

# COMMUNAL RESOURCE TENURE AND THE QUEST FOR INDIGENOUS AUTONOMY: ON STATE LAW AND ETHNIC REORGANIZATION IN TWO COLOMBIAN *RESGUARDOS*<sup>1</sup>

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## 1. Introduction

During the past 15 years, several Latin American countries have been involved in a dynamic and ongoing process of state reform, which got under way after the promulgation of new Constitutions. One of the most notable features of these new constitutional frameworks is that for the first time in history they have come to acknowledge the multicultural and pluriethnic character of Latin American societies and states. In different ways and degrees, they have incorporated or reformulated the recognition and protection of the rights of indigenous peoples,<sup>2</sup>

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<sup>2</sup> The most frequently cited definition of indigenous peoples is that of Martínez Cobo:

Indigenous communities, peoples and nations are those which, having a historical continuity with pre-invasion and pre-colonial

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often in the language of self-determination.<sup>3</sup> In some countries, for example Colombia, Bolivia and Panama, new or renewed legal arrangements for indigenous territorial autonomy have emerged, implying that indigenous peoples are allowed to govern themselves, within a certain territory and to a specific extent, according to their own cultural patterns, social institutions and legal systems (Assies 1994: 46). These kinds of arrangements therefore purport to institutionalize forms of what could be called official (constitutional) political and

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societies that developed on their territories, consider themselves distinct from other sectors of the societies now prevailing in those territories, or parts of them. They form at present non-dominant sectors of society and are determined to preserve, develop and transmit to future generations their ancestral territories, and their ethnic identity, as the basis of their continued existence as peoples, in accordance with their own cultural patterns, social institutions and legal systems. (Martínez Cobo Study 1986: 29)

Indigenous peoples share many characteristics with ethnic or cultural minorities in terms of both numbers and power (though constituting a numerical majority in Bolivia and Guatemala). The main characteristic distinguishing them from other minorities is their claim to be entitled to special inherent rights as prior occupants of the countries in which they live as a result of historical patterns of empire and conquest (Anaya 1996: 86).

<sup>3</sup> The term self-determination gained prominence in the post-World War II discourse on international human rights and refers to the right of all peoples (nations or states) to control their own destiny (UN Charter Art. 1, Para. 2). With regard to indigenous peoples, the right of self-determination is commonly understood as the collective right of these peoples to “freely determine their political status and freely pursue their economic, social and cultural development”, albeit within the frameworks of existing sovereign states (Anaya 1996: 86; taken from the Draft UN Declaration on the Rights of Indigenous Peoples).

For the first time, the 1991 Constitution of Colombia also grants specific collective rights, also territorially, to black communities of Afro-Colombian descent, constituting 10-12% of the national population. (See *inter alia*: Wade 1995; Arocha 1998; Hoffman 2000).

legal pluralism (Hoekema 1999; see also Merry 1988; Woodman 1998).<sup>4</sup> On paper this constitutes a significant break with the previous, essentially monist juridical-political model of the nation-state, which led to indigenous peoples' subjugation and marginalization by the dominant culture and society. Yet it is clear that the real implementation of territorial autonomy necessitates a thorough reconstitution of relations between indigenous peoples, states and nonindigenous society. On the one hand, legal provisions need to be translated into concrete policies and institutional reforms that allow indigenous peoples to freely pursue their economic, social and cultural development (i.e. to exercise self-determination). On the other, indigenous peoples themselves have to appropriate and take advantage of the new legal framework in order to develop solutions to

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<sup>4</sup> The concept of legal pluralism draws attention to the fact that social order is not established through state law alone, but that, in every society, different legal or normative orders co-exist in a pluralist fashion (e.g. Moore 1978; Griffiths 1986; F. von Benda-Beckmann 1997). In the debate on legal pluralism, a distinction is often made between empirical and official legal pluralism. Empirical legal pluralism refers to the social fact that different legal or normative orders co-exist, regardless of whether the state legal order recognizes the other(s), and, of course, vice versa. Official legal pluralism refers to a social situation in which a state explicitly includes within the national political and legal order a principle of recognizing other, distinct structures of law and authority. Hoekema (1999) analytically distinguishes between 'unitarian' and 'egalitarian' versions of official legal pluralism. In his view, official legal pluralism is unitarian when there has been no encroachment on the authority of the state and its legal competence to decide whether and, if so, under what conditions and for how long it is still opportune to place legal orders of particular communities on an equal footing with that of the state. In that case, the official status of non-state legal orders could simply be dissolved by governmental decree. In contrast, as a more solid form, the egalitarian version of official legal pluralism would entail that the pluricultural and multinational (multiethnic) character of the state has been constitutionally acknowledged and that laws, decrees and actual policies have been promulgated to carry these provisions into effect, whereby in many cases a Constitutional Court has been established to discipline governmental agencies to uphold these values. In this case, the national government would find it quite difficult to unilaterally modify or revoke this system. However, it must be noted that, in reality, a truly egalitarian version of official legal pluralism cannot exist, since governments will always retain the possibility to supersede local legal orders in matters of overriding national interest. To escape these powers is to secede from the state (compare with Griffiths' (1986) conception of 'weak' and 'strong' legal pluralism).

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their problems and further their demands (Assies 1994, 2000a, 2000b; Van Cott 2000)<sup>5</sup>.

It is generally acknowledged that, besides a secure land and natural resource base, a certain continuity in the ongoing relationship of indigenous peoples with their lands or territories is of central importance to the survival of their cultures and, by implication, to their self-determination. Accordingly, with regard to the implementation of territorial autonomy, the recognition and protection of typical indigenous institutions of land and resource holding – communal resource tenure – constitutes an area of special concern (Anaya 1996: 104-106). As a property regime *sui generis*, communal resource tenure differs markedly from the dominant, Western concept of private individual property (ownership). Characteristically, it is a community-based property regime including a mixture of individual and collective rights to land, water, trees and other important natural resources. Whereas the rights to economically use and exploit resources, often on a long-term basis, are usually allocated to individuals or households, the rights to socio-politically control and manage these resources always remain vested in the community as a whole. Communal resource tenure thus regulates community members' relative interests in the natural resources throughout their territory, while at the same time it also has a bearing on the character of these resources vis-à-vis the state and others. In rural indigenous communities, institutions of communal resource tenure fulfill a very important function as they form the cornerstone of economic organization and contribute significantly to these groups' social cohesion and ethnic identity (F. von Benda-Beckmann 1995: 311; F and K von Benda-Beckmann 1999; Tomei and Swepston 1996).

Although the recognition of institutions of communal resource tenure is important in itself, this recognition alone is generally not enough for indigenous peoples to be able to ensure the economic viability and self-development of their communities. First, indigenous communities must have a sufficient resource base and be free from undue outside interference for these institutions to function properly. Secondly, these communities need to be protected from the often-lingering discriminatory effects of the governing institutional order in which these

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<sup>5</sup> This dual thrust of implementing arrangements for indigenous autonomy therefore entails a process of integration of indigenous peoples into the fabric of the state on mutually agreed terms. This process, which has been described as a form of "belated state-building" (Daes in Anaya 1996: 87), points to the present-day aspirations of many indigenous peoples to simultaneously safeguard their distinctive communities and secure a more effective participatory engagement in larger social and political structures.

institutions operate. In a world of growing interconnectedness in which indigenous peoples become more and more encapsulated by or incorporated in regional and national economies, it is increasingly important that these two conditions be met for communal resource tenure institutions to be able to form the institutional basis for their communities' autonomous economic development. Over the past years, however, experiences in several countries have demonstrated that this still often is not the case (e.g. Smith and Wray 1996; Gray 1997; Roldán 1997). This situation then raises questions as to (1) how the formal recognition of indigenous institutions of communal resource tenure is applied, (2) how this is affecting indigenous communities in practice, and, more generally, (3) how conditions for indigenous territorial autonomy are developing in particular national contexts.

