicas e leis que atentem para as especificidades dos grupos menos favorecidos, compensando, desse modo, as eventuais desigualdades de fato decorrentes do processo histórico e da sedimentação cultural.
>
> A Carta Magna é repleta de dispositivos que não só possibilitam a adoção de ações afirmativas por

parte do Estado e de particulares, mas que de fato criam verdadeiros mandamentos de sua implementação sob pena de inconstitucionalidade por omissão (Artigo 3o, III, Artigo 5o, I, Artigo 7o, XX, Artigo 37, VIII, Artigo 170, VII, IX, todos da Constituição Federal). Foi então que veio a ideia de se trabalhar para promoção social desse grupo, estabelecendo-se o regime de cotas, seja no serviço público, seja nas universidades. E é certo que, bem examinada a questão, vê-se claramente que inexiste qualquer lesão jurídica *in casu.*

En este punto de nuestro análisis, se puede cuestionar en cierta medida, ¿si las decisiones de las Cortes Constitucionales son reproducidas en otras decisiones que envuelven la cuestión racial? En el trabajo de Silva (2016), se presentan una seria de datos, parte de los cuales se basa esta presentación. La autora señala como en el Brasil, en sus Estados y en sus municipios se adoptaron leyes cuya temática se refería a la reserva de cupos para negros en los concursos públicos. El cuadro que la autora destaca que fueron identificadas 50 experiencias en el tema. De estas 35 vienen siendo implementadas. En ese universo, hay cuestionamientos judiciales de las leyes que establecieron la reserva de cupos en los concursos públicos. Se tratan de 10 acciones judiciales. De estas, 6 discuten el principio de isonomia. Aquí cabe un análisis para identificar en que medida los argumentos de estas decisiones se conectan (o no) con las decisiones de las Cortes en el tema.

En este sentido, vale la pena destacar la importancia de estudiar lo que llamamos de patrones de juzgamiento. En buena hora, podemos encontrar referencias a esos trabajos que estudian

esa definición, partimos de las consideraciones que están en Kroener (2013), Sunstein (2001), Tate (1993), Spisten & Linquist (2017), en los cuales, los temas sobre patrones decisionales del sistema judicial, activismo judicial, la comprensión de la limitación de las decisiones judiciales y su repercusión en el espacio de las políticas públicas, parecen tener mucho sentido. Sobre esta perspectiva y considerando la discusión propuesta en este texto es importante investigar como el entendimiento de las Cortes Constitucionales repercute en espacio de decisión política de implementación de las acciones afirmativas.

Para una agenda de investigación

Así, para concluir, se presenta una agenda de investigación podrá contener las siguientes cuestiones:

En qué medida la decisión de las Cortes Supremas tienen fuerza auto-aplicativa en el ámbito de las políticas públicas de acción afirmativa.

Como el tema de las capacidades institucionales y de la cooperación entre poderes puede ser tema de investigación que nos auxilia en una mejor implementación de políticas afirmativas.

¿Es posible diseñarmejor tales políticas a partir de las decisiones judiciales?

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Como se benefician los sistemas de garantías de derechos de las decisiones de las Cortes Supremas para mejorar indicadores en políticas públicas.

Que campos del conocimiento esta discusión trae para la enseñanza y la investigación en el Derecho.

En este caso, es importante mapear que políticas de acción afirmativas existen en Colombia y como las Cortes Superiores vienen interpretando el tema. Este parece el desafío capaz de identificar similitudes y diferencias de los contextos institucionales identificados en Brasil y Colombia.

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RESUMEN

La profesionalización del trabajo de los policías responde a las exigencias de modernizar las instituciones del Estado y de elevar la calidad de los servicios públicos. La instrumentalización de dicha política se apoya en los referentes de la "nueva" gestión pública y en la cuantificación del trabajo de los servidores públicos. En este artículo analizaremos las tensiones vividas por policías, en el marco de los cambios en la administración de la justicia, con el cambio de sus actividades. Sostendremos que la producción de la seguridad constituye un entramado de relaciones complejas en el que el trabajo de los policías está sujeto a cambios tensos y conflictivos.

Palabras clave: modernización, servicio público, trabajo, profesionalización, policías.

RESUMO

A profissionalização do trabalho dos policiais responde às exigências de modernização das instituições do Estado e do aumento da qualidade dos serviços públicos. A instrumentalização de dita política se apoia nos referenciais da "nova" gestão pública e na quantificação do trabalho dos servidores públicos. Nesse artigo analisaremos as tensões vividas pelos policiais no contexto de mudanças da administração de justiça, com transformações em suas atividades. Argumentamos que a produção da segurança constitui um emaranhado de relações complexas, no qual o trabalho dos policiais está sujeito a mudanças tensas e conflituosas.

Palavras – chave: modernização, serviço público, trabalho, profissionalização, policial.

ABSTRACT

The professionalization of the policeman job answers to the requirements of modernize the institutions of the state and raise up the quality of public services. The instrumentalization of that policy rest on new public management values and in the quantification of the work of public servers. In this article we analyze the tensions suffered by the policeman – in the frame of the changes in the justice administrations – with the reframing of their activities. From it we will hold that the production of the security constitutes a framework of complex relations in which the policeman work are subject to conflict and tense changes.

Keywords: modernization, public service, work, professionalization, policeman

INTRODUCCIÓN

La profesionalización del trabajo en el sector público se apoya en la promesa de modernizar las instituciones del Estado y de responder a las exigencias de calidad y buen trato en la prestación de servicios públicos; empleando referentes del mercado y herramientas gerenciales, la reorganización de los servicios públicos pone a discusión el sentido de la actividad y, con ello, la vocación de servicio de los trabajadores del Estado (Bezes, 2007; Bezes et al., 2011). La crítica a la relación burocrática se combina con una pérdida de coherencia simbólica, pues el sentido y la vocación de servicio (trabajar para "el otro", el *ethos* profesional) se confronta con el dominio de una lógica gerencial y con la evaluación de indicadores de desempeño en la recomposición de las profesiones del Estado. En este proceso, la ética profesional es objeto de fuertes tensiones al ponerse en evidencia la brecha entre el trabajo prescrito y el trabajo real, pues la ética policial no sólo está anclada en los protocolos judiciales y en las normas que regulan el trabajo de la corporación; sino

también, como señala De Lima (2013) en las reglas implícitas que son producidas por los agentes de seguridad en situación de trabajo.

La coherencia en la producción de los servicios públicos va más allá de su viabilidad técnica y financiera y de la promesa de elevar su calidad, pues la reorganización, bajo una lógica de mercado, pone a discusión el sentido mismo de la actividad y las condiciones de su producción. La intervención de la policía en situaciones de emergencia, por ejemplo, en aras de resguardar la seguridad y de intervenir en la administración de justicia, son actos de servicio que se organizan desde el Estado, constituyendo servicios públicos que se sujetan a estructuras y prácticas organizacionales. En el interés de hacer más eficiente la capacidad de respuesta de las instituciones que intervienen en la materia, se han instrumentalizado cambios que modifican, entre otros elementos, los contenidos de la actividad del policía.

La organización del sistema de justicia refiere a estructuras burocráticas, procedimientos y reglas que orientan y encuadran la administración y el uso de la fuerza del Estado mexicano bajo el imperativo de

asegurar el respeto a un orden normativo y de sancionar conductas que alteran la vida social (CIDE, 2015). La intervención de las fuerzas de seguridad pública representa un servicio en tanto que se actúa a solicitud –expresa o no - de un ciudadano sobre el otro que es el objeto de la intervención. Más que una intervención univoca, la relación de servicio sugiere una coproducción en tanto que, quien solicita la intervención, evalúa al mismo tiempo su "calidad". Bajo este esquema, la reforma se justifica con la incorporación de los referentes de la calidad y de la satisfacción del usuario. En este marco, nuestra atención se centra en la producción de la seguridad, por lo que conviene preguntar sobre el trabajo de los policías en tanto que éste constituye un referente central en la producción de la seguridad.

La producción del servicio de seguridad pública es un proceso complejo; sin embargo, la centralidad que se otorga a las exigencias de calidad y de buen trato reduce el debate a la reorganización del sector público en la relación del servicio, esto es, en la relación entre el prestador del mismo y el usuario/cliente/ciudadano. Dicha centralidad, corresponde con la mercantilización de los servicios públicos.

En el análisis de la conflictividad entre el prestador de servicio (burócrata, policía, médico, enfermera, etc.) y el usuarios/consumidor, el objeto de transformación y reeducación son los sujetos que se encuentran en el *front office*, o sea personas y profesionales que están en contacto "directo" con el público. Así, el servidor público es objeto de una política de cambios en los que es imperativo controlar y evaluar el trabajo a partir de indicadores.

En este artículo haremos un análisis, desde la perspectiva del trabajo

de los policías en Querétaro,[1] de los contenidos de la política de profesionalización que se instrumentaliza desde el Estado. Partimos de que la redefinición de las actividades policiales converge con cambios en el sistema de justicia penal y con el dominio de la gerencia pública, creando un conjunto de polémicas alrededor del control sobre la actividad productiva mediante la evaluación de indicadores; pues, en la conversión de los servicios públicos impera la premisa de que "lo que no se mide no se mejora". En este sentido, la promesa de elevar la calidad de los servicios de seguridad pública corresponde con el interés de fortalecer la confianza en las instituciones. Promover un sistema judicial más "cercano a la gente", autónomo y que atienda mecanismos de rendición de cuentas sugiere, como señala el diagnóstico del Poder Judicial (SCJN, 2006), la existencia de controles que permiten supervisar la labor de los impartidores de justicia[2].

La combinación de dichos mecanismos encuentra en la

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[1] Querétaro es una ciudad de aproximadamente de 1 millón de habitantes; está ubicada en el centro de México. Se caracteriza por ser una ciudad industrial, con alto crecimiento económico dentro del contexto nacional y, en las últimas tres décadas, su crecimiento demográfico ha sido muy superior a la media nacional, principalmente por la llegada de migrantes de otros lugares del país. En ese contexto, el alza delictiva ha comenzado a ser uno de los problemas y preocupaciones sociales que años antes no existían.

[2] Según Benítez (2016), la reforma penal de 2008 avanza en lo siguiente: a. Innovación en el proceso penal; b. Instrumentación para agilizar el combate a la delincuencia organizada; c. Implantación de un sistema acusatorio, diferente al tradicional inquisitivo; d. Elevación a rango constitucional de la presunción de inocencia; e. Profesionalización de la defensa; f. Superación de la discrecionalidad del agente del Ministerio Público para ejercitar acción penal, creando la figura del juez de control.

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instrumentalización de herramientas gerenciales y en la cuantificación (medición de indicadores de desempeño) un soporte aparentemente "neutral" y "científico". En este sentido, la profesionalización del trabajó del policía se enmarca en la premisa de ejercer mayores controles en el reclutamiento, la formación y la evaluación del trabajo. Sin embargo, la reorganización del trabajo implicada en las exigencias de la profesionalización, no está exenta de paradojas y tensiones que afectan al trabajador.

La nueva política de seguridad pública: modernizar y profesionalizar

La premisa de modernizar los servicios públicos y de elevar la calidad de los servicios públicos son dos caras de la misma moneda. Por un lado, se busca responder a una crítica social que evidencia las inconsistencias de las instituciones públicas para cumplir sus tareas eficaz y eficientemente (Cabrero, 1997); por el otro, identifica como objeto de transformación a la relación de servicio, en el supuesto de que un buen servicio requiere de una mejora en la actitud y desempeño de los servidores públicos. En este sentido, la crítica a la relación burocrática encontró un soporte en nuevas exigencias productivas: calidad/satisfacción cliente[3].

La conversión de los servicios públicos, en el marco del retraimiento

de la protección social, pone a discusión el sentido de la acción del Estado; una dimensión ética-política que encuadró la producción de servicios públicos en la voluntad de promover la cohesión social, mediante la distribución y la protección de su consumo (Belmont, 2016). En este proceso, las identidades profesionales de los servidores públicos entran en tensión con la emergencia de nuevos imperativos. En efecto, el incremento de los índices delictivos en el país y en el Estado de Querétaro se combina con las exigencias de la población en general[4] de mejorar el desempeño de los cuerpos policiacos, creando un contexto favorable para justificar cambios en la orientación y organización del trabajo de las distintas corporaciones policiacas.[5]

Cuadro 1. Aumento delictivo y preocupación por la inseguridad en Querétaro

Querétaro es el municipio que más aporta a la incidencia delictiva del Estado. Los dos últimos años muestran un aumento delictivo. Dentro del perfil delictivo de la ciudad, el robo, las lesiones dolosas y las adicciones son los que más preocupan. El robo, por ejemplo, ha rebasado la media nacional[6]. En paralelo, la percepción de la inseguridad se muestra en ascenso. Según la Encuesta Nacional de Victimización y Percepción sobre Seguridad Pública (ENVIPE) 2016, el 62.1% de la población de la

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[3] El discurso de la modernización se combina con los imperativos de la competitividad y con el impulso de una cultura comercial en la conversión del sector público; en este escenario, la iniciativa, en el periodo de Felipe Calderón (2006-2012), de invitar a la ciudadanía a "denunciar" el trámite más inútil de la administración pública, exhibió la instrumentalización de herramientas gerenciales en la evaluación de indicadores, en la ruta de trabajar por resultados y rendir cuentas.

