Decentralization and Environmental Governance in Multicultural Areas: Lessons from Two Colombian Communities[1]

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Abstract

Most Latin American countries recognized the right to self-determination of ethnic groups and became precursors in community forest management. The paper takes the case of Colombia to evaluate how multicultural areas have adapted to these reforms. I evaluate the effect of local politics on ethnic organizations and environmental governance by comparing an indigenous community settling 1,300 hectares of forested land in Karmata Rúa (Antioquia) and a riverine Afro-Colombian community addressing the environmental effects of a hydroelectric company in the Anchicayá River (Valle). The paper argues that in multicultural areas, ethno-political autonomy may lead to environmental governance. Autonomy is affected by the scale and characteristics of ethnic territories and their natural resources, social movement dynamics, type of state presence and inter-government relations, and the reciprocal recognition and adaptation of consuetudinary and statutory norms within multiple layers of governance. I conclude that autonomy rights depend on local faculties to oversee government actions and synchronize customary and statutory rights. This is more likely to happen in the presence of strong social movements that support community empowerment and facilitate governance technology transfers compelling cooperation or acquiescence from government, and other powerful groups. I draw information from primary and secondary documents, participant observation and interviews with stakeholders.

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Introduction

In the past two decades of decentralization, a majority of Latin American countries secured multicultural citizenship at the statutory or constitutional level (Hooker 2005), and a few re-founded themselves as multicultural societies, recognizing significant levels of local ethno-political autonomy for Indians and in some cases, Afro-Latinos (Van Cott 2011). Simultaneously, the region became a precursor in community forest governance by passing on property rights to local communities. For example, between 1985 and 2002, Bolivia, Brazil, Colombia and Peru, transferred 149 million hectares of forest land to communities, many of them indigenous or traditional (Larson et. al. 2008).

Colombia's 1991 Constitution reconfigured the country as a multicultural nation, decentralized governance and instituted Black and Indian legal rights to over 25 million hectares of tropical forestland, making them territorial authorities of 38% of the country's forest reserves. Few studies however, examine how multiethnic regions have adapted these different layers of reform, nor how diverse local actors and institutions are working on issues of social justice, socioeconomic development and natural resource management, often using complex legislations, working with different tiers of governments, or coordinating dissimilar legal or normative principles. This paper examines ethnic governance in Colombia in an Embera-Chamí indigenous community recovering 1,300 hectares of forested land in Karmata Rúa (Antioquia) and an Afro-Colombian community that is addressing the environmental effects of a hydroelectric company in the Anchicayá River (Valle). These communities are working on issues of environmental governance, building up local capacities, and harmonizing consuetudinary and civil legal systems.

The paper sets out to answer two main questions: How are different authorities and tiers of government working together in multiethnic regions? How do local politics affect governance in ethnic communities? This paper argues that upholding autonomy rights depends on local faculties to oversee government actions and synchronize customary and statutory rights. Such rights more likely develop in the presence of strong social movements that support community empowerment and facilitate governance technology transfers compelling cooperation or acquiescence from government, and other powerful groups. Autonomy is affected by the scale and characteristics of ethnic territories and their natural resources, social movement dynamics, type of state presence and inter-government relations, and the reciprocal recognition and adaptation of consuetudinary and statutory norms within multiple layers of governance.

Research for this paper was carried out in coordination with leaders from Karmata Rúa and Anchicayá, and with the Jenzerá Working Collective, a Bogotá-based non-governmental organization that facilitates an itinerant "Interethnic School for Conflict Resolution" offering training on ethno-territorial rights, environmental governance and conflict resolution, among others.[2] I engaged in one of the school's training events focused on territorial governance and natural resource management held in Karmata Rúa, for roughly forty leaders from Indigenous and black communities from across de Pacific coast. In addition, two Anchicayá leaders visited Karmata Rúa to participate in the training and obtain first-hand experience about Indian governance. After the training, I interviewed community leaders and local government officials,

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[2] The Jenzerá Working Collective (Colectivo de Trabajo Jenzerá) was created in 1995 by veteran Indian social movement activists and it enjoys the support of individuals connected to long-standing Indian and black organizations.

observed regular governance activities, and held one large meeting with about 30 Karmata Rúa

residents. I traveled to Anchicayá with a leader from Karmata Rúa to visit various communities

and conduct two meetings with roughly 50 people who discussed issues of territoriality, natural

resources and governance. The point of involving leaders from the communities studied in field

exchanges was to obtain their insights, and contribute to their own training on matters of local

governance. Information for this paper came from the training event and the field exchanges

between Anchicayá and Karmata Rúa. I also conducted formal and informal interviews with

leaders inside and outside the communities and gathered government documents.

Decentralization and Ethnic Governance

Decentralized natural resource management and devolution of political power to

elected local authorities are generally believed to maximize democratic and environmental

governance by compelling government accountability, bringing citizens closer to their

governments and "matching public decisions to local needs" (Rantala & Lyimo, 2011). However,

these policies have produced mixed results. For one, decentralization policies did not

necessarily increase the power of local authorities (Faletti, 2010). Nor did they automatically

empower citizens. Achievements in participatory budgeting, citizen oversight of governmental

processes, and transparency and accountability have been documented, but studies warn that

in many instances decentralization maintained authoritarian enclaves by increasing corruption

and clientelism (Fox 1994), facilitating incumbent use of local budgets as fiscal rents to

strengthen their hold on power (Gervasoni 2010) or fragmenting political party systems (Ryan

2004). Therefore, similar institutional designs produced diverse outcomes, prompting research

that scrutinizes variations in local political strategies, the use of contentious politics, and local policymaking (Herrera 2012).

