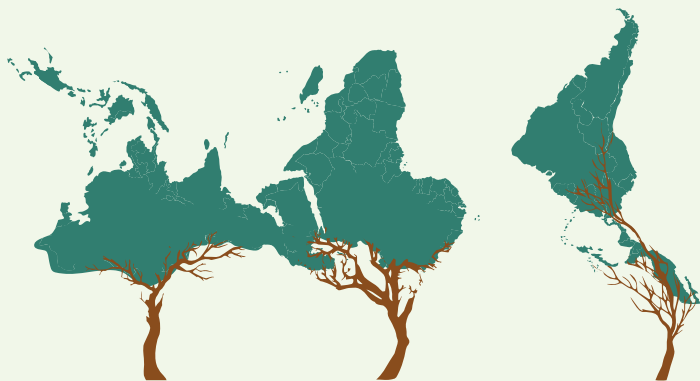


Fighting the Tide

Human Rights and
Environmental Justice
in the Global South



César Rodríguez-Garavito
(Director)

FIGHTING THE TIDE

HUMAN RIGHTS AND ENVIRONMENTAL JUSTICE IN THE GLOBAL SOUTH

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Rodríguez-Garavito, César (dir.), Caio Borges, Mary Louise Dumas, Richard Ellimah, Karen Hudlet, Eliana Kaimowitz, Arjun Kapoor, Sylvia Kithinji, Gabriela León Cobo, Felipe Milanez, Darshana Mitra, Yamile Eugenia Najle, Rodrigo Magalhaes de Oliveira, Felício Pontes, Jr., Margaretha Quina, Pétalla Brandão Timo.

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Introduction
Human Rights in the
Anthropocene: New Practices
and Narratives on Human Rights
and the Environment
from the Global South

César Rodríguez-Garavito

In 2009, the International Commission on Stratigraphy appointed a group of thirty-five experts from around the world to determine whether we have entered a new geological era. The question was whether the Holocene, an epoch that began 11,700 years ago, has been replaced by the Anthropocene, one marked by profound changes to earth caused by one species alone: humans.

After several studies and discussions, in 2016, the group of scientists reached a nearly unanimous conclusion: we humans are indeed creating (and destroying) a planet in our image and likeness. The scientists recommended that the commission officially declare the existence of the Anthropocene and identify its starting date as the 1950s. They claimed that plastic pollution—in rocks, oceans, and the stomachs of fish and birds—will probably be the most visible footprint that humans leave behind for posterity. Indeed, the fossils of the Anthropocene will contain not traces of our books, our homes, or our monuments, but rather water bottle scraps, container tops, and shreds of grocery bags.

For human rights scholars and practitioners, the Anthropocene presents unprecedented challenges. Extreme environmental degradation (climate change, water scarcity, rapid extinction of species and forests, and uncontrolled pollution) has become one of the most serious threats to human rights. After all, rights do not mean much if what is at risk is life on earth.

We are living on the brink of a possible sixth mass extinction: the demise of thousands of species on account of climate change, coral bleaching due to ocean acidification, or the succumbing of amphibians around the globe. Such an extinction would be the first cataclysm caused by a living species, comparable to

the meteorite that brought the fifth extinction and ended the era when dinosaurs roamed the earth (Kolbert 2015).

To avoid the fate of the dinosaurs, who were caught off guard by the meteorite, today's generation of human rights academics and activists—to which the authors of this book belong—must develop legal, political, research, and narrative strategies that confront the challenges of the Anthropocene and deepen the connections between human rights and environmental justice.

To this end, they can begin by relying on some of the promising innovations currently underway. In terms of *legal and political strategies*, the international human rights system is increasingly moving toward official recognition of a right to a healthy environment. Even though this right has yet to be formally enshrined in an international legal instrument, civil society and state actors have invoked it on the basis of the 1972 Stockholm Declaration that emerged from the United Nations Conference on the Human Environment. As this right has been incorporated into one national constitution after the other, it has become a standard component of rights charters, public policies, and litigation in more than half the world's countries (Boyd 2012). And thanks to the recent reports and recommendations of John Knox, United Nations Special Rapporteur on Human Rights and the Environment, its international status has been elevated (Knox and Pejan 2017).

Invoking the right to a healthy environment means declaring the importance of an environment amenable to a dignified life (Rodríguez-Garavito 2017). In addition to playing a key role in the enjoyment of other rights, the right to a healthy environment has an intrinsic *moral value*. It provides explicit protection for the basic conditions of individual and community existence that are being threatened each day by growing ecological distress: human beings' relationship with the environment in which they live, the ability to remain in one's habitat and develop a sustainable relationship with the environment, the rights of future generations to enjoy a habitable planet, and even the potential recognition of certain rights for non-human animals and natural bodies. This moral and legal approximation also means giving special consideration to the right to a healthy environment in concrete situations in which claims based on other moral and economic approximations might point in the opposite direction (for example,

utilitarian arguments for the prioritization of short-term economic growth).

Claiming the right to a healthy environment has two implications. From a moral and legal standpoint, it brings the human rights approach in line with the realities of the Anthropocene. From a political standpoint, it aligns with “new earth” politics—the set of discourses and collective mobilization strategies at the local, national, and global levels that is based on the idea that “human bodies and human practices are deeply enmeshed in natural flows and processes” and that “Earth system science establishes the intimate material connectivity of humans across the lines drawn on the Earth by national states” (Deudney and Mendenhall 2016, 54). The future of human rights theory and practice therefore depends on the connections that can be established with strands of biopolitics that conceive of the planet in its entirety—as a “web of life,” in the pioneering words of Alexander von Humboldt (Wulf 2016)—and that oppose forms of nationalist populism that erode both human rights and the environment, whether in India, the United States, Ecuador, or the Philippines.

Environmental activists have been using the human rights language for decades. We only need to recall, for example, Chico Mendes in Brazil, Ken Saro-Wiwa in Nigeria, and members of Greenpeace around the globe. The interlinking of the environment and rights is even tighter in modern movements such as those explored in this book: the indigenous communities that connect their struggle for cultural rights with mobilization against climate change in the Brazilian Amazon and in Mindanao in the Philippines; the rural workers who stand up against industrial agriculture and mining in Ghana, Ecuador, and Mexico; and young urban activists in India and Buenos Aires.

Amphibious Narratives on Human Rights in the Anthropocene

The complexity of the Anthropocene challenges our knowledge and our imagination. “If the Anthropocene can be said to ‘take place’, it does so across huge scales of space and vast spans of time,” writes Robert Macfarlane (2016). “It involves millions of different teleconnected agents, from methane molecules to rare earth metals to magnetic fields to smartphones to mosquitoes.”

Therefore, the Anthropocene requires not just new forms of theory and practice but also new forms of writing that adapt to the decentralized structure of our time. Following the lead of narrative journalists (Kolbert 2015; Vince 2015), human rights academics and practitioners should uncover the global connections within local cases to shed light on the causes and consequences of—and answers to—the activities that affect human rights and the environment.

This book, and the *Dejusticia* initiative that inspired it, seeks to promote such narratives. To that end, it proposes a new type of writing on human rights, one with three specific characteristics. First, the writing is reflective: its authors, who are the very people working in organizations and on the ground, pause to think about the potential, achievements, and limits of their knowledge and their practice.

In this sense, both this book and *Dejusticia*'s larger project, described below, seek to amplify the voices of human rights defenders in academic and practical discussions about the future of the field, which, to date, have tended to be dominated by academic studies. In the spirit of the type of action research that elsewhere I describe as “amphibious research” (Rodríguez-Garavito 2013), the chapters combine the methodological and analytical strengths of academic research with the practical experience of the authors and the organizations and communities with whom they work. The objective is to foster a new hybrid genre that is as robust as it is relevant, and which contributes to maintaining and broadening the window of reflection and discussion within the human rights field and its connection to environmental justice.

Second, the genre of writing proposed in this book is narrative. Partly because of the human rights community's excessive mastery of legal language and knowledge, its preferred mode of writing is that of technical reports and legal briefs. While this genre has enjoyed notable achievements for decades, it has hindered organizations and activists from effectively sharing and communicating the stories that they live and learn about firsthand: those of the victims, of campaigns, of moral dilemmas, of injustices, of victories. Opening the human rights field to other types of actors, knowledge, and audiences means telling these stories—and telling them well. To that end, the contributors in this volume—with the

help of techniques borrowed from fields such as narrative journalism—tell and are part of these stories (Rodríguez-Garavito 2013).

Third, the stories come from the global South, from the countries and regions that have tended to be objects rather than subjects of the knowledge and decisions within the fields of human rights and environmental justice. In this sense, they attempt to respond to the challenges of an increasingly multipolar world and to counteract the organizational, economic, and epistemological asymmetries between the South and North that have limited the effectiveness and legitimacy of the global human rights movement. The authors of the chapters are activist-researchers from Africa, Latin America, the Middle East, and South and Southeast Asia who belong to human rights organizations and write from this geographic and professional angle to enrich global dialogue on the future of the field.

The Origin and Structure of the Book

This text forms part of a long-term project undertaken by Dejusticia as part of its international work. The project revolves around the Global Action-Research Workshop for Young Human Rights Advocates that Dejusticia organizes each year to foster connections among and train a new generation of action researchers.

The workshop helps participants develop action-research tools, understood as the combination of rigorous research and practical experience in social justice causes. For ten days, Dejusticia brings approximately fifteen participants and ten expert instructors to Colombia for a series of practical and interactive sessions on research, narrative writing, multimedia communication, and strategic reflection on the future of human rights. The aim is to strengthen participants' capacity to produce hybrid-style texts that are at once rigorous and appealing to wide audiences. Participants are selected on the basis of an article proposal, which is then discussed during the workshop and subsequently developed with the help of an expert mentor (one of the instructors) over ten months until a publishable version is achieved, such as the chapters that make up this volume.

The workshop also offers participants the opportunity to take advantage of new technologies and translate the results of their research and activism into diverse formats—from blogs, videos,

and multimedia to social network communications and academic articles. Therefore, in addition to the annual volume comprising participants' texts and instructors' reflections, the workshop produces a blog in Spanish and English that features weekly entries by workshop alumni, written in the style described above. The title of the blog—*Amphibious Accounts: Human Rights Stories from the Global South*—owes itself to the fact that action research is “amphibious” in that its practitioners move seamlessly between different environments and worlds, from academic and political circles to local communities to media outlets to state entities. For those who are dedicated to the promotion of human rights, this often implies navigating these worlds in the global North and South alike.

Each year, the workshop is centered on a particular current issue. In 2014, the topic was the intersections between human rights and environmental justice that I outlined at the beginning of this introduction. In addition to providing coherence to the book and the group of participants, the selected topic determines the workshop site in Colombia—for the sessions are held not in a classroom or convention center but in the middle of the field, in the very communities and places that are witnessing the issue firsthand. For example, the 2014 workshop traveled to the Amazonian border shared by Colombia, Brazil, and Peru, where the fate of the lungs of the planet is being played out.

The structure of this volume reflects that of the workshop. The core section of the book features studies on the mutual overlapping between human rights and environmental justice in countries in the global South, including India, Brazil, Kenya, the Philippines, Ecuador, Indonesia, Argentina, Ghana, and Mexico. Faithful to the spirit and structure of the annual workshop, the last part of the book gathers the reflections of several of the instructors who led sessions during the workshop and acted as mentors during the writing process.

Acknowledgments

A new and long-term initiative such as this one is more than a collective effort—it requires the support of an entire organization. This text and the ongoing commitment that it represents is an institutional effort of Dejusticia that involves, in one way or another,

all of the organization's members. For the unconditional support that Dejusticia's staff have dedicated to this project, and for embodying the hybrid of research and action in their daily work, I extend enormous thanks to all of them.

I am particularly indebted to the colleagues and friends who were co-architects of the 2014 workshop and subsequent publication process. First of all, I would like to thank Meghan Morris, senior researcher at Dejusticia, for having believed in the idea of the workshop from the beginning, when it was a mere dream, and for having dedicated her unparalleled talent, generosity, and commitment to the immense task of ensuring that the workshop, this volume, and the blog became a reality. Eliana Kaimowitz was the workshop's indefatigable facilitator. Nelson Fredy Padilla, Meghan Morris, Coimbra Sirica, Jack Sirica, Diana Rodríguez, Eliana Kaimowitz, Claret Vargas, and Tatiana Andia did a fantastic job serving as mentors during the chapters' writing process.

Finally, any initiative of this nature requires considerable logistical support, which William Morales assumed with an admirable mixture of efficiency, solidarity, and optimism. At the workshop, significant contributions were made by the instructors, many of whom also served as mentors to participants during the subsequent writing process. I therefore extend my deepest thanks to Carlos Andrés Baquero, Diana Rodríguez, Tatiana Andia, Felício Pontes, Felipe Milanez, Rodrigo Uprimny, Nelson Fredy Padilla, Lily La Torre López, Boaventura de Sousa Santos, Coimbra Sirica, Jack Sirica, Martín von Hildebrand, and Purabi Bose.

During the publication phase, three colleagues were fundamental. Morgan Stoffregen and Sebastián Villamizar went above and beyond their duties as translators, becoming unwavering allies who made continual improvements, proposed alternatives and ideas, and ensured that a polyphonic manuscript was converted into a coherent and legible whole. Elvia Sáenz, in coordinating Dejusticia's publication process, never ceased to demonstrate precision and creativity.

Both Dejusticia's international program and the workshop and book were made possible thanks to the generous and enduring support of the Ford Foundation. Martín Abregú and Louis Bickford have been essential counterparts in our efforts: beyond coordinating the foundation's financial support, they have served

as partners who are at once sympathetic to and independent from our ideas and initiatives, for which we are enormously grateful.

I would like to conclude by recognizing perhaps the most essential players of all: the activist-researchers who authored the chapters in this volume. Both during and after the workshop, they enthusiastically supported Dejusticia's commitment to action research and took time from their busy lives to reflect, write, revise, and write again. If the space that we created for them is helpful in their work to contribute to a more effective, horizontal, and creative human rights movement, this effort will have been worth it.

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PART ONE: STUDIES

CHAPTER 1
The Role of Financial
Institutions in Promoting
Environmental (In)justice:
The Brazilian Development Bank
and the Belo Monte Dam

Caio Borges
(Brazil)

Editor's note: Before being translated into English, this chapter was translated from Portuguese into Spanish by Mariana Serrano Zala-meá.

Introduction

It was the second week in January 2013—summertime in the Southern Hemisphere. Since 2010, the year I moved to São Paulo, it seems that the first few months of each year have been growing increasingly hotter and drier. Around 2 p.m., I arrived to the Conectas office, which is located on a busy avenue in downtown São Paulo, Brazil’s wealthiest and most populous city. The sun was directly overhead. I could hear the clamor of cars, street vendors, and musicians from the fifth floor.

It was my first in-person meeting with my new boss, Conectas’s director of programs, who would supervise the research I had been hired to do. My instructions were clear: as a consultant for a pilot project in the area of business and human rights, I was to research, over six months, the human rights criteria applicable to financing from the Brazilian Development Bank (BNDES).

The final research product was published eighteen months later, in August 2014. What had been envisioned as a short-term assignment had become something much bigger. During my research, I examined the role and responsibility of funders in protecting the environment and human rights. I adopted a dual perspective: that of an academic and that of a financial professional with an eye toward ensuring that the financial sector’s policies and practices incorporate human rights and environmental justice standards. The hope was that by using the financial sector as an example, we could induce companies in other sectors to adopt these same standards, which is the goal of Conectas’s Business and Human Rights Project.

Today, almost four years after leaving the private financial sector, where I helped create financial projects for qualified

institutional investors and analyzed international banking regulations, it is not an exaggeration to say that my life has changed radically. Originally, when I left the field to pursue a master's degree, my plan was to return to corporate law—but this plan changed abruptly. Today, as a human rights lawyer at Conectas, I continue to focus on the financial sector, but from a different perspective. Instead of thinking about how to help financial institutions structure their products and services to provide higher returns to shareholders, I focus on how to ensure that these products and services can become vehicles for a more just, egalitarian, and sustainable society that respects human rights. I have also begun to pay attention to public funders and development banks, which, due to their unique nature, call for higher levels of transparency, consultations with affected parties, social accountability, allocations of responsibilities, and mechanisms for the prevention and mitigation of environmental damages and human rights violations.

In this chapter, I present some of the knowledge and experiences that I have gained since accepting the challenge of trying to incorporate environmental justice and human rights as key elements of development financing. Discussions of the technical and descriptive dimensions of my research are complemented by personal reflections, since there are many questions that still lack conclusive answers.

Specifically, the chapter explores the BNDES's financing of the Belo Monte Dam. The BNDES is the world's third-largest development bank (in terms of total assets) and is often the main sponsor of projects that have the potential to either significantly reduce or aggravate environmental injustices. Unfortunately, in practice, many of the projects and programs financed by the bank have deepened patterns of social exclusion and have limited citizens' access to meaningful participation vis-à-vis the entities charged with creating environmental policies and norms. The Belo Monte Dam—which, when finished, will be the world's third-largest hydroelectric dam—is but one example of a BNDES-financed project that has had disastrous socioenvironmental and human rights impacts. As the Belo Monte case shows, the BNDES has faltered in its search for truly effective long-term solutions that guarantee an egalitarian and universal usufruct of environmental heritage

for all, especially for historically marginalized minorities who are underrepresented within democratic institutions.

This chapter responds to the following question: How does the BNDES perceive environmental justice, and what institutional, legal, and social tools exist (or could be created) to obligate the bank to effectively internalize this issue? It is important to point out that the Belo Monte case is not exhaustive of the development financing world and its relationship with environmental justice. Other financing institutions—whether public or private, focused or not on development—exhibit distinct patterns that should be studied in order to obtain a more holistic understanding of the problem. Nonetheless, this chapter, by turning our gaze toward one of the world’s main development banks operating within the context of an emerging and influential economy, helps shed light on the main challenges and opportunities that exist for those who work on this issue from a global South perspective.

The Brazilian Development Bank: A Brief Overview

The BNDES was created in 1952 to analyze complex projects and to serve as the Brazilian government’s implementing arm for policies considered fundamental for the country’s path toward industrialization. The bank would act as the creator and implementer of Brazil’s national economic development policy. Its role as a source of funding for projects requiring long-term financing was essential, since, from the 1950s forward, Brazil’s private financial sector began to operate largely with short-term, low-risk loans, which were insufficient for sustaining a growing economy. Economic experts agree that the creation of the BNDES marked a decisive moment in the shaping of Brazilian capitalism, whether the bank is analyzed for its provision of resources for long-term, high-risk financing or for its role in the formation of a modern bureaucracy able to undertake studies and roll out new instruments for the promotion of economic development (Conectas 2014).

Throughout its existence, the BNDES has assumed a variety of roles, depending on the federal government’s policy at the moment. Understanding these roles is essential for being able to propose changes to the way the bank evaluates its investments under the lens of environmental justice and human rights.

The BNDES supports companies and ventures through direct financing (loans to a specific borrower), indirect financing (loans through an intermediary bank), consulting services for more complex operations, and corporate holdings in the capital market (see table 1).

TABLE I
The BNDES: Basic information

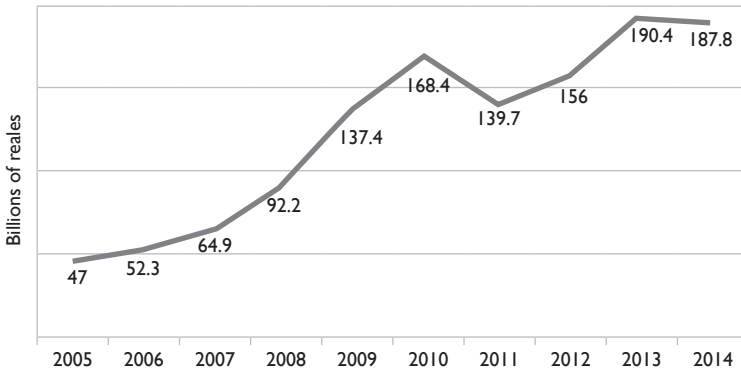
Founded: 1952
Structure: State development bank (associated with the Ministry of Development, Industry and Foreign Trade)
Control: Federal government (sole shareholder)
Disbursements (2014): R\$187.8 billion
Net profits (2014): R\$8.6 billion
Basel Index* (2014): 15.4%
Main affiliates and subsidiaries: BNDES Participações (BNDESPAR), which focuses on capital markets; the Special Agency for Industrial Financing, which promotes the production and commercialization of machines and equipment; and BNDES PLC, which supports the internationalization of Brazilian companies and is located in London. The BNDES has representative offices in Montevideo and Johannesburg.
Areas of operation: Urban, social, energy, and logistics infrastructure; industry; small and medium enterprises; agriculture; innovation; microcredit; climate change management; venture capital; private equity; exports and imports
Main activities: Direct financing; indirect financing (through intermediary financial agents, such as commercial banks, including import-export); financing through the Investment Guarantee Fund; capital market operations through the subsidiary BNDESPAR; advising on the structuring of projects and corporate operations; advising on the formulation of public policies; knowledge production
Number of staff: About 2,000

* The Basel Index measures an institution's core equity capital compared with its total risk-weighted assets. It is a financial soundness indicator composed of various "levels" of capital, according to their degree of liquidity and reliability. In Brazil, the minimum required index is 11% (in other words, for every 100 reals in loans, the bank should have 11 reals of equity capital).

SOURCE: Prepared by the author using data from BNDES's website and annual reports

The BNDES operates in a range of sectors, including oil and gas, agriculture, communications technology, mining, pulp and paper, petrochemistry, biofuel, and automotive. However, infrastructure has undoubtedly been the sector that has attracted the most funding from the bank since 2000. Between 2010 and 2014 alone, more than R\$292 billion was dedicated to airports, ports, highways, hydroelectric plants, thermo-power plants, wind farms, and waterways, among other works, the majority of which

FIGURE I
BNDES's disbursements (2005–2014)



SOURCE: Annual reports of the BNDES

were carried out as part of the government's ambitious Growth Acceleration Program, launched by former president Lula in 2007 and continued by his successor, Dilma Rousseff. This program aims to foster investment in structural sectors, including social, urban, logistics, and energy infrastructure.

The Growth Acceleration Program and the unfavorable international economic climate following the 2008 financial crisis—when the BNDES elevated its loan portfolio as investors withdrew their investments in light of an uncertain environment—are the main causes of the BNDES's considerable increase in disbursements over the past decade.

Traditionally, the BNDES funds its activities through the Worker Assistance Fund, a fund that provides resources for programs that strengthen workers' safety net, such as unemployment insurance. In accordance with the Brazilian Constitution of 1988, 40% of the fund's annual revenues are transferred to the bank. Nonetheless, since intensifying its anticyclical action in 2008 (in other words, increasing its investments in response to a credit supply shock in the private financial sector), the bank has substantially increased its volume of disbursements and, according to the prudential regulation of the Central Bank of Brazil, begun to require more resources to ensure its operations (see figure 1). Since that year, the Treasury began to cover the capital deficit that the Worker Assistance Fund could not supply. Between 2009 and 2015, R\$527 billion was injected into the BNDES. These transfers

were done through the executive branch with approval of the legislature.

The public origin of the BNDES's resources is arguably the strongest "hook" for raising public awareness of the bank's operations. Importantly, this characteristic is frequently raised in discussions on the violations of the rights of populations directly affected by BNDES-financed projects.

BNDES's Financing and Its Impacts on Environmental Justice and Human Rights

Banks possess a singular capacity for risk management. However, they are particularly vulnerable to fluctuations in the economic, political, institutional, and social arenas. To ensure that they can fulfill their commitments to their creditors, banks must develop sophisticated models and risk management systems for the risks to which they are exposed, which include market risks (price fluctuations), liquidity (insufficient cash resources to comply with short-term commitments), and operational risks (flaws in their processes, routines, and systems).

In particular, operational risks encompass legal risks and—most relevant for this case—environmental risks. The Central Bank of Brazil defines an environmental risk as "the possibility of losses arising from socioenvironmental damage" (art. 4 of Resolution 4327 of 2014 of the National Monetary Council). Therefore, banks—especially those that finance activities that are intensively contaminating or that have the potential to cause socioenvironmental impacts—must internalize a range of tools in their processes of selection, analysis, approval, and monitoring of projects in order to evaluate the potential risks that their loans may have for the environment and for populations that stand to be affected.

The majority of development financing institutions—including national development banks, multilateral development banks, and export credit agencies—have rules, procedures, and management tools aimed at preventing, mitigating, and eliminating negative impacts and, in some cases, compensating individuals and groups affected by development projects and policies, especially those that prioritize economic growth (Conectas 2014).

For example, the BNDES has mechanisms in place for assessing socioenvironmental impacts prior to a project's commencement

and for mitigating such impacts when they occur. Although the bank's internalization of environmental criteria dates back to the 1970s, it was not until 2010 that it developed a policy requiring a social and environmental analysis to be conducted for potential projects. This policy was created as part of the bank's acceptance of a US\$1.3 billion Sustainable Environmental Management Development Policy Loan from the World Bank.

The BNDES's Social and Environmental Responsibility Policy seeks to ensure that the bank's actions promote sustainability. According to the policy, social and environmental responsibility means "to attach importance to and ensure the integration of social and environmental dimensions in its strategy, policies, practices and procedures throughout all its efforts and relationships with its wide array of audiences." In the operational realm, these principles are embodied by procedures for identifying and addressing the social and environmental aspects of BNDES-sponsored projects throughout the various phases of the funding process. One such procedure is the "socioenvironmental analysis of projects," which covers the framework phase; the analysis, approval, and contracting phase; and the project monitoring phase (Conectas 2014).

Despite this policy and other internal mechanisms for evaluating and measuring socioenvironmental impacts, projects financed both directly and indirectly by the BNDES have had harsh socio-environmental and human rights effects, as revealed by research conducted by nongovernmental organizations and by the Public Prosecutor's Office.

Examples of human rights violations include degrading working conditions at the Santo Antônio and Jirau hydroelectric dams along on the Madeira River, located in Rondônia (Plataforma Dhesca 2011); the lack of free, prior, and informed consultation for indigenous communities affected by the construction of the Belo Monte Dam (Moraes 2012); and the purchase of cattle from ranches in the Brazilian Cerrado accused of using slave labor (Repórter Brasil 2011).

The Aim of the Research

We did not want my research to follow the traditional format and methodology used by human rights organizations—that is,

detailed research on one or more cases of human rights violations at the hands of the government or a company, or research that requires extensive fieldwork, data collection methods (such as interviews with victims and other key stakeholders), and sometimes even lab tests and on-site verification by specialists (geologists, chemists, doctors, and so on). This type of report, which generally aims to create an air of undeniability around a set of human rights abuses, is based on the compilation of evidence obtained through primary sources.

For the project that I had been hired to research, human rights violations related to BNDES's financing were not the main object of focus. Instead, we wished to analyze the flaws in the legal and institutional framework that enabled such violations to occur. We were already familiar with valuable studies, based on cases and evidence, showing how the bank's resources were being used to commit human rights violations and to finance ecologically unsustainable projects. These findings, which we collected through a mapping exercise and an analysis of secondary sources, would serve as a point of departure for my research.

Nonetheless, one case required a deeper look. With regard to BNDES-financed projects that have had massive socioenvironmental impacts, without a doubt the most emblematic case—due to its size, complexity, and scale of violations—is the Belo Monte Dam. This dam, which I had the opportunity to visit in December 2013, serves as the centerpiece of this chapter.

My Visit to Altamira and Belo Monte: Evidence of Asymmetric Development Financed by the Brazilian Development Bank

After a seven-and-a-half-hour flight, I arrived to Altamira, the biggest city near the Belo Monte Dam. From the plane, I had been able to see part of the dam, which had been easy to identify due to the massive clearing in the middle of the rainforest. My visit had emerged as a last-minute opportunity, and I planned to stay for three days. Technically, it was not a "field visit" but an opportunity to meet local stakeholders and witness up close a project that I had read so much about. Of course, it was also an opportunity to collect information that could lend greater consistency to the recommendations that I would develop for BNDES and other entities.

It was my first time in the heart of the Amazon, and the muggy air stuck to my skin. During the flight, gazing at the immense, dense, mysterious, and magnificent rainforest from high above, I had thought about how platitudes reproduce a somewhat schizophrenic image of the Amazon. On the one hand, we all know that the Amazon is a rare and fragile treasure—one of the world’s largest reservoirs of potable water and biodiversity—and that it requires preservation. On the other, this conservationist vision frequently gives way to utilitarian considerations regarding the exploitation of resources and the desire to sustain a certain way of living that we are loathe to abandon. In this way, it is not uncommon for people to adopt a paternalistic attitude toward the Amazon—one that decides what is “good” for the territory and the people who inhabit it.

Roberto, a taxi driver whom local organizations had recommended to me, was waiting for me at the airport. In reality, he was not a taxi driver by profession but rather someone who earned extra cash by providing transportation to passengers from the airport to the city and between the Belo Monte work site and indigenous communities. Given that so many outsiders had recently been arriving to the region, I had been warned that some of the locals—including those who could benefit from my work—might not receive me with open arms. The communities had become tired of being an object of study while seeing few changes in practice. Fortunately, in the following days, I spoke with extremely receptive and friendly individuals—though their signs of physical and emotional exhaustion were visible.

We went straight to the hotel, which was considered luxurious by local standards, for it had air conditioning, decent breakfasts, and hot water. Since the dam’s construction had begun, hotels and other amenities had doubled or tripled in price, and the cost of groceries and personal hygiene products had risen considerably. I later discovered that almost all of the hotel’s guests worked for the Consorcio Constructor de Belo Monte or Norte Energia.

From the hotel, I went to the office of Movimento Xingu Vivo para Sempre in Altamira, where I met with Antonia Melo, a feminist leader and icon of the resistance movement against the destruction of the Amazon. Antonia is a passionate human rights activist who mobilizes families to demand that the state provide

them with schools, electricity, and paved roads, among other basic rights. While there, I also met with a high school student and a grade school teacher, who were also part of the resistance movement against Belo Monte. Movimento Xingu Vivo para Sempre (also known as Xingu Vivo) is a collective of organizations and social and environmental movements in Altamira and the area surrounding Belo Monte. Its members include groups working on behalf of riverside populations, fishing communities, workers, indigenous groups, residents of Altamira, communities affected by dams, women, and religious groups. Xingu Vivo's office is located in a simple and discrete building. Taped on its front door is a piece of paper with the movement's logo. The air-conditioned office is decorated with plants and has a stand featuring indigenous products, which the movement sells for extra revenue. Internet access is slow.

One of the biggest concerns of Antonia and her colleagues was the resettlement of families living in the areas that would soon be flooded. According to the local census, approximately 5,000 families would need to be relocated. Norte Energia, the company responsible for the construction, was offering these families three options, all of which had their downsides. The first option involved the purchase of the family's property for a very low price compared to current real estate prices (which meant that purchasing a house elsewhere in Altamira would be prohibitively expensive). The second option consisted of moving the family to a 500-home residential complex being constructed by the company. People felt that these houses were very small, and they did not like their location in a "high" part of the city that was hard to reach and that lacked public services (such as transportation and security). These homes also had structural flaws and were not constructed according to the sizes of the families. The last option involved up to R\$900 in rental payments that the company would cover for a given period of time.

Another source of concern was public security. With the disorderly arrival of masses of people in search of the wealth promised by the project, the city began to suffer a wave of violence, along with a substantial increase in drug use (see table 2).

Further, Antonia and her colleagues explained that Belo Monte workers were being forced to work long hours in degrading

conditions and were suffering intimidation by the National Public Security Force. Such intimidation had become commonplace after the uprising of workers from the Jirau Dam, in Rondônia, in 2011, which left the dormitory destroyed. Belo Monte workers also complained about the low-quality and sometimes even spoiled food that they were being fed, which occasionally put them in hospital.

We had spoken all day. It was 7:30 p.m., and Antonia, tireless, was patiently waiting for some websites to load as her granddaughter slept beside her on the floor. I wanted to hear her views on the role of the BNDES. I asked her if the bank, as it claimed, would be present in the region and would hold a dialogue with local communities. According to Antonia, Xingu Vivo had not received any news of BNDES consultations with civil society or indigenous communities in the region—not even participatory meetings. Although the bank had apparently visited the project site several times for inspections, its contact with affected communities was nonexistent or extremely limited at best.

After leaving Xingu Vivo, I went to the edge of the Xingu River to eat. I sat down at a restaurant and ordered pirarucu with rice. Shortly after placing my order, two sex workers sat down at a table beside me. They were complaining about being exhausted and not having earned much that day. Joining their conversation, I asked them whether, since it was a Sunday, there weren't actually more clients, to which they responded no. As the two women, whose names were Selena and Daniela, explained, the *peones* (laborers) only wanted to drink, not hire prostitutes.

Then two drunk men, both foreigners, entered the restaurant. Selena and Daniela signaled the men, who sat down at their table. Unhappily, I played the role of translator. The two men were employees of a European company that lends services to the consortium responsible for Belo Monte. The men sedately explained that workers were putting in at least twelve hours a day, up to eighty hours a week (the collective agreement between the union and the company establishes a fifty-four-hour limit). They also said that the National Security Force used violence and intimidation against workers. They described the horrible quality of the food served in the cafeterias, noting that sometimes the meat was even served raw.

Upon hearing their observations, Selena began to talk, under Daniela's watchful and distrusting gaze. At first, Selena was hesitant, asking me whether I was going to turn her in. But slowly, she became more indignant, saying that the National Security Force did not have the right to beat workers. She spoke of human trafficking and of the company representatives who went to other Brazilian states to lure workers with the promise of good wages, when the reality was that they were terrible. She described her worker friends' complaints about the quality of the food at the work site: the chicken was served raw, the pastas gluey, and the beans sour. These stories corroborated what I had heard earlier about workers suffering intestinal infections due to the food they were eating. Lastly, Selena talked about the increase in deaths, assassinations, and attacks within the city, which were especially high during the weekends. At the end of the conversation, there was an attempt at negotiation between the two men and two women, but each ended up going their own way.

The next day, Roberto and I drove to the dam's main warehouse and to the indigenous reserve of Paquiçamba. We left around 9:30 a.m. Paquiçamba was composed of three villages, one of which was Marutus. There, we spoke briefly with some of the residents, who told us about a meeting that was taking place in a nearby village in the same reserve on the implementation of the Basic Environmental Plan, the execution plan for socioenvironmental conditions. On the way there, we picked up an indigenous man who told us that Norte Energia had provided some seedlings for them to cultivate, but that they covered only a fraction of the lands that should be cultivated. We took a quick tour and saw the unplanted cocoa seedlings and a few houses under construction. The seedlings were part of the company's agriculture and subsistence program, but Roberto informed me that these communities were fishers, not farmers, and that they would not know how to manage a cocoa plantation.

I spoke a bit with Manuel, the former chief. Confirming what I had read before the trip, he described how he had been deposed from his post by his own community because he had not stood firm against the project. Manuel's case illustrates one of the biggest scandals surrounding the construction of the Belo Monte Dam. Millions of reales set aside for the Basic Environmental Plan

had been transferred directly to the indigenous groups, in sums of R\$30,000 per town, as part of a compensation and mitigation package. Without receiving any kind of orientation, the indigenous communities used the money to purchase items such as televisions, cars, and supermarket products. These payments led to frictions between communities; they also jeopardized the food security of those who received the money, because the recipients temporarily stopped producing their own food.

As soon as the meeting we had been told about was finished, I spoke with an indigenous woman who had participated in the session. She explained that there had been no representatives present from the National Indian Foundation or any public body, nor from *Consortio Constructor de Belo Monte* or *Norte Energia*. The only people who had come to meet with the indigenous communities had been consultants and service providers sent to announce the functioning of indigenous-related aspects of the Basic Environmental Plan. During the meeting, the woman had demanded what she had always demanded: schools, health care, and seeds.

Then I spoke with another representative from the same community about the difficulties they were facing in light of so many abrupt changes and the problems that inevitably accompany them. He made an interesting point regarding the dispute between local public bodies and *Norte Energia*. For him, responsibilities were being transferred between the company and governmental agencies. The dispute he described is actually one quite common in projects such as this one—a dispute that the environmental licenses seek to resolve efficiently, often requiring companies to perform actions that should be taken by the state. In regions such as Xingu, the state has historically been absent. Thus, the government attempts to resolve chronic deficiencies (such as the lack of infrastructure for public services) through the licensing process. This process—which, in theory, is legitimate and necessary—ends up creating an endless dispute, since the lack of public services is the result of structural problems that are exacerbated by the disorderly settlement of the area, which results in delays in the project's execution, elevated social conflicts, and increased violations of the rights of marginalized and vulnerable groups.

I then asked him if he had heard anything from the BNDES. He said that the bank had never reached out to the indigenous

communities and that he had not even heard anything being said about the bank. He also bemoaned the scarcity of fish as a result of explosions and the turbidity of the water, both of which were related to the installation of the dam's turbines. During the dam's construction, the fish would disappear for at least five years—the time needed for the complete damming of the river, after which point the flow would be restored. In addition, the river's water had become unsuitable for drinking, bathing, and washing clothes.

On our way back to the city, I asked Roberto to take me to a neighborhood whose residents were going to be displaced to make way for the dam. He took me to the office of the Fishers' Association of Altamira. Fisherpeople in Altamira stood to be equally or even more gravely affected than indigenous communities, since they were not even taken into account as a potentially affected population in the preliminary environmental impact studies.

Marcos, one of the association's representatives, told me that the association included about 1,200 fishers, of whom 900 were active. He explained that Norte Energia had promised a new office for the organization, but that the office would be inadequate because it was too small. He said they had met with the company in October 2013 and that the fishers' demands had been ignored—they would not have the right to compensation or reparations since they did not stand to be "directly affected." Marcos said that residents of the area did not know exactly when they would be resettled; they had been given no information in this regard. They had asked to be moved to another area close to the river and had even made a joint trip with the Brazilian Institute of the Environment and Renewable Natural Resources to the desired location, but their request had been denied.

When I returned to Xingu Vivo's office, I spoke a bit more with Antonia. Earlier, I had mentioned that the acai berry was one of my favorite foods and that I preferred the acai from Pará to that from other parts of Brazil, which was mixed with guarana syrup to make it sweeter. Antonia had bought me a little packet of acai. She also gave me an indigenous flower vase that, for me, was a touching gesture of the connection between me and Xingu Vivo.

Belo Monte: A Symbol of Today's Developmentalist Ideology?

When Belo Monte had been dominating newspaper headlines, I was not closely following the plight of indigenous peoples in the Amazon and was actually in favor of the hydroelectric dam. I supported the classic argument about the need for an economically growing country to have energy. I often think about how my vision of Belo Monte has changed, and what I can do to persuade others to adopt a different view toward megaprojects such as this one that promise growth and development but that deliver only suffering and a host of negative economic, social, and environmental impacts. The challenge lies in doing this without sounding doctrinaire or arrogant.

According to Alexander Budzier and Bent Flyvbjerg, professors at the University of Oxford, megaprojects are intrinsically biased, generating an optimistically skewed representation of their potential benefits, almost as if there were a collective illusion around them. Through an analysis of several cases, the authors identify an “iron law” behind such megaprojects: they are “almost always over budget, over time, over and over again” (Budzier 2015).

Budzier argues that we must eliminate our bias in favor of megaprojects such as Belo Monte, proposing a variety of strategies that civil society can use. Among them are coalition building, protests, and increased media and political attention. Other, more pinpointed strategies that have been used in recent cases include the creation of documentaries and the undertaking of rigorous technical studies on the risks of megaprojects.

Thinking about the professors' recommendations in the context of Belo Monte, I wondered, have all the possibilities been tested and exhausted? In general, the answer was yes. The resistance movement against Belo Monte had mobilized unprecedented levels of resources and forces, and it included sophisticated strategies. It began with a broad national and international coalition around the defense of Amazonian communities affected by the dam; at the movement's center was Xingu Vivo and its leader, Antonia Melo.

Countless protests were held around the globe. In one particularly memorable event, protestors chained themselves to the gates

of the agency responsible for the project's bidding in an attempt to prevent the dam from being constructed. In online videos, Brazilian celebrities campaigned against Belo Monte, discussing the havoc that the dam would wreak. International artists renowned for their activism—including Sigourney Weaver, James Cameron, and Darryl Hannah—went to the Amazon to express their solidarity and to raise awareness of the dam's adverse effects. A panel of experts consisting of respected scientists from prestigious Brazilian universities authored a report on the impacts of Belo Monte as a counterpoint to the environmental impact studies that were published by the companies responsible for the project and that were approved by Brazil's environmental agency.

Moreover, a group of civil society organizations conducted a technical study on the various risks that Belo Monte posed to potential investors. They sent letters to the banks interested in financing the project, alerting them of potentially miscalculated risks and warning them that, in the future, they could be held responsible for damages. Various academics published opinion pieces in Brazilian and international newspapers denouncing the project's shortcomings, such as its failure to conduct prior, free, and informed consultations with local indigenous communities. Finally, at the legal level, more than twenty lawsuits were filed by the Public Prosecutor's Office; and the Inter-American Commission on Human Rights even issued a precautionary measure in favor of the communities and indigenous populations living near Belo Monte.

But none of this was enough to halt the project. This, in my opinion, suggests that megaprojects such as Belo Monte represent more than a collective "unbiased" view; rather, they have transformed into something greater and deeper—an uncontested truth that gradually becomes embedded in institutions and the collective conscience.

According to Hanna Arendt, totalitarian regimes have two foundations: terror and ideologies. For Arendt, ideologies make it impossible to learn new things from any experience. Ideological thinking analyzes not what is, but what will be. It lacks the power to transform reality, instead neatly organizing facts into to an absolutely logical procedure and "proceed[ing] with a consistency that exists nowhere in the realm of reality" (Arendt 1962, 471; Conceição 2008). Such thinking rationalizes life and society,

adjusting everything and everyone to its dogma and boundaries. It also subverts reality, preventing us from learning from events, because they are explained *a posteriori*, in such a way that reality always adjusts to the ideology.

Various components of Arendt's ideas can be seen in development and neodevelopment discourses, whose dogma is rigid and rationalizing of reality. As I see it, developmentalism can be understood as an amalgam of postulates, premises, and absolute truths about the optimal conditions and objectives of development propagated by the dominant politico-economic class. One of these is the ideology of progress as an economic, cultural, artistic, intellectual, and institutional path forward, reflecting a restrictive interpretation of modern Western thinking. Another is the marginalization of—or war against—ways of life that do not conform to the patterns of the majority.

My reference to Arendt's work does not seek, even remotely, to insinuate that in Brazil we are living under a totalitarian regime. We have a democracy that, in spite of its current crisis, is increasingly growing stronger and has institutions capable of confronting serious political, economic, and institutional crises. While it is an exaggeration to define Belo Monte as a totalitarian project, it does seem plausible to say that the project's decision-making process exhibits hints of authoritarianism (and let's not forget that the project was originally conceived during Brazil's military dictatorship). The words of Dilma Rousseff have become notorious in this regard: during a meeting with civil society in 2004, Rousseff, who was then the minister of mines and energy, was asked about the government's commitments to local communities and its seriousness toward the preliminary environmental impact assessments. According to Antonia, Dilma had reacted to journalist Eliane Brum's question with a slam on the table, telling meeting participants that "Belo Monte will move forward." Then she rose from her seat and left the room before giving anyone the chance to respond (Brum 2011).

At a minimum, Belo Monte is a milestone in the regression of human rights protection for excluded, vulnerable, and minority groups that share common ground in their institutional, political, and economic inability to avoid paying the price of development for the benefit of the "majority." As Brum (2015) explains, Belo

Monte is a monument to violence; it is the exposed facet of the most profound structural distortions of modern Brazilian democracy—distortions that are also present in many other countries, including the most “established” ones. Such distortions include the promotion of private interests by institutions that are supposed to protect the public interest; systemic corruption; tacit acceptance of human rights violations in the name of economic progress; and the perverse and cruel physical and psychological elimination of traditional ways of life that do not conform to Western paradigms and values.

It is true that development visions are far from homogenous. For instance, there are those that recognize the negative effects of development that prioritizes economic growth above the fulfillment of human rights. Nonetheless, it is common for entities involved in policy making and law enforcement to adopt a development vision that embraces development as an intrinsically positive phenomenon, virtually free of negative collateral effects. A passage from a court ruling on the legality of Belo Monte illustrates the state’s endorsement of this vision:

The taxes collected by direct beneficiaries will be utilized for the good of all Brazilian citizens. In particular, during the company’s deployment phase, tax collection for the services that will be performed will bring a vast amount of resources to the municipalities where the project will be carried out, allowing for significant investments in the social arena, offering better living conditions for the entire population in this part of the Amazon . . . *A rising tide of development is predicted, which includes job creation and the contracting of companies that will not directly benefit. In other words, Belo Monte will be able to establish a decisive development corridor.*¹

When the dam’s construction began in 2011, four years after the aforementioned judicial ruling, the court’s references could not have been farther from reality. Many of the predictions and concerns by civil society regarding the project’s risks and social environmental impacts—effects that had been presented since the end of the 1980s and were calculated according to financial and economic criteria (Hurwitz et al. 2011)—unfortunately

1 Juízo Federal da Subseção Judiciária de Altamira, Sentença No. 2007, Processo No. 2006.39.03.000711-8, March 27, 2007; emphasis added.

materialized, some even more intensely than what had been imagined during the bidding process and the licensing phase. A study conducted by the Instituto Socioambiental, one of the Brazilian organizations that monitors compliance with socioenvironmental

TABLE 2

Socioeconomic and environmental indicators for the area around Belo Monte (after 2010)

Average number of homicides	<ul style="list-style-type: none"> ▪ 57 for every 100,000 residents* ▪ Between 2011 and 2014, there was an 80% increase in the number of assassinations in Altamira*
Transit accidents	<ul style="list-style-type: none"> ▪ 1,169 per year in 2014, a 144% increase over four years*
Crimes of bodily injury	<ul style="list-style-type: none"> ▪ Arrests for bodily injury increased by 40% between 2010 and 2013**
Crimes of drug trafficking	<ul style="list-style-type: none"> ▪ Between 2011 and 2013, the number of people imprisoned for drug trafficking increased from 22 to 104**
Sexual violence against children and adolescents	<ul style="list-style-type: none"> ▪ Number of episodes in Altamira was four times greater in 2013 compared to 2009*
Hygiene and water distribution	<ul style="list-style-type: none"> ▪ 0% sewage treatment; less than 2% of homes in Altamira are connected to previously existing sewage networks* ▪ 80% of Altamira's population lacks access to treated water
Infant malnutrition	<ul style="list-style-type: none"> ▪ 1 of every 4 children is malnourished, representing a 127% increase between 2010 and 2012* ▪ Malnutrition among indigenous children rose from 62.8 to 143.4 cases per 100,000 residents between 2010 and 2012**
Infant mortality	<ul style="list-style-type: none"> ▪ Infant mortality rate among indigenous infants in Altamira is four times greater than the national average*
Teenage pregnancy	<ul style="list-style-type: none"> ▪ 42.68% increase in the number of pregnant women between 2011 and 2014, with a significant increase among adolescents aged 12–14*
Health	<ul style="list-style-type: none"> ▪ Number of patients in the municipal hospital of São Rafael (the only municipal hospital in Altamira) rose from 266,475 in 2009 to 536,258 in 2014 (increase of 101.24%)*
Education	<ul style="list-style-type: none"> ▪ Primary school dropout rate rose by 57% between 2011 and 2013 in Altamira* ▪ Failure rate in secondary education increased by 92.3%*
Environmental indicators	<ul style="list-style-type: none"> ▪ Between 2008 and 2013, deforestation in indigenous territories represented 193.4 square kilometers* ▪ In 2012, the area surrounding Belo Monte made up 56% of the entire area subject to illegal exploitation of timber in Pará* ▪ Relative quantity of the degraded area in relation to the total index for Pará: 30% in 2011; 56% in 2012* ▪ Between 2011 and 2012, illegal timber exploitation increased by 151% in Pará**
Resettlement of affected families	<ul style="list-style-type: none"> ▪ 7,790 families were originally registered, but just 3,980 homes were constructed*

SOURCES: * Instituto Socioambiental (2015) / ** “Especial Belo Monte” (n.d.)

conditions by the company that runs the plant, shows the extent of the socioenvironmental degradation suffered by communities living around Belo Monte. According to the report, Belo Monte's impacts are significant, even when compared with those of other megaprojects in the Amazon.

Despite studies showing that the appropriate socioenvironmental conditions had not been complied with, in 2015 Belo Monte obtained its operating license—the last stage of the environmental licensing process in Brazil. When the dam begins to operate, Belo Monte will be the third-largest hydroelectric dam in the world and the second-largest in Brazil, just slightly smaller than Itaipú. With a production capacity of 11,000 megawatts, the plant will provide sufficient energy to meet 40% of household consumption throughout the country (Ministério das Minas e Energia 2016). But this data is largely irrelevant when considering the fact that Belo Monte is geared largely toward attending industrial sectors that require high energy consumption.

I believe that projects such as Belo Monte take place only because their final cost (economic, social, and human) for society is deliberately underrated. This is where the role of ideology in the legitimation of Belo Monte as a cornerstone of the country's development comes in. As stated earlier, ideologies are able to deny the facts, to create consensus where there is none, to pacify conflicts, to silence voices, and to congeal power structures. In the words of Lilia Schwarz and Heloísa Starling, two of Brazil's most respected anthropologists:

Good ideologies are like a tattoo or a fixed idea: they seem to have the power to override society and create reality. We end up believing in that country where it is better to listen to things being said as opposed to seeing for ourselves. We have constructed an image that has so often dreamed of a different country—due to our imagination, happiness, and a particular way of confronting difficulties—that we end up reflecting ourselves in it. Now, all of that can be very good and justify such a portrayal. But Brazil is also a champion of social inequality, and it struggles to construct republican and citizen values. (Schwarz and Starling 2015, 19; emphasis added)

Among those whose voices are silenced and whose struggle is often discredited are indigenous and traditional populations. These populations, after much struggle in the international arena,

won the right to free, prior, and informed consultation regarding projects and administrative measures that stand to directly or indirectly affect them. In cases where development projects have potentially significant impacts, these populations have the right to halt such projects if communities' free, prior, and informed consent is not first obtained. Free, prior, and informed consent is a corollary of the principle of self-determination of indigenous peoples, which is enshrined in the United Nations Declaration on the Rights of Indigenous Peoples, Convention 169 of the International Labour Organization, and article 231 of Brazil's Constitution. It allows indigenous and traditional populations to deliberate on laws and policies that seek to permit activities that may directly or indirectly affect these populations. One clear example of a situation that requires such consent is the authorization of the exploitation of hydrological and other energy sources located in indigenous territories, or even outside them, when such exploitation has the potential to influence their lives, customs, and traditions.

Brazil's Constitution, in articles 4 and 231, recognizes the principle of self-determination, both as a mechanism for consulting with indigenous communities affected by the exploitation of hydrological resources, including potential energy sources, and for the prospecting and mining of mineral resources located in their territories. Nonetheless, in the case of Belo Monte, consultations were carried out simply to comply with formal requirements, but without effectively hearing indigenous communities or allowing them to influence the process. As stated earlier, indigenous communities have complained that the consultations were neither prior nor free nor minimally informed; on the contrary, they were carried out after the government had already made its decision. In addition, the communities were not informed about how such a consultation would be carried out and were not given access to a comprehensible version of the environmental impact studies. In other words, they were not guaranteed the conditions allowing them to effectively question the concept of economic development based on the exploitation of their territories and natural resources.

Belo Monte is also an example of a megaproject executed without transparent or inclusive processes, with great socioenvironmental risks, and with insufficient mitigation and compensation measures to cope with its impacts, generating damages for

investors themselves and society as a whole. A recent study by Alexandre de Ávila Gomide and Roberto Rocha Pires (2014), researchers at the Institute for Applied Economic Research, analyzed eight policies and programs of the federal government under the lens of the state's "technical-administrative capacity" and "political capacity"² to implement them. Political capacity, according to the study, is associated with "the promotion of legitimacy of state action in democratic contexts, by means of social mobilization and the articulation and compatibility of diverse interests around common platforms" (Gomide and Pires 2014, 14). A greater level of political capacity would be the presence of effective "channels of discussion with civil society and with agents of the political-representative system in processes of the production of public policies" (ibid., 15).

The authors use the example of Belo Monte—which received more than R\$25 billion from the BNDES—to illustrate a policy accompanied by low levels of political and technical-administrative capacities. Among other elements, the authors take into account the high level of litigation surrounding the project, the flawed consultations carried out during the licensing process, the low influence of social participation mechanisms vis-à-vis the decisions of executive organs, the absence of meetings with indigenous communities, the inability to resolve conflicts through Congress, and significant delays and subsequent setbacks, such as interruptions in the licensing process and paralysis due to worker strikes and protests by affected groups (Gomide and Pires 2014).

In Belo Monte, "political incapacities" were converted into delays in the execution of the construction schedule. Norte Energia, the company responsible for the construction, unsuccessfully sought a waiver from the National Agency for Electricity exempting the company from any responsibility related to delays

2 According to Gomide and Pires (2014, 19), "Political capacities are guided by (i) the existence and forms of bureaucratic interactions between the executive and members of the representative political system (Congress, its members, leaders of subnational governments—governors and prefects—and their political parties); (ii) the existence and effective operation of forms of social participation (councils, conferences, hearers, hearings, and public consultations, among other things); and (iii) the performance of supervisory bodies (whether internal or external)."

in construction. These attempts, made via administrative mechanisms, were thwarted—though it is possible that they may now be brought to the judicial level. According to the administrative contract governing the project, if the hydroelectric plant is not generating energy by the stipulated date, the company must buy energy at market rates. This clause threatens to impose an exorbitant cost on the company, and it even jeopardizes the project’s viability as a whole, since the price of energy in the Brazilian market has reached historically high levels due to rainfall shortages and policy interventions in the setting of prices. Without rain, the energy system must be fed by thermoelectric plants, the cost of which is greater than generation by hydroelectric plants.

Overburdened local public amenities, increasing violence (including against women), the unraveling of the social fabric and family relations, the violations of labor rights and the rights of indigenous peoples, and corruption are just a few of the factors that demonstrate that the costs of megaprojects often exceed their benefits.

All of these costs are being discussed in various fora in Brazil and elsewhere. Questions about the impacts caused by Belo Monte and the responsibility of the BNDES due to its role as a financier are front and center in the minds of various stakeholders. One example is Xingu Vivo and its partner organizations, such as the Instituto Socioambiental, which continue to hold protests, publish reports, and use other mechanisms to denounce the project’s failure to comply with the conditions set by the Brazilian Institute of the Environment and Renewable Natural Resources and to criticize the passive stance of the BNDES in demanding compliance by its borrowers. In the legal arena, Belo Monte has become the object of nearly thirty lawsuits, twenty-four of which were brought by the Public Prosecutor’s Office of Pará, through the prosecutors of Belén and Altamira. Four years after the project was authorized to commence, Brazilian courts remain inert and have yet to issue a worthy decision regarding the human rights violations and environmental damage caused by the dam’s construction.

In the international sphere, Xingu Vivo, together with other organizations, brought the case before the Inter-American Commission on Human Rights, which issued a precautionary measure calling on Brazil to suspend the environmental licensing process

and to halt construction until a consultation was carried out with local indigenous populations and until measures were adopted to protect their lives and personal integrity. But the Brazilian government took a hostile stance toward this measure, withholding its annual dues to the Organization of American States and withdrawing its candidate for a position on the commission.

Final Assessment: What Changed and What Remains to Be Done?

More than two years after defining the scope of my research project and seeing firsthand other projects financed by the BNDES—in addition to speaking directly with the bank on this issue—a question remains. What has changed, and what remains to be done? An assessment of this process can be divided into at least two fronts. The first has to do with changes in the BNDES's policies and processes, whether undertaken of the bank's own volition or prompted by external forces. The second consists of analyzing changes in the way that civil society articulates its demands with regard to the creation of a BNDES that is more protective of human rights and the environment.

In terms of the first front, advances were more notable in the area of institutional transparency than in the way the BNDES confronts the challenges and fragilities of the environmental licensing process in Brazil and the guarantee of human rights in the context of development. In the human rights arena especially, the bank has yet to assume a more transformative approach.

In the area of transparency, and despite improvements in information sharing over the last five years, the BNDES still shows flaws in sharing essential information that allows society to evaluate its level of compliance with its own socioenvironmental policies and with the Brazilian legal framework. Among the areas in which the BNDES needs to improve in order to embrace progressive standards in transparency are the following: (i) provide well-grounded justifications for its investments; (ii) demonstrate, under the framework of accountability and democratic openness, the social benefits of its investment strategies; (iii) share information that is relevant for the environmental and social aspects of projects that it finances; and (iv) provide information to affected

communities about projects in the pipeline or in execution. For this reason, civil society organizations have adopted a set of advocacy strategies geared toward decision-making spaces and public debates.

In terms of the second front, the organizations' lines of actions are varied, and they are consistent with their histories and missions. One of Conectas's main objectives is the strengthening of democratic institutions, a cross-cutting activity that passes through the organization's various programs. In this regard, Conectas has undertaken actions aimed at improving the BNDES's accountability to society, human rights, and the environment.

Conectas has also issued recommendations to the BNDES, Congress, and the executive branch, including the Central Bank, which are set out in a report published in August 2014. Months before publishing the report, Conectas presented a preliminary version to the BNDES and discussed its findings in a meeting with high-level representatives of the bank. Conectas did this as part of best practices in report writing by civil society organizations that write about human rights abuses committed by companies. The idea is to give the entity in question the chance to present its perspective prior to the report's public release and, if relevant, to incorporate the entity's critiques or response in a specific section of the report.

Of the recommendations made directly to the BNDES, Conectas has emphasized the reform of its ombuds office in light of the bank's failure to establish direct lines of communication with affected individuals and communities that would allow these people to be heard and to file claims. Whether through the bank's ombuds office or a specific governmental organ created for this purpose, it is critical that such an office be able to investigate complaints of human rights violations and propose improvements to the bank's internal processes, in addition to monitoring complaints. Conectas also uses the Citizen Information Service channel (which all public entities are required to take part in) and information requests to better understand how the bank's socio-environmental policy functions in practice in terms of avoiding and alleviating human rights violations and negative environmental impacts.

In terms of the proposals made to Congress, Conectas calls for the periodic convening of BNDES directors by Congress so they

can be heard not only with regard to economic and financial issues (such as subsidies contained within the bank's loans) but also with regard to measures that have been adopted to prevent, provide redress for, and mitigate human rights violations committed by the borrowing companies.

Also in the legislative arena, Conectas monitors the introduction of bills aimed at granting greater transparency to the BNDES and tries to influence and improve these legislative efforts. For example, the organization is seeking the inclusion of human rights and socioenvironmental concerns in the legislative mechanisms that authorize budget transfers to the BNDES's treasury.

Moreover, Conectas is carrying out an important line of action before the Central Bank. In the wake of Resolution 4327 of 2014, which obligates all Brazilian financial institutions to create or update their socioenvironmental responsibility policies, Conectas is monitoring the creation and implementation of action plans presented by the BNDES and other Brazilian banks for the operationalization of these policies. The Central Bank plays a fundamental role in monitoring the application of socioenvironmental policies of Brazilian financial institutions and, if necessary, issuing sanctions in cases of noncompliance.

Finally, considering that democratic strengthening demands intense public debate, Conectas organizes events with invited experts who share their perspectives and make suggestions regarding various aspects of the BNDES's work.

Conclusion

Between the first and final drafts of this chapter, one of the saddest events took place since I began working on the Belo Monte case: Antonia Melo was forced to abandon her home because it was located in the area that will be flooded by the dam's reservoir. Thus, on September 11, 2015, Antonia was victim of a violent act legitimized by a collision of world visions. To forcibly remove individuals—without their consent, without fair compensation, and without preserving their dignity—who have lived in the same place for years or decades (and, in the case of the indigenous, centuries) in the name of a “modernization” project that is already anachronistic at the moment of its inception is an act of contempt for the richness of their way of life. It demonstrates a

painful indifference toward ways of living that differ from those of the majority, as well as a failure to recognize that the future is not a one-lane road.

From distant São Paulo, I was up to date—astonished and desolate—on the news of the demolition of Antonia’s house, trying to find a way to stand in solidarity and to raise awareness among as many people as possible. Obviously, her situation was irreversible, and there was nothing that could be done to keep her in the house in which she had lived, raised her children, and tended an orchard full of acai palms. The days following Antonia’s eviction were filled with sadness, grief, and even a sense of guilt. I thought to myself, *I could have done much more*. It was then that I read an interview with Antonia. I was already familiar with her proud personality, her extraordinary strength, and her irresolute courage. But even so, I was shocked when I read what she said. This is her testimony:

Evicting me is yet another one of their attempts to silence me. They will not achieve it. They are going to kick me out of here, destroy everything, but they will never succeed in silencing me. Even if they smile, knowing they are going to defeat me, I feel pity for them, because they are the defeated ones, because their lives will never have the peace and consciousness that I have: the peace of mind of a person who was not a coward, who did not abate. I continue carrying my banner. (“O dia em que a casa foi expulsa de casa” 2015)

For some time, I have been thinking about my role as a human rights lawyer, especially my particular line of work, which concerns conflicts between economic development and human, social, and environmental justice. I still do not have a neat answer for this question, because, as clichéd as it sounds, the world changes very quickly, and each day new technologies and events alter the dynamics of things. New patterns of violations emerge, new threats are formed, and, fortunately, new responses for preserving the human rights and providing justice in the midst of these accelerated changes are also designed.

Based on my professional and personal experience (despite the fact that neither is very extensive), I believe that one of the biggest things that lawyers, activists, and sympathizers of human rights and environmental justice should keep in mind is not allowing their struggle and ideas to become a solipsism, thus taking

away their ability to have a dialogue with those who lack the opportunity, the interest, or the time to see and hear about those whose rights are violated.

In terms of the concrete focus of this chapter, I remain convinced that change in the parameters of financing has considerable transformative potential in terms of generating greater respect for human rights in the development process. I say this knowing that financial institutions themselves do not possess all of the incentives to undertake the necessary transformations, but also knowing that such changes in attitudes are desperately needed.

An honest debate about the BNDES's role in the promotion of social rights should necessarily depart from a recognition of the bank's efforts in advancing human rights, especially in terms of its considerable investments in "socially friendly" areas (such as microcredit) and social infrastructure (such as access to hygiene, water, and schools). In addition, the bank plays an important role in environmental governance in light of its role as the administrator of the Amazon Fund and the Climate Fund Program.

Nonetheless, such a perspective cannot overlook the BNDES's vast underperformance in promoting human and environmental rights, especially considering its significant political and economic capacity. For Alessandra Cardoso, Nathalie Beghin, and Iara Petricovski (2015), the solutions offered by the BNDES to address the lack of sustainability of the projects it finances are evasive ones. Instead of seeking to strengthen its own socioenvironmental policy by securing the tools needed for greater effectiveness and learning, the BNDES seeks, through palliative programs and policies, to reverse the liabilities generated by the megaprojects it finances. This posture leads only to frustration.

The greatest challenge ahead of us is to find creative and innovative ways to sensitize people's hearts and minds. This involves the arduous task of ensuring that facts speak louder than ideologies—in other words, making people confront reality, regardless of how uncomfortable it might make them and regardless of the barriers that must be overcome to ensure that they "see" and do not just "hear being said." A deeper understanding of the tangible and intangible losses suffered by communities and entire peoples is critical for ensuring that the debate on financial institutions and social and human development attracts more followers. However,

sensitizing people about the suffering of others becomes especially difficult in the middle of an adverse economic situation, such as the one that is beginning to rear its head in Brazil. Under such circumstances, people tend to worry about their immediate future (such as their job stability and their purchasing power), making it difficult to talk to them about the injustices being waged against an indigenous tribe, or a fishing community, and what this means for them. These disputes, well established in a late-developing country such as Brazil, include the confusing relationships between public and private, the tension between the economic and the social, the cohabitation of “modern” and “traditional”—and they are situated on the threshold between development and human rights.

