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The Kolla of Argentina: Neoliberal Trends and the Promise of Law in the Process of Reframing,
Claiming and Maintaining Land Rights

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“Ten years ago I was a hunter. Then, I didn’t know anything about all these papers. Now I am still a hunter—a hunter of papers” (Hector Zaravía as quoted in Occhipinti 2003: 156). In October of 1997 Hector Zaravía, a local leader in the indigenous rights movement in Northern Argentina, recited these words at a much anticipated ceremony in the village of Los Blancos, a small village in the eastern part of the Salta province. After indigenous peoples had fled rubber bullets and paralyzing gases near the end of the ten years of struggle and negotiation, the province’s governor had finally arrived to formally distribute land titles to assembled residents. The contemporary struggle that drew on the assistance of NGOs, expert negotiations and modern law may have lasted ten years, but the broader movement depicts a drawn-out struggle for land rights of over fifty years. The moment indigenous peoples came into contact with the Spaniards in the 16th century marked the seizing of their ancient lands by the invaders. This moment also established a division between the indigenous and non-indigenous that has yet to be fully reconciled. There is no doubt, however, that the official titling of land had been a long time in the making: land titles promised a solution to years of exploitation, marginalization, persecution, elimination and assimilation. Nevertheless, indigenous peoples have learned that titles alone are not enough to prevent infringements to their lands.

Many of Argentina’s 35 indigenous groups tell a similar story of their indigenous rights struggle (Encuesta Complementaria de Pueblos Indígenas 2004), but I will focus on the Kolla of northwestern Argentina. While there is no doubt that the Kolla are a minority group both oppressed and marginalized, they have only recently begun to reconceptualize themselves as indigenous. Kolla identity struggles coupled with larger Latin American trends explained below make the Kolla an excellent case study to conceptualize the larger struggle between neoliberal governments and indigenous employment of international legal norms. Processes of legal

globalization have led to the increasing codification of the collective rights of indigenous peoples in Latin America (Sieder 2011). This can be seen in states' constitutional revisions, ratifications of ILO 169 and signings of the 2007 Declaration on the Rights of Indigenous Peoples. I argue that these codifications are not always about recognizing rights as such, but rather indicate the states' limited acceptance of cultural diversity, which maintains the state as a rational actor operating between needs and interests of multiple actors. Furthermore, I interpret this limited acceptance to be evidence for a neoliberal trend in governmental functions. In the case of the Kolla and arguably Latin America more broadly, the neoliberal framework re-conceptualizes the state to be a property distributor that solely protects property rights rather than engages in broader social provision or support. In other words, the government may codify certain rights that appear to benefit indigenous peoples, but in reality fails to take seriously these rights in any practical sense. I argue that the government's neoliberal stance can explain this implementation gap. The intentional lack of processes and structures for seeking redress as well as the absence of enforcement methods attest to the government's apathy. Moreover, the government may "rationally" side with corporate interests in its larger function weighing needs and interests of many actors.

This larger insight into the state's role in indigenous affairs may complicate world polity arguments maintaining that law, human rights law more specifically, make states responsible for more functions than they had been. As a result, states expand to take on these roles and responsibilities. (Meyer 1997). I argue, however, that the Kolla are employing international legal discourses to hold states responsible for the rights they have granted. Through the "boomerang effect" the Kolla have engaged internationally in order to pressure the government (Keck & Sikkink 1998). While states may be resorting to neoliberal frameworks to preserve profit

endeavors, indigenous groups are effectively drawing on international law to hold governments accountable and maintain their land rights.

This paper will relay the Kolla narrative in light of a neoliberal framework. After accounting for Kolla demographics and offering a detailed description of historic identity formation and grievances, I will move to an analysis of how domestic priorities framed the way in which Kolla claims were made. Specifically, I argue that the Kolla emphasized their “worker” status to gain resonance in the government in regard to land rights. However, an analysis of how international norms and NGOs shaped Kolla identity, legal mobilization and land claims against neoliberal structures, will show that the Kolla have since turned to international law to maintain their land rights. In the final section I return to the larger implications for government operations and international law.

Kolla Demographics

In 2005 the indigenous population of Argentina was about 600,000 (1.6% of total population) according to the results of the Additional Survey on Indigenous Populations; this figure includes 457,363 people who self-identified as belonging to an indigenous ethnic group, and the remaining 142,966 who recognized themselves as first-generation descendants of an indigenous people (INDEC 2004-2005).¹ Many indigenous organizations object to this survey as faulty due to the lack of surveying all relevant groups. This shows, however, that there has been a notable increase in awareness amongst indigenous people in terms of their ethnic belonging.