Studies on natural resource management concur that under certain conditions communal institutions produce effective environmental governance. For instance, common property studies find that homogeneous local groups can manage natural resources sustainably if their property is clearly defined, and the community benefits from high social capital, legitimate leadership, redundant rules embedded in different levels of government, and central government support (Agrawal 2002; 2003). However, large scale processes such as climate change, deforestation and economic globalization are making it increasingly difficult for communities to meet these conditions and manage their resources sustainably (Dietz, Ostrom, & Stern, 2003; Ostrom, Burger, Field, Norgaard, & Policansky, 1999). Acheson (2006) argues that under certain conditions government, private and communal property arrangements all fail to manage natural resources sustainably. Local community management fails when communities are overwhelmed by dominant societies, or when they fail to build a sense of community, defend boundaries or adapt to new technologies (Acheson 2006). Smith and Wishnie (2000) find that members of small societies, often indigenous groups are more likely to allocate the bulk of their efforts to the resources that support their livelihoods, which may or may not result in conservation.

The natural resource management literature has been especially concerned with evaluating the effectiveness of laws devised from above versus local rules. Of particular interest are political systems characterized by legal pluralism, or by multiple bodies of law based on competing principles. In colonial or post-colonial societies, statutory laws sought to undermine

customary rules. But in areas where the central government has an uneven territorial presence, customary norms prevailed, making it an imperative for governments to work with traditional laws (Ingram et. al. 2011). Discrepancies between statutory and customary laws may provide advantages to politically powerful social actors in some cases, while in others it may open opportunities for disadvantaged individuals to contest prevailing norms (Rantala & Lyimo, 2011). Rantal and Lyimo (2011) warn that what constitutes customary law is ambiguous, pointing to the example of many African societies where customary rules do not necessarily respond to tradition, but rather to government directives. Nevertheless, customary systems are not static and change and adapt to new challenges and integrate new principles.

Decentralization in Colombia sought to address numerous challenges, many of them stemming from the uneven development and territorial presence of the state and the prevalence of political violence. Colombia's fractured geography, history of partisan strife, and self-contained regional economies usually controlled by vested interests, produced one of the most fragmented countries in Latin America (Bushnell 1993; Safford & Palacios 2002). The reforms tried to build up political legitimacy for the state by granting subnational governments mechanisms to face increasing social conflict. However, capacities to take on the new rights and responsibilities varied, and some local administrations were better prepared than others to exercise their new rights and obligations (c.f. Sarmiento 1998). Decentralization and territorial reordering laws added new boundaries to the old municipal and departmental administrative divisions. Accordingly, special districts and indigenous territories were enabled as public entities, while metropolitan areas, municipal associations, regions and publicly owned companies were recognized as entities in matters of public procurement.

The main instrument enabling Indian political autonomy has been the *cabildo,* a colonial

era institution set by Spaniards to draw labor and tribute from Indian towns or communities,

and which was maintained after independence by law 89 of 1890 that also set up *resguardos*

(shelters or reserves). *Cabildos* survived into the 20th century and were normally used to

acculturate or dispossess Indians of their land. The 1970s Indian movement took them over and

turned them into symbols of autonomy, transforming them into instruments to reconstruct

Indian communities, defend land, and resist Colombia's ethnocentric and integrationist society

(Valencia, M 2002).

The 1990s reforms created indigenous territorial entities and approved Law 21 of 1991

that ratified International Labor Organization's Convention No.169 on the rights to land and

self-determination of tribal peoples, most importantly, the right to prior, free and informed

consent on development projects. Ethnic autonomy however, is curtailed by article 332 of the

constitution establishing state ownership of subsoil and nonrenewable resources. *Cabildos*

became recipients of fiscal transfers and were covered by laws compelling decentralized

governments to invest and devise development plans (see Law 60/1993 on decentralization and

Organic Law 152/1994 on development).

Like Indians, Black peasant communities organized around the collective use of land.

However, no legal precedents allowed them to claim collective titles over these lands. Between

1819 and 1991, Colombia's legislation offered nothing other than incorporation into national

society as mestizo peasants (Valencia, C 2002). The Agrarian Reform laws of the 1960s covered

Black *campesino* land claims under individual property titles. Law 2/1959 on forest

development and natural resource conservation turned the Pacific into a reserve subject to

government-designed Forest Ordination Plans and viewed Black traditional peasant communities as "*colonos*" or settlers encroaching in national lands. Law 70 of 1993 is the main legislation covering black territorial claims. It created Black community councils to oversee collective property and natural resources, divide land internally, choose legal representatives to stand for the communities in relation to adjacent governments, and settle conflicts that may be solved by the community's traditional authorities. The constitutional reforms did not enable black community councils as public authorities in the same way as Indigenous communities.

Most communities were nonetheless ill-prepared to accommodate the reforms. In 2007 only 18% of the country's indigenous territories were using the legal framework that enabled them as local authorities (Chirif & García 2007), while the autonomy rights of Afro-Colombians have been curtailed by illegally armed groups operating in their lands (Oslender 2007). The next section examines the two cases, highlighting successes and failures in local governance, and placing ethno-political autonomy in its recent historical context and against local power dynamics.