It is in the lost link between these seemingly contrasting values where we encounter the horizon for our most profound dilemmas, and the clues for where we should be headed if we are truly committed to a more just, equal, inclusive, republican, democratic, and human society.

Thus, the next big step unquestionably presupposes an ingenuity in connecting socioenvironmental issues with themes that resonate with the general public, especially the public in big urban centers far away from the territories where natural resource exploitation occurs. In the case of Belo Monte, for example, some media outlets are talking about how representatives of the *Consorcio Constructor de Belo Monte* have admitted paying R\$100 million in bribes to government officials for ensuring the project’s completion. Exploring the links between corruption, poor management of public resources, the lack of transparency in decision making, delays in projects’ execution, and the social and environmental conflicts that such projects generate is a task that we must address.

Such an approach offers a path for reversing the “innumerable forms of violence that accompany the development process . . . in silencing the innumerable forms of seeing, being, doing, and saying” (Zhouri and Valêncio 2014, 11–12).

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CHAPTER 2
Relational Practices: Pacto's
Good-Faith Community
Referendum and the Story of
a Mining Conflict in the Cloud
Forests of Ecuador

Gabriela León Cobo
(Ecuador)

Large-Scale Mining: Development for Everyone?

More than one hundred people, with brown faces and dressed in bright colors, looked at one another in rapt expectation. It was Monday morning, and a cloudy sunrise blanketed the sky. An assembly—made up mainly of women—was being held. Thirteen campesino communities were meeting to discuss regulations for the good-faith community referendum that would determine whether the communities would support large-scale mining on their territory. Manuela Arcos shouted into the microphone, “Which communities are here today?!”

I had met Manuela in the offices of a nongovernmental organization, where she had been calling for civil society’s involvement in Pacto’s social process. A rural parish of Quito, Ecuador’s capital, Pacto is home to twenty-three campesino communities. The majority of them raise cattle and produce milk, vegetables, coffee, corn, cassava, fruit, and other products for self-consumption and sale. Nearly 80% of the campesinos make a living from organic panela, which, thanks to their cooperative, is exported to Europe, Asia, and North America (Freile 2014, 15).

For Manuela, supporting a mining project would affect the daily lives of these communities, who have particular needs, such as the need to feel relaxed, live well, produce their own food, and enjoy clean air and water. I had not understood her infatuation until I took on the case of Pacto. She explained:

What happens if we people in Pacto are conscious of the fact that we are not poor—because we have land, because we have water, because we produce our food, because our children have something to inherit? So imagine what it means when a company comes with the aim to hegemonize, where we go from being owners of this, of life, of our

life, of our liberty, to respond to the market logic of a company: to be employees, to follow a schedule, to have a boss.¹

Pacto is characterized by cold and humid air, and tall trees that touch the sky. It is a place where birds sing, frogs croak, and crickets chirp. To me, it seems surreal that the fate of this land and the rights of local communities should be determined in faraway offices and courtrooms in concrete buildings in Quito.

However, that is how this story begins. In 2012 in an office in Ecuador's capital, government officials drew up an overly simplified map with the aim of defining land concessions for mining activities.

This process was very distinct from the one that took place in 2008, when I was still a law student in Montecristi, a small town on Ecuador's coast. There, in a constituent assembly, various groups and social movements met to draft a new constitution for the country. Ecuador's 2008 Constitution is the result of a participatory space that featured the voices of women, men, the Montubio, indigenous groups, youth, and environmentalists, among others, who agreed on a new paradigm for the country. The Constitution's preamble proclaims "a new form of public coexistence, in diversity and in harmony with nature, to achieve the good way of living, the *sumak kawsay*." In addition, articles 71–74 declare nature the subject of rights and outline the state's duty to guarantee "the integral respect for its existence and for the maintenance and regeneration of its life cycles."

This vision of Ecuador as a constitutional, plurinational state—a state of rights and justice—was a direct consequence of the participation of these diverse groups. However, today, the country is embracing policies far removed from their constitutional roots. There seems to be an implicit agreement to implement an extractivist policy focused on mining, oil, and hydroelectricity, without consideration for the communities who stand to be affected by such efforts.

In 2010, the government created ENAMI, a state-owned mining company, which, in less than four years, has received thirty concessions covering more than 98,000 hectares to exploit, melt,

1 Interview with Manuela Arcos, February 4, 2015, Pacto.

refine, and commercialize metallic minerals. None of these projects has involved the participation or prior consultation of affected communities, despite the explicit protection of these rights in the Constitution.

Among other rights of indigenous groups, Afro-descendants, and Montubio, Ecuador's Constitution protects these communities' right to be consulted before the adoption of any legislative measure that could affect their rights. It also requires these communities' free, prior, and informed consultation within a reasonable period with regard to plans to explore, exploit, or commercialize nonrenewable resources in their territories. Moreover, it recognizes every community's right to be consulted before the adoption of any state decision that could affect the natural environment; this principle, known as environmental consultation, requires that the community be informed in a comprehensive and timely manner.

Plutarco Durán, the president of Pacto's Ingapi community, explained to me that "human beings do not have a price. That is why we are ready for anything." For him, both the economic system and the human system are vitally important. Plutarco gauges his happiness by the country life he is currently living—by the close interrelationship between his crops, the rivers, the forests, and his life project within the community. For him, mining threatens his way of life.

Today, thirteen Latin American countries are among the world's fifteen largest providers of mineral resources. Together, the region is home to 65% of the world's lithium reserves, 49% of its silver, 44% of its copper, and 33% of its pewter. Latin America is also home to a third of the globe's freshwater reserves and 21% of its natural forests (Fundación Avina 2014). With the intense global demand for natural resources, Latin America alone has experienced approximately 200 socioenvironmental conflicts as a result of the mining industry, 90% of which are related to Canadian companies, which are key players in the industry (Enciso 2014). And according to the report *Deadly Environment*, one of the main causes of death in these cases is linked to social resistance against large-scale mining and extractive projects (Global Witness 2014).

Concessions without Consultation: Is the Right to Participation Enough?

The lack of effective participation around decision making for these projects strikes a nerve for Ecuador's democracy, which presumes equality among its citizens. In an egalitarian society, all social groups should interact as equals—that is, they should have the same opportunity to opine, to demand that their needs be met, to propel their vision of development, to be heard, and to be part of the decision-making process on public issues, especially if these issues pose irreversible effects for their lives.

Political philosopher Nancy Fraser notes that the lack of equal participation among actors is the result of an institutionalization of certain cultural values over others. This limits the ability of certain groups, identified as inferior, to participate fully as equals in society (Fraser 2000, 114). Fraser also indicates that in modern societies, this lack of equal recognition is traversed by the prevailing economic structure, which stratifies social groups according to the distribution of resources. Under her vision, this combination—the lack of equal recognition and economic inequality—constitutes a form of subordination and is thus a grave violation of justice.

In Ecuador, the failure to recognize the economic, social, and cultural elements of indigenous and local communities occurs in a very specific way: the state prioritizes development based on the exploitation of resources, the modernization of industries and human resources, dependent labor relationships, and the legitimization of unilateral decisions made in the “national interest.” This stands in contrast to communities' uses of resources, which are generally based on a type of development that embraces conservation, traditional knowledge, self-sufficiency, community harmony, and a collective sense of identity.

This devaluation of indigenous and local communities' perceptions of development has been institutionalized in the approach that resource extraction projects take toward the right to participation, both at a policy implementation level and at the level of normative design and administrative processes. For example, in 2010, the Ministry of Nonrenewable Natural Resources decided to explore and exploit oil resources in 3.6 million hectares of the Ecuadorian Amazon that are home to seven indigenous groups. It

made this decision without respecting the affected communities' right to free, prior, and informed consultation.

In addition, in July 2012, Ecuador's president, without first consulting with indigenous communities, issued Executive Decree 1247, aimed at regulating these communities' right to prior consultation. According to article 3 of the decree, the goal of prior consultation is to "consider the communities' criteria and observations" with regard to extractive projects. International standards, however, indicate that the goal of the consultation must be to reach an *agreement* or to acquire the *consent* of the populations.

Similar examples abound in mining concessions. In March 2015, the government sponsored Ecuador Day during the 2015 convention of the Prospectors and Developers Association of Canada, a well-known international mining fair. There, Ecuador's minister of strategic sectors stated, "We have decided that mining constitutes a key axis of our development plans" ("Ecuador pule la imagen del sector minero para ir en busca de inversiones" 2015). This development policy reflects a clear orientation toward large-scale mining that fails to consider the communities affected. Less than three months after the country's Constitution was approved, on January 20, 2009, the National Assembly passed the Mining Law, opening up Ecuador's entire national territory, including indigenous and campesino lands, to mining exploration.

In this respect, responding to two lawsuits—one of them filed by the National Indigenous Confederation of Ecuador—the Constitutional Court ruled that the Mining Law failed to comply with the right to prior consultation. However, it also declared the law's constitutionality on the basis that "the process of the drafting and approval of the Mining Law was framed by an exceptional situation that is part of the substantial change in circumstances derived from the constitutional transition."²

Furthermore, mining projects have jeopardized the right to participation of other communities, such as campesino ones. The environmental consultation enshrined in the Constitution, which recognizes local communities' right to be consulted in a timely manner before the implementation of any state decision

2 Corte Constitucional, Sentencia No. 001-10-SIN-CC, Casos No. 008-09-IN y 0011-09-IN (acumulados), March 18, 2010.

that could affect the natural environment, has been ignored. For example, according to article 1 of Agreement 066 of the Ministry of the Environment, the aim of the social participation process with regard to projects with environmental impacts is to gather opinions, observations, and comments, and to incorporate “those that are justified and technically feasible in the Impact Study and Environmental Management Plan,” which gives a large amount of discretion to public officials in terms of incorporating the opinions of affected communities.

It was in this context that a meeting was organized on January 22, 2015, between residents of Pacto and officials from ENAMI. It was a small group, made up largely of company officials who had called for a meeting to hear residents’ opinions on the proposed mining activities. Although ENAMI had previously conducted—as part of the environmental impact assessment—a survey showing that 75% of Pacto’s population was against the mining project,³ the company insisted on carrying out another one. At the meeting, one of the residents said:

Here they are asking if we do or don’t want mining. Now, what happens if the people say, “I don’t want mining”? What is going to happen? Will they respect that? Because they already know the percentage of the people who are against mining, so what is the point of asking people if they want it or not, if they’re going to do it anyway?

A company official responded, “The moment in which a consultation is carried out is not a yes-or-no ballot. The state wants to know the population’s opinion in order to know how to act, how to intervene.” But if the population’s opinion is ignored, public participation loses its meaning—it fails in its very reason for being. As the Pacto resident said, what is the point of asking communities for their opinion if the company is still going to do what it wants?

Circumstances such as these reveal the insufficiency of rights in practice. The exercise of rights should encompass various perspectives and activities so that it truly meets the needs of various

3 According to the environmental impact assessment, “People’s perception of mining is mostly one of rejection due to the danger of environmental contamination during the exploitation phase. According to information obtained in the field, 75% of households surveyed disagree with mining” (Empresa Nacional Minera n.d., 4–11).

social groups. For example, community participation in decision making around public issues incorporates multiple possibilities. On the one hand, it involves an exercise of rights that requires dynamic interaction between governmental institutions and civil society. In this way, it is a procedural right intimately interconnected with other rights, such as the rights to information, to association, and to freedom of expression. On the other hand, such participation involves important social effects. For example, if direct participation is guaranteed in public issues, society's political and economic structure would reflect strong pluralistic aspects.

This is why equal participation becomes a question of justice and equality. And such participation is the essence of Pacto's good-faith community referendum.

The Shaping of a Proper Consultation: Pacto's Good-Faith Community Referendum

Since 2014, Ecuador's ruling party has proposed seventeen amendments to the Constitution, three of which are related to the right to participation and the electoral system. Two of the proposals aim to restrict direct democracy: one would limit citizens' ability to request a referendum on any issue of public interest, confining this ability to issues defined by the state; the other would restrict local governments' ability to hold referenda on any topic of interest for their jurisdiction, allowing them to convene referenda only on issues that fall squarely within their power. This latter proposal would limit, for example, a local government's authority to hold a referendum on the exploitation of oil or mineral resources.

These proposals come at a distinctive time in Ecuadorian politics. In 2007, the government voiced its support for an initiative spearheaded by young urban ecologists aimed at protecting Yasuní National Park; for Ecuadorian society, this initiative represented a breakthrough in support of good living. However, in 2013, the government unilaterally authorized the exploitation of Yasuní. This decision led to public outcry for a national referendum on the issue. The civil society collective known as Yasunidos collected over 700,000 signatures for such a referendum, surpassing the minimum number required by law. But the National Electoral Council invalidated many of the signatures, leaving the total

just short of the amount needed for the referendum. Yasunidos filed a lawsuit contesting this decision, arguing that most of the rejected signatures were invalidated due merely to their appearance, among other irregularities.

Despite this setback, the signature-collecting process for the national referendum fostered an unprecedented sense of citizen empowerment. It brought together various groups, including academics, trade and student unions, youth collectives, feminist organizations, indigenous groups, rural communities, and the media. The exploitation of Yasuní led to a national-level debate and infused daily household conversations. Further, the controversy fostered the cooperation of diverse social groups, who shared with one another their alternative approaches to resource exploitation.

In this context, the communities of Pacto also decided to use the referendum as an instrument of social action—but as their own organic space and not as an instrument of Ecuadorian law. They organized a referendum by the communities for the communities, fusing the functions of democratic institutions with Pacto's local authorities and campesino entities. Through *mingas* (community work groups) and community general assemblies, the communities agreed to establish a Community Electoral Tribunal whose members would be intergenerational and gender diverse and would be elected through an inclusive process. They also developed several rules for the referendum, among them the Regulation for the Community Referendum on Metallic Mining in the Parish of Pacto, which emphasized the referendum's importance in promoting communities' right to actively participate in public issues. In addition, the regulation highlighted the threat that large-scale mining poses to fundamental human rights, including the rights to land, to food self-sufficiency, to live in a healthy and ecologically balanced environment, to water, and to a dignified life.

The communities financed the referendum with their own resources and donations by individuals affected by mining. After raising around US\$20,000 in less than six months, the communities were able to pay for two communications specialists, a local coordinator, a consultant, and my legal assistance. In addition, they invited national observers, academics, and politicians to participate in the referendum.

On April 12, 2015, the Good-Faith Community Referendum of Pacto was held. Beginning at 4 a.m., youth, women, men, and the elderly, dressed in their most elegant clothes, swept the pavement and set up chairs and voting tables in the parish's volleyball court. Members of the National Police were present to keep order. After the national anthem was played, the Community Electoral Tribunal presided over the event's opening.

That day, in a parish of about 5,000 inhabitants, 1,820 people placed their votes, representing more than 60% of registered voters. Freely and voluntarily, residents voted on the question that had been posed by the communities: "Do you agree that public, private, national, or foreign companies, or natural or legal persons, should be able to undertake mining activities at any level within the parish of Pacto? Yes or no." That evening, the votes were counted, indicating that 92% of voters (1,681 people) opposed mining activities in the parish of Pacto.

Conclusion

Although the results of this referendum do not have any legal weight, they have proven to have a valuable and multifaceted reach. On the one hand, the community referendum helped deinstitutionalize certain cultural values that inhibit the equal participation of campesino communities. In exercising their right to vote, community members participated in a symbolic act of reclaiming their decision-making power over an issue that is both public and communal. On the other, campesino communities were able to organize a democratic act on the basis of their world views. This involved a deep appreciation of their organizational capacity, as demonstrated through the recognition and use of traditional and community institutions such as *mingas* and general assemblies. In this way, the referendum ennobled campesino identities; and, as a result, the mining project in Pacto lost legitimacy.

Despite these powerful social and individual effects, this type of participatory space has its limitations within a political climate that perpetuates inequality and injustice for certain groups. Indeed, the legitimacy of the bidding and concessions process for large-scale mining in Ecuador has been reinforced by a government policy that, at the beginning of 2015, was further strengthened by the rollout of the country's new Ministry of Mining.

Fraser uses this type of situation to demonstrate that, in addition to the cultural dimension, the political and economic dimensions also adamantly place certain social groups in a subordinate position in society.

In the case of Pacto, there is a startling asymmetry between the economic and political resources held by communities and those held by the entities behind the mining project, including ENAMI and the government. For example, the national government speaks with a single voice in promoting large-scale mining as essential for national progress, using a range of official information channels, including the famous *Enlace Ciudadano*, a radio and television program aired for three hours each Saturday by fifty-four Ecuadorian stations (Wikipedia 2016). Therefore, although it is important for the state to recognize and incorporate community values in order to ensure the equal participation of all members of society, the redistribution of economic and political resources is equally necessary in order to offset imbalances in decision making.

Socioenvironmental conflicts involve violence, deaths, injuries, displacement, and a decreased quality of life for those affected. At the same time, they generate spaces for debate, social protest, innovative thinking, collaboration, and creativity, as seen in communities such as Pacto. In this light, the cumbersome journey that places hundreds of communities worldwide at the center of socioenvironmental conflicts can help address and resolve fundamental issues regarding the social structures that perpetuate inequality.

And in this context, Ecuador is a pluralistic nation—one represented by diverse social groups involved in an ongoing process of integration that would appear to require campesino communities to abandon their essence, their culture, and their economy in order to act on an equal basis with others.

However, it is this process of integration under a *single national project* and this process of supposed effective parity that I now question, after experiencing the social life of campesino assemblies. I question it not because I question the appropriateness of democracy or rights to equality, but rather because I believe that democracy is upheld only when effective spaces for pluralistic participation are generated, whether collective or individual, in full recognition of otherness.

This experience has pierced the heart of my profession, and I now feel rejuvenated in my desire to understand our political actions in their entirety. I see no more appropriate moment than now for observing the *other* as one's own self, and for expressing every creative impulse in the crystallization of those elementary concepts of justice and fairness.

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CHAPTER 3
Dissent against “Development”:
The Mindanao Indigenous
Peoples’ Fight for Self-
Determined Progress

Mary Louise Dumas
(Philippines)

Introduction

Whenever there was a major ritual or gathering of the *datus*¹ under the organization I used to work for in the Philippines, I looked out for one *datu* in particular. He was said to be the oldest of them, although none of the older *datus* could really say what their exact ages were.

The first time I saw him, I was drawn to his peaceful face. He seemed to be content sitting on a chair, chewing his *mamá*.² His bare feet were splayed out flat on the soil, unmindful of the mud and uneven ground. His back was hunched over, giving an appearance of humility and meekness. His community was the most remote, reached only by hiking for an entire day from the farthest point a motorcycle can reach. This *datu* was there because he wanted to provide testimony to the media gathered around them. He wanted to talk about the indigenous way of living—how if the community’s mineral-rich territories were plundered, the community would not survive.

I went over to the organization’s chairperson, a Higaonon *datu* himself but only some years older than me, and mentioned the barefoot *datu*. “I will buy him a pair of slippers,” I offered. Datu Imbanwag, the chairperson, laughed at my suggestion. “He

1 A *datu* is a male leader of an indigenous community. Depending on the community, there may be several *datus* with specific responsibilities or there may be only one *datu*, with a group of counselors, the community elders. Most often, the *datu*’s wife is also a female leader, called a *bae*. A *bae* has specific duties that can vary from settling disputes to, in some very male-centered communities, merely entertaining guests of the *datu*.

2 *Mamá*, sometimes called *nganga*, is a combination of areca nut, lime, and chewing tobacco wrapped in betel leaves.

wouldn't know how to walk in a pair of slippers," he said. Although my intention may have been well meaning, his feet, more sure with the texture of mud and rocks, would only stumble with the unfamiliar material of slippers.

That was almost half a decade ago. I could not remember the *datu's* name, but I still remember his face. I would be thankful to know that he was still alive.

Now, years later, that modest scenario encapsulates—if I am allowed to simplify decades of blood-drenched struggle—what I want to say in this chapter. The Philippine government cannot—or refuses to—understand why there are indigenous communities that reject the entry of “development” projects on their ancestral lands when these projects are supposed to bring economic growth. But the answer is simple: this kind of development is not the development that these communities want or need. They want development, yes. But they want development on their own terms. The same goes for the imposition of laws among these indigenous communities. They have their own system of governance—a system that has allowed them to live in peace with one another for centuries. Their rules and policies are crafted from their belief systems, from their world view.

The core of the conflicts in indigenous communities—both among themselves and with external actors, such as corporations and state forces—is the struggle for control over resources in ancestral domains. On the one hand is the introduction of the government's idea of money-based “economic progress” and on the other is the communities' self-sufficient needs-based use of resources. The former introduces quick exploitation—and plunder—of the environment, while the latter looks at resource sustainability for generations to come. The introduction of a money-based economy has gradually eroded the unity of indigenous communities, some convinced of quick financial gratification while others steadfast in the protection of their resources.

The Killing of Datu Angis

On December 28, 2012, I was surprised to get an email from a colleague in our organization, the Rural Missionaries of the Philippines, asking me to review and edit a press release. Although

I was not on official leave—there is no such thing as a leave in our kind of work; after all, human rights violations do not select dates—I had not been given any assignments since the wake of my mother, who had died a week earlier, on December 21. It must have been a major incident, I thought, opening the attachments. One of them was a draft fact sheet containing a summary of what had happened: Datu Necasio “Angis” Precioso, Sr., a Banwaon³ leader, had been shot.

Reading through the document, I found out that he was the father of a young man I had met in my early years working with indigenous communities. The young man’s name was also Necasio—he was called Neco to differentiate him from his father. I remembered my first impression of Neco when I had sat in one of their meetings: he was so confident. At the time, he and his colleagues had been planning to create an organization called *Kalasang sa Tribu*, meaning “shield of the tribe.” And Neco, who was among the youngest in the group, had been elected as the organization’s chairperson.

None of the participants at that meeting had probably been over twenty years old, and yet they were already coming up with what I referred to as “hard” lines—no to mining, no to logging, defend the ancestral domain—calls that I thought would have been better if diluted a bit to attract more teenagers. I was coming from an experience of student organizing, where it had been challenging to raise awareness among students who did not want to go beyond the comforts of their lives and who preferred to talk about fads and fashion instead of social realities.

I suggested that as a youth organization, they might want to work with the cultural aspects of their communities—for example, to revive dances, songs, and community festivities. At the time, I was just a year out of university, working as a coordinator

3 The Banwaon people live in remote villages of the province of Agusan del Sur. The nearest major city is Butuan, which is on the coast of Mindanao. From Butuan, a commuter must take a three-hour bus ride, without air-conditioning, to the municipality of Talacogon. Then, from Talacogon, one must hire a motorcycle to the town of San Luis. This motorcycle ride can take from thirty minutes to an hour, depending on the road condition. This last part of the journey involves passing through mud roads, hanging bridges made of wooden planks, and old logging roads.

of a project that aimed to revitalize cultural practices in indigenous communities. I felt ashamed of my opinion after I heard the young people's answer. They reasoned that these cultural practices would be strengthened in the process of achieving their demands. Dances and songs, they argued, could not exist if there was nothing to celebrate, for indigenous celebrations are linked with activities in ancestral lands—the start of the planting season, the harvesting of crops, preparations for hunting. None of these activities would be feasible if indigenous communities' rights to their ancestral lands and to self-governance were left unprotected.

A Succession of Killings and Forced Evacuations

Neco would go on to become the secretary-general of Tagdumahan, an organization whose founding chairperson had been his father, Angis. Neco replaced Genesis Ambason, who had also been an officer of Kalasag sa Tribu. I remembered Genesis as someone who listened quietly to discussions, waiting for the facilitator to ask him for his ideas. When he did speak, he was direct and spoke from a wealth of experience I had thought impossible for someone his age. All his life, he lived in a community that had been hunted and harassed; many of his relatives and friends had been killed or had joined armed groups. I had tried to initiate conversations with him, but he was shy, not quite comfortable discussing matters with individuals who had never been to their communities.

I learned about Genesis's murder while I was abroad for my postgraduate studies, detached from the ground and debating theories that were supposed to sum up my experience working with indigenous communities. Across the globe, the stories I continued to receive via email were literally and figuratively a Pacific Ocean away. But the alert on Genesis, posted on the Front Line Defenders website, took me back home. Dated September 20, 2012, it read:

On 14 September, at approximately 6:00 am, the tribal chief of Sitio Tambo [the residence of Genesis in Barangay Binikalan, San Luis] discovered Genesis Ambason's body approximately 130 metres from the military detachment. His corpse had six gunshot wounds, there was dark bruising on his face and chest and he had lost all of his teeth. It is believed that the human rights defender may have been tortured prior to his death. (Front Line Defenders 2012)

It also noted that “Genesis Ambason was the Secretary-General of Tagdumahan, a grassroots indigenous organization that has been campaigning against the entry of large-scale mining ventures into their ancestral domain. He had also campaigned for the release of community members who had reportedly been illegally detained by the military” (ibid.).

Although Genesis had not been a *datu*, he was a community leader who was respected by traditional community heads even at his young age. An attack on someone who holds important responsibilities in the community, like an officer of an organization, is a threat to the community itself, for this individual has been entrusted with representing the community’s struggles.

The repercussion for the community is graver if the victim of a killing is a *datu* like Angis. For indigenous communities, the *datu* is an economic, political, and cultural icon. Killing a *datu* is akin to killing the prime minister, the president, or the king. It is an attack on the community’s very culture. A *datu* is often at the center of a community’s cultural activities; he is chosen and blessed by the gods to hold the community together in its daily activities. He, together with the *baylan*, a spiritual leader (sometimes the *datu* himself is also a *baylan*), communicates to the gods for guidance on everything that happens in the community—from the preparation of its lands for planting to the settling of disputes and, in some cases, to the pairing of individuals for marriage.

The *datu*’s role is reflective of the life of indigenous peoples. Everything is interconnected. The tilling of the land is connected to the community’s relationship with the gods, to the political stability of the village, to the moral fiber of the community. Because of this interconnectivity in the lives of indigenous peoples, their civil and political rights are necessarily linked with their economic, social, and cultural rights. This is something that many human rights workers have failed to grasp.

“Most often, documentations and reports we have of [indigenous peoples’ rights] violations provide only the victim’s ethnicity—and that becomes the only reason why the case is treated as an [indigenous peoples’] issue,” observed Beverly Sakongan Longid, a Benguet-Kankanaey,⁴ when we showed her, during a

4 The Kankanaey are an indigenous people originally from Ben-

capacity-building session of the Rural Missionaries of the Philippines in November 2014, some fact sheets on the displacement of indigenous communities over the years.⁵ She pointed out that the narratives do not reveal the communal practices of the families who were displaced, or the ways their lives were intertwined with the land they were forced to leave. Moreover, killings of indigenous leaders are important because of these individuals' role as pillars in the community. This is one of the reasons why communities feel unsafe after the killing of a *datu*, often feeling the need to flee their land.

Prior to being killed, Datu Angis had accompanied two Tagdumahan members to the military base that had been set up within their community (Karapatan n.d.). The men, Jonas Acosta and Allan Baluado, had been called for questioning because of their alleged attendance at an anniversary celebration of the Communist Party of the Philippines and for supporting the New People's Army (NPA), the party's armed group.

Datu Angis had asked why their community, especially members of the organization Tagdumahan, was continually being targeted. In response, the military accused him and his family of supporting the NPA as well. His death, which occurred just a few days after his argument with Andres Villaganas, the second in command of the 26th Infantry Battalion, caused unrest in the Banwaon communities. If the military could commit this crime against the community's *datu*, who was also an elected *barangay* captain—the *barangay* being the smallest unit of governance in the Philippines—what would stop it from wiping out their families?

Datu Angis's death, and the discovery of another unidentified body afterward, prompted the Banwaon families to leave their homes and seek refuge together. The evacuees first camped in a school run by the Congregation of Our Lady of Charity of the Good Shepherd. But while they were there, military personnel roved among them, taking photos and videos of the evacuees. Thus, they decided to move to an evacuation center at the nearby

quet and Mountain Provinces in the Cordillera Administrative Region in the northern Philippines.

5 Conversation with Beverly Longid, November 4, 2014, Cagayan de Oro City. All quotations from Beverly derive from this conversation.

hospital grounds, where there was a gate and they could control the individuals going in and out of their area—including state forces. Throughout the grounds, the families hung streamers displaying their demand: *Ihunong ang magahat* (“Stop the killings”). The term *magahat*, however, is specific. It refers to the intent to kill everyone—women and children included—in the enemy camp, similar to a clan war.

“The evacuees see the military operations, aided by the paramilitary groups who are against us, as *magahat*,” explained Datu Manpadayag, one of the Banwaon elders.⁶ A cheerful man in his sixties, Manpadayag’s sunny disposition belied the fact that his life is in constant danger due to his being among the (still living) most respected leaders of Tagdumahan. “Those who evacuated do not want to be used by the military. They want to defend our ancestral domain,” he said.

“These people would gladly take to the forests any time,” Aida Ibrahim, a staff member of Karapatan, told me while we were sipping corn coffee in the dim staff house beside the school.⁷ I was in between interviewing leaders of Tagdumahan for a series of articles on the recent massive evacuation of their members.

Once again, there was no electricity in the community—whether it was a real power outage or whether the military, who had camped at the *barangay* hall, had turned off their main plank again, they had no idea. Aida and I were waiting for breakfast to be cooked; breakfast meant canned sardines and spiced fermented shrimps with the cheapest rice available. The evacuation center, a hospital building that was not being used due to a lack of equipment and staff, was already in a budgetary crisis. It had been providing food and medicine to more than 1,000 individuals for two weeks already.

“To tell you frankly, they are scared of doing urban battles,” Aida went on. “They know it would be difficult for them to win in courts or even in negotiations with government agencies. So

6 Conversation with Datu Manpadayag, February 10, 2015, Balit, San Luis, Agusan del Sur. All quotations from Datu Manpadayag derive from this conversation.

7 Conversation with Aida Ibrahim, February 10, 2015, Balit, San Luis, Agusan del Sur.

when the military operations come, they would prefer to hide in the forests. They know it better.”

We were discussing the options available to the community, for, at that moment, there was a deadlock in the negotiations with the municipal government of San Luis. The mayor wanted the *datu* to go to her office to talk. She would not allow other organizations—including Karapatan—to accompany them. The *datu*, on the other hand, did not want to go, reasoning that it wasn’t their territory. And again, the killing of Datu Angis in broad daylight was concrete proof of the threat against them.

At that moment, a question came to my mind, one that has been asked many times by many people. Why was the Banwaon community a target of killings and harassments? In my attempt to find an answer, I looked at two components: first, the history of the Banwaon community and, second, the compatibility between Philippine laws and indigenous traditions of governance.

The History of the Banwaon People’s Territorial Struggle

I tried to put together the narrative of Tagdumahan, the organization directly under attack. The story narrated to me by Datu Manpadayag goes back to the time when the Philippines was under the dictatorship of Ferdinand Marcos. Being a post-martial law baby, I know of this segment of Philippine history only through schoolbooks and stories from my mother, who had actively campaigned against a planned nuclear plant. My grandfather, a writer and pseudo-politician, had been briefly incarcerated during those years. I therefore had the impression that to be honorable at that time meant to be against the government.

The culture of resistance was popular during martial law, when oppression was very palpable. However, resistance, and criticism against the government in general, was viewed differently after the People Power Revolution of 1986, when the Filipino people supposedly restored democracy through a series of massive demonstrations. The revolution—popularly referred to as the EDSA Revolution—was superficially characterized by people flocking to Epifanio de los Santos Avenue (EDSA), the main road in the country’s capital, and calling for the ousting of Marcos. The undercurrent—and, if I may say, the real cause of the dictator’s

downfall—was the withdrawal of the armed forces’ support for Marcos, as well as the open call of the head of the Roman Catholic Church for the removal of the dictatorial government. These two developments occurred after Marcos had called for a snap election and had then lost, though proclaiming himself the winner.

For me, the EDSA Revolution, whose proponents claimed was the restorer of democracy to our country, is a mere fairytale, for an increasing number of human rights violations continue post-Marcos. Tagdumahan’s story confirms this conviction.

The Banwaon, according to Datu Manpadayag, had been part of the bigger Higaonon ethno-linguistic group. I was interviewing Datu Manpadayag for an article on the situation of his community after the death of Datu Angis. We were at the old staff house of the Religious of the Good Shepherd in the Banwaon community in Balit, just a few meters away from where some Banwaon families had sought refuge. At that time, Datu Imbanwag was sitting with us, also curious to hear what the elder *datu* had to share. Datu Imbanwag and I had previously worked together on various projects for the Kalumbay Regional Lumad Organization, and it was good to see him again.

Datu Manpadayag, having been informed of my short stint with Kalumbay, used the organization as a reference for his explanations. He said that before Kalumbay had been formed, there had been smaller organizations that were community specific. Tagdumahan had been one of them. At the time of its founding, it had Higaonon and Manobo⁸ members from the provinces of Agusan del Sur and Bukidnon. Although the two provinces are now geopolitically separated, the ancestral domain of the Higaonon who lived along the Pantaron Range—the mountains that now serve as the boundary between the two provinces—was one contiguous territory for the indigenous peoples, who had not been bothered by borders or by the naming of provinces.

“This is part of the problem we actually have right now,” Datu Imbanwag interjected while Datu Manpadayag prepared his coffee. Like us, Datu Manpadayag had not eaten breakfast yet. Datu Imbanwag continued: “The military accuses us of following the area divisions of the NPA commands because we cut across

8 The Manobo are another major indigenous group in Mindanao.

provinces. But what can we do if that was how our territories had been before they split us up into different provinces, municipalities, regions?”⁹

Listening to him explain the territorial delineations, I asked why this had to be an issue for them when the ancestral domain of FEMMATRICS¹⁰ (the Federation of Manobo-Matigsalug Tribal Councils), which I had studied as an undergrad student, had encompassed three regions, and the military and the government did not have problems with it now—although the federation had also experienced bloodshed during martial law.

But then, maybe what happened during martial law—a time when indigenous communities were considered cultural minorities and were treated as citizens—was what made the experiences of indigenous communities different from one another. In the cases described below, the government’s responses to indigenous communities’ resistance to companies had been different.

The story of the ancestral domain of FEMMATRICS, as I recall from my undergrad thesis days, had started with a *pangayaw*, a war that is waged with the blessings of the gods for the integrity of the community. This war was declared by Datu Gawilan against ranchers and the Philippine military during martial law; the entire community then took up the battle cry of its leader. According to a FEMMATRICS officer we had interviewed, the government had not acknowledged the indigenous communities’ existence at that time. The communities’ lands were leased out to ranchers, who then erected barbed-wire fences and hired guards to shoot the indigenous residents caught “trespassing” on their own territory (Dumas, Vergara, and Carpentero 2009).

The Tagdumahan had a similar story, though instead of ranchers, they were up against logging companies. From 1968 to 1970,

9 Conversation with Datu Imbanwag, February 10, 2015, Balit, San Luis, Agusan del Sur. All quotations from Datu Imbanwag derive from this conversation.

10 The ancestral domain of FEMMATRICS is the largest titled ancestral domain in Mindanao. The domain is recognized by local government units in three regions. (In the Philippines, the major geopolitical divisions are regions, which are composed of provinces, which, in turn, are composed of municipalities and cities.) The domain of FEMMATRICS covers part of the provinces of Bukidnon (which belongs to Region 10), Davao (Region 11), and Cotabato (Region 12).

these companies intruded the indigenous communities’ domain. Together with the logging companies, the government introduced agencies into indigenous territories. As Datu Manpadayag explained, the Commission on National Integration and the Presidential Assistance on National Minorities, the first government agencies tasked with managing indigenous peoples’ affairs, had gone to these communities to register them.

“But we didn’t want to take part in [the registrations] because they were also putting up the CHDF [Civilian Home Defense Force],” he said.¹¹ The leader continued:

Lavi Manpatilan later on became one of the leaders of the CHDF here. He was a Higaonon and because we did not want to join them, we separated from the Higaonon. Manpatilan controlled some areas, with the help of the forces of Colonel Noble. In the municipality of Esperanza, they killed a lot of people. In Maasam, they murdered farmers and workers—what the families were able to recover were only bones. That was when we, the Banwaons, decided to fight back and defend what was left of our ancestral domain from the continuing deforestation and military control.

Datu Manpadayag’s narrative was similar to that of a Human Rights Watch report from 1992:

Since the mid-1980s . . . the Banwa’on and other tribes have come to know the military very well. The forests along the Maasam River have been a refuge from the New People’s Army, and both the NPA and the military have tried to engage the two tribal communities in the conflict. The government, for its part, has had limited success. In 1985, under the leadership of a Higaonon mayor, Lavi Manpatilan, the Higaonon of Esperanza signed up with CHDF in large numbers. The Manobo also joined CHDF units. However, most of the Banwa’on of the lower Maasam River forests refused. (Human Rights Watch 1992, 13)

Furthermore, the report mentions Colonel Noble, whom Datu Manpadayag never forgot:

Some of the most vicious abuses have been committed by the Higaonon. In 1988, the training and arming of the Higaonon became the obsession of a renegade military commander, Lt. Col. Alexander Noble of the army’s 23rd IB, and Higaonon militia there are still lo-

11 The CHDF was the civilian auxiliary force under the Philippine Constabulary (now the Philippine National Police) during martial law.

cally known as the “Noble CAFGU.” Noble staged a right-wing revolt against the military in Agusan del Sur in July 1990. Upon his retreat to the forests west of Esperanza, he was joined by roughly 200 fiercely loyal Higaonon CAFGU, who defended Noble against capture for nearly two months against six army and marine battalions. However, while Noble was eventually captured and imprisoned, most of the CAFGU were pardoned. Within weeks, they were reactivated under the command of the 89th IB based in the town of Prosperidad. (Human Rights Watch 1992, 13)

But Datu Manpadayag admitted that with the pressure all around them, some of the Banwaon leaders reorganized what had traditionally been the warriors of indigenous communities, the *alimaong*.¹² During the martial law years, the Communist Party of the Philippines had formed its armed wing, the NPA. Datu Manpadayag acknowledged that the NPA had, at some point, operated in the Banwaon communities’ territory. The communities took advantage of these additional forces to battle with the much larger and better-equipped units of the military, which were targeting these lands for the entry of logging companies.

“Every month, the military would send helicopters with machine guns,” he recalled. “But we knew the territory and were able to evade them. Until finally, the companies asked to sit down with us to negotiate. And we did.” But in the end, despite the negotiations, a large portion of the Banwaon people remained opposed to the intrusion of companies in their territory. As a side effect, the state continued to associate the Banwaon with the communist group, even after many of them had given up their arms and gone back to their civilian lives.

Unlike the Banwaon, FEMMATRICS had its domain legally titled according to government requirements and had drafted an Ancestral Domain Sustainable Development Protection Plan (ADSDPP), a requirement for this title that welcomed investors. The government considered the Manobo-Matigsalug people under Datu Gawilan as non-threats because of their willingness to open up their lands to companies. To quote one of their officers:

12 This should not be confused with a paramilitary group known as Alimaong, which currently operates in the provinces of Davao del Sur, Bukidnon, and Agusan del Sur. The word *alimaong* is the traditional name for indigenous communities’ warriors.

What would the ADSDPP be for? For one if there would be investors who would enter the municipality, they would know the groups in the area. They would also see the law, customary laws and traditions of the Matigsalug. When they come here, all they would have to do is present what are needed, what are to be followed. Also, the investors would already know the requirements upon entering a [certificate of ancestral domain title] area. (Dumas, Vergara, and Carpentero 2009)

In our undergraduate study, which looked at the delineation and titling of ancestral domains, we noted that the primary focus of the ADSDPP is to make it convenient for investors to enter their lands (*ibid.*, 38). This was the polar opposite of the demands of the Banwaon.

Development Aggression and Indigenous Peoples

Aggravating the situation of the Banwaon leaders was the fact that some of their contemporaries had surrendered to the military and formed armed groups to fight against their fellow Banwaon. "One such case is the surrender of Mario Napungahan, whose wife is my first cousin," said Datu Manpadayag. Mario established a connection with the military and soon formed an armed group called Rebel Returnees.

The two men had been old friends, with their relationship strengthened by Mario's marriage to Datu Manpadayag's cousin, explained Datu Manpadayag. However, Mario, who later became a political figure, wanted to invite mining companies into the communities' ancestral domain. Datu Manpadayag and the other members of Tagdumahan were standing in his way. Mario then simply used the excuse that he was going after communist rebels when he began targeting members and leaders of Tagdumahan with his armed group.

"It doesn't matter if they are relatives," interjected Datu Imbanwag. "The money offered by companies has created rifts in communities, even within families. And those who have the power—backed by the government troops—eliminate those who resist them, all under the pretext of counterinsurgency."

Kalumbay, which now functions as an umbrella alliance among indigenous peoples' organizations, including Tagdumahan, in the provinces of Misamis Oriental, Bukidnon, Agusan del

Norte, and Agusan del Sur, has had several of its members killed over the years.

Datu Imbanwag explained:

The statements of the paramilitary groups are always the same—they killed the community leaders because they were supporters of the NPA. Some of their victims had not even been born at the time of martial law, had not even seen a member of the NPA. Their only fatal move had been to oppose these companies threatening their families. And sadly after these claims, nothing ever comes out of the cases. This is how the paramilitary groups—together with the Philippine military—have created a culture of impunity in our communities. They can do whatever they want. Because once an individual has been “red-tagged,” he can be disposed of without too much attention.

The Basic Relationship between Nature and Humankind

In the wake of the entrance of logging companies, the environment has noticeably changed. “There had been a very huge deluge before,” said Datu Manpadayag. He went on:

Even with the talks of climate change today resulting to more intense rains, that flood¹³ in history remains incomparable. However, the aftermath of floods before and today is what differs. Now, the river does not clear easily. The food from the forest and the fish in the waters are not as abundant. We want to defend our ancestral lands from deterioration because it is our source for everything we need.

This made me recall a similar story of a Higaonon community whose case had started right before I left the country in 2012 for a study break.

A Personal Memoir

There were two of them when they came to the office of Karapatan, a human rights organization we were consulting with. It

13 The flood he speaks of, however, was not of his lifetime, and may even be a part of the legends that have been passed down through the generations. Many communities of indigenous peoples in Northern Mindanao—those of the Talaandig, Higaonon, and Manobo—have a story of a great flood, similar to the biblical story. It is through this story that they have identified major mountain systems as important to their heritage, not only as their sacred sites but also as the places where the flood’s survivors started their communities again.

was probably on a day when I would get a headache from too many depressing cases being forwarded to me and I would imagine what it would be like to work as a communications officer of some company for a change. I remember feeling annoyed that I had to redo a fact sheet. Whoever had written the first version had treated the case like an ordinary land-grabbing incident (I use “ordinary” for nonindigenous farmers because the tenurial instruments are different for indigenous communities).

In the office’s reception area, Manong¹⁴ Gilbert, accompanied by a companion from his community whose name I can no longer recall, sat on a bench clutching an envelope, waiting for someone to talk to them. I remember taking my time before going over to them. I was thinking, *If these people weren’t so meek, we would have an easier time helping them assert their rights.* But that is the way these farmers are. I took the envelope and went back to my computer. It was a long time before I was ready to interview them.

Before they arrived, I had been talking to their prospective lawyer’s office about the difficulties of their case. Their story seemed disjointed. When they first approached us, referred by a priest we had been working with, it had been an “ordinary” case of land grabbing—they were farmers whose lands were being taken over by an oil palm company, A Brown. But later, having discovered that they had better bargaining powers if they used their indigenous ancestry, they wanted to assert their right to their ancestral domain. “So now they are indigenous people?” I had asked, not really convinced.

But their case became our focus during the following weeks. The local government unit of their municipality, Opol, had taken the side of A Brown Company (Front Line Defenders 2013).¹⁵ Some government officials had started to demonize the farmers, saying that they were letting in rebels—my organization included—and

14 *Manong* is a term used to show respect for an older male person.

15 In December 2013, another member of their organization, Rolan Langala, was killed by a *barangay* counselor, Nestor Bahian, right in front of many people during a village celebration. Bahian had reportedly stopped Langala, who was about to go home, and asked him, “What is your problem? Are you brave?” Langala answered him, “We don’t have a problem. We only fight back when we are attacked.” Ramil Salban, who was with Bahian, stabbed Langala; and when Langala tried to escape, Bahian shot him twice in the head.

were refusing to accept development in their community. Even as I was annoyed by once more being called a rebel by affiliation, I thought, *How can I write statements and articles when I am not clear what exactly we are dealing with?* I personally knew some of the heads in the regional office of the Department of Environment and Natural Resources, where they were filing their complaint. And whatever their shortcomings in dealing with the poor farmers, they were among the few government employees who were very diligent with legal agreements. So when they explained that Manong Gilbert and his group had been granted permission to cultivate land through a Community-Based Forest Management (CBFM) agreement and had sold this land contrary to the stipulations of the agreement that it could not be sold, I knew we would have a problem with the legalities. There were documents that proved their arrangements.

But although they had performed this illegal sale, I could not see these humble farmers—who silently waited at our office and who, despite their meager finances, had taken their time and resources to come to the city to meet with us—as the swindlers the government officials and agencies were making them out to be.

We reviewed the farmers' documents and their sworn statements again. We had them tell their stories again. What was missing? They confirmed that they, together with other neighbors, were under a CBFM, although they admitted not entirely understanding what that meant, having only a vague idea that it somehow allowed them to till a certain piece of land. They explained that some of the farmers had indeed left the area that was specified under the CBFM permit because it was too far, and they wanted to farm near their homes. Their explanations were too simple. Had I not finally understood what was happening, I probably would have told them to go home because it was their fault they had given up their previous plots.

First came the confusion regarding their identities as Higaonon. For them, there had been no need to tell us they were Higaonon when they came to us the first time. It was a given for them.

Then came the issue of the CBFM arrangement, which is a land tenurial system normally used for nonindigenous farmers, since the arrangement is made on an individual basis and not for communities. Yes, they were at fault for not having immediately

insisted on their right as an indigenous community. But it was a good-faith mistake, based on a failure to grasp the country’s confusing laws. Indeed, who among their group was literate enough to have read the myriad laws that govern the land—this land that their families, relatives, and ancestors had been tilling for generations? Also, when they got into the CBFM arrangement, they thought it was an ordinary title, something they could sell like any other piece of land. They could not answer our questions about the sale being illegal, because they had not known that it was.

Unfortunately, this lack of knowledge of the laws was used against Manong Gilbert, who was president of their newly founded community organization, Pangalasag.¹⁶ He was suddenly put in the spotlight, and he had no other way but to fight head on, focusing on the destruction the company was wreaking in his community. After all, the legal arguments were trivial for them. They were simply fighting for their right to be able to go to their farms without being harassed by the company’s guards, fighting to stop the company from uprooting their crops and replacing them with oil palms, fighting to stay alive despite the threats to their lives.

Of course, we changed strategies and made it an issue of indigenous peoples’ rights, which is how it should have been framed from the start. The community should not have been offered arrangements like the CBFM, as the territory was their ancestral territory. We were able to garner support from a range of civil society organizations, including international ones.

But Manong Gilbert did not survive the fight. On October 3, 2012, as he was walking home, he was shot by a man on a motorcycle. To this day, no one has come forward to identify the gunman or the driver, who were both wearing helmets.

Prior to Gilbert’s death, an international fact-finding mission had been conducted on the case thanks to his organization’s persistent efforts. Among other things, the fact-finding report included the discovery of the use of carbofuran and glyphosate, two harmful pesticides. In addition, according to the report, farmers in the area had reported an increase in worms and mice in their rice fields since the start of the operation of the oil palm plantation (PAN Asia Pacific 2012). Manong Gilbert’s organization was not

16 *Pangalasag* means to shield or to defend.

only fighting for the community's right to till its own land but also protecting the local environment, which was the main source of food and income for Higaonon families in the area.

This, again, shows that the civil and political rights of indigenous peoples are necessarily interrelated with their economic, social, and cultural rights. Their organizational systems are a means to protect and continue their culture and traditions, as well as to preserve their self-sustaining economy.

The Philippines' Oppressive Laws and Rifts on the Ground

"The Philippines has laws governing the waters, separate laws for the land, separate laws for the minerals within the lands, laws for the forests, the mountains, and separate laws for the people," Beverly said in a discussion about a recently started project aimed at training indigenous organizations on human rights documentation and mass media. Most of our staff working on the organization's new project, *Healing the Hurt*, had no experience working with indigenous communities, and they had just two days to understand the international and national mechanisms available for addressing indigenous issues. Beverly started the discussion by saying that indigenous peoples understand laws very differently than we do:

For the indigenous peoples—whatever part of the country we come from—all of these components are necessarily integrated. You cannot talk about the people without talking about the land, about the forests and the sacred mountains. You cannot make rules about the waters without considering the people, the animals—the governance of everything is connected, seen as a whole.

The Philippines has many laws that, on the ground, are ineffective in protecting marginalized communities. One of them is the Indigenous Peoples' Rights Act of 1997, whose aim is to "recognize, protect and promote the rights" of indigenous peoples. This law provides for the recognition of ancestral domains and the right of indigenous communities to self-determination. However, at the same time, the Mining Act of 1995 facilitates the extraction of the country's mining reserves, the bulk of which are in indigenous territories.

For the Manobo and Banwaon territories, for example, in Agusan del Sur, mining is the next biggest threat now that their mountains have been logged in recent decades.

A large part of the province to which the Banwaon community of San Luis belongs is still free of mining. However, applications are on the way. Since many of the country’s mineral reserves are in indigenous territories, it is no wonder why a battle of interests is taking place. The resistance of indigenous communities has delayed some activities—but as long as the laws favor the companies, these communities can never be at ease.

One high-profile case against a mining company is that of the Subanon people of Zamboanga del Sur, who brought suit against TVI Resource Development, the Philippine affiliate of the Canadian company TVI Pacific. Before discussing their story, though, let me first talk about the Indigenous Peoples’ Rights Act.

Among other things, the act established the National Commission on Indigenous Peoples, which now handles the titling of ancestral domains. While the “titling” of ancestral domains is controversial—many indigenous communities still insist that their very presence on the land since time immemorial is enough to give them native rights—I would like to focus on some of the problems that have arisen for communities, including the Subanon, that did opt to obtain a certificate of ancestral domain title.

I have not personally followed their battles, although I once worked with the organization that was helping them. The organization had provided me with their case documents so that I could write about the victory of the Subanon. I never finished writing that article, as I had been unable to make sense of the result. In fact, it would not be the last time I would get confused with ancestral domain battles. In any case, let me proceed with the introduction to this confusing territory through the Subanon case.

In the 1990s, there was a split among the Subanon, who had organized themselves to apply for a certificate of ancestral domain claim (then issued by the Department of Environment and Natural Resources; this document would later be turned into a certificate of ancestral domain title when the National Commission on Indigenous Peoples was instituted). While the original organization of the community applying for the title, called the Siocon Subanon Association, had been opposed to the activities of TVI Resource

Development, there were members who broke away. These members, allegedly backed by the mining company, filed their own application for a certificate of ancestral domain. This is problem number one. The application for a title (such as the one applied for by the Siocon Subanon Association), if contested by another application (the breakaway group supported by the mining company), is unfortunately subjected to the discretion of government agencies. Here, instead of unifying the community and respecting its right to ancestral domain, the law providing for the titling of the indigenous territories caused a faction between members—those for mining and those against it. Once again, money was decisive.

Based on my experience working with organizations that help communities with their applications for certificates of ancestral domain title, government agencies require applicants to pay a fee for “field surveys.” This amount—which does not usually go below US\$225—may not be much money by mainstream standards, though for many indigenous communities relying on a subsistence economy, it can be prohibitive. In the face of this barrier, some indigenous communities, just to get the title, accept the offers of companies to help them fund the processes and pull the strings of their government connections. The case of the Subanon was no different.

The early years of the Siocon Subanon Association had read like a heroic novel: the organization maintained a firm position in defense of the Subanon people’s ancestral lands, accusing the mining company of not respecting their sacred ground, Mount Canatuan. Over the years, however, the organization’s position gradually dwindled into an entirely different demand. What had begun as a demand for the complete control of the community’s ancestral lands had become a call for acknowledgement in the form of the payment of royalties and the prevention of expanded mining areas. I asked a colleague who had worked with the Subanon people about this shift, and he said that the counter-propaganda and the offers from the mining company were simply too much for the resisting community to handle. Community members reasoned that their lands, despite their protests, had already been mined; they might as well get something in return.

Obviously, the laws meant to protect indigenous peoples are not doing a very good job. More effective seem to be those that

protect business interests. This imbalance is evident in the government’s strategic development framework for Mindanao:

To help the mining industry take off, it is crucial to create a suitable regulatory environment that is investor-friendly and that ensures compliance with all environmental regulations. For instance, decentralization of approval of mining exploration permits could shorten processing time and encourage more investments. Local governments also need to be further involved, particularly in regulating small-scale mining operations, and in monitoring and addressing environmental degradation and conflicting land uses. (National Economic and Development Authority 2010, 8)

To say that indigenous communities prefer green pastures and farms to digging up underground wealth would be a misconception. In many cases, these communities also engage in small-scale mining. While minerals traditionally have not had much importance in these communities’ lives, the communities have learned about the value that minerals hold in the mainstream market. Nonetheless, the big difference between community-led small-scale mining and large-scale mining driven by companies is that in the former, the amount of extracted minerals, the method of extraction, and, most importantly, the proceeds from the minerals are controlled by the community. The responsibility of the rehabilitation of the lands is also taken seriously, since the communities live on the lands they are mining.

The Confusing Role of Climate Change

The effects of climate change have been felt by the Philippines, with stronger and more frequent typhoons, incessant rains in low-pressure areas, and longer dry seasons. Yet each year, when the country suffers a natural disaster, it seems to show no learning from past experiences. The government continues to appeal to various countries and aid agencies, expressing its desire to train its people to deal with these natural hazards and to provide for those who have been affected.

Today, everyone seems to be involved in one disaster risk reduction and management (DRRM) project or another, with plans being implemented by national institutions down to the *barangay* government level. Whereas before, budget allocations were concentrated on disaster response, the Philippine Disaster Risk

Reduction and Management Act of 2010 shifted the bulk of the disaster response budget to disaster preparedness.

I myself took on two projects in 2014 related to the development of DRRM plans. For my two engagements, I had to look at the DRRM frameworks of government units from the regional to the national levels. The impression I got was that local government units were developing their plans not so much to create disaster-ready and resilient communities but rather to access funding that is allocated for DRRM activities. Instead of encouraging economic stability among residents to give them options and help them recover faster during disasters, many of the plans simply delineated no-build zones, displacing numerous families without providing alternatives. Coastal zones that had been previously occupied by informal settlers were opened to commercial buildings; however, these developments did not translate into livelihoods for former area residents, who were either street vendors or occasional laborers. These residents were relocated to areas far from the city centers where they made their living, and transportation expenses could barely be covered by what they earned in a day.

The 2010 act also added other government agencies to the National Disaster Risk Reduction and Management Council. Heading it now is the Department of National Defense, together with four vice chairs: the Department of Science and Technology, the Department of the Interior and Local Government, the Department of Social Welfare and Development, and the National Economic and Development Authority (Commission on Audit 2014). Like the segmented laws of the Philippines, this institutional framework assigns a different institution to each specific function related to natural disasters. For example, the Department of Science and Technology is responsible for disaster prevention and mitigation, while the Department of the Interior and Local Government is charged with disaster preparedness. Interestingly, the Department of Environment and Natural Resources is not among the committee's decision-making agencies.

The National Disaster Risk Reduction and Management Framework itself acknowledges the hitherto "ineffective vertical and horizontal coordination among its [disaster risk management] member agencies," together with "poor enforcement of environmental management laws and regulations, and other

relevant regulations,” and “inadequate socio-economic and environmental management programs to reduce vulnerability of marginalized communities” (National Disaster Risk Reduction and Management Council 2011, 2). While the 2010 act tried to unify the initiatives of the different agencies, the segmented formation of the plans made the implementation cacophonous and disorganized.

In November 2013, the country was hit by Typhoon Haiyan, one of the strongest typhoons ever recorded in history. Despite the forecasts from different weather bureaus worldwide, Western Visayas, where the typhoon first landed, was not prepared. Over 6,000 people were killed, and the typhoon’s damage to agriculture alone—the main source of livelihood for the provinces hit hardest—amounted to around US\$45 million (Global Agricultural Information Network 2013). This represented an obvious failure of the country’s disaster risk reduction and management efforts.

Nevertheless, the government sought to present a recovering image of our devastated country. After all, who would want to invest in a group of islands whose coastline is receding and where half of the area is prone to earthquakes? And so during the UN Climate Change Summit in 2014, President Aquino’s speech was replete with the government’s efforts to cope with climate change. For example, the president stated:

Legislation has been enacted to lessen the impact of disasters by adopting a comprehensive approach to disaster response. We have empowered our forecasting agencies so that they can give timely warnings to vulnerable communities for national and local authorities and residents. We have undertaken multihazard and geohazard mapping which is integral to the effective assessment risk. (Aquino 2014)

Working as a communicator for most of my professional life, I felt pity for the local forecasting agency, which took the brunt of the blame for the lives lost in the Haiyan disaster. It was criticized for not being able to properly convey the gravity of the typhoon to the people. But I believe that the problem was not so much the terminology used by the agency but the fact that people refused to follow the agency’s advice. The greater undercurrent of people’s hesitance to leave their houses was their economic position; many of them preferred to face danger rather than abandon the few possessions they had accumulated from their meager earnings. And instead of looking into this situation, the government

created hollow plans that were not grounded in addressing natural disasters.

One such plan was a supposed re-greening program, mentioned by the president in his speech: “We have undertaken a massive re-greening program on top of an intensified anti-illegal logging campaign” (Aquino 2014). Right after the devastation wrought by Typhoon Haiyan in Northern Mindanao, the lack of trees in the headwaters of the major rivers that overflowed and killed more than a thousand individuals was identified as one of the main reasons for the tragedy. Our organization explored the reason behind this deforestation. Looking at the landscape around the headwaters of Cagayan de Oro and Iponan Rivers, we discovered that vast tracks of industrial plantations have today replaced the forests that had once been there. Covering a large portion of the area are pineapple plantations. Yes, they are plants, but not the kind that are effective against flooding.

The government has other schemes for reforestation: integrated forest management agreements and CBFMs, the first being a nicer name for a logging concession (whereby applicants are permitted to grow trees and then to log them) and the second allowing a group of community residents to apply for a piece of secondary forest to “develop” — the development usually being some form of small-scale farming. The aforementioned case of Manong Gilbert and his group is an unfortunate example of a CBFM in which a group of farmers were allowed to till the land. A CBFM is not by any means a scheme for protecting trees.

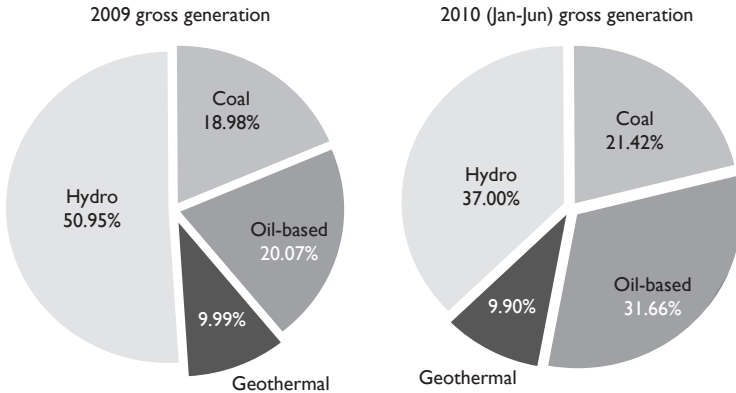
President Aquino went on:

As early as 2008, we have passed a Renewable Energy Act, and are now treading a climate-smart development pathway. We continue to take steps to maintain and even improve our low-emission development strategy and the trajectory of our energy mix, and are hopeful that our fellow developing nations, especially those who have been gaining the economic wherewithal to pursue similar strategies, will tread a path akin to ours. (Aquino 2014)

While reading his speech, I felt that he was talking about an entirely different country, for in the case of energy production in Mindanao, the main power source used to be hydropower but has recently shifted toward coal- and diesel-based production. Many have argued that despite the region’s extended dry season, power

FIGURE 1

Energy generation sources in Mindanao



SOURCE: Department of Energy (2010)

generation can be maximized through proper maintenance of the power plants. However, the government’s solution, instead of providing a maintenance budget for these plants, was to privatize them. It reasoned that privatization would increase power prices, which would then attract investors in energy—specifically, coal- and diesel-based energy. Figure 1 demonstrates the shift in the generation of energy for Mindanao.

The government, for sure, had been convinced that there was a need for more power in Mindanao.¹⁷ However, investments in the pipeline were contrary to what President Aquino had been boasting about low emissions. According to the Department of Energy (2010), while the short-term solutions to that energy crisis had included the rehabilitation of hydroelectric power plants (which did not actually happen), the medium-term solutions had included the development of non-hydro power plants in Mindanao: Conal Holdings’ coal-fired power projects and Mindanao’s coal-fired power plant. These were still considered more dependable sources of power, as hydropower was eyed hesitantly with the lengthening dry months.

Of course, new investors have recently expressed their intention to install renewable energy plants in the country, and we can

17 At that point, the Mindanao power grid had not been connected to the larger grid, which at that time covered only Luzon and Visayas (the two other major island groupings in the country).

only hope for their success. But the government's move to privatize energy generation (through the Electric Power Industry Reform Act of 2001) is not helping this goal. Clean energy, without the support of the government, might cost more than the coal-fired plants that many investors are too willing to propose.

And finally, the major "victim" lines from the president's speech:

It would not be an exaggeration to say that Filipinos bear a disproportionate amount of the burden when it comes to climate change. Being less industrialized, we are not a major emitter. Still, even while we work [for] the fulfillment of our full development potential that remains on the horizon, we see the opportunities borne of more environmentally progressive policies. We have never lacked in resolve, for example, as regards transitioning towards less traditional sources of energy. What we lack is the access to technology, financing, and investment that would allow us to accelerate our strategy. (Aquino 2014)

There is an obvious disconnect between the environmental champion image (albeit lacking technological and financial capacity) that the government promotes and the aggressor that the government actually is in terms of environmental and resource management.

More importantly, the country's laws on environmental management have not changed over the years. Of course, many memos have been released on illegal logging and illegal mining, which inflict considerable damage on the environment (after all, their methods are not regulated). Nonetheless, legally permitted operations, such as open-pit mining, are the ones that cause the most damage.

The Philippine Mining Act of 1995 is based on the constitutional provision that the state owns and manages the country's mineral resources. This is reminiscent of what I discuss above about the Philippine laws' segmented viewpoint. While the Indigenous Peoples' Rights Act addresses indigenous concerns, an entirely different law governs the resources found underneath the farms and houses of indigenous communities.

This act has allowed the entry of foreign-owned mining corporations through financial or technical assistance agreements. It includes incentives for foreign investments, such as tax holidays. Companies that are not granted these agreements can still apply

for a mineral production sharing agreement with a local company—which, in many cases, can be a dummy corporation.