This paper aims to address these questions in the case of Colombia, where the 1991 Constitution formally recognized the autonomy of indigenous peoples (communities) in self-governing indigenous territories or *resguardos*. Based on fieldwork study in southern Colombia from October 2000 to April 2001, the paper will present in turn case studies of two characteristic but quite distinctive *resguardo* communities, one from the Andean and one from the Amazonian region. Each case includes a description of the concrete problems faced by the indigenous community both in regulating the use and management of natural resources (communal resource tenure) and in their economic organization, among themselves as well as in relation to outside social actors. The focus will specifically be on the ways in which community members strategize in their attempts to solve their organizational problems, thereby making use of and orienting their behavior at elements of state law favoring indigenous peoples' rights. Situated in the context of broader economic and political developments in Colombia, this process of adaptation will subsequently be analyzed in terms of 'ethnic reorganization' (Nagel and Snipp, 1993). To set the stage for the two case studies, the next section will first provide a brief outline of the history and current status of the *resguardo*.

## 2. The *Resguardo*: Historical Background and Current Status

Legally recognized indigenous territories are by no means a new phenomenon in Colombia. The *resguardo* institution dates back to the Spanish colonial era and was first introduced in the Andean region in the mid-16th century. In an effort to concentrate dispersed indigenous populations, the Spaniards granted pieces of territory to particular indigenous communities, which were allowed to communally use and manage the land and natural resources in exchange for payment of tribute to the Spanish Crown. The communal and inalienable *resguardo* lands were administered by annually elected councils or *cabildos*,

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which had gradually replaced hereditary chiefs or *caciques* in the first half of the 19th century. Under the *resguardo* system, lands of indigenous usufruct holders were protected from outside encroachment, while local communities enjoyed a certain degree of autonomy with regard to internal matters. Thus this arrangement amounted to a weak (or 'unitarian': see Hoekema (1999) and above, footnote 4) form of official legal pluralism. (Arango Ochoa 1992: 224; Rappaport and Dover 1996. For a more extensive treatment of *resguardos* in the colonial period see: Rappaport (1982); Findji and Rojas (1985); Kloosterman (1997).)

After independence from Spain (1819), however, the communal landholding system of the *resguardo* came to be seen as an impediment to economic development and national integration. While the institution was never officially abolished, *resguardos* were threatened time and again by successive government policies aimed at the privatization of communal lands and dissolution of *cabildos*. By the 1960s, this had resulted in a situation in which many *resguardos* had largely fallen into the hands of nonindigenous landowners exploiting the indigenous population as cheap farm laborers. At this time, however, dispossessed indigenous peoples in the southwestern parts of the country started to mobilize themselves. Guided by old colonial titles and backed up by a still valid piece of legislation protective of *resguardos* (Law 89 of 1890), local communities became active in reclaiming territory through land occupation. Although this 'recuperation movement' was initially targeted with high levels of violence, perpetrated by the military and local security forces in the pay of landowners, the struggle for land considerably strengthened indigenous communities and reconstituted *cabildo* authority. In response to their unrelenting activism and demands for territory, the Colombian Institute of Agrarian Reform, INCORA, was finally compelled to comply with the new agrarian reform legislation (Law 135 of 1961 and subsequent decrees), which called for the return to indigenous communities of communal lands that legitimately belonged to them (Findji 1992: 118; Rappaport 1992; Kloosterman 1994).

In the isolated rainforests of the Amazonian and Pacific Coast regions, as well as in other inaccessible parts of the country, *resguardos* are of a much more recent origin. In response to the advancing agricultural colonization, which got under way in the late 1950s, local indigenous populations, supported by missionaries and anthropologists, first began to articulate demands for the recognition of their ancestral lands in the early 1960s. In this case, the above-mentioned agrarian reform laws allowed for the titling of new and often very large indigenous territories on state owned lands. Initially, INCORA established these territories under the legal figure of the *reserva*, which was less comprehensive than the *resguardo* since its inhabitants were not granted full ownership rights but instead a lesser right of simple usufruct (leasehold). Nonetheless, in the course of the

1980s, the government gave way to the pressure of national and regional indigenous organizations and, with Law 30 of 1988, changed this particular land titling policy. Henceforth, indigenous territories in the Amazon were created as *resguardos* as well, and all remaining *reservas* were gradually converted into *resguardos*. Between 1961 and 1991, the recognition of indigenous land rights became increasingly linked with a policy of ecological conservation and the protection of biodiversity. In this period, in the Amazonian region alone the government established more than 200 *resguardos* covering a total land surface of over 18m hectares. In contrast, the remaining 67 colonial *resguardos* in the Andean region at that time amounted to ‘only’ 400,000 hectares (Arango Ochoa 1992; Roldán 1993: 57-58; Jimeno 1996).

The 1991 Constitution and subsequent legislation has had a profound impact on Colombia's indigenous peoples. Most significantly, it explicitly recognizes the territoriality and autonomy of their communities and emphasizes the communal and inalienable character of *resguardos*, which received the status of special administrative-territorial entities. Indigenous authorities, *cabildos* and other forms of local authority, are attributed a series of old and new public functions. Besides observing the use and management of natural resources, they are now also responsible for watching over the application of national legal norms with regard to their preservation. Moreover, they are entrusted with the design of policies and programs for social and economic development in their territories, in conformity with national policies. In tandem with programs of administrative and political decentralization, *resguardos* increasingly participate in tax revenues through intergovernmental resource transfers, which have been fundamental in enabling indigenous authorities to negotiate development projects with municipal governments. The legal position of the *resguardo* has been further consolidated in various rulings of the Constitutional Court, an institution created to assure the effectiveness of rights included in the new Constitution (Cepeda 1995; Roldán 2000).<sup>6</sup> The government continued its pre-constitutional policy of creating new *resguardos*, mainly in the Amazonian and Pacific Coast regions. As a result, in March 1997 Colombia's estimated 700,000 indigenous population (1.75% of the national population) already collectively owned about a quarter of the country's territory – 27.8m hectares in 460 *resguardos* (Arango Ochoa and Sánchez 1998: 307).

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<sup>6</sup> *Resguardos* have also been recognized as jurisdictional entities, which implies that indigenous authorities have been granted the power to judge and impose sanctions in judicial cases that may come about within their territories according to their own norms and procedures.

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Although the *resguardo* is in fact a uniform indigenous autonomous form of regime, the institution nationwide accommodates a strikingly diverse and widely dispersed indigenous population, which is comprised of eighty-one distinct ethnic groups, speaking sixty-four languages, with the largest concentration in the Andean zone (particularly in the Cauca department), Amazonian and Orinoquia regions, along the Pacific Coast, in the Sierra Nevada de Santa Marta Mountains and on the Guajira Peninsula. All these ethnic groups or indigenous peoples differ, in varying degrees, both with respect to the ways in which they relate the natural environment to social organization and as regards their history of contact with nonindigenous society. Without ignoring this cultural diversity and the heterogeneity of situations in which indigenous societies find themselves today, it is possible and interesting to broadly distinguish between, on the one hand, the situation of sedentary farming communities of the old colonial *resguardos* in the Andean highlands and, on the other, that of populations of shifting cultivators inhabiting the newly established *resguardos* in the Amazonian lowland rainforests. While the Andean communities over the centuries have culturally appropriated the externally imposed models of communal resource tenure and authority – *resguardo* and *cabildo* – as their own (e.g. Rappaport 1982; Field 1996), the isolated and highly segmented indigenous peoples from the Amazonian region have no tradition of centralized authority and have only recently started to adapt their economic and political organizations to the new legal situation (e.g. Jackson 1995, 1996). Furthermore, there are marked differences in both the physical and social makeup of their *resguardos* (size, geography, single/multi-ethnicity) and in the degree to which their local economies are incorporated into larger economic structures. As will become clear in the following two case studies, the particular situations of Andean and Amazonian indigenous communities result in quite different but typical problems and dilemmas in their attempts to maintain and reproduce (reorganize) their economic organization and social institutions (communal resource tenure) in the quest for territorial autonomy.