Developing Local Autonomy in Karmata Rúa

The Embera-Chamí indigenous reserve of Karmata Rúa (also known as Cristianía) is located in the Andean municipality of Jardín in southwestern Antioquia, one of Colombia's most economically developed departments. The 416 families of subsistence farmers are consolidating socio-economic, justice and environmental governance institutions resulting in innovative leadership, territorial expansion, insertion into local markets and strategic alliances

with adjacent governments. This is the product of a 40 year process that began in the 1960s when the community of 900 people organized to recover their old reserve.

In 1967 Cristianía first organized to recover reserve lands, but their claims were denied by the government until 1975 even if the 125 families were crowded in 140 hectares of reserve land, 50% of which were unproductive, a situation confirmed by a 1978 National Agrarian Institute study (Salazar, 2000). In 1980 they organized peaceful land takeovers by planting in neighboring haciendas, which the government declared illegal actions. Soon after, Indian leaders Mario González and Aníbal Tascón were murdered by hired gunmen, a crime that compounded unity in support of the takeovers (Salazar, 2004). In 1981 the departmental government expanded the reserve by buying 200 hectares of adjacent hacienda land. These events propelled the foundation in 1982 of Antioquia's Indian Organization (OIA) which began to serve as a department-wide coordination instrument (Salazar, 2000). Initially, OIA was dedicated to community organizing to claim land, culture and autonomy, but a decade later, it started to address issues of authority and governance, and relations with government institutions.

Karmata Rúa's population currently stands at 1,736 and lives in 391 hectares of land, 201 hectares of which are not productive. Family farmers have small plots where they primarily grow organic-certified coffee commercialized by Karmata Rúa's Association of Indigenous Coffee Producers (ASOPICK) through Colombia's Federation of Coffee Growers; they also sell arts and crafts, raise cattle and produce sugar cane, plantains, corn, beans and vegetables mostly for domestic consumption (López 2011).

They were the first community in Antioquia to adapt the *cabildo* as a social movement strategy and later as an instrument to plan development and forge relations with adjacent governments. According to Aquileo Yagarí, Karmata Rúa's *cabildo* governor the new rights obtained in the 1990s "increased our responsibilities and exposed our weaknesses in the areas or administration, budgeting and planning;" so we built a "school of government" to train our own leaders (Interview, July 2009). The *cabildo* is elected every three years by an assembly of commoners where adult men and women reach a consensus. *Cabildo* authorities report on their activities to the assembly every six months or whenever the assembly requires it. Between 1996 and 1997, they produced the first development plans—which would later be called "life plans" to reflect holistic or non-positivist conceptions of socioeconomic, cultural or ecological advances. Currently, they show notable results in health, education and social services, land recuperation, and administration of justice.

As other indigenous communities across Colombia, Karmata Rúa found it difficult to work with top-down positive or statutory laws—normally general, impersonal and abstract laws that tend to stay in paper—than with rules based on consuetudinary law (Valencia 2002). Successful norms resolve concrete problems, are not fixed and can be adapted to specific circumstances prior deliberation by the assembly, certain rules are more flexible than others (especially norms pertaining to inter-cultural or inter-institutional relations for which Embera principles offer little guidance) and the administration of justice is not independent from other communal bodies, especially the assembly.

In 1998 Karmata Rúa approved by general assembly a constitution known as "Dachi Código Embera." The constitution is based on interpretations of Embera Original Law (Karabí's

or Karakabarí's Mandates) , but includes as well principles from Colombia's constitution. It addresses interpersonal, conjugal, and public conduct, as well as human-earth relations that helped classify conflicts affecting family life, land and natural resources, governance and administration, and social peace. A salient feature of this constitution is the Justice and Conciliation Council (JCC) which took over justice administration. In an official ceremony, justices from the municipalities of Jardín and Andes handed over to the JCC, legal records over which Karmata Rúa had jurisdiction.

The JCC investigates and sanctions misdemeanors including theft, defamation, family violence, crimes against the community, and offences by *jaibanás* or traditional doctors, among others, as well as water contamination, unauthorized logging, and forest burning. Serious felonies such as rape or homicide are investigated by the JCC and handled in collaboration with the municipal justice system where the convicted serve jail time. Finally, commoners enjoy the right of defense and can resort to the *tutela* mechanism—a writ for the protection of the constitutional rights of all Colombians—through regular court systems if they disagree with JCC rulings or find fault with the legal process leading to sanctions. A few commoners have appealed decisions using *tutelas,* and adjacent courts have for the most part tended to agree with JCC and *cabildo* authorities.

Karmata Rúa has its own jail, normally used as short-term punishment for lesser offences, and to discipline *jaibanás* believed to cause problems for the community. While the community seems to be divided into believers and skeptics of the power of its traditional doctors, *jaibanás* are important authority figures, and play pivotal roles in conflict resolution, health and biodiversity conservation. Their knowledge of a variety of plants in both mountain

and lowland ecosystems is a source of power and business—some *jaibanás* have patients outside of the reserve—and explains why they advocate for the conservation of forests to appease *jais* or spirits. Universities in Medellin offer programs on ethno-education, multiculturalism and ethno-botany, the latter to *jaibanás* interested in combining traditional and scientific knowledge to complement their understanding of medicine, ecology and botany.

The *guardia indígena* or indigenous guard is another prominent institution that supports monitoring and sanctioning activities. It is made up of men, women, youths and elders who have qualified themselves in community workshops to act as a group of unarmed volunteers, and whose legitimacy is conferred by the community and their authority represented by a command baton. They mediate conflicts, address incidents of domestic violence, and offer protection to *cabildo* officials or other well-known community leaders who, given Colombia's history of violence against Indian leaders, are at a higher risks of political attacks. They also make regular rounds to monitor 52 water sources, reforestation projects, drainage ravines, soil quality, logging, and geological faults. They also coordinate with Jardín's Municipal Unit for Agricultural Technical Assistance (UMATA) and Colombia's Federation of Coffee Producers, both institutions that share production technologies and conservation strategies.