¹ The majority of indigenous organizations in Argentina do not believe these figures to be credible for various reasons. They cite the methods of collection as faulty given that a large number of indigenous people live in urban areas where the survey could not be fully conducted. Also, there are still many people in the country who hide their indigenous identity for fear of discrimination. When the survey was designed in 2001, it was based on the existence of 18 different peoples in the country whereas now there are more than 31 (Carrasco 2012). This would suggest that either more groups are claiming indigenous identity and/or the government is officially recognizing more.

The Kolla's ethnic belonging is strongly tied to the land. The Kolla are not confined to one country; rather, they occupy various regions of Western Bolivia, Chile and Western Argentina. Likewise, the Kolla peoples are not confined to one group; the Omaguaca, Zenta, and Gispira are also considered members of the Kolla. Within Argentina the Kolla occupy the Jujuy and Salta Provinces (although they move freely between the borders of Argentina and Bolivia.) Their ancestral territory measures about 120 million hectares of Northwestern Argentina. Most of the lands are part of the yungas or high altitude forests at the edge of the Amazon rainforest. Within the Yungas the Kolla survive on subsistence agriculture and livestock herding (Carrasco 2012).

Challenges to Kolla Identity

Since the legacy of the colonial period and the remnants of historical exclusion still haunt indigenous groups in Argentina, *outwardly* Argentinean's indigenous groups fight political exclusion, larger Argentinean identity centered on general European "whiteness" and stereotypes depicting them as wild and destructive. Another outward challenge to Kolla identity comes from the surrounding communities. In Northern Argentina the image of "indigenous peoples" is primarily associated with lowland peoples, not with highland farmers. Many of these lowland cultures have sizable populations and vibrant traditions. They exhibit distinct cultural markers such as indigenous languages, hunting and gathering economies and traditional craft production. The Kolla, however, appear at times to be "Hispanicized" when compared to the neighboring cultures (Occhipinti 2002).

Inwardly, the Kolla specifically combat internalizations of the world "indio" as a social stigma rather than a source of pride. In fact, the idea of belonging to a larger "Kolla" group is itself a modern phenomenon where identity is so intensely local that groups of one hamlet may

see themselves as entirely different from residents of another. In light of this new identity claiming of “indigenous,” many Kolla find themselves trying to prove their authenticity. What has brought them together in the midst of these challenges? What is the one common thread? I argue that is it the sanctity of their traditional land. For the Kolla, culture is inextricably tied to the land. Through different governments, economic climates, identity challenges the one commonality that remains is Kolla land claims.

Kolla History and Origins of the Movement

Tradition holds that the Kolla occupied their region for centuries, even before the arrival of the Incas. In 1540 the Kolla came into contact with the Spaniards. After 110 years of resistance the Kolla finally lost one of their most important lands, the Santiago Estate, to the hands of the invaders. After another 160 years Argentina gained its independence, while the Kolla gained nothing. For decades public and private owners of the Santiago Estate oppressed the Kolla through various means (Occhipinti 2002). The Kolla were exploited for their work, forced to cut down their own trees, evicted in the name of oil exploration and poisoned as mines were dug on their lands and polluted their water.

The Kolla’s first step in achieving land rights was gaining recognition by the government, which they did as early as the 1940s through the *Malón de la Paz*. In 1946, 160 men and nine women from different villages in the province of Jujuy and Salta, marched 1100 miles to Buenos Aires on foot, by donkey and by horse. Led by *el teniente* Bertonasco, a retired military lieutenant, they left their homes in February of that year, shortly after Juan Perón won the presidential election. When the 169 Kollas arrived in Buenos Aires to petition Perón, the

president greeted them personally. However, a month later the Kolla were forcibly removed with the use of tear gas, placed on trains and shipped back to Northwestern Argentina.

Two months earlier, Perón visited the Salta and Jujuy provinces and began talking about the expropriation of haciendas. He officially targeted Patrón Costas, a conservative and influential politician from Salta who owned San Martín del Tabacal, an indigenous sugar factory. Patrón Costas was a political figurehead who served as governor and interim president of Argentina for a number of years. Ostensibly in order to expand the surface for cane cultivation, Tabacal, like other companies in the area, started to purchase haciendas in Jujuy and Salta until it controlled a vast area of 93,000 hectares (Schwittay 2003). However, cane was never meant to grow in these high planes and foothills of the Andes. The new owner's real interest was in the indigenous peoples he had bought, namely the Kolla, who were forced to pay rent to their new landlord in labor, rather than in money or goods. In this way, Costas exploited the Kolla taking advantage of not only their traditional lands, but their dignity as well. Moreover, Costas set a precedent of viewing the Kolla as cheap easily manipulated by the love of their land. Besides their labor, the sugar barons like Costas also purchased Kolla votes, which ensured the barons' power (Schwittay 2003).