[4] Ser policía en México, ¿Qué rol asume la sociedad? Centro de Opinión Pública UVM, Insyde Ideas. México (2017).
[5] Según Manaut existen seis modelos de organización policial en México. Ver: https://bit.ly/2JhTWTe; Se sugiere también consultar: https://bit.ly/2qhrByI
[6] https://bit.ly/2JdN09F

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entidad dijo sentirse insegura; dato que contrasta con el de 2015, que fue de 50.7. En 2015, esta percepción posicionaba a Querétaro como el tercer Estado con menos inseguridad percibida, sólo después de Yucatán y Aguascalientes. Para 2016, la situación cambió radicalmente, pues Querétaro se ubicó el lugar 18. En lo que respecta al municipio de Querétaro, la percepción de la inseguridad también es alta y creciente. El 51.3% de la gente se dijo poco segura y 21.9% se dijo nada segura. Sólo 26.2% se siente segura y 2.6% muy segura. Las mujeres, las personas con menos escolaridad e ingreso, y las personas con mayor edad, con respecto a otros sectores de la población, manifiestan mayor preocupación por la seguridad y consideran que la ciudad es más insegura. En este sentido, el 53.8% considera que la seguridad es el tema principal que el gobierno municipal debe atender. Lo cual es consistente con el 42.3% de la población que dijo que en su delegación hace falta más seguridad: más policías y más módulos de vigilancia[7]. Por otro lado, llama la atención que el 78% de la gente considera que el gobierno municipal no está haciendo nada para mejorar la infraestructura urbana para combatir y disuadir la inseguridad[8].

La confianza y la satisfacción del público aparecen como indicadores de la calidad del servicio. Desde esta perspectiva, la política de seguridad identifica como objeto de trasformación al policía en tanto que agente clave en la producción de la seguridad. Dicha política, sin embargo, al descontextualizar el servicio pone en evidencia las tensiones que se crean entre la lógica gerencial, el contexto de trabajo y las situaciones que se desarrollan en el curso de la actividad (Boussard, Demazière, & Milburn, 2010).

En la reorientación y reorganización del servicio de seguridad pública convergen también cambios ideológicos, expresados en tres características de la "nueva" política de seguridad, a saber: la centralidad que adquiere el punitivismo, el dominio de la cuantificación para atender un problema complejo y multidimensional y la redistribución de responsabilidades con la llamada "democratización" de la seguridad (Ramírez, 2018).

La tendencia al alza de la incidencia delictiva en la entidad y en la ciudad de Querétaro corresponde con la emergencia del discurso de la "mano dura". En este marco, la población demanda mayor eficacia en el control del delito, pero en un contexto en el que Estado no puede utilizar toda su fuerza, ni los instrumentos de política social y económica que empleó en gran parte del siglo XX. El uso de la fuerza se ve limitado por las exigencias de la democratización, tales como la exigencia de observar los derechos humanos y dar cabida a la participación ciudadana. De manera que se presenta una fuerte tensión entre la necesidad de ser eficiente en el control criminal - que lo ha llevado a emplear soluciones principalmente de fuerza -, y un conjunto de limitaciones legales, políticas y sociales. De manera que, en

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[7] En nuestra experiencia, la referencia a la mayor vigilancia y el aumento de policías el contexto mexicano, se suele asumir como una de las dimensiones de calidad en el servicio de la seguridad, pues repercute directamente en la satisfacción de la gente en relación al servicio.
[8] Recuperado en: https://bit.ly/2icp4V3 y en: https://bit.ly/2dhNquw

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este marco, profesionalizar implica una política pedagógica en el que el policía es objeto de transformación.

Así, el policía además de formarse en los aspectos jurídicos que enmarcan su actuación, debe capacitarse para mediar en los conflictos, dialogar y convencer a las personas en tanto que es una figura que debe generar confianza en la comunidad. Respetar los derechos humanos, incentivar la participación ciudadana en la producción de la seguridad y actuar con profesionalismo expresan -en buena medida- el compromiso gubernamental de garantizar la satisfacción del público.

La conflictividad que se crea en la relación de servicio y la "mala percepción" en general sobre los servidores públicos, han servido como una palanca que fuerza cambios en los arreglos contractuales, en los contenidos de las actividades y en las profesiones del Estado. El impacto más tangible se observa en la pérdida de reconocimiento y en el deterioro de la "imagen" de los prestadores de servicios públicos, pero también en la brecha que se crea entre el trabajo real y el trabajo prescrito, entre la administración gerencial y las situaciones de trabajo.

Aunada a esta conflictividad, la cuantificación domina el escenario. Primero en el control sobre el desempeño del funcionario público[9]. Desde la planeación hasta la evaluación, el uso de indicadores de desempeño

muestran que la política descansa en este soporte práctico – ideológico (Hibou, 2012). En segundo lugar, la operatividad del castigo implica la detección de riesgos o peligros a través de la utilización y ponderación de su ubicación estadístico – espacial del delito[10].

La brecha entre la promesa de mejorar la calidad de los servicios y las situaciones que se construyen en la actividad, se expresa en las tensiones alrededor de la promoción del policía ideal (que se recoge bien en la metáfora de Robocop (Schmidt y Verhoeven, 1987) como policía eficiente, bien equipado en seguridad personal y en armamento, respetuoso de la legalidad, sin conflictos, ni tensiones en el desempeño de su trabajo: un policía que actúa profesionalmente, apegado a la norma y a la técnica), justificando la importancia de ejercer mayores controles – legales y cuantitativos - sobre su actividad. Aspecto que analizaremos a continuación.

El policía como objeto de transformación

Existen varias tensiones alrededor de los ideales de la profesionalización y de las condiciones en las que se desarrolla el trabajo que, en buena medida las tensiones emergen en el análisis de la experiencia de los policías.

Apoyándonos en datos extraídos de encuestas recientes y de entrevistas a profundidad, entre noviembre de 2017 y enero del 2018, a diez elementos policiales en servicio y en retiro de

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[9] Artículo 36 del reglamento de la policía estatal de Querétaro, establece que: "El Comité de Estándares Profesionales tiene a su cargo procurar, mediante recomendaciones técnicas no vinculativas, el aprendizaje permanente y la mejora operacional de la corporación, a cuyo efecto tendrá a su cargo la revisión genérica de las prácticas, políticas y procedimientos policiales, la identificación de los patrones de actuación de los policías, la interpretación de sus resultados estadísticos y la evaluación del desempeño institucional de la policía en su conjunto".

[10] Los artículos 42 y 103 de la ley de sistema de seguridad ciudadana del Estado de Querétaro son buenos ejemplos de la cuantificación de la seguridad.

Querétaro[11], analizamos algunas tensiones. Básicamente, las tensiones se evidencian en el contraste entre las exigencias legales y organizaciones que pesan sobre el trabajo de los policías y las condiciones reales del trabajo policial. Por ello, la contextualización y el análisis de las condiciones reales del trabajo policial son fundamentales para entender que la evaluación del trabajo tiene dificultades que muchas veces escapan a los indicadores.

La modificación la Ley general del sistema nacional de seguridad y la creación del Plan Rector de Profesionalización, exhiben la centralización de la producción de seguridad en la figura del policía. Los cambios en el trabajo parecen resumirse en el concepto de "desarrollo policial"[12]. Ésta contempla mecanismos para controlar el ingreso a los cuerpos policiacos, la formación, la capacitación y la evaluación de competencias en situaciones de trabajo. La instrumentalización de mecanismos de control sobre los cuerpos policíacos refleja la fuerte regulación que se ejerce desde el Estado. En este sentido, la idea de grupo profesional queda un tanto vaga en tanto los policías no intervienen o ejercen poco control sobre el mercado de trabajo, la definición de las actividades y la evaluación de los conocimientos y/o competencias que dan coherencia a la práctica profesional.

La referencia a la igualdad de oportunidades para ascender de puesto en el desarrollo de la carrera policial sugiere el reconocimiento del mérito como criterio fundamental en la movilidad del policía. Recordemos que

en otro momento de la función pública, el reconocimiento de la antigüedad laboral constituía un componente de la movilidad interna. En este plano, fortalecer la vocación de servicio y el sentido de pertenencia a los cuerpos policiacos apuntala la idea de hacer más sólidos los vínculos con el trabajo y de responder a las expectativas de los usuarios: actuar de manera profesional.

El control de la trayectoria del policía (ingreso y permanencia) y la evaluación permanente de su desempeño fortalecen el régimen disciplinario y la regulación que ejerce el Estado sobre el estatus que se le asigna. La paradoja es que como prestador de servicio, esto le impide reconocerse como trabajador y, por lo tanto, la posibilidad de reivindicar mejora en sus condiciones de empleo y de trabajo.

Las demandas derivadas de diversas movilizaciones registradas en los últimos años muestran las tensiones alrededor del reclamo por mejorar las condiciones de trabajo y de empleo, *vis a vis* de las exigencias productivas y de los riesgos de trabajo[13]. En efecto, la dimensión de seguridad y riesgos constituye un punto neurálgico en el reconocimiento del colectivo, por lo que la supresión de la crítica y de las reivindicaciones colectivas, así como la invisibilización de la acción colectiva, crea un malestar en los policías,

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[11] Se entrevistaron tres elementos de la policía estatal, 5 del municipio de Querétaro, 1 de El Marqués y 1 policía en retiro.

[12] De acuerdo a la ley mencionada, desarrollo policial es: "un conjunto integral de reglas y procesos debidamente estructurados y enlazados entre sí que comprenden la Carrera Policial".

[13] Entre 2015 y 2016 se registraron paros laborales de corporaciones policiales en los municipios de Querétaro. Fuentes: Mariana Chávez. "Huelga de policías en Querétaro". La Jornada. 6 de abril de 2016. https://bit.ly/2Ls3oA2
Andy Martínez, "Auxiliaron estatales ante huelga de policías municipales en Cadereyta". Quadratin. 28 de septiembre de 2015. https://bit.ly/2sIX9A2
El paro de la policía municipal de Tlaxcala también es muy destacado por el precedente jurídico que sentó en contra del colectivo profesional. https://bit.ly/2M2n7r6

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mermando la "voluntad" de hacer carrera o el interés de hacer más sólido el vínculo subjetivo con el trabajo. La fragilidad del colectivo se expresa también en una fragilidad de compromisos y de vínculos con el trabajo; por lo que las razones de permanecer en la carrera policial tienden a ser instrumentales.

No obstante, la idea de orgullo de pertenecer a los cuerpos policiales, en algunos lugares más sólido que en otros, parece ser una estrategia que contribuye a mitigar estas contradicciones. En ese sentido, los policías entrevistados dijeron haber ingresado a la corporación, en primer lugar, por necesidad y después por vocación por el servicio público o la influencia del padre.

La mayoría de ellos manifiesta un orgullo por ser policía, pero algunos dudan cuando se les pregunta si volverían a ser policías. El siguiente testimonio refleja la contradicción entre la necesidad de tener un trabajo, independientemente de las vocaciones personales, y el orgullo de ser policía que, al final, mitiga parte de las tensiones vividas en el ejercicio de la profesión:

> (…) yo creo que elegiría emprender a lo mejor un negocio o terminar mi carrera; porque esto de la policía es muy complicado, es mucho estrés; la policía mata. El estrés mata normalmente a la policía, al elemento, es muchísimo estrés, es mucho desvelo, es mucho trabajo y es muy poco que tú puedas emprender o lograr algo.
> (…) creo que ya estamos en el barco, yo la verdad, en la institución, al menos yo de la policía estoy muy orgulloso, yo sí estoy orgulloso de pertenecer a una corporación como esta, trabajarle, mantenerme ahí hasta que el cuerpo aguante... la parte fundamental de esta Secretaría es el policía, el que va a dar resultados de primera mano es el policía como tal, ni el presidente municipal, ni el diputado local, ni el regidor, ni nadie; normalmente quien hace toda la chamba de seguridad pues es el policía, con todas las carencias que tiene, en cuestiones operativas, hablando en cuestiones de elementos, cargas de trabajo... hay que cubrir todo eso; yo por eso me siento orgulloso de estar acá. (Policía Julio)

Reeducar, transformar

La profesionalización del trabajo de los policías redefine los contenidos de la actividad y la instrumentalización de cambios en la evaluación del desempeño. Las herramientas utilizadas se apoyan en la instrumentalización del modelo de competencias y de mecanismos de evaluación individual. Sin embargo, se tiende a fragilizar los colectivos de trabajo (Durand, 2011; Linhart, 2011) y poco contribuyen al fortalecimiento de la identidad colectiva (Fortino, 2013) y, por lo tanto, de la profesión como categoría social.