The Indigenous Guard has established its authority in relation to adjacent law enforcement institutions in Jardín and Andes and some people approved of the sense of safety they upheld in the vicinity of the reserve. I saw some evidence of collaboration between the guard and adjacent law enforcement authorities who lent the guard civilian equipment or supported efforts to protect *cabildo* leaders. In April 2012 however, the Andes police accused and arrested a Karmata Rúa man for terrorism without consulting with the Guard. In a public

statement, the *cabildo* governor and the head of the guard accuse them of trumping up charges

and disregarding Indian authorities who had no indication of misconduct by this individual.

In 2011, Karmata Rúa passed an environmental mandate consisting of 10

commandments addressing matters ranging from agricultural production, biodiversity and

conservation, water use, reforestation, waste management, and the conservation of culture,

the respect of the rights of others, and respect of *jaibanás*. It defines the environment as a

triangle that includes human beings, territory and indigenous worldview. Again, it is a short

document, reflecting prior deliberation, and written in lay language in Spanish and Embera. The

community received support from the Universidad Nacional in Medellín in drafting the

mandate. In one of the meetings attended, an elder explained that Emberá ancestors never

talked about the environment, and argued that the environmental mandate is a new type of

law in tune with current times. Indeed, the mandate mixes Christian principles (it has 10 basic

commandments), social movement principles (it refers to territorial and human rights), and

traditional principles (it defends the institution of the *jaibaná).*

Relations with Adjacent Governments

As in other parts of Latin America, the "Indian problem" was treated as a matter of

acculturation, education, public order or integration as peasant workers (Efraín Jaramillo,

Jenzerá Working Collective, interview, June 2008). This emphasis changed as regional Indian

movements, and later international institutions, demanded policy change. In the 1980s,

Antioquia's government responded to Indian demands by creating what would eventually

become the Indigenous Board (*Gerencia Indígena*). In 2004 the government consolidated its

ethnic affairs policy agenda—which dated back to the 1979 ethno-education office—to address

issues of local autonomy and governance, health, education, programs for women, youths and elders, food security, land purchases and natural resource management (Gerencia Indígena, 2004). Antioquia's assembly Ordinance No. 32 of 2004 buttressed Indian autonomy and capacity to interact with adjacent governments and supported local planning and evaluation mechanisms.

Karmata Rúa is Antioquia's most advanced ethnic local governance experience, compelling adjacent governments to coordinate with the *cabildo's* development or life plans. Jardín's municipal council passed in 2010 Accord No. 12, an extensive piece of legislation by which it sanctioned "a public policy to recognize and guarantee the rights of the Embera Chami indigenous community in Karmata Rúa." The accord acknowledges indigenous territorial boundaries, agrees to indigenous juridical, administrative, and political autonomy, and manifests willingness to work in coordination to promote alternative development and natural resource conservation. It calls for coordinating mechanisms for municipal authorities whose jurisdiction overlaps with the *cabildo*. The municipality recently equipped the *cabildo* with a city hall office and created a "*veeduría indígena*" or an "indigenous citizen's oversight committee" to assess and observe municipal proceedings and the implementation of the new public policy.

Despite these advances, tensions do exist in the relationship with adjacent municipal authorities. I came across some evidence of bigoted attitudes, misrepresentation of Indian interests, disregard of their history, and disrespect or ignorance of the community's rights and achievements. One official was unsettled by what he believed to be laxer contracting or construction procedures applying to the reserve, two people criticized the community's management of what had been "the region's most beautiful coffee hacienda," and one person

in the office of community relations disdained Indians as dirty and lazy recipients of

government and charity handouts. Someone seeking to market Jardín as an environmental

tourist destination lamented that Karmata Rúa was not picturesque enough for tourists.

Others were critical of the sinecures granted by the regional and national governments,

manifesting that Indian governments were misusing resources and wasting their electoral

potential. Some held the wrong impression that Karmata Rúa's infrastructure projects had been

transacted and financed by Jardín's municipal government, when in reality they were financed

by a combination of fiscal transfers, Antioquia's government, and Corantioquia—the

Autonomous Regional Corporation working on environmental issues. The *cabildo* has procured

international cooperation funds—for example, Spain's Chartered Community of Navarra

supports various governance projects, including the JCC—and saved its own funds to buy more

land, modernize health facilities, and increase the size of the school. In 2010 the *cabildo*

governor prepared for Jardín's council a thorough report on Karmata Rúa's governance

structure and development projects, including detailed information on sources of funding and

execution of projects. A bus full of people traveled to Jardín for this "historic moment" but

walked out in protest after the council delayed their presentation numerous times.

Some tensions revolved around Karmata Rúa's electoral potential and matters of

representation. The *cabildo* is limiting unauthorized proselytizing and has been trying to compel

the community to vote united for candidates who are responsive to community interests. Local

politicians who believe they have affinities with Indian voters or who need this minority vote to

win elections took issue with this ban on open campaigning. A young politician for example,

questioned the degree to which Indian authorities were really representative of their

constituencies, claiming that Indian/mestizo divisions were a thing of the past; while another candidate running for mayor on an environmental campaign was rather lobbying *cabildo* authorities to win their trust and vote.