Most men and women from the San Andrés area were forced to labor for six months each year starting in 1936. Don Cleto, once laborer and participant in the Malón, described his experience this way:

...I had to go when I was 12 years old... We earned little, on *pesito* per day... What a pity, even the old ones, the grandfathers had to go. I remember my brother, it was back then that he had to bring cattle from one place to another, so he left the ingenio² to come home. And so they caught him in the road and brought him back to the indegio and there they held him for a month and made him

² Sugar factory

work without pay. It wasn't like today where we have our pensions...Back then, the people who died, died as if they were thrown away. I couldn't work anymore...I fell and couldn't get up anymore but as long as one can get up one has to keep going, all the time with the whip. The ingenio held us in a pitiful state, it treated us like donkeys...That's how it was before. Now it's different, since the late Perón (Schwittay 2003).

The *Malón* was partially a response to the oppressive policies of Patrón Costas who many Kolla described as a “feudal lord residing over indigenous people who are reduced to conditions similar to those of serfs in the Middle Ages, being enslaved to the land” (Schwittay 2003: 132).

The subsequent president, Juan Domingo Perón, introduced ideas of social justice which began to circulate among workers. To this day many Kolla remain staunch Peronists because of his populist politics, which he had instituted while being head of the Secretariat for Labor and Social Welfare from 1943-1946. His reforms materialized in a “stream of enactments improving workers' conditions” (Rock cited by Schwittay 2003). Perón's improvements such as the *Dirección de Protección del Aborigen* and the *Estatuto del Peón* gave Kolla workers, for the first time, a concrete sense of the Argentinean nation and of their citizenship rights, manifested in an end to labor subjugation and some form of political participation (Schwittay 2003). The *Estatuto del Peón* of 1944, for instance, improved agricultural labor conditions: it had a special provision for the sugar industry that raised minimum wages, regulated hiring contracts and instated social benefits. Although it was far from ideal that the Kolla were working on sugar plantations on their own land, Perón's politics allowed them to move up the socio-economic ladder and feel like they were part of the Argentinean nation by contributing through their labor. Through the Kolla's reconfiguration by Perón's politics, some indigenous leaders became immersed in state agencies and acquired a voice (Gordillo and Hirsh 2003).

In spite of these advancements, Perón faltered in the implementation of land expropriations, the Kolla's ultimate goal. Some blame the failure of the Malón and the Kolla's land claims in general on Perón's political timing. It seemed unwise for him to implement such radical land expropriations, directed against such powerful opponents only three months after coming into office. One indication of this reluctance was the reduction of the *Consejo Agrario*, the institution founded in 1940 to deal with land questions, to an "appendix" of the agrarian credit section of the *Banco de la Nación*. Ironically, it was the same bank that only ten years earlier had handed out massive credits that allowed indigenous owners to purchase the same lands it was now, supposedly, to expropriate. In January of 1946 the Consejo was completely dissolved and replaced by the *Dirección de Protección del Aborigen*, a step backwards for those who organized the Malón in order to intervene in the Dirección's indigenous land politics (Schwittay 2003). Unfortunately, a military coup overthrew Perón along with the promise of land rights that he embodied.

In the 1950s, the owners of the Finca Santiago—one of the largest fincas and the home of many Kolla—sold their property to a Spanish corporation. Two decades later, indigenous discourse had changed. New global and national opportunity structures—most prominently democratization, constitutional multiculturalism and a growing concern for human rights—were mediated by specific local contexts (Hau and Wilde 2010). In the 1980s, for instance, the Kolla refused to pay rent due to the company's logging on the land. It was in this context that the Kolla started lobbying and turning to international indigenous rights frameworks to gain land rights (Occhipinti 2003). In the mid-1980s, leaders and activists who had participated in the organizations created in the early 1970s such as the *Asociación Indígena de la Republica*

Argentina, adopted an active role in the demand for a new legal framework for the indigenous rights at a national level.

The era of claiming recognition on the basis of a worker framework was over, but the employment of an indigenous legal framework appeared promising on a domestic level. This was especially clear with advocates' lobbying for the passing of the *Ley de Protección y Apoyo a las Comunidades Indígenas* in 1989. For the first time, the Kolla made claims on state authorities as indigenous peoples within a human rights framework. The Kolla tapped into international norms and discourses that allowed them to pressure the government in a whole new way. This law contemplated important points, among them the need to grant land titles and give legal recognition (*personeria juridica*) to indigenous communities. It also created a unified, autonomous institution to deal with indigenous issues: the *Instituto Nacional de Asuntos Indígenas*.