El uso de indicadores en la evaluación del trabajo corresponde con la promesa de sujetar la valoración del trabajo a criterios objetivos y cuantificables, comparables en el tiempo y, por lo tanto, neutrales en la asignación de promociones o en el reconocimiento del desempeño, frente a lo cual es preciso fortalecer la identidad colectiva con el objeto de contener la fragmentación del colectivo, pues según esta idea, el trabajo debe estimularse con incentivos materiales individuales, buscando la proactividad y el desarrollo de prácticas y conductas emprendedoras.

En otras palabras, dichos cambios fortalecen el carácter instrumental del trabajo, reduciendo el margen para el desarrollo de una identidad colectiva articulada con

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estrategias que impulsen el reconocimiento social de la profesión. El carácter instrumental del trabajo fragiliza el sentido social de la prestación del servicio público; laborar por el ingreso, *vis a vis* los riesgos de trabajo, aparece con frecuencia como una razón para abandonar la carrera policial, debilitando el vínculo con la vocación.

El caso del despido de Rogelio es interesante porque ilustra la desprotección de los oficiales frente a sus jefes, dada la fragilidad del colectivo. Según él, su despido se dio cuando comenzó el sexenio panista y, para los nuevos funcionarios, estaba asociado con la anterior administración. Actualmente, está peleando el caso en los tribunales, si bien sabe que no lo reinstalarán, demanda una liquidación justa, pues le ofrecían mucho menos de lo que le correspondía, según sus palabras. Mencionó que los mecanismos de evaluación y justicia interna no funcionaron en su defensa, a pesar de contar con las pruebas. Otro testimonio, en el contexto de la labor de concientización de los riesgos de la profesión, que se hace hacia los nuevos elementos, un oficial señaló:

> Aquí tienes un pie en el panteón, cuando te paras aquí, en la corporación, tienes un pie en el panteón y el otro en la cárcel, en el penal; si te cargas hacia acá, caes al penal y si te cargas un poquito hacia allá, te vas al hoyo; así de sencillito, (…) o estás dentro del marco legal, dentro de la actuación policial o, como aquellos que les gusta un poquillo el dinero, la extorsión o en todo este tipo de situaciones. Pónganle que no, que no caigan a un lado o al otro, pero sabes qué, pues ¿cuántos se están yendo o se van de la corporación o incluso están sancionados en la Secretaría de servidores públicos? (Policía Roberto)

En este sentido, Moloeznick (2015) considera que la carrera policial en México es falaz. Entre otras cosas, porque estriba básicamente en que los policías (…) "pueden ser libremente removidos y, aunque dicha separación haya sido injusta, en ningún caso procederá la reinstalación". Así lo avalan también los datos de la encuesta ¿Qué piensa la policía?

Frente a las exigencias de la calidad y de buen trato, la profesionalización del policía implica principalmente la reeducación del policía y que el Estado ponga las bases para ello.

La reeducación no sólo es la adquisición de un conjunto de nuevos conocimientos y competencias, orientadas por el vínculo entre de la satisfacción del usuario y la evaluación del servicio. Esta dimensión pedagógica tiene la consigna de adquirir competencias para un desempeño exitoso, en un escenario donde las exigencias cívicas están más presentes por la creciente denuncia y, hasta criminalización del policía, mediante el registro de "abusos" con las nuevas tecnologías.

Del otro lado, la población adquiere el status del ciudadano en la medida que participe en la producción del servicio, supervisando el trabajo del policía, su apego a los procedimientos adecuados en la atención de denuncias y en el ejercicio de la fuerza. El rol que adquiere el ciudadano es del cliente insatisfecho, lo cual exhibe la mercantilización de los servicios públicos. En el rediseño de la política de seguridad se pone una atención especial a la figura del ciudadano/consumidor/cliente en tanto que la relación de servicio se concibe como una coproducción a partir de la vigilancia y las expectativas de quienes lo consumen. Nuevamente, el encuadre de la relación de servicio corresponde a

la interpretación que desde la nueva gerencia pública se impone en la orientación de los servicios públicos, pues las consignas de lograr una comunicación efectiva y de observar los protocolos y los procedimientos administrativos condensan la idea del buen servicio. En esta tónica, la figura del público palidece ante la figura del consumidor/cliente del servicio público.

La atención en la figura del policía y del ciudadano desdibuja el análisis sobre el contexto, las actividades y políticas que están detrás de la producción del servicio, lo que da poco margen de maniobra para reflexionar sobre la producción de la prestación del servicio: el *back office*.

A partir de ello, la profesionalización se objetiva en un tipo ideal de policía, que embona bien con la figura de un servidor de la justicia bien tecnificado, remplazable, sin conflictos emocionales o de conciencia. Ante ello, los policías entrevistados se mostraron críticos.

En términos de la adquisición de conocimientos, se habla de programas de formación inicial y continua y de una redefinición de los perfiles de ingreso, así como nuevos criterios en la evaluación de las competencias y de las trayectorias profesionales, los cuales rompen con las formas de evaluación y de reconocimiento anteriores, pues existen policías que sienten un bloqueo en el desarrollo de la carrera profesional frente a las nuevas exigencias.

La formación inicial implica un proceso de preparación teórico-práctica basada en conocimientos jurídicos, sociales y técnicos para capacitar al personal de nuevo ingreso de las Instituciones de Seguridad Pública. En este sentido, se observa una modificación a la curricula académica, pues en generaciones anteriores la formación se limitaba al uso de armamento y al adiestramiento

operativo de los oficiales, mientras que hoy, además de ello, se incorporan conocimientos y desarrollo de habilidades nuevas, tales como comunicación efectiva, manejo de temas diversos como el de derechos humanos y equidad de género; atención a víctimas del delito, y aprendizaje de las nuevas tecnologías y de las nuevas reglas del sistema de justicia penal.

Es notorio también el interés de ejercer mayor control en la contratación y en la permanencia laboral de los policías. En este sentido, el colectivo pierde margen de maniobra para intervenir en la definición de perfiles y de criterios a evaluar en la práctica profesional. Recuperamos un testimonio en ese sentido:

> (…) en el 2000, por ejemplo cuentan los oficiales, los policías viejos que, para ser policía, si tenías que hacer un examen de diez palabras; por ejemplo, sí de esas diez palabras seis estaban escritas correctamente, más del 50% estaban escritas correctamente, en ese momento, te daban tu uniforme, tu arma y te ibas a dar vialidad a una esquina, a infraccionar y te daban tu talón de infracciones; ahora la policía ya no es así y de eso estamos hablando en un lapso de diez y siete años. (Policía Julio)

Antes, señala el policía Julio, las exigencias para ingresar a la policía eran mínimas, situación que ha cambiado por las nuevas exigencias de un mayor nivel escolar y de un conjunto de pruebas para asegurar el ingreso y permanecía en el servicio. Para los policías con más años de servicio –entre 20 y 25 años en la corporación -, todos estos nuevos conocimientos muestran un cambio radical en su profesión y, sobre todo, un malestar para cumplir con las exigencias y una mayor responsabilidad. Para algunos, los policías menos preparados, los cambios

han provocado que los muevan de puesto y / o los cambien de funciones sin que exista alternativa o posibilidad de oposición ante el hecho de sentirse desprotegido.

Un policía en retiro mencionó que, más allá de los riesgos, las dificultades laborales serían el motivo por el que no regresarían al sector. Consideró que a pesar de la profesionalización, persistían prácticas como la falta de ascensos, el compadrazgo, el amiguismo y la compra de puestos. La opacidad que reporta el Índice de Desarrollo Policial 2017 (INDEPOL) para las rotaciones del personal y al sistema de promociones, confirma el juicio del policía. Otra encuesta "¿qué piensa la policía?", muestra que en 2017 el 62% de los policías del país no conocía el sistema de promociones, el 36% consideró que los ascensos son por recomendaciones y el 22% pensaba que obedecían a decisiones discrecionales. El 72% considera que no hay suficientes concursos de promoción y 55 % dice que el sistema no es transparente

Por otro lado, como idea, la profesionalización, aunque implica una serie de cambios sobre el policía, no tienen una lectura negativa, pues se ven como necesarios y normales dentro de la evolución del trabajo, en el marco del aumento del delito y de mayores exigencias sociales. Esta buena apreciación que tienen los policías de Querétaro sobre la necesidad de adquirir mayores niveles académicos es interesante, pues contrario a lo que encuentran Azaola y Ruíz (2009) para el caso de la ciudad de México, la pérdida de injerencia de los policías antiguos en formación de los nuevos elementos no es asumida como pérdida de control, sino como una necesidad del momento.

Sin embargo, los problemas se observan cuando los policías señalan que muchas veces se tienen rezagos que dificultan que las promesas de la profesionalización puedan cumplirse. Es común que se señalen las dificultades que implica operar en el nuevo sistema de justicia penal, desde la insuficiencia de elementos policiales, la insuficiente capacitación en este nuevo sistema, hasta la mala planeación de los tomadores de decisiones. Se critica la profesionalización en términos de la práctica concreta y no como idea, pues muestra fuerza y cierto arraigo.

Reeducar, visto como un cambio en la mentalidad, implica una reorientación del sentido del trabajo. Se trata de aprender a que el desempeño en el trabajo – y las mejoras laborales - son una responsabilidad del individuo y que éste debe sujetarse a evaluaciones estandarizadas constantes. Por lo tanto, trabajar por resultados, el reconocimiento del mérito y la evaluación permanente son dispositivos que redefinen los contenidos de la actividad.

La evaluación de indicadores o de resultados es un proceso de recolección, procesamiento y valoración de información cuantificable que determina en qué medida el policía ha adquirido el conocimiento y el dominio de competencias en situaciones de trabajo. La exploración en campo da cuenta de que estas exigencias se ven como necesarias, pero también como políticas ajenas al trabajo real, pues crean un velo sobre el proceso de trabajo y, en ocasiones, la simulación. Pues la evaluación del desempeño, en la carrera profesional, se pervierte cuando prima la evaluación subjetiva, el favoritismo y la falta de pertinencia de la estandarización de algunos aspectos de la operación policial, en el sentido de que no recogen las dificultades que se presentan en las situaciones reales. Por ejemplo, a decir de los policías, muchas soluciones del trabajo cotidiano en calle, pasan más por la intuición –

ligada a la experiencia – que por el apego a los protocolos y a los conocimientos recibidos durante la formación.

Pensando en la relación entre incentivos y mejoras laborales, llama la atención cómo la vieja máxima identitaria y de defensa del trabajador, según la cual "el policía que llega a viejo es porque se hace pendejo", tiende a romperse, pues los estímulos materiales buscan que se privilegie la eficiencia, independientemente del riesgo que implica la operación en calle del policía. Sobre esto volveremos más adelante, pues hay que valorarlo a la luz de los cambios en las protecciones al riesgo en el trabajo.

Ligada a la profesionalización está la certificación. La certificación es el conjunto de requisitos mínimos que un policía debe cumplir para probar su idoneidad, atados a un sistema de evaluación y los requisitos necesarios para que una corporación pueda evaluar con objetividad. La objetividad está dada por criterios que se convierten en números e indicadores los cuales parecieran verdaderos e irrefutables tanto para los evaluadores como para los tomadores de decisiones. Según el artículo 96 de la Ley General del Sistema Nacional de Seguridad Pública (…) "la certificación es el proceso mediante el cual los integrantes de las Instituciones Policiales se someten a las evaluaciones periódicas establecidas por el Centro de Control de Confianza correspondiente, para comprobar el cumplimiento de los perfiles de personalidad, éticos, socioeconómicos y médicos, en los procedimientos de ingreso, promoción y permanencia".

La certificación es entonces la posibilidad de que se acepte que, desde afuera, algún agente establezca tanto los requisitos ideales para el trabajo, como los estándares de su evaluación. Así, la certificación avala la profesionalización,

como criterio de verdad y legitimidad. Estar certificado es estar dentro, contar con cartas para jugar el juego de la profesionalización.

Tres son las principales objeciones a la certificación. La primera es que los exámenes, que instrumentalizan dicho procedimiento, se ven como poco legítimos e injustos porque, quienes los hacen, no conocen el trabajo en la misma medida que lo conocen los policías. Se ignoran el estrés laboral, las malas condiciones en las que muchas veces se desempeña el trabajo, los problemas personales, la presión de la sociedad, entre otras cosas. Por otro lado, se considera que hay injusticia en la medida que los jefes (principalmente los burócratas que toman decisiones) no están sujetos a evaluación y por lo tanto carecen de mérito para decir quién sí y quién no está certificado. También, como se verá en el abordaje de la dimensión de carrera policial, los exámenes de control de confianza pueden resultar perversos, pues pruebas como el polígrafo atentan contra los derechos humanos y pueden implicar la posibilidad de terminar con la carrera de un policía, independientemente de si un procedimiento es inadecuado, erróneo o injusto.