### 3a. *The Páez Resguardo Jambaló*

Located in the northern region of the Cauca department, Jambaló is one of the more than thirty *resguardos* of the Nasa or Páez people. With an estimated total population of 118,845 it forms the single largest indigenous people of Colombia (Arango Ochoa and Sánchez 1998: 116). Stretching across the western slopes of the Central Andean mountain range, this relatively small *resguardo* of colonial origin, founded by the legendary Páez *cacique* Juan Tama in 1702, covers a surface area of 25,000 ha. An estimated 11,000 indigenous inhabitants live in various localities on stretches of flat or accentuated terrain in a rugged territory intersected by numerous rivers, with altitudes ranging from 2,000 to 3,800 meters



above sea level. This is where they cultivate a mixture of subsistence crops, but principally maize, beans and potatoes, depending on the altitude. The production of coffee and sisal, of which the fibers are used for the production of packaging materials, is destined exclusively for the sale on nearby regional markets.<sup>7</sup> The *cabildo* of Jambaló gained in authority along with the rise of ethnic mobilization in the 1970s, a history in which this Páez community has played a prominent part (Findji 1992). Currently, it maintains good relations with the *alcaldía* (mayoral offices) of the municipality of Jambaló, the administrative entity with which the *resguardo* almost totally coincides, as with most of the non-indigenous families inhabiting a small village of the same name in the south of the *resguardo*. (These people generally do not have land in the *resguardo* and work in commerce and transport or for the municipality or Catholic Church.)

*Tenure, land scarcity and unequal distribution of land*

The type of communal resource tenure found in Jambaló today shows many similarities with those of other indigenous communities in the Andean region (e.g. Pachón 1987; Kloosterman 1997; Perafán *et al.* 2000). The Páez acquire individual usufruct rights to communal lands through their membership of the community. Adult men, and to a limited extent also women, get access to land by way of patrilineal (or cognatic) inheritance. In their lifetime, elder men and women divide their rights to land among their children. These transfers have to be formally endorsed by the *cabildo*, which then issues an official document, the certificate of adjudication, to the new landholding family. In former times, the *cabildo* also adjudicated land to young land-poor families in those parts of the *resguardo* that had not yet been partitioned (commons, or *tierras de reserva*).<sup>8</sup>

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<sup>7</sup> Roughly speaking, the Jambaló territory is characterized by a south (high)-to-north (low) altitude gradient. Potatoes (among the Páez essentially a subsistence crop), like ‘ulluco’ (*Ullucus tuberosus*), ‘arracacha’ (*Arracacia xanthoriza*) and onions are typically cultivated in the southern, more elevated areas (*tierras frías*), whereas maize, beans and coffee (*Coffea arabica*) are cultivated in the middle and northern parts of the *resguardo* (*tierras tibias*). Sisal (*Agave spp.*) is principally cultivated in the southern and middle parts of the *resguardo*.

<sup>8</sup> Until the mid-1980s, this was only the case in the southern parts of the *resguardo*, whereas the middle and northern parts were under the control of hacienda owners that had ‘invaded’ the indigenous territory in the first half of the 20th century. In the latter parts of the *resguardo*, the *cabildo* did not have effective control in land tenure matters. In earlier times (until the 1950s), however, when the *resguardo* population was under 2-3,000 inhabitants and there

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However, because of a steady population growth, especially since the 1970s, this had become a purely theoretical question by the mid-1980s when all the arable commons had been partitioned among community members. With the land appropriation completed and the colonization of the highlands (*páramo*) being culturally prohibited, from that time onwards family fields started to become smaller with every new generation (compare with Perafán, 1995). This has led to a situation of acute land scarcity in large parts of the *resguardo*, one of the central problems confronting the community of Jambaló today. The land scarcity is furthermore exacerbated by a partially dysfunctional tenure regime that has resulted in an unequal distribution of land throughout the territory.

The unequal access to land has its origins in the specific modalities of the land struggle in the 1970s and 1980s. With the help of other community members, indigenous tenant farmers (sharecroppers) had been successful in appropriating the haciendas of their landlords. However, it was not until Law 30 of 1988 that it became possible for INCORA to reallocate these lands as communal property to the *cabildo*. Pursuant to the preceding agrarian reform legislation, Law 135 of 1961, a 'progressive-integrationist' land policy imposed two (nonindigenous) cooperative tenures on these local tenant groups, regimes that were intended as a transitional phase in the development towards individual ownership (Jimeno and Triana 1985: 113). In one agricultural cooperative and several so-called 'communal enterprises' in the middle parts of the *resguardo*, former tenant families were given collective possession of the recovered haciendas, which were to be administered by newly created executive committees. In practice, these lands were thereby taken out of the *resguardo* system, the associate families were separated from the rest of the community, and, at least in land tenure matters, the jurisdiction of the *cabildo* was eliminated (Findji 1992: 120).<sup>9</sup> At the time, the

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was still plenty of *tierra de reserva*, land tenure (particularly access and allocation) was less regulated, mainly because *cabildo* authority was weakened by continuous aggressive government policies from the 1930s onwards. In this period, many inhabitants of the southern 'free' parts of the *resguardo* cultivated several plots in various localities (in the *tierras frías* as well as in the warmer Jambaló valley), making use of vertical 'complementarity' of climates. In part, this situation still persists today, although former owners of 'additional' fields in the *tierras frías* have often sold their possessions (usufruct rights) to local land-needy families (see Findji and Rojas 1985).

<sup>9</sup> In Jambaló, unlike some neighboring *resguardos* (for example Toribío), these communal enterprises were not created with official collective ownership titles but established through an accord between INCORA, the associate families and the *cabildo*. The associate families were granted the right to administer the haciendas

*cabildo* was not opposed to this outside intervention because these new forms of organization were considered a useful instrument in the ongoing struggle for the recovery of ancestral *resguardo* territory. In some cases, however, small groups of families were thus able to gain control over relatively large portions of land. The land struggle in Jambaló was problematic in another respect as well. While haciendas were being occupied elsewhere, some landowners, especially in the northern parts of the *resguardo*, attempted to divide the local tenant community by selling considerable shares of their property to indigenous families, often at extortionate prices. This gave rise to a small group of indigenous landowning families (Findji and Rojas 1985: 111-113; Mejía 1991)<sup>10</sup>.

The particularities of the recent land struggle in Jambaló explain the persistence of 'foreign' (nonindigenous) tenures, collective and individual, within the *resguardo* up until the present day. Especially in some of the areas that fall under these regimes, there are families with relatively large land holdings that seem unable to bring all of their land into production, in some cases partially leaving it fallow for extended periods of time. In times of land scarcity, this reality is problematic as it leads to increasing resentment on the part of families with a shortage of land, sometimes even escalating into open conflict. At the same time, however, the

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of their former landlords independently of the *cabildo*. In practice, this meant a continuation of the old situation, except that now the former indigenous tenants had collectively taken over most of the powers of their ex-landlords though not having formal title. The only agricultural cooperative in the *resguardo* does have a formal title and is thus also, and in this case also legally, excluded from the *cabildo* tenure regime.

<sup>10</sup> Today 5,000 of the total of 25,000 ha. of *resguardo* territory are still held as private individual property, or in individual ownership. Nearly all of the owners are indigenous smallholders (less than 5 ha), most of whom are prepared to convert their ownership title into a usufruct right with the *cabildo* since they are no longer capable or willing to pay land taxes to the municipality (land of private individual owners is still considered to fall outside the *resguardo* – at least fiscally – and, hence, is taxable). However, there are also some indigenous landowners with relatively large properties (25 ha or more) who are reluctant to give up their ownerships title because they believe rumors that they would lose some of their rights, in particular the right to mortgage their land. The *cabildo* increasingly considers this situation to be problematic and a threat to the integrity of the *resguardo*.