In October of 1993, a group of 200 Kolla returned to Buenos Aires for the second Malón de la Paz. For an entire month they spend their days shivering in the Plaze de Congreso and their nights cramped into the Tunkauaku center, an indigenous cultural center in Buenos Aires (Schwittay 2003). Finally, in May 1994, law 24.334 passed stating that the government would purchase all of the lands of Finca Santiago and subsequently pass these titles onto the Kolla of that community. Land was finally awarded in 1999. However, only the Kolla of the Finca Santiago received land rights.

At this point, conditions looked promising. Five years earlier Argentina joined the Latin American trend of constitutionalism that Rachel Sieder alluded to in her work. Not only did Argentina sign ILO 169, but it also extended a series of rights and recognitions to indigenous peoples. A most welcome change was a revision to the old constitution reading that it was

responsibility of parliament to “maintain a peaceful relationship with the Indians and convert them to Catholicism.” In contrast, 90% of the new constitution’s language regarding indigenous rights focused on land and legal recognition rights. Argentina also agreed to the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. Finally, Argentina signed the 2007 Declaration of the Rights of Indigenous Peoples.

Kolla Grievances

Despite Argentina’s outward appearance of an indigenous rights champion aided by their recent ratification of the 2007 Declaration, the situation on the ground is much different. In recent years, Argentina has experienced significant economic growth. For Argentina’s indigenous groups this is not welcome news. On the contrary, the persistent call for high-tech development in rural areas, at any price, along with the constant concessions being granted to hydrocarbon and mining companies for the exploitation of non-renewable natural resources, is dangerously competing with indigenous peoples’ territorial demands (Carrasco 2012). The state’s lack of political will to resolve the conflicts and the local governments’ systematic refusal to recognize these demands only make the situation worse.

A perfect example of how the current government prioritizes mining is its involvement with the Canadian company, Barrick Gold. Barrick Gold plans to extract 14 million ounces of gold over 14 years from the Pascua Lama mine on the border between Chile and Argentina. As open-pit mining uses vast quantities of water, this will be drawn from the melting glaciers in the area, running the risk of contaminating the rivers and underground aquifers. Faced with this situation, the Congress of the Republic approved the so-called “Glaciers Law” prohibiting

mining in the area, but this law was vetoed by the government and then finally promulgated with some amendments. The company and the provincial governor appealed to the courts and thus, the law has not been implemented. This is happening all over Argentina. In the Río Negro Province, popular dissent forced the government to pass a law banning open-cast mining, but in January of 2012 the new governor overturned the decision and subsequently authorized such mining (Carrasco 2012).

Besides outright violations of the Kolla's ancestral lands for profit, another grievance of the Kolla is the government's apathy and disregard for indigenous rights laws. For instance, Emergency Law 26160 on Indigenous Community Ownership, approved in 2006 and extended to 2013, suspends evictions from the ancestral territories and requires surveys of these to be conducted. However, in practice, this law has been ignored as dozens of communities have been evicted and surveys have been conducted in few provinces due to the provincial governments' opposition and the national governments' apathy. When indigenous communities do make complaints and lawsuits, the progress is slow in comparison to claims brought by other parties. This, along with judicial irregularities—which have given rise to requests for impeachment and complaints regarding the lack of impartiality of the judges—means, in practice, that the right to legal protection is being violated (Carrasco 2012).

Emergency Law 26160 does not establish a procedure for demarcating territories or granting property titles. The situation with regard to the encroachment of third parties and the state onto the territories continues to be insecure, even in cases where communities have obtained legal recognition. This can be seen in the case of the Lhaka Honhat Association of Aboriginal Communities, which has been claiming a single title for more than 47 communities for over 28 years. This area affects some communities of Kolla. Despite being one of the first

indigenous organizations to denounce the violation of their territorial rights to the Inter-American Commission on Human Rights, these communities still have not obtained the titles to their property after 13 years of litigation. Instead, non-indigenous livestock farmers have been allowed to settle on the land. The slow procedure within the Inter-American system, linked to the lack of any will on the part of the national or Salta provincial authorities to deal with the claim and resolve the conflict between non-indigenous settlers and the indigenous communities has led to environmental degradation and rising violence between the two communities. In 2011, two indigenous youths were beaten to death and a young girl was raped due to the violence between these two communities. The authorities have done nothing to put a stop to the wire fences being erected by the non-indigenous settlers in an attempt to demonstrate that they own the enclosed lands and nor has there been any action to prevent the illegal felling of trees (Carrasco 2012).

Many indigenous communities have also been excluded from the political processes by larger governmental divisions. For instance, in October of 2011 the INAI (National Institute for Indigenous Affairs) invited representatives of the Indigenous Participation Council (Consejo de Participación Indígena) to discuss a draft bill of law on the Instrumentation of Community Ownership, which was to be sent to the Congress of the Nation for its consideration. The indigenous peoples tried to make use of their right to consultation on issues that affect them in order to propose amendments but their requests for substantive changes were not accepted. In the end, the draft was sent without major amendment and it has not, to date, been considered by Congress (Carrasco 2012).