Además de trabajar por resultados, sujetarse a la evaluación y certificación de competencias, la disciplina continúa apareciendo como un criterio central en el desarrollo de la carrera. El régimen disciplinario son un conjunto de normas que deben observarse a fin de que adopten conductas deseables. Según el Reglamento de honor y justicia del municipio de Querétaro, la disciplina se entiende como (…) "un procedimiento que busca asegurar que la conducta del personal policial sea apegada a derecho, al honor, el deber, la justicia y la ética; y a los principios de actuación de

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legalidad, objetividad, eficiencia, profesionalismo, honradez, y respeto a los derechos humanos, así como a los principios de necesidad, no discriminación, proporcionalidad, humanidad e imparcialidad". Además de que (…) "comprende la pulcritud, los buenos modales, el rechazo a los vicios, la puntualidad en el servicio, la obediencia legitima".

Sin embargo, aunque hay mayores exigencias para los policías, los estímulos parecieran ser un tema pendiente, pues el 89% de la muestra nacional dijo no haber tenido ningún estímulo por su desempeño[14]. En el caso de Querétaro, la normatividad para este rubro existe, pero los policías entrevistados mencionaron no haber recibido estímulos.

La disciplina aparece como parte del re-encuadre de la relación de servicio ante las exigencias productivas y cívicas. En algunos casos, la solicitud de disciplina por parte de altos mandos se ha interpretado como subordinación laboral, pues constituye un mecanismo de control que sanciona conductas no esperadas aun cuando generen desacuerdos en los policías. El reclamo de disciplina oculta, además, cargas laborales excesivas y mitiga la posibilidad de ejercer la crítica a las condiciones de trabajo. Algunos policías manifestaron que los cambios en la administración han desatado purgas y persecuciones contra ciertos elementos etiquetados como "gente del gobierno anterior", argumentando, entre otros, la necesidad de contar con gente – dócil - que obedezca las nuevas consignas.

Por otro lado, la consideración legal según la cual los policías no tienen relación laboral con el Estado, sino administrativa, ha dejado de manifiesto

que, ante la imposibilidad legal del derecho de huelga, el policía es un trabajador que no puede parar nunca, a pesar de que sus derechos pudieran estar siendo violentados.

En términos de las sanciones a las que están sujetos, obliga a que el policía deba ser en extremo cuidadoso de su desempeño y a enfrentarse, en solitario, a los aparatos de justicia cuando es objeto de una sanción. La expresión: "si la riegas... vas al panteón o la cárcel" refleja la ausencia de mecanismos de solidaridad y de protección colectiva. Afirmando la tesis de que la profesionalización recae en una paradoja a partir de que las herramientas que se instrumentalizan tienden a fragilizar el colectivo.

A decir de los policías con más años en el servicio público, los controles a los que están sujetos ahora son muchos y muy exigentes respecto de épocas anteriores, sobre todo pensando en el apego exigido a los derechos humanos y la eficacia. Por otro lado, cuando enfrentan un procedimiento disciplinario en su contra, internamente, tienen pocos medios de defensa, pues su representación en el consejo de honor y justicia es minoritaria. Si bien tienen derecho a defenderse[15].

La defensa del colectivo de trabajo sólo puede darse de manera informal – como lo han mostrado distintos casos de huelgas y paros en todo el país - y con el riesgo de ser sancionados, pues en la legislación aplicable a todo el país, los policías tienen una relación administrativa y no laboral con el Estado mexicano[16]. En

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[14] Según los Datos de 2017 de la encuesta ¿qué piensa la policía?2017

[15] Reglamento de honor y justicia del municipio de Querétaro, 2014.

[16] En este sentido, la Suprema Corte de Justicia de la Nación ha concluido que los militares, los marinos, los cuerpos de seguridad pública y el personal del servicio exterior, la relación con el Estado es de orden administrativa y debe regirse

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realidad, lo que se observa es el intento de desarticulación del colectivo, lo que muestra que el trabajo sólo puede ser defendido a través de la disciplina personal.

En otro orden de ideas, en términos de la seguridad del trabajador: "(…) tienden a citar factores administrativos u organizativos (sueldo insuficiente, opciones de promoción profesional limitadas, exceso de trámites administrativos o la falta de apoyo) como fuentes de estrés superiores a factores relacionados de manera específica con sus tareas, como el trabajo en turnos rotativos, la interferencia en la vida familiar o el miedo a la enfermedad o a la violencia" (Haro, 2013: 5). Lo anterior nos permite establecer que, tal como los datos recabados corroboran, las nuevas exigencias a las que está sujeto el policía, al no encontrar un asidero en la justicia laboral, se encuentran en fuerte tensión.

Entre los policías de Querétaro es común el sentimiento de injusticia, principalmente en lo que toca a las corporaciones municipales, pues consideran que los policías estatales tienen mejores condiciones de trabajo[17]. Los policías municipales entrevistados refieren haber tenido mejora salarial, pero critican la insuficiencia de prestaciones que reconozcan los riesgos de la profesión. Tan es así que, algunas corporaciones municipales, han optado por crear un fondo común – y paralelo a lo que el patrón otorga - de recursos

para el retiro y la protección de riesgos al trabajo[18].

Conclusiones: las paradojas de la carrera policial

La promesa de la modernización de la producción de la seguridad se centra en la profesionalización del trabajo del policía. Como hemos visto, existe una brecha entre los objetivos de la profesionalización y la situación real del trabajo policial que genera tensiones.

La profesionalización entonces aparece como una promesa doblemente incumplida. Por un lado, los ideales del trabajo profesional que debe desarrollar el policía no alcanzan a cumplirse a cabalidad, pues son rebasados por la complejidad de las situaciones reales de trabajo. Los indicadores y las reglas poco flexibles de la profesionalización no se corresponden con las múltiples situaciones de trabajo, que exigen normas más flexibles y una concepción del trabajo tan orientada a la satisfacción del público, como orientada a valorar adecuadamente al trabajador en un contexto de amplio riesgo. La situación no es menor porque ello trae consigo la descontextualización del trabajo policial y el ocultamiento del conjunto de las tensiones que se viven en la operación de los imperativos de la profesionalización y por el aumento de los riesgos del trabajo, dados el incremento delictivo y la demanda social por seguridad. Este ocultamiento reproduce los estigmas que pesan sobre la policía.

Esto hace que en el público prevalezcan los sentimientos en contra del policía y que no se desarraigue la idea de que el trabajo es poco profesional; y también que, en el

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por las normas también administrativas de la ley y reglamentos que les correspondan.Fuente:https://sjf.scjn.gob.mx/sjfsist/Paginas/DetalleGeneralScroll.aspx?id=3234&Clase=DetalleTesisEjecutorias

[17] En la policía estatal, la seguridad incluye el reconocimiento a derechos como seguro social, seguro de riesgo del trabajo, seguro de vida, servicios funerarios, seguro por invalidez.

[18] En las entrevistas se refirieron concretamente a los seguros de vida y de invalidez

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discurso de los tomadores de decisiones, la profesionalización siga siendo un recurso retórico ante el público y un mecanismo de presión hacia al policía como trabajador.

Por otro lado, aunque la profesionalización del trabajo policial también alcanza idealmente al trabajador, pues normativamente pareciera reconocerle méritos y necesidades, se ha observado que permanecen en el escenario obstáculos que impiden ver cristalizadas las promesas hechas a los trabajadores. De ahí que los policías sigan pensando la profesionalización como una buena idea que, sin embargo, les demanda mucho pero les reditúa poco.

En teoría, la carrera policial son un conjunto de procedimientos y reglas tendientes a establecer y garantizar las condiciones bajo las cuales se puede permanecer y ascender laboralmente. En este sentido, debería funcionar como una ruta certera para el progreso y la certidumbre laboral, respetando las posibilidades de estabilidad, estímulos, promoción de ascensos y retiro digno.

En el caso del retiro, algunos de los policías entrevistados, que refirieron estar próximos al retiro o retirados, mencionaron que, más que haber o estar padeciendo injusticia, lo que hubo fue cierta presión para que se jubilaran un poco antes de tiempo. Esto como una medida para justificar su falta de ascensos a lo largo de su carrera y para dar entrada a nuevos elementos, bajo condiciones laborales más precarias, pero también con perfiles que, por su inexperiencia, serían más adaptables a las necesidades de las dependencias.

Los ascensos y promociones también permanecen como una asignatura pendiente, nos sólo porque son escasos, sino porque a pesar de que hay procedimientos establecidos normativamente, la opacidad y los mecanismos tradicionales – no

modernos – siguen primando en el escenario.

La profesionalización también está generando una fragilización del colectivo. Por un lado, porque obliga al trabajador a comportarse individual y meritocráticamente, lo que hace relega al colectivo a un segundo plano; lo cual se combina con el impedimento legal del derecho a la huelga como medio de reivindicación colectiva del trabajo.

Así, se configura una situación paradójica en la que, los encargados de dar seguridad a la ciudadanía, increíblemente padecen la inseguridad que les causan las difíciles condiciones de su trabajo.

En este contexto, los trabajadores construyen sus propios recursos para mitigar parcialmente las tensiones. Entre ellos, sobresale el sentimiento de orgullo que produce ser policía, el cual deja ver la fuerte emergencia de uno de los rasgos de la cultura policial (Silva, 2011). Este sentimiento los mantiene el vínculo con el trabajo y resulta funcional a la profesionalización.

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Coordinadora de Postproducción: Magali Rocha Donnadieu
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El censo de la Comisión Nacional para el Desarrollo de los Pueblos Indígenas (CDI) afirma que, en 2006, de un total de 214,275 personas encarceladas, 8,767 eran indígenas. De ellos, 8,767 eran hombres y sólo 383 mujeres. Este último número podría parecer bajo, pero no es casualidad. De acuerdo con Aída Hernández, esta cifra revelaría que muchas mujeres no se reconocen como indígenas debido al racismo y discriminación a los que se enfrentan (2016:203). Por otra parte, según datos de la Secretaría de Seguridad Pública, en 2009, del total de mujeres encarceladas en México, 60% se encontraba por delitos contra la salud, es decir, delitos que tienen que ver con narcotráfico (Rodríguez, 2014).

Desde que inició la llamada "Guerra contra el narcotráfico" en 2006, durante el sexenio del expresidente de México Felipe Calderón, las políticas de seguridad nacional incluyeron no sólo la militarización del país, sino la criminalización de mujeres indígenas, quienes parecieran ser los chivos expiatorios de esta guerra de baja intensidad que hasta la fecha continúa. Muchas de las mujeres indígenas encarceladas por este delito eran sólo transportistas de droga o, en el caso de que efectivamente fueran vendedoras,

las cantidades eran mínimas. Otras muchas mujeres encarceladas son inocentes y están en prisión injustamente. Las mujeres encarceladas en México se enfrentan no sólo a un sistema de justicia racista sino también sexista, en el que los cuerpos son controlados y criminalizados a partir del color de piel y la clase. Es decir, existe una racialización de los cuerpos que son encarcelados y controlados. Un paisaje y una institución que marca y encarcela cuerpos específicos, cuerpos que son leídos como desechables.

El documental *Semillas de guamúchil* retrata las voces, historias y rostros de cinco mujeres que estuvieron encarceladas en el Centro de Readaptación Social (CERESO) de Atlacholoaya, Morelos, por distintos delitos y ahora viven en libertad. En este documental, Martha Elena Bermúdez, Marisol "Águila del mar", Leo Zavaleta, Alejandra Reynosa y Rosa Salazar, nos comparten sus vivencias en prisión, así como también la continuación de su vida en el presente fuera de la cárcel y la poesía que siguen creando.

Durante una investigación que la antropóloga Aída Hernández realizaba en esta prisión, encontró un taller de escritura y decidió, junto con la escritora Elena de Hoyos, comenzar un proyecto de taller para mujeres, en donde las participantes también

escribieran las historias de compañeras internas que no supieran leer ni escribir. Carolina Corral, la directora del documental, filma a una parte de estas mujeres una vez que están en libertad para compartir la importancia de la escritura para ellas durante su tiempo en prisión, pero también fuera de ella: otra forma de libertad. El guamúchil es el único árbol que hay en la cárcel, en un patio, en donde las mujeres, en palabras de Rosa, una de las mujeres protagonistas del documental, "íbamos a sombrearnos, a hacer costura, a trabajar, a echarle ganas. Ese fue el lugar más hermoso que tuve".