Moreover, and most important in terms of resource conflicts,

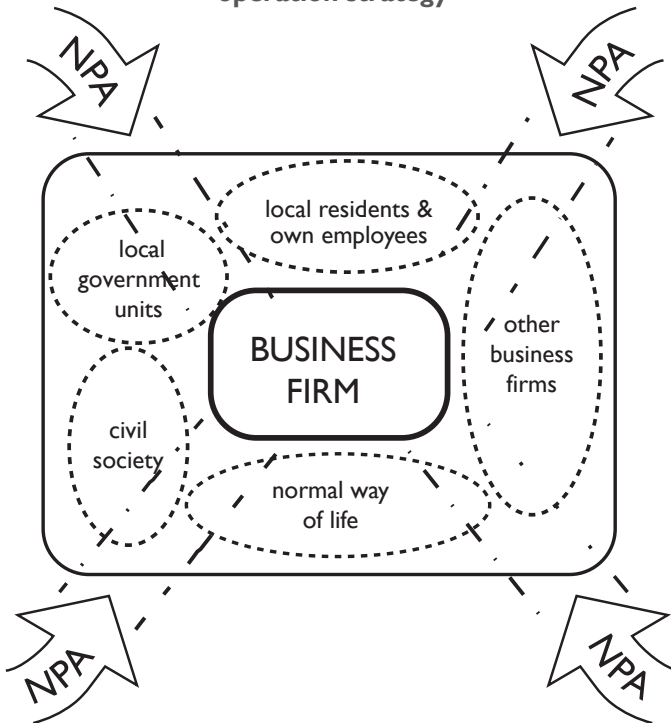
the Mining Act grants auxiliary rights to foreign investors. Government grants the foreign and big local mining corporations the rights to use water and forest resources. It grants easement rights, which simply means the right to “ease out” any impediment to mining operations. Effectively, the government has granted mining corporations the right to dislocate and displace farming, fishing, and indigenous communities. (Tujan and Guzman 2002, 84)

Defense Forces Protecting Environmental Plunder

Apparently, companies not only have a right to dislocate people in resource-rich areas but also have the backing of the government’s armed forces. At the core of the government’s internal

FIGURE 2

The Philippine army’s “unhampered business firm” operation strategy



SOURCE: 58th Infantry Battalion (2013)

security plan is the protection of business firms, not communities, despite what is claimed in the armed forces' "winning the hearts and minds" campaign under Oplan Bayanihan. While our organization has always been skeptical of the military's community-first statement in light of the human rights abuses we document, I finally received a document directly from the military showing that its interests indeed lie elsewhere.

As figure 2 shows, at the core of the military's security plan is a business firm. Where is the community? It is on the periphery. The military is trying to protect the business firm from attacks by the NPA. This aptly explains why the military has been vigorously recruiting community members to its "peace and development" volunteer teams. It wants the community to protect the firms that are entering certain areas. And what of those who resist these firms? Well then, they must be allied with their attackers—the NPA.

Conclusion

The term "resource conflict" easily conjures images of parties fighting for a resource—a piece of land, a section of some body of water or forest. But what is not immediately understood are the stakes of the parties involved. On one side, the stakes are profits—or "economic development," as the government puts it. On the other side, what is at stake is communities' lives, their identity, their being.

"I think we should plant together a narra tree," said Datu Manpadayag. "It is sacred for us. It tells us many things."

We had finished our interview and were sitting outside, where it wasn't too dark. I had mentioned a new project that our organization was initiating in order to help strengthen the traditional structures of indigenous communities. We were hoping to launch the project in Datu Angis's community to express our solidarity with his bereaved family and the evacuees. I asked Datu Manpadayag what gesture would best symbolize our unity with the community.

The narra tree, he explained, is very hard. But unlike ironwood, it can easily be fashioned into items that can be used by the community. Its cycle also marks the seasons. "When its leaves have all gone, it means we can start planting our crops," he said.

The lifestyle of indigenous peoples is based on nature, making environmental protection integral to their survival. However, the government, instead of building on the knowledge of indigenous communities in its quest to create a disaster-ready and resilient country, has viewed indigenous peoples’ stance on the environment as a hindrance to the country’s economic development. And indigenous peoples’ resistance is being quelled by systematically eliminating their leaders.

“There are several ways of killing us,” said Datu Imbanwag. “You remove us from our land and we lose our identity, we lose our means of survival. We become farm laborers, factory workers, domestic help. We continue to breathe but we’re dead as a people.”

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CHAPTER 4

Saving Lamu

Sylvia Kithinji
(Kenya)

As I boarded the Air Kenya flight to Lamu Island for the first time, I could not help but get excited about the experience that was to come. I had been told that the people of Lamu are conservative and proud of their heritage. I remembered the stories that my mother used to tell me about Lamu's vibrant culture and tasty seafood. I loved the glint in her eyes every time she repeated the same story.

My mind drifted away from the island's culture to the reason for my visit. As a representative of the Kenya Human Rights Commission, a nongovernmental organization, I was undertaking a study on the extent to which environmental impact assessments (EIAs) in Kenya incorporated human rights concerns. This study was inspired by growing worries among community members about the impact of development projects on their daily lives.

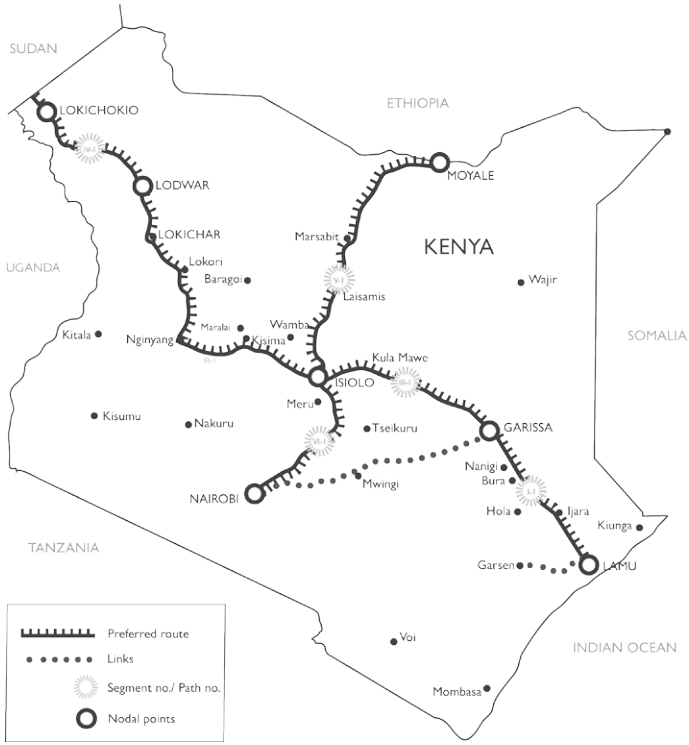
The LAPSSET Project

I first heard of the Lamu Port-South Sudan-Ethiopia Transport Corridor (LAPSSET) project in 2012 on prime time news, when Kenya's former president Mwai Kibaki, Ethiopia's former Prime Minister Meles Zenawi, and South Sudan's president Salva Kiir were performing the groundbreaking ceremony for Lamu Port.¹ Official statements from the Kenyan government and coverage from local and international media described the project as one that would transform the economic and political status of Kenya and East Africa (BMI Research 2014). I marveled at the prospects

1 This project is a major tenet of Kenya's Vision 2030, the country's blueprint for development over the next few years, which aims to push Kenya toward becoming a middle-income economy.

MAP I

The proposed path of the LAPSSET Corridor in Kenya



SOURCE: Kasuku (2013)

of the good tidings that LAPSSET would bring—an elaborate system of railroads that would feature the first electric train on Kenyan soil, highways, the world’s longest heated pipeline network, fiber-optic cables, water infrastructure, three resort cities, and three international airports.² Surely this would have a positive impact on the lives of Kenyans, especially those living in historically marginalized areas that would now run along the project corridor—wouldn’t it?³

2 More on this ambitious development project can be read at www.lapsset.go.ke/lamu, the official website of the LAPSSET Corridor Development Authority, the body mandated with overseeing the project’s implementation.

3 According to the *LAPSSET Corridor and New Lamu Port Feasibility Study and Master Plans Report: Volume Three LAPSSET Corridor*

Unfortunately, all that glitters is not gold. One quiet Sunday evening in 2014, I received a phone call from Jafar Omar, one of the Kenya Human Rights Commission's community-based human rights coordinators in Lamu. He told me, "Mambo ni mabaya, lazima ukuje Lamu." ("You have to come to Lamu. Things are bad.") His voice was somber, almost scared. We spoke at length that evening; our conversation marked the beginning of my journey toward finding a solution for Jafar, his people, and the beautiful island of Lamu, which is tucked away on Kenya's northeastern shoreline along the Indian Ocean, toward the border with our more volatile neighbor, Somalia.

As the plane descended into the Manda Airstrip—located on Manda Island, which faces Lamu Island—I could see Lamu Old Town perched across the channel. Boats and canoes were bobbling on the water next to the jetty, their captains sitting on the sea wall, seemingly in thought. At a distance, I could see a large cargo ship floating casually. It seemed misplaced amidst the small boats of the locals, the Kenya Wildlife Service, and the police. Sea transport is integral to the economy of Lamu, as it connects Lamu with the northerly towns and islands within the larger archipelago, as well as Mombasa to the south. The Manda Airstrip serves the local tourism circuit, linking Lamu with Nairobi, Mombasa, and Malindi. It is not uncommon for charter flights to land on the airstrip, bringing in a more affluent breed of tourists.

Boat captains carried our luggage to the recently refurbished jetty that linked Manda Airstrip to Lamu Island—signs of development that, albeit small, were visible to the naked eye. I was told that prior to LAPSET, these developments had not commenced; but all of a sudden, it seemed as if there was a push to ensure that development happened with great haste. The seventy-five-horsepower speedboat broke the ocean waves at seemingly neck-breaking speed, and I reluctantly embraced the cold, snappy lash of wind and misty salt water against my face as the Old Town drew closer with each bounce on the water. I sat stiffly on the wooden seat, clutching my orange life jacket with one hand and

Master Plan and Development Plan, the project is expected to have an impact on the livelihoods of 166 million people in Kenya, Ethiopia, South Sudan, and other East African countries (Japan Port Consultants and BAC/GKA JV Company 2011).

grasping the edge of the boat with my other hand even harder. One rather dark joke that I had been told repeatedly by Msalam, the boat captain, was that these brightly colored life vests were not so much to save us in the event that the boat capsized but rather to help rescuers locate the floating “non-living persons” in the water faster and without a fuss. His lame attempt at humor was unwelcome; I looked forward to getting my feet on land.

During the bumpy boat ride, I asked—or, rather, in an effort to be heard above the wind, shouted—questions in the general direction of Msalam. His untucked white shirt was a size too big, a fact that made it flap vigorously as his slender frame cut through the strong gales of wind. As he responded to my questions (or at least the parts he heard over the wind), he would first smile and then crouch closer to me as he answered, in a very dialect-infused form of Swahili I had not encountered before.

Msalam had been born on the northern island of Kiwayu, near the Somali border, and had moved to Lamu Old Town to look for work. Msalam told me that he had worked in Lamu for about five years. Although he had heard about the LAPSET project, his knowledge was limited to the construction of Lamu Port. He had once managed to enter the project site while dropping off a resident of the hotel who was a contractor. The site was well guarded, he recalled. From the look on his face as he spoke, I could tell that he knew nothing of the project.

Before Msalam became a boat captain, he had been a fisherman:

I never went to school. My friend and I had a small boat. We would go down the channel checking our lobster traps, which we had set the evening before. When we were lucky, we caught one and we would sell it for about a thousand shillings. We would drag on the ocean so that we would catch fish to eat.⁴

As Msalam spoke, I recalled the hopelessness in Jafar’s voice during our phone call as he explained the threat that the project posed to fishermen who relied on the channel for their livelihood.⁵

4 Conversation with Msalam Omar, April 2014, Lamu Old Town.

5 Although there are 2,500 registered fisherfolk in Lamu, the true population is estimated to be around 5,000. The fishing methods used in Lamu’s waters are, by and large, simple. For instance, boats are wind-propelled and can travel only between two and five nautical

I safely reached Lamu Old Town and later that day visited the Beach Management Unit (BMU) offices in town.⁶ Mzee Somo, chairman of the Lamu BMU, bore a regal look; it was an indication of the trust his peers had placed in him in electing him the BMU's chairman. Sitting on a desk and clad in a traditional *kanzu*, Somo was staring intently at a newspaper. Splashed ominously across the front page was the headline "JOY, SORROW AS MILLIONS PAID OUT FOR RAILWAY LAND" (Muiruri 2015). His lips moved slowly as he read the story of the landowners who had been displaced to pave way for the construction of the standard gauge railway in Taita Taveta and Makueni Counties—one of the components of the LAPSSSET project that is already underway (Republic of Kenya 2014). He shook his head as he flipped the page, reading about how some landowners had already squandered money that they had been given by the government as compensation, even as neighbors waited for their turn. As I sat down to talk to him, I noticed that the newspaper was the previous day's issue of the *Daily Nation*. He explained, "The newspapers take a whole day to arrive in Lamu, as they are delivered by road courier. While the rest of the country reads today's newspaper, we read yesterday's news."⁷

The gray-haired Somo spoke methodically and in a measured way, but the frustration in his voice was not lost. Could this be part of the reason why the people of Lamu knew so little about the LAPSSSET project? I put on my human rights hat for a second and immediately began to acknowledge the challenge that

miles, thus limiting their capacity to operate in the deep sea. As a result, 195 of Lamu's 200 nautical miles have yet to be exploited.

6 In Lamu, fisherfolk and other stakeholders in the fishing industry are organized under the statutory structure of BMUs, as set out in chapter 778 of the Fisheries Act of 2012. The concept behind BMUs is that local stakeholders in the fish industry are the ones who best understand local fishing issues and should thus be involved in the management of fishing resources. The main function of BMUs is to ensure the orderly, safe, and effective use, management, and operation of fish landing sites. Their structure consists of an assembly, an executive committee, and subcommittees. Membership is open to individuals whose livelihood depends directly or indirectly on fishing activities. Members include fisherfolk, *dhow* (sailboat) makers, ice makers, fish sellers, and people who dry fish.

7 Interview with Somo Bashir, April 2014, Lamu Old Town. All quotations from Somo in this chapter derive from this interview.

implementing the right of access to information was proving to be in Lamu.⁸ Already, by getting their news a day late, citizens were challenged in their ability to use this information effectively and promptly. The right of access to information is one that, in my opinion, is highly time sensitive. A good example is the notice for the EIA that was performed for Lamu Port, which was published late and therefore failed to adhere to regulatory timelines, giving locals a very short period to submit their comments.⁹ Now, imagine having one day deducted from a fourteen-day period to submit comments on a life-altering project taking place in your community because a newspaper carrying that notice fails to arrive on the correct day; surely this is unfair and potentially an act of indirect discrimination.¹⁰

I listened to Somo as he told me about himself and how he fit into the bigger Lamu picture. He was born on the island of Pate. Like most other men from the island, he was a fisherman:

I have been fishing for as long as I can remember. When we were young boys, we spent our weekends fishing or learning how to fish. My father was an experienced fisherman, and a good one, too. He would go deep-sea fishing, sometimes for days on end. He would then come home with stories. He often told us to respect the ocean. It is full of beautiful creations of Allah, and Allah would punish us if we disrespected it. Once, I found a turtle nest amongst the mangroves; and when I took out an egg, he was very upset, and he took me back to the nest and made me apologize to Allah and to the forest.

8 Article 35 of Kenya's Constitution guarantees every citizen the right of access to information held by the state or by a private person required for the exercise of any right or freedom.

9 On February 14, 2013, an EIA report on the port's first three berths was submitted to the National Environment Management Authority (NEMA), under the Environmental Management and Coordination Act of 1999. Under Kenyan law, NEMA must publish, for two successive weeks in the *Kenya Gazette* or a newspaper of wide circulation, a brief description of the project and must state where the environmental impact assessment can be examined for a sixty-day period.

10 Article 27(5) of the Constitution prohibits the direct or indirect discrimination of persons on a number of listed grounds. Courts in other countries have not shied away from interpreting provisions of their constitutions quite liberally—see particularly the Constitutional Court of South Africa in *Hoffman v. South African Airways* (CCT 17/00) [2000] ZACC 17, where the court ruled that the stigmatization of people living with HIV was tantamount to indirect discrimination given the assault on their dignity through the perpetuation of systematic disadvantages.

It was clear that Somo loved the ocean and was troubled by any potential harm to the ocean or its inhabitants. The Lamu archipelago comprises about fifty islands and coral reefs. The islands are breeding grounds for migratory birds,¹¹ and the waters around Lamu are home to diverse species of fish. Fishermen fish mainly for snapper, prawns, crabs, and lobsters. Studies done by some of our partners working in Lamu indicate that on Pate Island alone, where Somo hails from, the average crab and lobster fisherman earns approximately US\$12,400 per year¹²—a decent wage that allows them to cover basic costs for a dignified, healthy life. Those from Kiwayuu and Faza occasionally catch small sharks and stingrays, which are popular among tourists.

Lamu has the largest mangrove forest cover in Kenya, which is protected by law.¹³ The forest is home to a variety of marine wildlife, including sea turtles, and is a source of livelihood for local communities. The locals are licensed to cut the mangroves for their own use, though not for commercial purposes. Local mangrove cutters on Pate Island make approximately US\$4,000 per year.¹⁴ The development of Lamu Port is likely to severely affect local industries such as fishing and mangrove cutting, thus impeding local residents' attainment of their social and economic rights.¹⁵

The EIA for the construction of the first three berths at Lamu Port envisioned the loss of mangrove habitats (Japan Port Consultants and BAC/GKA JV Company 2011, 166). This would bring about the loss of twenty species of fauna. The changes in water circulation that would occur as a result of blocking the channel

11 From Lamu, over forty species of birds can be seen (Lemaire and Dowsett 2014).

12 Data collected by Natural Justice in October 2014 through interviews with fishermen on Pate Island.

13 According to chapter 385 of the Forests Act of 2007, indigenous forests include mangrove forests.

14 Data collected by Natural Justice in October 2014 through interviews with fishermen on Pate Island.

15 Article 43 of the Constitution guarantees every person's right to freedom from hunger, to adequate food supplies of acceptable quality, and to social security. Article 174(f) states that the government has a duty to promote the economic development of services throughout the country.

to facilitate construction would be detrimental to the breeding patterns of the marine life upon which Somo and his people are highly dependent. Somo explained:

We use the mangroves to build our huts as well as to construct our fishing equipment. Our people, especially the Boni, are honey gatherers, and they harvest the honey of wild bees that reside within the forest. In the times of my forefathers, the healers would derive medicines from the forests. Those healers are still there in the villages, and they save lives where modern medicine would take days to arrive. These projects require that our forests be cut down. We are already so few. If they take away our livelihood, we will surely fade away to extinction.

The project requires that the Mkanda Channel be closed for dredging (Ministry of Transport 2013, 170). The channel is used by fishermen to access their fishing grounds. Furthermore, it is the lifeline of all transportation in Lamu—from children going to school, businessmen bringing in vital goods, ambulances serving the islands, tourists traveling along the channel, pregnant women coming to deliver children at the only large hospital in the county, and so much more. The proposed alternative route would entail the construction of the Siyu Channel to enable use by the small vessels that form the greater part of the boat traffic in Lamu (*ibid.*, 134). Somo was quick to point out that this was not logical:

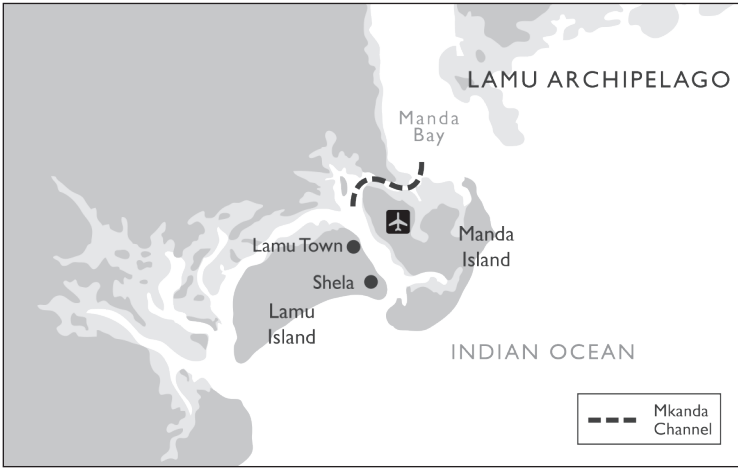
The alternative route is too long. It will endanger the lives of the fishermen and boat captains who ferry goods and people from the islands¹⁶ to Lamu. It will also lead to high losses, as the fishermen will not be able to deliver their catch to the markets on time. The people on the islands are highly dependent on Lamu for medical care. Our women have to be ferried to Lamu to give birth. Can you imagine how many children and mothers would die at childbirth if they have to take a longer route to get to hospital?

This alternative route has also been criticized for being subject to much larger waves, which pose a risk to small boats during the *kusi* season,¹⁷ when the ocean is more volatile. He took a moment

16 He was referring to the islands of Kizingitini, Kiwayuu, Kiunga, Pate, and Faza, which rely on the Mkanda Channel to access Lamu.

17 The *kusi* season is characterized by strong winds that blow between May and November and by rains, rough waters, and silt from the Tana River.

MAP 2
The Mkanda Channel



SOURCE: Adapted from googlemaps.com

to adjust to the thought. I recalled a portion of the EIA that said that, due to this fact, the fishermen of Lamu would need to be trained in deep-sea fishing and would need to use larger and more modern fishing gear and vessels capable of traversing the higher seas (Japan Port Consultants and BAC/GKA JV Company 2011, 170). To this end, the government had promised to provide fisherfolk with modern fishing equipment to enable them to engage in deep-sea fishing, since the costs involved in obtaining such equipment would be prohibitive for the majority of them. To date, no information had been given to Somo or any of the BMU members in Lamu about this development, leading me to ask the question, who implements and enforces the recommendations of an EIA?

I had continually asked myself how it was possible that EIAs are used to assess the potential environmental and social threats posed by development projects to the lives of ordinary Kenyans, while the follow-up on their implementation always seems to prove elusive. Was there a chance that this failure to follow through perpetuated the continued violation of human rights? Meanwhile, the promised modern boats and deep-sea fishing gear remain dreams for Mzee Somo and the thousands of fishermen eking out a living in the archipelago.

Somo then pointed to the article he was reading and said:

At least these people have been paid for their land and the crops which they would have harvested. It may not be much, but it is better than nothing. The livelihood of the fisherman cannot be quantified. He gets what the ocean deems worthy of him. He cannot seek compensation for loss of his livelihood, as the government will not understand his claim.

One interesting argument that has been posited in some circles is the fact that since Kenya's territorial waters—such as those Somo fishes from and Msalam operates his boat on—form public land, fisherfolk using these territorial waters as a source of livelihood should be compensated for loss of economic use.¹⁸ According to this argument, if communities depend on either community or public land for a living, and the state seeks to expropriate that land, the state is expected to compensate such communities. A perfect example is that of the farmers in Taita Taveta and Makueni Counties, who were compensated due to the construction of the railway on their land. Thus, if that is the case, how should communities that use territorial waters for fishing and boating be compensated for the loss of an economic space that sustains their lives and creates income that allows them to buy food, pay for health services, and send their children to school? I stepped away from this crucial yet highly theoretical legal argument brewing in my mind and stared at Somo, who folded his newspaper, placed it under his arm, and picked up his bottle of water. A defeatist aura emanated from him as he stared back at me and said:

We appreciate the changes that LAPSSET will bring. But before all that, the big question is, is it right to suspend our right to sustain ourselves, our right to life and all those other rights which will be violated for the sake of this project?

The proposed construction of the berths and the high risk of accompanying pollution would force the aquatic population to migrate or become extinct. The situation is worsened by the fact that most fisherfolk lack sufficient information regarding the project and the plans that will be put in place to protect their source of livelihood. The safer and more sheltered fishing waters of Lamu would be closed off to a significant number of artisanal fishers,

18 Article 62(1)(j) of the Constitution recognizes Kenya's territorial waters as public land; however, the Fisheries Act allows for regulated fishing activities on these waters.

who would be forced to cope with the new and more onerous demands of fishing the high seas. On another level, the disruption of local fishing arrangements—a centuries-long determinant of social habits and interactions—could lead to the destabilization of the social and cultural fabric of a significant proportion of Lamu’s population.

On the whole, the port’s operations would destabilize fishing activities, putting thousands of people who depend on fishing for their livelihood out of a source of income. The government has not been forthcoming about its plans to cushion fisherfolk from the economic and social fallout that will result from the port. Although fisherfolk have sought compensation for the impending loss of traditional fishing easements, they have been unsuccessful. Some of our partners wrote a letter to the governor of Lamu and the National Land Commission laying out crucial compensation principles that should be considered with regard to the fishing communities likely to be affected by the project. However, to date, neither the governor nor the commission seems to have made any effort to acknowledge this situation, and the matter remains unaddressed.

Kenya’s Enchanted Island

For the next few days, I asked Ahmed, a member of Lamu’s Youth Group and the Kenya Human Rights Commission’s Lamu Human Rights Network, to accompany me on an excursion in Lamu. We visited communities living in and around Lamu. Everything I had read about this beautiful and magical island came to life. Lamu’s population is small: the most recent government-furnished data places it at 101,000 (Kenya National Bureau of Statistics 2010, 62). The islands of the Lamu archipelago speak of a thousand-year-old civilization that developed between the ninth and nineteenth centuries. For centuries, Lamu was on the trading route for ivory, rhino horn, slaves, and spices making their way from Zanzibar to the Middle East. Today, the island retains an eclectic influence of diverse cultures and is known for a number of natural and man-made attributes: a marine ecosystem with rare turtles, seabirds, and fish; national reserves, including Dodori, Kiunga Marine, and Boni; clear seawaters; more than fifty offshore islands; sand dunes; clean and sandy beaches; Lamu Old Town’s imposing nineteenth-century architecture, its narrow streets, and

its fort, built in 1820; and luxurious hotels and holiday homes. Lamu Old Town is a relic of quaintness, being the oldest and best-preserved example of a Swahili settlement in East Africa. It is believed to have been founded in the fourteenth century by rulers and merchants who adhered to a strict observance of Koranic law. The island is undoubtedly the jewel in Lamu County's crown. Nonetheless, no steps have been taken to preserve this richness in light of the potential impact of the LAPSSET project.

As mentioned above, Lamu is home to nature reserves of great local, national, and global importance. These reserves include more than fifty offshore islands and significant mangrove, estuarine, and marine ecosystems. They are home to diverse wildlife, including marine turtles,¹⁹ seabirds, fish, elephants, and buffalos. If the development of the LAPSSET project is not undertaken in a sustainable manner, the ecosystems found in these reserves will become more vulnerable and endangered than they already are.

Impressive nineteenth-century merchants' homes, built on land that was previously covered by the sea, dot the seaward side of the island. Inland are the mud-and-wattle dwellings of the less affluent inhabitants, closely fitted together. The streets are famously narrow. Ahmed explained to me that this narrow street architecture is a cooling mechanism that utilizes the shade cast by adjacent walls over the narrow paths, as well as the air circulation caused by local variations in the warmth of walls and by the breeze of the sea. Remnants of a long-gone epoch were visible in the traditional architecture around me. As the two of us walked along the streets—occasionally stopping and standing against the wall to let donkeys pass—the island's rich history truly sank in.

In 2000, the National Museums of Kenya proposed the inscription of Lamu Old Town on UNESCO's World Heritage List. The text justifying the nomination read as follows:

Lamu is the oldest and the best-preserved living settlement among the Swahili towns on the East African coast. Its buildings and the applied architecture are the best preserved and carries a long history that represents the development of Swahili technology. The old town is thus a unique and rare historical living heritage with more than 700 years of

19 Among them are the endangered dugong species of turtle.

continuous settlement. It was once the most important trade centre in East Africa before other towns such as Zanzibar took over.

Since the 19th century, Lamu has been regarded as an important religious centre in East and Central Africa due to the tarika activities introduced by Habib Swaleh, a Sharif descendant of Prophet Mohamed (P.B.A.H). There are many descendants of the Prophet in Lamu. Their presence has kept up those traditions, which continue to the present day Lamu in form of annual festivals known as “Maulidi”. These festivals are endemic to Lamu and draw the Muslim community from all over East and Central Africa as well as the Gulf. Lamu is an Islamic and Swahili education centre in East Africa. Researchers and scholars of Islamic religion and Swahili language come to Lamu to study this cultural heritage, which is relatively unchanged. The island town has adopted very little modern technology due to its isolation. (UNESCO 2004, 6)

Subsequently, at its twenty-fifth session, UNESCO’s World Heritage Committee deliberated on the nomination and decided to inscribe Lamu Old Town on the World Heritage List under criteria (ii), (iv), and (vi):

Criterion (ii): The Committee found that the architecture and urban structure of Lamu, graphically demonstrate the cultural influences that have come together over several hundred years, from Europe, Arabia, and India, utilizing traditional Swahili techniques to produce a distinct culture.

Criterion (iv): The growth and decline of the seaports on the East African coast and interaction between the Bantu, Arabs, Persians, Indians, and Europeans represents a significant cultural and economic phase in the history of the region which finds its most outstanding expression in Lamu Old Town.

Criterion (vi): Lamu’s role as a centre of trade and its attraction for scholars and teachers give it an important religious function in the region. It continues to be a significant centre for education in Islamic and Swahili culture. (UNESCO 2004, 6)

Further south, leaving the Old Town, one ends up on the more affluent Shela Beach, whose clean white sands and aqua blue waters attract international tourists and local revelers. The plush hotels, apartments, and houses draw in foreign vacationers and wealthy Kenyans on a regular basis. Indeed, tourism has been one of Kenya’s greatest sources of revenue over the years. The development of the LAPSET project must sustain this industry, which provides a livelihood for most of Lamu’s residents.

The road network that feeds Lamu's mainland is decrepit and in bad repair. It has remained untouched for decades, as the government of Kenya has seen no reason to develop it. As a part of the LAPSSET project, however, the road exiting Lamu and traversing the Tana River has recently been placed under a number of contracts for improvement that are being funded by the African Development Bank.

For a long time, Lamu Island managed to maintain its social and cultural identity. However, in recent years, the cultural grandeur of the Old Town has been under threat of erosion, both by pressures of modernization and by the government's general failure to promote the cultural and historical richness of the Old Town in the face of LAPSSET. Most community members I met with were not familiar with the content of the EIA report and were apprehensive about what LAPSSET meant for them and the impact that it would have on their daily lives.

As I was leaving Lamu the next morning, I got a glimpse of the navy's communications masts, which stood high and mighty across the channel. Fish vendors and hotel staff stood on the beach awaiting the arrival of the fishermen, whose sail boats dotted the channel. A distance away stood a man with his hands placed together in front of him as if deep in prayer, with a straw basket laying on its side next to him. As I approached him, I realized that he was holding one end of a nylon string; the other end was cast into the channel. With a sudden jerk, he yanked the string. On the other end of the string, a fish flapped around in panic. The man murmured a prayer as he placed the fish on the beach and put it out of its misery. I stopped to talk to him.

His name was Mohammed. He grew up in Lamu.

While I was growing up I didn't come to the beach often. I joined my father and brothers in the searching for food in the forest and bee keeping. Things changed after rumors that the Lamu Port was coming up. People started showing up from Nairobi and buying land at a throw-away price from the poor people in the villages who did not know any better. I remember the day we tried to access our clearing and found workmen fencing it off. They threatened to beat us if we strayed into that land again.²⁰

20 Conversation with Mohammed Bakari, April 2014, Lamu Old Town.

He tied up his string and left me sitting on the beach, wondering what happened to the people who sold their land. I also wondered about the Aweer people,²¹ a community of indigenous foragers, who would stand to be further marginalized once the LAPSSET project is fully implemented.

Saving Lamu

My interaction with Lamu and its people increased my desire to advocate for social change and environmental justice. In collaboration with other parties, the Kenya Human Rights Commission convened meetings in Nairobi with representatives of the communities along the LAPSSET corridor that would be adversely affected by the project's implementation. The meetings had been called in haste, as there was a clear apprehension that the project would begin despite the communities' grievances not having been addressed. It was here that I met Abdulmunim, a young graduate lawyer and a resident of Lamu. He has played a key role in raising questions about the welfare of the community with regard to the project. Abdulmunim is passionate about human rights and was clearly agitated by what he saw as an absolute disregard for the welfare of the communities living in Lamu:

People of Lamu do not know about the LAPSSET project and the problems that it will bring. The leaders have sold the project with promises of good things, yet they do not tell them that they may not even be the ones to enjoy those things. The people will be displaced, and the government has not shown enough commitment to protect the welfare of those people.²²

21 The Aweer people, who number approximately 2,500, are indigenous forest dwellers who practice hunting and gathering within the Boni and Dodori Forest Reserves. Their villages include Bargoni, Basuba, Milimani, Kiangwe, Mangai, and Mararani on Lamu's mainland. Some are to be found around and within Witu Forest. Their livelihood system is closely aligned to land ownership and use. The Aweer practice a mix of Islam and traditional African religions. Before the gazette notice that demarcated the forests, forcing the Aweer out of their historic dwelling, they would perform religious rituals there. However, the demarcation has restricted their access to their sacred shrines. In recent times, many Aweer have been forced to take up shifting cultivation for subsistence, partly due to the lack of full access and use of their traditional land and territory.

22 Conversation with Abdulmunim Omar, April 2014, Lamu Old Town.

He told me of the petition that had been filed in court seeking an injunction against the project until those grievances were effectively addressed. The main petitioner was Mahmoud Barro, and the petition was supported by the affidavits of over one hundred individuals. The petition argued that the public had not been sufficiently consulted; that the EIA required of the government had not been carried out, despite the fact that a feasibility study authored by Japan Port Consultants had indicated that the port would have irreparable effects on both marine and terrestrial life; that there was limited access to information about the project by the people of Lamu; and that the government had failed to protect the rights of indigenous tribes on the island whose livelihoods depend on the region's biodiversity and culture.

Abdulmunim showed me a notice placed in the newspaper by Kenya's National Environment Management Authority inviting the public to offer comments on the construction of the three berths in Lamu. He went on:

The public participation forum was there, but it was not well attended. The best way to engage the community would have been to use the town crier to announce the public participation meetings. Instead, the administration placed printed notices around the city, yet the greater population of Lamu cannot read.²³

Abdulmunim also told me about the struggle of trying to call the government's and the world's attention to the problems faced by the people of Lamu. He described how civil society organizations in Lamu had asked the provincial administration to inform them of the project. At the time, the main concern was that people would lose their homes. The provincial administration, however, was reluctant to share information on the project, and the provincial commissioner at the time gave them vague information in response to their queries.

He said that the organizations had then decided to form an umbrella body that they hoped would be a more effective advocacy instrument for bringing attention to the issues faced by the people of Lamu regarding development projects on the island. After futile attempts at alternative dispute resolution, they resorted

23 Conversation with Abdulmunim Omar, June 2014, Nairobi.

to picketing and legal action. He showed me a letter that the organization Save Lamu had written to the president of Kenya at the time, Mwai Kibaki (Save Lamu 2012).

When I was back at the airstrip jetty, preparing to depart Lamu, I stared back at the Old Town across the channel. I could not help but think about how the island was going to change over the next few years: an industrial port envisioned to have thirty-two berths, a large resort city, an international airport, a recently announced coal generation plant, and the potential for gas development off Lamu's coast all loomed over the future of the island. In a county where the need for development is ever present—where development projects have the potential to generate positive change and uplift the local economy—a delicate balance must be struck between economic progress and the need to ensure that the rights, interests, and livelihoods of local residents are protected.

As the Air Kenya flight took off, I stared out my window and recalled the fears and doubts expressed by the older generation I had interviewed, including Msalam, Somo, and Mohammed. But some of these fears, which I had also felt myself, were assuaged by the hope demonstrated by young activists like Abdulmunim, who are trying to preserve and protect Lamu's heritage and ecosystem. The optimism portrayed by Abdulmunim and other like-minded individuals can be channeled through advocacy around concrete plans to mitigate LAPSSET's impact on Lamu's residents. Some practical steps that the government of Kenya should take include providing agricultural extension services, allowing access to forests to enable local agriculturalist and gathering communities to produce competitively, and establishing facilitative infrastructure (such as fish cooling plants, canning factories, good roads, access to electricity, and communication) and amenities (such as hospitals, schools, and libraries). In addition, developing the technical and financial capabilities of fisherfolk to adjust to more stringent fishing methods in the event that they are forced to relocate from the more sheltered fishing zones to the open sea will ensure that they are able to sustain themselves.

To protect the island's ecosystem, the government should demarcate national fishing zones to protect aquatic resources from being decimated by indiscriminate industrial and shipping

activities. At the same time, it should grant local fisherfolk access to marine habitats for the purpose of fishing while taking active steps to avert any danger that may arise from the project—for instance, by establishing an insurance fund against oil pollution, instituting grievance mechanisms, and installing the necessary social infrastructure.

Although the government of Kenya has been engaging stakeholders in Lamu in this respect, it needs broaden its outreach to ensure that it adopts the most appropriate approach in implementing the LAPSSET project—one that will safeguard Lamu’s rich cultural heritage and ensure that residents like Msalam, Somo, and Mohammed can enjoy the wealth that Lamu has to offer.

The EIA process offers an important tool for broadening this outreach and ensuring that residents have a voice. The LAPSSET EIA report raised a number of pertinent issues, including oil-spill preparedness and response, the displacement of fishermen, and potential impacts on archeological, cultural, and historical sites. However, the National Environment Management Authority failed to conduct adequate public consultation prior to issuing the EIA and, in doing so, increased the community’s anxiety over the project. While the EIA can be utilized as a tool to secure social and economic justice, the process must be undertaken in a holistic manner that targets the beneficiaries of the project—in this case, the communities that live in Lamu.

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CHAPTER 5
Maya Beekeepers Stand Up
to Monsanto's Genetically
Modified Soy

Karen Hudlet
(Mexico)

*Nobody asked us.
Decisions are made top-down.
We had no idea they were even planting.*
—MEMBERS OF THE CHENERO BEEKEEPERS' COLLECTIVE

In the plaza of Ich Ek—a town in Campeche, Mexico, that is at once traditional and atypical—there is an area used for a variety of social and commercial activities. It is a clean space where the sun becomes unbearable at midday. It is also where community assemblies are held.

On July 8, 2014, the plaza was bustling with preparations for a ceremony. A white plastic tent was erected to protect the audience from the scorching sun, and a long table and a podium were set up, along with wooden chairs lent by the local police station. Later that day, the plaza would host officials from the state of Campeche as part of a ceremony in recognition of the Chenero Beekeepers' Collective and female beekeepers, who had won the United Nations Development Programme's Equator Prize in light of their efforts to preserve the natural environment. Angelica, one of the Maya leaders who had filed a lawsuit against the cultivation of genetically modified soy, had traveled from the mountains in a rickety pickup truck with ten of her colleagues to attend the event. The women were dressed in *huipiles* (embroidered colorful blouses), and the men wore *guayaberas*.

Under the radiant sun and scorching heat, the presentations began. A young girl recited a Maya poem about melipona bees, known as *xunan-kab*—small, stingless bees whose honey has medicinal properties and which the Maya have kept since ancestral times. Public officials then gave some words about their supposed

support for the beekeepers who had won the prize. Finally, the award recipients gave brief speeches. Leydy, one of the leaders of the movement against genetically modified crops, diplomatically thanked the state for its recognition and reminded the audience of the important role that beekeeping played in the municipality.

After Leydy spoke, Gustavo—a devoted grandfather and beekeeper who is also a spokesperson of the same movement—eloquently described the movement’s struggle against soy, noting how public authorities had belittled and even insulted them for defending their bees against genetically modified plants (also known as transgenic plants, or transgenics). He exclaimed, “How can we *not* defend the bees when they are the source of our livelihood?” While Gustavo spoke, reminding public officials that they had been an obstacle, not a support, to the cause, I watched the faces of members of the Chenero Beekeepers’ Collective. Nervous smiles together with proud expressions illuminated the faces of the men and women who, for years, have resisted Monsanto’s planting of genetically modified soy in their municipality and throughout Mexico. The following year, Gustavo, speaking with this same eloquence, would stand before the media to give thanks for the more than 74,000 signatures collected through www.change.org against genetically modified soy that were delivered to the second chamber of Mexico’s Supreme Court.

This chapter tells the story of Angelica, Leydy, and Gustavo, and of the beekeepers of the Chenero Beekeepers’ Collective. It presents a brief analysis of my experience in Hopelchén, when I accompanied these campesinos in their struggle against monocultures, which were threatening their natural environment and their way of life. I hope that the chapter offers a small piece of the history of a struggle that is still being waged.

The first time I heard about the concerns of agronomists, environmentalists, and campesinos regarding Monsanto’s permits to grow genetically modified soy in the Yucatán Peninsula was in 2012. At the time, I was working at Indignación, a local human rights organization in Mérida. At the end of the following year, I returned from a master’s program to work with the same organization. The day after I arrived, the Permanent Peoples’ Tribunal, an international opinion tribunal, held a pre-hearing about Mexico’s policy of extermination against the Maya people.

At the hearing, Leydy was among the victims who provided testimony about how the state's policies have affected Maya culture, autonomy, and access to land. Speaking forcefully and compellingly, she described how the cultivation of transgenic soy would destroy the lives of Maya beekeepers. She spoke with the confidence of an expert in the field, with the exception that—unlike many academics and members of civil society groups—she was able to effectively convey the urgency of the situation. Hers was the authentic voice of someone who will actually have to live through the consequences. Leydy's speech centered on a truth in dispute: "The cultivation of soy and beekeeping cannot coexist." The hearing closed with a presentation by Andrés Carrasco, an Argentinean doctor who is an expert on the negative health effects of glyphosate, a pesticide used to fumigate transgenic soy.

A few days after the hearing, I attended a meeting where people from various backgrounds discussed their opposition to the planting of genetically modified soy. This meeting marked the beginning of my research on beekeepers' opposition to forces that threatened their access to land. During my research period, I worked at Indignación, one of the organizations that litigates against the entry of transgenic soy into Mexico, specifically the state of Campeche.

Hopelchén: A Land of Contrasts

I was told that *hopelchén* means "land of wells" in Mayan. Hopelchén is a municipality of Mexico that, for many years, has demonstrated strong agricultural performance due to its hydrological resources and wide expanses of land. The people of Hopelchén, known as Cheneros, are dedicated largely to agriculture, beekeeping, and cattle raising. However, despite the area's abundant natural resources, approximately 75% of its inhabitants live in poverty (Consejo Nacional de Evaluación de la Política de Desarrollo Social 2012).

Today, Hopelchén is characterized by a diverse population and a contradictory form of rural development. One needs only to look at the rusty metal signs bearing the Monsanto or Syngenta logos in the Mennonite camps, which are surrounded by *tajonal* flowers, to get a sense of the inconsistency: the yellow and orange flowers on which bees forage are juxtaposed against the crops of

agrochemical companies that threaten the local bee population. Will these abundant flowers, which flood the fields in February and March during the beginning of the bee season, survive the deforestation, aerial fumigations, and agrochemicals that are part and parcel of soybean monoculture?

Hopelchén reflects the challenges of the countryside in Mexico and in Latin America in general: the race for natural resources; agrarian policies that promote extensive, mechanized, and even transgenic agriculture over more sustainable models; the erosion of collective land governance; and a complex jumble of competitive and dependent relationships among local actors. In the words of the Ma OGM Collective¹—a collective of civil society organizations, lawyers, academics, honey entrepreneurs, and other interested citizens—the planting of transgenic soy in Hopelchén “will end the virtuous circle in a region in which beekeeping has fostered sustainable human development for years. Breaking this circle will have disastrous consequences” (Fundar 2015). As a Maya beekeeper explained to me, soy represents the end of a certain way of life. And according to a specialist from the Ministry of Agriculture, extensive farming represents the arrival of development.

In my opinion, what this municipality best shows is the range of visions regarding the future of the countryside. The main plaza of Hopelchén’s municipal seat is where, as in any municipal capital, most of the important events in the area take place. Next to it is a restaurant that serves cheese-and-chili empanadas and horchata. The restaurant’s clientele reveals a mix of Maya *huipiles* and Mennonite overalls and checkered shirts. Each group sits at a different table, but they share the same reality: a way of life that is intimately connected to the countryside.

While I watched them, questions filled my head: What does the countryside mean for the indigenous Maya, and what does it mean for the Mennonites? What model is being promoted by state and national authorities? Who decides which model takes precedence, and how does this decision affect different groups? What are the voices of the various actors involved, and how do they make themselves heard?

1 The Ma OGM Collective, or Collective against GMOs, is a close collaborator of the Chenero Beekeepers’ Collective.

A Walk around Hopelchén: Toward a Countryside without Campesinos?

One of the most important issues facing communities in Hopelchén, including Mennonites and the Maya, is that of rural subsidies and poverty reduction programs. In a municipality that prides itself on being one of Mexico's breadbaskets, it comes as no surprise that campesinos worry constantly about the falling prices of their products. In the long lines that form outside the health clinics, where women and children wait for their mandatory check-up in order to receive the government subsidy for poverty "alleviation," one can hear residents discussing the cheap prices that middlemen are paying for tomatoes, the deaths of bees and the government's failure to do anything about it, and residents' desires to undertake small projects for their backyard animals or to receive some pigs.

The comments and complaints that can be heard in each plaza lead one to conclude that the countryside is being subsidized for inequality. In the town of Iturbide, one of the *ejido*² commissioners bemoaned the impossibility of growing corn like he used to; this is the corn his family uses to make tortillas, the corn they eat. Comparing the rising cost of inputs, such as seeds and fertilizers, with the paltry price they receive per ton, the commissioner asked if perchance the government's intention was to push communities to grow soybeans, sorghum, or yellow corn—a type of corn they do not eat and are not familiar with—for export to the United States. Many analysts share the commissioner's sentiment that Mexico's agricultural policy is biased against small-scale farmers, who are relegated to social assistance programs (Fox and Haight 2010; United Nations 2012).³

Residents in the mountain region, in addition to worrying about the lack of government support for the countryside, worry

2 An *ejido* is a unit of communal land managed by rural indigenous or *mestizo* communities.

3 The United Nations Special Rapporteur on the Right to Food demonstrates this bias in his 2011 report on Mexico, which points out that 95% of social programs are spent on the poorest, while less than 8% of agricultural spending goes toward this group. The disparity between these figures shows that agricultural programs address rural poverty not from a long-term perspective but from a welfare-based one.

about deforestation. In Cancabchén, locals told me how the Mennonites have decimated the forest, chopping and burning the trees of an entire hillside. They explained how they can no longer plant there as a result. Deforestation negatively affects beekeeping because it destroys the melliferous flowers that facilitate the production of honey.

This deforestation being witnessed by the Maya has been documented by researchers. From 2000 to 2008, researchers documented a change in Hopelchén's landscape, along with severe deforestation due to the sale and transfer of public lands to private entities and Mennonites (Porter Bolland, Sánchez González, and Ellis 2008). For example, a recent report published by an environmental nongovernmental organization includes aerial photographs and maps that clearly demonstrate the change in soil use and the loss of "Mexico's last forest." In recent years, around 80,000 hectares have been deforested annually in the Yucatán Peninsula. And in 2013, more than 38,000 hectares of tree cover disappeared in the state of Campeche—the greatest loss in the country—partly because of industrial agriculture (Greenpeace Mexico 2015). Therefore, Gustavo's observation that jaguars have been sighted prowling around the apiaries due the destruction of their habitat is not surprising. It is also not surprising that, on more than one occasion, we encountered rattlesnake road-kill; the snakes had been on the road because they were fleeing fumigations.

Traveling around the municipality by car reveals a mosaic of forest conservation zones; mechanized plantations of corn, sorghum, watermelon, and other plants; and the *milpa* crop-growing system. It also reveals recently harvested lands and, from time to time, fires. In the mountainous region, one can bathe in the *aguadas* (Maya water reservoirs) and lakes (if not intimidated by the stories of crocodile attacks) and visit the remains of haciendas and Maya archeological sites.

One Sunday, as I was visiting the archeological site of El Tabasqueño, I saw a Mennonite family standing in awe of the Maya pyramids, a simple scene that reflected the syncretism of cultures within the municipality. Indeed, we must not overlook an important element within the complex panorama of Hopelchén: the Mennonite camps.

The Arrival of the Mennonites

*The person in charge of agriculture insulted us.
He said, "Learn from them, they are productive."
But we have been caring for the forest for years.⁴*
—ANONYMOUS BEEKEEPER FROM HOPELCHÉN

The precedents to soybean cultivation in Hopelchén can be seen not only in rural subsidies that favor agribusiness over small producers but also in the deregulation of the countryside and in the changes to land tenure regulations that favor private property, thus threatening indigenous and rural communities. Agrarian legislation and the reform of article 27 of Mexico's Constitution have made the Maya campesinos of Hopelchén vulnerable. The constitutional reform eliminated the state's duty to distribute land to those who lack it and gave communities and *ejidos* the ability to transform their communal property into private property. It also involved the sale of public lands to private owners in spite of the pending requests of many *ejidos* to expand their territories (Bocanegra Quiroz 2000). This change in land tenure laws facilitated the acquisition of land by Mennonites—some from the north of Mexico, where there were already conflicts over resources—in order to establish new camps.

The Maya population's perception of the Mennonites is unclear. Gustavo, like many Maya campesinos and beekeepers, knows them well. For many years, he worked alongside them picking green chilies. The younger Maya often work for the Mennonites, sometimes as day laborers and other times extracting coal in the Mennonite camps—a job that pays much better than other rural options, even though it is generally illegal given the lack of required permits for the production and commercialization of coal. In either case, the Mennonites generate jobs.

One afternoon, I spoke with a beekeeper from the *ejido* of Packchén whose words illustrate this contradictory relationship between the Maya and the Mennonites:

When they destroyed the hillside area for *mecanizados* [large extensions of land used for a single crop and that rely heavily on machin-

4 Interview with anonymous beekeeper, April 2014, Hopelchén.

ery] and cultivation, the Mennonites affected the rainy season and destroyed the bees' food. But they also generated jobs so that our young ones could return home, because they pay them very well for coal extraction, even though it's illegal.⁵

That same afternoon, a young Maya man returned after working in the coal furnaces. As he calmly drank a strawberry soda and ate some *charritos* (a common junk food in the Yucatán Peninsula), he explained that he returned because he could not find work in the city of Campeche. Although he knows that what he does is illegal and risky, he also knows that he earns more than the agricultural day laborers. We did not talk about how the destruction of the forest being caused by coal extraction will affect the thirty some beekeepers in his town.

For some *ejidatarios* (members of an *ejido*), the Mennonites are not so much a source of employment as a source of rent, given that they often rent the *ejidatarios'* land. The majority of these rental arrangements require the Mennonites to pay a certain amount of money, hand over their state-provided rural subsidies to the *ejidatarios*, and guarantee an accessible price for the rental of their tractors when the *ejidatarios* need them to plant corn. When I asked some of these Maya about their decision to rent their lands instead of work them, they explained that the Mennonites enjoyed the support of the government and the necessary loans to capitalize on them. Others simply pointed to the low price of corn and the expensive inputs as having forced them to make that decision.

In *ejidos* such as Chenko, which is surrounded by Mennonite camps, a visible change in the life of beekeeping campesinos can be observed. Instead of cultivating their lands, these residents now spend their afternoons sitting outside their homes or in the local cantina, living off the earnings from their land rental. In other *ejidos*, such as Xmabén, the community regrets its decision to sell its communal property. A few years ago, the *ejido* sold 5,000 hectares to the Mennonites for 5,000 pesos. Today, it regrets that sale because the government program that provides compensation for environmental services would have guaranteed better earnings for the community, in addition to conserving the *ejido's* forest so

5 Interview with anonymous beekeeper, May 2014, Pakchén.

that it could be used for apiaries and as a source of wood for local carpenters who sell boxes and frames for beekeeping. This land has since been deforested and is now being used for *mecanizados*. One of the *ejidatarios*, who is also a beekeeper, had openly protested the sale of the land at the time but was ignored by fellow *ejidatarios*. He still regrets the community's decision: "We learned late, but we learned. Other *ejidos* lost even more land."⁶

In general, the Maya's vision is one of imbalances. During my visits to Hopelchén over the course of several months, I heard a variety of statements to this effect: "The Mennonites came here and destroyed all the forests we had cared for"; "The government gave the Mennonites lands that we had been requesting for years for our *ejidos*"; "The Mennonites have the support of the government"; and "The Mennonites discriminate against the Maya; they don't see us as equals." These are just some of the sentiments of injustice expressed by Maya *ejidos* and communities. At the same time, these sentiments are juxtaposed with a vision of complementarity. For example, the Mennonites generate jobs. In other cases, the Maya have land and the Mennonites have the inputs. There is also an exchange of knowledge: the Maya sometimes teach the Mennonites how to handle bees, and the Mennonites share techniques for farming with improved seeds and fertilizers.

The Festival of Corn and Honey . . . and Soy? Changes to the Maya upon Accessing Land

Ich Ek, the town where the award ceremony mentioned at the beginning of this chapter took place, is an *ejido* where community assemblies are strong local institutions, forest conservation regulations are strict, and inhabitants are presumed to make good decisions (as can be confirmed by their higher income compared to neighboring towns). It is also an *ejido* where the sale of land to outsiders is prohibited—although this does not necessarily mean that some *ejidatarios* have not acquired large expanses.

One resident I met is Emiliano, who lives in front of the plaza and can often be heard from the street singing "La Donna é mobile qual piuma al vento" with a superb opera voice. His history

6 Interview with beekeeper and *ejidatario*, February 2014, Pak-chén.

offers a glimpse of the town's beekeeping story. Emiliano used to lead a cooperative that sold honey under a fair-trade scheme. Like most beekeepers, he learned the trade from his father.

Beekeeping of the native melipona bees is an age-old Maya activity dating to pre-Columbian times. Even today, the Maya continue to produce and consume this native honey. Emiliano's sister, who lives with him, is one of the members of an organization that sells artisan goods derived from this green and not-so-sweet honey with curative properties. The Maya's knowledge of raising melipona bees has been used to raise European and Africanized bees, which are raised today to produce an important quantity of honey.

Hopelchén is home to around 1,500 beekeepers and more than 50,000 beehives (PROGAN 2009). Beekeeping, together with agriculture, cattle raising, and non-rural work, sustains local Maya families in a mixed campesino economy that includes subsistence and commercial activities (Sands 1984) and that gives the name to Hopelchén's festival of corn and honey. For others, beekeeping represents a chance to earn extra money, as it allows them to compensate for a bad year of crops. Similarly, many beekeepers point to the resources generated by beekeeping (specifically during years when the price of honey was considerably high) as allowing them to pay for their children's education in the city of Campeche and to guarantee the family's access to health, among other necessities, including expenses for the Day of the Dead.

Possibly as a result of its beekeeping tradition and valuable melliferous flower, the Yucatán Peninsula is one of the biggest producers of honey in the country and the world. Mexico is the seventh-largest producer and fourth-largest exporter of honey, the majority of which is produced in the Yucatán. Honey from this area is prized for its quality, scent, flavor, and color. Honey varieties are classified according to a spectrum of colors, ranging from yellow to orange to red and, in some cases, to almost black. Each has a distinct flavor and consistency resulting from the blooms of the season and the locality. Beekeepers talk about their honeys with pride, boasting of the sweet flavor of the yellow honey derived from the *tajonal* flower and the intense scent of the red honey from flowers such as *xavín*. All of these honeys are for export and are rarely found in their pure state, since they are combined with other less attractive varieties before hitting the

market. For me, my time in Hopelchén was the first opportunity to try these honeys in their unadulterated form.

Emiliano was one of the founders of the largest honey cooperative in Mexico, Miel y Cera Campeche. Years later, he helped form the cooperative Lol Cab, which sought to export organic honey directly to Europe, avoiding the problems and losses associated with having to deal with intermediaries. He was a witness to the various barriers placed in the way of the Maya's access to land⁷ and natural resources.

The first factor that has limited this access is the sale of public lands to Mennonites, private individuals, and companies. This has restricted the Maya's possibility of obtaining more lands in the future for their *ejidos*, despite the fact that many had previously asked for their *ejidos* to be amplified. The second barrier to land and natural resources is the subsequent change in soil use and the destruction of forests, which has prevented Maya beekeepers and *ejidatarios* from extracting forest resources. As a result, their bees no longer have access to the melliferous flowers they need. Gaudencio, from Dzibalchén, described the situation well: "I was a beekeeper and I used to sell honey. But after there was no longer any forest, in Dzibalchén we sold our land, and there was almost no more honey. So now I have a store and I don't keep bees."⁸

A third possible barrier exists: the planting of transgenic soy in a region reliant on beekeeping. Even though this biotechnology does not directly dislodge beekeepers from their land, it threatens their access to honey markets. Bees generally forage for nectar within a one-kilometer radius, though in times of scarcity they can travel up to three kilometers.⁹ In this sense, bees may forage

7 Based on Jesse Ribot and Nancy Peluso's theory of access (2003), if we understand access to land as the ability to obtain benefits from land, its resources, and related income, we can grasp the real and potential scope of these changes for beekeepers. The theory of access is broader than the right to property and includes legal and illegal means, as well as various mechanisms (technology, assets, markets, authority, knowledge, identities, and social relations) that allow one to acquire, maintain, and control his or her access to land and natural resources.

8 Interview with Gaudencio Dzul, March 2014, Dzibalchén.

9 Amicus curiae presented to the Second Civil Court of the Thirty-First Circuit Court by the Unión de Científicos Comprometidos con la Sociedad and the Colegio de la Frontera Sur, October 2012.

within the *ejido* forest, local crops, the Mennonite camps, and fields owned by private companies. In other words, beekeepers cannot control, even by placing their apiaries farther away, where their bees ultimately obtain their pollen.

This last barrier to beekeepers' access to land emerged in 2010, when the Ministry of Agriculture granted permits to Monsanto to cultivate 253,500 hectares of glyphosate-resistant genetically modified soy. It is possible that this action—which ignored the warnings of the National Commission for the Knowledge and Use of Biodiversity, the National Institute of Ecology, and the National Commission for Natural Protected Areas that such crops could negatively affect protected areas, the underground aquifer, and the rights of beekeepers—has led to an irreversible negative impact on the environment and the way of life of 25,000 families of beekeepers and campesinos.

In response to the granting of these permits, a broad civil society movement emerged against transgenic soy.¹⁰ The personal testimonies of the beekeepers who have struggled to enforce their human rights and their rights as indigenous peoples lead one to question the effectiveness of national law in protecting beekeepers' access to land and natural resources. Moreover, the time frames established by law stand in stark contrast to the reality being experienced on the ground; although years have passed since beekeepers first expressed their concern over transgenic soy, their future remains unknown.

During the time that I have followed this case, thousands of hectares have been deforested to make way for soybean crops; *aguadas* have dried up; extraction wells have been drilled; and the use of agrochemicals has increased. But at the same time, the beekeepers' movement has become stronger as they await the ruling of the Supreme Court.

10 This chapter focuses on the resistance of Maya beekeepers in Hopelchén, Campeche. However, similar struggles have taken place in Yucatán, Chiapas, and Quintana Roo.

David against Goliath: Maya Beekeepers against Monsanto

When Leydy told me her story, she began by recalling how she used to pass the time sitting by a window facing the main street of Ich Ek. The window was from her uncle's grocery store, where she had worked for many years. Then, her life slowly changed as she began to participate in workshops on human rights, gender, and the environment. Leydy was a "direct beneficiary" (in the parlance of international aid agencies) of some of the many projects implemented by development organizations in the municipality of Hopelchén; and within that wave of projects, her life took an important turn.

With other Maya women, Leydy founded Kooel-Kab/Muuch-kambal, a community organization that promotes beekeeping, organic agriculture and agroforestry, gender equality, and community participation. Leydy is a beekeeper who works with melipona bees. Like other members of the organization, she sells her products at various fairs and venues, which has allowed her to significantly increase her income.

Leydy is also a member of the Chenero Beekeepers' Collective. "In this municipality, beekeeping is just as important as corn, but there aren't any committees or specific bodies focused on the issue."¹¹ To respond to this gap, and after learning about the planting of genetically modified soy, a group of beekeepers from thirteen communities in Hopelchén organized the collective.

The stage was set for collective action, for the beekeepers had a combination of grievances and social capital. In the mountains, bees were increasingly dying from an unknown illness; even today—despite visits to the communities by experts and advocates eager to investigate the situation—the precise cause remains a mystery. As one beekeeper explained during a focus group, "You take your bike or the pickup truck in the morning, you enter the forest, you go to the apiary to bring food, and when you arrive you find a heap of dead bees outside the boxes. And just like that, you are left without a livelihood."¹² On top of this illness

11 Interview with Leydy Pech, March 2014, Ich Ek. All quotations from Leydy in this chapter derive from this interview.

12 Focus group with beekeepers, March 2014, Cancabchén.

that is killing the bees is the fear of the effects that agrochemicals could have on them. As the beekeepers said, "Our biggest fear is that the bees will die."¹³

Leydy explained to me, "We were also scared that we would no longer be able to sell our product. We were worried about the closing of the European market [because the honey could be contaminated]. People depend on beekeeping." Beekeepers' fear of losing the European market is no small issue. In 2011, the European Court of Justice ruled that pollen was an ingredient, not a component, of honey. This declaration meant that due to overlapping areas between Monsanto's permit and bees' foraging radius, on top of the new rules of the European market, it was possible that Hopelchén beekeepers' honey could be refused entry. Indeed, beekeepers claim that around this time, more than forty tons of honey were diverted from the European market as a precautionary measure to protect the reputation of honey from Campeche.

According to the European ruling, if laboratory tests revealed that transgenic pollen made up more than 0.9% of the total pollen, the honey's label had to indicate that it contained genetically modified ingredients. Even though the court's ruling has since been revoked and standards have been made more flexible, it is not uncommon for European dealers to require lab tests showing that the honey is free from transgenics. This, of course, increases costs for honey producers.

Hopelchén communities' prior experience with cotton served as a warning regarding the possible negative impacts of an external monoculture subsidized by the government. Indeed, this experience is likely but one of many such stories in which public officials, from their comfortable offices in Mexico City or the capital of Campeche, decide that the best thing for a particular area's rural development is this or that formula because it worked somewhere else. Leydy explained:

What worried me most about the transgenics was that the government would promote genetically modified soy and people wouldn't know how to work with it. When they introduced cotton, we got plagues and white flies, which affected us for years, even after they stopped

13 Ibid.

cultivating. They brought people from outside and didn't give jobs to the Maya.

In Suc Tuc, another town of Hopelchén, the community had to deal with massive bee deaths. José Manuel, a member of the Chenero Beekeepers' Collective, recently opened his own distribution center with the aim of paying better prices to local beekeepers. He does not want beekeepers to be taken advantage of, as is often the case at other distribution centers in the region, which rig their scales and honey refractometers. He told me, "I guarantee a good price for beekeepers from the region, and because of that I have their respect. In my distribution center, even though there are no fences, nobody steals anything."¹⁴

In the face of the sudden death of bees in José Manuel's town after fumigations had taken place at a nearby ranch, beekeepers demanded an explanation and compensation. In the end, the effort created rifts among them, for some received less money than others; moreover, there was never any justice, nor did the beekeepers find out what the cause had been. "The labs didn't dare tell us the cause of the deaths of our bees. We know that it was the chemicals," said José Manuel.

The collective's first steps thus involved the creation of a common agenda that identified risks to beekeeping, including transgenics and deforestation. Leydy noted:

The building of the beekeeping collective hasn't been easy, and the transgenic issue gave it strength. We entered into a dynamic of learning about what transgenics are and how they affect beekeeping . . . Then we spread our message to the communities, to representatives of beekeepers, and to local authorities. That's how we began to grow.

She also stated that "people latched on to the issue because every town has beekeepers." Leydy's position on transgenics is clear: instead of focusing on the scientific-technical debate over the possible impacts of glyphosate and agrochemicals on bees, or on the question whether bees forage soybeans, she focuses on the town's participation in the policies that affect people's access to resources.

14 Interview with José Manuel Poot, April 2014, Suc Tuc. All quotations from José Manuel in this chapter derive from this interview.

Transgenics are a larger issue—they don't have to do with whether the people want them or not. They are questions that are decided from above . . . That is what we explained to the communities: if transgenic soy has arrived, it's because the government wanted it that way and allowed it to happen. It is a political question, and it has been from the very beginning.

The beekeepers' movement began by seeking corrective measures before authorities through dialogue. Leydy recalled, "At the beginning, we wanted the government to sit and listen, but that didn't happen." She continued:

We approached the authorities to ask them to commit to beekeepers—the governor, the Ministry of Agriculture, and Campeche's Ministry of Rural Development. We asked the government to intervene, but it didn't. So then we realized that it was about defending the poor, that the government was not on our side. The government isn't going to defend you—it supports transgenics.