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*cabildo* has until now proved incapable, in practice or in law,<sup>11</sup> of adjusting the distribution of land in favor of needy families, a right which it retains, at least theoretically, in the area under 'traditional' communal resource tenure in the south of the *resguardo* (Perafán 1995: 51).<sup>12</sup>

### *Economic crisis, absence of credit facilities and illicit drug crops*

Like that of other indigenous communities in the Andean region, the economy of Jambaló is characterized by a relatively high degree of incorporation into the money economy, rendering it vulnerable to the fluctuations of the market. The enduring general crisis in agriculture that has pervaded all of rural Colombia in recent years, and is currently intensifying as a result of a reorientation of the national economy towards neoliberalism, constitutes a major problem for this Páez community as well. During the 1980s, farmers experienced a sharp decline of prices for the cash crops coffee and sisal, leading to a strong deterioration of family incomes. While the cultivation of subsistence crops used to buffer periods of crisis in the market-directed production, the current situation of land scarcity is putting pressure on this parallel economy, forcing families to reorganize their

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<sup>11</sup> Not in practice because these private owners and collective proprietors (enterprises) and owners (cooperative) stubbornly resist renouncing their rights and the *cabildo* does not (yet) want to risk the social cohesion of the *resguardo* community by forcing them to do so; not legally because the government (INCORA) still considers the situation with regard to indigenous private/collective land ownership and collective proprietorship (possession) within *resguardos* an internal problem and has until now refused to intervene or produce a solution to the problem (assisting *cabildos* with extra state legal authority) that was created by its own pre-constitutional legislation. The agency still seems more inclined to recognize the property rights of individual owners than to recognize the superseding right of communal indigenous property (*resguardos*)!

<sup>12</sup> In rare cases, the Jambaló *cabildo* is known to take back part of the uncultivated land of individual usufruct holders for reallocation to land-needy families (three cases in the last 5 years, all in the southern parts of the *resguardo*). Usually, these so-called 'segregations' (*segregaciones*) are compensated with small remuneration in money or kind in settlements between the two respective parties. Due to land scarcity, the occurrence of segregations is decreasing. In the middle and southern parts of the *resguardo*, however, where, because of the uneven or 'imperfect' land appropriations, land access inequalities are most pronounced, there is still much unproductively used land to be potentially segregated.

household economies. In the absence of viable economic alternatives, the Páez seem to be drawn into a process of intensification of agricultural practices, often involving a shift from subsistence to market-directed crops, which requires them to make investments in new agricultural techniques and inputs (fertilizer and fungicides). At this point, however, protective restrictions on the sale and mortgaging of land to outside parties (persons or banks), inherent in the inalienable character of *resguardo* lands, tend to exclude them from access to capital or agricultural credit.<sup>13</sup>

At the same time, past experiences with government-assisted programs for credit and technical assistance, which have usually disregarded the particular characteristics of indigenous economies, have not been very positive, if not negative. In the 1980s and early 1990s, a number of short-lived credit programs were almost exclusively directed at the collective landholdings, the cooperative and communal enterprises, thus discriminating against farmers with individual usufruct rights.<sup>14</sup> These programs failed because they were underfunded, paternalistic and unresponsive to local needs (Mejía 1991: 55-56; Cortés 1996:

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<sup>13</sup> Some authors (Perafán *et al.* 2000; and Perafán 2001) have reported alternative possibilities for acquiring capital with land. In some *resguardos* – e.g. among the Guambianos – there seems to exist an informal practice of internal buying and selling of usufruct rights to land, most often by liability. In this case, less affluent or indebted people can ask for a loan from a member of a rich family who in return receives the usufruct rights over a part of lands of the former. If the debtor is not capable of returning the loan within the period as agreed on between both parties and their families cannot reach a settlement, the ‘mortgaged’ land remains in the hands of the creditor. This internal (indigenous) arrangement, which is said to have antecedents in colonial legislation, is called *censo enfiteutico* (Perafán 2001: 44-45). In Jambaló, this practice has not been reported. Informants said it was never practiced, at least not as long as they remembered. In other cases, rights to land are being sold by less affluent or near-landless families opting for migration to the low-lying regions of the Cauca and Huila departments – often referred to as *tierras de lo caliente* – where land prices are far less high. Although *cabildos* have usually put a ban on these practices to avoid uncontrolled accumulation of usufruct rights, in the latter case their authority is heavily compromised by the prevailing situation of land scarcity.

<sup>14</sup> These were, in chronological order from the 1980s into the 1990s, INCORA credits, Plan Nacional de Rehabilitación (PNR), Proyectos Productivos para Comunidades Indígenas (PCCI), CRIC credit fund and Desarrollo Rural Indígena (DRI).

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4)<sup>15</sup>. Moreover, they were based on misinterpretations of the logic of indigenous collective labor activities (*mingas*).<sup>16</sup> Ironically, an economic program initiated by the regional indigenous organization, CRIC, failed for similar reasons as it was informed too much by indigenous political ideology, stressing the collective (communal) over the individual. In Jambaló, several cooperative associations received these kinds of loan, but they were unable to use them to their advantage. For many individual farmers, the only possibility to obtain agricultural credit was with a state-owned agrarian bank, the Caja Agraria, which, upon the showing of a *cabildo* certificate of adjudication, accepted harvests or cattle (*mejoras*; lit. betterment of the soil) as collateral (pursuant to Decree 2476 of 1953). However, the interest rates of these commercial credits were considerable and in the 1980s many families in Jambaló ended up heavily indebted.<sup>17</sup> These Páez were adding to already long lists of moratoria, causing the Caja Agraria to be reorganized and privatized in 1994. Thus the previous credit facility for indigenous farmers became extinct.

In conjunction with the economic crisis, the absence of adequate credit facilities and financial support for indigenous communities is considered to be one of the prime causes for the rise of illicit drug crop production in Andean *resguardos* by

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<sup>15</sup> In the 1970s and 1980s, INCORA attempted to introduce extensive cattle raising in *resguardos*. This was unsuccessful because the targeted indigenous communities had no experience whatsoever with such practices.

<sup>16</sup> A term derived from the Quechua *mink'a*, which the Páez and other Andean indigenous peoples commonly use to denote either periodical labor exchanges or collective work festivities organized by the *cabildo*. Labor exchanges are based on relations of reciprocity and basically oriented around the needs of families that have periodically to call upon a larger work force, for example in the beginning of the growing season and during harvest time or house construction. The *mingas* organized by the *cabildo* fulfil a very important social role as they guarantee both the revitalization of a sense of community and the strengthening of ethnic identity (Pachón 1987: 241-243; for further anthropological interpretations, see also Findji (1993: 65) and Field (1996: 106).

<sup>17</sup> The story also goes that, in the 1980s, during the heydays of indigenous mobilization (land struggle), the Páez in particular earned a bad reputation with the Caja Agraria and, hence, also with other, commercial banks, because some families considered not paying back their loans as a form of resistance or even redress for historical grievances. For a comparable observation on the Guambiano people, see Perafán (1999: 5).

the end of the 1980s (Perafán 1999). Bringing high and quick economic returns, families in the more elevated areas started growing the opium poppy, a plant that was introduced by the Cali narcotics mafia between 1987 and 1989, while in the northern, lower parts of the *resguardo* the production of coca was expanding.<sup>18</sup> Of course this phenomenon has not been without negative effects. The poppy and coca tend to replace subsistence crops, resulting in decreasing food security and a growing dependency on outside markets. Moreover, the income obtained from their cultivation has produced an increasingly individualistic mentality and, consequently, the breakdown of existing economic relations of solidarity and reciprocity (periodical labor exchanges and *mingas*). But most of all, the production of drug crops, undermining *cabildo* authority internally and contributing to the economy of anti-state forces, constitutes a direct threat to the position of indigenous communities vis-à-vis the Colombian state.