El documental comienza con imágenes de un árbol con una valla de alambre y un campo de maíz seco. Enseguida aparece lo que pareciera el patio de una casa, y una mujer de pelo corto y color grisáceo, sentada en una silla. Una voz en *off* anuncia: "Yo caí en el 2008 presa. Aprendí a leer y a escribir y a hacer poemas en la cárcel. Cuando yo estoy escribiendo, siento que me transporto a otros lados, a otros lugares".

A través de imágenes de la vida cotidiana de estas cinco mujeres, en casa, cocinando, amasando para las tortillas de día, en el trabajo, haciendo jugos de frutas, cosiendo ropa, en compañía de sus hijas, vamos observando cómo su vida cotidiana va transcurriendo fuera de prisión. Estas imágenes nos hablan sobre las formas en que las mujeres paren vida y reproducen la vida de distintas maneras: en la comida, en ser hacedoras de alimentos, de trabajo, de hijas, de sororidad y de palabras.

A la par de las imágenes, escuchamos sus escritos, los poemas que escribieron dentro y fuera de la cárcel. Las mujeres nos narran cómo al menos dos de ellas aprendieron a leer y escribir en prisión y esto les abrió otros horizontes de posibilidad transformadora. La escritura

se convirtió en la forma de derrumbar, al menos mentalmente, las paredes que las contenían. La escritura se convirtió en sanación.

Cada una de las mujeres escribe desde su experiencia y su vida. Una de ellas proveniente de Nuevo Huixtán, en Las Margaritas, Chiapas, escribe sobre su lengua tzotzil y cómo nadie más lo hablaba en prisión, de cómo al principio le avergonzaba hablarlo pero esto cambió, pues son sus raíces y tiene que honrar su historia; también habla sobre cómo las mujeres, sólo por serlo, no tienen acceso a tierras. Otras mujeres hacen un poema a las plantas y árboles medicinales; una de ellas narra cómo en la cárcel plantaban —a escondidas— varias de estas plantas como limón, o hierbabuena para curarse, pues no tenían recursos para comprar medicina: muestra de las estrategias de resistencia pero también de organización colectiva entre mujeres dentro de la cárcel.

Un momento especial dentro del cortometraje son las imágenes al interior del CERESO de Atlacholoaya. Una reclusa metiendo pan en el horno, otra tratando de medirse una blusa negra. Mujeres con ropa en tonos marrones y amarillos. Vemos también a las protagonistas del documental en el CERESO, pero ahora ya no como internas sino como visitantes, mientras asisten a un evento de presentación y lectura de poemas en público. Rosa les dice frente al micrófono que las extraña. Las mujeres en el patio de la cárcel, muy cerca de donde está el árbol de guamúchil, aplauden. Es un momento especial por el reencuentro con el lugar que les quitó su libertad, pero en donde cosecharon fuertes relaciones de cariño con otras mujeres, un lugar donde la vida ocurrió a pesar de los barrotes y los grandes muros alrededor.

Un tercer momento especial de *Semillas de guamúchil* son las imágenes en un auditorio grande, con estudiantes en

uniformes escolares como público. Observamos a Marisol, otra de las mujeres protagonistas del documental, descender unas escaleras con dirección al estrado donde lee uno de sus poemas: "soy tejedora de mis sueños, forjadora de mi propio destino".

Alejandra, frente a este público estudiantil, narra: "Fui acusada de robo de infantes. Estuve seis años y medio. Yo era una mujer analfabeta. A mí me roban a mi niña saliendo del hospital. Las personas que me quitaron a mi hija me encerraron". En esta líneas se describe la injusticia que vivió en el sistema de justicia mexicano, y de cómo la justicia se amolda a privilegios de clase, de etnia o raza y de género. Es decir, de cómo la justicia se da sólo para unos cuantos. La interseccionalidad de una justicia subjetiva.

Semillas de guamúchil muestra la política y la poética de mujeres encarceladas en México. Poética no sólo en sus palabras, sino también en las formas de relacionarse, de crear lazos de confianza y la política de cuidado, de empatía radical, construida entre mujeres en un espacio tan violento como la prisión, pero que esas relaciones continúan y se transforman una vez fuera de la cárcel.

Es un retrato de la vida que sigue después de prisión, de una experiencia difícil, y de cómo la escritura fue el descubrimiento de otro mundo, un mundo que, por unos minutos, permite borrar los barrotes y saborear la libertad. La escritura, así, se convierte en una pedagogía de libertad, pero sobre todo en una experiencia de sanación.

La música y diseño sonoro, a cargo de Josué Vergara, acompaña las imágenes de paisajes rurales y urbanos en distintos momentos del cortometraje; se escuchan guitarras y voces melancólicas pero también esperanzadoras.

Este cortometraje fue ganador en 2015 del primer concurso de apoyo a la postproducción de cortometraje de ficción, animación y documental Región Centro, otorgado por el Instituto Mexicano de Cinematografía. Asimismo, fue nominado al Ariel en la categoría de Mejor Cortometraje documental, galardón de la Academia Mexicana de las Artes y Ciencias Cinematográficas (AMACC) (2017); Premio de Mejor Cortometraje Documental del Festival de Cine de Oro Negro, Veracruz (2017); Primer lugar en documental en el 3er Festival Internacional de Cine UNACH (FICUNACH); Selección Oficial en el Festival Internacional de Cine en el Desierto (FICD); Mención honorífica del Festival Internacional de Cortometrajes de México Shorts México (2017).

Como se menciona al final del cortometraje, este proyecto audiovisual forma parte de un proyecto más amplio de una colectiva editorial independiente llamada "Hermanas en la sombra", en donde han publicado diversos textos de las propias mujeres encarceladas como autoras, fabrican los libros con su manos y producen una serie radiofónica. Recomiendo ampliamente este documental como un acercamiento para dar cuenta sobre la racialización de los cuerpos que habitan las cárceles de mujeres en México, de las historias que transcurren una vez fuera de la cárcel y de cómo construyen sus vidas cotidianas y comparten sus historias, ahora también a partir de la escritura. Este documental también muestra el racismo y clasismo naturalizado en el sistema de justicia mexicano, ya que estas historias retratan la experiencia de muchas cárceles de mujeres en México. La cárcel es un espacio donde se busca callar y encerrar voces disidentes y que defienden la dignidad. En México son criminalizados grupos específicos como estudiantes, pueblos indígenas y afrodescendientes defensores del

territorio contra el extractivismo, así como cualquier grupo disidente e inconforme con la desigualdad social. *Semillas de guamúchil* es un retrato cercano, profundo y doloroso sobre la situación de las mujeres encarceladas en México y a lo que se enfrentan dentro y fuera de prisión. Sin embargo, también nos da una esperanza sobre cómo un espacio como la cárcel puede ser transformado en un espacio de, efectivamente, cosechar semillas de libertad y sororidad.

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DE LA "VIEJA" A LA "NUEVA" JUSTICIA INDÍGENA. TRANSFORMACIONES Y CONTINUIDADES EN LAS JUSTICIAS INDÍGENAS DE MICHOACÁN

Erika Bárcena Arévalo

El libro *De la "vieja" a la "nueva" justicia indígena. Transformaciones y continuidades en las justicias indígenas en Michoacán,* de Orlando Aragón Andrade (2016), analiza en términos generales el proceso de "oficialización de la justicia indígena" en la provincia de Michoacán, México, durante la primera década del siglo XXI. Para ello, entreteje distintas discusiones teóricas bien articuladas entre sí e incluso analíticamente propositivas, con una etnografía rigurosa del funcionamiento y organización de las justicias indígenas antes y después de las reformas judiciales que buscaron incorporarlas al aparato estatal de justicia.

En este sentido, son varios los aportes que la obra hace a la antropología jurídica y a los estudios sociojurídicos, entre los que destaca una lectura novedosa y bien sustentada del pluralismo jurídico. La antropología jurídica en México y la mayor parte de América Latina se ha centrado precisamente en las justicias indígenas y en su relación con el derecho estatal, y siendo un debate ampliamente discutido en la región, el aporte señalado no debe soslayarse.

El proceso de oficialización de las justicias indígenas redundó evidentemente en el objetivo de sacarlas de su contexto comunitario, lego desde el punto de vista del derecho estatal, para incorporarlas a la estructura del poder judicial en la entidad y, desde esta misma perspectiva, profesionalizarlas.

Para una mayor comprensión del campo al que se pretendió incorporar a las justicias indígenas, Orlando Aragón describe y analiza el aparato estatal de justicia de la provincia de Michoacán, lo que constituye una aportación de gran valía a la antropología jurídica puesto que se trata de la primera etnografía en México sobre tribunales estatales.

Pese a que desde la propia antropología se ha discutido la construcción cotidiana del derecho en procesos condicionados por —y condicionantes de— contextos sociales y culturales específicos, las prácticas propias de agentes estatales en estos procesos han merecido escasas líneas en los estudios etnográficos y por tanto es prácticamente nulo nuestro conocimiento al respecto.

Cabe señalar que si bien en Argentina y Brasil se ha desarrollado una corriente de la antropología jurídica que se centra en el estudio etnográfico de las instituciones de administración e impartición de justicia, principalmente cuerpos policiacos y tribunales en materia penal, lo cierto es que, al ser las justicias indígenas el objeto central de estudio, en el resto de la región esta corriente ha desarrollado en forma paralela sus propios conceptos, discusiones e incluso sus propias reflexiones metodológicas, sin que se haya establecido un diálogo con la antropología jurídica dominante.

Así, Orlando Aragón nos muestra por primera vez en su libro algunas de las prácticas y las dinámicas del Supremo Tribunal de Justicia de la Provincia de Michoacán, así como de

los propios juzgados indígenas creados tras las reformas judiciales: el que atendería al pueblo purépecha, situado en la ciudad de Uruapan, y el que atendería al pueblo nahua, ubicado en la ciudad de Coahuayana.

Son múltiples los aspectos que analiza; sin embargo, por motivos de espacio me referiré brevemente a uno que considero particularmente importante. Según señala Orlando Aragón, el sistema de nombramiento de los juzgadores que existía antes de que se implantara una carrera judicial escalafonada y basada en sistemas de puntos (meritocrática), estaba regido por una lógica de relaciones interpersonales según la cual el gobernador de la provincia nombraba a los magistrados del Supremo Tribunal y éstos nombraban a los jueces menores, generalmente de entre el personal que laboraba en su tribunal. Así, particularmente en este último caso el capital relacional se combinaba con la noción que tenía el magistrado de que la persona seleccionada era apta para ocupar un puesto de juez por la competencia o el esfuerzo probado en la labor cotidiana.

Conforme a este mismo sistema de nombramiento el personal ascendía al interior de los tribunales en una especie de escalafón informal, de tal manera que como apunta Orlando Aragón "[…] también constituía —y lo sigue haciendo de otra manera— el mecanismo más efectivo para que el recién llegado al tribunal 'aprendiera', interiorizara y naturalizara la disciplina, el orden, la división jerárquica del tribunal, la mayoría de las reglas no escritas del STJE" (2016:106).

Si se analiza detalladamente se llegará a la conclusión de que una de las consecuencias de este sistema de nombramiento es que resulta uno de los mecanismos más eficaces de reproducción judicial: se trata de un proceso pedagógico de disciplinamiento que llevará a los funcionarios judiciales a reproducir más o menos acríticamente todo tipo de prácticas relacionadas con las formas "correctas" de estudiar y resolver los asuntos, y hasta con las formas "correctas" de entender los usos del derecho y la función jurisdiccional.

Sistemas de nombramiento similares se siguen reproduciendo, aún hoy día con una carrera judicial formal, en otros espacios. Orlando Aragón nos da la pauta en su libro para visibilizar prácticas que como éstas perfilan la impartición de justicia, y que finalmente tienen consecuencias concretas tanto a nivel individual para los justiciables como a nivel colectivo para las sociedades. Sin embargo, todavía queda mucho por observar y analizar en los espacios de impartición y administración de justicia, por lo que la agenda de investigación que nos deja la obra se torna también en sí misma un aporte significativo.

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ENTREVISTA

APORTES A LA ANTROPOLOGÍA FEMINISTA EN CHIAPAS
Entrevista a Mercedes Olivera*

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Mercedes Olivera nació en la Ciudad de México en el año de 1934. Estudió en la Escuela Nacional de Antropología e Historia (ENAH) y en la Universidad Autónoma de México (UNAM). Es una destacada antropóloga mexicana y una de las más reconocidas a nivel centroamericano y latinoamericano. Su trabajo Pillis y macehuales. Las formaciones sociales y los modos de producción de Tecali del siglo XII al XVI (1978), así como algunos de sus artículos tales como "Consideraciones sobre la opresión femenina como una categoría para el análisis socioeconómico" (1976) y "La explotación de las mujeres acasilladas en Chiapas" (1980) han sido relevantes para la disciplina. Destaca en su larga trayectoria la defensa de los derechos de las mujeres indígenas. Es fundadora y socia del Centro de Derechos de la Mujer de Chiapas, AC., cuyo objetivo es lograr el avance de la igualdad de género, clase y etnia en Chiapas. Tiene una amplia bibliografía, varios libros publicados hasta la fecha relacionados con la participación política de las mujeres en Centroamérica y es por eso que a lo largo de la entrevista introduzco algunos puntos de su trayectoria vital y de su obra, ya que sus aportes al campo de la etnohistoria, de la antropología crítica y de la antropología feminista, no pueden pasar desapercibidos en los debates sobre justicia cultural y económica.