This change from seeking direct dialogue with authorities—or, rather, relying on the government to offer a solution—to voicing more proactive demands is critical. To understand Campeche, I tend to think about how one of my professors used to compare Mexico's territory to Gruyere cheese: in spite of advances in democratization and transparency at the federal level, some states have deep holes where *cacicazgo* (chieftancy), corporatism, and handouts are rampant.

At this point, the Chenero movement focused on spreading awareness. Authorities had not disseminated any information to communities about the permits issued for transgenic soybean crops, and residents did not know what the planting of this monoculture entailed or how it might affect them. At Maya meetings and assemblies, the collective projected (when technology permitted) videos and presentations explaining (i) what transgenics and their possible side effects are, including the results of scientific experiments on glyphosate's toxicity; (ii) the health consequences of glyphosate on communities, using the case of El Chaco, Argentina, as an example; and (iii) the possible consequences for the price of honey.

Then, some members of the collective, together with the cooperative Miel y Cera de Campeche, collected signatures. In all, more than 3,000 beekeepers signed a petition against the planting

of transgenic soy. Members of the collective visited various communities of Hopelchén and Calakmúl, where they spoke with beekeepers. They were successful in spreading their message, perhaps because of the camaraderie shared among beekeepers and also because the message was delivered in Mayan. Leydy commented, “I thought that they weren’t going to believe me in some towns because I’m a woman, but that was never a problem. All the meetings were in Mayan, and we forged relationships.”

The collective also held various meetings at the Mennonite camps, where they projected slides on transgenics—specifically, transgenic soy—in barns full of men who listened attentively. Then the men would ask questions: If they didn’t plant soybeans, what would they plant? If transgenic soy is so harmful, why is it grown in other places and why does the government support it?

Maya Beekeepers’ Repertoire of Contention

The protests were important. I had never taken to the street, and although we were a small group, there we were.

—FELICIANO, MEMBER OF THE CHENERO BEEKEEPERS’ COLLECTIVE

In addition to awareness-raising activities, the Chenero collective organized several protests. Aerial photos of thousands of Maya beekeepers using their bodies to form the phrase “MA OGM” (“no genetically modified organisms”) on archeological sites in the Yucatán and Campeche became world famous after being published by Mexican and international media outlets. In Hopelchén, the collective organized more than 200 people to form those letters on a *mecanizado*. The picture that was taken from the sky with the support of Greenpeace shows the landscape of an uncultivated *mecanizado* surrounded by the lush forest of Xtampac. For the Chenero collective, this was a key moment that allowed members to witness their convening capacities at the community level. It was also a critical achievement for the Ma OGM Collective, which collaborated with the Chenero collective and other actors to spread the word about the action. In fact, the event was what inspired the Ma OGM Collective to choose its name.

Then came the legal battle against the giant. Two *amparo* lawsuits were filed on behalf of Campeche. The first was filed by local

authorities from Pakchén and Cancabchén. The second was filed by five beekeepers' cooperatives, including large ones such as Miel y Cera de Campeche and small fair-trade ones such as Lol Kax. These lawsuits sought to protect Maya communities' right to consultation, pointing to the fact that nobody had asked the communities whether they wanted transgenic soy to be cultivated on their territory. At the same time, the lawsuits alleged that Mexican authorities, in their desire to please Monsanto, had failed to comply with their own rules and procedures.

Together with the lawsuits came the first suspension. In June 2012, the Second District Court of the state of Campeche ordered the suspension of transgenic soy crops while the case awaited a decision, on account of the irreversible harm that beekeepers could potentially suffer. Feliciano, a beekeeper who is part of the Chenero collective, said that the suspension, despite later being revoked, was a key win for the movement: "Now we know that things can be done even without the authorities on our side. When the [suspension] was handed down in favor of beekeepers, people were happy—they felt vindicated, stronger. If we hadn't won this, I don't know if there would be a collective."¹⁵ Feliciano's words illustrate the exhilaration that the collective felt upon discovering that it had managed to beat a giant: "It was the suspension that kept us going. We didn't think we'd win, but now we know there are ways."

However, soon after, the beekeepers learned about the limits of judicial mechanisms. One beekeeper explained, "A bag of seeds fell off a Mennonite truck, and it turns out they were transgenic. Then a cultivation appeared in the Mennonite camp of Las Flores, and that made people angry."¹⁶ With the support of academics, the community established a monitoring initiative for soybean crops. Through this effort, they discovered that despite the judge-ordered suspension and the fact that such cultivations had become a federal crime, transgenic soybeans were still being planted in Hopelchén. This marked the first failure of the executive branch to ensure that relevant judicial orders were being complied with.

15 Interview with Feliciano Ucán, May 2014, Ich Ek. All quotations from Feliciano in this chapter derive from this interview,

16 Interview with anonymous beekeeper, April 2014, Hopelchén.

During the legal process, state and federal authorities showed their inclination toward a corporate countryside model. For example, they criticized soy opponents, made statements in favor of transgenics, showed complicity with transnational companies by not monitoring compliance with the rulings, and filed appeals against beekeepers.

In the newspapers, the head of Campeche's Ministry of Ecology used the word *coyotes* (dishonest intermediaries) to refer to the academics involved in the process, whom he accused of working on behalf of Yucatán honey producers seeking to undercut Campeche honey. Similarly, on several occasions, authorities asked Maya beekeepers to provide proof that transgenics were harmful to honey and their way of life. "They treated us like we were ignorant, but we organized and brought them documents on honey, glyphosate, and our rights," Feliciano commented. Authorities also repeatedly voiced the virtues of soy for the region's economic development. Even more alarming were the statements of a delegation from the Ministry of Agriculture claiming that despite the beekeepers' victory with the *amparos*, "throughout the country there is a total liberalization for the commercial farming of soy and Campeche is part of the country. There is permission for planting glyphosate-resistant soy" (Verebélyi 2014).

The suspension of soy cultivations was short lived. Not long after the suspension was issued, a circuit court revoked it, telling the communities that they would need to pay twenty million pesos to have it reinstated in order to compensate Monsanto for possible economic losses. Like all judicial battles, this was and continues to be a long process. Currently, the case awaits a final ruling from the Supreme Court.

Within the framework of the International Day against Monsanto, the Ma OGM Collective and Chenero Beekeepers' Collective organized a demonstration featuring the arrival of a "Monsanto" pirate ship to the coast of Campeche, where it was successfully fended off by beekeepers. This was an allusion to the colonial era, when pirate ships arrived on Campeche's shores to invade the territory.

The day before this protest, state authorities contacted the beekeepers to try to dissuade them from protesting. The officials claimed that they were not going to allow transgenic soy

to be planted that year given the importance of beekeeping to Campeche. “The secretary of government told us, ‘No noise, no scandal, soy will not be planted this year.’”¹⁷ The Campeche government’s false promises and double standards appear time and again in this story. As one beekeeper commented, “We weren’t sure if we should protest or not, but in the end we went out, and what a relief that we did! Fifty days after they told us there wouldn’t be transgenic seeds, we found out that 14,000 hectares of transgenic soybean crops had been planted.”¹⁸

Community monitoring has also been key. “We didn’t know what the soy plant looked like,” one beekeeper told me. “We had to learn how to identify it . . . We entered the Mennonite camps and searched for soy, we all cooperated, we all dedicated our time, then we used ELISA kits to see if the plants were transgenic.”¹⁹ The results of the most recent monitoring effort led to legal actions before the Federal Bureau of Environmental Protection, the Ministry of Agriculture, and the Second District Court of the state of Campeche, in which beekeepers denounced the illegal cultivation of genetically modified soy in Campeche.

At the same time, the collective has spoken at a range of venues and events, including the Permanent Peoples’ Tribunal, the visit of Greenpeace’s *Rainbow Warrior* to Cozumel, and regional fora on the rights of indigenous peoples. One important occasion was Leydy’s speech on behalf of Chenero beekeepers during a thematic hearing at the Inter-American Commission on Human Rights. The hearing—which various civil society organizations had requested to discuss the loss of Mexico’s biocultural patrimony and the violation of the human rights of indigenous peoples and campesinos—addressed a range of problems related to the right to consultation, its scope, and its implementation in Mexico.

The beekeepers also met with the Mennonites to discuss transgenic soy and explain its possible impacts, in addition to explaining that planting soy (during the time of the court-ordered suspension) was a federal crime. This rapprochement began in Las Flores, where there were more than 200 Mennonites. The usual

17 Interview with anonymous beekeeper, April 2014, Hopelchén.

18 Ibid.

19 Ibid.

entrenched positions were voiced: "Transgenic soy is an economic question," a Mennonite would say; "These cultivations threaten our bees and our health," a Maya would respond. "Beekeepers take advantage of our roads," a Mennonite would argue; "Our bees pollinate your cultivations," a Maya would answer.²⁰ One day, I accompanied the beekeepers on their visit to the Mennonite camp of Yanlón. Contact between the two communities had been made through Gustavo, who worked for many years with the Mennonites and has a good relationship with their bishop. After arriving, we patiently waited as the barn filled up with more than 150 people, all men, all dressed in their traditional denim overalls. After everyone had arrived, Leydy and Gustavo gave a presentation on transgenics. For two hours, the audience was captive. At the end, during the question-and-answer session, questions centered on the pragmatic: What would they plant, then, with corn being sold at such a low price? Is agroecology viable?

We still do not know whether this dialogue persuaded Mennonites to change their cultivation practices—but it has allowed for a rapprochement among parties. In the words of one beekeeper:

Since we began working with the Mennonites at meetings, I have seen that they are also unaware of what is happening. If we involve them in these problems, they will stop living in a world apart and will be made aware. Mennonites don't know what the crux of the problem is because they live apart from us, but they are using up all the water and destroying the forest and they receive lots of government benefits, so they must take part.²¹

The struggle over transgenic soy has centered on the search for common viewpoints between Maya beekeepers and the Mennonites, as well as the need for the state to subsidize other, less harmful crops. Although the Maya and the Mennonites have not always shared the same visions, the beekeepers have tried to avoid a direct conflict with their fellow neighbors.

20 Statements made during a meeting, January 28, 2014, Las Flores, Hopelchén.

21 Interview with anonymous beekeeper, February 2014, Hopelchén.

Indigenous Maya Win the Battle against Monsanto!

The above phrase was the headline of local, national, and international newspapers after the historic ruling in favor of the Maya beekeepers was handed down in 2014, suspending Monsanto's permit to plant transgenic soy in Campeche. The day it was issued, we went to the courthouse, as we did every week, to see if a decision had been made; finally, the clerk gave us the document. For several minutes, the beekeepers' lawyer was silent. He then handed the document to Leydy and I, who read the last page over and over—and even though we could sense the victory, we still weren't sure. Finally, the lawyer broke his silence and said, "We need to hold a press conference."

The main grounds for suspending the soybean permit was the violation of communities' and Maya beekeepers' right to consultation, as recognized in Convention 169 of the International Labour Organization. The court's ruling suspended indefinitely transgenic soybean crops in eight municipalities in Campeche (all of those in the area of Monsanto's permit). It was a groundbreaking achievement after two years of struggle and litigation. In order to reactivate the permit, the Ministry of Agriculture would have to hold a free, prior, and informed consultation—in accordance with the highest standards of human rights—for the Maya communities located in affected municipalities.

Both the state and Monsanto have filed appeals. The beekeepers have also requested that the case be resolved in the country's Supreme Court. The case is fundamental for the livelihoods of more than 25,000 beekeeping families in Mexico (including those of Gustavo, Angelica, Leydy, Emiliano, and José Manuel). It is also extremely important in terms of the precedents it sets for the cultivation of transgenic corn in Mexico. Moreover, it presents an opportunity to establish criteria for a methodology that authorities must implement when holding consultations. Finally, it opens up the possibility that the Supreme Court will rule on the precautionary principle in relation to the use of agrochemicals, problems that other countries in the region, such as Colombia and Argentina, are facing.²²

22 This chapter was written prior to the ruling issued by the Supreme Court on November 4, 2015, in which the court recognized

They Have Won the Battle, but Not the War: The Road to the Supreme Court

Maya beekeepers' resistance movement against transgenic soy in Campeche has had important—and even unexpected—wins.

Members of the Chenero Beekeepers' Collective express a variety of expectations: "Work on becoming stronger with the dream that one day we can address the beekeeping issue." "[The collective] can have political clout if we sustain ourselves and keep growing." "The collective is important because it benefits a public good that nobody else has fought for." "We need to take advantage of our image right now in order to do things well."²³ In the future, the most likely scenario is that the beekeepers of Hopelchén will continue their struggle against genetically modified soy. Perhaps they will also become involved in other areas, such as efforts to increase their beekeeping income through cooperatives or more direct relationships with consumers, or to eliminate the harmful practices of the *coyotes*. In fact, today, some of the beekeepers' children have launched agroecology projects.

Maybe the Supreme Court's ruling will protect Maya communities' right to consultation. Or perhaps it will give practical meaning to the precautionary principle or the *pro natura* principle in Mexico. Perhaps the decision will simply require that the complainants be consulted, without taking into account their membership in a collective. What is certain is that the beekeepers have won important battles, but the discussion on rural development in Hopelchén and in much of Mexico remains on the table.

For me, the chance to accompany the beekeepers in their struggle was a unique experience. In Hopelchén, I was able to better grasp the contradictions of rural development and the need for indigenous populations to defend their way of life. I remember when Angelica, who was the municipal president of Cancabchén when the legal proceedings began, explained bluntly that they were Maya, they lived as Maya, they had Mayan names, they spoke Mayan, and they wanted things to remain that way.

Maya beekeepers' right to consultation (see Fernández, Hudlet, and del Pozo 2015).

23 Focus group with beekeepers, April 2014, Campeche.

Some studies show that transgenic soy is no more profitable than beekeeping (Rivera de la Rosa and Munguía 2012); others demonstrate the possible negative impacts of pesticides on bees (Budge et al. 2015); and still others document the negative effects of glyphosate on human health (Center for Environmental Research and Children's Health n.d.).²⁴ Indeed, the World Health Organization recently announced that glyphosate is probably carcinogenic. In the case of Hopelchén, I believe that beekeeping presents a viable alternative for an inclusive and sustainable countryside. Nonetheless, the government stubbornly promotes a genetically modified soy monoculture. Until now, the courts have acted as an important traffic light for the executive branch. But this case raises profound questions about the links between human rights and social justice.

After years of struggle against transgenic soy in the state of Campeche, after two favorable rulings against this monoculture, and with the case on the verge of being decided by the Supreme Court, it is still unclear what the impact of these rulings will be for the communities. What will happen with the right to consultation in Mexico? And what happens when the rulings are not complied with and, in spite of the court-ordered suspension, transgenic soy continues to be cultivated? In the words of Jorge Pech, when asked about the situation in Hopelchén, "We are tired. We won a few cases and they continue to grow transgenic soy. We are going to go to the Supreme Court, and what is going to happen? Who can promise us that this will be the end of the battle?"²⁵

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CHAPTER 6

Of Love, Privilege, and Autonomy

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(India)

* I would like to express my deep gratitude to my colleagues at Kanuni Salah Kendra in Dang and at the Centre for Social Justice in Ahmedabad, without whom this chapter would not have seen the light of day. I would also like to acknowledge the Dalit, Bahujan, and Adivasi writers on the online platform Round Table India, whose writings have decisively shaped my perspective and position on the politics of contemporary Indian society.

This chapter is written from a deep sense of concern for understanding how notions of love, privilege, and the autonomy to govern oneself interact (or should) with one another in a society that is deeply political, divided, and unequal. But before I begin, I must pose a question whose answer is central to our understanding of the issues that will be discussed throughout.

The question is this: what is the nature of the state?

In contemporary political discourse, we often speak of the state as a monolithic creature or a distinct entity that is responsible for the welfare of its citizens. We think of the state in a state-subject binary, where, on the one hand, the state exists with its own identity and, on the other, subjects or citizens can be found. However, such an understanding fails to account for the complex nature of society. It does not explain the fact that beyond the state-subject binary there exist relationships between people themselves. These relationships determine the social order: who is more powerful, who has certain privileges, who is denied their basic rights, how labor is exploited, and how these realities come to define the kind of society we live in. The state then has to be understood as a political category that reflects the prevailing social relations in society, where the ruling class wields immense power, often to the detriment of others in society. To imagine a society that is just and equal must then compel us to think of how we can transform these relationships—where questions of power, autonomy, or justice are no longer subverted through the state-subject binary but in fact seen as fundamental to the relationships between people themselves.

I will begin with the idea of love.

In her seminal book *All About Love: New Visions*, author, cultural critic, and black feminist bell hooks renders a touching account

of the lovelessness that abounds in society today. She points to the fact that as cultures, and as individuals conditioned by such cultures, we do not discuss love enough in our private spaces or in public. As a society, we have failed to understand what love truly means and have in fact desisted from defining it for ourselves (and others), since it is a stark reminder of the actual lack of love that is so conspicuous in our everyday lives.

In an extremely honest critique of such a society, hooks also offers hope and direction toward creating cultures where “love can flourish.” She gives us radical new ways to think about and practice love—ways that can transform our lives. She underlines the importance of values and the need to live by a love ethic. Echoing the sentiment that as long as our psyches are driven by an obsession to dominate or control, love cannot prevail, she points out in a beautiful paragraph:

The underlying values of a culture and its ethics shape and inform the way we speak and act. A love ethic presupposes that everyone has the right to be free, to live fully and well. To bring a love ethic to every dimension of our lives, our society would need to embrace change. (hooks 2001, 87)

I believe in the power of love. I believe in its power to transform, to humanize, and to liberate. I also believe (like others) that as human beings who are (and must be) concerned with questions of justice and injustice, of right and wrong, of power and powerlessness, we cannot imagine justice without love, just as there is no love without justice.

But as someone whose primary vocation is to work, within the discourse of human rights, with the law, legal systems, and their impact on the lives of people, I feel it is as important to *define* this love ethic within the public space as a universal discourse—a discourse that must serve as an ethic to judge our personal and political actions, or as a lens to wear and critique the world around us.

If the idea of justice is relational, and based on the relationships between the ruling class and oppressed classes, then an ethics is required to alter the terms of those relationships. It is here that love can enter and transform such relationships. There is something universal about love, and implicit in it is the desire for the *other* to grow and become freer—to engage dialectically and, in the process, enable the growth of both the *self* and other.

A relationship of love is one that challenges existing power equations, respects the other's autonomy, and, most importantly, creates conditions for the other to improve its capacities and realize the self. The love ethic is then very conscious of political realities, of responsibility, and a commitment to change the status quo. Above all, it is about politicizing love and bringing love into the political.

This chapter is based on some of my experiences and interactions during my work as a human rights lawyer in Dang District, India. In the following pages, I will explore the idea of a love ethic by examining questions of privilege, power relations in society, the nature of the state, and the relationship between the personal and the political. I will also look at how the Panchayats (Extension to Scheduled Areas) Act of 1996, a law that provides for the self-governance of certain communities known as Scheduled Tribes, can be understood within the framework of the love ethic.

Personalizing the Political

Dang District is nestled in the densely forested Sahayadri Hills in southern Gujarat, a state in Western India. Spread over a terrain that consists of layers of overlapping hills adorned by tall deciduous trees, the region is interspersed with winding rivers and shifting fields. In small valleys and along river beds lie hamlets, minor habitations, and villages, remote and often hard to access by road, where people go about ordinary routines: subsistence farming during the day and community gatherings around tiny bonfires at night. The topographical terrain of Dang is marked as much by its social geography and political relationships as by its socioeconomic realities. Historically, its land and natural resources have belonged to the communities who settled in the region hundreds of years back. However, during the course of history, Dang has been consistently invaded by an influx of outsiders, beginning with the British colonialists who exploited the communities for their land, timber, and natural resources, followed by the Christian missionaries with their civilizing and evangelical mission, and ending more recently with right-wing Hindu fundamentalist groups with their nationalist agendas. Equally pervasive has been the recent entry of civil society organizations with their own agendas of ensuring development and human rights

for the communities. Throughout the presence of these “other actors,” the state—another outsider in the political and cultural history of Dang—has been conspicuous by its ineffectiveness in addressing issues of unemployment, landlessness, violence, poverty, social exclusion, and the encroachment of land, resources, and the autonomy of local communities. As a consequence, basic socioeconomic and civil-political rights are denied to citizens, and an ineffective bureaucratic clergy, along with institutional barriers, has rendered the legal system inaccessible to the majority of the population. The underlying subtext here is the relationship that each of the actors has entered into with the local communities and patterned as a site for reproducing disparities in power and privilege.

Ahwa, the headquarters of Dang District, is transitioning from a village to a town. The entire village is located on either side of a two-kilometer arterial road. Our law center, Kanuni Salah Kendra (KSK), is located in a tiny lane in one of the colonies. It consists of two huts made of dung walls, covered with tin roofs with gaping holes. The office space is divided into three rooms, a kitchen, a small bath area, a toilet, and a backyard. This space and its work is managed by community lawyers and paralegals who are a part of a movement—led by the parent organization the Centre for Social Justice—that has been committed for the past twenty years to ensuring legal empowerment and access to justice for communities at the grassroots level. KSK’s work is multifold. Apart from providing legal aid, advice, and mediation on legal cases, the center works with the community on several issues, including conflict prevention, strengthening informal dispute resolution mechanisms, and raising legal awareness through community radio programs, local theater, and pamphlets. Every week, the team conducts village visits armed with a notebook, a bottle of water, and a packet of grams (chickpeas) to nourish oneself against the blistering heat. Reaching out to the most vulnerable in the most inaccessible areas is a priority. During these visits, the team identifies and records rights violations, claims for benefits under government schemes, and potential legal cases, which it follows up on through the appropriate legal channels.

During my time at KSK, my role was one of support through leadership. I provided legal inputs to support the work of the team, conceptualized strategic activities, and helped build the

capacities of team members. I assumed that my privileged legal training at a reputed law school would add value to the team. But with time, that assumption stood on its head as I began a struggle to initiate a process of understanding the complex realities of a community whose history and cultural reality I did not share. I spent several evenings just reflecting on how I could design that process without altering, conforming, or distorting its realities within the trapdoors of my own biases, preconceived notions, and all sorts of other intellectual baggage (and in some cases trash). It was then that I realized that the roles stood reversed. All of my interpretations of the experiences, problems, and daily realities of the community were in fact being informed and mediated through the painstaking efforts of my colleagues. It was the team that was playing a supporting role to enable my learning, while I was climbing a steep learning curve. This shift in the work relation was a turning point that changed how I viewed myself in relation to my colleagues. It was an experience that dislodged me from my position of comfort, because it meant questioning my abilities and confidence, much of which I had prided on an invisible and unacknowledged heap of privileges. There used to exist a subconscious assumption of power, a hint of arrogance that came with my privileged education (and status) and defined my relations with the team, but which stood shattered now, as I began to finally understand the ironies that defined my vantage point in these relationships. There is a deeper point I am making here, one with material consequences. It is one of the ethics of relationships within structures of power, in spaces that are as political as they are personal.

My colleagues at KSK often complained that year after year people like myself—from privileged backgrounds, proficient in English, and well versed in high theory—come to their field offices to make use of their labor, whether in the form of knowledge, expertise, networks, or spaces. After extracting the same without any genuine sense of engagement or solidarity with the local struggles, they go back to their privileged spaces and use all that appropriated capital to further their own careers (and publish papers and chapters as this one) without giving back anything to the community. For many at the Centre for Social Justice and other organizations across the country, engaging in human rights work

is not a choice or a career. It is a point in life they are compelled to arrive at because of their material realities. It is a fact of their existence. But for some like me, who have abundant access to opportunities because of our privileged positions, a decision to go to a place like Dang is a choice, more often a “career choice.” Some of us go to experience a “life-changing process,” others go to gain “grassroots experience” to move on to more glitzy and glamorous careers in human rights advocacy, and some of us go for a mere academic or intellectual pursuit. In this process, we end up speaking—in our privileged spaces and networks—for the people who have been denied opportunities to do the same for themselves, using the products of their very own labor. All of this is done without understanding the implications it has for everyone and for the idea of social justice.

To repress or suppress feelings or thoughts that prick our conscience or that are not convenient to the preservation of our privileged realities is a human trait that is naturalized by habit or through unconscious processes—even in the relationships where we love and care. But within a political context, where the imbalance between the “self” and the “other” is predetermined in a relationship, there are material consequences of the kind I discussed above that arise from repressing or denying the fact of inequity in the relationship. A love ethic in the most fundamental sense begins by recognizing this fact. It compels me to locate myself within that relationship and evaluate the power and capital that I carry from the space I come from. It makes me personalize the political: find how and where in the structure I am complicit in the reproduction of imbalanced equations of power and privilege that determine relations between people and that deny resources, autonomy, and representation to the marginalized. This is a responsibility often overlooked by most privileged individuals, even those who are engaged in social justice and human rights work.

These insights lead us to a further set of crucial questions. How are power relations, social hierarchies, and their resulting inequalities created? How are they manifested in the polity of our society? How does this inform our understanding of the state and its relationship with the subjects? And what does this mean for practicing a love ethic?

Politicizing the Personal

The time I spent living and working in Dang was a crucial moment, for I began to see, perhaps for the first time, the relationship between the personal and the political. This compelled me to contextualize my experiences in Dang within the larger socio-economic structure of Indian society—not just in terms of how social relations between individuals and the classes they belong to are molded by the iniquitous structure of such a society, but also how our inner worlds and personal experiences are actually a reflection of those very social relations. Of how relationships of power are determined by where we are situated in our hierarchical society. Of how this situatedness determines questions of material justice. Of who owns resources and who can enjoy the benefits of those resources. Of who can speak for herself and who can be heard, and by whom. Of representation, autonomy, and self-governance: elements that are crucial in deciding who has the power to influence, who is able to define the self and the other, and who holds the pen when it comes time to write the histories of others.

India is bound by a peculiar paradox. While it is the largest democracy in the world today, it is also one of the most undemocratic. For the past 3,000 years, society in the Indian subcontinent has been under the siege of the caste system, a system of social stratification of individuals into a hierarchy of fixed classes on a graded scale of inequality. To understand caste, one must engage with the writings of Bhimrao Ramji Ambedkar (1936), the principal architect of the Indian Constitution. Born in one of the lowest castes (Mahars) who were treated as untouchables, he emerged as the most revolutionary intellectual, philosopher, scholar, and politician of twentieth-century India, dedicating his life to fighting caste and its founding ideology, Brahmanism. Through his writings, we learn that the caste system began initially as a class system, or a “division of laborers.” Over time, the highest class, the Brahmins, in pursuance of Brahmanism, an ideology that believes in the inherent inequality of human beings and the supremacy of its class over all others, became a self-enclosed group by practicing endogamy. This led to the creation of the caste system, with a number of castes forming themselves in response as closed, endogamous groups bound to specific economic occupations. To

reproduce the system as a structural phenomenon, castes were bound by rituals of purity and pollution that restricted their interactions with others; but more importantly, they became associated with the idea of birth. One's caste was determined by their birth, for life (Ambedkar 1917). Ambedkar's writings teach us not just about the workings of the caste system but also about how the ideology of Brahmanism has so deeply entrenched caste consciousness in the psyche of Indian society that the only way we can ever achieve social and political democracy is by annihilating caste.

Today, caste should be understood as a socioeconomic stratification of society affecting every individual irrespective of the person's gender, sexuality, religion, ethnicity, or class. It ensures status and, more importantly, a concentration of resources (jobs, opportunities, spaces, social capital, finance, and so on) in the coffers of the upper castes, which are actually a minority in India. This minority has hegemonized all institutions in terms of ownership and representation: political bodies, higher educational institutions, academia, media, corporations, and even civil society. But the irony is that the glass palaces of the upper castes today are able to rest only on the strong laborious shoulders of the majority population. Privilege can afford to revel in luxury as long as it continues to exploit and appropriate. The caste system is in fact a well-oiled system of appropriation and exploitation of labor and its fruit.

I speak and write as an upper-caste person who has, throughout his life, accrued benefits from the privileges that come with this position. I come from a background where I never had to toil or make ends meet as a growing child. I always lived in big cities where I had access to the best education. I had the luxury of time to enjoy that education unhindered. I had access to the spaces that, today, have become symbols of progress and modernity in India—shopping malls, theaters, clubs, bars, hotels, and the list goes on. The people I interacted with (and still do)—my friends, relatives, extended family—all came from similar privileged backgrounds. Even today, when I travel to big cities in India and meet new people, I find that we share mutual friends and acquaintances. Often, when confronted with such situations, one comments that “the world is so small” or “we are separated by six degrees of separation.” This is remarkable for a country with

a population of one billion, with cities that are big enough to be city-states in themselves.

The truth is that the world is not small. Caste limits our world and its circumference.

When I was growing up, I felt that I was “casteless,” that I didn’t actively discriminate or look down on lower castes. I thought that caste was not a part of my reality and somewhat absolved myself of the responsibility of understanding it further. This was because we never discussed caste in our familiar spaces. But now, as I begin to observe how the political economy of caste and its supporting ideologies are written into the codes of all our institutions and experiences, I realize how they come to mediate not just our identity and relationships but also the unconscious processes of our psyches.

Caste (un)consciousness pervades all our spaces—our families, our homes, our schools, our work spaces, how we write, what we read, what we listen to and see. It is in our books, our literature, even our sense of humor. We share our power, we share our resources, we ensure that those close to us get access to opportunities; even our outrage and protests against injustice are limited to wrongs done to us. Our lives are governed by caste morality and its twin sister, middle-class morality, which determines what we do, what we study, what we eat, whom we love, and every other existential aspect of our lives. Love, too, becomes casteist because its beauty never reaches those outside of the caste. Love is limited, rationed, and restricted. Loving beyond the brief handed to us becomes an act of transgression, blasphemous, sacrilegious, unacceptable, dirty, impure, criminal. Any kind of care, affection, or love we experience then remains tightly bound within our families, extended families, friends, or social circles.

Our castes. Those small worlds. Those six degrees of separation.

The reality of caste as a socioeconomic phenomenon is the defining character of Indian society and all social relations therein. The autonomy of one caste can be ensured only by the colonization of the other. The ability to represent someone other than the self assumes the deliberate silencing or erasure of the voices of the other. But caste consciousness—as it is engendered by a supremacist ideology such as Brahmanism—can also be defined as a more universal phenomenon that believes in the eternal superiority and

exclusivity of one class over others. This is evident from the practices of the ruling classes and native elites in most societies (even in the global South), who seek to preserve and retain their powers and privileges while exploiting the labor of others. To acknowledge one's complicity in exploitation and estop oneself from preserving and accumulating one's own privileges, then, is not to transgress one's caste or class position, for that can never change. It is in fact to retreat one step back from committing the excesses of caste. It is an act of love.

An Ethics of Engagement

Dang District is constituted by 311 villages. They are inhabited by a mixed demographic of citizens belonging to the five communities that settled in the region at different points in history. Each of these communities comes with its own history, traditions, cultures, and customary laws. However, as I was informed during my stay in Dang, over time, with changing market dynamics, evolving customs, and the influence of other factors, citizens began to identify less with their individual tribes and more with the identity of their village. This is just one instance of how hundreds of communities in India define themselves and their identities in relation to their complex and rich material realities. Yet in official, academic, and popular discourse, they are lumped together as "tribal communities." This begets some questions. What is "tribal"? Who constituted this term, for whom, and under what conditions of institutional power? Was it a self-assertion or an imposition? Can it even accurately represent the complex realities of the communities it seeks to label?

To begin with, the term "tribe" is a colonial construction, born of the discipline of anthropology, which was constituted to further the colonial project. White-supremacist-orientalist-colonialist writers used the term to "study," "classify," and "define" hundreds of communities based on their *own* notions of what was "primitive," "uncivilized," or "savage-like." Other parameters included indigeneity, minimal contact with mainstream civilization, dependence on nature, and the practice of animism. These categorizations became institutionalized for administrative purposes, when the British began officially designating tribal status to some communities based on these criteria. For the first time,

the 1931 census recognized a list of “primitive tribes.” After India’s Constitution was adopted in 1950, the state continued the colonial policy of identifying tribes based on the broad criteria of “primitiveness” in terms of (i) primitive traits, (ii) distinct culture, (iii) geographical isolation, (iv) shyness of contact with the community at large, (v) backwardness, and (vi) religion. Much of these parameters were also informed by Indian anthropologists and writers, who came largely from upper-caste and privileged backgrounds and defined these communities as tribes in relation to “mainstream” civilization. On the basis of these parameters (with no holistic definition), the Constitution has recognized around 400 tribal communities under the term Scheduled Tribes, a significant political-administrative term used for the purposes of governance and for the allocation of resources and state benefits. Interestingly, the state’s primary focus has been on identifying groups for administrative and political reasons rather than on questions of what constitutes identity. One can therefore see immense heterogeneity among the groups that have been classified as tribal, and the communities themselves have begun movements of articulating and asserting their own identities. But there is another point I wish to make at this moment. Suffice to say for now that this move toward articulating tribal identity by those who do not belong to these communities is at complete odds with how these communities and their leaders imagine themselves—as constituting separate societies just like other “mainstream” regional identities in India and not mere “tribes.”

The point I wish to make is this. In all these discussions, recommendations, and definitions, intellectuals and the state bureaucracy have almost never considered how these communities recognize and define *themselves*. In fact, the assertions of the bureaucracy and the intellectual class, which reflect prevailing social relations in society, have come from the position of the ruling class. They have been enabled due to galactic proportions of institutionalized power, privileges, and apparatuses to define the identities of communities that they themselves do not belong to. In a society marred by structural inequality, when intellectuals and bureaucrats belonging to the ruling class, through institutional power structures, caricature or racialize oppressed and marginalized communities based on dehumanizing parameters that they

decide *themselves*, then they are inherently racist in their acts of defining such communities. Such acts not only are based on the belief that oppressed communities are inferior or lack agency but also perpetuate the superior-inferior distinction by denying communities the agency to define the parameters of their own social identities.

The irony of myself being a privileged writer who is at this moment engaged in a similar act of defining is not lost on me. Thus, I want to pause for a moment and address a very crucial (personal) dilemma regarding the relationship between language, the act of writing, and the ethics of engagement as fundamental to the love ethic.

Writing is a political act.

But behind the act of writing is also a politics.

It is a politics of who writes. About whom. And how.

As a writer, one has the implicit power to define, to re-present, or to present reality in different ways—to state things as one sees them and to influence others. The ability to influence is also a function of one's capability to exercise institutional power, which is often determined by the community to which one belongs, one's access to resources, or the social capital one possesses in the form of social networks. However, the use of language also enables this power dynamic, since power is coded in the very structure of language. For example, more often than not, when we as privileged writers (in terms of caste, race, gender, and class) write about communities, experiences, or stories that are not ours, our writing subconsciously or consciously introduces an us-them binary. In other words, the privileged writer ends up "othering" who is being written about. This is particularly true when marginalized communities and individuals are subjects of research (and ironically objectified in the process) to be dissected and analyzed, their homes and private spaces invaded, and their sufferings used as intellectual fodder to create literature for consumption. This is violative of the fundamental ethics of engagement, as it not only smacks of an abuse of one's power but also dehumanizes the other by reducing it to an object to be exploited for one's own gain. Reproducing the relations of power through the use of language couched in an us-them binary can thus be an act of epistemic and textual violence, even if the writer is well-intentioned. This is not

merely a polemical point. It has serious material consequences because it prevents the other from exercising autonomy over the self, from speaking for oneself, and from constructing one's own identity and thus having ownership over one's own histories, acts of resistance, struggles, and labor. The first step toward self-governance is the ability to define oneself and how one sees oneself in relation to others. While this is linked as much to questions of self-determination, it also affects one's personal liberty and the idea of fraternity where communities relate with each other in a spirit of genuine solidarity and not hegemony.

I want to emphasize one point that I feel is universal about all struggles for human rights, which are actually relationships of conflict between the ruling class and the oppressed classes. Ruling classes across societies wield immense power and privileges that the state apparatus guarantees them. This includes the power to define the *other*. However, this aggressive need to define the other is really just a subconscious attempt to validate one's own existence. The ruling class needs the other for itself to exist—to feel more complete, more human. But in defining the other, it refuses to identify the self. Thus, when a white writer writes about blacks, or when a Brahmin writer writes about lower castes, it is a conscious omission to erase one's whiteness or Brahmin-ness while pointing to the other.

Conversely, oppressed classes have to also see themselves in relation to the ruling class (for it is the latter that oppresses them). But the crucial difference is that oppressed classes are more concerned with defining *themselves* and their own identities as an act of resistance, a fight for justice, and above all a move toward emancipating oneself. When ruling classes (through their bureaucracies, intelligentsia, and civil society) appropriate and hegemonize the spaces for such articulations and assertions, they fundamentally violate the love ethic.

What, then, can we say about the implications of the relationship between language, writing, and an ethics of engagement for the love ethic? Language is crucial to the exercise of power because language in itself is power. However, language is also crucial for a love ethic since it determines the ethics of engagement. This is possible when the writer of privilege uses language to turn the gaze inward to the us in the "us-them" or to the self

in the “self-other” in order to actively question the conditions, codes, and structures that enable the writer’s privilege and its consequences. The writer does this in order to not appropriate the intellectual labor of those who have painstakingly articulated resistance, instead acknowledging it with respect and in the very voices through which it is expressed from the spaces of resistance. Above all, the writer uses a language of love and justice, which can forge friendships and relationships based on humility, solidarity, and respect for boundaries.

Whose Narrative?

The discussion in the previous section is revelatory of how prevailing social relations in society begin to inform the language of the state in law and policy. This is evident in the way the upper-caste Hindu Indian state—through political, cultural, and economic subjugation—superimposes its own narrative over the narratives of communities. Before I explain this, it is important to first appreciate some dimensions of these narratives. Tribal communities in India have been asserting, from *within*, their identities as an act of political assertion and resistance against the dominance of the ruling classes and their repressive apparatus—the bureaucratic state. These movements have intensified particularly since the 1950s, when the discourse on the protection of the rights of “indigenous peoples” was initiated by the International Labour Organization and subsequently by the United Nations.

The term “indigenous peoples” in the international context has been framed mainly with regard to those native peoples who have been colonized and marginalized by colonialist countries. However, the applicability of the term in the Indian context is disputed. Professor Virginius Xaxa (1999), one of India’s most renowned scholars on the social exclusion of tribal communities in India, says that it is historically difficult to give a determinate answer on which communities can be regarded as indigenous or native in India. Given the rich migration histories of the hundreds of communities in India (belonging to different linguistic groups), indigeneity has acquired two connotations: national and regional. A community might not be native nationally but might be considered an original settler in a particular region of the country, or vice versa. For example, Xaxa’s own community, the Oraons (also

recognized as Scheduled Tribes), can be considered to be native to India and the state of Jharkhand, where the community has been settled for centuries. But where the Oraons have migrated to other states, such as Assam in Northeast India, their native status is disputed by the tribal communities there. So if today indigeneity as the sole criteria for assertion of tribal identity is disputed, then what factors underlie the articulation of a distinct identity and movement? Xaxa writes about the emergence of the "Adivasi consciousness" as an identity that is not just a matter of pride and self-esteem but also rooted in the struggle against the exploitation of the resources and labor of Adivasis. The term Adivasi is a vernacular translation for "indigenous peoples" but also refers to the marginalization and oppression of Adivasis by upper-caste non-tribal communities. The identity as asserted by various communities across Western and Central India¹ is founded on the fundamental relationship between communities and the territories they inhabit. Xaxa writes:

The paradox is that whereas such privileges and rights are freely recognised in respect of the dominant communities in India the same is denied to the tribal communities. In the process they are progressively getting dispossessed of their control over land, forest, water, miners and other resources in their own territory and increasingly subjected to inhuman misery, injustice and exploitation. If their status as indigenous people of India is problematic, and the problem indeed is both empirical and conceptual, the least the dominant regional communities could do is to recognize the priorities of rights and privileges of these people in the territories and regions they inhabit. It is the non-recognition of these rights and privileges by the dominant sections of the Indian society that has led to increasing articulation of the idea of indigenous people by the tribal people.

. . . The adivasi consciousness and the articulation of indigenous people status is not so much about whether they are the original inhabitants of India as about the fact that they have no power whatsoever over anything (land, forest, river, resources) that lies in the territory they inhabit. This is despite being the original inhabitants of India in relation to others. The consciousness and the articulation are basically

1 The political articulations and assertions of tribal communities in Northeast India are different given the distinct political, historical, and social contexts of their struggles. Hence, the scope of my arguments herein does not extend to the communities in Northeast India.

an expression of the yearning to have or to establish a special relation with the territory in which they live. It is the same kind of yearning that the various dominant communities of India articulated in the period before independence or after independence. (Xaxa 1999, 3593, 3595)

One can hear resonances of Xaxa's articulations in the words of my good friend Roshan Saroliya, an Adivasi lawyer who hails from Dang and is a fiery youth leader respected and known throughout the region. Roshan and I began our relationship as colleagues during my time in Dang. Much of my understanding of the issues in the region was painfully explained to me by Roshan. Our working relationship transformed into a strong personal bond when the two of us went on a trek in the hills of the region. After we climbed to the top and back, Roshan expressed his amazement at my ability to endure the tough terrain and complete the trek without any discomfort, given that I was a "city boy." I, in turn, expressed my amazement at his presumptuousness. Both of us had a great laugh in the moment, which was the starting point of a strong friendship based on love, mutual respect, and trust. Over various conversations about love (he disagrees with me on any relevance of a love ethic), violence, and revolution, he shared many insights about his vision for Dang. With his permission, I am reproducing some compelling insights that he shared about the Adivasi identity in Dang:

Adivasi identity is one which finds its essence in the spiritual relationship of man with nature. This relationship is based on the interdependence that man has with his ecological surroundings, and the judicious use of its resources. When there was no departmental rule, Adivasis used to get what they needed from the jungle; they practiced shifting cultivation wherever they wanted. There was no concept of individual property; property was community based so there were no disputes. Now the department [government] has stolen the power of Adivasis. Now for their livelihood they have to find a way, so they go to city or industrial areas and there they suffer different kinds of issues, such as labor and wages, and atrocities of various kinds. They do not have basic facilities like housing, education, etcetera. So for the survival, they are dependent on the mainstream structure. If the sources of their survival is in their hands, then development is possible. Without that, development is not possible . . . Development can happen alongside the preservation of culture and traditions. But for that we need control over our resources.

... All the resources are sold to multinational companies, and the benefit of that is divided and delivered to those who are in power. What about the people who preserved these resources? What about them? They are forcefully pushed out from their own land, home, fields, and resources, and that is in the name of their own development. What kind of development? I believe that we all know the answer. I am not talking about dividing country or states. I am saying the system to rule in Adivasi areas must be according to Adivasis and in their favor and benefit, which is not impossible. I strongly believe that [the Panchayat (Extension to Scheduled Areas) Act of 1996] also means the same thing. But the problem is implementation, and I strongly believe that it will be not implemented. Why? Because it is not in favor of the capitalist. Instead of setting giant plants in Adivasi areas, there should be small plants which must be run by Adivasis, and let the revenue come to the owners. I am not saying no to utilize resources. What I am saying is that the utilization must be in favor of all and the benefit must go to the original owners. Every problem of Adivasis is related to resources which are theirs, and I am asking for the control over those to be handed over to Adivasis through the power of self-governance.²

As one can derive from Roshan's narrative, the relationship between identity and territory is not just about resources. It is also about the narratives of lingual, cultural, and political life, which emerge from the experience of socioeconomic conditions. I say this specifically because today one sees clearly the devious intentions of Brahmanical ideology to erase and subjugate the rich narratives of communities, which are distinct from caste-based society. "Tribes" are not the same as "caste" — they are different forms of society. However, it is a fact that the cultural and socioeconomic oppression of Adivasis is a product of upper-caste communities. One can turn to Dang to see the most potent illustration of how violence is inflicted through ideology.

The Sangh Parivar is a group of religious right-wing Hindu organizations headed by the Rashtriya Swayamsevak Sangh, which ascribes to the ideology of Brahmanical Hindutva — an ideology of cultural nationalism that believes in the superiority of caste-based Hindu society and seeks to establish India as a Hindu state. These proponents of Brahmanical Hindutva believe that all minorities in India — including Muslims, Christians, and Adivasis — are

2 Conversation with Roshan Saroliya, April 15, 2015, Ahmedabad, Gujarat.

culturally Hindu and must accept that their ancestors were also Hindu. This very Sangh Parivar has been consistent in creating an anti-Christian sentiment not just in Dang but in other parts of the country where Christian missionaries have been working with Adivasis. In 1998, the Sangh Parivar engineered large-scale riots against Adivasis in Dang who had converted to Christianity. Several Christian schools were burned down, churches were destroyed, and homes were razed to the ground. Subsequently, in 2002, the Sangh Parivar—with the tacit support of its political wing, the Bharatiya Janata Party, which was the ruling state government—orchestrated the genocide of 2,000 Muslims in retaliation for the burning of a train carrying some 200 Hindus back from a pilgrimage. The current prime minister of India, Narendra Modi, was the chief minister of Gujarat during the riots.

The district gazetteer of Dang explicitly states that the religion of the Dangai Adivasis is animistic (even though there may be some common Hindu gods). However, the Sangh Parivar, through its affiliate local organizations, has been pursuing its agenda of bringing the Adivasi communities of Dang back into the fold of Brahmanical Hinduism through “re-conversion” activities. It is important to bear in mind that Adivasis have traditionally been outside of caste Hindu society in terms of position and status, even though they have been exploited for their labor and resources by upper castes. More importantly, the state has legitimized this policy of identity erasure not only by supporting these organizations but by ensuring the application of Hindu laws in the region, which is illegal and illegitimate in law. This has created a conflict with the customary laws of the communities in Dang, leading to a prevalence of Hindu law in the formal legal system. As a consequence, matters such as property, marriage, and succession—which used to be governed in accordance with customary laws in the villages—now have to be settled in accordance with Hindu law. Furthermore, citizens in the region are now forced to acknowledge their identity and religion as Hindus on all official documents in case they wish to avail of state benefits that are reserved for members of Scheduled Tribes.

One of the fundamental ethics of engaging with movements and struggles for social justice is to understand the specific issues that oppressed communities frame in the context of their own

material realities. This is significant, for any love ethic that has any relevance for the construction of law and policy must be embedded in those material realities. But when the state itself is a conduit for the ideology of the ruling classes, what does this do to our understanding of the love ethic and its implications for law?

Love(lessness) in Law

At the time that India's draft constitution was being debated in the Constituent Assembly, the framers were confronted with two options on the future of tribal communities in India. Given the relative disconnect of these communities from "mainstream" society, the two options were isolation or assimilation. Eventually, the Constitution adopted an approach of integration—in other words, tribal communities would be integrated with dominant communities for equitable development, but they would also be ensured enough space to preserve their traditions, customs, languages, and culture. The administrative category of Scheduled Tribes was thus invented to identify some communities that would be accorded proportional representation in political institutions, higher education, and employment through affirmative action, and that would receive state benefits through government schemes and policies. Further, through two separate schedules in the Constitution (one for Central and Western India, and another for Northeast India), distinct territories inhabited by Scheduled Tribes were identified as Scheduled Areas, and a separate governance scheme was put in place for these areas, along with safeguards for preventing the transfer of tribal lands to non-tribal communities. Acts of violence committed against Scheduled Tribes and Castes by upper castes were also criminalized through separate legislation.

Despite these safeguards, exploitation of the land, natural resources, and labor of hundreds of such communities continues unabated. Today, a substantial proportion of India's landless population belongs to this section of society, which falls far behind upper-caste communities on most socioeconomic indicators, including health, education, and employment. The state-corporate nexus has further appropriated tribal lands, plundered natural resources, displaced millions, destroyed the ecology, and used violence to crush any dissent or resistance. Thousands are languishing in jails, especially in Central India, without so much as

a formal complaint filed against them or legal representation, on irrational suspicions of being anti-national or Maoists.

The problem thus is not of integration alone. It is far more fundamental. It is about autonomy—and autonomy from the ruling classes. But autonomy does not imply isolation. Its exercise is predicated on engagement and relationships with others in society. What is implicit in the idea of autonomy is the principle of substantive equality, which ensures that the terms of the debate, the identification of the issues, and the framing of the critique must be couched in the language of the oppressed. As long as the ruling classes dominate these spaces, autonomy will continue to be colonized.

Such autonomy is fundamental to defining the love ethic as a framework of laws and policies. It is a framework in which communities exercise the power to decide what kind of development they desire, to control their natural resources, to be guaranteed proportional representation in decision-making spaces and opportunities, and to articulate unmediated resistance in the expression of their own voices. Within this framework, it is the responsibility of the bureaucratic state to play the role of a facilitator, a nurturer, or an enabler by actively building the capacities of communities through effective programmatic interventions and budgets that enable the actualization of autonomy in material, measurable, and scientific terms without limits or preconditions.

The demand for autonomy by the Adivasis began through various struggles in the eighteenth century. Many of these communities—which were already practicing self-governance through customary laws—began their resistance movements across different parts of India, first against the British colonialists who were exploiting their forests and timber, and more recently against the Indian state itself. Some of these movements have also been claiming political autonomy. In the 1990s, the National Front for Tribal Self-Rule, along with several Adivasi communities and organizations, began demanding greater political autonomy through the enactment of a central law that would give them the necessary powers for self-governance. After several campaigns and immense advocacy, the movement resulted in the enactment of a landmark law known as the Panchayat (Extension to Scheduled Areas) Act of 1996, or PESA.

PESA accords tribal communities living in scheduled areas the right to self-governance. It recognizes the village as the most basic unit of self-governance, defining it as constituting a *community* that is characterized by its practices, customs, traditions, and cultural affinity. This is a significant departure from state practice because, for the first time, the state has recognized the village as a *community*—which is so integral to the egalitarian ethos of Adivasi communities—and not as a revenue-generating unit. This is also important because the village then becomes the territory where both identity and ownership over natural resources are recognized as one whole.

The *gram sabha*, or village assembly, which comprises individuals living in the village, is meant to be the custodian and preserver of traditions, customs, and community resources, and is entrusted with the responsibility of safeguarding the cultural identity that binds together the people of the village. In this sense, the village assembly is meant to play the role of a participatory democratic institution that approves the plans, programs, and projects for social development and determines the beneficiaries of poverty alleviation programs.

More importantly, PESA accords village communities the right to manage their natural resources, including the acquisition and alienation of land, titles for forest land, ownership of minor forest produce, and licenses for mining and the exploitation of minor minerals. However, this is where PESA suffers, from a *design perspective*, in two ways.

First, it creates a dichotomy between the prerogatives of the *gram sabha*, which is truly representative of the community, and those of the *gram panchayats* (councils at the village, block, and district levels), which consist of elected bureaucratic officials. In doing so, the supremacy of the *gram sabha* as the community custodian is undermined since it is not mandatory to approach this body on the management of natural resources. As a result, the bureaucratic state, in all its repressive and coercive nature, can prevail over the autonomy of the community.

Second, in cases of land acquisitions for development projects or rehabilitating displaced persons, only a requirement for consultation—and not prior and informed consent—with the *gram sabha* or *panchayat* is stipulated. Planning and implementation is in turn

a prerogative of the state government. In cases of mining and the exploitation of minerals, the requirement for consultation is substituted by a requirement for *recommendations*. Thus, in effect, the autonomy of the community is once again undermined and diluted.

PESA also suffers from an *implementation perspective*. First, it is characterized by a lack of political will. As a central law, PESA mandates state legislatures to amend their existing laws in alignment with the act's provisions. However, none of the nine states to which the PESA applies have been able to fully align their laws with PESA. For example, in Gujarat, where Dang is located, no powers have been given to the *gram sabhas* under state law.

Second, one would imagine that at least the *gram sabhas* would be functioning in the villages as per the provisions of the law. However, the reality is quite the contrary. Our interactions in some villages in Dang in 2014 revealed that the district administration organizes *gram sabhas* by itself on issues that are decided in advance by officials without any consultation with members of the *gram sabha*. Further, resolutions are passed on these predetermined issues without reflecting the priorities of the members of the *gram sabhas*. The resolutions are sent upwards to the authorities or *panchayats*, often without any follow-up. People are also either unaware of the existence of the law or just not motivated enough to mobilize and activate the *gram sabhas*, which often leads to the lack of a quorum during meetings.

Third, the general attitude of public officials at the state and district levels shows a severe lack of interest in PESA. In my personal experience, while researching the implementation of the law in Dang, officers refused to answer questions, providing responses such as an honest "I am not aware of anything, please speak to the authorities on the ground," a creative "Please ask the other departments that work on the different issues; we have no information," or the standard "I don't know." It was quite obvious that most officials were not even aware of PESA's existence. But in general discussions, one could clearly gauge the patronizing attitude they had toward the communities living in Dang. When asked whether a law like PESA should be implemented, their responses ranged from "Yes, but powers should remain with the village *panchayats*" to "[The people] are not capable of making decisions" to "It is not possible to give so much power to every village."

Beyond these observations, there are far more problems with the conceptualization of PESA and its implementation. Each state's experience reveals different challenges and defects, which, due to space constraints, cannot be covered here. By identifying the *gram sabha* as the most basic institution of democratic participation—and most importantly, for managing the question of resources—the state has displayed a willingness to sit on the margins, giving the people autonomy to exercise self-governance. The love ethic is ostensibly visible in this mandate, but does the architecture truly enable a realization of this ethic or render it redundant? The dilution of the powers of the *gram sabha* and the ambiguities within the institution point not only to a design fault in the legislation but also to a reluctance on the part of the state to implement this legislation. Clearly, there is a conflict between the rule of law as envisaged by the ruling class and the love ethic, which should be informing the content and implementation of such a law. Could this be attributed to the interests of the ruling class? Perhaps it feels threatened by the prospect of losing its power over these communities? Or more importantly, their resources?

Turning the Gaze Inward

Societies all over the world are characterized by the universal phenomenon of class struggle, or the constant antagonist relationship between the ruling classes and the oppressed classes. The dynamics of this struggle are reproduced even in movements, discourses, and narratives that seek to fight structural power and oppression. Within these hegemonic spaces, members of the ruling class—often elite intellectuals, writers, or activists—build alliances in order to preserve their roles as revolutionaries, critical thinkers, or representatives of movements while claiming to critique the status quo. To illustrate this lack of self-reflexivity, there is no “worse” example than Indian society and the role of Brahmanism on keeping intact structural inequalities even in so-called articulations or movements for justice, whether against India or the West.

It is in this context that one is compelled to question writers such as Gayatri Chakraborty Spivak (1988) and her essay “Can the Subaltern Speak?,” a seminal piece in postcolonial theory. To the question she poses in the title, Spivak concludes that the subaltern cannot speak on account of being muted by the hegemony

of Western colonialists. But in concluding this, Spivak refuses to investigate, question, or theorize on the much longer oppression that Brahmanism has inflicted on Dalits, Adivasis, and other lower castes in India. If one rereads this text in light of Brahmanism and its effect on the lower castes of India, one questions Spivak's deliberate omission to theorize on her own "position" as a "Brahmin" intellectual benefitting from caste privilege. And in this light, one also questions her intellectual integrity in constructing the "subaltern" in response to Western colonialism, instead of in response to Brahmanism with its longer history of oppression.

It is rather ironic that as one of the most important living symbols of postcolonial critique, Spivak comes closer than any of her own ilk to the colonialist, racist, and casteist subjects of her own postcolonial critique. In a lecture titled "'Subversion' in Reading the Visual" delivered at the Subversive Film Festival in Zagreb in May 2011,³ while responding to a question on why she doesn't write about her experiences of teaching school children in rural Bengal, Spivak talked about the challenges of teaching the "cognitively damaged." She applies this category to describe Scheduled Castes and Scheduled Tribes communities in India, who (according to her), having been prepared singularly for manual labor through centuries of Brahmanical oppression, have become cognitively damaged. Spivak's outright racist judgment begets important questions. Does cognitive damage imply that the Scheduled Castes and Scheduled Tribes are *incapable* of producing knowledge, philosophy, or critique from experiences of their oppression? Does that justify Spivak's lack of engagement with some of the most revolutionary thought and critical frameworks on oppression that have emerged from revolutionary poets such as Kabir or from anti-caste leaders such as Ambedkar, who belonged to the lowest castes? How are her views any different from what intellectuals or officials of colonial establishments wrote about their colonized subjects during the period of colonialism?

Writers back home in India are equally complicit in perpetuating Brahmanical supremacy and casteism. One of them is Arundhati Roy, a Booker Prize-winning upper-caste author who has

3 A recording of the lecture is available at www.youtube.com/watch?v=sO8BFUpyqq5.

written extensively on political issues, including the exploitation of Adivasis. Recently, Roy (2014) wrote a lengthy introduction to Ambedkar's seminal text, *Annihilation of Caste*, where rather than writing about the text and its revolutionary ideas, she spends most of the pages repeating a critique of Gandhi and his casteism—something that the anti-caste movement led by Dalit and other lower-caste communities had exposed a long time ago. The criticism against Roy is that she has not only appropriated this critique as her own intellectual contribution and distorted the true import of the revolutionary text to satiate her own professional agenda but also failed to acknowledge the fact that her ability to present this critique to a global audience is the very symbol of the Brahmanical and structural power she enjoys. The charge against Roy, then, is that while she positions herself as an anti-caste crusader, she refuses to question her own privileges as an upper-caste writer and her complicity in reproducing the structural oppression that naturalizes the denial of these very privileges to the Dalits, lower castes, and Adivasis in India (Ambedkar Age Collective 2015).

The examples quoted above are of two upper-caste thinkers who are today regarded as global symbols in the discourses against structural inequality and oppression. However, much like most upper-caste thinkers and writers, their discourse is willfully bereft of a self-reflexive interrogation of their own privileges and complicity as members of the ruling class. Equally damaging is the power of their gaze, which not only dehumanizes the oppressed *other* but also quashes any possibility of challenging the hegemony of their own discourses. Ironically, those who seek to question the status quo are actually the strongest preservers of it. It is no wonder, then, that members of the ruling class in contemporary India—which consists of intellectuals, bureaucrats, businessmen, fundamentalist forces, activists, and so on—despite the “irreconcilable” differences they might express with one another, are all united by a common thread: that of upper-caste privilege.

There is something universal about how relationships between friends, lovers, neighbors, employers and employees, parents and children, teachers and students, politicians and citizens, and so on are constituted in societies that are deeply unequal. Such

relationships are founded on a social order that seeks to ensure exclusion and exclusivity and to engender a certain (un)consciousness. It is an (un)consciousness that limits instead of opening up—one that believes in the limitedness of love, affection, care, respect, empathy, and trust, which are so fundamental in humanizing us and the world around. Yet these emotions come to be structured and acquire specific meanings in the material realities that class struggles define. Especially for those who find themselves bound by the privileges that one's class interests seek to preserve, these meanings act as limitations or prohibitions on their capacity to transgress those six degrees of separation. What was meant to humanize and attain new meanings ends up repressing our instincts and desires to experience the beauty of love in its most expansive form. Love, then, is but a prisoner within the dark walls of ego, power, and profit. Love is also fundamental to our experience of life and is defined by the material realities that determine our (un)consciousness. But if to be fully human is to escape and free ourselves from those shackles that dehumanize us, then we are compelled to question and transform our material realities. And in that transformation, which also transforms our (un)consciousness, we must then transform our very idea of love. Of love as justice. And of justice as love.

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CHAPTER 7
**Stained Gold: A Story of Human
Rights Violations in Ghana's
Mining Industry**

Richard Ellimah
(Ghana)

He felt the bullet hit his lower abdomen. Dizzy, he fell to the ground with a thud, raising a circle of dust around him. Though conscious of his surroundings, Awudu Mohammed remained fixed to the ground. His strength left him. *God, I am going to die*, he thought. The idea of death scared him, and he wished he had stayed home sleeping that humid night of June 10, 2005, instead of coming on this ill-fated expedition.

Just a short distance away, about fifteen other boys huddled together in the thick brush, quietly watching and listening to what might happen to Awudu. They heard the sound of a moving car, causing them to bolt farther downhill and rush home to deliver the news.

The double-cab pickup truck screeched to a halt just a hair's breadth away from Awudu's head. He could hear voices faintly in the distance: security officers arguing over who had fired the shot. Then another voice joined in. It seemed to be the commander. He wanted to find out if the victim was dead. All of a sudden, Awudu felt heavy boots kicking his head in a frenzy. He let out a muffled cry. Blood started oozing from his head down his face.

"Good, he is not dead," the commander said. The men bundled Awudu into the truck, which brought him to the Edwin Cade Memorial Hospital, run by the international mining company AngloGold Ashanti. From there he was transferred to the Komfo Anokye Teaching Hospital in Kumasi, Ghana's second-largest city. There, the mine officials who accompanied him sold a beautifully packaged lie to the consulting surgeon to cover up their act: Awudu was an armed robber who had attempted to jump over a fence and had gotten pierced by the metal spikes in the gate.

An eight-hour operation miraculously saved the life of Awudu, who had been a poster boy for responsible mining in Ghana.

But Awudu the “armed robber” was chained to his hospital bed, with a police guard standing by around the clock, even while he was recovering from surgery.

The intervention of a local newspaper, *The Servant*, and Shaft Radio, which broke the story, triggered a conflicting comedy of explanations from the Ghana Police Service and the AngloGold Ashanti officials who had formed the security operation that nearly killed Awudu. Specifically, they vehemently denied that Awudu had been shot. It took several months for the Komfo Anokye Teaching Hospital to issue an official statement identifying the cause of Awudu’s life-threatening injuries: a gunshot wound.

Unlike Awudu, twenty-seven-year-old Clement Baffoe was not lucky. Already a school dropout because his parents could not afford to send him to school, Clement made a living by working as a driver’s mate¹ and a barber. He was married and had one child.

With other boys in his neighborhood, Clement often entered the Pompora Treatment Plant, located within AngloGold Ashanti’s Obuasi mining concession, to forage for gold-bearing rocks that had fallen from the dump trucks. They would then sell these rocks to earn money to take care of themselves and their families. However, one day in June 2004, luck ran out for Clement, who was arrested by AngloGold Ashanti security officials as he searched for loose rocks. They beat him severely until he collapsed. He was then sent to the company-operated Edwin Cade Memorial Hospital, where he was treated. From there, Clement was sent to the mine’s private detention facility. He died later that night.

Awudu’s and Clement’s stories represent but a few of the gross violations of human rights that have blighted an otherwise golden era of mining in Ghana’s history. In this context, organizations like Wacam, an environmental advocacy organization, have adopted nonlegal approaches to combating mining-related human rights violations. Rather than relying on the courts and quasi-judiciary institutions to bring about change, Wacam uses other approaches to bring relief to victims of human rights abuse.

1 A driver’s mate refers to an apprentice driver. The practice in Ghana is to ask a young boy to understudy a professional commercial driver for a number of years and learn the skill from him.

As a program officer at Wacam in charge of the Obuasi zone from 2007 to 2011, I heard these stories of victims of Ghana's booming mining industry firsthand.

Liberalized Mining Regime

In 1983, Ghana's new military junta (which had taken over on December 31, 1981) adopted neoliberal economic policies in its management of the economy. This decision by the government positioned mining as the growth pole of the country's economy. In addition, in 1986, it passed the country's first consolidated mining law, the Minerals and Mining Law, to make mining attractive to foreign investors. Among other things, the law allowed mining companies to undertake large-scale surface mining for the first time in Ghana's history. These reforms achieved their purpose: in subsequent years, multinational mining companies started flooding the country. Indeed, the number of mining companies operating in Ghana jumped from five in 1986 to seventeen in 2013 (Akabza 2007; Minerals Commission 2013). This increase in companies pushed up production levels, which, in turn, boosted the country's economic growth. For instance, gold output surged from 287,124 ounces in 1986 to 97.8 tons in 2013 (Akabza 2007; Minerals Commission 2013).

By the mid-1990s, the International Monetary Fund and World Bank were hailing Ghana as a star performer for its ability to sustain economic growth. The country became a model for these institutions regarding the "success" of structural adjustment programs in Africa. Ghana's economy—which had previously been recording negative growth rates—was now recording, on average, 5% growth rates, due largely to strong growth in the mining sector.