Some concerns about Indian governance affairs are warranted. Jardín is a small, well-planned town, with an attractive central plaza. Officials in both planning and sanitation departments worried about Karmata Rúa's disorganized urbanization and lack of recycling, garbage collection and residual or waste water treatment. Karmata Rúa authorities know that this is overwhelming them and are working with Jardín's sanitation department who is assisting pedagogical programs on waste management. Corantioquia built infrastructure for waste water. People however were discouraged to see that after sorting compost, trash and recyclables nothing got picked up, forcing them to go back to old practices of burying, burning or scattering trash. The landfill is located four hours away and the *cabildo* has not yet contracted a private service to deliver to the site for lack of resources.

Most people interviewed however, saw indigenous governance as a positive development allowing municipal authorities to get more work done by coordinating with established authorities. Others viewed gains for security and public order since potential lawbreakers would no longer take advantage of the community's land. The current *cabildo* governor for example, cracked down on Indian and non-Indian individuals using an abandoned peasant community meeting house in the limits of reserve land, to sell drugs and possibly commit a murder.

Inter-institutional Collaboration to expand landholdings

Landlessness continues to be a problem for 120 families for whom expanding the reserve to its original size is politically untenable at present. For one, this is a conservative region where paramilitary groups recently practiced "social cleansing" activities to rid the place of alleged petty criminals, guerrillas or sympathizers. *Cabildo* authorities explained that adjacent lands are too expensive and property owners "are committed to not selling us land.*"* They described current power dynamics as dominated by well-established property owners with significant political and economic clout, who did not welcome Indian territorial expansion.

To address land shortages the *cabildo* has had to resort to formal mechanisms including the use of fiscal transfers, as well as funds provided by Antioquia's Indigenous Board and Corantioquia, who is interested in the conservation role that the community could play in this water-rich, forested area. With their help, they bought 1,300 hectares of land in a remote area called Dojuro in the municipality of Andes, situated at an altitude of 1,800 to 2,000 meters near the limit of Chocó and Risaralda. A 25 km rugged road and a 5 km steep foot trail separate Karmata Rúa from Dojuro. The *cabildo* is interested in further expansions and is finding that many *campesinos* in the area want to move to larger urban centers and are willing to sell. Some of them have vague property rights or no titles at all, and know that the process to clear these could cost as much as the land itself. They have accepted the indigenous guards who are making rounds in the area and have seized shotguns, prevented illegal logging, and expelled informal miners. However, one large landowner—allegedly a drug trafficker—is refusing to sell and is believed to be looking into the business of Reduced Emissions from Deforestation and Forest Degradation (REDD). The government has also announced plans to dam the Santa

Barbara River that passes through Dojuro and there is increasing mineral prospecting in the region.

The *cabildo* is destining 90% of this land for conservation of high altitude natural forests, where they are guarding patches of second-growth forests and reintroducing wood species common to the area such as *Aniba perutilis, Hemsl., Schizolobium parahybum* and *Cedrela montana*. Some areas will be left alone because they contain undetonated bombs dropped by the military in combat against National Liberation Army (ELN) guerrillas in the 1990s. Another 200 hectares of degraded soil by decades of intensive agriculture and cattle-raising, are being recovered for agriculture. People used to Karmata Rúa's proximity to regular government and market services, including jobs and transportation, reject Dojuro as a living alternative. Traditional families or those who believe in Dojuro as a political project seem more motivated to settle the land, and programs to attract at least 35 families began in 2006. They include school and health installations, built with support from governmental and non-governmental institutions and production projects.

In conclusion, Karmata Rúa provides evidence of collaboration between different levels of government. The *cabildo* stemmed from a contentious process and is supported by fairly active social movement organizations. In addition, local authorities accommodated and acted upon the ethno-political autonomy policy agenda, achieving advances in infrastructure, improved quality of life and cultural revival. However, the community needs more land and has to manage the land they already have in a way that sustains a healthy economy, urban development, and natural resources.

Anchicayá: Limits to Autonomy in Black Territories

Anchicayá's population of approximately 6,000 descends from African slaves and has a rich cultural tradition and a common past and identity setting it apart from other socio-cultural groups (Escobar 2008; Asher 2009). They live in collective lands covering tropical rainforests and mangroves in the municipality of Buenaventura (Valle), in the Pacific region. These were once remote lands that occasionally allowed isolated and precarious free slave and Indian communities to resist oppressive slave and hacienda systems (Thompson 2006); constituting an important legacy of tenacity, dignity and self-determination. Geographical remoteness allowed these communities to reconstruct a common African-Colombian culture (Sánchez et al. 1993), based on intricate symbols that integrated people with nature and, according to one study, encouraged environmental sustainability (Arocha 2009).