A final law that has recently been amended is particularly concerning to Argentina's indigenous communities. Argentina recently passed the so-called Anti-terrorist Law, approved without public knowledge of its intentions since there are no known terrorist activities in

Argentina. The law was passed under pressure from the Financial Action Task Force, which stated that this is a condition for “considering Argentina a safe destination for Direct Foreign Investment” (Carrasco 2012). The Criminal Code within the law was amended in order to enable the “rule of law to repress attempted acts of terrorism or those who fund them,” and includes a new aggravating factor for any crime committed with the aim of creating terror among the population or of forcing the government to refrain from taking a particular decision. While legislators tried to explain that this law did not apply to social protests, human rights organizations and social organizations believe this will mean a greater threat of criminal persecution for indigenous groups who choose to protest (Carrasco 2012).

The Language of Land Claims

In light of the Kolla’s complex and detailed history, a few key trends can be highlighted in regard to changing Kolla identity. From the Perón era to the present, the Kolla have emphasized certain parts of their identity to gain resonance with the government in regard to land claims. In the Perón era, the Kolla emphasized their “worker” status to lay claim to their ancient lands, but as indigenous rights norms developed internationally, the Kolla fully adopted their indigenous identity to lay claims to their lands. The indigenous rights framework not only provided international backing, but allowed the Kolla to pressure the government through the employment of legal claims. I will briefly analyze these two “claim languages” to see how and why the transformation occurred.

Besides advocating for workers’ benefits, Perón’s populist discourse emphasized the idea that the land belongs to the farmer rather than the landlord. Perón, introduced ideas of social justice which began to circulate among workers. The rise of Peronism and populist politics

provided a stream of enactments improving workers' conditions so naturally the Kolla were going to support Perón. Perón's improvements such as the *Dirección de Protección del Aborigen* and the *Estatuto del Peón* gave Kolla workers, for the first time, a concrete sense of the Argentinean nation and of their citizenship rights, manifested in an end to labor subjugation and some form of political participation (Schwittay 2003). Most importantly, the Kolla emphasized their rural "worker" status and marginalized minority status to receive land rights and recognition in light of Perón's advancements. During these years, the Kolla made land claims not in the language of human rights, but in language that would most resonate with the current domestic political forces—the language of workers' rights. The Kolla of San Andrés emphasized that they were born and raised in these lands: they were constituted as national rural workers, a subject category that enabled them to request their land on the basis of having worked it in the past and wanting to work it in the future for the benefit of their country (Gordillo and Hirsh 2003).

Fifty years later, the elements of the articulation have changed and the land claim now draws on another discourse representing a different political subject. Now that the Argentinean government has changed its laws to outwardly reflect international norms of indigenous rights, the Kolla have changed their claims as well to invoke a full application of this language. The Kolla no longer must work for the state or a corporation to make land claims. Rather, the very fact that they are indigenous is enough. Therefore, the Kolla began "[d]rawing and strengthening advocacy connections with actors participating in larger networks of political influence [to articulate] indigenous struggles 'from below'" (Valdivia 2007: 64). Taking up the battle with the aid of international norms that finally recognize indigenous groups for who they are has opened up a new window of opportunity. I argue that claiming indigenous identity and conforming to international norms proved to be the most promising option for the Kolla. To voice their

“Drawing and strengthening advocacy connections with actors participating in larger networks of political influence [to articulate] indigenous struggles ‘from below’” (Valdivia 2007: 64). One Kolla leader described the process of declaring rights institutionally within the Constitution, an example of the Kolla’s assertion of influence:

Though the Constitution we elevated our recognition expressed though our preexistence as peoples. We guaranteed our ethnic and cultural identity, the recognition of our legal authority as peoples, and the possession and communal ownership of our traditional lands...as well as our right to a bilingual and intercultural education (doCip Work Group 1998).³

By constructing themselves in such a way as to conform to internationally recognized norms of indigeneity, the Kolla achieved acknowledgement from the Argentinean government by way of inscribing their identity and rights into the Constitution.

Although Argentina’s indigenous groups have inscribed their identity and rights into the Constitution, this does not mean that they are claiming complete autonomy and sovereignty. Karen Engle discusses how few indigenous groups claim external self-determination, which caused many states to surprisingly insist on the inclusion of Article 46 (2010). In other words, the process of positioning themselves in such a way as to not pose a direct threat to the sovereignty of the state allowed the Kolla to take advantage of the opportunities for political agency and collective action provided by the indigenous rights movement. State recognition of their indigenous identity promises protection, attention and results: “Aggrieved actors need to identify with the global norm—for example, they would need to identify themselves as an indigenous peoples—and domestic political actors must recognize the category of actor in order for these principled claims to be compelling” (Larson, Johnson, Murphy 2008: 54). Since

³ Translated to English from original Spanish

indigenous groups are not often claiming complete autonomy, their claims resonate more loudly with the state.