Considering that the mining sector contributed 18.7% to domestic tax revenue in 2013 (Ghana Chamber of Mines 2014), it was only natural that the government took a strong interest in the mining industry. The government's interest in this regard was not restricted to creating a friendly environment for investors. Even though the state had significantly reduced its participation in the industry through the reforms of the 1980s, it retained a 10% free carried interest² in every mining project, as stated in section 43(1)

2 The 2006 Minerals and Mining Act entitles the government to

of the 2006 Minerals and Mining Act. Furthermore, as explained above, the mining sector was now considered the growth pole of the Ghanaian economy. The government's philosophy was that the sector needed unfettered government support to ensure its growth, which would, in turn, stimulate other sectors of the economy. This thinking has led to deep government support for the industry, including by placing the military and police at the disposal of mining companies. A strategically important sector like the mining sector, the argument goes, deserves all the protection the state can muster, even if it means trampling on human rights in the process.

While there is little doubt that Ghana's 150-year-old mining industry has boosted economic growth over the last three decades, this success has come at a cost to citizens such as Clement and Awudu. Moreover, thousands of indigenous communities that depend on land for their survival have lost their livelihoods to giant multinational mining companies operating in the country, including AngloGold Ashanti and Newmont Ghana Gold Limited.

Impressive Governance Credentials

A former British colony, Ghana was the first African country south of the Sahara to gain political independence. After becoming independent on March 6, 1957, the country held a lot of promise, being a torchbearer for the independence movement on the African continent. Unfortunately, this hope would fizzle out following the first government's decision to impose a one-party state and curtail general freedoms. In 1992, after decades of military and civilian dictatorship, Ghana finally introduced constitutional democracy and, since then, has successfully changed governments twice without the usual political chaos that has characterized changes of government in other African countries, particularly in West Africa.

In terms of governance, the country's president is popularly elected every four years. The president appoints a team of ministers to help run state affairs. Ghana's Parliament represents 275 constituencies across the country. Only two parties have governed the country since its return to constitutional democracy in 1992:

10% of every mining operation's shares. These shares are not paid for.

the conservative right-wing New Patriotic Party and the more liberal, center of left, social democratic National Democratic Congress. Though professing seemingly divergent ideological leanings, these two political parties are little different when it comes to their approach to respect for human rights in the mining industry.

The 1992 Constitution contains strong and progressive provisions on human rights. Chapter five is devoted to fundamental human rights, even entrenching these provisions to prevent unnecessary amendments. The Constitution also establishes independent institutions meant to safeguard citizens' human rights, such as a fairly independent judiciary and the Commission on Human Rights and Administrative Justice (CHRAJ). To ensure the protection of the human rights of all Ghanaians, irrespective of social class, the Constitution provides for the establishment of CHRAJ district offices in all of Ghana's administrative districts. The high courts have also been designated as the only courts authorized to address human rights cases.

Another key right safeguarded by the Constitution is freedom of the press. Since the passage of the new Constitution, the Ghanaian media scene has seen an explosion of media houses representing different shades of political, economic, and social ideologies. Currently, the country is home to nearly 300 radio stations, almost 100 newspapers, and about 20 television stations. In terms of freedom of the press, Ghana has consistently scored high on the World Press Freedom Index. Indeed, in 2014, it scored a respectable twenty-seven, ahead of more established democracies such as Australia, Portugal, the United Kingdom, and the United States (Reporters Without Borders 2014, 30).

Despite this impressive record, the story is not all rosy when it comes to media houses operating in mining communities or the publication of mining-related news. Media houses that have attempted to publish stories considered "anti-mining" have suffered threats of withdrawal of corporate sponsorship. For instance, in Obuasi, there are three radio stations: Shaft FM, Time FM, and O FM. Each of these stations receives substantial financial support from AngloGold Ashanti for a program dubbed "Safety Talk." Since this support forms a significant portion of these stations' monthly revenue, any threat to withdraw such sponsorship is treated very seriously.

As the news editor of Shaft FM in 2000, I had an interesting experience. A group of casual workers had been laid off by Ashanti Goldfields Corporation (now AngloGold Ashanti) without receiving their entitlements. They therefore decided to demonstrate in Accra and present a petition to the president asking him to intervene and compel the company to pay them their full entitlements. On the day of the demonstration, I interviewed the leader of the demonstrators live on our one o'clock news program for about five minutes. While returning to work from my lunch break, I met a senior staff member of Ashanti who was furious that I had interviewed the leader. He then said that due to that interview, he would ensure that the company reviewed its sponsorship package with the radio station.

When I got to the office that evening, there was a notice on my door from the station's general manager: "Richard, stop talking about AGC [Ashanti Goldfields Corporation]. We nearly lost a sponsorship of 50 million cedis. Henceforth, any story on AGC must pass through my desk before publication."³ I yanked the notice off the door and resolved to be defiant. A few months after this incident, I left my job at the station.

The unofficial gagging of the critical press by both the state and mining companies is much worse with the state-owned media. Mining is probably the only economic activity that the government sees as having national-security relevance. Due to this classification, any news on mining tends to be sensitive. Until recently, it was difficult to get a "negative" mining article published in any of the state-owned newspapers. I have personally written a number of articles on mining and submitted them for publication in the state-owned *Daily Graphic*, but none of them has ever been accepted. These same "rejected" stories have been subsequently published by private newspapers.

The financial and economic might of mining companies is also demonstrated by their notorious poaching of critical journalists to serve as communications or public relations managers at the companies. Since Ghanaian journalists are generally poorly paid,

3 For a small radio station such as Shaft FM, 50 million cedis in 2000 was a lot of money and constituted a substantial portion of its earnings for the year.

an opportunity to work for a mining company and earn a higher salary is something that very few will let pass.

Following the promulgation of the 1992 Constitution that “liberated” the political space, many civil society actors have sprung up across the country. These civil society organizations come in all shapes and forms. With regard to the mining sector alone, there are countless nongovernmental organizations, community-based organizations, and research organizations supporting both communities and multinational mining companies to advance their interests. For example, the National Coalition on Mining—a coalition of organizations, communities, and individuals—has helped put human rights violations in the mining sector at the forefront of the national discourse, including through its 2008 campaign entitled “Stop Violence in Mining Communities.”

Although Ghana is hailed as a success story among emerging democracies worldwide, the country’s successes with respect to human rights protection have yet to reach the vast number of residents living in resource-rich areas. Residents of poor, marginalized mining communities continue to suffer various human rights violations. Indeed, a 2008 report by CHRAJ revealed widespread human rights infractions in mining communities across the country (Commission on Human Rights and Administrative Justice 2008).

Options for Seeking Redress for Human Rights Violations

Legally, two options exist for victims of human rights abuses to seek redress: the high courts and CHRAJ. The first of these options has proven fairly ineffective in reality. Failure of the high courts to deal decisively with cases of human rights violations has meant that residents of mining communities have enjoyed little redress for abuses perpetrated by multinational mining companies. Among the problems has been these courts’ long delays in ruling on cases. For instance, one case involving a community in the Western Region of Ghana and a mining company took ten years to be resolved, and even then the parties had to settle out of court. Similarly, when Newmont Ghana released fecal matter into a stream used by farmers, a few local residents took the company to court. For the past seven years, these litigants have been walking in and out of court. These two examples are enough to

discourage other communities from attempting to litigate against multinational mining companies.

Another problem with the courts has been public perceptions of injustice—and such perceptions can be as dangerous as reality. Mining communities harbor a fear that rich multinational mining companies are likely to influence judges, for in Ghana corruption in the judiciary is commonplace. This problem is even more pronounced in rural districts, where judges of lower courts and police chiefs are often members of mining companies' elite sports clubs. Given that the judges, as members of the club, enjoy a number of privileges, communities fear that they cannot be trusted to dispense justice in mining-related cases. Similarly, the communities do not trust the local police. In Ghana, one of the first infrastructure projects that mining companies provide whenever they enter any community is the construction of a police station, which the companies donate to the community. They furnish these police stations and donate vehicles and other telecommunications equipment to them, as in Obuasi Municipality.

Furthermore, the cost of litigation discourages poor community members from bringing cases against mining companies, which are wealthy, powerful, and politically connected. From securing the services of a lawyer to filing and following up on cases, residents of communities must spend a relative fortune. Recently, the cost of filing cases was increased, generating public outcry. This increase has exacerbated the perception that justice can be secured only by the rich. Knowing that the costs of litigation can be prohibitive for claimants, mining companies take pleasure in delaying cases for as long as possible. Eventually, a lack of funding and litigation fatigue sets in for the claimants.

The inherent weaknesses in the judiciary and lack of trust in the justice delivery system have sparked public interest in CHRAJ as an alternative mechanism for seeking redress for human rights abuses. Established under article 216 of the Constitution with a dual mandate to protect human rights and fight administrative corruption, CHRAJ is much closer to communities than the high courts, as it has a presence in all of Ghana's administrative districts. It is also accessible in that one can easily walk in and file a petition. The petition itself does not have to be in English, which is the official language of Ghana and which has also become a huge

barrier to community residents wishing to take advantage of the justice system. A CHRAJ petition can be verbally narrated to an officer, who will then write it down. Furthermore—and most importantly—CHRAJ does not charge for filing a petition.

When a petition is filed, CHRAJ then writes to the person or institution against whom an allegation has been made, giving them an opportunity to respond. After the response has been provided, a date is then set for a public hearing, during which both sides lay out their case. The CHRAJ commissioner uses the available law to help the two sides reach an amicable settlement. In many cases, parties are able to reach a settlement.

While working as a program officer at Wacam, I personally wrote several petitions on behalf of residents of mining communities whose rights were violated by AngloGold Ashanti. These cases ranged from the destruction of buildings as a result of blasting from open-cast mining to persons who suffered life-threatening injuries as a result of attacks by AngloGold Ashanti guard dogs. A few cases pertained to wrongful dismissal from work. In Obuasi, where I wrote the petitions for the residents, not a single case was settled amicably.

The excuse provided by CHRAJ was that AngloGold Ashanti did not respond to CHRAJ's requests to meet with claimants and resolve the impasse. What makes this explanation bizarre is that the constitutional provisions establishing CHRAJ give the commission extensive powers, including the power to subpoena. Thus, the fact that a mining company can exhibit this level of impunity without CHRAJ activating its constitutional powers frustrates many people and exacerbates the perception that "you can't fight AngloGold Ashanti." This perception is poisonous, for it weakens communities' resolve to seek redress for human rights abuses.

In the face of such an intransigent company, CHRAJ has failed to garner much-needed public trust. Consequently, communities have concluded that CHRAJ—like the courts—is impotent to deal with their problems.

The Emergence of Wacam

As the state wobbles in the face of mining companies' growing political and financial influence, the role of civil society has become much more significant. Occupying the space previously occupied

by the state, a number of civil society groups have stepped in to support these communities. One such organization is Wacam.

One of the fallouts of the reforms of the 1980s was the decision by mining companies to undertake extensive surface mining. For instance, Ashanti Goldfields Corporation received a loan of US\$80 million from the International Finance Corporation to undertake the Ashanti Mine Expansion Project. This and other surface mining projects led to a more than quadrupling of Ghana's total gold production. But the negative impacts were equally profound, including the pollution of water bodies, destruction of large forest areas, atmospheric pollution, social conflicts, human rights violations (which have been extensively detailed in CHRAJ's 2008 report *State of Human Rights in Mining Communities in Ghana*), and institutional inertia to deal with community development problems.

In the Tarkwa area, located in southwestern Ghana, there were about eight multinational mining companies operating in the early 1990s. These companies took over large tracts of land that local communities had been using for agriculture, paying them little or no compensation. Affected farmers therefore grouped together and formed an association named the Wassa⁴ Association of Communities Affected by Mining (WACAM) in 1998. Using a mixture of strategies, the association sought to fight the negative impacts of mining on their livelihoods.

Over time, WACAM spread to other mining areas in Ghana, such as Obuasi, Kenyasi, Nzema, and Akyem. As the organization spread beyond the Wassa area, it became apparent that the name Wassa Association of Communities Affected by Mining was becoming irrelevant. So in 2011, the organization changed its name to Wacam, which is no longer an abbreviation of a fuller name.

Though Wacam is an *environmental* advocacy organization, it has attained most prominence in the area of addressing human rights violations in mining communities. Unlike other nongovernmental organizations in Ghana, Wacam works directly with communities affected by mining. It operates on the philosophy of empowering communities with knowledge so they can fight their

4 The Wassa are an ethnic group found mainly in the Western Region of Ghana. The traditional capital of this ethnic group is Tarkwa.

own battles against multinational mining companies. This strategy was particularly useful prior to 1992, when there was very little political space for activism. Building the capacity of different communities across the country helps citizens become a formidable force able to withstand any military or authoritarian regime.

In the case of AngloGold Ashanti, in 2003, Wacam began a series of training programs for certain community leaders. It selected the leaders based on their ability to command the trust of their communities. The training programs were conducted in the local dialect, Twi, and care was taken to use examples and references based on the local context so that the community leaders could easily identify with them. For example, Wacam broke down complex legal documents—such as the 1992 Constitution, the Stool Lands Act of 1994, and the Minerals and Mining Act of 2006—into easily digestible formats for the community activists. It also taught them strategies in community organizing, conflict management, and negotiation.

By mid-2004, when the organization began engaging formally with AngloGold Ashanti, it already had a significant number of community activists. This wide support base became Wacam's trump card. Using the results of a fact-finding mission in



Picture 1

A group of Wacam activists and students demonstrating against Newmont Ghana Gold Limited for spilling fecal matter into community streams

Photo: Hannah Owusu-Koranteng

communities where AngloGold Ashanti had operations, Wacam was able to arm a case alleging gross human rights violations committed by the mining company against community activists over a ten-year period.

Wacam adopted a three-pronged strategy to address these human rights violations. The first prong, “naming and shaming,” was a powerful tactic aimed at casting a negative light on the company’s image. As part of this strategy, Wacam used national and international media to highlight the numerous human rights abuses allegedly perpetrated by AngloGold Ashanti. It also encouraged radio stations across the country to discuss these stories in the local dialect and then activate phone lines for listeners to call in and make comments. To ensure the effectiveness of this strategy, Wacam issued press statements any time an issue of human rights came up. For instance, when Awudu Mohammed was shot by the Ghana police and AngloGold Ashanti officials, Wacam circulated a press release on the shooting, which drew the nation’s attention and prompted the media to pick up the story. Similarly, when Kwame Eric, a native of Binsere (a mining community near Obuasi) was gunned down by private security officials working on behalf of AngloGold Ashanti in August 2011, Wacam issued a statement condemning the killing and calling on AngloGold Ashanti to assume responsibility for the actions of its security contractors. This statement received widespread coverage in the Ghanaian media and cast a shadow on the company’s credibility. From 2004 to 2013, a number of international media organizations visited Obuasi to learn firsthand about the human rights situation. These organizations included the BBC, *The Washington Post*, *The Guardian*, *National Geographic*, *The Examiner*, *The Mail*, and Italian and Japanese television networks. They had a tremendous influence on pushing the company to begin addressing cases of human rights violations.

A second prong of Wacam’s strategy was to “raise the ethical flag.” Wacam showed that the issue of human rights violations in AngloGold Ashanti’s concession was not just a legal issue but a moral and ethical one. It pointed to the fact that AngloGold Ashanti has signed on to the United Nations Global Compact and the Voluntary Principles on Security and Human Rights in order to pressure the company to live up to its commitments. Working

together with the National Coalition on Mining and other organizations, Wacam helped launch a campaign dubbed “Stop Violence in Mining Communities.” The campaign’s leadership met with the minister of lands and natural resources, the minister of the interior, the defense minister, the inspector general of police, military officials, and representatives from the Minerals Commission to draw their attention to the increasing violence perpetrated against communities in mining areas. This key step led to a gradual halt of the company’s use of the military and police to keep illegal miners off its concession. Another campaign that Wacam helped launch, together with Oxfam America, was the “No Dirty Gold” campaign. This campaign targeted the company’s ethical investors. To be able to attend the annual general meetings of AngloGold Ashanti, Wacam negotiated with these investors to get them to transfer their right to participate in the meetings to Wacam so that, in front of the world, stories of violations of human rights could be told. Over time, some of these ethical investors also began to threaten to withdraw their investments until the company cleaned up its act. This further pushed the company to the negotiating table.

The final prong of Wacam’s strategy was the nomination of AngloGold Ashanti for the 2011 Public Eye Award, an annual award given to companies with atrocious corporate social responsibility records. The awards ceremony is held concurrently with the annual meeting of the World Economic Forum in Davos, Switzerland, and is supported by environmental organizations such as Greenpeace. The basis of AngloGold Ashanti’s nomination by Wacam was its poor human rights and environmental record. From a pool of companies—including BP (which had been nominated in light of the oil spill off the Gulf of Mexico), Coca Cola, Toyota, and Statoil—AngloGold Ashanti won the award as the world’s most irresponsible company for 2011. This dealt a heavy blow to the company’s image.

In a statement after the award was issued, Wacam’s executive director, Daniel Owusu-Koranteng, outlined some of the human rights violations that had necessitated the company’s nomination, including “the use of guard dogs to chew suspects who trespass on the company’s concession, shooting of suspected illegal miners, and detention of suspects in private detention facilities, much

against the 1992 Constitution of Ghana” (Owusu-Koranteng 2011). Owusu-Koranteng’s statement, which was emailed to media outlets in Ghana and around the world, received widespread media attention.

The award had an instantaneous effect. AngloGold Ashanti, which for two years had broken off all engagements with Wacam, quickly expressed its readiness to sit at the negotiation table to discuss the human rights cases it had abandoned for so long. A newly constituted team consisting of representatives of Wacam, the Centre for Public Interest Law, communities affected by mining in Obuasi, and AngloGold Ashanti met in July 2011 to resolve all pending human rights cases. A mediator was appointed by consensus, and he set the ground rules for what would become routine monthly meetings. As a starter, Wacam submitted a list of victims of human rights violations that it had compiled in September 2011 when a fact-finding mission from both sides visited clusters of communities in Obuasi to investigate allegations of human rights abuses. One by one, the cases were then discussed on their own merit. After more than a year of negotiations (and behind-the-scenes pressure on the company), AngloGold Ashanti finally assumed responsibility and formally agreed to compensate victims (or their relatives in the case of deceased victims). AngloGold Ashanti’s formal acceptance of responsibility was a great moral victory for Wacam and the communities.

The next stage of the negotiation process was to agree on the specific amounts of compensation for the victims. This process did not take too long, as a rare rapport had been established between Wacam and company representatives. It is important to acknowledge the significant role played by AngloGold Ashanti’s vice president for corporate affairs, Kwame Addo-Kufuor, who had a great moderating influence on the side of the mining company. His calming demeanor cooled proceedings whenever things heated up.

In July 2014, all but one of the many human rights cases had been amicably settled, with victims and their families receiving fairly adequate compensation. The only outstanding case is that of Awudu Mohammed, who has been flown to South Africa ten times for surgery to correct his gunshot wounds.

Conclusion

Ghana has been hailed as a rising star in Africa due to its impressive democratic culture and economic development. Years of stable democracy and the 1992 Constitution have led to the building of institutions that uphold respect for human rights. But in the mining industry, where human rights violations are commonplace, merely guaranteeing the protection of human rights in the Constitution is not enough. The use of nonlegal approaches by vibrant civil society groups can help fill the gap, moving us closer to the fulfillment of constitutional promises.

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CHAPTER 8
Garrote and Venice:
Development, Decent Housing,
and Human Rights in Argentina

Pétalla Brandão Timo
(Brazil/Argentina)

Welcome to Garrote

It is raining. The first time I visited the Garrote neighborhood it was sunny, but residents pointed out the large puddles that remained since the last rain, several weeks before. Now, as I listen to the storm looming over the city of Buenos Aires from the comfort of my downtown home, I think about them again. When it rains in Garrote, the precarious streets tend to flood and turn into streams of garbage. It is not uncommon for the water to flood houses as well.

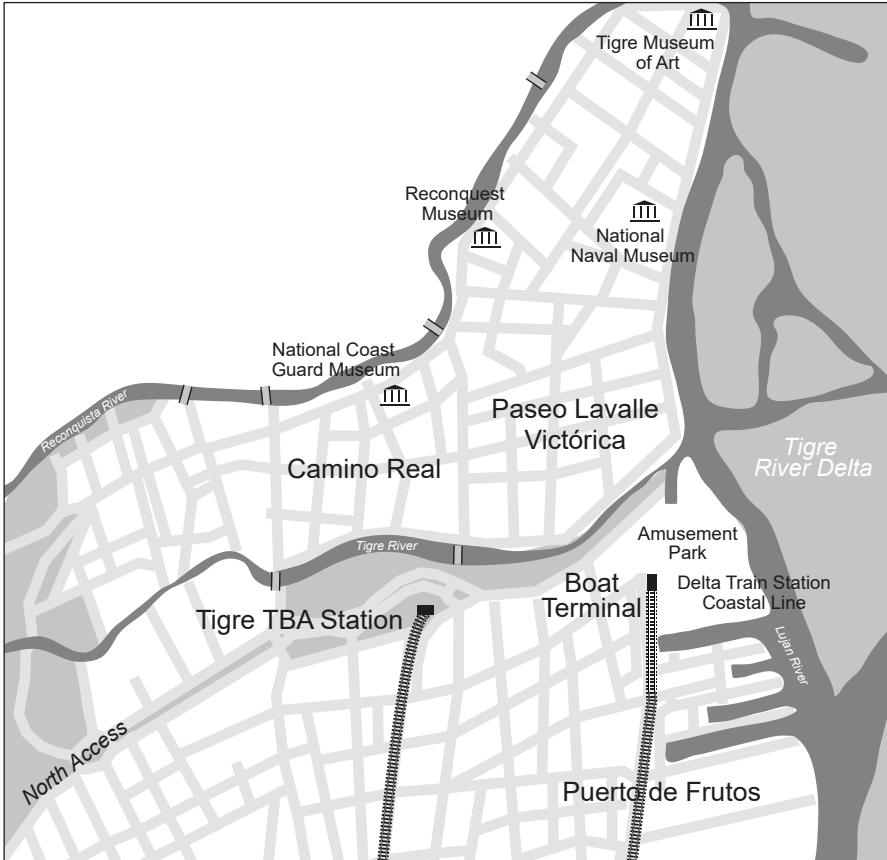
MAP I
Distance between Buenos Aires and Tigre



SOURCE: Adapted from googlemaps.com

MAP 2

Tigre



SOURCE: Adapted from [googlemaps.com](https://www.googlemaps.com)

Garrote is located in the touristic municipality of Tigre, about thirty-two kilometers north of Buenos Aires, Argentina's capital. The region features beautiful natural landscapes shaped by the dynamics of the rivers.

One day in 2014, as I walked with longtime Garrote resident Marcela Araceli alongside the nearly 800 dwellings that make up the neighborhood and that house close to 4,000 people, she told me about the parasite epidemic that had affected local residents, primarily children, between May and June 2012 ("Los vecinos de la villa Garrote denuncian una epidemia de parásitos" 2012). That had been more than two years ago, and I could see that the unsanitary conditions that had led to the spread of the disease remained

unchanged. Although some of the neighborhood's oldest zones have improved somewhat, most families live without drinkable water and septic tanks, and with very poor or inexistent garbage collection services.

Added to this lack of basic infrastructure are other obvious problems related to the prolonged social exclusion suffered by the inhabitants of Garrote.

"Turn around. Dead end. Violators captured on camera. Avoid fines." These admonishments are found on the enormous sign hanging above the entrance to Garrote.¹ Next to it is a police post. Across the street, another sign hanging on the bridge says, "Neighborhood of Almirante Brown." Marcela explained, "We don't exist for the municipality."² People who live there do not consider themselves residents of the Almirante Brown neighborhood, the name by which the neighborhood appears in official public records. Early residents of the neighborhood, which was



Picture 1
Sign at the entrance of the Garrote neighborhood
Photo: Garrote residents

1 The sign I saw on a visit to the neighborhood in April 2014 had been removed when I returned in November of the same year. The neighbors did not know why. What is known is that this sign's presence generated a great deal of discontent in the community and sparked public debate in the Municipality of Tigre City Council Chamber.

2 Conversation with Marcela Araceli, April 2014, Garrote. All quotations from Marcela in this chapter derive from this conversation.

founded in the 1960s, gave it the nickname Garrote in reference to the fights, or *garrotazos*, between the four families that originally ruled the neighborhood.

Marcela has lived in Garrote for twenty-seven years. She was eighteen when she arrived and was present during the neighborhood's expansion, which was the result of migration from the country's provinces to urban areas, driven by industrial growth. This expansion occurred without any type of urban planning.

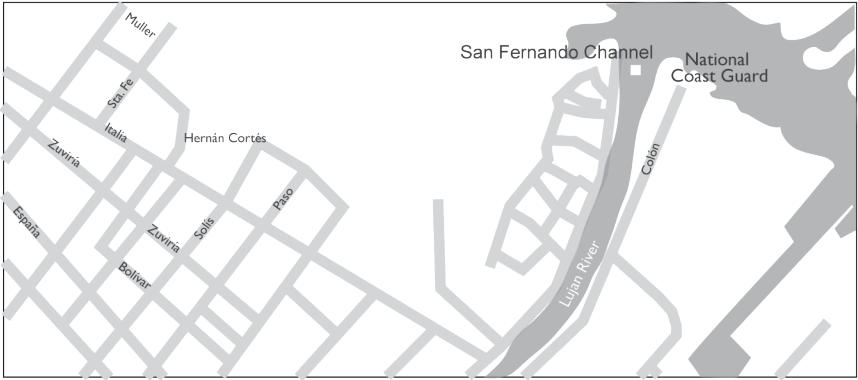
While shoddily constructed residences and precarious infrastructure are widespread, the level of risk and vulnerability is not identical throughout the neighborhood and is noticeably worse in certain zones. Residents distinguish between "those from the back part" and "those from the front part." The first group lives on the riverbank, where houses are made of flimsy materials and the streets are mere alleys. The second group lives in the oldest part of the neighborhood, which boasts a few paved streets and more solid construction, including houses whose owners have invested significant resources to improve their living conditions. A soccer field is the landmark separating these two territories.

Marcela traces her family's history to Garrote, where she married Flavio, who was born there. The neighborhood is also where they raised their children, now twenty-four and twenty-two. Elisa, the youngest, accompanies us on our walk, and she is the one who explains what my eyes see but fail to comprehend: the tall concrete wall that surrounds a large area of the neighborhood. This is the wall that separates Garrote from the facilities of Tren de la Costa, a touristic light rail line connecting Buenos Aires to the Paraná River delta.

Physically speaking, Garrote is enclosed by a large sign on Avenida Italia, the Tren de la Costa wall, and the San Fernando Channel, one of the most polluted parts of the Luján River.

Not far from Garrote is the beautiful city of Tigre, a tourist draw for the well-to-do. Since the 1990s, the city has adhered to a pro-development policy that favors large, luxury real estate projects. For the tourist who arrives to Tigre, Garrote is hidden, enclosed behind the river and the wall. Able to be seen only from above, one must assume the perspective of the rain that falls in order to catch a glimpse of it. If it were visible, the contrast with Tigre would be striking. Paradoxically, images of the invisible

MAP 3
The zone



SOURCE: Adapted from googlemaps.com

Garrote neighborhood were broadcast on countless television screens from May to December 2011, when it provided the setting for the slum scenes of an award-winning television drama. Few are aware, however, that the series, *The Point Man* (*El puntero*), was shot in the center of the wealthy municipality of Tigre. Marcela commented that even she found it powerful to view the reality of how people live in Garrote on television and with a certain remove.

By day, Marcela is the leader of Vecinos Solidarios, an association formed in 2009 that defends the rights of local residents. By night, she works at a geriatric hospital. Garrote is home to five different cooperatives organized by distinct political and social groups. Each cooperative carries out different kinds of activities in its search for solutions to the problems faced by the community.

Despite years of struggle by residents, Garrote's history is marked by broken promises and unfulfilled expectations. A plot of land on the edge of the neighborhood is one such example. Here, one finds the unfinished construction of a housing plan called Sueños Compartidos (Shared Dreams), begun in 2011, which was supposed to address the area's housing shortage.³

3 The Ministry of Federal Planning, Public Investment and Services signed an agreement with the Sueños Compartidos program, organized by the Mothers of the Plaza de Mayo Foundation, for the construction of houses for people living in slums and settlements. Within

The mobilization of Garrote's residents has deep historical roots, as the neighborhood's founding overlaps with the history of the lands of La Anguilera, an old political meeting and organization space of workers from the former shipyard Astilleros Argentinos Río de la Plata, who were persecuted for their union membership during the last Argentinean military dictatorship; today, many of them remain missing. One of these workers was the father of Graciela Villalba, who also accompanied us during our first meeting in the neighborhood as a member of the Northern Zone Commission for Memory, Truth, and Justice. The tireless work of this commission achieved, on October 11, 2014, a presidential decree (Decree 1762/14) declaring La Anguilera a national historic site and a state terrorism memorial site.

At the Center for Legal and Social Studies (CELS by its Spanish initials), an Argentinean human rights organization, we learned about the situation of Garrote in early 2014. Raquel Witis, a member of the Northern Zone Commission for Memory, Truth, and Justice and a member of CELS's board of directors, informed us that land-use planning studies were beginning in La Anguilera in order to commence construction of the urban development project known as Venice.

The name Venice represents the ambitions of this real estate megabusiness: "a navigable city on the Luján River." The project's website describes the faux Venice as a "brand new urban development" that includes "an extensive residential project with commercial establishments and its own private shoreline" (TGLT 2016).

On the highway leading up to and around Tigre are an abundance of advertisements that feature nature as Venice's principal

this framework, the parties agreed on the construction of 288 houses to reduce Garrote's urban housing deficit. Faced with the suspension of construction and a demonstration by Sueños Compartidos before the municipality regarding the impossibility of continuing the implementation of what had been agreed on, in July 2011 a termination of work contract was signed with the Mothers of the Plaza de Mayo Foundation. One month later, the Municipality of Tigre entered into a new agreement with the Deputy Minister of Urban Development and Housing with the aim of reducing the number of houses from 288 to 108. However, in September 2011, the same parties entered into a new agreement, this time for the construction of 180 houses.

attraction.⁴ Ironically, however, the luxurious and supposedly exclusive project of the TGLT company (an associate of Latin America's largest real estate company) is being constructed without regard for its socioenvironmental impacts.

Garrote's residents are worried and steeped in uncertainty. Their houses are built on wetlands and are already vulnerable to flooding; and due to the rising construction level that Venice entails, this risk has the potential to get much worse. Similarly, there are questions about the quality of the soil that Venice plans to dig up to open its canals. The Astilleros Argentinos Río de la Plata shipyard was in operation for sixty-seven years and was the site of intense industrial activity at a time when environmental controls and remediation treatments were almost nonexistent. The soil that is now beginning to be removed for Venice's construction is contaminated with heavy metals such as mercury and lead, as well as other harmful substances.

In light of these aspects, my colleagues and I realized that we were facing a situation of multiple violations of the human rights of Garrote's residents. As I will detail below, it became clear that this case is representative of a broader national problem—one that involves the human right to housing. We therefore decided to become involved in the case through a series of strategic actions.

The Garrote case typifies the links between economic development policies and the fulfillment of human rights. It demands that we reflect on the conflicts that arise from an unequal and exclusionary model of land use. Although the Garrote neighborhood is in Argentina, it illustrates a reality prevalent throughout Latin America.⁵

One of Marcela's final comments during our conversation on that first walk through the neighborhood in April 2014 resonated with me:

4 Between April and November 2014, we noticed a significant reduction in the number of billboards in the city.

5 See, for example, the case of the gated community Condomínio Ribeirão do Vale in Brazil, located in Bom Jesus dos Perdões, seventy kilometers from São Paulo. There, a river has been diverted to build this gated community, while in several *favelas* (slums) of São Paulo people face water shortages in what is already the most severe water crisis in the city's history (Coletivo Conta D'Água 2015; Capriglione n.d.).

We're not naïve, and we don't expect to stop Venice. But it's not fair for so much money to be spent on construction right next to us while we're living in poverty. I know what my rights are, and they're not going to kick me out of here, no matter how much they might want to and how hard they might try.

Justice for Garrote: Calls for the Right to Decent Housing

Access to decent housing⁶ represents an outstanding debt to the human rights of millions of Argentinean citizens, particularly low- and middle-income sectors of the population, as well as vulnerable groups such as women, children, the elderly, and people with disabilities. Although undeniable progress has been made in social matters in the last decade, the persistence of an acute housing deficit in the country (Center for Legal and Social Studies 2013, 352) shows that merely increasing public investment in infrastructure and housing construction is insufficient. There must be complex interventions that respond to the multiple causes of this problem and that allow the social function of property to become a reality.⁷

In an interview, Eduardo Reese, director of CELS's economic, social, and cultural rights team, stated that the solution requires not only social improvements and economic growth but also public policies that regulate the market ("*La informalidad agrava la pobreza*" 2014). Historically, the forms in which land markets have functioned have produced "cities that are economically unequal, socially exclusive, spatially segregated, and environmentally unsustainable" (Center for Legal and Social Studies and *Habitar Argentina* 2013).

6 Decent housing includes access to land and adequate shelter, as well as water and sanitation, social infrastructure, public services, and work and production spaces within a framework that respects an area's cultural, symbolic, and environmental components.

7 According to this principle, the state must privilege in its interventions the general interest, equality, and social inclusion over the individual interests of real estate owners and developers. The social interest of property is provided for in many provincial constitutions of Argentina. In addition, article 21 of the American Convention on Human Rights stipulates that the law may subordinate the use and enjoyment of property to the interest of society (Center for Legal and Social Studies 2013).

In this context, Garrote can be seen as a case that, from a human rights perspective, powerfully expresses the tensions between different conceptions of development and the right to decent housing. CELS, which has been working for many years with other social actors, such as *Habitar Argentina*, to solve these problems, provides legal support to Garrote's residents. Marcela is named in the lawsuit as a plaintiff, together with Laura Novais and Ramón Oscar La Paz.

Strategic litigation through leading cases is beneficial in various ways. First, it reveals and exposes patterns of illegal behavior or structures that lead to the violation of human rights. Second, it allows for the construction of tools to promote rights that are not being respected, whether due to inadequacies of the state or to the invisibility of affected groups in the public agenda (Center for Legal and Social Studies 2008). In this way, litigation may also function as a resource for political action and may prompt the state to resolve structural problems.

CELS's case on behalf of Garrote residents seeks to generate the conditions necessary for the proper implementation of Law 14449 on Fair Access to Housing. This law, passed in November 2012 by the Legislature of the Province of Buenos Aires, recognizes the need to comprehensively address the complexity of the province's housing problem and, among other objectives, regularize informal neighborhoods and promote the socio-urban integration of slums and settlements.

Its passage was a significant political milestone, as it concluded a key process of coordination among a broad spectrum of social actors throughout the province. Beginning with the preparation of a draft following participatory dialogue, the law then had to overcome the obstacles created by the negative reaction of real estate developers and other parties (Center for Legal and Social Studies 2012; "Scioli: 'Puede haber un veto parcial a la ley de tierras'" 2012; *Habitar Argentina* 2013).

Law 14449 "provides instruments to directly intervene in the deficit of urban housing, gradually improving it, and in the production and growth processes of cities, creating structural conditions for the development of housing and habitat policies." It establishes four guiding principles for these policies: the right to the city and to housing, the social function of property, the democratic

management of the city, and the equitable distribution of burdens and benefits (Center for Legal and Social Studies 2013, 372).

In the words of Reese (2014), the law “is neither a starting point nor an end point but rather both of these things at once.” Popular struggle is what led to this breakthrough, which has failed to be implemented in practice. Those of us who promoted the development, enactment, and regulation of this law understand that its characteristics require gradual implementation. We thus continue to work to overcome resistance and generate the conditions necessary for its full application.

We decided to file a lawsuit on behalf of Garrote residents when we learned that the Venice real estate project threatened to exacerbate the already critical situation of inhabitants by altering the neighborhood’s flood levels.⁸ In March 2014, we submitted formal requests for public records to the Municipality of Tigre, requesting the appropriate technical studies behind the project’s development, including the environmental impact study and statement, the construction plan, and any permits that had been issued for the project.

Our request went unanswered. This silence generated even greater uncertainty about the administrative procedures necessary for authorizing the construction and marketing of a project of this magnitude.⁹

We filed the first lawsuit in April 2014, following a request for precautionary measures. We subsequently renewed the claim as an action of restoration or recognition of rights (*acción*

8 Both Venice and Garrote are located at the bottom part of the Luján River on the floodplain. Article 19 of the Tigre Zoning Code (Ordinance 1894/96) requires that the level of terrain of all properties be a certain amount above sea level; and if the terrain is below this indicator, the ground must be filled to reach it. The plans for Venice refer to extensive and deep waterways in space that is currently solid ground, leading to the conclusion that it will necessitate significant movement of the soil.

9 In July 2014, Venice’s developers (TGLT and Metro21) and marketers (Achaval Cornejo) published a flyer noting that “we obtained the final feasibility study, we hired the construction company (sites and systems), we started construction, and we launched a fixed fee plan in pesos: 65% sold in the first stage.” However, provincial rules governing real estate developments such as Venice state that “the granting of preliminary technical validation does not imply authorization to effect any works or to formalize sales agreements” (art. 6 of Provincial Decree 9404/86).

de restablecimiento o reconocimiento de derecho) to adapt to the decision of the trial judge, who had dismissed the proceedings on the grounds that the complexity of the claims exceeded those of a precautionary measure, as they required further discussion and proof. Our claim specifically highlighted the impact on residents' rights to decent housing, health, and a healthy environment.

On October 14, 2014, we filed the official lawsuit, along with a new request for precautionary measures, which were granted on October 28, 2014. The judge ordered the defendants—the Municipality of Tigre, the Ministry of Social Development of Buenos Aires, the Ministry of Infrastructure, the Provincial Agency for Sustainable Development (which has the role of environmental oversight), and TGLT (the developer of the Venice project)—to submit all necessary technical studies regarding the feasibility of the project's construction and the provision of services of solid waste collection, the drinking water supply, and the cleaning of septic tanks. At the time of writing, these legal proceedings were ongoing.¹⁰ The time frames of Argentina's court system suggest that the process will be a long one.

CELS's past experience with the political and legal enforceability of the right to decent housing in both rural and urban environments has made us aware of the obstacles associated with the judicialization of conflicts as a means for the fulfillment of economic and social rights. In urban areas, our work on behalf of residents of the slums La Dulce and La Cava, and even our participation in the *Ramallo* and *Mendoza* cases (Center for Legal and Social Studies 2008, 2009), have shown the importance of coordination between institutional actors and social organizations in the fight for the enjoyment and effective exercise of human rights. The drawn-out process of litigation can negatively affect parties' mobilization—and “without the participation of the affected parties, the

10 In November 2014, both the municipality and TGLT submitted their answers to the judge. In the case files, the municipality stated its intention to “provide a dignified response to the current lack of infrastructure and housing” in which the inhabitants of Garrote live, affirming that it is “located in a strategic location in the city of Tigre.” In doing so, the municipality recognized its responsibilities, did not reject the demand, and merely requested an extension in order to comply with the required documentation. The company, on the other hand, filed an appeal in which it disputed the case's lack of legitimacy.

actions of the legal support institutions and other organizations of civil society become emptied of political strength to influence social life” (Kletzel and Royo 2013, 123).

When issues affecting a group of people become judicialized, and when the protection of economic, social, and cultural rights is at stake, the limitations of traditional judicial mechanisms to remedy violations of these rights also become evident (Sigal, Morales, and Rossi n.d.). Rulings in these cases should not be limited to concrete solutions to correct particular situations but should instead seek to alter the structural and political conditions that led to the violation of the rights at hand.

Recognition of these tensions is central to CELS’s approach to formulating and litigating cases such as Garrote, since they demand not only a favorable ruling but also specific measures for enforcing that ruling.

Another difficulty is that socioenvironmental justice cases often require additional expertise to address relevant technical issues (such as environmental impact studies)—knowledge that falls outside the domain of human rights lawyers. These cases therefore require multidisciplinary approaches.¹¹

In the Matanza-Riachuelo basin, for example, enormous challenges have arisen in the context of the implementation of the 2008 *Mendoza* ruling, which established a comprehensive program for the basin’s rehabilitation (Center for Legal and Social Studies 2011). This program is supposed to simultaneously improve the quality of life of the population living in the precarious and environmentally hazardous settlements in the basin, restore the basin’s environment in all respects (water, air, and soil), and prevent damage with a sufficient and reasonable degree of predictability. The ruling also ordered that measures be taken to ensure that people do not live in garbage dumps (a situation similar to that of the residents living in the rear part of Garrote). To accomplish this, it provided for both the regulation of land ownership in favor of its occupants, where appropriate (providing basic

11 In light of this challenge, CELS’s team comprises lawyers, political scientists, sociologists, architects, urban planners, and psychologists. In addition, we are partnering with the Environment and Natural Resources Foundation, which provides us with technical advice on environmental issues in the Garrote case.

infrastructure services, consolidating public spaces, and mitigating environmental problems), and the relocation of those families facing imminent environmental risk.

However, many tensions have arisen around the relocation process. The intervention of organizations such as CELS has been critical for ensuring that the process does not consist merely of the violent eviction of households for an alleged common good but instead abides by human rights standards (Center for Legal and Social Studies 2011). This requires paying special attention to the consultation with and participation of those affected.

Garrote residents have made it clear that they have no interest in being relocated and that the Sueños Compartidos housing project will not work. For one, they note that the housing complexes were constructed without consulting with people from the neighborhood. Further, it is not known how the families to be relocated will be selected once the buildings are ready. Residents explain that they have their own ways of life, which have not been taken into account. It is for this reason that our lawsuit places special emphasis on the need for a participatory decision-making process around the neighborhood's socio-urban integration.¹²

Unlike the other cases mentioned, Garrote is the first in which we have had an important legal tool at our disposal from the outset: Law 14449. The law's framework for the socio-urban integration of slums and settlements, as outlined in article 27(II), provides an essential starting point for creating an effective protection system against forced evictions. This aspect is central if one takes into account residents' fear of being expelled from the valuable land where they have lived for more than half a century.

Other Garrotes

The Garrote case is not an isolated one, as around 50% of Tigre's territory is occupied by gated communities. The lands bordering several of these private spaces are poor neighborhoods with conditions similar to those of Garrote, with walls separating the

12 Law 14449 (particularly articles 13, 35, and 57) considers the right to participation (defined as the active, protagonistic, deliberative, and self-directed participation of the community in general and citizens in particular) as a guiding principle of the democratic management of the city.

two worlds. As stated in one documentary, “On one side are golf courses, lakes, private navigable rivers, mansions, and five-star hotels. On the other side, polluted waterways, trash, dirt roads, and total abandonment by the state” (“El Tigre que nos ocultan” 2013).

Nordelta, whose construction began in the late nineties, is an ostentatious icon of this model of gated communities in Argentina. There, buildings were erected without any consideration of the environment. Developers covered the basins of the rivers and streams and left no green spaces for water drainage. The gated community filled the Luján River basin, significantly transforming the ecosystem and thus the dynamics of island life (“Tigre: Denuncian la destrucción de la forma de vida isleña” 2013).

The combination of the walls and the land’s elevation exacerbates flooding in poor neighborhoods (“Los countries sobre la cuenca, responsables de la crecida del Río Luján” 2014; Pintos and Sgroi 2012). For example, in Tigre, the neighborhood of Las Tunas has become enclosed within the walls of four different gated communities built within the last ten years.¹³ In the face of flooding, some residents who, out of desperation, broke parts of the walls to drain the water report having been restrained by private security personnel (“Countries secos y barrios inundados: El paredón que divide a Tigre” 2014; “Las Tunas existen: Lo que las lluvias han dejado” 2013).

These projects are unsustainable from both an environmental and a social standpoint. They are also responsible for savagely raising the price of land via speculation, profiting from the informality that is generated as a result of poor families’ inability to access land. In the case of Venice, its construction on the land of La Anguilera also represents an insult to historical memory (“La memoria hundida en una Venecia trucha” 2012). Such situations are reproduced throughout the entire province and elsewhere in Argentina.

From a macro perspective, a positive ruling in the Garrote case should have repercussions for the implementation of Law 14449, benefiting all neighborhoods by setting a precedent with regard to the state’s obligation to intervene in these types of complex land-use dynamics.

13 La Comarca, El Talar del Lago II, El Encuentro, and Nordelta.

“Venice’s harm is not limited to Garrote,” Marcela explained. Venice, as well as other similar real estate ventures with artificial lakes, harms all of Tigre through the environmental impacts generated by construction on wetlands. “But they have tremendous impunity,” she added—and by “they,” she was referring to those who profit from this multimillion-dollar market.

CELS’s lawsuit is directed against relevant state bodies,¹⁴ as well as TGLT, the developer of the Venice project. While the company is not responsible for improving the living conditions of the plaintiffs and other residents of Garrote, it is responsible for ensuring that damage is not caused by a higher construction level. The Argentinean Civil Code (namely articles 2634 and 2653) prohibits the owners of upper-riverside country properties from aggravating sediment transfer to lower regions through changes to the level of their land or harmful water management practices. Garrote residents have the right to not be affected by any changes to the soil in the construction of Venice that aggravate and disrupt water drainage.

Since Venice’s construction, flooding has worsened in the neighborhood after rains. Not only has the water level risen, but it also takes much longer to go back down.

There is a need for an awareness-raising campaign among residents, who should also be informed of the ongoing lawsuit. This is part of the work that CELS has been coordinating alongside some of the cooperatives, particularly Vecinos Solidarios, and other grassroots actors.

Women’s role in the struggle caught my attention during my visits to the neighborhood. It is women who are the main heads of household and members of the cooperatives. I once made a comment in this regard at a meeting with some of the female residents, and they all agreed that women are indeed the most committed to “stepping up and fighting.” They are the ones who “see a little further into the future.”¹⁵

14 The Municipality of Tigre, the Ministry of Social Development of Buenos Aires, the Ministry of Infrastructure, and the Provincial Agency for Sustainable Development (which is charged with environmental oversight).

15 Focus group discussion with women, November 2014, Garrote.

Laura Novais, one of the plaintiffs in our case, noted, “Each act of activism is connected to our own life story.”¹⁶ Laura is fifty-five years old and has a son, Christian, who was born when she was sixteen. She told me a little about Las Alondras, the care center for women in vulnerable situations that she founded with great effort and is trying to maintain in the neighborhood. Laura has suffered a lot of violence in her life, mainly at the hands of her ex-husband, who died in a fire that assailed the neighborhood many years ago. Firefighters had been slow to arrive, and the ambulance had been unable to enter the narrow streets.

Venice represents a common threat to all Garrote residents, regardless of any political differences or disputes they might have with one another. But it represents even more than this: an opportunity for inhabitants to fight for Garrote’s proper socio-urban integration. Similarly, for other members of civil society who are concerned about this issue, Venice offers a context for public and democratic debate on Argentina’s development policies.

Development and Human Rights

Development-oriented policies have a differential impact on populations in situations of social vulnerability. These policies can, on the one hand, help the most vulnerable sectors of society achieve greater access to rights or, on the other, maintain or exacerbate the structural and circumstantial situations that lead to rights violations (Center for Legal and Social Studies 2015).

An example of this tension has manifested in several Latin American countries, mainly since the 2000s, when leftist governments came to power as a result of strong social mobilizations. These governments recovered the centrality of the state in the distribution of economic surplus and fostered significant redistributions of income through compensatory policies. At the same time, they let market forces reign, inaugurating a neodevelopmentalist model that, in many cases, meant sweeping aside those who stood as an “obstacle to progress,” such as campesinos and indigenous peoples (Santos 2014).

16 Ibid.

Approaching development from a human rights perspective means overcoming this apparent paradox. Such an approach integrates international human rights norms into the plans, policies, and processes of local development. Basic principles such as participation and nondiscrimination inform and guide decision making. A focus on human rights exposes discrimination and exclusion, and it refuses to allow large-scale gains and changes to take place unremarked if they imply violations of the human rights of nearby communities. Such an approach is centered on acknowledging the real socioenvironmental costs of development projects, the interests they serve, and their true beneficiaries. It means understanding that full respect for the human rights of all people is a condition without which there can be no genuine sustainable development.¹⁷

In this vein, the Montevideo Consensus on Population and Development contains a number of principles on how development from a human rights perspective is understood in today's Latin American context. It includes a set of recommendations and priority actions for ensuring that development policies and strategies achieve access to decent housing. These recommendations, adopted by the Economic Commission for Latin America and the Caribbean in 2013, represent an important shift in the definition of and approach to the "urban problem." As stated in a recent CELS report, "Social housing policies produce sustainable transformations only if they are accompanied by consistent urban, environmental, and land use policies" (Center for Legal and Social Studies 2015, 462). And as Boaventura de Sousa Santos writes, "Human rights are [today] the hegemonic language of human dignity" (2014, 23). This means recognizing that the human rights language has been exploited on many occasions to legitimize the ideologies of proprietary individualism and to reproduce a capitalist, colonialist, and patriarchal order. However, such a discourse must be countered with conceptions of human rights that offer alternatives aimed at warding off oppression, promoting the

17 This is not to deny that the relationship between development and human rights has a complex impact on multiple dimensions. My intention here is simply to offer some ideas for reflection.

autonomy of individuals and social groups, and building more just societies.

With this vision, the harmonious coordination of economic growth, an equitable distribution of benefits, and environmental sustainability becomes central. Development is understood as the “process of collective construction and comprehensive scope in which the living conditions of all members of society improve in a fair and sustainable way, both materially as well as socially, culturally, and politically” (Center for Legal and Social Studies 2015, 441).

In this sense, what is required is the appropriate intervention of the state in its regulatory role. Particularly with regard to housing policies, the regulation of the real estate market becomes indispensable for ensuring the equitable sharing of burdens and benefits in land use, with a view to materializing the social function of property. In our specific case, Law 14449 provides policy instruments and management mechanisms aimed at generating financial resources for the implementation of its objectives.

Specifically, article 52 of the law grants municipalities the power to participate in real estate valuations occurring in their jurisdictions that originate from administrative decisions that permit a property’s increased profitability. This aims to collect resources for the implementation of article 8, which includes the socio-urban integration of underserved neighborhoods. The state’s failure to achieve this violates the basic principle of international human rights law to take measures *to the maximum extent of available resources* toward the full realization of the rights recognized in the International Covenant on Economic, Social and Cultural Rights.¹⁸

The problem, as we have seen, is that the state often reproduces and encourages speculation and the unequal growth of cities rather than regulating the market; consequently, it worsens inequality in land access. Accordingly, public investment tends to support a dual city model, creating a division between “formal” and “informal” and ignoring the social management of housing (Catenazzi 2014). Insecurity entails living under a constant threat

18 See article 2(1) of the International Covenant on Economic, Social and Cultural Rights, as well as paragraphs 16, 17, and 18 of the Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights.



Picture 2
Sign on Avenida Italia
Photo: Pétalla Brandão
Timo

of expulsion that, at its most perverse, enables the institutional violence of forced evictions. For this reason, it is important to discuss the role of urban planning as a tool for contributing to more inclusive development.

Local governments play a key role in the process of questioning what “order” and “disorder” mean in the city space, including in areas with blurred borders between “environmental” and “urban” problems (categories that should actually not be separated), such as basins. The solution lies in moving beyond the fragmentary, sectoral, and technocratic policies of land and housing management and adopting a holistic view of these problems, as well as strategies to address them (Catenazzi 2014).

Within this context, in December 2014, the *Habitar Argentina* platform (of which CELS is a member) launched the National Consensus for Decent Housing, a proposal of nine major points for the design and implementation of comprehensive land policies.¹⁹ Stemming from the need to transform the factors that shape

¹⁹ The nine points are (i) guiding principles for the design and implementation of comprehensive land policies; (ii) public policies of regulation and redistribution of earnings in land markets; (iii) regula-

inequalities, this initiative aims to promote broad and critical discussion for the implementation of new policies and strategies seeking to guarantee the right to decent housing in Argentina. The consensus is an important step toward integrating a human rights perspective into development and housing policies.

Final Considerations

Garrote features characteristics that encapsulate the historical and current agendas of the struggle for human rights in Argentina. It is a unique but at the same time emblematic case of the tensions of development.

While the work in Garrote lends itself to discussions, such as this one, of a more macro nature, it also generates reflection on the role of human rights organizations such as CELS in these types of conflicts, taking into account the inherent limitations of the legal and institutional tools at our disposal to confront and intervene in them. Acting as a counterbalance are the state and powerful economic actors, which add many layers of complexity when we try to develop strategies and devise solutions.

Using the language of law as a tool of emancipation means understanding its essential paradoxes (Baynes 2000) and reflecting on the need for legal enforceability to accompany strategies of political and social struggle.

This work also stirs up concerns at the individual level. I wonder, is it possible that the buyers of the Venice units are aware of what its construction represents? Would that knowledge make any difference? Would it change their decision? The answers that come to my mind lead me to question what kind of society we are constructing.

It is not easy to respond to the human demands that arise in the context of a neighborhood where people face structural deficits—deficits to which we are unable to give an adequate response due to our own limitations. These demands may seem minor, but

tion of the rental market; (iv) social production of housing; (v) security in the possession and regularization of urban and rural land; (vi) democratic procedures in cases of evictions; (vii) democratic security for decent housing; (viii) participation and access to information; and (ix) universal access to basic social facilities and services.

they are not so for the people living in Garrote. Thus, our lawsuit is not, and was never intended to be, an end in itself. It is simply an addition to the framework of interventions needed to improve the community's situation. There can be no doubt that we have a long road ahead of us.

The last time I visited Tigre before finishing this chapter, graffiti on the front of a house caught my eye. On Avenida Italia, en route to Garrote and opposite the entrance to Venice, it read, "The best thing about Tigre is its people."

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CHAPTER 9
Lost in Translation:
Toward an Environmental Right
to Know for All

Margaretha Quina
(Indonesia)

How I Met Your River: The Struggle of the Polluted Ciujung

My first encounter with the Ciujung River was in November 2012—my first month at the Indonesian Center for Environmental Law (ICEL). Mitha, my supervisor at the time, took me to the river to build a little chemistry between me and the many documents related to it. Although it was wet season, we got lucky with the sunny weather. There, I met the Ciujung, which calmly flowed in warm, muddy brown tones—as normal as other Indonesian rivers I had seen.

The Ciujung River flows for 142 kilometers, from Lebak Regency through Serang Regency to Banten Bay. Covering a watershed area of 1,850 square kilometers, it was once the artery of Banten Province. Seeing it from the Ciujung Bridge, not much activity appeared to take place, except for a few small boats carrying people, small cargoes, or sometimes motorcycles.

As we approached the riverside along Tirtayasa and Tanara Subdistricts, I felt the pulse of the river life getting more real. Women squatted with their laundry buckets, their hands washing clothes on pieces of serrated wood in an up-and-down motion, making a choir of “grauk-grauk-grauk” sounds in between their laughs and chats. Occasionally, they slammed the clothes on the board, then dipped the board into the water, squeezed the water out of the clothes, and put them in another bucket. Children played around them—soapy, naked, and uncensored, jumping in and out of the water as they bathed. Some adults also took part in communal bathing—some as equally uncensored as the kids, sinking their bodies below the water, a piece of *sarong* lying nearby. People brushed their teeth using the water where other

people defecated, but the flow of the river seemed healthy enough to wash away the human waste before the water entered other people's mouths for rinsing. It was rainy season.

Across the big river through the bush was a small canal with a contrasting sense of hygiene from what I saw in the river. Approximately five meters wide, some parts of the canal were muddy and black, and the water flowed slowly. The same activities took place there: washing, bathing, teeth brushing, and defecating. But it did not look romantic at all—in fact, I was worried. Given that the canal was located next to the main road, I saw more of it along our way to Tengkurak, the last village fed by Ciujung. It was a part of the irrigation canal originating from the Ciujung River, and despite the wet season, it was a little bit dry. As industrialization flourishes in Serang Regency, water allocation for irrigation from the Ciujung River must compete with the industrial water consumption of thousands of cubic meters per day—both use water derived directly from the middle portion of the river.

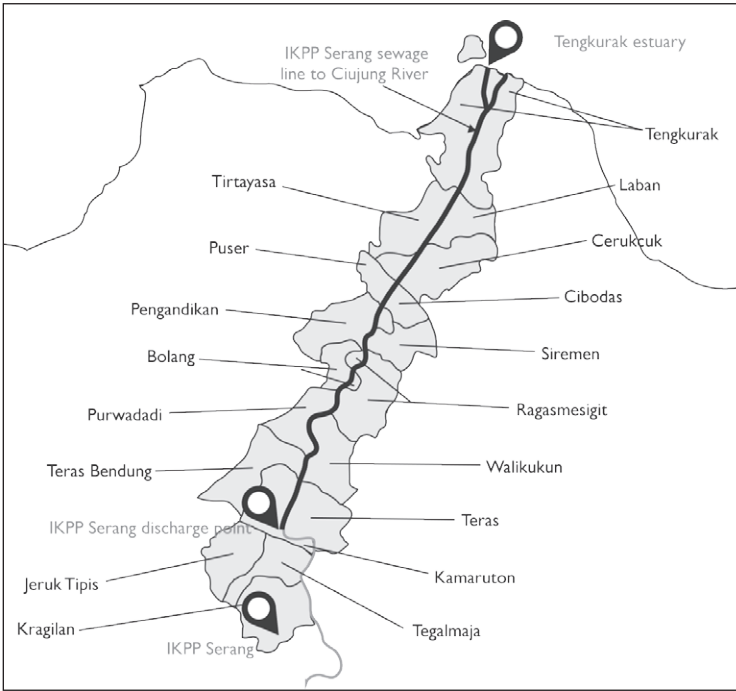
In my first days at ICEL, I valued technical data and statistics more than this kind of participatory observation. I was slightly myopic, data driven. My brain operated in the mode of an environmental lawyer who came from the city with all the privileges to access, process, and react to information about the environmental quality where I live. I saw the information top-down: what information the government should provide by law. I did not bother with *how* the information should be released. But was it fair to expect local community members to process this information just as *I* would?

With regard to the pollution of the river, most of the people I talked with had pointed their finger to a single actor, PT Indah Kiat Pulp and Paper Serang (IKPP Serang), the subsidiary of the giant pulp and paper producer Asia Pulp and Paper, which began operating in 1991 in Serang.¹ IKPP Serang's pulp and paper mill stands on 550 hectares of land and discharges its wastewater to the middle of the watershed, exposing the eighteen villages downstream (as can be seen in map 1) to its daily dose of wastewater

1 Author's field notes, November 24, 2012. Also confirmed in monthly meetings during January–May 2013.

MAP I

Villages affected by the pollution of the Ciujung River



SOURCE: MediaLink (2013)

discharge.² One of the documents obtained through our information request confirmed that the community's perception of the pollution was true: IKPP Serang was responsible for 82.93% of the waste discharged to Ciujung River. It was permitted to discharge 40,000 cubic meters per day of wastewater to Ciujung. Three other companies were responsible for the remaining portion of the discharge (BLH Serang 2011).

What was particularly troubling for me was the community's perception of the environmental risks posed by the water pollution.

During my first visit to Tengkurak, the last village downstream, a well-spoken man aged forty-three who works as a fisherman and who had lived in the Ciujung riverbank his whole life

² Asia Pulp and Paper's Serang mill contributes 1.7 million metric tons of paperboard and 480,000 metric tons of folding boxes annually (Indah Kiat Pulp and Paper 2016).

gave one of the most knowledgeable answers I would ever obtain to my question about the water he drank:

When the river is blackened [by the untreated waste discharge], it causes the fishes to get drunk and die—almost every dry season, there are hundreds of dead fishes floating on the river. It forced us to buy gallon waters to drink. It is expensive, but we don't have any choice because it was impossible to drink from the water that killed fishes!³

But at the end of his answer, he gave a twist: "As long as it's not so black and the fishes are fine, we can drink it."

Other people I spoke with had a similar reaction: they knew through experience that the water could be harmful.⁴ But they were concerned mostly with the observable *immediate* impacts that they had seen or experienced, such as dead fish, instead of the risks associated with *long-term* impacts caused by low-concentration exposure to elements such as carcinogenic chemicals from the discharged wastewater.

An old woman in her seventies who had been living in the riverbank in Tengkurak her whole life told me about the impact she felt from the water:

The company said that the water is safe, although we don't really believe so. [The water] causes me some skin rashes, which can be very itchy and common for people who use the river water. To help us, the company gave us medicine every year through its [corporate social responsibility] program.⁵

As she scratched the rash on her right arm, she added, "It wasn't like this before."

The community had received no warning whatsoever about the river's contamination. Although in 2005 the local government of Serang declared Ciujung contaminated—and in 2011 declared an environmental emergency on the river—no socialization or update about the river's condition was ever provided to the community living along the riverbank (World Resources Institute 2015; "Pemkab Berlakukan Status Darurat Bagi Sungai Ciujung" 2011). Thus, community members measured the river's safety only

3 Conversation with Sutinggal, November 26, 2012, Tengkurak.

4 Author's field notes, February 21, 2013.

5 Conversation with elderly woman, June 25, 2014, Tengkurak.

through biological criteria, such as the existence of dead fish, the river's color, and the smell of the water.

When I visited in February 2013, ICEL was working on a study related to environmental transparency in water pollution.⁶ For some time, ICEL, in collaboration with some community members, had been filing a massive amount of information requests—based on the 2008 Public Information Disclosure Act—related to water pollution in the Ciujung River.⁷ The requesters, consisting of ICEL's researchers and community members, had obtained two boxes filled with environmental documents. These documents included critical information related to the water quality in and around the Ciujung River. Mitha and I had been learning about some of the pollutants associated with the pulp and paper industry from environmental textbooks and existing studies. By referring to the environmental baseline data in the environmental impact assessment (EIA), we had scientific confirmation that the river “wasn't like this before” (PT Sinar Makmur 1992).⁸ We obtained records of multiple violations by IKPP Serang on all of the criteria pollutants (BLH Serang 2011).⁹ We knew that the government had never conducted or referred to any study regarding the health impacts that the pollutants have on those who use the water for multiple purposes.

6 The study, *Strengthening the Right to Information for People and the Environment*, was conducted in collaboration with the World Resources Institute and the Open Society Foundations. Later in 2013, the study expanded to pollution advocacy with the community, in collaboration with Friends of the Earth Indonesia and Media Link (see Indonesian Center for Environmental Law 2013).

7 The 2008 Public Information Disclosure Act is the first general law in Indonesia to govern procedures for obtaining “public documents.” It requires agencies to appoint officials to manage and document information and respond to requests; sets specific time limits for these agencies in responding to requests; and provides an appeals mechanism for cases where the requests are denied or ignored. The act allows communities to access environmental information that was previously considered confidential.

8 The EIA was originally conducted under the company's old name. It had been revised several times, including in 1996, when government ordered IKPP Serang to install wastewater treatment plants.

9 According to Ministry of Environment Decree 51 of 1995, the criteria pollutants for pulp and paper are biological oxygen demand, chemical oxygen demand, total suspended solids, and pH.

To Know or Not to Know —But Can You Possibly Know?

(Not) the Environmental Geek: The Problem with the Volume and Technicality of Information

In early 2013, still in my program-manager mode, every time I visited Serang and had the chance to talk with community members, I tried to figure out what they knew and did not know about our data collection effort and the environmental information we were gathering from it. I informed them about the information requests, conveyed some valuable information (whose “value” might be biased by my background), and asked them for feedback. Some of them responded that they knew about the process and the packet of documents received by their fellow neighbors.¹⁰ However, I also noted that most respondents were not well informed about *what* was in those documents. Upon the same inquiry to the information requesters, I heard a similar concern: they had not expected their simple questions, which they had written down in their request letters, to be answered with a thick packet of documents such as an EIA, some fifty pages of public health statistics, or a research article in English. Later, enriched with more discussions, I understood the first challenge to making information valuable: the volume and technicality of various environmental documents were difficult for laypersons to handle. Simply having a document is not necessarily the same as “knowing” what is in it, much less “understanding” it.