Economic activities revolve around fishing, shellfish collection, agriculture, logging, artisanal gold mining (*barequeo*) and transportation, education or health services. Sea fishing operations are typically performed by groups of partners, agriculture is done through communal work teams, and families maintain a labor sharing institution known as "changed hands" (*mano cambiada*) to build or maintain homes. These practices helped them preserve resources, ensure enough food and keep their social networks. The partial collapse of traditional economic activities is compelling people to emigrate, or to participate in commercial logging or irregular mining operations. Finally, coca was introduced to parts of this territory but

the community forced *cocaleros* out. Their strong opposition to coca has made Anchicayá notorious across the region.[3]

Anchicayá's economic livelihood is threatened by natural resource degradation and water contamination coming from unregulated gold mining in the river, and deforestation of mangrove and inland forests. The Energy Company of the Pacific (EPSA) however, has had the greatest economic and health impacts on the population. The company has its roots in the state-owned CHIDRAL (privatized in the 1990s) and dates back to the 1950s when the World Bank made loans to build a hydroelectric plant in Anchicayá to supply power to Cali and Yumbo, whose industrial expansion was limited by energy scarcity (International Bank for Reconstruction and Development 1950, 1955). The project changed the river's natural course and life cycles and intensified floods which used to occur every 10-12 years, and then began twice a year. In 2001, EPSA opened floodgates to begin evacuation of 2.8 million cubic meters of sediment that were reducing reservoir capacity by 40 percent (López 2012). In a matter of days 500,000 m^3 were released, causing water pollution, degradation of plant and wildlife, and economic devastation to about 3,000 people (Defensoría del Pueblo 2005). Since then, Anchicayá has been consolidating local governance by combining new and old institutions and building a legal strategy to seek compensation for environmental damages suffered.

Anchicayá's most important grassroots organizational process began around 1984 when the Committee to Defend the Anchicayá River [later renamed the Organization of Blacks United for the Interests and Resistances of the Anchicayá River (ONUIRA)] was formed, first as a

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[3] See for example ONUIRA's 2009 press release against coca fumigations in nearby Naya River
http://afgj.org/colombian-community-gardens-fumigated accessed May 24, 2012.

peasant association and later as an organization reflecting black ethnic identity. ONUIRA does

grassroots political work, supports traditional organizations, and develops networks. It is also

politically aligned with the Black Community Process (PCN), Colombia's main black organization

and its Palenque el Congal in Buenaventura. Currently, the region is organized in nine

Community Councils that in 1993 obtained collective titles to 59,024 hectares of what had been

government-defined "vacant or barren lands" (*baldíos)*.

River communities are represented by ONUIRA and, following Law 70/1993, the

Community Councils, including the Greater Council of the Anchicayá River which is uniting

fourteen of the smaller villages. The old peasant organizations or village committees (*comités*

veredales) are still active, and so are customary institutions such as the justices of the peace

who settle problems between families and the Council of Elders that includes one or two

representatives from each village. Village committees take care of most difficulties in the

communities and only resort to other instances "when things get out of hand." However, the

extended families continue to be the most influential institution for interest intermediation,

property allocation and natural resource management. Powerful families may pick and choose

what rules to follow and how to manage their resources without consulting with others. To be

effective then, Anchicayá's Community Councils must harmonize old and new laws and

institutions, and develop governance plans and internal rules in local assemblies that include

key representatives from all pertinent institutions and community leaders.

Community Councils upriver are located in Buenaventura's Eighth District. They are

connected to traditional clientelistic networks operating from the city of Buenaventura, and are

politically aligned with the Federation of Community Councils of the Cauca Valley (FECOVA).

FECOVA formed as a pro-government organization claiming representation of black communities in order to contest the political influence of the PCN's Palenque el Congal which is independent from traditional clientelistic networks and represents grass-roots organizing and ethno-territorial governance.[4] According to ONUIRA representatives, opposition by these communities to their political process only weakens them as a collectivity, becoming a problem at the time of addressing land and natural resource management. They also claim that these communities are introducing backhoes for informal mining, generating problems for everyone else.

In groups discussions people maintained that they only experience the repressive face of Colombia's state authorities, citing as evidence the ill state of health, education and security. Both guerrillas and government armed forces take shelter in churches and schools, and do not respect communal rules, generally violating the rights of civilians. Military authorities reprimand people when passing through security controls, and if carrying gasoline or food "they accuse us of supplying the guerrillas." In 2011 the Revolutionary Armed Forces of Colombia (FARC) caused three mass displacements in the river. According to a 2011 press release signed by leaders of nearby rivers on the "Current Situation in Rural Buenaventura," in their bid for territorial control, armed groups behind illegal mining are also forcing displacements in Anchicayá. On occasions however, Anchicayá residents through their institutions have successfully negotiated with some illegally armed groups (e.g. guerrillas and *cocaleros*) who have agreed to respect their rules and authorities.

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[4] Personal communication Efraín Jaramillo, Director Colectivo de Trabajo Jenzerá and José Santos, Activist and Sociologist, Proceso de Comunidades Negras.

My interviews with government officials in Buenaventura left me with the impression that they visit the communities very occasionally—citing security reasons as an impediment to travel—and have supported very basic health, sanitation and education projects. The government body most frequently mentioned by *anchicagueños* that operates in their territory was the Autonomous Corporation of the Cauca Valley (CVC)—the regional environmental management institution created in 1954 to stimulate regional economic development—which on occasions has offered valuable support, for example the services of a biologist who collected evidence for the legal process against the hydroelectric company after the 2001 conflict, which will be discussed below. The CVC offers technical support in agroforestry, natural resource management, environmental education and improvement of environmental services. Yet in the river, people criticized it for failing to sanction "pollution in the river and not backing the community in the lawsuit against EPSA."

The CVC's performance and effectiveness however, are being seriously questioned as allegations of incompetence and corruption are corroborated by national and regional government institutions of internal control. The CVC went from being a top example of public administration to being dominated by regional *politiquería* –or the politics of abuse of power and corruption (*Semana,* 17 September 2011). This organization of 600 employees and a budget of 206 billion pesos (145 million US$) became political spoils managed by a board of directors that is supposed to represent business organizations and the community, but is now controlled by the network of former Valle del Cauca senator, Juan Carlos Martínez Sinisterra. Martínez was arrested on charges of "*para-política,*"or supporting paramilitary groups, though it is widely believed that he still controls regional politics from prison (*Semana*).