In February 1992 in Jambaló an agreement was signed between the *cabildos* of various communities, CRIC and representatives of the national government, in which the indigenous leaders committed themselves to the voluntary eradication of drug crops in their *resguardos* in exchange for financial support and development assistance from the government. This agreement is known as the ‘Jambaló Agreement’. Although the area used for the cultivation of illicit crops seemed to decrease slightly in the years following the agreement, the eradication effort did not maintain continuity, primarily due to a lack of commitment on the part of the government, especially of the current administration since 1998. Today indigenous involvement in the drug crop production is still widespread.<sup>19</sup>

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<sup>18</sup> Opium poppy (*Papaver somniferum*); Coca (*Erythroxylum coca*). The Andean indigenous peoples have traditionally used the leaves of the coca plant to relieve fatigue, hunger and altitude sickness. Moreover, coca leaves are used today, as they were centuries ago, in divination. Only recently have indigenous peoples, like other Colombian peasants, started to grow coca on a larger scale for processing into cocaine by the narcotics mafia. Most of the coca, however, is produced east of the Andes below 2000 m and in the Putumayo and western Amazonian departments. The cultivation of the opium poppy, the basic ingredient for the production of heroin, is new to the Andean region.

<sup>19</sup> In the summer of 2000, an independent study conducted by the Jambaló *cabildo* showed that 8-13% of the total amount of arable land in the *resguardo* (300 to 500 ha. of a total of 3,875) was used for the cultivation of poppy or coca crops. Though these numbers may not seem particularly alarming, the magnitude of the problem becomes immediately clear when the economic significance of these illicit crops is considered. In the above-mentioned study, it was estimated that in 1999 the amount of money going around in drug crops easily doubled the amount

*Strategies and new directions*

Following developments in neighboring *resguardos*, in the late 1980s the Páez in Jambaló created a new structure of community organization with the aim of strengthening unity within the *resguardo* and finding answers to growing demands for economic development and basic community needs like education, health and infrastructure. In practice, this organization consists in consecutive two-monthly meetings on the occasion of which the *cabildo* invites people from all parts of the *resguardo* to discuss pressing community problems and collectively work out plans for 'ethno-development' (Partridge *et al.* 1996) – or what the indigenous peoples of the Andean region commonly refer to as *Plan de Vida* (lit. Plan of Life). Over the past years, problems related to land tenure, the economic crisis and illicit drug crops have figured prominently on the community agenda.

In the face of land scarcity and unequal access to land, the community of Jambaló has recently begun to reevaluate its current territorial organization. It is generally recognized that this concerns both the question of the future status of foreign tenure institutions and the issue of the uneconomical allocation of land resources in certain parts of the *resguardo*. The past two *cabildos* (since 1999), largely made up of a new generation of young community leaders, have ventured to start talking about an internal redistribution of land, a subject so sensitive to the Páez that former, more conservative *cabildos* consisting of older people never dared to raise it for discussion. Although many people now seem to endorse the view that the unequal access to land is a problem that needs to be addressed, questions as to when, how and to what extent an actual redistribution should take place remain a divisive point. At any rate, an undertaking of this kind would in some localities at least entail the dispossession of land that has not been put to productive use for an extended period of time, a prospect which has led to resistance – still often silent – from the families that possibly have to bear the consequences. In view of lurking conflicts, it remains to be seen to what extent a territorial reorganization is in fact a feasible goal.

Whatever happens in this respect, given the fact that 65% of the *resguardo* inhabitants are under 25 years of age, redistributive measures are not likely to bring a permanent solution to the problem of land scarcity. In an effort to find

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of money generated by the total harvest of coffee, the most important legitimate cash crop in Jambaló (as in the region), amounting to almost 5 billion pesos, compared to 1.9 billion pesos in coffee (at the time, US\$2.4m and 1m).



new arable land for large sections of the population, the *cabildo* is therefore also trying to expand the communal territory by claiming land outside the borders of the actual *resguardo*. Pursuant to the new agrarian legislation (Law 160 of 1994 and additional decrees), the Colombian state (INCORA) is obligated to enlarge *resguardos* of indigenous communities in case the amount of arable land is insufficient for their economic and cultural development or the fulfillment of the ‘social and ecological function’ of their property (Decree 2164 of 1995, art. 1.2.). Up till now the land claims of Jambaló – as those of many other indigenous communities in the Cauca department – have not been met, however, due to the limited available land (vested interests of agro-industrial companies), bureaucratic negotiation procedures and a lack of state resources set aside for this purpose (Jimeno *et al.* 1998: 310-311).<sup>20</sup> The situation is further complicated by the fact that Jambaló is completely locked in by other *resguardos*. This means that a possible future acquisition of land will not form an integrated whole with the rest of the *resguardo*, making a resettlement of certain groups of families unavoidable – something which is already taking place in other *resguardos*, most notably among the Guambianos (Arango Ochoa and Sánchez 1998: 171).

With regard to the cultivation of illicit crops, the *cabildo* has continued to express its disapproval, but it is incapable of counteracting these practices as long as it cannot offer an economic alternative. During the 1990s, it has initiated several small-scale economic projects, or so-called ‘micro-enterprises’, in an attempt to provide employment for near landless families and increase the overall economic viability of the community. These include a fruit orchard and a tree nursery, a yogurt factory and a trout farm, among other examples. For the most part, however, these initiatives are not very productive and in some cases have proven to be outright failures. To an important extent, these disappointing results can be

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<sup>20</sup> At present, negotiations between the government, CRIC and nonindigenous landowners with regard to the acquisition of additional territory for indigenous communities in the north of the Cauca department seem to have reached an absolute deadlock. Nonetheless, according to an agreement between the Colombian government and the Inter-American Commission for Human Rights, Jambaló, together with several other indigenous communities, is entitled to a total of 6,500 hectares of new land outside the borders of existing *resguardos* as reparation for the killing of 20 Páez by several as yet unidentified gunmen during a peaceful land occupation on the El Nilo hacienda in the neighboring *resguardo* and municipality of Caloto on December 16, 1991; an act of violence for which the Colombian government was held responsible. However, even three years after the date of the agreement the government has still not fully complied with its promises to the communities concerned (see Jimeno *et al.* 1998).

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attributed to a lack of financial resources for making the investments needed to get the enterprises off to a good start. Since the 1991 Constitution, state support for the economic and social development in Andean *resguardos* has been minimal, despite the 1992 Jambaló Agreement. Practically the only financial resources allocated to indigenous communities are the yearly transfers of tax revenues, which began pouring into *resguardos* in 1994 (pursuant to Law 60 of 1993 and additional decrees). However, due to the limited magnitude of these transfers and because of the large and partly fixed number of areas of public spending, in Jambaló these revenues leave only a small room for investment in projects for community development.<sup>21</sup> But apart from a deficient *cabildo* budget, the failure of the micro-enterprises is also due to a lack of interest on the part of community members, who often seem to hedge their bets on the more readily available benefits of individual poppy and coca growing (see also Field 1996: 110 ff.).