Now that it has been established why the Kolla turned to indigenous rights as a way of achieving agency, how, specifically, did the Kolla make international norms work at the domestic level? How were the Kolla able to translate back international norms? According to Larson, Johnson and Murphy, “when a new category of actor emerges on the global level (indigenous peoples), there needs to be some means to bring this category into the domestic context (2008:66). Channels of connection or “receptor sites,” therefore, are critical to bringing about real change: “The influence of diffused global norms will be mediated by how receptor sites are located within state structures and are connected to civil society actors” (Larson, Johnson and Murphy 2008: 66). The Kolla created receptor sites by associating themselves with Greenpeace Argentina. When the company Belga Tractebel wanted to construct a pipeline through the Kolla’s traditional lands and failed to offer an alternative plan, the Kolla framed the issue to fit within environmental concerns by way of the acres of rainforest that would have to be cut down. To protect the Selva Montana Yunga habit, Greenpeace Areas adopted the issue and sued in the Tribunal de Alzada (doCIP 1998). According to Lynch (2010), global discourses of environmental protection have been employed to strengthen communal claims to territory and resources, to access new domains of action and cultivate new channels of patronage. Recently, the Kolla have gained more “receptor sites” through participation in Argentinean government and have the ability to hold local elected positions in their respective regions.

Argentina’s Changing Understanding of Indigenous Groups

As much as the Kolla transitioned their identity frameworks of claiming land rights, the government also transitioned its understanding of the Kolla. After Perón’s fall, the new patterns

of state policies and changing departments of indigenous affairs by the government casts light on the shifting understanding of indigenous peoples by the government. In the first decades after Perón's fall, most indigenous agencies were part of the Ministry of Social Welfare rather than the Ministry of the Interior. This shift reveals that the government gradually ceased seeing these groups as an "internal threat" and repositioned them as "poor and indigent" (Gordillo & Hirsch 2003). A few decades later, Argentina joined the Latin American trend of constitutionalism (Sieder 2011). Not only did Argentina sign ILO 169, but it also extended a series of rights and recognitions to indigenous peoples living within its borders. While indigenous people continued to be individual citizens, the Kolla also acquired citizenship rights. With the signing of ILO 169, Argentina availed itself to a profound reshaping of relations between international law, the state and the citizen. However, the influence of devolution of authority is evident. International law had to pass through three levels of interpretation—not just the federal government, but the provincial governments that manifest, at the local level, international policy. It is evident that the more levels law passes through, the more it loses its dynamism for large scale change. That is, international law, more often than not "soft law," proved useless on the provincial governments since they were not active in formulating or affirming these laws.

The current constitutional multiculturalism in Argentina establishes communal land rights, but constrains indigenous movements in their struggles for territory and resource governance. The exclusion of territorial rights from the 1994 Constitution presents itself as a major obstacle to indigenous self-determination and the development of local communal spaces. The power to manage and control environmental resources such as water and the subsoil remains with the state. Argentina thus appears to be more responsive to 'integrationist demands' for the accommodation of cultural differences, yet not to 'autonomy demands' that would recognize

indigenous territorial governance and imply a major challenge to the dominant economic and political order. Although Argentina signed ILO 169 and extended rights and regulations to indigenous peoples, the ambiguity that remains about the interpretation of its tenants can defeat its very purpose. Larson acknowledges this fact when he says, “Nation-states may ratify treaties or pass laws with the stated purpose of protecting human rights, but act in a manner that nullifies these legal protections...governments may ratify the treaties merely as means to deflect criticism...” (Larson 2007: 109-110). This same attitude is seen in Argentina’s signing of the 2007 Declaration on the Rights of Indigenous Peoples. Stavenhagen comments, “At best, the Declaration is considered to be ‘soft law’ which can be ignored at will, particularly as it does not include enforcement mechanisms” (2009: 151). This legal haziness allows provincial governments and corporations to claim compliance, yet slip out of hard and fast responsibilities.

Despite the lack of redress arrangements for violations and the evasion of enforcement by the government, the fact that the government has signed these international treaties and passed key legislation at the national level provides grounds for legitimate challenges to the government’s behavior (Larson 2007). Indigenous land struggles in this context introduced a new language of rights centered on tenants found in the UN Declaration on the Rights of Indigenous Peoples. The state began ceding some sovereignty to a range of different actors (Sieder 2011). Even communities without a title employ rights-based discursive strategies and emphasize historical use and possession to protect their access to land. International law and institutions provide important arenas for social movement action as they expand the political space available for transformative politics (Sieder 2011). In this way, Argentina represents only one of the actors involved; the situation has moved from one of only two parties to now three

parties. Furthermore, the tight link between state and law loosens to make room for this new actor.