By law, hydroelectricity companies with a generation potential above 10,000 Kw must transfer 3% of their gross sales to autonomous regional corporations (i.e. CVC) and 3% to the municipalities where hydroelectric watersheds and dams are located (i.e. Buenaventura and Dagua for the Anchicayá River). These funds must be used for basic sanitation and environmental protection of the watershed. In 2005 and 2006 alone, Buenaventura, Dagua and the CVC collected 10.6 billion pesos (5.6 million US$) to invest in the Anchicayá basin (Defensoría del Pueblo 2007). According to the Comptroller General, in 2006 both the CVC and the municipality of Buenaventura had destined no more than 10% of these transfers to social investment in the area, and in 2007 the CVC had accumulated and failed to execute about 13.5 billion pesos (6.75 million US$) of transfers (Defensoría del Pueblo 2007). When confronted, CVC officials resorted to complicated legal or technical arguments, for example claiming that by law they could not invest in communities located below the Anchicayá dam or pointing out that the lack of an Environmental Management Plan prevented them from investing the funds. Anchicayá's riverine communities know about this malfeasance, but the citizen oversight committees that were supposed to give them a say in these affairs have to date been inoperative.

The protracted legal case to seek compensation for the environmental damages suffered in 2001 offers additional insight into the inoperability of inter-institutional relations. To begin, Anchicayá's communities were divided in their legal action against the company. The villages in the middle and lower course of the river brought a class action suit against EPSA, the Ministry of Environment and the CVC. Meanwhile, the communities in Buenaventura's Eighth District established a criminal prosecution against EPSA. Their attorney went as far as trying to

invalidate the class action suit filed by the other villages, but was stopped by the State Council who in turn annulled the criminal prosecution he was following. The State Council decided in 2008 that the communities in the Eighth District should be covered by the class action suit. Finally, EPSA is represented by one of Colombia's largest law firms presumably benefiting from powerful lobbying capacities to twist rules or convolute the legal process.

By 2004 the process included class action suits, criminal investigations, *tutela* rulings, and multiple resolutions either overturning specific rulings or mandating compliance. In its assessment of the Ministry of the Environment's handling of the whole affair, the Office of the Ombudsman accused the Ministry of not conforming to the principles governing administrative functions, in particular those relating to speed and efficiency (Defensoría del Pueblo 2007).

A 2009 court ruling in Buenaventura's First Administrative Court found EPSA and the CVC culpable for environmental damages and the sentence was confirmed by the Administrative Tribunal of the Valle del Cauca department. The Tribunal decided that damages assessed individually should now make part of a common fund to be distributed among all Anchicayá communities, including those in the Eighth District 8. The Superior Tribunal on its part, ordered CVC and EPSA to pay 150 billion pesos (roughly US$83 million) to the communities. EPSA must cover 80% and has yet not paid its share.

Having followed different legal actions is increasing mistrust and contention between the communities. Communities in the Eighth District did not join the class action suit in 2002 and failed to produce an assessment of environmental damages soon after the 2001 incident when the evidence could be gathered. Meanwhile, communities that followed the class action suit are frustrated with the appellate body's decision that the money should now be pooled and

shared among everyone. As the Community Council lawyer claims this "is generating tensions in the communities as people below are asking that the original expertise assessment be respected and people in the Eighth District now feel that they also have rights to that money."

EPSA has denied wrongdoing, noting that they did not drop the amount of sediment claimed in the reports and that the environmental disaster was simply an incident that caused "water turbidity and fish mortality" (Marín 2011). Furthermore, they allege that they carried out a lawful action to maintain the dam following management plans developed by the CVC. They also claim that the river's main function is to generate energy (Marín 2011). They have tried to overthrow the whole process by filing a *tutela* in the Council of State arguing evidentiary errors, but the council denied the suit. At this point the Council of State is reviewing the whole process to unify jurisprudence. And the case will eventually end in the hands of the Constitutional Court and since it affects an ethnic minority at risk, the Inter-American Commission on Human Rights began to look into the process in 2011 (Marín 2011).

The legal case against EPSA is motivating the unification of most of Anchicayá's communities around their local institutions. In an informal conversation with a community council leader whose organization had recently joined ONUIRA's unity process, he criticized the bad advice and political orientation provided to his community by FECOVA (the regional organization connected to Buenaventura's clientelistic networks) and was hoping to see better results under ONUIRA and the PCN.

Silvano Caicedo, ONUIRA leader, has faith in "black people's history of active community participation and resistance" which will let them prevail even as "we face abuse from the state and now from multinationals." ONUIRA, the PCN, the Community Councils of Taparal,

Humanes, Brasito and Amazonas, Punta Soldado, and the Greater Council of the Anchicayá River are leading a socio-environmental movement labeled the Campaign of Rebirth "from the entrails of the River to protect our territory." The campaign insists on a "civic and peaceful vision to build democratic solutions worthy of the country that we want and deserve" and calls for an environmental identity and Afro-Colombian pride. The campaign endorses education programs, and symbolic actions such as yearly "*balsadas*" or boat tours along the Anchicayá River to observe EPSA's "environmental crime" and denounce the institutional negligence sentencing them to poverty.