### *3b. The multiethnic resguardo Puerto Nariño*

Puerto Nariño is a young and relatively large *resguardo* inhabited by the Ticuna, Cocama and Yagua peoples, located in the extreme southeast of the Amazonas department – the so-called Trapecio Amazónico – on the national border with Peru, not far from the departmental capital Leticia. Constituted in 1990 and largely overlapping the municipality of the same name, it covers over 85,000 ha of dense tropical rainforest, where an estimated 5-6,000 people live divided over 20 settlements spread out along the north bank of the Amazon and its local tributaries. Although nearly all of these villages have a multiethnic composition, in most locations the Ticuna constitute the great majority, together making up 85% of the *resguardo* population.<sup>22</sup> By tradition, all three indigenous peoples

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<sup>21</sup> In 2001, Jambaló (*resguardo*) received 581m pesos (at the time, US\$290,000) in resource transfers, due to state fiscal adjustments slightly less than in 2000. That year, these resources were largely spent on infrastructure, education, health care and other basic services, of which the costs were proportionately shared with the municipality of Jambaló, which received 2,400m pesos in transfers. As a result, the *cabildo* had only about 30m pesos (US\$15,000) left to spend on alternative economic projects (dates from the CONPES No. 51 document of the National Planning Department, Interior Ministry, and the Jambaló *cabildo*).

<sup>22</sup> The Ticuna are one of the largest indigenous peoples in the Amazon – their current number is estimated at 40,000 (Vieco and Pabón 2000: 111). They have traditionally inhabited a large area in the middle course of the Amazon in Brazil, Colombia and Peru and, with more than 7,000, are the second largest indigenous

practice a form of swidden-fallow management (shifting cultivation) based on the natural succession of the surrounding forest. Cultivated fields (swiddens or *chacras*) on forest and riverine soils are planted with a wide range of subsistence crops, generally dominated by manioc or yuca (*Manihot esculenta*). The agricultural production is complemented by fishing in rivers and backwaters and hunting in fallows (*rastrojos*) and the forest. Until recently, the local economy was almost fully subsistence-driven. In the past 20 years, however, external cultural influences (missions and narcotics mafia) have instilled a growing desire to produce for the market (Hammond *et al.* 1995).

*Tenure, government policies and the resguardo*

The Ticuna, like the Cocama and Yagua, are a highly segmented ethnic group, until very recently without any form of authority transcending the local community. Isolated settlements, mostly situated in the forest along small streams, were usually made up of one or more endogamous social units comprised of lineage segments tied by a system of bilateral cross-cousin marriage. These were governed by a local chief, the *curaca*,<sup>23</sup> in company with the family elders (Fajardo and Torres 1987: 171; Machado *et al.* 1989: 58; Goulard 1994: 368; compare with Métraux 1963; and Chaumeil 1994). The tenure regulating access to and control over local natural resources – *chacras* and *rastrojos* in different stages of succession, water resources and the nearby part of the forest – was organized along kinship lines, each settlement administering its own zone of influence (Machado *et al.* 1989: 66-67; see for more details Goulard 1994: 411-412). The social organization of the Ticuna, Cocama and Yagua in Puerto Nariño was disturbed at least to some extent in the 1970s, when many of these villages, attracted by government programs offering public services, relocated towards the banks of the greater rivers. In some areas this event increased local pressure on natural resources, leading to shorter fallow periods (Vieco and Pabón 2000: 112-

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people living in the Colombian Amazonian region (Arango Ochoa and Sánchez 1998: 155).

<sup>23</sup> The position of the *curaca* (a word of Quechua origin) is a relatively new phenomenon among the Ticuna. Introduced by non-indigenous rubber merchants in the beginning of the twentieth century, this authority mediated in the contacts between his community and outsiders. By the 1960s the *curaca* had replaced the former *dueño de la maloca*, the chief of the communal long house that has almost completely disappeared among the Ticuna (Goulard 1994: 394). Today *curacas* are elected to serve their communities for a period of two years.

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113). Nonetheless, it appears that in most locations earlier tenure arrangements have largely remained in force (Hammond *et al.* 1995: 338).

The Colombian state has been increasing its presence in the Trapecio Amazónico ever since the 1950s. Ignoring indigenous communities and their resource use, it declared large tracts of forest as state-owned land and forestry reserve, pursuant to Law 2 of 1959. From the 1970s onwards, a new government agency charged with the administration of renewable natural resources, INDERENA, began to encourage commercial timber exploitation in the region, giving out concessions to merchants coming from Leticia and other parts of the country (Jimeno and Triana 1985: 137 ff.). This was also the case in Puerto Nariño, where the forest is said to be rich in tropical cedar (*Cedrela odorata*) and the tributaries of the Amazon provide easy passage for exploited timber. In 1975, INDERENA furthermore created the 300,000 ha Amacayacu National Park, as a result of which four Ticuna communities were displaced from their ancestral village lands. As compensation, they were assigned new lands in two locations on the park borders, but they were officially restricted from making any further use of nearby forest resources. Other communities were threatened with displacement as a consequence of the advancing agricultural colonization by non-indigenous farmers (*colonos*), and by the narcotics mafia installing cocaine-processing plants in the nearby forest (Machado *et al.* 1989: 126-128). Increasingly the indigenous population of Puerto Nariño was losing control over natural resources in an area they considered to be their ancestral territory.

By this time, however, the national government was developing a new policy on indigenous peoples in response to their struggles elsewhere in the country. This led the Division of Indigenous Affairs of the Ministry of the Interior, DAI, together with several NGOs, to pressure INCORA to establish the Puerto Nariño *resguardo* in 1990. In spite of this sudden change of circumstances, the rather arbitrary selection of communities that came to be included in the *resguardo* still did not have any form of central authority competent to control the natural resources within this vast expanse of rainforest. Thus, for the time being the 'open access' situation in large parts of the *resguardo* remained unresolved.

### *The cabildo mayor and illegal forest exploitation*

With the support of the national indigenous organization, ONIC, the process of indigenous organization in Puerto Nariño had already started in the late 1980s but was initially plagued by various setbacks. It took until 1998 before the Ticuna, Cocama and Yagua finally installed a *cabildo mayor* to centrally govern their new multiethnic *resguardo*. Based on the Andean model of indigenous government, a

*curaca mayor* and his elected council were now to take control of all *resguardo* affairs and coordinate activities with the *curacas menores* of the various communities. Although the creation of the *cabildo mayor* was directly motivated by the need to appropriate and autonomously manage the tax revenues that had become available to the *resguardo* since 1994, which until then had been mismanaged by the corrupt Puerto Nariño *alcaldía*, the still inexperienced indigenous organization would soon be put to the test by another major challenge: the problem of illegal forest exploitation.

In the first months of 1999, several community members reported having seen large amounts of tree-trunks floating down the Amacayacu River. In a subsequent community meeting, they raised questions as to where these trees were coming from and who had authorized their exploitation. Acting up to its responsibility, the *cabildo mayor*, assisted by a legal adviser from ONIC and a customs officer, set up a thorough inquiry into the matter. It soon turned out that most of the timber originated from three concessions located in the Amacayacu and Atacuari catchment areas in the northwestern parts of the *resguardo* – the rest was illegally imported from Peru, a practice that is common in Amazonas (see von Hildebrand 1996). The three concessions were being logged by small teams of woodcutters, apparently to the order of nonindigenous timber merchants coming from outside the *resguardo*. Most strikingly, the logging permits, which were issued by CORPOAMAZONÍA, the successor of INDERENA, in 1997, appeared to have been signed by the *curacas menores* of three *resguardo* communities. They had been persuaded to do so by a company of high government officials, amongst whom was the director-general of CORPOAMAZONÍA, in exchange for insignificant sums of money and without informing their communities. Although the *cabildo mayor* and the wider community strongly disapproved of the affair, they were unable to stop the exploitation since the permits dated from before the formation of the *cabildo*. By ‘consulting’ the *curacas* in the absence of higher authorities, the agency had seemingly complied with all formal standards of procedure, making the documents legal.