From a legal angle, the courts tend to favor the private property rights of individuals or corporations over collective forms of indigenous identity. Few court decisions have protected the right of indigenous peoples (Anaya 2012). When one favorable decision was passed in 2011, the issue at hand was whether or not a company had sufficiently consulted with the affected community before proceeding with extractive activities. This issue comes as no surprise since companies and provincial authorities often consult formed fictitious indigenous “communities.” These “communities” are granted legal status by the provincial government so that all arrangements and negotiations can be conducted through them while traditional authorities go unrecognized (Anaya 2012). The companies and provincial government in conjunction take advantage of the lack of law or policy at both the federal and provincial levels to regulate a consultation procedure with indigenous peoples (Anaya 2012).

International Involvement (NGOs)

In light of these domestic challenges, the Kolla have had to supersede the government and turn to NGOs and international law to help them in their struggle. The Kolla in their various communities have a considerable number of domestic organizations that help represent them on a domestic level.⁴ Although the Kolla are able to participate in Argentinean government and hold local elected positions in their respective regions (CIPKT 2007), not many are actually able to do

⁴ In the Province of Salta of Northern Argentina, for example, Quillamarka provides a grassroots coordinating platform for five different Kolla organizations. These organizations are the OCAN (Organizations Aboriginal Communities Nazarene), UCAV (Union of Indigenous Communities Victoreñas), CIKDI (Kolla Indigenous Council of Iruya), CIPKT (Kolla Pueblo Indian Community Tinkunaku), and CIACRL (Indigenous Community of Upper River Basin Lipeo). In total, Quillamarka represents 80 communities spread over a territory of more than 1 million hectares in the Province of Salta (López 2012). Two other organizations represent Kolla rights in Argentina as well: the Centro Kolla in Buenos Aires and the Indianista de los Pueblos Kollas.

so due to deliberate political exclusion. NGOs, however, provide the extra advocacy indigenous groups may not be able to achieve due to this deliberate political exclusion. At the international level, the Kolla are influenced by a smaller number of NGOs. I contend that these NGOs may beneficially advocate for the Kolla on a larger front, but may have the unfortunate consequence of inadvertently shaping the Kolla to conform to international ideas of what “indigenous” looks like. As the reader will remember from the section on Kolla identity formation, many Kolla struggle with the idea of indigeneity and thus are vulnerable to outside “versions” of what it looks like to be “more” indigenous.

The most prominent NGOs the Kolla have come into contact with are Greenpeace and OCLADE (Obra Claretiano de Desarrollo). OCLADE has the most history and contact with the Kollas. OCLADE is a development outreach program of the Claretian order, a Spanish missionary group that has charge of the Catholic Church throughout the prelature of Humahuaca, a district that spans the northern part of the province of Salta and most of the rural areas of the province of Jujuy (Occhipinti 1999). Historically, OCLADE has been most active in areas of health and education. It has also acted as an important conduit of material resources into the community. It is composed of about 25 full-time paid employees. OCLADE’s administrative council and the majority of the promoters are not from the communities of the Prelature, but come from urban regions of Argentina, including Salta, Buenos Aires and Spain. Although some decentralization has taken place, its regular meetings are not open to participation from individuals of the community or other interested parties (Occhipinti 1999). Given that the Jujuy and Salta provinces are among the poorest, OCLADE has taken it upon itself to aid development in areas such as bureaucratic programming to locally initiated projects. This development,

however, has distinct cultural, social, economic and political ramifications that will be elaborated upon later (Occhipinti 1999).

Throughout the highlands in Northern Argentina, the phrase used to describe the process of development by local people and NGOs alike is, “*seguir adelante*,” to move up or forward. This phrase is ironic since the path “forward” is anything but clear (Occhipinti 1999). The goal of OCLADE is development within a context of respect for the culture. However, almost any sort of development impacts culture. Local NGOs operate within a global discourse of development. Indigeneity, in this case, is defined by transnational ideas related to the colonial and nation-building experiences (Tilley 2002). The NGOs, hesitant to grant the Kolla entrance into their decision making process, can unknowingly shape the Kolla solely by denying them a voice to shape policy directly affecting them.