I should have had anticipated the huge volume and technical complexity of environmental information from the beginning. Mitha, my supervisor, once told me that she did not expect these aspects to consume so much of our energy, although she knew that reading environmental documents would require training. She realized the gravity of this data analysis and data communication problem in the middle of the program, when in June 2012 our community contact, Dadi Hartadi, texted her with the good news that the EIA had been received by the requester. Within minutes, her excitement turned into confusion, as she read the next message from Dadi: “Mitha, what should we do with the EIA? We

10 Author’s field notes, June 25, 2014.

don't really understand this. Could you help us analyze this?" The humble request submitted to Serang's Department of Environment, asking about the ecological risk associated with the river's pollution, had been answered with three thick bundles—one twelve-centimeter-thick EIA, one six-and-a-half-centimeter-thick environmental management plan, and a three-centimeter-thick environmental monitoring plan (Aspros Binareka 2008).

While it was relatively easy for us, as lawyers, to get what we wanted from the EIA, translating it to fit the needs of the community was less straightforward. Mitha herself, an environmental lawyer who had been practicing for seven years, with a master's degree from a top university abroad, spent a considerable amount of time carefully reading the document and highlighting the relevant points. She had to consult an environmental engineer to be sure that she fully understood the technical language.¹¹ The EIA actually provides a lot of valuable information, such as the condition of the river when the polluter started operating (the baseline condition of the environment), significant impacts on the environment, ideal mitigation measures to minimize the impacts, the company's commitment to environmental management and monitoring, and alternatives to the polluting activity, among others.

But finding such information within the dense technical language was not easy. It is time consuming and requires training, patience, and basic knowledge. Most of all, it is necessary to know *what* information can be obtained from the document. Doing this demands familiarity with the document's anatomy. Sometimes it is necessary to skim through the document's entire 3,000 pages instead of only the conclusion, although sometimes looking at the table of contents helps. Although I had the help of a "cheat sheet" on important information contained in the EIA, I still had to carefully go through the pages. More than once, I had to hire experts to help me confirm my understanding or explain the concepts too alien to me.

Cholid, a community member, later confessed to me:

People were bored with this old pollution problem, indeed. We've been dying to see some success, tangible changes, for years. When ICEL

11 Various conversations with Dyah Paramitha, November 2012–August 2013, Jakarta Province and Serang Regency.

came and trained people to do the information requests, we thought this might be it. But when people received the documents, some people got demotivated because instead of seeing changes we saw another complication of dealing with government. No less complicated with the bureaucracy and being sent from one agency to another.¹²

Another barrier was trying to understand specific terminology, such as qualitative pollution data that used technical terms like BOD (biological oxygen demand), COD (chemical oxygen demand), and TSS (total suspended solids). These are but a few examples of the many confusing terms that can appear in a single document. For me, the internet and a technical dictionary or encyclopedia were of great help, although many times I had to take extra time to review these supplements, sometimes spending up to an hour to understand a single concept.

However, if someone were to ask me whether the community should be trained to extract important information from a complex document, or whether the community should spend the time I spent to study these documents, I would probably say no. In the beginning, I thought they should, and I even tried to make this happen. The story of my big failure will be told in the following section—but it does not necessarily mean that my “no” is because I gave up. I changed my mind for another reason: if people from the community wanted to carry the burden of understanding all the complex information, so be it—and on top of understanding the information, they must understand the long process associated with it, too. But if this effort puts too much burden on the community, and if there are experts (such as non-governmental organizations, academics, journalists, volunteers, and religious leaders) who can collaborate, why not give a chance to broaden the movement by letting a third party contribute?

The EIA was just one example. Other documents we gathered possessed similar characteristics—large in volume, written in technical language, and intimidating from the outset. More importantly, merely extracting important information and converting long documents into simple words was not enough. As the process went along, I learned another important aspect: communicating the message.

12 Conversation with Cholid, March 24, 2013, City of Serang.

Communicating the Message: Why “Verbal” Translation Was Not Sufficient

Between 2012 and early 2013, ICEL played the primary role of explaining the content of the environmental documents for community members, trying to extract the most important information to make it readable for them. Through this information translation process, we maintained two primary contacts in the community with whom we directed our intensive communication and conveyed our analysis of the information.

One of these individuals was Sutiadi, a layperson from the community who farmed and fished for a living and organized various environmental initiatives locally in his spare time; and the other was Dadi Hartadi, a journalist who also actively organized environmental actions in Serang. Their ability and dedication to grapple with environmental issues amazed me; indeed, they seemed to come from professional backgrounds when discussing the Ciujung issue. During the requests period, they always attempted to analyze the documents themselves first before seeking input from us. They coordinated with the individual requesters in submitting requests, monitored the progress and the response given by the government, and, when the documents were finally provided, assisted the confused requesters, who were not familiar with such dense and technical information.¹³ We merely relied on them as “the messengers.”

Compared to the volume of information we received, and the intensive data interpretation we had with Sutiadi and Dadi, relying on just two people to spread the word to thousands of affected community members was far from ideal. At first, I thought the problem lay with the communication between the requesters and our two contacts. It was not until our March 2013 discussion with my colleagues at ICEL that I realized that we had too few people to convey the message.

I myself had a contemplative experience in trying to make the community interested in reading the EIA. In April 2014, I attempted to conduct a workshop for community members on how

13 Various conversations with Dyah Paramitha, November 2012–August 2013, Jakarta Province and Serang Regency.

to read technical environmental documents.¹⁴ But it was far from a success. For the event, I used the EIA as our learning source, and we invited community members who had not yet understood the problem at hand. Nearly forty people attended from different backgrounds: students, farmers, fishermen, unskilled laborers, and some individuals who were involved in other environmental advocacy efforts not related to Cijung.¹⁵ Although I forced myself to go beyond “law and regulation” language and simplify technical terms, my perception of “simple” represented that of an educated, middle-class, well-trained environmental lawyer. As I predicted, I encountered bored faces and awkward silences when I started talking about tips for understanding the document. Finally, at one point, Cidoy, one of the community members, commented:

Quina, we don’t really care about reading that. My brain wouldn’t stand it. That complicated language should have been your task, and you just tell us what to do. You let us know if we need to go out to the streets and protest the government, but just don’t tell us to examine documents if you want to help us. I don’t even read a newspaper, and care even less about a document that thick!¹⁶

His words were a slap in my face. No matter how simple I thought it was, I had to accept the fact that my language was still too complicated and ended up alienating people instead of attracting them. It might have made them feel that, given the complexity, interpreting the document should be the business of elites instead of them. Although most of the participants seemed enthusiastic about translating the documents, I could not help but take Cidoy’s comment as an honest response, and I was thankful that he raised it so that I could know how feasible our approach had been. In our future efforts, we took his observation into account when trying to figure out what kind of communication approach would work in conveying the information translation.

14 Information translation workshop, April 27, 2014, Serang.

15 Ibid.

16 Statement by Mohammad Cidoy, information translation workshop, April 27, 2014, Serang.

Do We Believe in Government Information?

In our March 2013 meeting, I had an intensive session with my team to discuss follow-up for the documents and data we had gathered so far. Besides members from ICEL, there were representatives from the World Resources Institute, our global partner in advocating around environmental information; WALHI (Friends of the Earth Indonesia), the biggest environmental network in Indonesia; and MediaLink, who had deep experience in using the Public Information Disclosure Act and information in grassroots advocacy. Most importantly, we invited the community to discuss our advocacy strategy based on the information we had at the time. Another tension had become apparent by then: disappointed with the conclusions and recommendations of one of the most critical documents, the community refused to follow up on the document entirely, expressing its distrust of the document.¹⁷ Environmentalists disagreed, emphasizing some important points of the document. The community, having experienced countless government tricks in “legitimizing” false information, refused to believe that the document’s substantive recommendations were logical and sound from a legal and environmental perspective. At that point, we discovered another problem: in Indonesia, a country prone to corruption and minimum rule of law,¹⁸ to what extent would we, or the community, choose to trust government-produced information?

The tension in the meeting subsequently led us to the conclusion that we needed to explore the reliability of the document’s logic and involve the community in providing counter-information. Similarly time-consuming, such a logical examination of the document can be done by tracing back the rationale of each of analysis, thus leading to the conclusion in reverse. The reader must check if the conclusion has answered the question posed in the document, and whether each point of the conclusion is

17 The document at issue was the mandatory environmental audit of IKPP Serang’s environmental performance (see Wijaya 2013).

18 Indonesia has moderate percentile rankings for the six Worldwide Governance Indicators: voice and accountability (53); political stability and absence of violence/terrorism (31); government effectiveness (55); regulatory quality (49); rule of law (42); and control of corruption (34) (World Bank 2015).

legitimately supported by each part of the analysis. This process can be done in parallel with or before the translation part. In April 2014, we actually tried to include a logical examination in one of our community workshops with the community, and most people seemed to enjoy the process.

On the other hand, counter-information is much more engaging for the community, and much less boring than the document examination. Providing counter-information consists of comparing wide arrays of community-supplied data with information provided by the government. It is done through participatory observation, sample collections, whistleblowing, and other means. For the people who live in affected areas, providing counter-information might be best suited with the community's vantage point—for example, those who live near wastewater outlets have the privilege of directly observing the flow of the wastewater, color, the exact kinds of materials contained in the waste, and the smell of the waste; or those who fish can observe the point from which the dead fishes start.

Another valuable asset that often gets overlooked by our data inventory is the individual stories of the community's struggle, which could have informed us and policy makers about how those people felt about not having a choice but to use the river water, regardless of its quality. Unfortunately, none of our information translation efforts successfully captured these stories by the time I wrote this chapter.

Moreover, from the perspective of the environmental right to know, the government's inability to provide important environmental information is also problematic. The environmental right to know suggests that *any* activity that might pose environmental or health risks should be disclosed to the public (Roesler 2012). However, the government does not necessarily possess this information, especially if it is not specifically mandated by law. Very often, laws and regulations lag behind science. For example, through an expert consultation, I learned about absorbable organic halogen, a carcinogenic pollutant generated in the pulp and paper industry during the bleaching process. Aquatic organisms living in rivers polluted by this substance are contaminated, and, through the food chain, the substance eventually gets into, and remains in, the human body (MediaLink 2014, 3). Since absorbable

organic halogen is not listed as a controlled substance for the pulp and paper industry, no monitoring has ever been done by authorities. I also learned about dioxin and furan, both carcinogenic and known for their hazardous effects—yet no information on these substances was available in the government’s archive (ibid.).

It was not until February 2015 that we discovered the high value of this community-made information—before the government even had it. This community-provided information, as described in the next section, led to the imposition of administrative sanctions for IKPP Serang.

The Long Road from Information to Action

During my involvement in this case, I witnessed the emergence of well-informed advocacy led by the community; and, today, their incremental successes are eventually leading to some bigger ones. I might be biased in this statement, but a small group of persistent community members showed me that the power of their tirelessness, together with the right information and the right advocacy strategy, eventually results in grand achievements. The mandatory environmental audit and the administrative sanctions were the two most notable examples.

In early 2013, an independent auditor completed a mandatory environmental audit of IKPP Serang’s environmental performance, as ordered by the Ministry of Environment (see Wijaya 2013). This was a big step for community advocates, since the audit not only confirmed the company’s violations and recommended specific actions but also summarized the *government’s* inaction and legal obligations in detail. The audit had been triggered, among other things, by the result of Sutiadi’s information requests related to Cijung’s water quality and IKPP Serang’s compliance, which Mitha had diligently translated for the community in May 2011, highlighting that the company had continued to discharge waste despite the fact that its wastewater discharge permit had expired. The government was supposedly aware of this situation but had never reported it to the community. Sutiadi and Dadi, then the key people driving this advocacy, took the ball quickly, bringing the data to Serang’s local congress and demanding a field monitoring of the company’s facility. A follow-up meeting between the local congress, the Ministry of Environment, and the company was

conducted on July 12, 2011, and on July 21, 2011, the Ministry of Environment issued a letter mandating IKPP Serang to conduct an environmental audit (Ministry of Environment 2011).

However, when the result of the environmental audit came out, the very same concern with the EIA documents—the volume and technicality—arose once again. The audit made very specific technical recommendations, such as “Immediately stop disposing liquid waste into Ciujung River no later than 1 x 24 hours or 2 x 24 hours after the water debit in Pamayaran Dam reaches zero” (Wijaya 2013). Some people from the community, including Sutiadi, even stated their distrust of the results because the audit recommended that the river’s classification be set as class IV, meaning the lowest water designation of all, instead of class II, the allowable standard for domestic use and drinking (Indonesian Center for Environmental Law 2014). From a legal perspective, the recommendation regarding the water classification made sense, since the regulation, Ministry of Environment Regulation 1 of 2007, requires the determination based on the current—instead of ideal—condition.

Responding to the issue, in our March 2013 meeting, my colleague from the World Resources Institute came up with the idea of information translation. My organization agreed to team up with WALHI to ensure that the information we gathered could be used for grassroots advocacy. We also started cooperating with MediaLink in translating the information into a simpler, more interesting, and more readable format.

Temporarily, I thought we had a solution to our first problem—the volume and technicality of environmental information. From mid-2013 to the end of 2014, we created various information sheets, each two to five pages long, containing the most critical information from the massive documents. Mujtaba Hamdi (Taba) and Vicianto Putra, our colleagues from MediaLink, assisted with visualizing the data, which consisted of summarizing critical information in interesting infographics, pictures, and layouts. Community advocates then disseminated these information sheets at community events, conveying more accurate messages around the issue.

One data visualization that we made included information about the company’s outfall (the points where wastewater

discharged), which was taken from the company's permit; the infographic then translated the technical coordinates of the outfall into real photos of the locations so that people could easily identify with the coordinates. Many young people came to the community's basecamp in Serang to learn more about the pollution issue and its advocacy, and others hung the infographic on their walls.

After this information on the outfall was produced, Media-Link announced that it would provide training to one community member who would voluntarily monitor the river and co-produce information about the company's environmental performance related to water pollution; meanwhile, WALHI offered training for community organizers. At least twenty people submitted applications for WALHI's training for community organizing.

In mid-2014, I went abroad for my studies and, while away, received updates from my teammates. Taba told me that one of the responses he received upon giving the information sheet to one of the requesters was, "Nah, *mending gini* [It's better like this]! The first time I got the document, I wondered what we would do with it. Now at least the next time the river turns black again, I can tell people what's in it!"

Taba also recorded positive responses when the information sheets were circulated at community meetings (Indonesian Center for Environmental Law 2015, 12). Having this information written in a simple format helped individuals like Sutiadi, Cholid, and Cidoy—all from the local community, who previously experienced difficulties in raising the broader community's awareness—explain the facts more accurately and efficiently, ultimately rallying more people. In particular, the information sheet was useful when meetings allowed for interaction, honest dialogue, and targeted audiences. Additionally, during WALHI's advocacy meetings, there were fewer awkward moments of bored and alienated audiences trying hard to listen for hours to an environmental lawyer who could not find simple substitutes for technical terms (WALHI 2014). The latter might be attributable not just to the information sheets themselves but also to the fluency of my WALHI colleague in organizing the grassroots community.

Nonetheless, the information sheets were not always so successful. When Rika Fajrini, a colleague of mine from ICEL, circulated these sheets at bigger events, where she simply handed them

out without further interaction, she witnessed some people actually using the sheets as a mat to sit on the ground. In events with less targeted audiences, she noted that the materials that were more frequently taken home by participants were those with additional functions—such as calendars containing pollution photos or infographics.¹⁹

Internal community turbulence occurred alongside this process, and by the end of 2014, both Sutiadi and Dadi decided to leave the Ciujung advocacy effort for personal reasons. When they left, the information sheets saved the movement. When Dadi decided to leave in early 2014, we learned the hard way about the downfall of the verbal “messenger” method; information dissemination was cut significantly, and the movement was paralyzed for a while since one of two key messengers was no longer involved. Fortunately, by the time Sutiadi—our primary messenger who had been involved for years—decided to leave, the knowledge had been disseminated and absorbed by other individuals, thanks to the summary and translation of the data into a simpler format. The pain of losing these two individuals was indeed much more than losing our “key messengers”—but being able to maintain the knowledge provided a relief to their successors.

While the internal turbulence and transition went on, Anton Susilo, a community member, took over the lead of the grassroots advocacy. Using our previous data and community-made information, the community submitted three reports to the Serang Department of Environment and the Ministry of Environment upon discovering that the river still turned black at least three times during the dry season. Despite IKPP Serang’s report that it had complied with the audit recommendation, the observable condition was no better than before the audit had been completed.

In early 2015, the water turned black again. As soon as Taba heard from the community that the river had turned black, he, together with Mukri, a colleague of mine from WALHI, rushed to Serang to assist the community in collecting samples from three of the nine outfalls. They then sent these samples for testing in a certified laboratory. MediaLink then translated the laboratory results into an information sheet showing that the biological

19 Telephone conversation with Rika Fajrini, September 2015.

oxygen demand was 189% above the standard limit, the chemical oxygen demand was 415% above, and the total suspended solids was 284% above (MediaLink 2015, 2). In addition, the laboratory found the samples to contain sulfide, lead, and mercury (World Resources Institute 2015, 8). Using this information, the community filed another complaint—the third one in fewer than six months—to the Ministry of Environment. The ministry finally responded to the complaint and imposed an administrative sanction on IKPP Serang through Decree 9 of 2015. This government-issued sanction, issued in accordance with article 76(2) of the 2009 Environmental Protection and Management Act, was considerably serious, just one step before permit revocation.

By this point, I had become convinced that information does not work in a vacuum—it is definitely not a silver bullet and should never be the center of the light. It is merely a catalyst that can act as leverage when other circumstances enable the community to act or react to what it knows. Information is like a double-edged sword: it can alienate and confuse people with its volume and technicality, but it can attract and unite people, too. The right to information is a procedural right, and as a procedural right, it works best when it is directed toward achieving other substantive rights. On the whole, environmental advocacy is demanding, time consuming, and resource intensive, but there is no way around it, and it is impossible to merely rely on the environmental right to know. A series of follow-up actions *after* knowing are indispensable in order to materialize the knowledge into choices, and choices into action—and within that follow-up action lies the complexity of community organizing, lobbying, and dealing with governments, law enforcement efforts, public pressure, and much more.

However, I realize that there were actually two problems with our approach: it was costly, and it was a product of third parties, which could cause its sustainability to be a question, besides perhaps not being matched to local tastes or preferences. While we are still figuring out a more sustainable, community-driven method to information-based advocacy, thus far our work with the community has provided us with a better view of the environmental right to know.

Conclusion

Writing this chapter was exhausting—not because the editing process was very demanding but because it forced me to look back on the questions I had left behind due to my own process of self-brainwashing, leading me to realize and admit my stubborn conception and one-sided perspective regarding the things on which I had worked so passionately during those two years.

Through the process of writing this piece, I realized that my lawyer-driven nature in the beginning had treated information as a silver bullet. As I critically examined my efforts, I knew that I might have been wrong. My bias toward “information” had overshadowed other important factors, such as the community’s dynamics, causing me to obscure how the community actually felt about our data collection efforts. I expected the community to respond just as I would to information about environmental risks, forgetting the differences in our backgrounds and motivations. Unconsciously, I had shed a negative light on what I considered “the ignorance of not knowing” and had not realized that obtaining a bunch of documents was not equal to “knowing”—or that knowing was not even equal to “understanding.” Ultimately, I had forgotten that it might have been external factors—and not their knowledge—that inhibited the community’s ability to choose.

Information is not a silver bullet, for two reasons. First, the volume and technicality of it could demotivate or confuse people, especially when its recipients are not well equipped with the luxury of time, technical skills, and energy to extract the most valuable information from a long technical document and examine its level of confidence. Translating information into a more interesting, simpler language or visualization is the first step to making people feel they can actually discuss the information and involve themselves in it. Recreating information in various forms helps the messenger—as a key actor in the community—spread the message more accurately and effectively. Carefully analyzing the logical chain of information and comparing government-issued information against other sources helps the community decide which information to take into account. There is no exact formula for determining who will be responsible for gathering and

processing the information until it reaches a simpler form. In our case, ICEL decided to take on the technical task of processing it.

Second, information is merely a catalyst that requires prerequisite and follow-up actions. When information works in conjunction with other efforts—advocacy goals, organizing efforts, routine community meetings, and the tireless efforts of community members seeking to hold the polluters accountable—it can facilitate these other efforts to achieve better results. From my experience, I learned the importance of acknowledging that information does not work in a vacuum. Giving people information without analyzing how that information can help them solve their problems is like giving fancy war equipment to soldiers without equipping them with the skills to identify who and where their enemies are. A community that places heavy pressure on the government by showing it that the community is capable of building its arguments with accurate evidence, be it from the government or from the community itself, can elicit a more serious response from the government. The community's two successes in demanding government actions proved this to me.

Lastly—and although I have not really mentioned this yet—I finally realized a twist. During the process of writing this chapter, I reread my old field notes. One of these notes was something I had written when staring blankly, with mixed feelings, at a part of Ciujung that was completely black. It was a personal note of how I felt—not as a lawyer, but as a traveler and environmentalist whose heart crashed upon seeing that a river was no longer a river. In that note, I had thought of the children of Ciujung who will never know what a clean river looks like. I had thought of the bureaucrats—the subjects of our complaints, who recalled their good old days swimming, playing, or fishing in the clean Ciujung. I had thought of the grandmother in the boat who told me the tale of Ciujung's glory in the past. I never recorded that moment as the primary memory I had brought back from that particular visit, since I was too busy analyzing the community with my methodical and ambitious data collection. For some two years, I forgot the value of such a feeling, of the individual stories and connections between the river community and their polluted river.

If there is one task that we have not done, it is to collect these feelings and stories and tell them to the world. As a complement

to the community's environmental right to know, *we* can also process information about *them*. Maybe *that* information speaks more genuinely than all those data.

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CHAPTER 10
On the Margins of the River,
Margins of Institutions:
The Xingu People
and the Belo Monte Dam

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* I would like to thank Juma Xipaya, my friend and partner in struggle, for reviewing this chapter.

Editor's note: Before being translated into English, this chapter was translated from Portuguese into Spanish by Mariana Serrano Zalama.

Between the Office and the Areas of Conflict

The Belo Monte Dam is the biggest public work currently under construction in the world. The hydroelectric dam—situated on the Xingu River in the municipalities of Altamira and Vitória in the Brazilian Amazon—is valued at R\$33 billion (Amora 2015) and, according to official data, is expected to generate 4,400 megawatts of energy each year through the flooding of 502.8 square kilometers. The project is part of a package of actions of the Brazilian government aimed at the “planning and execution of large social, urban, logistical, and energy infrastructure projects, contributing to the country’s expedited and sustainable development” (Ministério do Planejamento 2016).

Belo Monte embodies a neoextractivist model that is pervasive in the global South, alongside an increasing global wave of mineral, energy, and oil exploitation, from the Latin American tropical rainforests to the African savannahs to the Asian countryside. The dam has become internationally famous, above all, for the massive environmental and social harm it has caused to indigenous communities, making it the object of intense criticism by national and international civil society.

First as a law student and now as a practicing lawyer, my career has been shaped by the resistance movement against the dam. It has always seemed a genuinely Amazonian cause to me: fighting against Belo Monte means, in the end, fighting against the colonialist development model, the deterritorialization of ethnic groups, and the destruction of rainforests and rivers. When I first began studying law, I wanted to be able to help construct an alternative vision for the Amazon—one that respects the various ways of life in the region.

Working at the Public Prosecutor's Office gave me an opportunity to accomplish my plans. The office, which has the constitutional mandate to defend the rights of individuals and communities in Brazil, had filed fourteen lawsuits against Belo Monte, questioning, among other things, flaws and omissions in the project's environmental impact assessment (EIA); the failure to ensure free, prior, and informed consultation with affected indigenous communities; the invalidity of the licenses issued; noncompliance with measures aimed at mitigating the project's impacts; and the threat of forced displacement of indigenous peoples. The Public Prosecutor's Office had become an important actor in the debate surrounding the dam's legality.

On April 24, 2012, I began my job at the office, where I worked under Felício Pontes, Jr., a key figure who has been involved in the case since its inception. Almost immediately, I could see that Belo Monte was the office's biggest case and that, because of its importance, I could not simply insert myself in it from the outset. Therefore, I focused on gaining the confidence of the work team, helping draft legal petitions and participating in meetings with local and global actors. Before I knew it, I had become completely absorbed in my work. Little by little, my initial naïveté that carefully crafted legal arguments would be able to stop Belo Monte's construction began to dissipate. The judicial branch was ignoring our allegations of human rights violations. With each decision against the case, I began to see the weight that governmental and private interests had on judges' rulings—much more than one might imagine.

After working in the office for nearly three years, I finally had the chance to travel to the region and witness firsthand what Belo Monte represented. My expectations were confirmed: Brazilian institutions were failing to guarantee respect for the human rights of local populations affected by the project. Today, nearly 70% of the dam is complete, and it appears that the project will have a sad ending. The city of Altamira is an urban chaos, and local residents suffer from a lack of adequate public education, health care, and transportation. Social indicators have worsened as violence, urban segregation, and sexual exploitation have increased. Indigenous peoples in the region have suffered drastic changes to their traditional ways of life.

Still, the story that I will tell in the following pages cannot be reduced to mere sadness. While on the one hand Belo Monte is a story of abandonment and abuse, on the other it is a story of resistance of Amazonian populations, which have come together on several levels to oppose the project and everything it represents. Taking these two dimensions into account, I will reflect on the limitations of the state institutions involved in the licensing process and in the management of the dam's impacts. In addition, I will explore the challenges involved in fighting against the world's largest public work currently under construction, which require human rights activists to draw on new and creative strategies.

The Obsession with Damming the Xingu

The Xingu River is one of the main tributaries of the Amazon River. Originating in the state of Mato Grosso and ending in Pará, it is about 2,000 kilometers long. The aerial view of the river is stunning. The Xingu's color, cascades, rapids, and islands are like no other. For me, it was a dream to finally see the Xingu, the river that is the essence of life for several Amazonian peoples and a muse for local artists and poets. I could barely contain my excitement.

As the plane neared Altamira, I saw the first signs of the intense transformation that the river and its surroundings were experiencing: deforestation and turbid water,, both stark reminders that Belo Monte is now a reality. On my way from the airport to downtown Altamira, more signs emerged: many unfinished construction projects, dirty and potholed streets, people sleeping on the sidewalk. Altamira's daily life is no longer what it once was.

Prior to my arrival, I had participated in meetings on health and basic hygiene, education, and the urban resettlement of families who were going to be displaced by the dam's reservoirs. Despite covering various topics, the meetings steered toward a single conclusion: the region was not (and is still not) prepared for a project of this magnitude; the state apparatus was overloaded.

Altamira's current reality gives the impression that the dam is being constructed helter-skelter, without proper planning or time for the region to prepare. It is clear that the extraction of hydroelectric energy from the Xingu River has been a longtime obsession of the Brazilian government, which has not bothered to ensure good planning.

The first studies date to 1975, the year in which Centrais Elétricas do Norte do Brasil (Eletronorte) began a hydroelectric inventory of the Xingu. This inventory identified the “ideal points” for extracting energy from the river’s basin. The inventory and the creation of Eletronorte in 1972 took place in the context of Brazil’s dictatorial governments—particularly those of Emilio Garrastazu Médici (1969–1974) and Ernesto Geisel (1974–1979)—which sought to increase energy generation in Amazonian rivers, seen as holding the promise to Brazil’s development. Studies suggested seven points for damming along the Xingu and Iriri Rivers (Babaquara, Kararaô, Juruá, Ipixuna, Iriri, Jarina, and Krokaimoro). In all, these dams would generate 19,000 annual megawatts of energy through the flooding of 18,000 square kilometers. In 1980, Eletronorte began technical and economic viability studies for the construction of the Kararaô and Babaquara Dams, which would form part of the Altamira Hydroelectric Complex.

The territories of at least seven indigenous peoples—the Juruna (Yudjá), Arara, Kayapó, Xikrin, Assurini, Araweté, and Parakanã—would be flooded by the dams’ reservoirs. The dams’ “indirect” impacts (such as the invasion of indigenous territories, illegal logging, migratory pressures, and increased territorial conflicts) would affect an even larger number of indigenous communities (Castro and Andrade 1988).

Indigenous peoples voiced their opposition to these dams during the first Meeting of Indigenous Peoples of the Xingu, held in 1989. Over 650 individuals from various ethnic groups participated in the event, where the Kayapó in particular played a strong leadership role (Instituto Socioambiental 2016). The meeting subsequently became world famous due to a photograph that was published showing an indigenous woman, Tuíra Kayapó, holding a machete blade in front of the face of Eletronorte’s president in a gesture of protest. After the meeting, the company announced that it would rename the Kararaô Dam (which had been named after a battle cry of the Kayapó), since the indigenous considered it offensive. The dam’s new name was Belo Monte.

Activities around Belo Monte were halted for a decade before being resumed in 1999. In 2001, the first EIA—a document required under Brazilian law for any activity that affects the natural environment—was conducted. Although I was just ten years

old at the time, I remember the context in which the project was resumed. Brazilians lived in fear of energy blackouts. The country's growing demand for energy was not accompanied by a corresponding expansion of the supply. The country's reservoirs were low due to a shortage of rainfall; and hydroelectric plants, responsible for around 80% of Brazil's energy supply, were unable to operate at full capacity. Thus, the government launched an energy rationing program.

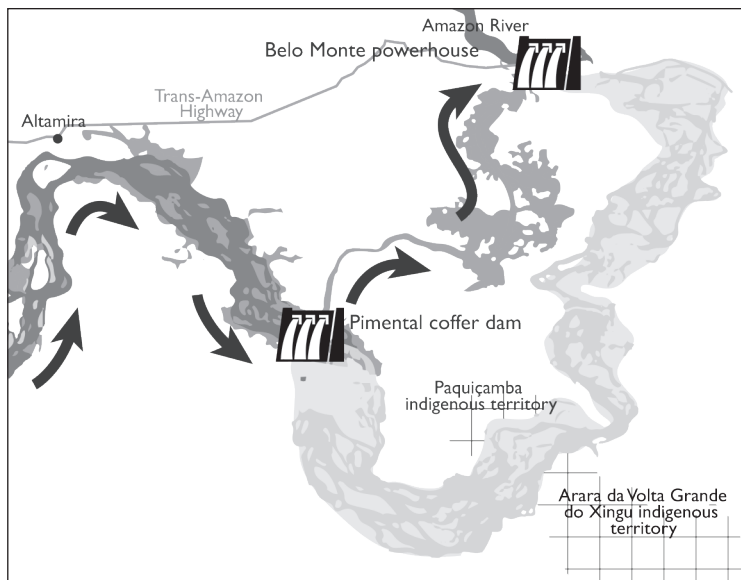
In this context, proposed solutions revolved around the diversification of the country's energy supply (such as investment in offshore wind power and solar energy) and around energy-efficiency measures that would reduce Brazil's dependence on hydroelectric energy while also decreasing negative socioenvironmental impacts. However, the government's solution to the energy crisis at hand was to dam the Xingu River. In this way, Belo Monte became the government's priority project, taking on a new technical and spatial configuration:

Broadly speaking, the planned hydroelectric exploitation involves damming the Xingu River (in the area called *Sítio Pimentel* in the viability studies), where channels will allow energy generation to occur at Belo Monte, located 50 kilometers away by highway, through a 90-kilometer vertical drop. As a result of this configuration, a stretch of approximately 100 kilometers of the Xingu River will be subjected to a partial emptying, which will also be harnessed for energy generation in a complementary electric plant located near the main dam. (Leme Engenharia 2009, 39)

Belo Monte features an uncommon engineering design. It involves the diversion of the Xingu River through an artificial canal, leaving the 100-kilometer stretch downstream known as the Big Bend high and dry. The EIA dubs this part the "dry stretch," and it is the most discussed aspect of the project.

Experts, civil society, and social movements question the project's environmental and social viability. Some independent studies highlight the shortcomings of official documents, suggesting that the impacts could be worse than predicted (Santos and Moral Hernandez 2009). The EIA was delivered to the Brazilian Institute of the Environment and Renewable Natural Resources (IBAMA by its Portuguese initials) for analysis and subsequent approval or rejection. In their evaluation, IBAMA's environmental specialists

MAP I
Belo Monte's "dry stretch"



SOURCE: D'Elia and Alves (2011)

concluded that the environmental analyses were insufficient for allowing the entity to decide in favor of the dam's viability, and they asked that these analyses be complemented. Pressured by IBAMA's president's office, the specialists did not have enough time in their evaluation to consider civil society's inputs from the public hearing.

On February 1, 2010, opposing the assessment of the environmental specialists, IBAMA's president granted Belo Monte a preliminary license approving the viability and location of the venture. The issuing of this license allowed the government to begin the bidding process, which would select the company responsible for managing the plant. On April 20, 2010, the contract was awarded to Norte Energia, a private company whose majority shareholding is public (70%, divided among public companies and pension funds) (Aneel 2010; Norte Energia 2015). On June 1, 2011, IBAMA issued the installation license, allowing construction to begin. This license involved several illegalities; on many occasions, environmental laws were not followed, and local populations are now suffering impacts that could have been avoided.

Kararaô, Belo Monte, and the Fate of the Amazon

Almost three decades stand between the Kararaô and Belo Monte projects. During this period, Brazilian laws and institutions underwent important changes. Unlike Kararaô, which was conceived of during Brazil's military regime, Belo Monte is being developed in a democratic context. Brazil's 1988 Constitution recognizes the rights of indigenous peoples, and the country is party to international human rights treaties that protect the rights of ethnic groups, including Convention 169 of the International Labour Organization. In addition, the country has a sophisticated environmental legal framework.

The public's general expectation is that Brazilian institutions should adequately supervise the dam's construction, should undertake a serious assessment of the dam's socioenvironmental viability, and should guarantee respect for the rights of local populations—something that is currently not happening. In addition, the fact that the dam's development is being led by public authorities has entailed a certain level of confusion among the actors involved.

On various occasions, public entities have acted as entrepreneurs, focusing their efforts on the dam's materialization instead of ensuring its legality. Meanwhile, Norte Energia has acted as the supervising entity, unilaterally altering the rules for the procurement of licenses that the company itself must comply with. The lawsuits brought against the dam—to which I dedicated a large part of my efforts—have sought to undo, without success, this reversal of powers.

As a result, local indigenous populations and the urban population of Altamira are suffering the hardships of a “development” that will never provide them with any benefits, since the bulk of the energy generated by Belo Monte will be exported to other regions. To paraphrase Eduardo Galeano (1971), Belo Monte revives the regional division of labor characteristic of the colonial era, in which some regions specialize in profiting while others specialize in losing.

In the following sections, I describe the situation of the three groups that, in my opinion, are the most disadvantaged by the dam's construction: local indigenous communities, the urban population of Altamira that lives in the area that will give way

to the dam's reservoir, and the riverine communities that have been forcibly displaced. I close the chapter on an analytical note, providing a glimpse of the legacy that Belo Monte has left for Brazilian institutions and resistance movements.

The Indigenous Peoples of the Xingu River and the "Price" of Their Rights

"Belo Monte is an ethnocide in a world where everything is possible." This is how Thais Santi of the Public Prosecutor's Office defined Belo Monte during an interview conducted by journalist Eliane Brum (2014). Having lived for more than two years in Altamira and led legal proceedings against Belo Monte, Santi understands the dam's significance for the daily lives of local populations. In the interview, after describing a series of impacts that she observed during her trips to indigenous areas, she announced the office's intention to file a lawsuit accusing the Brazilian state and Norte Energia of being responsible for the ethnocide of the indigenous people of Xingu: "[This is] a terrifying world in which, in disregard of the law, Belo Monte has become an accomplished fact. And the cultural death of the indigenous has been accepted by Brazilians as something natural" (Brum 2014).

It is true that Belo Monte's license has indeed sidestepped the law on various occasions and that the main victims of this illegality will be local indigenous communities. But Santi's serious allegations sounded to me more like a passionate speech, a bit exaggerated. However, they gained meaning during my trip to Altamira, when I saw the delicate changes occurring in the lives of indigenous communities. If we accept that the function of the state and its institutions is to promote human rights, then these institutions have truly failed.

Many of the impacts denounced by prosecutor Santi had been predicted and could have been avoided through a more careful supervision by the agencies responsible. The EIA distinguishes between "direct" and "indirect" impacts; the difference is based not on their seriousness but on the causal link between the dam and impacts and on their implications for the payment of damages and compensation. Indirect impacts are those derived, for example, from the intensifying of agrarian conflicts and from the

massive immigration to the region due to the promise of employment. These have intensified since 2001, the year in which the project was announced.

The Arara, Araweté, Assurini, Juruna (Yudjá), Kayapó, Parakanã, Xikrin, Xipaya, and Kuruaia indigenous peoples continue to experience indirect impacts (Pontes and Beltrão 2005). The coffer dams¹ restrict their access to and use of the Xingu River, jeopardizing their traditional river navigation. Moreover, the river has been contaminated by debris and decomposing organic matter. The water's turbidity and the construction's noise and lighting have caused fish to flee, making it impossible for these communities to fish. Further, the migration of over 30,000 people to the region has exacerbated territorial disputes. Invasions of indigenous lands have increased, and conflicts with invading loggers and miners are growing more frequent.

Direct impacts, for their part, are related to the construction of the dam itself, the formation of the reservoir, and the diversion of the river—and they will become more evident once the dam begins to operate. Belo Monte's direct impacts derive not just from the flooding but also from the formation of the "dry stretch," which will leave the indigenous residents of Altamira inundated, while those located in the Big Bend of the Xingu will suffer a permanent drought (Leme Engenharia 2009). The groups most affected by the dam's direct impacts will be the Juruna, in the indigenous territory of Paquiçamba; the Arara, in the indigenous territory of Arara of the Big Bend; and the Xikrin, of the indigenous territory Trinchira-Bacajá. In particular, they will be forced to bear the following: (i) increased pressure for land and deforestation of their surroundings; (ii) impacts on their river navigation and transportation; (iii) impacts on their water resources; (iv) impacts on their economic activities (fishing, hunting, and gathering); (v) the stimulation of indigenous migration (from indigenous territories to urban centers); (vi) increased vulnerability in social organization; and (vii) an increase in contagious and zoonotic diseases.²

1 These are temporary structures made of earth and stones that allow the river to dry in order for the main dam to be constructed.

2 Parecer pericial 25/2011, Ministério Público Federal, Processo 2006.39.00.0711-8.

There is a fear that the dam will provoke the forced displacement of the Juruna and the Arara.³ Although their relocation is not planned as part of the construction, there exists the risk that these communities will not adapt to the environmental changes resulting from the drastic reduction in the river's flow and will not have any other option but to go elsewhere. This risk has been overlooked by the dam's technical studies.

I was recently with the Juruna in the village of Miratu in the indigenous territory of Paquiçamba and could see people's insecurity regarding their future. The dam's "dry stretch" will mean permanent drought for the Big Bend. The indigenous communities know that drought is synonymous with a scarcity of fish and difficulties in river navigation. Bel Juruna, the village leader, lamented how her children will not be able to enjoy the territory the way that she and her ancestors had envisioned. With the river's diversion, the Arara and the Juruna will not enjoy the conditions that will allow them to remain in their traditional territories, which they struggled so hard to have recognized as official indigenous land. They do not know if they will migrate to other indigenous territories or toward the outskirts of Altamira. Neither the government nor the company seem concerned with offering a concrete answer to this problem. The Public Prosecutor's Office has filed a legal claim warning of these impacts and the high probability of forced displacement (which is prohibited under the Brazilian Constitution), but a definitive ruling has yet to be issued.

With so many likely impacts, Belo Monte's authorization should have been preceded by a free, prior, and informed consultation with affected populations—a right protected in Convention 169 of the International Labour Organization and in the United Nations Declaration on the Rights of Indigenous Peoples—but this did not happen. On the international stage, the Brazilian government has claimed that indigenous communities support Belo Monte, but the truth is that they were never consulted. In the indigenous villages, there was no adequate process for information sharing or discussion.

Between 2007 and 2009, some public officials held information sessions with indigenous communities; however, the officials

3 Ministério Público Federal, Processo 28944-98.2011.4.01.3900.



Picture 1

The Xingu River's Big Bend

When the dam is operational, the flow of this stretch will be drastically reduced and the landscape irreversibly altered.

Photo: Rodrigo Oliveira

made it clear that these sessions were not consultations. In September 2009, the president of the National Indian Foundation, or FUNAI, the state organ charged with promoting indigenous rights, published a technical report claiming that these information sessions complied with the requirements of a prior consultation. With a mere signature, the organization's president transformed the information sessions into prior consultations, revealing the institution's susceptibility to interference by government interests.

The "negotiation" processes were channeled into informal spaces. As an academic and activist, I felt the need to understand the social processes taking place around the project. What was the relationship like between the state, the company, and the indigenous peoples? How did the indigenous communities position themselves in relation to the project? How are they coping with the impacts? What do they think of the government's proposals to mitigate these impacts? How are relevant institutions involved in the licensing process? However, I was unable to respond to all of these questions.

In my search for answers, I interviewed Juma Xipaya, a young indigenous leader of the Xipaya community in the village of

Tucumã, located along the Iriri River, one of the main tributaries of the Xingu River.⁴ Juma is a prominent leader in the struggle against Belo Monte. Despite her young age, she has a wealth of experience and maturity. Shortly after our interview began, she told me about how, since her childhood, she has listened to the elders fret about the government's intentions to dam the Xingu River. With the passing of the years, rumors turned into premonitions, and, little by little, Belo Monte became a reality in the lives of indigenous communities.

Juma became an important leader during her teenage years and, as a result of her capable work defending indigenous rights, was elected president of the Association of Indigenous Residents of the City of Altamira. In 2011, alongside other indigenous leaders and social movements, she helped organize various political actions against the dam.

The Brazilian government and Norte Energia began to see Juma's actions as an obstacle. She received frequent telephone threats. Her family lived in fear of physical violence. Representatives of Norte Energia tried to discredit Juma in front of leaders from other indigenous groups. Finally, it became too dangerous for her to remain in Altamira, and she had to step down as president of the association. All of this, in addition to the distress caused by the situation of the indigenous communities, led Juma to make the difficult decision to go to Belém, the state's capital, to study law at the university, which is where we met.

But she did not abandon the struggle. She visited Altamira and her land as much as possible. She told me that during each visit she encountered a different panorama. Juma was surprised by the growing interference by employees of Norte Energia in the activities of the indigenous movements, a scenario that was quite distinct from that of 2007 and 2008, when the movement was united in its struggle against the project. During that time, indigenous communities had come together under a single organization that represented them through a multiethnic village in the city of Altamira.

After the bidding process, Norte Energia, which had won the contract, began to intervene in the movement's daily activities.

4 Interview with Juma Xipaya, December 2014, Pará. All quotations from Juma in this chapter derive from this interview.

Juma recalled a meeting where forty-eight *caciques* (indigenous leaders) participated, she being the only woman among them. She was shocked by Norte Energia's attitude during the meeting. At one point, a company official acted disrespectfully toward an indigenous elder, and Juma reprimanded her behavior. At the end of the meeting, Juma could not contain herself and began to cry. She could not believe what she was seeing.

The situation only worsened. The company incorporated new tactics into its arsenal of strategies against the indigenous movement, among them individual negotiations with members of indigenous communities, financial benefits, offers of employment, and the legitimization and delegitimization of leaders. The company transformed its ethno-development program—which was aimed at empowering indigenous peoples and was part of the compensation measures approved by IBAMA—into a policy involving the direct transfer of money and consumer goods for indigenous communities. Each village would be entitled to a certain amount (averaging around R\$30,000) in consumer goods, requested through a shopping list. This transformation took place with the blessing of IBAMA, which ignored the criticisms made by FUNAI.

The initiative led to fragmentation among the indigenous communities, for, among other things, different amounts were paid to different communities. Twelve new villages emerged for receiving money. Indigenous peoples' human rights claims were answered by the company's offer of cars, *voladora* boats (a type of motor boat common in the region), and gas. The program introduced packaged foods and modified communities' productive activities and dietary habits. At the same time, the communities' use of these goods provided grounds for the company to disqualify them (Brum 2014).

In cases such as this one, it is important that state institutions respond to these kinds of tactics and attend meetings between indigenous groups and the company. While the local office of FUNAI admonished the company on various occasions, due to the entity's lack of autonomy and its precarious structure, its advice was ignored.

During my interview with her, Juma complained thoughtfully: "Belo Monte is not just a dam. It has many other aspects." For her,

the dam's impacts have a much greater reach than the mere damming of the river, or the anticipated direct and indirect impacts. There are invisible, silent impacts that escape official studies and are never seen by public authorities. She mentioned the change in indigenous behaviors, the transformation of the landscape of villages, the growing presence of nonindigenous people in indigenous territories, the loss of traditional activities (such as the cultivation of certain vegetables), and the increase in industrialized foods spurred by deteriorating environmental conditions (such as the reduction in fish and game).

Belo Monte has led to a loss in the beauty of life for local inhabitants, whose lives have been inundated not only by the hydroelectric dam but also by the vast bureaucratic terminology used for the environmental licenses: terms such as "Xingu," the "rainforest," the "forest," "housing," and "abundant food" have been changed to "directly affected area," "area of direct influence," "point of support," "mitigation," and "compensation." These new words do not carry much meaning in the world experienced by local indigenous communities and other residents, which is characterized by the senses.

Belo Monte has created a chasm in the Amazon. As construction continues, state institutions remain silent. "Families live in a state of premeditated poverty," explained Juma. In other words, the state has failed to implement public policies (such as education and health) in the region. The indigenous have complained about their precarious health situation (especially in light of constant outbreaks of the flu and malaria), about their poor educational opportunities (the village schools cover only the first few years of primary education), and about the invasion of their lands by loggers and miners. Within this scenario of abandonment, the government's discourse promotes Belo Monte as the ultimate solution. The dam is a promise to guarantee certain rights for a region that has historically suffered from an absent state.

Land demarcation, the expulsion of invaders, territorial protection programs, increased plot sizes, education and health programs, and the construction of roads are some of the items promised by the government—items designed to mitigate or compensate the project's impacts. Belo Monte is the "price" to pay in exchange for the enjoyment of these rights.

This policy of negotiating rights (Zhouri and Valencio 2014), according to anthropologist Thais Mantovanelli, has had the effect of creating an ambiguous position among indigenous groups in relation to the project. These communities want their lands demarcated, and they want health and education, but they reject the idea of the dam. The Xikrin of the territory of Trinchiera Bacajá are such an example. They stand against the dam while also demanding better policies:

We want the PBA programs [programs that provide for mitigation and compensation measures], we want communication radio with Norte Energia, we want nicer homes, better schools and health centers, we want more boats and roads and a landing strip in the village. We want the money of the *kuben* [nonindigenous]. But we do not want Belo Monte here. (Mantovanelli 2014, 3)

Today, indigenous communities have paid the price, but their rights have yet to be realized. As the project moves forward, a large portion of the measures have been ignored. Two of the main measures (the expulsion of invaders of indigenous territories and the Territorial Protection Plan, which calls for the construction of dozens of bases to protect the lands from external pressures) have not gone any farther than they paper they are written on. Local indigenous territories are currently in an extremely vulnerable position.

IBAMA should have halted Belo Monte's construction and required compliance with the promised measures, under the threat of fines and annulment of the licenses that had been granted. FUNAI sent several communications to IBAMA recommending the project's suspension, but this indigenous entity lacks the authority to influence the licensing process.

In the case of Belo Monte, human rights have been converted into a hard currency in negotiations with indigenous groups. Nonetheless, this does not mean that the government's and Norte Energia's tricks have been able to neutralize local resistance. On the contrary, indigenous communities, ever since the first Meeting of Indigenous Peoples of the Xingu in 1989, when the dam was still called Kararaô, represent the main force of resistance against the dam. These populations have never accepted the project, explained Juma, since it has squandered many of their dreams and expectations.

Flooded Lives

The Belo Monte hydroelectric dam will transform the region's landscape. While the communities living in the Big Bend of the Xingu are going to have to deal with a drastic reduction in the river's flow, those who live closer to the dam will have to deal with constant flooding. This is the case for more than 15,000 people who live along the Xingu River in Altamira. According to official data from Norte Energia, 5,420 families will lose their homes, of which 654 are indigenous, mainly from the Kuruaya and Xipaya tribes.

This is the most pressing issue facing the city. After staying in Altamira for a few days, I could see the population's suffering. The removal of families from the area that will be flooded is not being adequately supervised by public institutions. Affected residents lack sufficient information from the company; they do not know what their fate is—whether they have the right to a house in one of the six new neighborhoods being constructed, or whether they will receive compensation. The air is thick with uncertainty.

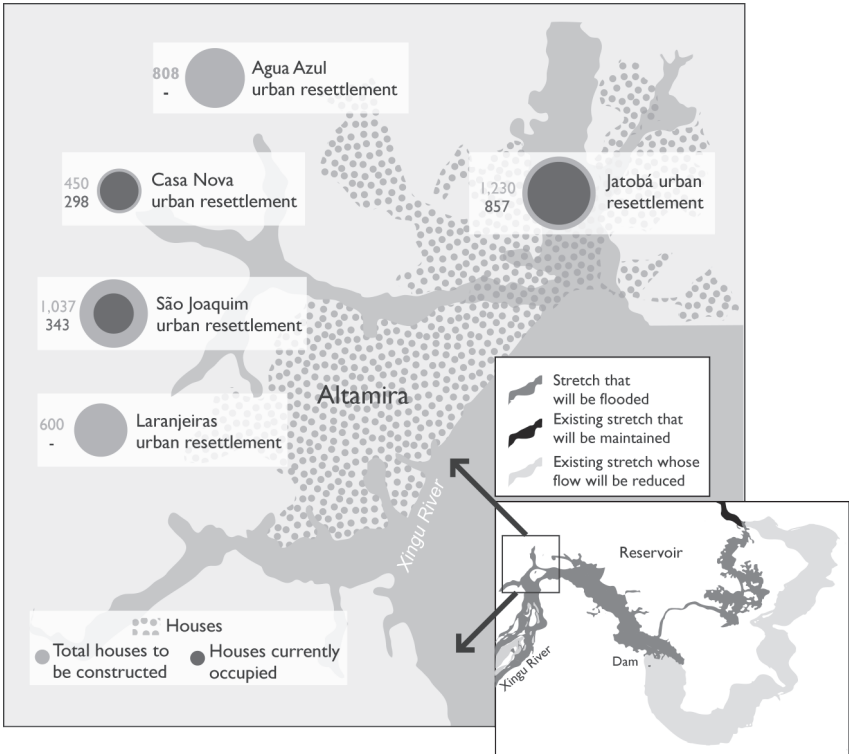
Antonia Melo is one of the people being forcibly displaced from her home. She is the leader of the Movimento Xingu Vivo para Sempre, the largest urban resistance movement against the dam, with an international reach and many partnering organizations. Her admirers (myself included) have tagged her as “warrior Antonia.” Antonia's displacement is symbolic of the violence that courses through the dam's history, as is described on the movement's website:

Antonia's family lives on a 743.36 square meter plot. The house—large, latticed, and cozy—occupies a bit less than half of this space, and in the back there is a wild garden with several fruit trees, flowers, and ornamental plants from the Amazon, which produce enormous amounts of acai, mangoes, and plantains each year. “In July 2014, officials from Norte Energia came here to register my house in the cadaster and let us know that we would be displaced. They have not come back since. We don't know how much money they plan to offer us as compensation, we don't know when they plan to remove us, we don't know anything,” comments the most active opponent of Belo Monte. (Movimento Xingu Vivo para Sempre 2015)

The lack of free legal assistance exacerbates the situation. Up until November 2014, the city did not have any public defenders. The population was unprotected and was obligated to negotiate

MAP 2

Altamira: Areas that will be flooded and urban resettlements



SOURCE: Leite and Almeida (2015)

with Norte Energia's team of lawyers without any legal support. At the meetings I attended, there were many complaints by people who had been coerced to sign documents without understanding their content. Most people affected by the dam are low-income residents, some without formal education who have difficulty reading.

This situation lends itself to violations. Residents complain about the company's unfair setting of prices for their homes. To assess the price of residents' properties, Norte Energia created a pricing chart that examines the square footage of the house, the number of rooms, and the construction. But in this chart, a household's relationship with the river or the existence of a tree that provides sweet fruit is not important. What is the worth of a family's attachment to such things?

Intense migration into the area around Belo Monte has caused housing prices to skyrocket, and the pricing chart is now outdated. Public authorities should take action to stop property speculation and demand that the pricing chart be updated, but this has not happened. Many families received insufficient compensation and have been unable to purchase a new home. Belo Monte is transforming Altamira into a city of the evicted. Neighborly relations have been destroyed, and people are being displaced to places far away from their daily activities. Furthermore, the new houses are poorly constructed and have cracks and problems with their water supply. And the new neighborhoods that have been developed lack infrastructure, commerce, and public transportation. These resettlements have reinforced urban segregation, displacing families toward peripheral areas far from the city center, as shown in map 2.

Loss of River Life

Otávio das Chagas became a non-being. The Belo Monte hydroelectric dam reduced him to a fisherman without a river, a fisher who does not fish, a fisher without paddles and without a canoe. The island from the Xingu, in Pará—where he grew up, fell in love with Maria, and had nine children—no longer exists. Between him and the fish, there remains nothing. (Brum 2015)

The above excerpt is from journalist Eliane Brum, who draws on the story of Otávio das Chagas to describe the forced displacement of riverine communities affected by Belo Monte. Riverine communities are part of traditional populations and communities, which refers to certain Brazilian populations whose unique relationship with nature and land distinguishes them from society at large. The ways of life of riverine communities living around Belo Monte are intrinsically linked with the Xingu River and its islands; these communities depend on the river for food, productive activities, income, transportation, and leisure.

Individuals from such communities have grown up and lived according to the river's dynamics. For them, the Xingu is at once a market, a plaza, a street, and a park. Fishing and agriculture have ensured their self-sufficiency. Many of them have never learned any other activity besides natural resource extraction; they sell their surpluses in Altamira to earn cash for medicines and their

children's school supplies. When IBAMA granted Belo Monte its license, it stipulated that the displacement of these riverine communities implied more than the mere loss of land, and that compensatory measures should consider the need to maintain their way of life and their special relationship with nature.

However, these groups have been largely invisible in the eyes of state entities, and only recently has their suffering come to light. For a long time, the conversation centered on the dam's impacts on indigenous communities and on Altamira's urban population—and with regard to this oversight, I acknowledge my share of the blame. The project's accelerated schedule, the failure to understand riverine communities' way of life, and the absence of the state have all made their forced displacement even worse.

Local riverine communities have been obligated to choose between the grim alternatives offered by the company: accept paltry compensation or be transferred to houses on the outskirts of Altamira or rural settlements far away from the Xingu. Compensation payments are more popular, even though they are not enough to purchase a house in the city's periphery, a location that fails to guarantee these communities' longtime cultural practices.

The contrast between the abundance of the past and the hardship of the present is increasingly evident. Individuals from riverine communities are joining the labor market as unskilled laborers. Today, there are many families like that of Otávio, who have lost their ability to be self-sufficient and who often go hungry living on the city's outskirts. Yet in the face of these impacts, the state has hesitated to halt the resettlements, instead preferring to keep construction on schedule and thus failing to ensure the physical and cultural integrity of local riverine communities.

The Legal Battle

We Latin Americans "are all brothers and sisters, not for sharing the same roof, the same table, but for the same sword over our heads hanging," writes the poet Ferreira Gullar. Reading these verses between the lines, one might conclude that in Latin America there is never any time for lamenting, since there is a sword dangling over our heads. In the face of numerous violations, crossing our arms is not an option. We must act.

I chose the Public Prosecutor's Office as one of the options for fighting. I remember my first day at work. A sticker for the "Stop Belo Monte" campaign, organized by the Movimento Xingu Vivo, had been placed on the cabinet door. On one of the office's walls hung a poster with a photo of Sister Dorothy Stang, a Catholic nun who was assassinated by landowners in the Anapu municipality near Altamira, thus becoming a martyr for the struggle against deforestation and the enclosure of lands in the Amazon. I was moved by these surroundings and by the possibility of working alongside Prosecutor Pontes, a great legal figure in the struggle to protect "the people of the forests," as he would often say.

He did not delay in inviting me to help with the office's lawsuits against Belo Monte. At that time, the Public Prosecutor's Office had filed fourteen lawsuits. His invitation encouraged me, and little by little I familiarized myself with the legal proceedings and with the office's litigation strategies, such as the combination of legal actions and journalism, as well as exchange programs with universities.

On August 14, 2012, Felício, euphoric, entered the office and said to me, "Rodrigo, the Federal Regional Court ordered the suspension of Belo Monte. They will have to hold consultations with the indigenous." He was referring to the decision of Federal Regional Court in Region 1, which had ruled on the appeal filed by the Public Prosecutor's Office. In a historic decision, the court unanimously ruled that the Belo Monte Dam did not conduct a free, prior, and informed consultation with indigenous communities—the meetings organized by IBAMA and FUNAI had been merely informational and could not be considered part of a consultation process. The court halted the dam's construction and suspended all licenses.

Belo Monte would go back to square one, and the indigenous communities would finally have an opportunity to be consulted and to share their opinions. The office's telephones were ringing off the hook. National and international media jumped on the story. Brazilian courts had given a glimpse of hope and encouragement for Felício, who had dedicated years of his life to the struggle against violations caused by the project. On Twitter, he celebrated: "There are still judges in Brazil!" (alluding to the famous phrase, "There are still judges in Berlin").

Nonetheless, eleven days later, the sword fell on us again. The president of the Federal Supreme Court (the court charged with safeguarding Brazil's Constitution) invoked a "security suspension"—a procedural mechanism created during Brazil's military regime for the exclusive use of the state, which allows judicial decisions to be suspended on the basis of political arguments—to overturn the decision to halt Belo Monte's construction. The court's president used the argument that the ruling would affect "the public order and economy" by jeopardizing the expansion of Brazil's energy supply.

This scenario was repeated several times. Although the judicial branch generally recognized the violations, its decisions fell to the ground one by one. Eventually, we no longer celebrated favorable rulings, knowing that they would be short lived. Just as had happened with other institutions, the courts lost their ability to ensure the project's compliance with the law.

The use of the security suspension extended to other hydroelectric dams. Those of Teles Pires, Santo Antônio, Jirau, São Manoel, and São Luiz do Tapajós had similar violation patterns as that of Belo Monte. The Public Prosecutor's Office took legal action in all of these cases, history repeating itself: judges acknowledged the illegalities, and then their decisions were overturned almost immediately. The government's desire that nothing stand in the way of the energy sector's growth was clearly being heeded in the chambers of court presidents.

The security suspension became an effective legal recourse for legitimizing human rights violations and violations of environmental laws. Organizations involved in the struggle against dams in the Amazon denounced this procedural mechanism far and wide; for example, it was discussed in a hearing of the Inter-American Commission on Human Rights (IACHR) and before the United Nations (Montgomery et al. 2014).

In light of the inadequacy of national mechanisms, these organizations brought the Belo Monte case before the inter-American human rights system. In April 2011, the IACHR issued a precautionary measure ordering the Brazilian government to immediately suspend the project's license until, among other things, a free, prior, and informed consultation was held with affected populations and measures were taken to prevent the spread of

diseases and outbreaks among indigenous communities living near the dam.⁵

The Brazilian government's reaction was shocking. The government threatened to withhold its payment of US\$6 million in dues to the Organization of American States and withdrew its candidate to the IACHR, lawyer Paulo Vannuchi. It justified these actions by claiming that the commission's decision was an attack on Brazil's national sovereignty and that Belo Monte complied with Brazilian and international law. In July 2011, the IACHR reversed its decision, withdrawing the suspension of the license and deeming the prior consultation a discussion of substance that could not be addressed through a precautionary measure. In other words, Brazil's stance ended up influencing the IACHR's actions. Several countries joined Brazil in its rebellion against the commission's precautionary measures, which has forced the commission to rethink its ways.⁶

Witnessing this sequence of legal defeats led me to ask myself a number of questions. The law is sometimes contradictory in contexts of conflict. It was my own naïveté that led me to believe that compliance with legal rules (in this case, rules on the environmental license and on human rights) depended only on access to justice. Between legal proceedings and reality exist countless nuances, comings and goings, advances, and setbacks. But Belo Monte went far beyond this realization.

The erasure of borders between the company and IBAMA, the state entity charged with overseeing the license, gave this case a unique framework. I realized that all of our claims would be shot down in light of the government's agenda. My initial romanticism gave way to tough realism, and I began to wonder whether the law was a viable mechanism for social change. Many human rights activists—in Brazil and around the world—are asking the same question.

5 Inter-American Commission on Human Rights, PM 382/10, April 1, 2011.

6 The repercussions of the Brazilian government's attitude toward the IACHR was discussed during the event "The Case of Belo Monte: Challenges and Opportunities for the Protection of Human Rights and the Environment in the Inter-American System," held at Washington College of Law on June 10, 2014. A video of the event is available at <http://media.wcl.american.edu/Mediasite/Play/7e2dc4f20e0a468b9ac31c1c7dba2a4a1d>.

Even as the dam nears completion, we continue fighting to remedy its legacy and reduce the suffering of local communities. This experience made me struggle on new fronts, without abandoning the legal battle. I signed up for a master's program in human rights at the Universidad Federal de Pará and became a researcher at Dejusticia. In these spaces, I have tried to understand the vortex of events that make up Belo Monte in order to perfect our tools in the resistance.

Without a doubt, Belo Monte involves the greatest legal battle concerning a development project in Brazil. Its materialization is proof of the need to devise new strategies for social change and human rights protection.

Belo Monte and the Various Faces of the State

The Belo Monte hydroelectric dam will be remembered as a sad chapter in Brazil's democracy. It exposes the fragility of state institutions. A true democracy would not permit the human rights violations that are being suffered by indigenous peoples, by the urban population of Altamira, and by riverine communities. The world's largest public work currently under construction, representing an investment of approximately R\$30 billion, has been marked by confusion regarding the roles of the state, which on many occasions has abandoned its duty to promote human rights and oversee the license, acting instead as a private investor.

My sense is that each public institution has failed to exercise its legal duties and has thus contributed its own brick to the dam's construction. The only facet of the state that local populations have been able to see is that of authoritarianism: IBAMA has not adequately managed the license, has remained silent in the face of violations, and has allowed Norte Energia to make up its own rules of the game; FUNAI has overlooked the ethnocide of indigenous communities, who are suffering drastic transformations in their lives; the courts have seen their hands tied in the face of lawsuits against the project; and the police have squashed public protests and acted as private security for the project's warehouse. These are but a few examples.

Belo Monte symbolizes the neoextractivist development model that is being promoted in different corners of the world. It is symptomatic of a paradoxical situation: the loosening of rights

and of environmental licensing in the contexts of leftist governments that call themselves post-neoliberal, as is the case not just in Brazil but in Bolivia, Ecuador, and Venezuela as well.

Initially, in Brazil, this loosening occurred silently and invisibly, which is why it went largely undetected by activists and academics. The change did not express itself through legal reform but rather through the dismantling of the public entities charged with protecting human rights. This becomes clear, for example, in Brazil's authoritarian posture toward the inter-American human rights system and in the government's use of legal mechanisms (such as the security suspension) to interfere in the functioning of the judicial branch.

The entities involved in the licensing process are in a precarious situation. In June 2012, public officials issued a letter to civil society summarizing this process of loosening and of the entity's political siege:

We, servants of IBAMA . . . wish to DENOUNCE the pressure to which we are being subjected in our daily business with regard to the rampant policy of approval for large projects in our country.

We, who work directly on the technical analysis of these processes, on oversight, and on the management of protected areas affected by them, *are living a situation of moral besiege and lack of autonomy to act how we should*, based on technical criteria and in defense of society's interests.