The discovery of the undesirable and uncontrolled timber exploitation rapidly raised the awareness of the indigenous community with regard to the legal status of the natural resources inside the *resguardo*. The 1991 Constitution (Article 329) and more specifically a recent Constitutional Court ruling (T380 of 1993<sup>24</sup>) grant

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<sup>24</sup> This was a ruling in favor of the Emberá-Catio people concerning illegal forest exploitation in one of their *resguardos* in the Pacific Coast department of Chocó. This writ of protection (*tutela*) case, which also involved the manipulation of sub-community authorities by a regional autonomous government agency charged with forest preservation and development (here called CODECHOCÓ), shows

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*resguardo* communities full and exclusive ownership rights to the renewable natural resources within their territory, though their (commercial) exploitation is subject to all the legal provisions concerning the sustainable management and preservation of natural resources and the environment (Roldán 2000: 55). During a general assembly in November 1999, the *cabildo mayor* of Puerto Nariño drafted its first public resolution, asserting control over all forest resources in the *resguardo* and laid down, in a general way, the conditions under which possible future timber exploitation should take place. Based on Law 21 of 1991 (ratifying ILO Convention No. 169), the *cabildo* also claimed authority in the remaining state-owned lands and forestry reserve situated between Puerto Nariño and the Cothué-Putumayo *resguardo* further to the north (created in 1992), lands which the Ticuna, Cocama and Yagua of Puerto Nariño have always considered part of their ancestral territory. In this respect, CORPOAMAZONÍA was explicitly called upon to abstain from giving out new logging concessions in the area without prior consultation with the indigenous authorities. Furthermore, a start was made with the creation of a community structure for the coordinated control of illegal exploitation of natural resources throughout the *resguardo*.

But the forest exploitation did not stop. On the contrary, during the next rainy season (October 1999 through June 2000) the river-transport of timber took on ever more permanent forms. Since the two-year term permits for the three concessions in the *resguardo* had already expired, nobody knew where this timber was exactly coming from. Presuming it was illegally extracted from within the indigenous territory, the *cabildo mayor* decided to confiscate a part of it and detain it at the mouth of the Amacayacu. This course of action immediately led to a confrontation with CORPOAMAZONÍA, which accused the indigenous community of obstruction of officially authorized logging practices and claimed to be the sole authority competent to control forest exploitations in Amazonas, thus ignoring the legal authority of the *cabildo mayor* of Puerto Nariño as well as that of any other indigenous authority in the region. The *cabildo* however took a firm position, demanding that CORPOAMAZONÍA produce documents that proved the legitimacy of the timber. At first the agency simply ignored the demand, but when the *cabildo* made an appeal to the public right of petition, it changed its attitude and produced a prospecting study and permit for a concession in the state-owned lands, supposedly proving the exploitation was legal. Upon studying the documents however, the *cabildo* and its adviser discovered several administrative and procedural irregularities and decided to keep hold of the confiscated timber.

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remarkable similarities with the situation concerning illegal forest exploitation in Puerto Nariño (see Cepeda 1995: 113-114).

The situation was becoming even more complex when officials from Amacayacu National Park, working in close collaboration with CORPOAMAZONÍA, suddenly maintained that the timber had been exploited illegally within the borders of the area under protection. Now there were three parties claiming authority in the matter. In the meantime, licensees from Leticia and their associates in the municipal town of Puerto Nariño tried to get the confiscated timber out of the *resguardo* using every means possible, lawful and unlawful: with new official documents, forged letters of safe-conduct, attempts at subornation and eventually even by intimidating *cabildo* members. When the opinion of the *alcaldía* of Puerto Nariño, which tends to swim with the tide, finally also turned against the indigenous community, the *cabildo mayor* decided to call on the help of the National Prosecutor in Bogotá. This government department started a judicial inquiry into all procedures followed by CORPOAMAZONÍA relating to the forest exploitation in the Puerto Nariño municipality. When it emerged that the government agency had not fulfilled several of its legal obligations (pursuant to Decrees 1791 of 1996 and 1320 of 1998) and at some points had grossly exceeded its powers, the Procurator called for a meeting between the *cabildo*, CORPOAMAZONÍA, park authorities and various officials, including customs, police, the respective mayors of Puerto Nariño and Leticia and the governor of Amazonas.

At this meeting, organized in May 2000 in the indigenous community of San Martín de Amacayacu – a place of symbolic significance because it is situated both in the *resguardo* and in the national park – the representatives of the several government agencies came to recognize, at least nominally, the right and authority of the *cabildo mayor* in the local management of the forest. Furthermore, the parties reached agreement on some of the points under contention, particularly about their respective obligations with regard to the control and monitoring of forest exploitations in the areas under different legal regimes. However promising this outcome might seem from a legal perspective, in the months subsequent to the meeting there was not much reason to believe that ‘on the ground’ things had really changed. Although forest exploitations in the *resguardo* had officially stopped, in the ‘state-owned’ lands they were carried out just as before, and it seems that particularly the social struggle for control over natural resources in the Puerto Nariño area has continued on pretty much the same footing.

#### *Strategies and new directions*

The resolutions adopted by the Ticuna, Cocama and Yagua of Puerto Nariño following the formation of the *cabildo mayor*, as well as a recently drafted *Plan*

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*de Vida*, clearly reveal that it is not the aim of the indigenous community to stop or rule out the commercial exploitation of timber or other natural resources in the *resguardo*, but rather to appropriate this exploitation for the benefit of a social and economic development that is in accordance with its own norms and values.

Since the relocation of their forest settlements towards the banks of the principal waterways in the beginning of the 1970s, indigenous families (i.e., lineages) have increasingly sought to produce surpluses of subsistence crops for sale on local and regional markets in order to increase their overall standard of living. Yet there are strong indications that, under present conditions of increased local pressure on natural resources due to population concentration, this transition has affected the long-term stability of existing patterns of swidden-fallow management, in some localities with loss of self-reliance as a result. In addition, insecurity of prices and demand and high costs of river transport have not particularly made the market-directed production of perishable food crops a success. Recent ecological research in the Puerto Nariño area (Hammond *et al.* 1995: 350) suggests that a limited and controlled commercial exploitation of tropical cedar may provide a far more sustainable solution to integrating market-strategies with a subsistence-driven economy.

However, for the indigenous community to be able to effectively take control of the timber exploitation within its territory, it will first need to face up to several critical problems. First of all, it has to make sustained efforts to further build the necessary organizational capacity and social cohesion within the *resguardo*. Among other things, this will involve sorting out the remaining problems of authority and coordination between the *cabildo mayor* and the *curacas menores* of the various multiethnic sub communities, as well as easing existing tensions between the family elders of the villages and a much younger generation of new community leaders. Secondly, as none of the indigenous groups in the *resguardo* has as yet the financial means or technical capacity to independently conduct logging operations, the *cabildo mayor* has to break new ground in entering into some kind of profit sharing exploitation venture with nonindigenous licensees and/or the associations of (again predominantly nonindigenous) woodcutters in Puerto Nariño and Leticia (AMAPUNA and AMALEC). Thirdly, and most problematically, community authorities have to change their adversarial attitude towards the admittedly highly corrupt agency of CORPOAMAZONÍA, on which it formally depends for the issuing of logging permits (Roldán 2000: 55), and turn it into some kind of cooperative relationship. Given the disadvantaged position the indigenous population has in terms of political power, experience and networks in the face of influential timber merchants from Leticia and elsewhere, this might in fact prove a formidable challenge.



#### 4. Analysis: State Law and Ethnic Reorganization in Colombian *Resguardos*

The case studies of Jambaló and Puerto Nariño provide us with an impression of indigenous peoples' experiences with self-government in Colombian *resguardos* and illustrate some of the typical problems and dilemmas they face in the domain of natural resource management, economy and development. Often these problems are, in one way or another, related to the functioning of indigenous institutions of communal resource tenure, which are paramount in the economic organization of indigenous communities, forming the basic point of orientation for their members' resource management practices and economic activities, among themselves as well as in relation to outsiders. Taking a historical perspective, both cases point out that these problems, many of which are the result of conditions of oppression and exploitation during the pre-1991 political order, show a remarkable continuity under the new constitutional regime. This would seem to indicate that in Colombia the implementation of the recognition of communal resource tenure as a fundamental part of any arrangement for indigenous territorial autonomy has failed to address many of the problematic internal and external conditions under which these social institutions operate.