*Entrevista a Mercedes Olivera, San Cristóbal de las Casas, Chiapas, 18 de junio de 2016).

A manera de introducción

La ausencia de referencias a autoras feministas en Chiapas, mi lugar de origen, y en la región centroamericana es notoria en la antropología. Por ello, en 2016, comencé una serie de entrevistas tituladas "Conocimiento Feminista en Chiapas y Centroamérica" con la intención de recuperar la vida y obra de antropólogas, pensadoras y activistas feministas de la región, como parte de la investigación posdoctoral que realicé en el Centro de Investigaciones y Estudios de Género (CIEG) de la UNAM. Asimismo, es escasa la teorización que profundiza en la historia de la experiencia colonial y postcolonial de la antropología de las mujeres, de género y feminista en

Chiapas y en Centroamérica, por lo que también he intentado hacer una reflexión epistemológica y política sobre la producción del conocimiento y las prácticas feministas (Ruiz, 2017). En esta ocasión, presentar la entrevista realizada el 18 de junio de 2017 a Mercedes Olivera, una de las investigadoras que es uno de los referentes en la antropología del sureste mexicano y en la lucha contra el despojo y la desposesión de los territorios de las mujeres indígenas. He intentado profundizar en sus trayectorias políticas y personales, en sus teorizaciones y conceptualizaciones, en las condiciones en las que se han realizado sus investigaciones y en el vínculo entre la academia y el activismo que ha desarrollado en esta región. Estos acercamientos constituyen puntos de enunciación y particularidades de la antropología feminista del sureste mexicano y de Centroamérica y resultan alternativos a los de otros espacios como el anglosajón (Castañeda en Ruiz Trejo, 2016), tal como explicaré más adelante.

Posturas antropológicas feministas en Chiapas y Centroamérica: aportes de Mercedes Olivera

Los aportes a la antropología de Mercedes Olivera, son sumamente amplios por lo que en este apartado, me referiré a la relación de su obra con algunas de las posiciones, particularidades y puntos de enunciación que la antropología feminista ha tenido en Chiapas y en Centroamérica.

Las condiciones de producción de conocimiento antropológico no han sido las mismas para unas antropólogas que para otras. Mercedes Olivera así como muchas otras investigadoras de su generación,[1] fueron influenciadas por las corrientes neomarxistas y feministas de la época y algunas se organizaron en movimientos revolucionarios en contra de la desigualdad en la distribución de la tierra, la acumulación de capital en pocas manos y los procesos democráticos manipulados por las oligarquías de la región. En la búsqueda del socialismo y aunadas a los movimientos campesinos, muchas de ellas vivieron represión y una política de contrainsurgencia de los Estados centroamericanos.

En los años ochenta, eventos como el genocidio en Guatemala, la persecución de organizaciones populares en El Salvador y en Nicaragua, las desapariciones, torturas y encarcelamientos a líderes políticos en toda la región, crearon un ambiente de políticas de terror, provocando que miles de personas se refugiaran en Chiapas. Si ya de por sí la incorporación de las mujeres a las universidades y a los centros de investigación había sido difícil, todos estos sucesos redujeron las posibilidades de acceso de muchas de las jóvenes estudiantes de la época, quienes vivieron situaciones dramáticas como amenazas, encarcelamientos clandestinos, violaciones sexuales, desapariciones e incluso asesinatos.

En ese sentido, una de las particularidades de los trabajos de las científicas sociales de finales de los setenta y principios de los ochenta en Chiapas y Centroamérica fue el contexto en el que desarrollaron sus investigaciones. Las posiciones de las antropólogas e investigadoras de la época se vieron marcadas por los peligros, riesgos y amenazas en medio de guerras civiles, militarización, exterminio, despojo y desposesión masiva. La segunda particularidad de los trabajos de finales de los setenta y principios de los ochenta, fue el vínculo persistente que generaron entre su estar en la academia y su quehacer constante

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[1] En este periodo incluyo a Alaíde Foppa, Marta Casaús e incluso a Rosario Castellanos.

en las organizaciones civiles. Muchas de las teorizaciones e investigaciones feministas de aquel periodo no siempre se produjeron en las universidades, sino que las organizaciones sociales sirvieron como espacio para la investigación y la creación. Ambas particularidades constituyen posiciones y puntos de enunciación alternativos de la antropología feminista chiapaneca y centroamericana, ya que diferencian estas posturas teóricas de las que han sido producidas en contextos como, por ejemplo, el anglosajón.

Mercedes Olivera y sus contemporáneas desarrollaron teorizaciones particulares, propias y críticas y no siempre apuntaron a transformar directamente las relaciones de género, debido a que sus luchas teórico-políticas estaban vinculadas a reivindicaciones de los "derechos más elementales, a la verdad y a la justicia" (Casaús, 1995). Tal vez por eso la comprensión multidimensional de las opresiones fue otro de los grandes aportes de las pensadoras de aquel momento que no sólo intentaron desmantelar las lógicas sexistas, sino que influenciadas por un pensamiento anti-clasista, complejizaron sus propuestas que no podían desvincularse del racismo, producido en gran medida

por las élites dominantes centroamericanas (Casaús, 2008). De hecho, una de las contribuciones de Mercedes Olivera, a finales de los setenta, constituyó una de las bases de la antropología desde una perspectiva interseccional en América Latina con la que se problematizó la explotación de las mujeres en el sistema capitalista y las dobles y triples discriminaciones que enfrentan como mujeres, indígenas y pobres, lo que da cuenta de su preocupación no sólo por las violencias por razones de género, sino el análisis articulado en cuanto a clase, raza y etnicidad (Castañeda, 2012). Olivera denunció la situación de las mujeres acasilladas en las fincas cafetaleras del Soconusco en Chiapas (1976: 43-44) y utilizó el concepto de "opresión femenina" (para diferenciarlo de la explotación como trabajadoras). Este se refiere al efecto de un proceso histórico en el que la fuerza de trabajo que producen las mujeres no se reconoce como trabajo y, por tanto, no se paga (Olivera, 1979). Esta opresión no ha sido considerada como explotación económica del sistema y, sin embargo, constituye el pilar del funcionamiento de dicho sistema (Olivera, 1979: 206).

La denuncia que Olivera hizo sobre la "opresión femenina", a finales

de los setenta, contribuyó al entendimiento de que "la mujer" está relegada a la producción y al mantenimiento de la fuerza de trabajo a través de las labores domésticas que sirven para la reproducción de la vida y, sin embargo, su contribución no se reconoce como productiva, aunque sí es un trabajo útil del que el empresariado se aprovecha para obtener mayor plusvalía. Estos aportes siguen siendo vigentes en varios de los países centroamericanos, sobre todo, al contemplar las opresiones que interseccionan en el caso de las relaciones clasistas cuando la mujer se incorpora al trabajo productivo y contrata a otra mujer para que haga las "labores domésticas", es decir, se da "explotación de la mujer por la mujer" (Olivera, 1979: 207). Además, Olivera aportó a la teoría feminista de la región la idea de que la categoría "mujer" no puede ser entendida de manera homogénea, ya que no es lo mismo la "opresión femenina" para unas mujeres que para otras.

Con el levantamiento del Ejército Zapatista de Liberación Nacional (EZLN) en 1994, Mercedes Olivera mantuvo sus valoraciones analíticas sobre las desigualdades sociales y se aunó a las luchas de las mujeres del movimiento zapatista. En su trabajo "De sumisiones, cambios y rebeldías: mujeres indígenas de Chiapas" (2004) retomó los aprendizajes materialistas que sus trayectorias académicas y políticas feministas le aportaron. Se trata de una mirada multidimensional que no sólo se enfoca en las violencias que viven las mujeres por cuestiones de género, sino que teoriza sobre esas situaciones que se combinan con dificultades por razones de clase y etnicidad. Esta posición analítica multidimensional es tal vez uno de los enfoques más emblemáticos de la antropología feminista en Chiapas y en Centroamérica. Por todo eso y por la larga trayectoria de lucha teórico-política de Mercedes Olivera, en este trabajo damos a conocer la entrevista que le hice en su casa en San Cristóbal de Las Casas el 18 de junio de 2016, como parte de un trabajo más amplio que he realizado en el que retomo la historia de las luchas emancipatorias, anti-racistas y anticoloniales y otras luchas que contestan cualquier forma de opresión. Lo anterior como una manera de definir la antropología feminista en esta región y los aportes de uno de los pilares de la disciplina en México.

Entrevista a Mercedes Olivera

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Marisa Ruiz Trejo: Mercedes, para empezar a hablar sobre los vínculos entre las trayectorias académicas y las trayectorias vitales me gustaría que nos dijeras ¿cómo te identificas?

Mercedes Olivera: Me identifico como feminista, mujer rebelde, mujer privilegiada porque me ha tocado vivir acontecimientos importantes dentro del proceso mexicano, centroamericano y latinoamericano. Además profesionalmente me siento muy satisfecha. También como madre he tenido muchas oportunidades de aprender de las mujeres, de sus puntos de vista, de sus problemas, de mujeres de diferentes lugares pero, sobre todo, de mujeres campesinas e indígenas en su mayoría. Esto ha sido una riqueza que me ha permitido construirme. En la medida de lo posible también me ha permitido aportarles conocimiento e instrumentos para que ellas se analicen y tomen sus decisiones.

Creo que nuestro feminismo surgió de las luchas sociales en Centroamérica. El feminismo popular tiene una característica importante que es haber unido la práctica política con los conocimientos. La unión de la teoría y la práctica ha sido el eje de mi trabajo y la participación de las mujeres en la

producción de ese conocimiento. No es una ayuda ni una colaboración, son sus conocimientos que a nosotras nos toca a veces sistematizar y organizar, a veces ponerles nombres muy complicados, por cierto. Para sus procesos, ellas son mucho más sencillas, mucho más vitales. La teoría no les ayuda a veces, sino más bien son las cuestiones prácticas de sus vidas cotidianas y de sus relaciones de tipo económico lo que les aflige y también todos los problemas, incluyendo la violencia que viven. Es una situación dura y difícil que en vez de haberse resuelto parece que se ha ido complicando y profundizando a través del tiempo.

Marisa Ruiz Trejo: ¿Con qué soñabas tú cuando eras niña?

Mercedes Olivera: Yo me eduqué en una familia muy católica. Mi madre era muy religiosa y siempre tuvimos problemas serios y fuertes de tipo económico que me hicieron pensar desde muy pequeña en la justicia social. En esa época, yo creía en Dios y me preguntaba: "¿qué le había pasado a Diosito lindo que nos había hecho a unos ricos y a otros pobres?". Eso no era justo pero era la realidad en la que vivíamos. Mi familia era muy grande éramos diez hermanos, cinco hombres y

cinco mujeres. Yo era la mayor de las mujeres y me tocó hacer mucho trabajo, cuidar muchos niños y luchar contra las ideas de mi padre que era indígena con ideas muy tradicionales. Para él, lo lógico era que yo me quedara en casa a cuidar a los niños. que mi mamá tenía que trabajar y que no había otra posibilidad. Yo como la mayor de las mujeres tenía que quedarme en la casa, y me impedían ir a la escuela. Ahora esto no se usa pero en ese entonces fue un problema muy serio para mí. Yo me escapaba y llevaba a mis hermanos conmigo a la escuela. A penas estaba en primer o segundo año de primaria. Afortunadamente mi maestra Julita, era cómplice de mi situación y de mis problemas y me ayudaba a que la directora no se diera cuenta de que ahí teníamos a los niños. Estas son cosas que se superaron con el tiempo y afortunadamente mis hermanas, hermanos y yo logramos estudiar.

Es una satisfacción muy grande tanto para mi madre que era la que lidiaba con nosotros, como todas las madres y con la situación económica, pero creo que también para la familia porque creamos un ambiente de confianza entre nosotros de mucha comunicación y de mucha solidaridad. En ese sentido, yo me sentí muy contenta. Tuvimos

diferencias por la ideología cuando ya éramos mayores porque yo dejé de ser católica, dejé de creer en Dios. Comencé a militar en organizaciones y en el Partido Comunista. Eso causó conflictos ideológicos en la familia. Pero han sido superados con el tiempo, hemos encontrado que el sentido humano de la vida es lo que puede unirnos más allá de las ideologías, de los conocimientos y ha sido una trayectoria familiar muy rica y de mucha comunicación.