In addition to these structural and technical positions, we are pressured to change our opinions, decrease and remove conditions of the licenses, avoid inspections and interventions, and [commit] numerous violations of the correct and due compliance with the lawful exercise of our duties. Finally, the operators often do not take the recommendations of our specialists into account and adopt opposing stances and decisions. This dire situation has become a daily reality, even though at this moment it is hidden. ("Servidores do IBAMA denunciam pressões de Governo Federal por Licenças de obras do PAC" 2012, emphasis added)

The fragility of Brazilian institutions can be seen at various levels: political interference in entities' technical work; the awarding of environmental licenses that do not include the components recommended by technical experts; entities' loss of autonomy (as in the case of IBAMA, whose president refused to sign the preliminary license for Belo Monte and was then let go); budget cuts; and

the loss of status of the entities involved in awarding licenses. This institutional fragility inhibits state entities' capacity to intervene, making them unable to operationalize licensing rules and to enforce the rights protected under Brazilian and international law. If initially this loosening occurred under the radar, today there is a legislative offensive against environmental protection and the rights of ethnic groups.

Belo Monte exists in the midst of this context, in which activists and academics around the world reflect about the end of human rights (Douzinas 2009), a phenomenon characterized both in an emancipatory language and as an instrument of transformation.⁷ Thousands of youth are taking to the streets to claim their rights. Behind these events lies a more profound question about the functionality of state institutions. Traditional legal training has taught us to view institutional pathways as the preferred routes for struggle. But these pathways have become problematic in today's adversarial climate. With the advance of projects and persisting violations, we activists feel a sense of failure. Our experience in Belo Monte inspires us to reflect: Should we try to transform institutions, or should we simply reject them? In other words, can we achieve social transformation by using the instruments provided by the state?

I do not seek to provide a definitive answer to this question, above all because I am unsure that such an answer even exists. As I wrote this chapter, I vacillated between positive and negative responses. The more I read the news and witnessed the suffering of victims, the more I tended to stop believing fully in the state and its institutions.

Struggling against the progression of the neoextractivist frontier is not an easy task. Belo Monte is just the tip of the iceberg in terms of megaprojects that are underway and that, if completed, will irreversibly transform the Amazon. Many times, we felt like Sisyphus,⁸ fighting a battle we could not win. But in Latin America, there is never any time for lamenting—we must destroy the

7 In 2014, *SUR: International Journal on Human Rights* dedicated its volume 11(20) to a discussion of the "end of human rights" and "taking to the streets," indicating the timeliness of the topic.

8 Sisyphus is figure in Greek mythology who was forced to push a huge boulder up a hill. However, just as he would near the top, the

sword that hangs over us. We Latin Americans must be conscious of the fact that in our struggles we will experience more defeats than victories and that the current situation has worked to our disadvantage for the last 500 years.

We cannot see belief in democracy as a strategic mistake. I would like to close this chapter by highlighting two points that I consider important for continuing our struggles. The first is the need for an insightful evaluation of the failings and successes of our struggles. It is not about evaluating the project itself—since we know how disastrous Belo Monte is proving for nearby populations—but rather about evaluating our strategies that cannot be evaluated in absolute terms. I do not know whether at one point we had the opportunity to stop the project; however, social movements, indigenous populations, nongovernmental organizations, and the Public Prosecutor's Office have taken many actions.

Dejusticia's work has contributed to such an evaluation. For example, the recent book published by César Rodríguez-Garavito and Diana Rodríguez-Franco, *Radical Deprivation on Trial: The Impact of Judicial Activism on Socioeconomic Rights in the Global South* (2015), provides theoretical tools and methodologies to support the evaluation of legal advocacy around social rights. Even though it focuses on legal actions (which are just a part of the strategies we use against Belo Monte), the book contributes to an evaluation of our strategies as a whole.

Here, I will highlight some of the achievements. For example, we successfully transformed common-sense principles on energy production; dismantled the propaganda around hydroelectricity as clean energy and publicized the violations occurring among local populations; and revealed the hidden interests behind the construction of dams. These successes were the result of multiple strategies, including the legal battle we waged.

It should also be noted that Belo Monte was elevated to the international stage in large part due to the actions of the *Movimento Xingu Vivo para Sempre*, which has led some of the strongest resistance efforts in recent Brazilian history. For example, the movement organized the International Day of Struggle against

stone would roll back down. This is a metaphor for tasks that seem routine and pointless.

Belo Monte (December 10), which involved protests in twenty-three countries. And on November 14, 2013, it took part in the conference entitled “Belo Monte Mega-Dam: The Amazon Up for Grabs?” hosted in Brussels by the Greens/European Free Alliance of the European Parliament, and which also involved the participation of Felício.

I am still surprised when I encounter activist colleagues from other countries who know about the dam and its impacts. The battle on the communication field has clearly been won by social movements in spite of their lower technical and financial capacity compared to Norte Energia. Indigenous populations, for their part, have established a daily struggle against the government and the company. The advanced stage of construction has meant that their struggle is focused on unmet promises. While it is true that the indigenous communities find themselves in a precarious situation, without their incessant struggle, today’s reality could be even worse.

We also had many partial victories that we cannot underestimate, some of which were won via institutional mechanisms. This leads me to the second point that I would like to highlight: by exposing the fragility of state institutions, Belo Monte has encouraged resistance movements to construct and utilize new forms of struggle. Some of the challenges facing us include strengthening the exchange between academia and social movements, reporting human rights violations in a more didactic manner, communicating through various channels, using legal mechanisms strategically, promoting public debate, and coordinating with organizations from other countries in the global South.

I believe that our increased capacity to advocate depends on how we articulate institutional strategies and political actions. It is not about trusting institutions but about trusting in our ability to transform and subvert them. To the extent that we have acquired a keen sense of their limitations, we can use these institutions strategically to promote our struggles.

The new strategies promoted by the Public Prosecutor’s Office are examples of the strategic use of state institutions. Conscious of the limitations of the legal route, prosecutor Thais Santi has begun to formulate new strategies for tackling the violations caused by Belo Monte. For example, the office held a public hearing on

forced displacement and created a conciliation committee to foster discussion on the fates of displaced families with various institutions, not just the company (Ministério Público Federal 2014, 2015a). It also organized a public hearing on the health situation of indigenous communities living around Belo Monte, highlighting the disastrous reality in which indigenous villages lack potable water, in which their children die of diarrhea, and in which their people suffer from depression and alcoholism (Ministério Público Federal 2015b).

I also remember the “interinstitutional inspection” held by the Public Prosecutor’s Office, which brought together a range of entities (IBAMA, FUNAI, the National Human Rights Council, the Ombuds Office, the Secretariat for Human Rights of the Presidency of the Republic, and universities) with the aim of diagnosing the forced displacement of riverine communities. The team’s work led to the publication of a report on the violations identified and recommendations for solving the problem (Ministério Público Federal 2015c). The participation of state agencies prevented the events described in the report from being refuted. The report’s publication stopped the forced displacement of riverine communities until a solution was found to guarantee the preservation of their ways of life.

To stop this powerful machinery advancing toward us and to reduce, even if minimally, the suffering of affected groups, we must use all of the tools within our reach. Juma Xipaya is right: Belo Monte is not just a dam; it is much more than that.

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CHAPTER 11
Environmentalism and the
Urban Jungle: Conflicting Rights
and Contradictory Visions

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Introduction

By regulating our environment, we are shaping it to a vision. The vision could be one of pristine forests, of undulating meadows, or of contained wilderness. But regulation may also enforce certain privileged visions over others, and its burden may disproportionately affect some inhabitants over others. The environment also includes the built environment, such as roads, pavements (sidewalks), and transit systems—and regulations of the built environment affect the population in perceptible and imperceptible ways. For example, the gentrification of a neighborhood might be hastened through the introduction of a metro line, which can adversely affect the informal economy by displacing street vendors. Renovating a road to build a boulevard may, among other things, deprive the homeless of a shelter and force sex workers to move to more unsafe locations.

But who, then, decides what a city should look like? And is it merely a question of weighing interests equitably? Or is it also a question of *what* we want a city to look like? Can we arrange differing interests in a city, zone them, and classify them? Is a unified vision of a city possible? Many urbanists would argue that urban public spaces are necessarily fraught with conflicting claims. But is it possible to find solidarity amidst this contestation?

As a lawyer and an activist, I am often tasked simply with responding: to evictions, to arrests and harassment, to the felling of trees, to the widening of roads. We lawyers respond to pleas for intervention, to requests for legal assistance, and even to calls for old-fashioned muscle. But to see ourselves as merely a response team to distress calls belies our participation in a larger process of envisioning, for these calls of distress are also assertions of rights.

The slum dweller asserts his right to his residence, the street vendor asserts her right to livelihood, the sex worker asserts, among other things, her right to bodily integrity, and the middle-class resident asserts his right to a habitable city. In responding to these assertions, we also validate them. We say that we support the right of a street vendor to sell his wares on the sides of roads, the right of a slum dweller to occupy public land, the right of a sex worker to stand on the street without fear of physical assault, and the right of the middle-class resident to enjoy clean, habitable, and safe public spaces.

But, often, in responding and validating, we also end up supporting oppositional claims: the right to clean and safe public spaces asserted by the middle-class urban resident often stands in opposition to the rights of the street vendor and the sex worker. As lawyers, therefore, we cannot merely respond to the assertions of disparate others—we must also try to reconcile these assertions within a larger narrative of the city and who it is for. In doing so, we must question descriptive terms such as “clean,” “dirty,” and “safe,” and ask whether they signify values that are commonly understood and held by all. The narrative of a city therefore lies somewhere in between the propertied resident, the immigrant street vendor, and the harassed sex worker—and our job is to find this narrative.

Over the last few years, my colleagues and I have been engaging in advocacy and legal representation in support of several urban communities in Bengaluru,¹ located in the state of Karnataka, India. These communities include informal workers—such as street vendors’ unions and sex workers’ collectives—and activist volunteer groups. In working with these different demographics, we have often had to juggle very different ideas of what Bengaluru should look like. Moreover, Bengaluru is one of the fastest-growing cities in the country and in the world. Known as India’s Silicon Valley, it is home to a number of software companies. Popular descriptions of the city emphasize its young, educated, and diverse population. The government of Karnataka has also implemented a number of policy initiatives aimed at making

1 In 2014, Bangalore officially changed its name to Bengaluru. Many people continue to call it by its former name.

the city more hospitable to the information technology industry. However, there is growing concern that these municipal policies are detrimental to the city's large population of informal workers. As stated in a report published by the Alternative Law Forum:

This rapid acceleration into the global, seen in a city like Bengaluru, also has its antecedent problems of legal restructuring, which adds another dimension into the already divided city. To be "investment friendly" there are a number of laws which need to be amended to suit the requirements of flexible production and accumulation . . . In a city like Bangalore this has been best seen in terms of the various incentives and benefits provided to the [information technology] sector, by ways of tax breaks, cheap land, infrastructure development etc and at the same time there is a parallel move towards ensuring that this image of the clean and green Bangalore is not affected by rag pickers, squatters, hawkers etc. Thus even as the translocation of the city generates new legal regimes, it also propagates new and diverse forms of illegality. (Alternative Law Forum 2003, 18)

For example, the Bruhat Bengaluru Mahanagara Palike (BBMP), the main administrative body responsible for the civic governance of Bengaluru, has repeatedly emphasized the need to widen roads to relieve traffic congestion. However, road widening is known to reduce space for pedestrians and street vendors. On the other hand, certain roads in central Bengaluru are currently being renovated to make them more "pedestrian friendly," but in the course of this development, street vendors are being evicted from the newly constructed pavements. In trying to achieve a sophisticated metropolitan aesthetic, BBMP and the Bangalore City Police have imposed multiple "clean-up" drives against different street-based communities, such as street vendors and sex workers. It is clear that such communities have no place in their imagination of the urban citizen.

One of the biggest difficulties that we as activists and lawyers face in finding a common narrative is having to tackle notions of "clean," "dirty," "unsafe," and "polluting." Urban planning is often driven by these notions, and to fulfill the vision of an "ordered" city, disorder must be cleared away. Citizens deemed disorderly are steadily pushed to the fringes of legality. Therefore, a street vendor is deemed illegal because he violates the "modern" aesthetic of the city, while a sex worker brings unregulated sexuality into the public space and is thus considered a pollutant.

Slums signify the “unauthorized occupation” of public space, whereas high-rise apartment complexes are a public symbol of the upwardly mobile middle class and its ability to claim the city as its own.

For example, the construction of the Majestic metro station is suspected to be behind recent eviction drives against sex workers in the area. The station, which, at the time of writing, was due to open in March 2016, lies at the intersection of two major lines of the Bengaluru metro. Many groups fear that municipal authorities want to achieve a “world-class” aesthetic for this area, which would involve the removal of elements that do not mesh with this aesthetic. They fear that Majestic could go the way of the Mahatma Gandhi Road station, whose inauguration led to the eviction of street vendors and sex workers. In fact, many of the women who were evicted from the area surrounding Mahatma Gandhi Road now work near Majestic and Hebbal, from where they are now being evicted.

Similarly, the renovation of several roads in central Bengaluru has coincided with the eviction of street vendors from those localities. Litigation that was initially employed to make Bengaluru’s roads more pedestrian friendly is now being used as an excuse to evict vendors. Put another way, the invocation of a certain form of order is being used to remove all that is considered disorderly. The dominant order is one that not only is predominantly upper class and upper caste but also reproduces its ways of living and being. The Dalits, who form the majority of the city’s informal economy, are being shunted from the streets on which they depend.

In 2012, fresh out of law school, I joined the Alternative Law Forum with a certain idea of supporting marginalized communities. In my mind, supporting also meant improving—uplifting communities from the dredges of poverty into middle-class respectability. This conviction stemmed from a belief in the centrality of the orderly citizen in a liberal democracy. It also, however, stemmed from my own character as an upper-caste elite.

My work included providing legal representation to a sex workers’ collective and intervening in instances of police violence. Through this work, I started seeing how police drives against sex workers are often framed and justified in terms of keeping the city streets “clean.” Observing my colleagues face similar challenges

in their work with street vendors, I began thinking about how these notions of order and cleanliness permeate our civic imagination and affect the way in which people access public spaces.

In this chapter, I explore some of the consequences that these notions of dirt and disorder have for marginalized people, as well as how aesthetic considerations are shaping Bengaluru to the detriment of many of its citizens. Drawing on the examples of two communities whose livelihoods depend on continued access to public space—street vendors and sex workers—I examine how the law repeatedly characterizes these communities as unclean and disorderly, seeking to regulate and invisibilize them in order to create a shiny, safe, and consumerist city.

Whose Pavements and Whose Rights?

In 2013, a petition was filed before the High Court of Karnataka seeking the protection of pedestrians' rights. In the case of *Jennifer Pinto v. State of Karnataka*,² the petitioner, an artist based in Bengaluru, pointed to the abysmal state of pavements on Bengaluru roads and the difficulty faced by pedestrians in crossing these roads. The petitioner quoted statistics of pedestrian fatalities, emphasizing how the poor maintenance of the city's roads posed a danger to pedestrians. She also pointed out that encroachments and the unauthorized use of pavement space were preventing pedestrians from being able to access these spaces.

Around the same time, *Bangalore Mirror*, a leading tabloid newspaper in the city, launched a campaign called "Footpath? My Foot." The campaign was run primarily in English and was therefore not easily accessible to a large section of the city's population that is not conversant in English. The campaign encouraged citizens to inform the paper about their concerns regarding the city's pedestrian infrastructure. According to the paper, on the first day of the campaign, over one hundred people called in to complain about the poor state of the city's pavements. In addition, some callers complained about vendors encroaching on pavement space (Kaggere 2014).

2 Writ Petition No. 13731 of 2013. The orders passed by the High Court of Karnataka are available at http://karnatakajudiciary.kar.nic.in/caseStatus_CaseNumber.aspx.

Over the course of the hearings, the High Court of Karnataka directed the BBMP to remove all encroachments from pavements within the following three months.³ The court's order did not include a definition of "encroachments." However, three days later, *Bangalore Mirror* published a report on the order. The report began:

In a city known for its mild weather—at least for most of the year—walking has been a dangerous exercise. The paradox stems largely from the state of the city's footpaths: dilapidated, encroached by hawkers, annexed by advertisers and utility providers and usurped by two-wheeler riders. But all this could change in six months. The High Court of Karnataka has ruled that pavements are the exclusive domain of walkers . . . The clincher though, was that the court empowered the civic agency to clear obstructions without having to serve notice on the encroachers. (Prasad 2014)

A walk down any of Bangalore's pavements, especially those in the busy Central Business District, will show that they are rarely available for pedestrian movement. Bikes, scooters, and cars are often parked haphazardly on pavements, and trees have been frequently cut down to make space for large advertisements. On Infantry Road in central Bengaluru, the displays of furniture and woodwork shops frequently spill onto the pavement. Often, shopkeepers display couches and even entire dining table sets, leaving little to no space for pedestrians. Moreover, in some places, the pavement has caved in due to the weight of the furniture, leaving gaping holes that pedestrians must walk around.

Similarly, *darshinis*—restaurants serving South Indian meals—often place tables and chairs for patrons on the pavement, leaving no space for pedestrians. In addition, residents regularly usurp pavement space to create small fenced gardens. Yet rarely, if ever, are these violations addressed. Only vendors are characterized as encroachers, notwithstanding the fact that many pedestrians actually depend on street vendors for their daily shopping needs.

Soon after the High Court passed its order, BBMP started an eviction drive against street vendors in the city. Vendors in residential parts of the city, including Malleshwaram and Koramangala, were evicted, seemingly in pursuance of the order. After the

3 High Court of Karnataka, order dated July 23, 2014.

initial round of evictions, the counsel for the petitioner brought to the court's attention the Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act of 2014, which prohibits the eviction of street vendors. The court clarified that its order to remove encroachments should be implemented without violating the provisions of this act.⁴ Activists and members of street vendors' unions then began approaching municipal authorities with a copy of the court's order and of the Street Vendors Act, hoping to dissuade them from carrying out evictions. However, on January 13, 2015, the city evicted street vendors from Lakshmi Park in Koramangala. Officials claimed that residents had complained about the smell of non-vegetarian food. On February 15, the Bruhat Bengaluru Beedhi Vyapari Sanghatanegala Okkutta, a federation of street vendors' unions, staged a protest outside one of BBMP's offices, demanding that street vendors who had been evicted from Koramangala be allowed to return to their vending sites. However, despite the clear illegality of the city's actions, no assurances were given, and evictions continue to this day. At the time of writing, members of street vendors' unions were approaching local residents to ask for their support.

These evictions are but one among many in the recent past. Also in January 2015, around 500 street vendors were evicted from Gandhi Bazaar in central Bengaluru. In 2014, a pavement-widening project across St. Mark's Road in central Bengaluru led to the eviction of several vendors from the area ("'Unilateral Execution' of TenderSure Project Criticized" 2014). And in 2009, street vendors opposite the Shivajinagar bus stop were evicted, ostensibly to free the pavement for pedestrians.

Notwithstanding these other intrusions, we must ask ourselves, does the presence of street vendors really disrupt pedestrian rights? It is true that in 2014 Bengaluru had the fourth-highest number of traffic accidents in the country among cities with a population of one million or above (National Crime Records Bureau 2014, 132). In addressing this high fatality rate, the government has overwhelmingly emphasized encroachments as the problem—and, as stated above, street vendors are singled out as the encroachers. However, there is a common enemy that is often

4 High Court of Karnataka, order dated September 22, 2014.

ignored, quite deliberately, in these conversations: road widening. In 2013, Hasiru Usiru, a civil society organization, released the report *Pedestrians in Bangalore: Walking a Tightrope*, which attributes the high rate of pedestrian deaths to road widening and to the construction of signal-free corridors. For example, the report discusses Bellary Road in Bengaluru, where the number of pedestrian deaths shot up in the seven months following the road's widening. Similarly, street vendors have been affected by road-widening projects and the construction of the Bengaluru metro. In 2010, the nongovernmental organization Environment Support Group published a study exploring the potential impact of urban infrastructure projects on street vendors in Bengaluru. While property owners stand to be compensated for their land if it is acquired by the state, street vendors do not receive any rehabilitative measures. Loss of pavement space, congestion and dust due to construction, and dwindling pedestrian movement on streets under construction would contribute to the loss of business for these vendors. In many cases, street vendors would be forced to look for a new place to sell their goods, meaning that they would lose their established customer base. In addition, many trees have been felled on pavements because of road-widening projects. Street vendors often sell their wares under the shade of these trees, and many street vendors have had to look for alternate spots to shade themselves from the harsh weather (Environment Support Group 2010, 20).

Hasiru Usiru's report also highlights how street vendors are often unfairly held responsible for the poor state of pedestrian infrastructure. The report refers to the pavement opposite the Shivajinagar bus stop in central Bengaluru, where vendors were blamed for obstructing pedestrian movement and were subsequently evicted. But today, this pavement—now “vendor free”—has turned into a public urinal, and pedestrians still must walk on the street just beside it (Hasiru Usiru 2013, 26). The organization's report points to the crucial role that street vendors play in the life of a city—not only by providing goods and services at cheaper prices but also by helping keep pavements clean.⁵

5 It is also interesting that what is seen as disorder in itself can contribute to creating order. Of course, it is problematic to justify

Street vendors' contribution to public safety has also been recognized. In 2012, after the rape and murder of a young woman on a bus in Delhi, the central government established a committee, headed by Justice J. S. Verma, to propose reforms to the country's laws on sexual assault. As part of its recommendations, the committee stated that street vending should be encouraged in order to make bus stops and streets safer for communities and pedestrians (Justice Verma Committee 2013, 421). This mention is a rare recognition of the contribution of street vendors to civic life, and it has not gone unnoticed. It has been highlighted in almost every public protest and meeting about street vendors' rights that I have been a part of, and the National Association of Street Vendors of India has hailed the committee for recognizing street vendors' role in serving as the "ears and eyes on the street." The association has also commended the committee's report for its emphasis of police officers' "lack of constitutional values and moral vision" (National Association of Street Vendors of India 2013).

The fact that street vending exists attests to the large market for these goods. Moreover, since most street vendors are located on pavements, it is inevitable that many of the vendors' customers are pedestrians. Yet policy makers and government officials routinely harass street vendors in the name of pedestrian rights.

Municipal laws are frequently used to enforce these spatial rules. For example, street vending in Bengaluru, until recently, was governed by a complex web of laws and regulations, including the Karnataka Municipalities Act of 1964, the Karnataka Municipal Corporations Act of 1976, the Town and Country Planning Act of 1961, the Karnataka Highways Act of 1964, the Karnataka Public Premises (Eviction of Unauthorised Occupants) Act of 1971, the Karnataka Police Act of 1963, and the Unorganised Workers' Social Security Act of 2008. Except for the last one, all of these acts, in various ways, regulate the unauthorized occupation of public land. For example, section 92 of the Karnataka Police Act empowers police officers to arrest anyone who causes "obstruction

street vending in such terms—first, because it is not always the case that street vendors keep their surroundings clean, and, second, it is perhaps counterproductive to rely on the same exclusionary understanding of cleanliness and order that elsewhere is responsible for the eviction of vendors.

by Exposing anything for sale or setting out anything for sale or upon any stall, booth, board, Cask, basket or in any other way whatsoever contrary to any regulation made and published by the commissioner or a Deputy Magistrate.”

Similarly, section 288B of the Karnataka Municipal Corporation Act prohibits the setting up of on “any public street or upon any open channel, drain or well in any street or in any public space, any stall, chair, bench, box, ladder, bale or other things so as to form an obstruction thereto or encroachment thereto.”

It is interesting to note that many of the laws governing informal labor in public spaces are remnants of a colonial project. Most laws regulating street vending and hawking were taken almost verbatim from British laws on public obstruction. The Immoral Traffic Prevention Act of 1986, a descendant of British sex work law, is driven mostly by the desire to render invisible a “necessary evil” and therefore does not abolish sex work so much as it regulates all public manifestations of it. The Karnataka Prohibition of Beggary Act of 1975 makes it an offense to wander about or remain in any public place in such a way that appears to be soliciting or receiving alms; this law is driven almost entirely by the desire to police urban poverty instead of identifying and addressing the structural reasons behind it. As stated by the National Association of Street Vendors of India (2001), “these laws, based on England’s experience in dealing with urban poor and migrants, were designed to facilitate control over Indian people, regulate the economy to suit their administrative skills and to enhance their sense of security.”

As in the case of sex work, laws on street vending were based on a colonial understanding of the “polluting” nature of the urban poor, which explains why municipal authorities, when directed to remove encroachments from roads, begin by evicting street vendors. In the ordering of claims to public spaces, the informal economy is always at a disadvantage.

While there are municipal and criminal laws regulating street vending from a punitive perspective, until very recently, there were no laws in India aimed at protecting the welfare of street vendors. In 2014, the Parliament passed the Street Vendors Act, which provides for surveys of street vendors to be conducted in every vending zone for the purpose of granting vending licenses.

The law further states that no street vendor may be evicted until such a survey is conducted in the vending zone.

Indian urban governance is increasingly geared toward the creation of modernist, “world-class” cities. Proponents of this form of urban space emphasize the importance of connectivity, clean and ordered spaces, and strictly demarcated zones for different activities. There is also an increasing participation of citizens’ groups in urban governance. *Bangalore Mirror’s* campaign on footpaths is an example of how middle-class citizen activism can be used to push a certain vision of the city. Another example is the Bengaluru Political Action Committee, a group of influential industrialists, artists, and professionals in Bengaluru who work on issues of urban governance. They evaluate local government representatives according to several criteria in order to determine these representatives’ contribution to urban development. In a survey conducted by the committee in 2014 on the performance of legislators, survey respondents were asked to rate legislators on their performance across several categories. “Slum clearance and rehabilitation” and “unauthorized construction” were some of the categories. However, most migrant workers and street vendors are not residents in the constituency in which they work, although they are affected by infrastructural concerns such as water, public sanitation, and law and order. Similarly, residents of a slum may lack voting rights in the constituency in which the slum is located, but they are often affected by a lack of public utilities. Most informal sector workers are affected by the concerns laid out in the questionnaire; however, there was no way in which their concerns could be addressed. The discourse appears to suggest a division between property owners and encroachers, and between residents and migrants, even though many street vendors may have occupied the same space for decades. This lack of formal recognition inevitably shapes the responsiveness of local government officials, who largely ignore the needs of street vendors because these vendors do not form part of the vote bank that places these officials into positions of power. For example, when vendors from Shivajinagar visited the local member of the Karnataka Legislative Assembly after being evicted, they were turned away because they were not voters in his constituency; therefore, he had no interest in helping them.

Public interest litigation on pedestrian rights exemplifies how certain uses of the street are never seen as legitimate. Petitions often speak of pedestrians as the only users of streets. Vendors are described as encroachers, and the urban homeless are seen as even less legitimate users of public space.

However, rather than seeing this situation as nothing more than vested class interests, it might be more illuminating to examine the role played by aesthetic considerations. There is substantial evidence to suggest that urban governance in India is increasingly being decided by the rule of aesthetics. D. Asher Ghertner (2011), in his work on slum clearances in Delhi, explores how the jurisprudence of “public nuisance” has been harnessed to effect slum evictions. In such cases, instead of proving that the slum is interfering with a general right to use property, citizens’ groups have successfully argued that the very existence of slums is detrimental to the enjoyment of public space and private property. Disorder and dirtiness are thus imputed to the very nature of informality. Moreover, caste markers of dirt and purity are regularly employed to disenfranchise street vendors. Take, for example, the abovementioned case of street vendors in Koramangala. Characterizing the smell of non-vegetarian food as a disruptive element is a typically upper-caste phenomenon. Dominant-caste vegetarian Hindus claim to find the smell and appearance of meat and fish to be disturbing to their caste sensibilities, as they consider non-vegetarian food impure. This is despite the fact that meat is widely consumed in India and is, in fact, a staple of most diets. The refusal to allow the smell of meat to pervade public spaces is therefore nothing less than an assertion of Brahmanical dominance over public space.

Sex Work and the Unclean Body

Just as street vendors and slum dwellers are criminalized by the aesthetic of the “world-class” city, sex workers are seen as an aberration in the ordered urban space. And just as street vendors and slum dwellers are often targets of state violence, sex workers find themselves constantly on the run from police violence. In Bengaluru, the police have carried out multiple eviction drives against sex workers in certain areas. A large number of sex workers work in Majestic, Upparpete, Cottonpet, Gandhinagar, and

adjoining neighborhoods in central Bengaluru. These areas constitute a bustling commercial center close to the busiest railway station in the city, Bengaluru City Railway Station, and the largest bus terminal, Kempegowda. The entire area—commonly referred to as Majestic Area—is one of the oldest and busiest market areas in Bengaluru and also serves as a major point of transit for travelers and traders from different parts of Karnataka and the rest of the country. This makes it an ideal location for street-based sex workers to conduct business.

Upparpete and its adjoining areas have been a hub for street-based sex work for many years. Many women travel to these areas from different parts of Bengaluru—and even from Karnataka, Tamil Nadu, and Andhra Pradesh—to engage in sex work. Like many street-based sex workers, these women generally work independently and take their clients to nearby hotels. Most of these women’s families are unaware of their identities as sex workers. Some of the women rent rooms to sleep in, though many are homeless and sleep in bus or railway stations. Many also sleep on trains and buses, moving from one location to another in search of clients.

In between solicitation and looking for shelter, sex workers in these areas also must deal with frequent police harassment and extortion. For example, between November 2013 and December 2014, police from Upparpete, Cottonpet, and adjoining jurisdictions carried out a “clean-up” drive against sex workers. Women were identified publicly, verbally abused, chased around, and beaten with sticks. They were detained in police stations, and any attempts to complain were met with further violence. Although police violence and harassment is routine for sex workers (often consisting of their being detained for a few hours, charged a fine, and then released), this time the police were unrelenting in their violence. Many women were brutally beaten, leaving them injured and unable to work. Others were attacked by police when they were simply walking home or crossing the road. Several times, women were chased into traffic, narrowly escaping an accident. They also received threats of sexual violence.

Many of the women who endured this harassment and violence were actually not active sex workers but members of a women’s collective in central Bengaluru. As part of this collective, they walk the streets at night to ensure that sex workers do not face

abuse from clients and do not fight with one another. It was these leaders who were targeted the most by the police. They were also taunted and told to take their *sangathan*, or organization, elsewhere. This pattern of violence was reminiscent of similar attacks that had taken place in 2001, when sex workers were cleared out of Mahatma Gandhi Road, a central thoroughfare in Bengaluru, and its adjoining precincts. In the wake of those attacks, civil society groups, lawyers, and sex workers came together to form a collective. Now, the same women who had organized themselves in 2001 were being attacked for being leaders of the collective, and other women who associated themselves with the collective were being similarly persecuted.

Although repeated complaints were made to the police, the violence only escalated with each complaint. In the face of this, in October 2013, the women requested a meeting with the commissioner of the Bangalore City Police. After listening to their complaints, the commissioner started talking about how it was not right that these women were on the streets—was it not better that they did some other kind of work? The women also met with the assistant commissioner of police of Chickpete Subdivision and his senior, the deputy commissioner of police of West Division. The message was the same: local residents are complaining about the presence of sex workers, and the women should get off the streets. The women were never told why, after all these years, local residents suddenly found the presence of sex workers so unbearable. When it was evident that their appeals to the police were not getting them anywhere, the women filed a complaint with the Karnataka State Human Rights Commission in February 2014. Five women came forward to give statements on how they had been assaulted. While the inquiry was going on, another woman was assaulted and left temporarily unable to speak. A new complaint was filed, and statements were taken. Yet another woman was beaten up, and another complaint was filed before the commission; the following day, the complainant was picked up by the police, who abused her and asked why she was filing complaints before the commission. She was dragged to the police station and kept there until midnight. A few days later, sex workers, activists, and lawyers staged a protest outside the Upparpete Police Station, demanding an end to police harassment. However, as soon

as the protest started, several men began screaming at the protesters, telling them that they were polluting the area. The protest soon degenerated into a fight between the women and these men, who claimed to be local shopkeepers. The shopkeepers argued that the women were making the area disreputable and were negatively affecting their business.

When it seemed that the fight was getting out of hand, the police stepped in and asked representatives from each side to come in and speak to the assistant commissioner of police. Inside the assistant commissioner's office—where sex workers, local shopkeepers, and activists and lawyers jostled for space and shouted at one another—the assistant commissioner kept quiet for a while and then told the women to behave themselves and not create problems on the streets. He then proposed the formation of a local committee, consisting of representatives from local businesses and civil society organizations, to monitor the streets.

No such committee was formed. However, soon after this protest, attacks against sex workers decreased, allowing the women to return to work. Whether this decrease in violence was because local residents had stopped complaining or because the police no longer wanted to act on those complaints is for anyone to guess. All the women know is that they can work on the streets in relative peace right now.

In this skirmish between sex workers, the police, and local shopkeepers (assuming that the shopkeepers had legitimate complaints—we were told later by other locals that the men were asked by the police to interfere in the protest), I observed at the root of it conflicting claims being put forth by the different stakeholders. For the women, it was a question of livelihood; and for the shopkeepers and local residents, we were told that it was a question not only of livelihood but of safety and respectability. But it was a question of safety for the women, too. These incidents were taking place little over a year after the horrific gang rape and murder of a young student in Delhi, and in the middle of a wave of protests condemning violence against women in India. For example, on December 6, 2014, the sex workers staged a protest against police violence outside the town hall in Bengaluru. The pamphlets distributed for the protest spoke not only of livelihood but also of sex workers' right to safe and accessible streets:

In this time of rising awareness of sexual violence against women, does the rape of a sex worker not merit discussion? When the state will not address the social and economic issues that compel women to take up sex work, then what right does it have to deny sex workers their livelihood? . . . Safety for women should extend to all women. Police brutality against sex workers must be seen in the larger context of violence against women. Sexual violence against sex workers must be punished. The police violence against them is inhumane, illegal, unconstitutional and violative of the fundamental rights of sex workers.

It is telling how sex workers grapple with visible and invisible forms of violence against women. For example, one former sex worker who had started working as a street vendor was harassed daily by the police, who abused and mocked her in public and told her to go back to sex work. Moving from one sector of the informal economy to another did not spare her from harassment. Moreover, within the sex work community, there is a growing understanding that the current wave of violence is not simply a case of aggravated police harassment targeted at sex workers alone. Street vendors in Upparpete, particularly in Gandhinagar, are also being harassed by the police and have faced several eviction drives. Criminal cases have been filed against a number of street vendors and are currently pending. In one of the initial meetings on the increasing violence against sex workers, an activist pointed to construction plans for the Majestic station of the Bengaluru metro and how these plans were a possible reason why women were being driven off the streets.

Once a woman enters the public space as a sex worker, she is denied the right to multiple identities. Therefore, a sex worker standing on the street is necessarily always soliciting, and a former sex worker doing street vending is still a sex worker. She is marked not by the fact that she is engaged in earning her livelihood but by the perception that she is engaged in transgressive, dirty sex.

Gayle Rubin, in her essay "Thinking Sex," speaks of an ordering of sexual activities:

Sexuality that is "good", "normal", and "natural" should ideally be heterosexual, marital, monogamous, reproductive, and non-commercial. It should be coupled, relational, within the same generation, and occur at home. It should not involve pornography, fetish objects, sex

toys of any sort, or roles other than male and female. Any sex that violates these rules is “bad”, “abnormal”, or “unnatural”. Bad sex may be homosexual, unmarried, promiscuous, non-procreative, or commercial. It may be masturbatory or take place at orgies, may be casual, may cross generational lines, and may take place in “public”, or at least in the bushes or the baths. (Rubin 1984, 152)

Therefore, sex work, which comprises commercial, promiscuous, non-procreative sex and which may even take place in public, surely forms the lowest rung in the hierarchy of sexual acts.

However, not all sex work is treated similarly. The site of sex work, whether it is the brothel, the home, or the street, is an important determinant of the manner in which this work is seen and of the form of its regulation. And the manner in which the law sees different kinds of sex work has deep, and often unforeseen (at least for activists), implications for the women themselves. For example, in January 2014, in the midst of attacks against sex workers, a group of activists and lawyers met the assistant commissioner of the Chikpete Subdivision. I was part of the group that had gone to meet him in search of an explanation for the attacks. The officer listened to us patiently and then asked, “Why don’t you tell me which law I can book them under?”

We had no answers. The law governing sex work in India is the Immoral Traffic Prevention Act. Sex work per se is not criminalized, and it is possible to earn a living from sex work as long as it is performed under certain conditions. However, certain aspects of sex work are penalized. For example, section 7 of the act penalizes public solicitation, while section 8 penalizes the keeping of a brothel. A 1975 report by the Law Commission of India explains this distinction:

But a woman or girl, who offers her body for hire, without soliciting or doing any of the other acts mentioned in the penal sections, is not guilty of an offence under the Act. The Act, thus, stops short of banning prostitution completely, and deals with only certain specified and concrete forms of immoral conduct. The ultimate objective is, no doubt, to check prostitution, but the methods adopted are limited in their scope. The philosophy reflected in the Act is that the law should stop only where the vice either assumes a commercialized form, so that the public policy requires its suppression, or it appears in a public space, so that it constitutes a public nuisance. (Law Commission of India 1975, 6)

Nevertheless, public solicitation can be difficult to prove, as merely standing by the side of the road cannot be considered solicitation. Therefore, unless a sex worker is caught in the actual act of soliciting a client, a charge of public solicitation against her will not stand.

This means that while sex work is legal, the public and exploitative aspects of it are criminalized. While this may seem to represent a relatively progressive stance of the Indian government, what it really means is that the law perpetuates a disapproval of sex work while simultaneously allowing such work to take place. This is not an unintended impact of the law. As described by the Law Commission of India in its report, sex work is disapproved of but not prohibited by law. The commission describes sex work as a socially unacceptable form of behavior yet one that is a “necessary social evil.” To quote the report:

In no period of recorded human history has any civilized society existed, without the institution of marriage in one form or another. With the help of this institution, man has tried to tame and control his brutal instincts and impulses. In this attempt there has been a fair amount of success, but not full and complete success, because man has not always remained satisfied with the company of his wife and has sometimes sought the pleasures of the flesh by straying beyond the limits of the marital wedlock, with the result that institutions such as prostitution and concubinage have existed side by side with marriage since times immemorial. For the greater good of family and society, man has tolerated these institutions as necessary social evils. (Law Commission of India 1975, 2)

Sex work is thus framed as necessary to divert the libidinous energies of the heterosexual man. At the same time, it is an “evil” — a morally reprehensible profession that needs to be controlled. Essentially, it means that while men should have access to sex outside of marriage in lieu of payment, sex workers themselves must be controlled to prevent the moral contamination of society.

The Immoral Traffic Prevention Act reflects this view. As mentioned earlier, while the transaction of sex for money is not prohibited under this law, public solicitation is penalized. Also, convictions for public solicitation are extremely hard to obtain. Therefore, in the absence of well-defined legal provisions but faced with a moral imperative, the police resort to extrajudicial methods to drive women away (such as illegal detention and verbal and

physical violence). Sex work, like many other forms of informal labor, is kept in the penumbra of illegality. The law's concern is thus clearly exposed—on the one hand to ensure men's access to sex, and on the other to prevent the moral contamination of public spaces. This framework makes state-sponsored harassment of sex workers inevitable. The assistant commissioner of police, in asking us which law he could have used, made it clear that the sex workers obviously had to be driven off—the question was how.

In fact, the history of regulating sex work in India is essentially a history of regulating access to certain spaces. Beginning with the Cantonment Act of 1864 (which mandated the compulsory inspection of sex workers found within cantonments), then the Indian Contagious Diseases Act of 1868 (which extended the same mandate beyond cantonments to certain areas), and finally the Bengal Suppression of Immoral Traffic Act of 1933 (the predecessor to the present act, which regulated sex work as an assortment of practices), sex work regulation in India has never sought to impose an outright ban on sex work. Instead, it has created an abolitionist regime—that is, one that allows the sale of sex but bans all related activities (Mossman 2007, 5). The implications of such an abolitionist regime extend far beyond the law. Phil Hubbard, in speaking of vice legislation in France (which resembles that of India), states that the “legal as well as moral ambiguities” of vice law have created a situation where “street sex work is tolerated so long as it does not arouse public complaints about sexual exhibition and gross indecency” (Hubbard 2004, 1690). He draws parallels between the exclusion of sex workers from public spaces and the exclusion of other marginalized groups, who are seen as the unclean other that must be expunged from the city. Hubbard states that the “displacement of established areas of street sex work appears particularly pronounced in the context of . . . ‘third-wave’ gentrification, which is led by corporate investors keen to draw back affluent consumers to the central city” (2012, 55).

Equally important to note is the fact that many sex workers in India are Dalits or members of religious minorities. The sexuality of Dalit women has always been constructed in opposition to that of Savarna Hindu women.⁶ According to Jenny Rowena:

6 The fourfold Hindu *varna* system consists of four Savarna

Hindu religious traditions institutionalize the use and exploitation of Dalitbahujan women's bodies for the sexual pleasure and entertainment of men who are placed higher than them in the caste hierarchy. This works to legitimize various other violent forms of oppression such as rape, formal and informal workplace sexual exploitation and networks of prostitution, involving adivasi, bahujan and dalit women. All these firmly hold down the body of the subaltern woman within a sexualized structure of abuse, violence and exploitation.

In great contrast, the caste system approaches the upper caste woman's body . . . [as] the adored and worshiped site of caste purity. The upper caste woman's body comes to be protected/controlled by father, husband and son (Manusmriti, IX, 3) under a caste Hindu morality, based on notions of chastity, virginity and docile femininity. As a consequence of such a caste/gender differentiation, the sexual energies which are made to be brooked with regard to the upper caste female body often gets unleashed onto the figure of the subaltern woman, who becomes the favored site of male sexual pleasure, violence, entertainment and release. (Rowena 2012)

By its very structure, Indian law pushes Dalit women into the performance of sex work so that the institution of endogamous marriage, upon which the caste system depends, can safely continue. This is an institutionalization of the dirt-and-purity divide, which puts Dalit women not only at the mercy of traffickers and pimps but also at the mercy of the police. The law thus reinforces dominant-caste interests, forcing Dalit women to become the receptacles of men's sexual desire while also ensuring that they stay out of sight, subjugated and silenced.⁷

castes: Brahmins, Kshatriyas, Vaishyas, and Shudras. Dalits and Adivasis (indigenous people) fall outside these castes and are known as Avarna.

7 The term "sex worker" can invisibilize the oppression and lack of agency of women involved in sex work. However, alternative terms often conflate sex work with trafficking, reducing participants to the status of mere victims, and are thus also not ideal. Many of the women I have spoken with who belong to sex workers' collectives prefer to call themselves *laingika karyakarta*, which means sex worker in Kannada, or they simply use the term *dhandu*, which means trade, to describe what they do.

Conclusion:

Dirt, Disorder, and Dealing with Difference

We have seen above how the law reinforces and reproduces certain dominant social orders and either excludes those it deems disorderly or attempts to cleanse and tame them. At the same time, the law does not aim at eradication. For example, while the Street Vendors Act recognizes the role of the informal economy in shaping the city, it does so through a complex regulatory structure, which may, in its implementation, leave many vendors vulnerable to legal action. In comparison, one sees the Immoral Traffic Prevention Act—which does not explicitly criminalize sex work but criminalizes most commercial and public aspects of it—effectively making sex workers vulnerable to police action. Urban informal workers, as opposed to those employed in the formal sector, often have to combat a *prima facie* assumption of illegality. Therefore, street vending, like sex work, is not explicitly made illegal, although a host of provisions on encroachments, obstruction of public thoroughfares, and causing public nuisance are disproportionately used against street vendors to harass and evict them. This is similar to the Law Commission of India's stand on sex work as an activity "disapproved of, but not prohibited by the law," thus creating a strong sense of civic disapproval around street vending.

Moreover, there is a hierarchization at work that places the rights of property owners, registered business owners, and middle-class pedestrians above those of street vendors and sex workers. Certain areas earmarked for the promotion of the consumptive practices of the urban middle class are then "cleaned" of these disruptive elements, for dirt, as defined by anthropologist Mary Douglas, is "matter out of place" and is thus defined relationally:

Dirt, then, is never a unique, isolated event. Where there is dirt there is system. Dirt is the by-product of systematic ordering and classification of matter, insofar as ordering involves rejecting inappropriate elements . . . Shoes are not dirty in themselves, but it is dirty to place them on the dining table; food is not dirty in itself, but it is dirty to leave cooking utensils in the bedroom . . . in short, our pollution behaviour is the reaction which condemns any object or idea which is likely to confuse or contradict cherished classifications. (Douglas 1966, 36)

Evidently, in the processes of ordering and classification, matter gets left out. Clean matter finds its privileged space in the hierarchy of things, and dirt gets relegated to the fringes, under our carpets and in our closets.

Similarly, gentrification, by producing a certain order of the city, pushes out the disorderly elements to the city's fringes. This is accompanied by an increasing frenzy among cities to become islands of prosperity that represent the face of a nation's progress. The informal sector is often hit the hardest in this process, as the achievement of a "world-class" aesthetic depends on the simultaneous exploitation and invisibilization of this sector.

This fear of disorder, and the accompanying fear of heterogeneity, is what characterizes gentrification processes the world over. However, in India, caste forms a unique and essential part of this process, as access to urban spaces has traditionally been mediated through caste identity. Dalits have systematically been denied access to public space and discourse, and the very presence of a Dalit is considered impure. Dalits have been forced into occupations that require them to clean up after upper castes, and even today, adjectives of cleanliness and dirt are used as markers of caste identity. It is therefore impossible to talk about dirt and disorder in India without talking about caste. And given the centrality of the caste system to determining power structures, it is not surprising that upper-class and upper-caste visions of the city predominate.

But is it possible, or even advisable, for us to seek an alternative narrative of the city to combat the neoliberal one? Can I, as a lawyer and an activist, attempt to classify all the elements of a city and assign each to its rightful place? Or, in attempting to do so, are we running the risk of denying the heterogeneity of urban society, which is exactly what the "rule by aesthetic" does? Should we as activists reconcile ourselves to the chaotic nature of the urban space? As Solomon Benjamin puts it:

Rather than assume that cities must have a common aesthetics bound by a singular history or trajectory, we need to consider them as territories of multiple hues. In doing so, we embark on considering a more anarchic politics of the city. This politics is shaped in complex dialectical ways by the meta processes, but also by diverse levels of structural effect and appropriation. In this perspective there is no one aesthetics

and nor is it static in some kind of predictive way. And this represents the heterogeneous terrain of what we call “the” city. (Benjamin 2010)

One of the first meetings I attended after I joined the Alternative Law Forum was on road widening in Bengaluru. BBMP had proposed that several roads be widened by taking over land on either side of these roads. The idea, ostensibly, was to improve the flow of traffic. But such a measure would also necessitate acquiring private property on both sides. Several citizens’ groups had come together to protest the measure, which, if implemented, would result in local residents’ homes being demolished. Environmental groups also joined to protest the mass felling of trees for road widening. At the meeting, I heard for the first time the assertion of a pedestrian’s right to the road. It took me another year to understand that there are uses of the streets other than walking on them and that some uses are being prioritized over others. And it was only in October and November 2013 that I began to comprehend how street-based sex workers were being denied access to entire stretches of public space because of their identity.

But as an activist, I have been unable to reconcile these conflicting visions. This is partly because of a lack of experience, but primarily because I no longer think that it is necessary to build such a narrative. Perhaps we need to move toward a more chaotic vision of the city, one that sees communities as equal inhabitants of the urban environment and allows them to negotiate public spaces on their own terms. Perhaps we need to acknowledge that city streets are not meant to be an extension of the middle-class living room and that grand narratives are inherently exclusionary. And perhaps what I used to classify as dirty and disorderly is simply the heterogeneity of social life that my background had made me resistant to.

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CHAPTER 12
Agrochemicals: Uncertainty
in a Dialogue between Policy,
Law, and Society

Yamile Eugenia Najle
(Argentina)

Introduction

The story that I will tell in this chapter features the Argentinean agricultural system in the global context of expanding agricultural frontiers, accelerated deforestation, food crises, and climate change. An analysis of Argentina's agricultural system reveals a clash of competing rights, values, and realities. This chapter will engage the prevailing economic, cultural, and social framework, as well as the frameworks of Argentinean and international law. A central point of reflection is offered by the experiences of the residents of the Parque San Juan neighborhood in the city of Alta Gracia, located in the province of Córdoba, Argentina, along with the complexities that the case poses to the court of Alta Gracia. This court must ultimately make a decision regarding a particular conception of development resulting from the implementation of the environmental precautionary principle.

This chapter reflects on the various actors, areas of knowledge, skill sets, languages, histories, and experiences that coalesce in the legal file titled "Verdol S.A. v. the Municipality of Alta Gracia-Declaratory Judgment Action," identified by case number 790108 and containing more than a thousand pages to date. Through this file, we will meet Ezequiel, residents of the Parque San Juan neighborhood, the private company Verdol, and the judge from Alta Gracia. Guiding us through this narrative will be me, a lawyer for the Foundation for the Development of Sustainable Policies (FUNDEPS by its Spanish initials).¹

1 FUNDEPS is a nongovernmental organization whose work is directed toward building a more just, equitable, and inclusive society, promoting sustainable development that respects human rights by influencing public policies at the local, national, and international

A Little Background

Far from the United Nations, the Intergovernmental Panel on Climate Change, and the Food and Agriculture Organization of the United Nations; far from national ministries; and far from the homes of Verdol shareholders, members of the court of Alta Gracia, engineers, and FUNDEPS's lawyers is the neighborhood of Parque San Juan. It is a peri-urban neighborhood on the outskirts of Alta Gracia, and there we find a house just like any other: the house of Ezequiel. Ezequiel's home is bordered not only by fields but by all the agricultural productivity that Verdol, a mineral grinding company, stands for. The fertile land is used mainly for growing soybeans (which the Argentinean president once called a "weed"),² one of the most profitable cash crops for Argentina in recent years. Indeed, Argentina's course has been charted, and its goal is clear. Soybeans have reportedly been growing at a rate of 800,000 hectares per year, and the "objective of the Argentinean Agri-Food Strategic Plan is to increase the amount of harvested soybeans by twenty percent by 2020" (Barruti 2013, 96). In order to achieve peak performance and profitability, this "weed" needs an agricultural technology package³ consisting of direct seeding, genetically modified crops, and agrochemicals. The use of this package, which lies at the heart of the expansion of the country's agricultural frontier, has negative consequences for local residents' lives and health, as well as the environment (Cáceres 2014).

In this regional and national context, the city of Alta Gracia dared to enact a local ordinance—Ordinance 9375—that creates

levels. With these aims, FUNDEPS carries out research, training, advocacy, strategic litigation, and collaborative activities.

2 In a 2008 speech, former Argentinean president Cristina Fernández de Kirchner referred to soybeans in this way, drawing a great deal of attention throughout the country. She said, "The other day I was talking to someone, and this person said that soybeans are, in scientific terms, practically a weed that grows without any special care. To give you an idea, glyphosate, which is used to bombard coca plantations in Colombia and along the border with Ecuador to destroy them, has no effect on soybeans. Actually, it helps them because it kills all the weeds around them" (Fernández de Kirchner 2008).

3 Barruti goes on to explain, "For, as expected, agrochemicals, without which soybean plants would not be able to grow, also increased in use: in 15 years they went from 30 million liters used in the country to nearly 200 million" (2013, 96).



Picture 1
Judicial impact

Photo: Parque San Juan residents

an environmental protection area consisting of 1,500 meters in which fumigation is prohibited.⁴ This law is based on the Constitution of Argentina and the Law on National Environmental Policy of 2002 (Law 25675), which establish minimum environmental requirements in accordance with the environmental precautionary principle, a far-reaching and important principle in international⁵ and national law. According to the principle, “when there are threats of serious or irreversible damage, lack of information or scientific certainty must not be used as a reason for postponing the adoption of effective measures, with regard to costs, to prevent environmental degradation” (art. 4 of Law 25675). Alta Gracia’s ordinance notes that the use of agrochemicals in Argentina has increased by more than 200% in recent years. It also states that agrochemicals are potentially toxic and that chronic and repeated exposure over long periods of time—even to small amounts—may be the source of certain health problems among the city’s residents. Moreover, the law reports that agrochemicals are sub-

4 According to article 2 of the ordinance, “The use in any form of any kind of chemical or biological product for agricultural use is prohibited within the Environmental Protection Area.” And according to article 6, “The aerial application of any kind of chemical or biological product for agricultural use is prohibited in all of the common land of the city.”

5 The precautionary principle is outlined in the United Nations Framework Convention on Climate Change (1992), the Convention on Biological Diversity (1992), the Cartagena Protocol on Biosafety (2000), and the Convention on Persistent Organic Pollutants (2001), among others. It is also found in nonbinding international instruments, such as the Stockholm Declaration on the Human Environment (1972), the World Charter for Nature (1982), and the Rio Declaration on Environment and Development (1992).

stances that transfer easily and that can accumulate, which is why they are a potential source of contamination. For these reasons, the ordinance involves preventive measures⁶ to protect the health of both the current population and future generations. By passing this ordinance, Alta Gracia has prioritized the right to life and health of its residents—but at a high price in terms of agricultural production that some actors are unwilling to pay.

The Beginning of Dialogue

At an introductory meeting at a local resident's house, located next to fields, a group of Parque San Juan residents gave a copy of the case file to my colleague John (also a lawyer at FUNDEPS) and me.

For over three hours and while sipping cups of mate, we listened to the group recount the reasons why residents had taken up the fight to pass the ordinance. They told us that the neighborhood was full of sick people and described how, on one of the fumigation days, one of the inhabitants had felt her chest "close up," and then died that same day. They recounted the fatigue that the fight causes for them, as well as the violence that it entails, and explained how by defending the ordinance, they see themselves as defending the life, health, and environment of an entire community.

I was struck by a brochure that the municipality had distributed after the ordinance's passage. It said:

We're in agreement. We prioritize life. We guarantee work. Balance: this concept is what makes us a society that both grows and cares for the community. That's why the Municipality of Alta Gracia passed an ordinance that strikes a balance between producers and residents regarding fumigations and care of the environment.

By the time I reached the last line, I could not help thinking that this supposed "agreement" was by no means evident. Of everything we had listened to, what had left the greatest impression

6 According to the ordinance, "the Argentinean Constitution also guarantees the right to work under the laws that regulate its exercise, and our community, with its profile of cultural tourism, seeks to reconcile its various activities with the right to life and health through the adoption of necessary measures for prevention and control" (para. 18, whereas clauses).



Picture 2
Flyer

Source: Municipality of Alta Gracia

on me was the magnitude of the violence that had befallen community members who defended the ordinance. This violence was such that it affected both those who refused to cease fighting and those who wanted it to end. This violence manifested itself in different ways: through direct threats in places like the supermarket, or through veiled threats by way of public officials. All of this occurred in a context in which residents had to call the police and mount night watches to ensure that fumigations did not take place at times and with methods that were prohibited. The violence even carried over to the children of those who took opposite positions in the matter. One story that Ezequiel told us is typical: two children would fight because the father of one defended the law (placing a priority on health and life) while the father of the other, a rural worker, rejected it (placing a priority on work and feeding his family). Ultimately, all were victims of a reality that we could not ignore and of a tension that we had to address.

The group's fear was palpable: they worried that there would be a return to politics as usual in which backroom deals prevailed. It was precisely because of this fear that they wanted to participate and be heard. They wanted their voices reflected in a file that, although about them, felt far removed. In this way, they began their efforts to play a formal role in the file, seeing as they

were already a real part of the case—indeed, perhaps the most real part of all.

During the series of meetings that we held to listen to the group’s concerns and discuss the possibilities and limitations of legal action, the group told us that they wanted to involve the entire community in the case; they didn’t want residents of the Parque San Juan neighborhood to be the only signatories. They wanted people to see that the problem of fumigations is a problem for all.

The Coalescence of Knowledge and Forms

As we armed our case, we had to reconcile languages, procedures, legal obligations, time frames, and residents’ needs. Although this was by no means easy, following a period of thinking, engaging in dialogue, and integrating needs, we filed the complaint on a warm December day, accompanied by some twenty residents.⁷ The filing was not without setbacks, but between Christmas and New Year’s we finally achieved a breakthrough: residents’ voices were heard in court. We also managed for the evidence that we submitted, particularly the medical report and scientific documents,



Picture 3
“We want everyone to know”
Photo: Parque San Juan residents

7 It is important to mention that FUNDEPS’s lawyers had an intense argument over the appropriate legal strategy, since we realized that the civil prosecutor who should have been part of the process had not been notified. We considered the possibility of requesting the annulment of all proceedings to date, but, for reasons of legal strategy, we decided instead to request participation as a third party.

to be included. In addition, we were able to make the residents of Alta Gracia, through their signatures and local press coverage, knowledgeable of and invested in the case, making them feel like part of what was happening in their city. The highlight was that our efforts enabled the file to begin another year with new and fundamental players.

Thinking about the Court

Having arrived this far, I could not help but reflect on the role of the local judge as an essential part of this process. Imagine a judge sipping a cup of coffee in an office overflowing with files, reading the case's testimonies aloud. The judge comes across phrases and expressions that belong to another realm, a realm far from the legal one, one entirely different from the files that usually end up in his hands: "There was no more green grass, no more butterflies, or any kind of animal . . . now, after the ordinance, there are plants, butterflies, and animals."⁸ Some are expressions that explain experiences, so difficult to put into words but so vivid when expressed: "When they would spray those liquids, the fields would automatically become dry-like."⁹

I would always wonder, will cases like this one make the judge think about the expansion of the agricultural frontier, food sovereignty, the right to development, climate change, and deforestation? Will the judge wonder about the economic, social, cultural, and environmental implications that the case raises? What values and principles will he take into account to reach a decision? What impact might this decision have on public policy in the city of Alta Gracia and the province of Córdoba? Will future generations be taken into account? How will the realities and experiences of residents be assessed? How will the judge measure the values, rights, and principles being disputed?

These questions demand direct reflection on the alleged tension between, on the one hand, the rights to life, to health, and to a healthy environment and, on the other, the rights to work,

8 Testimony provided by Ms. Ortiz, resident, September 3, 2013, Alta Gracia.

9 Testimony provided by Mr. López, resident, September 3, 2013, Alta Gracia.

to engage in any lawful industry, and to property. They prompt us to confront economic pressures, state policy, scientific uncertainty, and, ultimately, the right of a people to decide about a particular development model. They make us reflect on future generations and Mother Earth.¹⁰

The answers we produce will directly affect the life of Ezequiel and his fellow residents—and, by extension, the residents of the entire province and country, since this subject is highly relevant for the provincial, national, and international political agenda. It is an issue of global importance for both current and future generations, bringing together as it does varying conceptions of law, justice, and development.

A Few Implications of Knowledge Exchange

Today, we have reached a clear turning point in the case: scientific uncertainty. Scientific uncertainty is the cornerstone of the environmental precautionary principle and is of vital importance to our case, for it has direct, real, and specific implications for residents' lives. At the moment, science is unable to offer any definitive answers about the health- and environmental-related problems caused by the use of agrochemicals. But the use of these products is growing, and safeguards are needed.

Our work on the scientific evidence posed complex and difficult questions. We wondered, for example, what are the short-, medium-, and long-term effects of pesticide use? What cumulative effects do pesticides have? How do different organisms respond to pesticide exposure? How do these chemicals interact with the environment and the health of children, pregnant women, and the elderly? Are their consequences always predictable? What effects occur in an environment that is already contaminated by other toxic compounds? Should the standards for use be the same in all circumstances? How do different substances interact? What

10 Reading the case file clearly shows how the fields changed, how the plants in residents' gardens died, and how the rabbits and butterflies disappeared. The words of Boaventura de Sousa Santos aptly describe this complexity: "The conception of nature as an integral part of society, not as something separate from it, would involve a profound transformation of social and political relations. It would entail a reengineering of the modern state" (2014, 56).

effect will concentrations considered acceptable today have on future generations? To what extent are people's life expectancy and well-being reduced when exposed to pollutants? How do we ultimately evaluate the potential damage of substances that are clearly not harmless to humans and the environment? What level of risk do we consider acceptable, and who gets to decide (Falbo 2011)? These are just a few of the difficult questions we face today, and which Alta Gracia's judge must answer.

When Hard Science Isn't So Hard

When we started working on the case, we had to study several things. One of our biggest challenges in the learning process was the interdisciplinary work involved, particularly the realization that producing legal evidence is not easy when it comes to environmental contamination. We had to study chemistry, engineering, medicine, and a little biology to understand, in very general terms, what the hard-science professionals were saying about agrochemicals. We also had to meet with various professionals in the field. Contacting doctors and engineers was one of the many activities that taught us to speak a new language—one that we first had to decode in order to understand and then find a way to convey that understanding to the judge.

Trying to prove damages to health stemming from the use of agrochemicals is far from simple, as both legitimate information and misinformation on the subject abound. For this case, we needed to define and give scientific legitimacy—by way of irrefutable evidence—to the reality of Parque San Juan residents, in opposition to the reality offered by the agricultural model represented by Verdol.

We needed serious and well-founded studies to help explain the underlying problem. In other words, we needed studies that would help explain that local residents were suffering damage to their health as a result of agrochemicals and that it was not a matter of mere perception. Our problem was not a minor one. We looked to a 2012 report prepared by medical researchers—one whose results can be extended to our region—which states that “in Argentina, the problem arising from the use of pesticides is paid little attention in the health system” (Aiassa et al. 2012, 496). This report thus corroborated our claims.

Doctors vs. Biologists vs. Engineers vs. Lawyers vs. Reality

Health

*Due to the regular and indiscriminate use of pesticides,
Argentina may be suffering a silent epidemic.*

—EXCERPT OF EVIDENCE FROM THE CASE FILE

People are afraid. Residents whose property stands adjacent to fumigated fields suffer from diseases, but medical science has yet to provide a clear answer about the link between these diseases, the fumigated fields, and the products used on them. There are no clear statistics and no data. Nor is there any apparent interest in collecting more official information on the subject. Dissenting voices are silenced or discredited. People's health suffers in peri-urban areas, and we are still not certain why. Residents of Parque San Juan are currently in danger because their health is threatened. The law must decide regarding the life and health of these residents; it must decide about the life of Ezequiel.

One of the engineers summoned by Verdol to provide testimony said that "there would be no risks to the population"¹¹ if Provincial Law 9164, which prohibits fumigation within 500 meters (as opposed to Alta Gracia's prohibition of 1,500 meters), were applied. The engineer also explained that according to relevant reports, there is no reliable data confirming damage to health in peri-urban areas when sprayings are carried out following the rules of good agricultural practice. This statement, curiously, came from the same engineer who acknowledged that glyphosate—the mostly widely used agrochemical in the country—went from being rated as toxicity category IV to category III (Resolution 367 of 2014). If there is "no risk," in his words, then why was the agrochemical changed to a more toxic category? Not long after the engineer presented his evidence, the International Agency for Research on Cancer (2015), which is part of the World Health Organization, even concluded that glyphosate is possibly carcinogenic to humans.

11 Testimony provided by Ricardo Weiss, engineer, September 2, 2013, Alta Gracia.

We can then contrast the engineer's statements with those of residents who were asked to describe their reality:

Ms. CABRAL: [I] would sense a certain smell that would dry out [my] nose, throat, and chest . . . When they would fumigate, [I] would have to go inside with [my] granddaughters so they could take in oxygen.¹²

Mr. HEREDIA: [When they would fumigate,] you realized it from the environment, because you would be able to see weeds, and then after the fumigation there was nothing left . . . [I] would inhale it normally . . . There are many children, and many are sick. . . [My] son was in the hospital.¹³

Mr. LÓPEZ: You could tell when they fumigated . . . it's like a metal, a metallic taste in your throat. Your eyes would also get irritated and you would cover your nose. [I] was treated at the Hospital de Clínicas because of the fumigations, or that's what [I] was told.¹⁴

Ms. ORTIZ: The last time they fumigated, they did it at dawn. I took my three-year-old boy to the hospital because he had a bronchospasm attack, and my mother had an asthma attack shortly afterward. I have a little boy who has skin problems, and my little girl suffers from bronchospasms.¹⁵

When these same residents were asked how they felt following the ordinance that created the environmental protection area, this is what they recounted:

Ms. CABRAL: Did life change? Significantly . . . There's green in the fields, in the trees—it's a sign of life. Before the current ordinance, it was very sad because there wasn't any green. You feel good now; everyone feels good.