As other black communities, Anchicayá is also asserting the right of free, prior and informed consultation following ILO convention 169 ratified by Colombia and turned into Law 21 of 1991. They argue that EPSA must obtain proper environmental licenses and consider the rights of people living below the dam, as some people in the river say "we must be consulted." This position has been supported by the Office of Ethnic Affairs at the Ministry of the Interior and Justice.

In conclusion, Anchicayá has a larger territory with strategic natural resources for hydroelectricity, forest conservation and mineral prospecting. However, its grassroots organizations have been fractured but are now more united. There is also more social movement activity motivated by ONUIRA and the PCN. Yet, corruption, weak civilian state presence, and armed conflict constitute a backdrop that makes it very difficult for an organization to successfully maintain a healthy economy, addressing the population's needs, and supporting the sustainable use of natural resources.

Comparison

The comparison of two cases limits generalization on the status of ethno-political autonomy across Colombia. However, it reveals salient tendencies on the effects of territorial and natural resource characteristics, social movement dynamics, state presence, and regional economic development, which do mark ethnic governance in other regions. In general successful ethnic governance is more likely to occur in communities with a legacy of social movement contention and working with responsive government institutions. Indian communities have also used long established governance and property right institutions like the *cabildo* and *resguardo,* to launch political strategies of defense of land, autonomy and culture. Black communities face local governance challenges stemming from their weaker history of social movement contention, the abrupt escalation of violence in their territories, and the lack of legal or institutional historical precedents, prior to the 1991 reforms, upon which they could build local autonomy.

The comparison reveals mixed results on the effects of the scale and characteristics of territories and natural resources. Anchicayá's land contains more strategic resources than Karmata Rúa. The river has been destined for hydroelectricity generation and is of interest to regional and national authorities and a large private company. The river's forests and mangroves could be targeted for wider or more ambitious environmental service projects, such as REDD. Finally irregular mining upriver augurs future mineral prospecting. In effect, the government's National Hydrocarbon Agency is marketing large sections of the Pacific coast for prospecting and exploration by foreign investors. Under current conditions Anchicayá is hardly prepared to address these governance issues. All of this suggests that governance is more

challenging in larger, less accessible territories, with strategic natural resources. However, Karmata Rúa's smaller and more integrated territory into local markets and nested in various levels of government, faces different types of challenges. For one, the population is growing. The *cabildo* is seeing how little maneuver room they have to provide its community with sustainable economic activities and improved standards of living, a situation that may lead to natural resource depletion and that will require further urbanization of their main land base. Crucially, adjacent lands are too expensive and neighboring landowners are committed to not sell land to Indians. Since political conditions on the ground deny them the option of expanding the reserve into adjacent lands, they have resorted to buy land destined by regional authorities for conservation. Because of this they are developing a strong environmentalist agenda.

The comparison underscores the strategic effect of social movement or contentious dynamics if they penetrate or revamp already existing institutions of local governance. In other words, institutional path dependency matters. The Indian movement has a longer history of regional and national activism and was able to penetrate and transform long-established institutions designed to manage Indian lands, labor and economies. Regional contention was especially strong in the departments of Cauca, Antioquia and Tolima, and within specific municipalities such as Karmata Rúa in Antioquia or the northern towns in Cauca. Regional and national authorities responded in different ways to movement activism, at first containing it with violence, and later accommodating with policy.

Both communities engage with and are engaged by different authorities and tiers of government. However, such engagement is on the surface far more collaborative in Karmata Rúa than in Anchicayá. In Karmata Rúa ethnic, municipal, departmental and national legislations

are embedded and redundant. In other words, these different tiers of government have passed policies recognizing ethnic authority. Though the Department of the Cauca Valley, where Anchicayá is located, has passed policy instruments in support of Afro-Colombian rights, they are not operating as effectively as in Karmata Rúa. At least in the legal case against the hydroelectric, Anchicayá is obtaining support from middle or upper-tier judicial institutions and state control organisms that are generally censuring lower tier authorities such as the municipality of Buenaventura and the autonomous regional corporation (CVC), for mismanaging resources or not working in favor of the community.

Another key difference is the nature of state presence in both areas. The region surrounding Karmata Rúa has been pacified and enjoys more active civilian state presence in the form of social investment, economic development programs and technical assistance in natural resource management and production. The region surrounding Anchicayá is threatened by violent actors, who along with the government, respect civilians and locally devised rules at their whim. In addition, Black communities have enjoyed little in the way of institutional precedent to support their collective property claims. The community councils are fairly new, and just adapting to complex political and economic realities on the ground. They are thus, just beginning to harmonize the diverse norms, institutions and authorities that operate in their territories.

Finally there is the matter of the design and application of local laws, which is contingent on regional political dynamics. Black consuetudinary laws have generally received less respect from adjacent authorities, especially now that black territories are increasingly assailed by illegally armed groups. Customary rules in Indian communities have constitutional

standing in regions where Indian authorities exercise governance. The case of Karmata Rúa

reveals that the rules being devised by Indian authorities are hybrid, reflecting their people's

tradition and worldview, but also social movement claims, Christian elements and Liberal

precepts such as certain individual rights. Rules in Karmata Rúa are nested in different layers of

governance, facilitating collaboration between culturally and politically diverse groups.

In conclusion, ethnic autonomy success depends on the scale and characteristics of the

territories and natural resources, social movement dynamics, type of state presence and inter-

government relations, and the nesting of consuetudinary rules within multiple layers of

governance. Place-based or regional politics explain governance differences between these

ethnic communities. Governance in multicultural regions demands cooperation between

municipal governments, indigenous territorial entities, and/or black community councils.

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