Marisa Ruiz Trejo: Mercedes, ¿tienes algún recuerdo significativo de tu adolescencia o algo que te haya marcado y que quieras compartir?

Mercedes Olivera: Fui dirigente desde muy joven de una organización católica de mujeres que se llamaba "Unión Femenina de estudiantes católicas". Para mí, la militancia empieza propiamente en esa organización, era una militancia en las escuelas, en la preparatoria, en las universidades. Era interesante porque descubrí que las oposiciones políticas e ideológicas son la base de muchas dificultades. Había entonces todo el movimiento de izquierda estudiantil y, por otro lado, el movimiento católico conservador, inspirado y construido por los Jesuitas.

La UFE, dirigida por el padre Mayagoitia, era una organización nacional. Ahí empezó la polémica en mi vida. Se tenía que buscar la forma de argumentar la posición política porque los compañeros estudiantes de izquierda, eran militantes y tenían muy argumentadas sus posiciones. En cambio, la nuestra se basaba en la fe y entonces había una disparidad muy grande. Yo me esforzaba por encontrar razones teóricas, lo que me llevó a estudiar a los clásicos de la Iglesia. Esa fue una de mis experiencias. Fue muy interesante porque la confrontación tenía diferentes planos.

Desde que estábamos haciendo la propaganda, para la peregrinación anual de estudiantes en las universidades, en la que te tomaban el papel y te lo aventaban en la cara o algunos te decían insultos, hasta la discusión académica a veces violenta pero respetuosa.

Esto también fue parte de mi construcción y fue una experiencia muy temprana en mi vida que me hizo quizás un poco dura. Aprendí a ir separando la parte emocional que a veces nos doblega a las mujeres, sin embargo, es una riqueza. Aprendí a separar las posiciones masculinas de la racionalización y de la confrontación.

De cualquier manera a mí siempre me decían que era muy emotiva, muy emocional. Me gusta y considero que es una riqueza y no me arrepiento.

Marisa Ruiz Trejo: Estamos hablando de tus recuerdos, de tus memorias, porque la construcción de conocimiento implica también un conocimiento de nosotras mismas. En ese sentido, ¿hay algún momento específico de tu vida que te haya marcado? ¿Cuál fue la estrategia que utilizaste para salir adelante?

Mercedes Olivera: Como mi vida ya es muy larga, tengo 82 años, han habido muchos momentos difíciles que puedo mencionarte. De la época que estábamos hablando, puedo mencionar mi pleito con Dios. Fue algo muy importante. Primero el pleito fue con los curas. En ese ambiente estudiantil de mucha movilidad había también hostigamientos de tipo sexual y de violencia hacia las mujeres. Cuando descubrí que los curas también eran hombres hostigadores que usaban la violencia como parte de su manipulación ideológica, empecé realmente a enojarme muchísimo y a cuestionarlos.

Recuerdo que me prohibieron leer los libros prohibidos que estaban en una vitrina encerrados, pero como yo tenía las llaves, abrí y los leí. Cuando descubrieron que yo había leído diferentes versiones de la Biblia o novelas que criticaban las posiciones de la Iglesia, no eran cosas secretas pero para ellos era algo muy importante porque las mujeres no debían conocer ese tipo de cosas, porque supuestamente no teníamos capacidad para poder analizarlas. Evidentemente desde ahí había un problema fuerte de restricción y de imposición, de verticalismo y de autoritarismo. Esto en conjunto con el hostigamiento hacia las compañeras, sobre todo, a las que les parecían muy bonitas, me llevó a tener problemas muy serios y a darme cuenta de las inconsecuencia de los dirigentes de la Iglesia en relación a todo lo que planteaban: "igualdad", "respeto" y "amor muy espiritual". A mí me causó un problema muy serio y los empecé a cuestionar. Se lo planteé a mi confesor y le comenté que tenía problemas muy serios con las bases filosóficas del cristianismo. Él me dijo: "yo no puedo discutir eso contigo". Me mandó con un obispo de la plenipotencia y me dijo que él podía perdonar mi pecado tan grave.

Llegué con el obispo a la basílica de Guadalupe y expuse mi problema con la profundidad en que yo lo sentía, porque estaba perdiendo mi base de pensamiento y de posicionamiento político, ya que estaba tambaleándose. Eso era algo muy importante para mí y se lo planteé con mucha emoción. Él me dijo: "¿ya terminaste?", y le dije: "me parece que sí". Él me respondió: "reza tres Aves Marías a la virgen de Guadalupe y estarás perdonada". Entonces pensé "al diablo con los curas, al diablo con la Iglesia". Mi cuestionamiento era tan profundo que me di cuenta de que no era por ahí, y terminé con la Iglesia y con Dios. A partir de entonces me acerqué a los movimientos de izquierda y al Partido Comunista. Milité algunos años y se presentaron problemas también, porque tampoco éramos una estructura consecuente. Había en ese momento dos células del Partido Comunista y de la Universidad: la Marx y la Engels. La Marx eran los maestros grandes, los dirigentes y la Engels éramos los estudiantes que teníamos todavía pocos años o poca militancia. Fue interesante porque nos juntamos las dos células para analizar el problema que hubo con el movimiento ferrocarrilero que el Partido Comunista

había impulsado. Despúes hubo una represión muy grande y los dirigentes del partido comunista acabaron negociando. Al final los dirigentes ferrocarrileros, como Vallejo o Campano, acabaron en la cárcel muchos años.

Esto lo analizamos. Recuerdo que entre los maestros estaba José Revueltas, y algunos otros que tenían mucha escuela, y mucho conocimiento. Elaboramos un documento para presentárselo a la dirección del partido, y ya te imaginarás, la respuesta fue la expulsión. Te estoy hablando del 59 o 60. En ese momento salimos. Algunos de los dirigentes eran: Juan Brom, Eduardo Elizalde, José Revueltas y otros. La mayor parte de ellos fueron a Michoacán a crear una escuela de análisis y todos los demás nos quedamos aquí. Fue ahí donde terminó mi participación en el Partido Comunista. En la práctica estuve haciendo defensa de algunos casos, era un momento muy difícil por la represión del gobierno a los sindicatos obreros. Dentro del magisterio, estudié para maestra de la normal en el nivel de primaria, y hubo represión en esa época. Desde ahí surgió toda mi práctica de izquierda en las luchas sociales. Fueron aprendizajes muy grandes.

Marisa Ruiz Trejo: Mercedes, ¿cómo se vinculan las trayectorias vitales, las experiencias y formas de hacernos conscientes de nuestros cuerpos, nuestros compromisos corporales con nuestras ideas políticas? Todos estos recuerdos y memorias que nos estás contando están relacionados con el conocimiento que, como investigadoras, tendríamos que buscar en nosotras mismas para poder hacer investigación y ésta es la importancia de hablar de las trayectorias vitales.

Mercedes Olivera: Yo quería decirte que al mismo tiempo de la lucha social que te comentaba en la pregunta anterior, yo ya era estudiante de la escuela de antropología y formamos parte de este grupo que nos llamaban "Los magníficos", así nos pusieron los alumnos. Éramos un grupo muy inquieto de personas, no sólo mexicanas sino también norteamericanas como Susana Drucker. Además el guatemalteco Carlos Navarrete, entre otros. Éramos un grupo al que le pusimos "Miguel Othón de Mendizábal". Él fue el fundador de la escuela de Antropología en el Politécnico y era un militante también del Partido Comunista que estaba olvidado en la escuela porque se había

dado un vuelco muy importante a la antropología marxista mexicana. Por un lado, se pasó de Othón de Mendizábal y algunos otros pensadores a la escuela norteamericana y, por otro lado, a la escuela integracionista que dio origen al indigenismo. Othón de Mendizábal estaba olvidado y nosotros pusimos ese nombre al grupo y fue un grupo interesante e importante porque sustituyó la parte de seguridad que me daba la Iglesia. Este grupo se constituyó dentro de mí, como el espacio en donde podía discutir y aprender nuevas formas de ser. Hubo una influencia en mí, la de Rodolfo Stavenhagen, que fue nuestro compañero. Él tenía una formación marxista muy sólida y una formación y experiencia también en el campo porque trabajo con el INI. Discutíamos con él y nos planteaba también sus preocupaciones para interpretar desde el punto de vista marxista la situación indígena que se había planteado mucho más como una diferencia étnica-cultural. Se veía que las clases eran algo diferente. Fue importante aprender de Rodolfo Stavenhagen a interpretar la cultura y la cultura indígena desde un planteamiento de clase. Esto ha sido un aporte no sólo para el grupo Othón de Mendizábal, sino un aporte muy importante de Rodolfo a la antropología

de ese momento y fue la base ideológica de nuestras críticas al indigenismo.

Yo quería decirte esto porque hubo una liga muy importante entre los planteamientos de la política de izquierda con los aportes teóricos de la antropología pero interpretada desde una mirada materialista. Esta fue la formación que tuvimos en donde unimos, por un lado, la escuela de Van Maanen; la etnografía clásica; el pensamiento de Calixta Guiteras, Barbro Dahlgren y Johana Faulhaber. Ellas fueron nuestras maestras. También tuvimos la oportunidad de tener como maestros a todos los exiliados de la guerra española con Franco. Todo esto se acopló mucho a nuestro proceso de formación, con gente muy importante como Juan Comas, Encinas, Pedro Armillas y José Luis Lorenzo. Tenían todos una trayectoria de lucha social y política muy importante. Esto fue parte de la riqueza de mi formación teórica pero con una posición social y política muy importante y muy rica. Estudiábamos el "conocer" para cambiar, para transformar, para incidir. Desde que éramos estudiantes teníamos esta inquietud.

Marisa Ruiz Trejo: Mercedes, ¿en qué circunstancias llegaste a Chiapas?

Mercedes Olivera: Yo había estado en Chiapas alguna vez pero sin poderme asentar. Luego vine como Directora de la Escuela de Desarrollo (INI). Esto fue después de nuestra posición crítica al indigenismo, de todas nuestras discusiones con el Dr. Gonzalo Aguirre Beltrán y con todos los indigenistas de la época como Alfonso Villarojas y otros compañeros maestros. Aguirre Beltrán ocupó el cargo de subsecretario de cultura y nos invitó a los rebeldes que habíamos sido sus alumnos a diferentes puestos de dirección. Guillermo Bonfil estuvo en el Instituto de Nacional de Antropología e Historia (INAH), Enrique Valencia llegó al Instituto Nacional Indigenista (INI), Salomón Nahmad estaba en educación indígena, entre muchos otros. El INI decidió cerrar el centro coordinador y convertir el centro en una escuela de desarrollo. Se quedó la parte de educación y se anexó la Escuela Internacional de Antropología Social de Desarrollo, con alumnos de América Latina. Fue una invitación directa que me hizo el Dr. Aguirre Beltrán. Fue una mala interpretación de mi parte. Mi idea era que el Dr. Aguirre nos estaba dando oportunidad de mostrar nuestras críticas y nuestras posiciones en la práctica. Pero no fue así. El Dr. Aguirre lo que quería era incorporarnos, como realmente logró integrar a la mayoría de "Los Magníficos", a la dinámica del sistema. Tal como pasó con Arturo Warman que se pasó absolutamente al otro lado. Yo estuve entonces tratando de hacer cambios en la escuela de desarrollo con la idea de que los indígenas pudieran revalorar su propia cultura, con la idea de fortalecer los idiomas a través de conocerlos y poderlos hacer lenguas escritas. Toda una serie de ideas que yo tenía de la educación pero, sobre todo, el pensar que los indígenas tenían derecho a su propia cultura a sus propias decisiones, a tener sus formas de gobernarse y de vivir. Todo esto después se desarrolló más a través de la teoría, que partía de nuestras críticas. Yo quise poner en práctica todo eso, pero ya te imaginarás lo que pasó, no lo diré tan detalladamente. Cuando el Dr.[Aguirre Beltrán] se enteró, me pidió mi renuncia y renuncié.

Recuerdo que puso un artículo muy interesante en el periódico en donde explicaba porque se cerraba la Escuela de Desarrollo. Decía que la directora y el grupo de maestros de esa institución sin aprobación de la Secretaría de Educación habían tomado la decisión de organizar un movimiento

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al estilo de "Panteras Negras" (*Black Panthers*). Cuando yo leí eso, pensé en que si hubiera sido así no se hubiera acabado tan pronto la escuela, pero el temor era que los indígenas tomaran sus propias decisiones y pudieran convertirse en sujetos de sus propias transformaciones. Ahí acabó la experiencia en relación al indigenismo y así me fui quedando en Chiapas desde entonces.