Mr. HEREDIA: [Since the ordinance,] people stopped having to go to the doctor, looking at it from the point of view of health.

12 Testimony provided by Ms. Cabral, resident, September 3, 2013, Alta Gracia. She has lived in the neighborhood for forty years, and her house is separated from the fields by a wire fence.

13 Testimony provided by Mr. Heredia, resident, September 3, 2013, Alta Gracia. He has lived in Parque San Juan since he was fourteen years old. His house is seven meters away from the fields and is separated a gravel road and a wire fence.

14 Testimony provided by Mr. López, resident, September 3, 2013, Alta Gracia. His house is separated from the fields by a wire fence. His testimony has been challenged by Verdol.

15 Testimony provided by Ms. Ortiz, resident, September 3, 2013, Alta Gracia. Her house is forty meters away from the fields.

MR. LÓPEZ: I feel that we are much better off than before, when they would fumigate above us . . . We are better off, because the source of disease went away. So, you look at life with a different kind of expectation . . . I can think about living better.¹⁶

MS. ORTIZ: It got much better . . . [Our] skin problems went away, and now, after the ordinance, there are plants, butterflies, and animals.

Although the residents are not doctors, they were able to clearly explain that they began to feel better after the ordinance was passed. Prior to the ordinance, they had suffered illnesses more frequently, but now they see life with new eyes because they feel better. These words stand in contrast to those of the engineers, offered as evidence by the agricultural producers, which conveyed that there would not be any risks. This brings to mind the cases of endosulfan (an insecticide) and tobacco, which “suddenly” began to be harmful to health. The history of these cases illustrates a path that we fear may be repeating itself. Alta Gracia’s ordinance was enacted to protect the health of its residents. The case’s legal proceedings contain references to the right to health, which is why we wondered why no medical evidence had been included in the case before we became involved. The answer is uncertain. We believe that one of our greatest achievements was getting the testimony of a doctor specializing in allergies and immunology, Nelly Barrera, included in the file. Barrera, who is intimately familiar with the reality in Parque San Juan, bravely put her name to what science also backs up. Her medical report includes several important observations:

1. Of the total population surveyed, 51% were sick, with asthma being the most frequent pathology. This indicates “a percentage that *far exceeds* the results of other studies of asthma prevalence in the city of Córdoba” (Barrera 2013, emphasis added).
2. “If we take the sick population as 100%, the prevalence of these diseases is greater . . . where we also find other conditions such as endocrine diseases; cancer; neurological diseases; birth defects (polydactyly, Down syndrome, patent ductus arteriosus); autoimmune diseases such as lupus, myasthenia gravis, and

16 This witness’s credibility has been impugned, as the company’s lawyers believe that he was not impartial.

celiac disease; and obstetric conditions such as miscarriages and infertility” (ibid.).

3. “These results are *truly alarming*, very suggestive, and may be related to the proximity of the fields where *agrochemicals of known toxic effect were used* when safety standards were not followed” (ibid., emphasis added).
4. When referring to the reality of the residents after the enactment of the ordinance, the report explains that “since that time and until the present moment, there is a generalized perception of the residents that *coincides with a decrease in the appearance of new diseases in the neighborhood*” (ibid., emphasis added).
5. The report concludes that “it is of *utmost importance that this protection area be maintained*” (ibid., emphasis added).

Barrera’s report is clear and compelling.¹⁷ Her observations represent the opinions of a health professional who has worked in the neighborhood and is familiar with the reality of Ezequiel and his fellow residents. It goes without saying that the report’s findings were flatly rejected by Verdol. But the medical report’s existence cannot be ignored. While evaluating the evidence, the judge must balance knowledge and feelings, medicine and engineering, and rights and principles in order to reach a decision on how to protect the health of Parque San Juan residents.

Distances

Jorge Kaczewer, a doctor and professor specializing in ecotoxicology at the Universidad Nacional de Buenos Aires, has written that “pesticide drift is inevitable whenever there are fumigations” (2009). He has also stated that many chronic diseases are linked to pesticide drift and that the consequences of this drift are silent and unknown to the general public.

17 Due to the findings of doctors who have worked in the neighborhood, and before the medical study that we included was signed, the district attorney’s office initiated the case titled “Proceedings concerning alleged crimes.” Currently under a gag order, these proceedings have not moved forward and have not been made available to us.

In the case file is an article by engineer Pablo Mazzini, in which he claims that Alta Gracia's law was approved with little study, that the law is completely unnecessary, and that there should not have been legislation for more than the 500 meters established by provincial law. According to Mazzini, "its approval was motivated by feelings, social pressure, and a marked lack of information."¹⁸

Throughout Argentina, regulations on the use of agricultural products are patchy.¹⁹ There are no national laws that standardize criteria, provide guiding principles, or establish minimum requirements for distances in the use of these products. In light of this reality, in 2013 the Ministry of Agriculture, Livestock, and Fisheries issued relevant guidelines, entitled "Guidelines on the Application of Plant Protection Products in Peri-Urban Areas" (Ministerio de Agricultura, Ganadería y Pesca 2013).

These guidelines were the joint effort of thirteen key actors in the agricultural sector.²⁰ But it is surprising that a document intended to be used as a reference by all did not involve open participation. We asked ourselves why, if the heart of the current discussion is focused on damage to health and the environment, there was no participation from the ministries of environment and health, or from leading organizations in these areas. Did the document's authors believe that these issues are unrelated? How were the concerns of the populations bordering the fields taken into account? What reality did the authors have in their minds when writing the guidelines? Let us explore the document's conclusions—perhaps they will be enlightening.

18 Article published on January 31, 2008, in the local newspaper *Resumen de la Región*, included on page 238 of the case file.

19 In the province of Córdoba, more than twenty towns regulate the application of agrochemicals. Alta Gracia is one of them.

20 The thirteen entities included the Ministry of Agriculture, Livestock, and Fisheries; the National Agricultural Technology Institute; the National Food Safety and Quality Service; the Ministry of Agriculture, Livestock, and Food of the Province of Córdoba; the Federal Plant Protection Commission; the Argentinean Association of Regional Consortiums for Agricultural Experimentation; the Argentinean Association of Direct Seeding Producers; the Chamber of Agricultural Health and Fertilizers; the Chamber of the Argentinean Fertilizer and Agrochemical Industry; the Professional Council of Agronomy; the Argentinean Federation of Agronomy; the Argentinean Federation of Aerial Application Chambers; and the Department of Agronomy of the Universidad de Buenos Aires.

After analyzing the regulations of countries such as Brazil, Chile, Germany, the United Kingdom, and the United States, and with the “sole purpose of contributing to the definition of buffer zones so that competent authorities consider the use of plant protection products with a view to regulating them,” the report recommends the creation of buffer zones of various distances (Ministerio de Agricultura, Ganadería y Pesca 2013, 11). The authors explain that the buffer zone for ground application should be 100 meters, and the zone for aerial application should be 200 meters. They also note that “these recommended distances may be reduced following evaluation by the acting professional in consideration of the available technology, climatic conditions, and the plant protection product used” (ibid., 11). It is only appropriate at this point to recall the clarity of national policy regarding the consolidation of the extractive agro-export model. While space does not allow for an analysis here, this model invites us to think about the direct relationship between the expansion of Argentina’s agricultural frontier, the use of agrochemicals, and foreign exchange revenue. The model—which currently drives the direction of the country—has direct implications for the assessment of the risks to life and health represented by the use of agrochemicals. Ultimately, it defines the limits of the application of the environmental precautionary principle, which directly affects individuals’ rights to life, to health, and to a healthy environment.

Faced with this disparity in criteria and seeking to add more scientific analysis to our arguments, we included the signed and sealed report of Marcos Tomassoni, a chemical engineer who has studied the problem of drift and has advised FUNDEPS on this case. His report, which shines a light on the generation of drifts in pesticides, condenses the result of four years of work and research.

The report, written in technical language that is at times difficult to understand, affirms that “there is no such thing as controlled application of pesticides, basically because one cannot control the interaction between climate and the physical and chemical phenomena of pesticides, their residues, and adjuvants and surfactants” (Tomassoni 2013). Moreover, it argues that “the search for a definition of a minimum distance from the spraying sites to populated areas should lead us to consider distances exceeding

4,800 meters, which is the maximum distance that the smallest drop of an application can travel.” How do we control the interaction of agrochemicals with nature? Can we limit the blowing of the wind so that the poison does not reach Ezequiel?

The judge will ask what the minimum distance to effectively protect the populations bordering the fields is—and the answer will vary depending on who is doing the talking. If we ask the engineer who has studied our case, he will say 4,800 meters. The municipal government of Alta Gracia will say that 1,500 meters are needed to safeguard the health of its residents. The provincial government of Córdoba will say that only 500 meters are needed, and the national government will say that the distance should be 100 meters, with reductions permitted as appropriate. What, then, is the distance of safe application for protecting the health of Parque San Juan residents? It is important to note that the largest areas of protection are established by the people and institutions with the greatest direct contact with the reality of life in neighborhoods altered by the use of agrochemicals. In light of this scenario, the question becomes a necessary one due to the political and economic interests linked to and integrated in scientific knowledge, which is often used spuriously. The judge must decode all of this.

Decision Time

My telling of this story has introduced us to a variety of actors and institutions, realities and knowledge, and rights and values that the judge, as part of an impartial institution, must weigh. Thus, in his verdict, he must enforce the rights to life, to health, and to a healthy environment, all the while respecting the rights to work, to private property, and to engage in any lawful industry. All of these rights originate in a similar constitutional foundation, and all must be harmoniously integrated in this particular notion of development.

Each town determines its notion of development. Alta Gracia chose to restrict certain rights in favor of the environment and people’s lives and health, viewing this as a path to achieve progress. It operationalized the environmental precautionary principle—a principle that comes into play during the evidentiary and decision stages in legal proceedings by requiring specialized data and certainties that science is unable to provide. However, “scientific

uncertainty should not lead to legal uncertainty” (Quadri 2011, 1199). It is for this reason that the judge must shape the evolution of the law and look for a degree of “moral certainty—that is, a very high degree of probability”²¹—when deciding whether Alta Gracia’s choice was reasonable, appropriate, proportionate, and justified to achieve its goals as a society (ibid., 1200).

The judge will decide on an issue hanging over society, on which positions labeled as extreme have been staked out and where dialogue between competing priorities—the environment, health, property, work, and development—seems impossible (Lamberti 2008). This situation, taken together with the relativity present in science and the consequent demise of the ideal of scientific objectivity, calls us to consider the role of underlying political and economic interests. It forces us to consider new causal relationships that the law should provide for—ones that derive from cumulative effects, that appear in the long term, and that arise from varying interventions and interactions.

It is in this context that the cost-benefit principle must be superseded by criteria that incorporate the precautionary principle and the fair valuation of damages that have no economic value and that may not even be foreseen. The question we must ask ourselves is how the law can tackle different development paradigms. This is in addition to providing for rights established at the national and international level that the judge must enforce so that they can coexist within the same framework of democracy that calls him to intervene.

The role of the courts is not a simple one, and it is made even more difficult when laws fail to provide sufficient tools to address complex issues (Berizonce 2010; Pellegrini 2010). In difficult cases such as this one, judges must innovate with regard to forms and procedures, modifying them in order to do justice in cases of great transformative potential.

Judicial practice should not be static. Rather, it should be at the level of the rights it must protect, generating dialogue and a true

21 By moral certainty, the author is referring to “the judge’s frame of mind by virtue of which we can see, not with total certainty but rather convincing probability, his approach to the truth under convincing probability” (Quadri 2011, 1120).

exchange of knowledge in order to advance dialectically in building a more just and inclusive society.

Conclusion

Alta Gracia's judge will have to issue a decision in this particular case—which reflects a universal dilemma—in order to deliver justice to the residents of the city. This case has the potential to generate an active, dynamic, and transformative dialogue between society, politics, and the economy. It also has the potential to achieve cooperation between all parties involved to obtain sustainable progress in the protection of the constitutional rights of Alta Gracia residents (Rodríguez-Garavito and Rodríguez-Franco 2015), reconciling different areas of knowledge. Finally, it has the potential to foster a public and transparent dialogue between law and science and strengthen participatory and democratic channels that all too often are denied by democracies in their effective exercise.

We know that the scope and limits of judicial decisions in these cases have no clear boundaries or pre-established forms or procedures. What is clear, however, is that the implementation of human rights should not face obstacles in the courts and that the environmental precautionary principle, although admittedly difficult to implement, is a source of law whose guidelines must be respected by judges in their decisions.

It would not be prudent to make predictions. However, I should like to think that if Alta Gracia's court were to integrate and transcend the dialogue between formal parties in a file, if the government, scientists, and economists were to participate in an open dialogue with citizens, and if a true collective process were built, the judge could become a "true architect of justice that is at once realistic, flexible, and the producer of effective results, thinking more about the justice of the outcome than about the technique of the process" (Bestani de Saguir 2010, 1228). It is important for us to think about working in a holistic and comprehensive manner toward a justice characterized by the construction of dialogue, inclusion, and the effective implementation of human rights.

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PART TWO: COMMENTARIES

CHAPTER 13
Changing Faces and Stories
of Environmental Justice

Eliana Kaimowitz

I see an image of an intensely green Amazon forest abruptly ending and opening up into a chopped, burnt, dusty landscape, with long dead bodies of trees piled alongside a deforestation tractor. Standing between the lush green trees and the destruction are people risking their lives to protect the forests. That is the image that comes to mind when I hear the words “environmental justice.” I must have seen that photograph in elementary school. At school, we learned about how the Amazon forest held vast amounts of flora and fauna, how its trees are the lungs of the world, and how their destruction would have devastating consequences for the ozone and our climate. That image of deforestation is one of my first memories of learning about how people and nature intersect, and how some people have been allowed to take advantage of environmental resources to the detriment of others.

As I got older, I began to associate faces and stories with the concept of an environmental justice movement. In high school, I heard a song that referenced Chico Mendes and I looked him up at the library. I read stories about how this fearless Brazilian rubber tapper and union leader led a workers’ movement seeking to protect the Amazon from pillaging by loggers and cattle ranchers. Mendes knew that people and their environment were deeply connected and encouraged his community to find more sustainable uses of its natural resources. When Mendes was assassinated in 1988, the concept of environmental justice was beginning to gain traction around the world. His was the first face of an environmental justice crusader that I remember. While the faces of the movement change over time, many of the stories of injustice are dishearteningly similar.

When I was younger, the story line was simple: there were good guys and bad guys, and the good guys needed our help. The global community had a responsibility to support indigenous and local peoples' efforts to protect the natural resources of the Amazon. These communities had a right to use these resources sustainably. The insatiable extraction by loggers and business interests had to be stopped. Governments would be judged by whose side they chose to support. It all seemed logical and bound to have a good ending. To some degree, those stories of my youth still ring true to me today. But thinking about environmental justice now, I am confronted by more complicated follow-up questions: Who exactly is this global community? What new tools do environmental justice crusaders have that might change outcomes?

Changing Faces

Answers to these questions began to take shape in the Colombian Amazon during Dejusticia's Global Action-Research Workshop for Young Human Rights Advocates. We arrived to the small town of Leticia in the heart of the Amazon from Bogotá on a plane full of international human rights thinkers and doers who were participating in the workshop. A beautiful learning space on the Amazonian campus of Colombia's National University awaited us. From our classroom, we could see bright and colorful tropical flowers contrast against the thick forest that surrounded us. We could smell the river in the air's humidity. Being there, at the edge of the forest, next to where the Amazon River crosses through Colombia, Peru, and Brazil offered a new and exciting vantage point from which to think about the intersection of people, justice, and our natural environment.

During our first session, Dejusticia's director, César Rodríguez-Garavito, described what he called "the new map" of the human rights world, in which centers of power have shifted and globalization is facilitating the spread of technology and information sharing. César has blogged about what this future global community might look like when it comes to human rights. He argues that the "neighborhood" of human rights, which includes environmental justice, has changed since geopolitical power is no longer concentrated in Europe and the United States but is

increasingly spread throughout a multipolar world (Rodríguez-Garavito 2014). This shift allows for new actors and new alliances to take a more active role in shaping the global agenda. In addition, recent technology—such as smart phones, social media applications, and the internet more broadly—offer the human rights movement more tools to advance social justice.

Litigation and report writing are no longer the main or sole forms of advocacy. At the workshop, César suggested that the human rights movement embrace a more interdisciplinary approach to problem solving. He underscored the importance of finding new spaces for dialogue, creating constructive alliances, and learning how to explain human rights violations to a broader audience using researched facts and different media tools. Citizens can now capture human rights abuses on their cell phones, and advocates can circulate petitions against bad actors globally online. Communities are now better able to document human rights abuses in real time and share information broadly. Human rights activists from the global South are now better positioned—using social media and new technology—to shape and inform the narratives and priorities of the global human rights movement. César encouraged the global South participants at the workshop to amplify the reach of their voices and work to actively influence the international human rights debate.

At the workshop, I got a glimpse of the new face of the international human rights movement. I met new actors, saw new alliances form, heard current perspectives, and watched the results of innovative technology used to capture and disseminate images of injustice. It gave me a sense of what it is like to live in the emerging environmental justice neighborhood. During our flights, our bus rides, our dinners, our learning seminars, and our casual conversations, I listened to lively discussions. We talked not only about what needed to be done to protect the Colombian and Brazilian Amazon but also about efforts to protect communities deeply rooted in their land and their environment in places like Kenya, Indonesia, and the Philippines. The stories I heard from each person made me hopeful that the rich diversity of experiences, insight, and knowledge of these young people, if they are able to form strong alliances, will lead to more creative and effective solutions to injustice.

Fresh Alliances

Participants who self-identified as young human rights activists, researchers, journalists, communicators, biologists, academics, activists, and other professional labels shared and listened to environmental justice stories from the global South. The documentary films about Brazil and Peru that instructors Felipe Milanez and Lily La Torre Lopez screened showed the power of combining historical and fact-based accounts of human rights abuses with voices of the communities narrating their efforts to protect themselves and their livelihoods. We listened as participants shared their experiences from the field. Mary Louise Dumas told us about her work addressing conflict and violence in rural communities in the Philippines. Margaretha Quina described the effects on local communities of a contaminated river in Indonesia. Richard Ellimah shared his account of efforts to make the mining industry more accountable to his people in Ghana. Despite their different geographic locations, languages, cultures, religions, and other descriptive factors, their stories were similarly outrageous in the extent of environmental and human damage they revealed. Moreover, the conversations highlighted the creative local responses being developed by passionate advocates on the ground, who are often the most knowledgeable and thus best situated to find workable solutions.

During the workshop, we learned about recent environmental challenges facing the Amazon region, including proposals to build dams and other infrastructure projects to support the energy and extractive industries. We discussed the complications of the tangled Brazilian-Chinese construction of the Belo Monte hydroelectric dam, as well as other similar megaprojects. We unpacked their financing and potential socioenvironmental impacts and debated the effectiveness of the legal and advocacy efforts to stop them from being built. Our conversations showed how complex cases such as Belo Monte should be taken on by multidisciplinary alliances that are already emerging within the environmental justice movement. Understanding the possible effects and unintended consequences of these kinds of megaprojects requires drawing on many types of expertise. For example, financial experts may be needed to explain where the money comes from, community advocates to describe potential effects on communities, scientists to

examine environmental impacts, government officials to provide insight into the political implications, and maybe even a lawyer or two to analyze the legality of such projects under local, national, and international laws.

Gone are the days (or at least they should be) when mainly lawyers and academics were recruited to participate in human rights and social justice discussions. To effectively address environmental injustice, we need people knowledgeable about ecosystems, indigenous traditions, and economic markets, to name just a few topics. The workshop brought together these different skill sets and encouraged all of us to reconsider how we craft solutions to human rights problems. Hearing Caio Borges, a participant from Brazil, explain the far-reaching consequences of today's private financial industry and increasingly prominent development banks called into question the more traditional human rights strategy of targeting governments. Exposure to different world views and insights can spark the imagination and potentially lead to creative ideas.

Because we had experts from different fields, we were able to have a much broader discussion about how to address environmental injustices. Felício Pontes, the much-admired Brazilian prosecutor from Para who has worked on the legal case against the Belo Monte hydroelectric dam, explained the legal strategy to stop the dam's construction and the more recent efforts to raise public awareness and begin a national dialogue on energy sourcing in Brazil. Rodrigo Magalhaes de Oliveira added another dimension to the Belo Monte story as he described the indigenous communities whose houses and livelihoods would be flooded and destroyed by the dam. We looked at maps to understand how the dam will forever deviate the course of the Amazon River, giving context to the magnitude of the foreseeable devastation. Felipe's and Rodrigo's presentations were memorable not just because of the facts they shared but because their voices revealed the connection they felt to the land. They have both seen the beauty of the land that will be destroyed and have met the people whose lives will be disrupted.

The activism and strategies that thus far have halted the Belo Monte project, including targeting the multigovernment funding sources along with the construction company and raising global awareness, reflect a changing and interconnected global power structure. Although the BRICS countries (Brazil, Russia, India,

China, and South Africa) have made efforts to address the occurrence and scale of human rights abuses through changes to their national laws and policies, violations remain rampant. The environmental degradation of the Chinese countryside, the corruption scandals linking Brazil's government and Petrobras (Brazil's multinational petroleum corporation), and the Indian government's clampdown on the country's nongovernmental organizations paint a sorrowful picture of the current era of environmental injustice. Responding to environmental justice violations is seemingly more complex, now that global markets are interconnected and cross-border investment and extraction is more fluid.

Fortunately, activists are following a similar trend; they too are more interconnected and fluid in their information sharing. Our workshop conversations on how to address injustices and protect marginalized communities and their natural resources were broader, richer, and more inclusive than those I heard studying and working in the United States. It was inspiring to hear about all the work being done on the ground by participants and their organizations in places like Peru and Indonesia to document and expose environmental injustices. Our discussions focused not just on rainforests and rivers but also on environmental justice threats in urban communities. Darshana Mitra described her work in India, where public spaces and local infrastructure are increasingly being regulated to the benefit of wealthy elites and the exclusion of the poor. We heard similar urban accounts in Argentina from Pétalla Brandão Timo. It was moving to see these young human rights activists, who travel such different roads in different parts of the world, feel validated and have their efforts vindicated by their fellow participants' stories.

Today's Stories

At the end of the day, stories may be human rights activists' most powerful tool. Dejusticia's workshop creates a space for global South participants to reflect on their experiences, decide what stories might be most influential in their advocacy efforts, and, more importantly, figure out how to tell them. In addition to the time they have spent in academic and professional institutions, participants have spent time in the field. They know what it is like to travel on a crowded bus rumbling over potholed streets. They have

seen how a person's face contorts when they smile or cry. They know that people can experience devastating violence and destruction and still get up the next day looking for a way to survive. They are too familiar with feelings of fear and despair. And yet they keep trying to make things better—to find a semblance of justice.

Today's environmental justice crusaders need to be versatile and use all the tools and channels at their disposal to share information. The beauty of a story is that it can be shared in so many different mediums—through books, newspapers, blogs, movies, short videos, photographs, songs, and other art forms. It is a tool that is flexible and adaptable to change. The difficulty lies in learning how to tell a memorable story. Instead of blandly reporting facts and figures, we can tell stories about people with feelings and desires who confront troubles and hardships, big and small, and who respond to these realities with courage and determination.

I watched participants perk up as our writing instructor, Colombian journalist Nelson Fredy Padilla Castro, told the group to write their stories using all their senses. He asked the group to describe what things smell like, how they taste, how they feel to the touch, what sounds they make, and what kinds of light and color they emit. Participants were invited to describe the ruined beauty of a polluted river, the smell of a mining pit, and the dust that comes out of deforested land. These classroom attempts to tell stories were a first step in trying to master this empowering skill. Asked to list their favorite works of literature, it became clear to participants that a well-told story is memorable and can have a lasting impact on a reader on the other side of the world.

The recent murder of Berta Caceres, a Honduran environmental activist and indigenous leader of the Lenca people, shows the powerful global impact that an inspiring story can have. For years, Berta and her community voiced their opposition to the building of hydroelectric dams on rivers that run throughout Honduras. Before her death, Berta traveled far and wide to share their story about their efforts to protect their land and its resources. A close friend of hers, Jesuit priest Ismael Moreno Coto, known as Padre Melo by community members, describes her talents: "She was a person with an enormous capacity to communicate humanity and to defend it" (Blitzer 2016). Berta made sure that her voice was

heard in places like the Inter-American Commission on Human Rights. Due to her efforts, her story was recognized at the Goldman Environmental Prize award ceremony in San Francisco.

After Berta's death, the Lenca people, fellow Hondurans, and activists from around the world honored her memory by carrying placards and wearing shirts and hats with depictions of her face. They used the image of Berta's warm, gentle features to protest her assassination and call for an independent investigation of her murder. Local, national, and international media organizations from around the world published articles about Berta, about the ongoing violence and corruption surrounding the construction of hydroelectric dams in Honduras, and about the role of US foreign policy and the Honduran government in her death. Her effectiveness as a storyteller, and her willingness to be the face of the Lenca people's struggle, ensured that stories of environmental injustice in Honduras continue to dominate the international human rights debate, even after her death.

For me, Berta is the modern face of the environmental justice movement—the Chico Mendes of our generation. I believe that her story has the power to activate and fuel a generation of human rights activists. Similar to Chico Mendes, Berta made strong alliances with fellow activists around the world that brought her message to the attention of the international community. Berta had the advantage of living in a time of broad access to social media and the internet. Both her advocacy and her untimely death catapulted her story, her voice, and her beautiful face into the consciousness of progressive communities throughout the world. Even today, there are postings of news stories about Berta on Facebook, videos of her speeches on YouTube, and requests to sign on to petitions to investigate her murder from online advocacy organizations such as Avaaz. Her story continues to be told in different formats, from blogs to news articles to videos. Berta's story should inspire others in the global South to tell theirs, because as her death shows, the struggle for environmental justice continues.

While the human rights movement may be playing out on a new geopolitical map, and new faces are joining the environmental justice neighborhood, there will inevitably be new environmental conflicts and rights abuses as resources become scarcer. Like the environmental rights crusaders of the past, these new

alliances and actors must continue asking the same fundamental questions about the intersection between people and natural resources, about who benefits and who is harmed, and about how to best address injustice. But with today's interdisciplinary alliances, with South-South networks in addition to North-South ones, and with the power to broadcast stories through different mediums, I am hopeful that we will find more impactful solutions. Although many of today's stories of environmental injustice sound dishearteningly similar to those of the past, my experience in the Colombian Amazon has convinced me that progress is possible.

Walking through Leticia, the small border town between Brazil and Colombia where Dejusticia's workshop was held, I was met with a sense of humanity working to survive. Lakes form after the afternoon rainfalls soak the town, and people riding motorcycles weave around them on their way home. Nearby villagers arrive to the makeshift pier in simple wooden boats to sell their pigs and plantains. I felt like I finally understood the immeasurable worth of the Amazon River when I traveled its waters and felt its breeze brush against my face. There was something so special to me about watching pink dolphins playfully speak to each other and surface on the river to show off their graceful movements. In this space, there was no sense of pessimism or urgency. There was time to gather together, to share meals, to dance and sing. Settings such as these serve as reminders that life keeps moving forward despite the difficulties. In our efforts to save our natural surroundings and the ecological web they support, we may succeed or we may fail—but as long as we remain connected to one another and to our surroundings, we will continue to walk toward justice.

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CHAPTER 14

Fighting the Tide: Challenges for Young Human Rights Defenders in the Global South

Felício Pontes, Jr.

Editor's note: Before being translated into English, this chapter was translated from Portuguese into Spanish by Mariana Serrano Zala-meia.

The Culture Pattern

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Fighting the Tide: Challenges for Young Human Rights Defenders in the Global South

Machado de Assis is considered Brazil's all-time greatest writer. One of his stories, "The Alienist," narrates the rebellion caused by a doctor's arrival to a small city in inland Brazil during the nineteenth century. The doctor, proclaiming himself what today we would call a psychiatrist, established a model of behavior for society. Those who did not follow this model would be committed to an asylum that he had built. After the doctor's model was introduced, four out of every five residents were committed. In the end, the "patients" were freed and the doctor committed himself.

Many conclusions can be drawn from this story. One of them is the risk of establishing a particular way of conduct or ideology as the "model." Such a model is impossible in the context of the pluralistic societies in Latin America, for example. From a legal perspective, in Brazil, the intention of creating a pattern of behavior for different social groups is unconstitutional. Brazil's 1988 Constitution recognizes the country as multiethnic, meaning that different cultures must be respected. As article 215 states, "The national government shall protect expressions of popular, indigenous and Afro-Brazilian cultures and those of other participant groups in the process of national civilization."

Therefore, respect for those who are culturally different has immediate legal implications. One of them consists of preserving the country's *culture pattern*, as established in article 1 of the Indigenous Statute of 1973 (Law 6001/73), which has been out of force since 1988: "This law regulates the legal status of indigenous people or *silvicolas* [forest people] and indigenous communities, with the purpose of preserving their culture and integrating them into the national community, progressively and harmoniously."

But such “progressive and harmonious integration” into the national community entails negating the indigenous community’s culture, which should be interpreted as negating the community itself. In this way, the second part of the article clashes with the first part, which establishes the aim of “preserving their culture.” In other words, *integration* cancels out *preservation*.

This concern is not restricted to an isolated legal provision. It was part of a doctrine that was in force in Brazil until 1988—the *doctrine of integration or assimilation*. And the Brazilian version was no exception to the rule. It stemmed from an international current embodied by Convention 107 of the International Labour Organization (ILO), adopted in 1957, whose aim was the “protection and integration of indigenous and other tribal and semi-tribal populations in independent countries.” Article 2(1) of the convention declared that “governments shall have the primary responsibility for developing co-ordinated and systematic action for the protection of the populations concerned and their *progressive integration* into the life of their respective countries.”

Such *integration* would mean *ethnocide* for the community, as argued by Pierre Clastres:

If the term genocide refers to the idea of “race” and to the will to exterminate a racial minority, ethnocide signals not the physical destruction of men (in which case we remain within a genocidal situation), but the destruction of their culture. Ethnocide is then the systematic destruction of ways of living and thinking of people different from those who lead this venture of destruction. In sum, genocide assassinates people in their bodies, ethnocide kills them in their minds. (Clastres 1994, 44)

In this way, “different” behavior is considered improper and is eliminated in order to ensure individuals’ integration into one civilization: that of Europe.

Against this current emerged the *doctrine of self-determination, or pluralism*, which embraces the indigenous as a social category that established the greatest rupture with the previous system, as can be seen in article 231 of Brazil’s Constitution: “The social organization, customs, languages, creeds and traditions of Indians are recognized, as well as their original rights to the lands they traditionally occupy. The Union has the responsibility to delineate these lands and to protect and ensure respect for all their property.”

This rupture was not limited to the domestic arena. International pressure led the ILO to work on revising Convention 107 for nearly a decade: on June 7, 1989, the Administrative Tribunal of the ILO, during its seventy-sixth session, approved Convention 169 on indigenous and tribal peoples.

The document's preamble lays out the reason behind the change: "Considering that the developments which have taken place in international law since 1957, as well as developments in the situation of indigenous and tribal peoples in all regions of the world, have made it appropriate to adopt new international standards on the subject with a view to removing the assimilationist orientation of the earlier standards."

The *assimilation* mentioned in this convention is the same *integration* established at the domestic level in Brazil by the Indigenous Statute (art. 1). The objective was therefore to eliminate integrationism or assimilationism in the face of evolving international law.

But this was not the only reason. Another justification can be found in the fact that indigenous communities were taking control of their way of life and their economic development—these issues were no longer subject to the will of the state. As the preamble to Convention 169 states, "Recognising the aspirations of these peoples to exercise control over their own institutions, ways of life and economic development and to maintain and develop their identities, languages and religions, within the framework of the States in which they live."

The transformation was so drastic that it did not conform to the paradigm of the original proposal for amending Convention 107. The drafters therefore changed the proposal's wording to the following: "These proposals shall take the form of an international Convention revising the Indigenous and Tribal Populations Convention, 1957." Thus, in 1989, the international community adopted ILO Convention 169 on indigenous and tribal peoples.

Young Human Rights Defenders

When I met the young advocates at Dejusticia's second annual Global Action-Research Workshop for Young Human Rights Advocates, I recalled Machado de Assis's story and the history of ILO Convention 169. The young people's personal stories and the

causes they were fighting for highlighted a shared element: *the defense of social diversity*.

One of the advocates denounced the state's arbitrariness in imposing hydroelectric dams in the Amazon to the detriment of indigenous communities. Another defended the rights to prior consultation among communities living in the cloud forests. Yet another showed the effects that the pollution of an important river in Asia were having on riverine communities. One individual denounced the impacts that a mining project was having on nearby communities. Another talked about an urban community's struggle for the right to housing. And another described an indigenous community's fight to remain indigenous. Another talked about the struggle against land grabbing. Finally, another denounced the expansion of agribusiness at the expense of traditional communities. These examples showed that the battle being waged by each young defender was being fought against the establishment of a culture pattern—it was part of a counterhegemonic struggle.

My role during the workshop was to spend a morning with these young advocates talking about the Belo Monte Dam in the Brazilian Amazon. During my talk, I summed up my knowledge of nearly twenty years of struggle against the dam, which is slated to be finished in 2019. I suggested that today's Brazilian Amazon is experiencing a clash between two different models of development: *predatory development* and *socioenvironmental development*.

The predatory development model was introduced into the Amazon through five basic activities: logging, cattle raising, mining, monocultures, and hydropower. Its consequences have been disastrous: almost 20% of the Amazon has been destroyed over the last forty years, and rainforest communities have been displaced from their lands. In 1960, 35% of the Brazilian Amazon's population was urban. Today, in the wake of this model's proliferation, nearly 80% of the population lives in the city. But this does not mean that life has improved; indeed, official data show that in the biggest cities in the region, the quality of life is worse than in the *favelas* of Rio de Janeiro and São Paulo.

Standing in contrast to this model is the *socioenvironmental development* model, which is founded on a basic principle: the link between biodiversity and social diversity. In other words, development is reconciled with environmental preservation. It is

conceived of and directed toward communities living in the rain-forest who possess years of knowledge based on their symbiotic interactions with forest resources.

Under this model, the main productive activities are extractive activities and agriculture. These activities develop products that are becoming increasingly strong in the market, such as fruits and vegetable oils. And this is before we take into account the riches of the Amazon that have yet to be studied. Just 5% of the pharmacological potential of Amazonian plant life is known to scientists. Brazil's National Institute for Amazonian Research estimates that 788 seed species in the region have economic potential, but only half of them have been studied. The socioenvironmental development model is also the approach held dear by the communities who believe that *development* means possessing exactly what they already have: clean water and a protected rainforest.

Fighting the Tide

The first thing that caught my attention on the day of my presentation to the young participants was the event's location. We departed Leticia, an Amazonian city straddling three borders (those of Colombia, Peru, and Brazil), and made our way to indigenous lands located within the Colombian territory. We traveled by boat up the Amazon River. We were riding *against the current* of the planet's longest and most voluminous river. During the ride, the metaphor that came to mind was that each participant was struggling against the tide: it was like traveling up the river. The resistance that awaits a young human rights defender is enormous.

Today, the fight is about the implementation of rights—rights that are already recognized by the countries party to ILO Convention 169, as well as by those with similar domestic legal provisions. If the challenge has to do with the implementation of these rights, this means that a change in society's thinking is needed. And such a change does not occur within a short time frame; this is not a hundred-meter race but a marathon.

Young human rights defenders should therefore understand that they need to keep their sights on two basic premises: (i) perseverance; and (ii) counterhegemony. Defending a particular cause is not a short-term endeavor. The twists and turns—successes and failures—are part of the script. And their contact with local

communities and other stakeholders should not be limited to a single meeting. Rather, many such encounters are needed for the assembly and reassembly of strategies that should embrace political and social aspects in addition to legal ones.

The second premise has to do with changing society's way of thinking, an effort that should involve both legal and political aspects. The best example of the need to marry these components can be seen in a case studied in two chapters in this book: the Belo Monte Dam in the Brazilian Amazon. Rodrigo Magalhaes de Oliveira and Caio Borges show the behind-the-scenes struggle against the dam. These two young defenders highlight the importance of political struggle: the legal aspect is present, but what made them focus their attention on the project was the volume of judicial actions filed on behalf of communities and the ecosystem. Their struggles thus embraced a combination of legal and political efforts.

If perseverance means not giving up on the judicial process in the effort to defend vulnerable communities, then counterhegemony means knowing that the judicial process is but one aspect of the political struggle being waged by the affected community. And perhaps it is not even the main piece of that struggle. This confirms the importance of *amphibious research*: if the challenge lies in producing a change in thinking, young human rights defenders cannot restrict their efforts to the legal realm. In other words, they must take care to not focus their energies on the courts alone. A critical complementary piece involves convincing both society and the courts (because judges, too, are susceptible to societal thinking) about the new legal thesis.

To do this, it is important to meet with the vulnerable population, understand its way of life, its conception of the world. Such an effort makes a difference in the courts and in society. I recall one time when I was approached by a judge whom I respected deeply, even if we did not share the same thinking. He told me that he had been impressed by my arguments that were based on my description of the community I was defending. He said, "The way you describe reality is not that of someone who simply heard about [the victim], but rather that of someone who actually experienced her problems. That reassures the judge."¹ I drew a lifelong

1 Personal communication, 1999.

lesson from his words. Legal knowledge is necessary but not sufficient. The community being defended is not an object of research but a subject of rights. For the young human rights defender, legal knowledge is not enough—an “ecology of understanding,” to use the apt expression of Boaventura de Sousa Santos, is needed.

The position adopted by these young human rights defenders is one of a double life. The community being defended should be recognized by all (*visibility*). And the legal rules of dominant society should be brought to that community (*demystification of the law*).

Demystification of the Law

Law should not be restricted to the minds of its practitioners. This is even more true with regard to human rights. The young human rights defender must show the community that he or she is defending the rites of the judicial process and the laws that recognize the community’s rights. In this way, the process of providing legal defense for a vulnerable social group is a dialectic one. While the community offers the human rights defender its knowledge of itself as a group and of the region, the defender offers the community his or her knowledge of the law and of the judicial process. This exchange is critical for the community not just because it increases the community’s understanding of legal science but, most importantly, because it allows the community to use this knowledge to create a strategy for activism vis-à-vis the judicial branch.

To embark on the *demystification of the law* is to swim against the current. In Latin America—and in the global South in general—legal knowledge has historically been converted into a mechanism for upholding the social elite’s power, to the detriment of society. The elite has accomplished this by *mystifying the law*, as if its appropriation by traditional communities and peoples were impossible. This situation can be combatted only through a dialectic relationship between defenders and communities.

The chapters by young human rights defenders presented in this book portray rich experiences that denounce grave human rights violations in the global South. In many of these chapters, the authors tell their own stories. The authors show how their lives are intertwined with the life of the community they are defending. Moreover, they show, in some cases, how their own ways

of thinking changed after confronting such social injustices. This change in thinking is a sign that respect for multiethnic societies is beginning to emerge, despite the forceful current of the river.

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CHAPTER 15

Knowledge, Struggle, and Transforming the World

Felipe Milanez

Editor's note: Before being translated into English, this chapter was translated from Portuguese into Spanish by Mariana Serrano Zala-me.

The chapters in this book demonstrate Quixotesque dilemmas. The authors are activist lawyers, and many of their struggles for justice and human rights take place within the space of the “law”—that is, through the use of legal tools and judicial mechanisms. In all of these cases, there is an enormous disparity, an asymmetry of power. There is hope for a “law that is respected. A justice that is complied with,” as José Saramago, Sebastião Salgado, and Chico Buarque (1997) write with regard to violent land conflicts in Brazil. In Brazil, the people asked God to deliver them Justice, which they had but was being ignored. The people also had laws, which were not being recognized.

However, the authors’ Quixotesque struggles against windmills are not based on an idea of law that fails to respect people and of an unjust justice; quixotism acknowledges the important role of the guarantors of law and of the researchers faced with the task of being activists. Don Quixote versus the windmills is the metaphor used by César Rodríguez-Garavito in the opening of Dejusticia’s second annual Global Action-Research Workshop for Young Human Rights Advocates. There is a great risk that something will go awry when trying to navigate the difficult path of action research in the defense of human rights—and even more so if this struggle for justice occurs within the legal sphere. Rodríguez-Garavito points to four dominant factors that characterize the Quixotesque frustration: dispersion, loss of independence, difficulty in maintaining analytical distance, and burnout.

In methodological terms, Rodríguez-Garavito’s solution is what he calls “amphibious research”: transiting through various media and disseminating results through several different channels. This is an undoubtedly creative solution, but in order for it

to function, it must be empirically verified, put into practice, and tested through experience. In carrying out amphibious research, agents transit through different spaces for action and, conscious of the limits of law and justice, also seek channels and mechanisms for disseminating their analytical results.

This amphibious form of action, which uses various channels in addition to legal ones, prompts us to address Boaventura de Sousa Santos's (2003) question whether the law can be emancipatory. There are no easy answers, but what we can do is position ourselves within the context of a counterhegemonic globalization—of a subaltern cosmopolitanism—and the crafting of alternatives.

Reality is not transformed by using the instruments of oppression in a hegemonic manner or by drawing on the privileges granted by race, class, and gender. But, as Santos suggests, certain political battles can be waged by using these hegemonic instruments in non-hegemonic ways and by integrating one's battle into broader political mobilizations. The stories told in this book offer many examples of this approach: for example, pressuring the financial system to transform its policies; using legal institutions to halt destructive projects, such as the Belo Monte hydroelectric dam; and guaranteeing communities' right to not be contaminated by the use of agrochemicals. Many times, the victories seem small and localized. But in a counterhegemonic globalization, we must reconsider this perception, for the accumulation of victories, precedents, and cases that successfully transform reality and increase respect for human rights can strengthen our struggles and serve as a creative force in the production of alternatives.

Accompanying Their Struggles

Authors' reflections and the presentation of their actions embrace a personal perspective: the authors situate themselves on the ground and offer their reflections regarding one side of the combat. Fifty years ago, Frantz Fanon remarked that objectivity always works against the colonized. In the style of writing used in this book, readers are invited to walk alongside the authors—to walk the streets, to jump into the river, whether it is the Xingu, as told by Caio Borges and Rodrigo Oliveira, or the contaminated Cijung in Indonesia, as told by Margaretha Quina.

Borges migrated from the private sector to a human rights organization, Conectas, where his perspective on banks, the financial market, and the world was transformed. He researched the Brazilian Development Bank's financing of the Belo Monte hydroelectric dam in an attempt to understand the role of financial institutions in protecting human rights and the environment and to determine whether development can assume another, less damaging side. His answer: "Unfortunately, in practice, many of the projects and programs financed by the bank have deepened patterns of social exclusion and have limited citizens' access to meaningful participation vis-à-vis the entities charged with creating environmental policies and norms."

But, as Borges shows, it is important to look into how the bank views environmental justice and to understand which institutional and legal mechanisms oblige the bank to internalize this issue. The Brazilian Development Bank offers direct and indirect financing for various sectors of the Brazilian economy—including the communications sector, the petrochemical industry, and the infrastructure sector—under the framework of the Growth Acceleration Program, an ambitious program launched by Lula in 2007 aimed at increasing the country's growth.

It was not until in 2010—three years after disbursing millions under the Growth Acceleration Program—that the bank developed a socioenvironmental responsibility policy as a part of its acceptance of a US\$1.3 billion loan from the World Bank, which requires the bank to conduct a "social and environmental analysis . . . for potential projects," as Borges writes. The author's methodology involved reading the bank's reports in order to understand what the affected population largely does not. The Belo Monte project has provoked local and global protests, thanks in large part to the efforts of the Xingu Vivo movement, that have altered the public's perception of megaprojects as representing an "uncontestable truth"—that is, something theological and post-political. Borges, through his work at Conectas, made recommendations to the Brazilian Development Bank, to Congress, to the Central Bank, and to the federal government. Among these recommendations is a reform of the auditing process.

Borges's chapter unveils a few of the small steps that are being taken as part of the battle against hydroelectric dams in the

Amazon—and hundreds of such projects are underway. The issue of hydroelectric plants in the Brazilian Amazon, specifically that of Belo Monte, is also addressed in the chapter by Rodrigo Magalhaes de Oliveira. Oliveira's experience is situated within the Public Prosecutor's Office, the Brazilian entity charged with defending the interests of society and of the environment. The context involves a transposition of extreme universes, particularly in light of the fact that the law is being repeatedly violated. In this particular case, the violation of human rights has had tragic consequences for the environment and local populations.

As Oliveira shows, Belo Monte is a true obsession. Successive Brazilian governments have tried to dam the Xingu River for years—from the original proposal for the Kararaô project in 1980 to the remodeled version proposed at the beginning of this decade. Oliveira discusses the project's impact on indigenous peoples and the local population of Altamira—a city situated along the edges of the Xingu and nicknamed "Little Princess of the Amazon"—as well as traditional riverine communities whose lives are closely intertwined with the Xingu River. Oliveira's chapter explores what he sees as Belo Monte's "legacy."

The Brazilian government has identified at least nine indigenous communities as being "directly affected": the Arara, Araweté, Assurini, Juruna (Yudjá), Kayapó, Parakanã, Xikrin, Xipaya, and Kuruaia. These communities speak languages with different origins: Yupi, Jê, and Arawak. For those affected by the dam, the meaning of the term "indirect" has never been clear, despite the government's and companies' efforts to define it in their impact assessments.

Oliveira discusses the informal "negotiation" spaces that have been created throughout the process. In his research efforts, he spoke with Juma Xipaya, a prominent leader of the Xingu Vivo movement, to seek answers to his questions. In terms of community relations, the action researcher's most important role is perhaps knowing how to listen. Juma's narrative is one of struggle, in which the verbs "existing" and "fighting" are one and the same.

And with the intention of fighting, Oliveira explains, he chose the Public Prosecutor's Office, led by Prosecutor Pontes, as a space for action. For the author, the office was also a space of deception, as he began to see how many of its legal victories never

materialized in reality. But this struggle helped construct, within the judicial branch, a space for protesting against Belo Monte; indeed, no other development project in Brazil has been the subject of so many lawsuits, a distinction that gives Belo Monte an international level of renown. The project has achieved a visibility that is profoundly uncomfortable for Brazilian politicians, businesses, and banks.

The struggle, however, is being waged against not just one development project but a powerful public-private apparatus and an overwhelming tide of natural resource extraction projects that is enveloping the region. In light of this, the author explains, the Public Prosecutor's Office has devised new strategies for action in the face of the ephemeral legal victories that have been rapidly overturned.

Moving away from the Amazon and across the Pacific, we come to Margaretha Quina's account of the struggle for human and non-human rights in the context of Indonesia's contaminated Ciujung River. At the Indonesian Center for Environmental Law (ICEL), where the author works, the investigative dimension of activism is key: understanding reality in order to help communities see what is happening. The Indonesian government and the company responsible for the river's pollution have consistently denied the existence of contamination, instead attempting to construct an image far different from reality. At the same time that Quina describes how the population uses the river to bathe, brush their teeth, wash their clothes, and fish, she recounts people's worries regarding the pollution. A local fisherman told her, "As long as it's not so black and the fishes are fine, we can drink it."

Quina's story revolves around a community that never received any information about the river's pollution. ICEL's efforts focused on the issue of transparency vis-à-vis this pollution. After obtaining scientific confirmation of the pollution of the Ciujung, the organization secured documents revealing the indiscriminate use of contaminants by the company IKPP Serang. In addition, the author describes, ICEL knew that the government had not undertaken any studies on the health impacts of this pollution.

In cases such as these, the term "absent state" is often used. I disagree with this perception: the state, in fact, is quite present, acting with its cronies. It is neither a democratic state nor one that

follows the rule of law, but rather a patrimonialist and oligarchic one. We must therefore question whether the omission is active. Is it, instead, about the *presence* of the state, which actively refuses to comply with its legal obligations in order to facilitate ecological dispossession?

Quina searched for relevant information in the environmental impact assessment and quickly found contradictions. For the author, as a lawyer, it was much easier for her to extract what she could from the report than to expect the report to appropriately supply the necessary information to affected communities. The key challenge was understanding the report's technical language, which was replete with terms such as BOD (biological oxygen demand), COD (chemical oxygen demand), and TSS (total suspended solids)—proving that action research is necessarily interdisciplinary. The documents were long and “intimidating” for affected communities and non-specialists; here, “specialists” should be read as those individuals trained to confront this type of monstrous bureaucracy, which, through its severity and power of intimidation, is able to push its desires forward at the price of human and non-human lives.

Quina describes the long road between information and action: “I might be biased in this statement, but a small group of persistent community members showed me that the power of their tirelessness, together with the right information and the right advocacy strategy, eventually results in grand achievements.”

In other words, in order to achieve an environmental justice victory, it is essential to collaborate with community members. In Quina's case, this meant examining access to information and her relationship with the community. With regard to access to information, perhaps most surprising for the author was realizing the difference between merely accumulating information and truly understanding it. A true understanding should resemble the kind of knowledge that communities develop territorially and should function, according to Santos's decolonial perspective, within an “ecology of knowledges.”

Pollution is also a central theme in the chapter by Yamile Eugenia Najle, which examines the use of agrochemicals in Argentina. These chemicals are part and parcel of Argentina's expanding agricultural frontier and the deforestation, violence against humans

and non-humans, paradoxes of the food crisis (which are not conquered by agricultural production), and climate transformations that accompany it. In other words, deforestation to make way for agricultural production is one of the factors responsible for the drought and desertification that affects and threatens agricultural production. In reality, this “agricultural” frontier is the frontier of soy—a protein-rich bean produced by a leguminous plant native to China. Today, the soybean plant is a capitalist commodity, genetically modified, and usually accompanied by agrochemicals, biocides, and poisons.

Najle’s reflections take place in the city of Alta Gracia, in Córdoba, where a profound question has recently emerged regarding the different possibilities and conceptions of “development.” The author worked with various actors, forms of knowledge, languages, stories, and experiences regarding a specific project of the company Verdol. It was an ecology of knowledge put into practice against a poisonous development project.

The author carried out her research by familiarizing herself with different types of knowledge and community life in the neighborhood of Parque San Juan. Her conversations with community members challenged scientific assumptions. In this particular case, due to the high level of technification in the production of soy and in the production of chemical fertilizers and agrottoxins, there is an open battlefield around the expansion of soy. “Hard” science, the author argues, functions like a battlefield, placing doctors against biologists, engineers against lawyers, and all of these actors against the various perceptions of reality suffered by populations affected by the violent progression of soy. Based on this experience, she concludes, “Judicial practice should not be static. Rather, it should be at the level of the rights it must protect, generating dialogue and a true exchange of knowledge in order to advance dialectically in building a more just and inclusive society.”

Farmers affected by soy, by Monsanto, and by biocides and agrottoxins also include Maya beekeepers in Mexico, who are struggling to defend their bees against transgenics, as shown in Karen Hudlet’s chapter. Hudlet worked closely with the Chenero Beekeepers’ Collective and women beekeepers, who won an award from the United Nations in light of their efforts to defend the natural environment.

Maya beekeepers have an ancestral relationship with their native bees, called *xunan-kab*. In addition to representing an important source of income, the bees are also important for the medicinal properties of the honey they produce. Hudlet's chapter tells the stories of Angelica, Leydy, Gustavo, and the Chenero Beekeepers' Collective in their struggle against Monsanto. The transgenic soy that is invading and expropriating Argentina is also expanding its frontier in Mexico, profoundly affecting the territorialized relationships between humans and non-humans, between the Maya and their bees, affecting our very possibility of living on this planet. After all, who among us is not ultimately threatened by the agrottoxins used in violent association with transgenics?

Hudlet presents some of the contrasts she saw among the Chenero people—who make a living from agriculture, honey, and cattle, and of whom three-quarters are considered poor—in their struggle against Monsanto and soy-based agriculture. The fundamental issue is that, in the words of a local beekeeper, “the cultivation of soy and beekeeping cannot coexist.”

The Maya farmers struggling against the advancement of soy are trapped in a process of impoverishment that appears several times throughout this book. Impoverishment is a constant process of transformation within a cycle of dependence—in other words, a process in which certain groups (such as small-scale farmers) are pushed into poverty and then promised to be lifted out of this poverty by megaprojects. This is a vicious cycle and a fallacious narrative of progress.

Worsened poverty, marginalization, and exclusion are products of the expansion of neoliberalism and capitalism that occurs in both the countryside and the city. On the urban plane, Darshana Mitra, a lawyer and activist, focuses on the communities of Bengaluru, in the state of Karnataka, known as India's Silicon Valley. This region has recently witnessed rapid economic growth accompanied by gentrification, expropriation, sexual violence, and job insecurity, all of which forms the dark and invisible underbelly of the software industry ostensibly being led by brilliant and successful young people.

After finishing law school, Mitra began working at the Alternative Law Forum, where she provided legal assistance to sex workers. In her chapter, she explores the consequences of attributing

the notions of dirt and disorder to marginalized groups. She also shows how Bengaluru's transformation has worked more to the benefit of an aggressive and neoliberal capitalism than to the communities that live there.

For example, Mitra looks at how pavements (sidewalks)—which supposedly embody the universal notion of progress—are claimed by a visual artist in a lawsuit. She also notes how cars take advantage of these pavements at pedestrians' expense. The urban space is transformed into a space of dispute and resistance for artists, street vendors, and other marginalized groups. Mitra shows how certain uses of the streets are never seen as legitimate. In doing so, she explores the discussions that have made their way into legal spaces. The space occupied by food, and by its odors, is also a space in dispute by sex workers. Mitra presents the different forms of violence that these workers suffer, as well as the marginalized status they hold in society: she offers the example of a prostitute who later began working as a street vendor and who suffered violence and harassment by the police.

As Mitra argues, the law reinforces and reproduces certain forms of social domination and exclusion. The law, despite accepting certain informalities, such as that of street vendors, leaves this population vulnerable within the legal system. It embodies a confusing space that is home to something that is neither overtly illegal nor "legal": although sex workers are not illegal, they are susceptible to public repression and harassment. This is perhaps one of the key characteristics of gentrification, which can be seen in Mitra's description of the Indian case. Gentrification is a violent process that enjoys the support of legal and political institutions and that acts in a veiled and contradictory manner to deprive many invisible populations of their rights.

Gabriela León Cobo discusses large-scale mining in Ecuador, drawing on the case of a good-faith community referendum that determined whether communities would accept the arrival of mining in their territory. The twenty-three communities living in the parish of Pacto make their living largely from cattle raising and dairy production. With Manuela Arcos as their fiery leader, these communities knew that mining would have a profoundly negative impact on people's lives. Manuela, the author writes, reflected on the situation and inverted the hegemonic paradigm put

forth by the companies—the paradigm implying that the communities were poor and in need of progress. As Manuela told the author, “We people in Pacto are conscious of the fact that we are not poor—because we have land, because we have water, because we produce our food.”

In this case, allowing the entry of mining would have meant renouncing their liberty and livelihoods. The referendum was based on an interpretation of the principle of “good living” enshrined in Ecuador’s Constitution. In this light, the government’s creation of ENAMI, a state-owned mining company, in 2010 contradicted the constitutional will; today, there are thousands of concessions throughout Ecuador. Since mining activities do not implicitly signify good living, the implementation of these projects, according to the Constitution, should involve prior consultation with local communities. Awarding concessions without consultation would create a paradox favoring extractivism above human and non-human rights. And this was precisely what happened.

With regard to indigenous rights, León writes that “the state prioritizes development based on the exploitation of resources, the modernization of industries and human resources, dependent labor relationships, and the legitimization of unilateral decisions made in the ‘national interest.’” León explains:

Among other rights of indigenous groups, Afro-descendants, and Montubio, Ecuador’s Constitution protects these communities’ right to be consulted before the adoption of any legislative measure that could affect their rights. It also requires these communities’ free, prior, and informed consultation within a reasonable period with regard to any plans to explore, exploit, or commercialize nonrenewable resources in their territories. Moreover, it recognizes every community’s right to be consulted before the adoption of any state decision that could affect the natural environment; this principle, known as environmental consultation, requires that the community be informed in a comprehensive and timely manner.

In 2012, President Rafael Correa regulated the right to prior consultation, but he did it through a presidential decree that did not involve any discussion with indigenous communities. Moreover, this regulation does not abide by international standards, which require achieving communities’ consent or agreement; instead, communities’ interventions lack any real impact

on proposed economic projects, thus making the prior consultation process void of political significance. In other words, during the consultation process, the final policy is reached not through a push-and-pull effort but through the imposition of the will of the economic project over the rights of communities and the environment, in a sort of “post-policy.” This is the case of the Mining Law, which was approved in the wake of the new Constitution and in complete contravention of the constitutional right to consultation. While the right to undertake mining activities was being expanded, communities’ rights to consultation and participation in the projects that directly affect them was being restricted.

For the communities in Pacto, the referendum was an instrument of social action. The referendum took place on April 15, 2015, after years of struggle. More than 60% of registered voters in a population of approximately 5,000 people cast their ballots. In a near-unanimous decision, 92% of voters voted against the mining project.

Nevertheless, the referendum was not legally binding. Denial—the right to say no—was exercised within a complex dynamic of environmental conflict and multiple forms of resistance within and outside the legal universe.

While mining companies try to convince the public that their impacts will be localized and limited to the mines, Sylvia Kithinji’s chapter on Kenya demonstrates that the overall dimension of development projects is always much larger than it seems.

Kithinji’s work was directed toward the struggle to save Lamu Island, in the Indian Ocean, from the effects of the Lamu Port-South Sudan-Ethiopia Transport Corridor (LAPSSET), a complex web of infrastructure that will transform the island into a large port that services far-away development projects. Policy makers decided to allow Lamu to cease to be an island and instead become a port for the drainage of natural resources from Sudan and Ethiopia.

The environmental impact assessment for the port’s construction anticipated the destruction of swamps, the extinction of fauna, and worrying impacts on the circulation of waters, including the closing of a channel. Among the populations directly affected is Lamu’s fishing community. In this case, argues Kithinji, the withholding of information is a key strategy for those behind the port’s construction.

The enchanted island of Lamu, with its natural beauty and history, is being threatened by a “development” project. It was through her work at the Kenya Human Rights Commission and alongside affected communities that the author became involved in the fight to save Lamu. In this case, at least for informational purposes, LAPSET’s environmental impact assessment shed light on the reality that could emerge, such as oil spills, displacement of the fishing population, sociocultural and historical impacts on communities, and unpredictable ecological disasters.

In Africa, even in stable democracies such as Ghana, mining is also a source of human rights violations. Richard Ellimah’s chapter begins by describing two cases of mining-related violence: the attempted murder of Awudu Mohammed (who survived after eight hours of surgery) in 2005 and the murder of Clement Baffoe, who, unlike Awudu, died in 2004 at the hands of AngloGold Ashanti officials. Ellimah explains that these are but two cases of human rights violations in the context of Ghana’s gold mining industry.

The author became involved with Wacam, a nongovernmental organization that does not limit itself to judicial mechanisms in its search for reparations and an end to the violence. This resembles the description in my introduction: if the law cannot be emancipatory through hegemonic instruments, then the way out is through a much broader counterhegemonic struggle.

Created in 1998, Wacam embraces a mixture of strategies for confronting the expansion of gold mining. Though an environmentally focused organization, it is also involved in combatting human rights violations. Indeed, is it even possible to separate environmental (or non-human) rights from human rights, when all of these stand in the way of mining interests? Wacam’s work shows that the connection between environmental struggle and human rights is a close one. Wacam seeks to empower local communities with the appropriate tools of resistance. It does this by conducting training programs for community leaders that consist of, among other things, translating complex legal regulations and documents. The organization also conducts campaigns that shame mining companies on ethical grounds. The law, in order to transform, should be the object of struggle in a wide battlefield.

Ghana’s stable democracy has permitted the creation of institutions aimed at promoting respect for human rights. However,

this has not been enough to curb serious and constant human rights violations arising from mining operations, even with the backing of constitutional provisions, as in the case of Ecuador. As Santos argues, hegemonic legal instruments, except in cases of specific battles, are not emancipatory.

Arjun Kapoor writes about love and politics in India's Dang District and about his work in the office of Kanuni Salah Kendra. He reflects on the relationship between politics and belonging: the personal side of politics based on a contextualization of one's experiences and trajectory. In the Philippines, Mary Louise Dumas discusses her work with the indigenous populations of Mindanao who are struggling against development. Set in a country with one of the world's highest number of extrajudicial killings, the chapter begins with the story of the murder of Datu Necasio "Angis" Precioso, a Banwaon community leader, in 2012. *Datus* are male leaders of indigenous communities. The question that the author poses upon listening to both communities and *datus* is the following: What type of development are we talking about? In September 2014, Genesis Ambason—who had lived his life seeing relatives and friends be murdered—was killed. Dumas had met Genesis personally, describing him as "shy, not quite comfortable discussing matters with individuals who had never been to their communities." Genesis was a respected leader even though he was not a traditional *datu*.

The Banwaon people's territorial struggle also comes up against oppressive national laws, structural violence, and institutional violence, which occur alongside physical violence. Conflicts over natural resources are situated within the terrain of a discursive battle around ideas of economic development. Just as Datu Imbanwag tells the author, there are many ways of killing indigenous people—for example, by extinguishing their identity, expelling them from their land, and removing their means of subsistence. The elder leader explains that if the Banwaon people become domestic workers, forced to abandon their communities, they may continue breathing, but they are dead as a people.

Shortly before his death, Brazilian anthropologist Darcy Ribeiro described how his struggles had played out. Ribeiro was an active figure and a brilliant intellectual, and his life and struggles embody what this book calls "action research." Just as in the story

of Don Quixote, Ribeiro was not a winner but a “failure”—someone who lost the majority of the struggles he waged. He said:

I failed at everything in life. I tried to teach literacy to Brazilian children, and I failed. I tried to save the indigenous, and I failed. I tried creating a serious university, and I failed. I tried to make Brazil develop itself autonomously, and I failed. But my failures are my victories. I'd hate to be in the shoes of my victors.

The victories that are described in this book, although seemingly localized ones, represent significant victories in the struggle for a counterhegemonic globalization and a different world. Every defeat, as Ribeiro noted, is also a victory, for none of the authors would like to be in the shoes of those who beat us—those who defeated human and non-human populations, marginalized communities, the environment, different ways of life, the bees and the Maya, the people of the Xingu and the Ciujung, the people of Lamu Island, marginalized groups in India, Africa, the Americas, or any part of the world that we inhabit together and that we can learn to live and to share.

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Fighting the Tide

Human Rights and Environmental
Justice in the Global South

Fighting the Tide is the second in a series of books resulting from Dejusticia's workshop on human rights action research. Featuring chapters by talented activist-researchers from around the globe, it embodies a new way of telling human rights stories in the voices of the protagonists themselves.

This volume explores the struggles for environmental justice throughout the global South, using academic analysis, personal experience, and the tools of narrative and reflective writing. The contributions of these activist-researchers explore the environmental inequalities from rural areas to urban settlements—and all the different ecosystems in between—affecting campesinos, indigenous peoples, the urban poor, rivers, and fauna in Mexico, Argentina, Ecuador, Brazil, Kenya, Ghana, Indonesia, India, and the Philippines.

The book also explores the tensions between calls for “sustainability” and calls for human rights, and how these tensions are reshaping the current human rights arena.

Due to its focus, language, and topic, *Fighting the Tide* appeals to a wide international audience, including academics, activists, journalists, students, public officials, and individuals interested in human rights stories and how to write them.

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