NGOs can be beneficial in that they provide another actor besides the state. For instance, when the Argentine government last presented a report on segregation of indigenous people, immigrants and refugees in Argentina to the United Nations Committee on the Elimination of Racial Discrimination meeting, the Committee also received an alternative report drawn up by NGOs. This new report refuted the official document’s claims of state compliance with a number of commitments, especially in the chapter on indigenous land rights. Members of the UN Committee questioned the lack of statistical information on Argentina’s indigenous people and their living conditions, and asked for explanations about the continuous conflicts over land that occur despite the constitution’s recognition of indigenous land rights (Valente 2004). In this case, NGOs serve a valid and necessary purpose of questioning the state. This questioning of state authority can go as far as to make Niezen’s point that states, as territorial communities, are fading under the influence of mobile, temporary interest groups (2003).

Virginia Tilley's account of the indigenous peoples' movements in El Salvador is in some aspects very similar to the situation in Argentina. She argues that the Transnational Indigenous Peoples' Movement (TIPM) can actually generate new kinds of political stress for local indigenous movements: "Outside funding can have corrupting and fragmenting effects, and the TIPM's transnational consultations tend to favor and promote more literate and therefore often less representative leaderships" (Tilley 528). Given that the Kolla have not been permitted to attend administrative meetings of OCLADE, it is clear that OCLADE, part of the larger TIPM, is making decisions on their own rather than offering a position or positions to the indigenous peoples it represents. It seems that NGOs at times follow the poor example of states where decisions are handed down without regard to the peoples they affect.

Perhaps the more important issue relating to the Kolla and the NGOs that affect them can best be summed up by Tilley (2002):

A third hazard...derives from the very activity that has made the TIPM so constructive a political force for many indigenous movements: that is, the TIPM's success in codifying and promoting formal precepts about indigenous' peoples characteristic qualities and needs. In doing so, the TIPM has conveyed unprecedented political juridical and rhetorical leverage to local groups. Yet when adopted as a master frame by sympathetic outsiders...those same precepts tend to gel and reify as a new definition for indigeneity that can bring considerable pressure on those indigenous groups whose 'fit' in that master frame is less than exact (Tilley: 528).

OCLADE in Argentina imposes upon the Kolla its idea of indigeneity through its connection with the TIPM. The TIPM constitutes an identity community through which those involved imagine and share newly dignified understandings of indigeneity (Tilley 2002). Whether the process takes place by making decisions without the voices of the Kolla, imposing the Catholic religion or imposing certain development ideas, OCLADE can actively change Kolla culture. To

achieve certain grants from even larger NGOs, OCLADE takes larger understandings of indigenism and has the Kolla conform to them. To achieve their largest goal, land rights, the Kolla had to forge a common Kolla identity even when the diversity is so great between neighboring villages. OCLADE suggested they play up their language, traditions and living even when these characteristics had been put down by the government (Occhipinti 1999).

Both the progressive laws of government toward indigenous rights and the seemingly positive influence of OCLADE have drawbacks. In the first instance, a gap between the Constitution and implementation exists despite an outward expression and appearance of strong conformity to international indigenous human rights norms. In the second instance, the NGO can shape the culture in a way that it may not have intended. State law that reflects indigenous norms will hopefully become internalized and manifested at the local level. The Kolla have survived state attempts at assimilation and now face new pressures from NGOs to conform to international indigenous norms. Despite pressures from all angles, one thing the Kolla are assured of is that “Kolla es un símbolo de la memoria y la identidad que no muere”⁵ (Zárate 1998).

Conclusion

“No podemos desechar esta oportunidad histórica de adoptar nuevas normas que contribuyan a promover la libertad, la paz y la justicia en el mundo”⁶ (Valiente 2003). The Kolla realize the incredible potential of norms. From repositioning themselves as minority workers to an indigenous peoples, land claims have served as the central element in a political struggle that has spurred the Kolla to reinvent and reimagine what it means to be indigenous in contemporary Argentina. Evidently, the law is often decoupled from its true realization; the

⁵ Kolla is a symbol of the memory and the identity that does not die.

⁶ We cannot throw away this historical opportunity of adapting new norms that contribute to promoting liberty, peace and justice in the world.

government's neoliberal stance can explain this implementation gap. However, not abandoning the promise of law has proven fruitful. Although the government does not see the codification of rights as always about recognizing rights as such, but rather indicating a limited acceptance of cultural diversity in a neoliberal framework, the Kolla see the law as applicable to their situation; it is a vehicle for achieving land rights. The codification of indigenous rights in neoliberal states may cause the lines between indigenous groups and corporate interests to be finely drawn, but the law opens the door for counter-hegemonic struggles. It may take many more years, but ultimately, the law will require that states guarantee their commitments. The Kolla, therefore, look to incorporate international indigenous rights norms as a script for how to prompt the government to action. The interaction between norms and law will ultimately influence the destiny of the Kolla. By codifying rights and setting out the obligations of states to uphold those rights, law raises the prospect that those rights will be enforced.

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