Después hice un estudio en las fincas en donde combinaba la investigación con la acción política. Era un momento en Chiapas de mucho conflicto dado que no se había dado la reforma agraria y todavía persistían las fincas en donde la situación servil de los trabajadores era de una crueldad tremenda, incluyendo el derecho de pernada. No se podía ver nada más y estudiar, era necesario que se transformara y que los campesinos tomaran conciencia. Cuando llegamos vimos que los campesinos iban con su petate y su gallina caminando por las veredas, y las mujeres llorando. Yo les preguntaba: "¿qué pasó?". Y me respondían: "a mi patroncito se le metió el demonio, me quemó la casa y ya no nos quiere recibir". Yo les respondía: "¡Qué barbaridad!, ¿a dónde van ir ahora?". Y me respondían: "a buscar

otro patroncito, otro que sea bueno". El servilismo estaba interiorizado en sus cuerpos a tal grado que me tocó ver cómo los papás, cuando las niñas comenzaban a menstruar, las adornaban, las vestían y les colocaban trenzas con listones y las iban a llevar a la casa del patrón. Ellos sentían como orgullo de que las hijas pasaran por la casa del patrón, es decir, por todas las violaciones. Son aprendizajes que teóricamente se aprenden en la escuela pero que le pasan a una. Cuando los ves en la realidad, se te mete en el cuerpo y también te hacen reaccionar de una manera que no puedes estar nada más escribiendo y analizando la situación, sino es una obligación moral y ética, mínima humana, intervenir en esta situación.

Marisa Ruiz Trejo: Respecto a tu espacio personal, ¿te gusta la música o la poesía?

Mercedes Olivera: Mi familia era de clase media baja. No había libros, ni música. Había radionovelas y eran parte de toda esa formación. La cultura humanística la construí cuando me casé con Mario Vázquez. Él era una gente dedicada al arte. Me abrió todo el maravilloso espacio artístico, la arquitectura, la danza, la música y el

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teatro. La influencia de Mario, a pesar de sus neurosis, fue para mí una riqueza y fue parte de mi formación. La música preclásica fue muy importante en esa época de mi vida, y también la música popular. Lo que más me llenó fue la danza, siempre quise ser bailarina pero mis piernas nunca dieron para eso y no pude, pero estuve muy cerca del ambiente de la danza moderna, sobre todo, participé acompañando, llevando las maletas y haciendo el vestuario en un viaje muy interesante por China, Rusia y algunos países de Europa con el ballet nacional. Fue una experiencia vital. Ahora de grande que ya no puedo caminar casi, ha sido una frustración creciente que ya no puedo bailar y no me puedo mover, pero aún lo hago con los ojos porque me gusta mucho.

Marisa Ruiz Trejo: Gracias por compartir esa parte de tu espacio personal e íntimo. Quisiéramos que nos contaras ¿qué es para ti ser antropóloga?

Mercedes Olivera: Son historias muy complicadas las que tú preguntas. También el trayecto de mi vida ha sido un eje de mi existencia pero también me peleé con la antropología, siendo una antropóloga crítica y rebelde. Cuando hice trabajo en el Valle Poblano Tlaxcalteca, me di cuenta de que la

teoría y la práctica son dos cosas que habíamos separado y que no se puede hacer antropología sin unir a la práctica y a la acción política. Me di cuenta de que la antropología que estábamos haciendo se volvía cada vez más académica y que los antropólogos investigábamos para cambiar. Aunque existía la antropología social del cambio social y cultural se trataba en realidad de conocer, escribir y esperar el aplauso de los otros antropólogos pero en la realidad poco se cambiaba. Darme cuenta de la realidad tan dura de las mujeres campesinas en esa parte del Valle Tlaxcalteca, me hizo reaccionar muy fuerte contra la antropología. Pensé "no más antropología, me dedicaré al trabajo directo con las mujeres en el campo". Fue después de una crisis en la que descubrí cómo la forma de subordinación de las mujeres se prolongó y se fortaleció desde la época prehispánica y durante la colonia y cómo la tradición y la estructura comunitaria funcionaron como presión para subordinarlas de manera tan violenta. Eso me causó una crisis tremenda y decidí entonces dedicarme al trabajo feminista. Pensé en dejar la antropología pero no se puede dejar, es parte de la existencia. Hay que ponerla al servicio de lo que según tu conciencia

"debe ser" y, en este caso, me sirvió mucho para hacer una antropología feminista desde la base, desde las comunidades, desde las mujeres campesinas e indígenas que estaban y siguen estando marginadas de todo el desarrollo capitalista y de la participación social y política. Sobre todo criticar la forma en cómo se incorporan al desarrollo y cómo el Estado sigue promoviendo su integración. Aunque el indigenismo ya no exista, ahora es peor porque es integración al mercado neoliberal. Luchar contra todo esto ha sido mi posicionamiento, pero hacerlo desde las mujeres ha sido mi objetivo antropológico principal. Aunque haya dicho que dejo la antropología, en realidad la puse al servicio de mis preocupaciones políticas y sociales.

Marisa Ruiz Trejo: El trabajo que has hecho tiene relación con las luchas en contra del despojo de la tierra y de la desposesión que han vivido las mujeres indígenas históricamente. En ese sentido, ¿cuál es la relación para ti entre las mujeres y la antropología?

Mercedes Olivera: Está mediada por los antropólogos. No podemos ver a las mujeres aisladas de todo su contexto social. Es ver estos procesos como relacionales pero no solamente desde la parte material de la cultura, sino también desde nuestros cuerpos, sentimientos, nuestra forma femenina de ver, de pensar y de sentir. Podemos decir que es la cultura misma pero es una manera de vivirla diferente, de sentirla desde las mujeres por su posición subordinada y por la necesidad de luchar y salir de estas imprecisiones, de volvernos sujetas de la vida social, de impugnar las formas de poder que están sosteniendo las desigualdades de la sociedad y en las que hemos vivido.

Mi feminismo no es un feminismo que haya nacido solamente desde el planteamiento de la sexualidad del cuerpo, sino de esta parte del planteamiento social, político y de la relación con el poder de los hombres, el poder del Estado y el poder del sistema. Es algo fundamental para plantear transformaciones. Ahora se dice "interseccionar", es decir, conjuntar estos elementos para poder conocer la realidad y para poder intentar transformarla, no transformarla tú sino transformarla socialmente y esto es algo fundamental. Ahora todas las ideas decoloniales son muy vitales y radicales pero en realidad los y las antropólogas la hemos estado practicando desde siempre. Nosotras tenemos esa

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conciencia de la genealogía y el proceso transformador e histórico. Ahora se llama decolonialidad y esto permite ponerle nombre a las acciones, a los procesos y a la forma de construir conocimiento. Esta nueva forma de lo epistemológico, de los posicionamientos críticos me parece importante pero la hemos practicado desde hace mucho.

Marisa Ruiz Trejo: Algunos de los estudios críticos feministas de las Ciencias Sociales tienen que ver con cómo las disciplinas, tales como la antropología, han ido reproduciendo lógicas androcéntricas, sexistas, racistas, lesbófobas y tránsfobas. En ese sentido, esas críticas feministas lo que cuestionan también son los métodos, las metodologías, los diseños metodológicos y las técnicas de investigación o más bien las herramientas que utilizan las investigadoras para cambiar esas lógicas. Por eso me gustaría preguntarte, ¿cuáles han sido tus estrategias y tus formas de desarrollar metodologías que cambien esas lógicas?

Mercedes Olivera: La idea general es que la forma de hacer conciencia para que la gente pueda asumirse y autodeterminarse y por lo tanto hacerse sujeto de sus luchas y sus

transformaciones, está en la base de las metodologías que yo uso. Es muy interesante toda la herencia que tenemos las feministas de la educación popular de Paulo Freire. Ha sido retomar esa herencia. No sólo es incorporar el sentido de "género", sino ver la realidad incluyendo todos los elementos interseccionados, ver las desigualdades todas juntas incluyendo el género; se trata de ver una realidad en una forma integral y esto permite construir conocimientos de diferentes perspectivas. No puedes construir teoría individualmente, es producto de la práctica social. Yo no he hecho teoría, las hemos hecho las mujeres y se ha hecho muy ligada a sus problemas y realidades y no en función a las corrientes de moda. Esto a mí me parece que ha sido un posicionamiento epistemológico importante. Por ejemplo, los talleres, que son un instrumento feminista, son un espejo en donde las mujeres puedan ver su realidad, verse ellas mismas, tomar conciencia y ayudar a otras mujeres a través de aprender la metodología de los talleres para que grupos mayores puedan tomar conciencia y puedan las mujeres organizarse. Cada vez siento que es más difícil porque cuando el gobierno no había descubierto la

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potencialidad de las mujeres, cuando el Estado no nos tomaba en cuenta, era más fácil. Ahora que nos toma en cuenta para sus propios intereses, tenemos que luchar contra todos sus intereses necesariamente, como nos impone formas de vivir que observan a las mujeres totalmente. Por ejemplo, si el tiempo de las mujeres está invadido por el "Programa Oportunidades": ¿a qué hora pueden ellas militar?", si les están imponiendo formas de vivir que las absorbe totalmente.

Antes luchábamos por incorporar el género al desarrollo y ahora digo que producto de eso, cuando se apropia el Estado del género lo que ha hecho es algo que yo llamo el "M.E.S.", que quiere decir, "Mujeres Enterradas en el Sistema", o absorbidas o empantanadas por el sistema. De tal manera que es muy difícil por todas las formas de cooptación que existen, aprovechándose de la pobreza de las mujeres indígenas y campesinas; las tienen atadas a sus dinámicas. Muchas mujeres nos dicen en el campo que están de acuerdo en luchar conmigo pero necesitan el dinero. Es lo único que tienen para vivir porque los maridos se han ido, han migrado y han dejado a las mujeres solas con la obligación de trabajar las tierras porque si no se las

quitan. Las mujeres no sólo son reproductoras sino abastecedoras y sustitutas de los hombres en la vida de los ejidos y de las comunidades. El control social lo está haciendo, también el Estado, a través de las mujeres y esto tal vez es un atentado. En el campo, las organizaciones campesinas ya no existen o están asumidas o integradas a los partidos de tal manera que son parte del Estado y el trabajo ahora es dar proyectos para las mujeres. Las mujeres se vuelven diputa de los partidos en el campo. Y esto significa controlarlas a través de los proyectos para establecer dinámicas enajenantes que impiden la conciencia o la actuación liberadora de las mujeres. "Oportunidades" ha sido un programa tan "perfecto" desde el punto de vista de la maldad, para poder controlar a la sociedad porque no solamente se está controlando a las mujeres.

Marisa Ruiz Trejo: Otro de los conceptos que se han manejado desde la teoría feminista es la idea articulación no sólo intelectual y política, sino también con el campo de las emociones y los sentimientos. En ese sentido ¿cómo has articulado eso en tu trabajo de investigación?, ¿cuáles son tus preocupaciones también, actualmente?

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Mercedes Olivera: Pues viviéndolo. No podemos dividir nuestra vida de nuestro posicionamiento político y de nuestras preocupaciones sociales. Forman parte de ti. Yo no estudio ni práctico la antropología, más bien la vivo. Incluso mucho de lo que yo escribo no es para los intelectuales y para los científicos, más bien es para las mujeres. Todo esto no está en la bibliografía porque a CONACYT no le interesan esos libros, folletos y materiales pedagógicos. Son herramientas muy útiles y muy necesarias, que ayudan a las mujeres a entender. Tenemos aquí el problema que todavía muchas mujeres son analfabetas entonces hay que usar dibujos, videos y todos los materiales sonoros y gráficos para que las mujeres puedan ir transformando su forma de pensar y de vivir.

Tenemos la presencia del EZLN que marcó todo el trabajo social que realizaron las feministas y las mujeres. El hecho de que el EZLN haya legitimado la participación política de las mujeres y haya abierto espacios sociales hasta en el propio ejército para las mujeres ha sido una lección que facilitó toda su participación, incluso hasta en el propio gobierno que se ha aprovechado de esto.

Marisa Ruiz Trejo: Mercedes y tus preocupaciones actualmente ¿cuáles son?

Mercedes Olivera: La personal es que como ya estoy viejita no me va a dar tiempo de hacer todo lo que hubiera querido hacer. Y las otras preocupaciones son que los jóvenes y las jóvenes puedan seguir transformando, puedan continuar una vida fuera de la enajenación que está produciendo el sistema y que está dejando a los jóvenes y a los niños sin la seguridad de un futuro.

Marisa Ruiz Trejo: Te agradecemos mucho, estamos llegando al final de esta entrevista pero me gustaría despedirme con una pregunta que me gusta hacer mucho al final que tiene que ver con tus preocupaciones actuales también ¿qué te gustaría que pasara mañana?

Mercedes Olivera: ¿Mañana? Que dejen de reprimir a los maestros y a lo mejor no mañana, sino hoy mismo.

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