In Jambaló, as in many other small, colonial *resguardos* in the southwestern Andean region, problems are created first and foremost by a rapidly decreasing availability of arable land as a result of a steady growth of the *resguardo* population. This situation is exacerbated by the simultaneous existence of state-imposed cooperative tenures and private individual property next to the indigenous communal tenure regime. Under these internally pluralist conditions, a legacy of the indigenous land struggle of the 1970s and 1980s, the *cabildo* has to compete with these landholding entities and individuals over allocation rights regarding the scarce and unevenly distributed lands of the *resguardo*. At the same time, due to their age-long participation in regional economic structures, indigenous farmers, like other Colombia peasants, have seen their livelihoods severely affected by the enduring economic crisis in agriculture. A key problem in their attempts to maintain economic viability appears to be their exclusion from access to agricultural credit, as financial institutions generally do not accept usufruct rights to communal lands as collateral for loans. This inhibits them from purchasing key agricultural inputs needed for an intensification of land use practices. Thus, unable to find the means of production within the confines of the legitimate economy, many families have started to opt for the illicit cultivation of drug crops to the order of local guerrillas and drug trafficking agents.

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In Puerto Nariño, one of the many large and newly created *resguardos* in the Amazonian region, problems are to a considerable extent related to the small size and territorial dispersal of a highly fragmented and multiethnic indigenous community that has no tradition of centralized authority. While local tenure arrangements are generally working on a village level, the various subcommunities included in the *resguardo* still have difficulties in working out a new structure of supracommunity political organization that fits this nonindigenous property category and enables them to effectively prevent outsiders from illegally extracting natural resources from their communal forests. Ironically, this community's own aspirations to increase its standard of living with a limited commercial exploitation of forest resources, either now or in the future, threaten to become frustrated by national public regulations with regard to environmental protection and sustainable resource utilization. Moreover, in the Amacayacu National Park, which is partly superimposed on the *resguardo*, the constitutionally mandated participation of the indigenous community in the administration of the protected area seems doomed to fail amidst an institutional environment that is characterized by widespread corruption and political clientelism. Thus far functionaries of regional state-environmental agencies like CORPOAMAZONÍA appear to have followed their own secret agendas and have shown themselves very reluctant to relinquish their administrative powers to local indigenous authorities.

The cases of both Jambaló and Puerto Nariño clearly illustrate how indigenous communities have difficulties in reproducing their economic organization and underlying institutions of communal resource tenure, on the one hand because of unsettled problematic internal (material and social) circumstances and, on the other, because of unfavorable or persistent oppressive-discriminatory characteristics of the wider economic and political structures in which their economies and distinctive social institutions are embedded. These findings thus draw attention to the fact that the social significance of a constitutional recognition of indigenous territorial autonomy to a considerable degree depends on how the state – in this case that of Colombia – follows up on this recognition by developing statutory legislation, concrete policies and institutional reforms that create the necessary conditions for indigenous peoples to be able to truly exercise their right to self-determination (Van Cott 2000: 270). With regard to conditions internal to indigenous communities, such legislative and policy-making efforts should therefore be aimed at protecting their territoriality and guaranteeing them a resource base that is sufficient for the development of their economic and cultural activities, and at the same time at affirming and bolstering their particular forms of social organization. Regarding relations between indigenous communities, the state and nonindigenous society, laws, policies and institutional reforms should take cognizance of the economically and politically disadvantaged position these

communities have in the larger development process and help to constitute an institutional environment in which they can reach alternative development based on their own values, norms, institutions and aspirations, as well as on a more effective participatory engagement in larger economic and political structures and processes. Over the past ten years, however, government steps to devise or implement these kinds of ‘remedial-constitutive’ measures (Anaya 1996) have been scant and have exhibited mixed outcomes at best.

The most important legislative projects having a direct bearing on the (economic) situation of indigenous communities are the Law of Resources and Transfers (Law 60 of 1993) and the Law of Agrarian Reform and Rural Development (Law 160 of 1994). While Law 60 was to provide indigenous fiscal autonomy by securing constitutionally mandated resource transfers to *resguardos*, its execution under Decree 1386 of 1994 has generated much controversy. One issue is that nonindigenous mayors have been appointed as intermediate recipients of these funds, which is forcing indigenous authorities to negotiate development projects with often-corrupt municipal offices. Moreover, in many cases indigenous communities have difficulties in making effective use of their shares of state revenues since they received little or no training in project planning and management prior or subsequent to the implementation of the decree (Roldán 1997: 241). Law 160 of 1994 has been widely criticized, particularly by peasant unions and indigenous organizations, for its failure to effectuate a rapid and extensive redistribution of land or otherwise improve the living conditions of the masses of rural poor. Instead, the agrarian reform is proceeding by droplets as land negotiations are largely left to the forces of the market (Avirama and Márquez 1994: 92; see also Ochoa 1998). Equally, Decree 2164 of 1995, which further elaborated Law 160 for indigenous communities, has not been able to bring a solution to the land shortage in Andean *resguardos* or put an end to land encroachment and illegal exploitation of natural resources in *resguardos* of the Amazonian and Pacific Coast regions (Roldán 1997: 242-243).

In addition to this legislation, the government launched in 1995 a special four-year ‘program of assistance and ethnic strengthening for Colombia’s indigenous peoples’ as part of the National Development Plan 1995-1998, elaborated in a document of the National Council for Economic and Social Policy (CONPES No. 2773). This program, which basically was a continuation of a line of indigenous policy initiated in 1980, established that during four years 2% of the national budget for social and environmental spending was to be allocated to the indigenous population, including, however, state funds for resource transfers and agrarian reform measures directed at *resguardo* communities. Among other things, it made provision for co-financing projects for increasing levels of agricultural production in indigenous communities by way of the Indigenous Rural

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Development Fund, and signaled the need for alternative credit facilities that should enable indigenous farmers to substitute illicit drug crops. Furthermore, the policy document assured indigenous participation in activities aimed at the exploitation, management and conservation of natural resources in indigenous territories and promised training in public administration for indigenous authorities (Jimeno and Ministerio del Interior 1995: 165-167; Arango Ochoa and Sánchez 1998: 62-63). Ambitious as it may have been, according to experts the CONPES program failed to produce any tangible results since it never came any further than a mere enunciation of vague and incoherent intentions, lacking a clear definition of responsibilities of the various ministries involved (Roldán 1997: 248; see also Cortés 1996). Moreover, the General Office of Indigenous Affairs (DGAI) of the Interior Ministry, which was responsible for the coordination of the program, is said to have adopted a strategy of working directly with individual communities and groups, thereby marginalizing national and regional indigenous organizations in the process (Van Cott 2000: 90-91).

The CONPES program was not continued nor evaluated by the 1998-2002 administration. Except for a decree related to the consultation (not participation) of indigenous peoples in the management and exploitation of natural resources (Decree 1320 of 1998), there have not been any significant legislative or policy-making efforts with regard to the implementation of indigenous peoples' economic and political rights since 1998 (pers. comm. Roldán, March 2001). This is indicative of the emergence of a conjuncture less favorable to indigenous peoples' rights, which can be appreciated against the backdrop of a state that from the mid-1990s onwards has become increasingly distracted by more pressing problems, such as continuing economic recession and a related strong increase in guerrilla and other forms of political violence. This development underscores the uneasy relationship between the recognition of indigenous autonomy and the neoliberal economic reforms that have accompanied its implementation (Cortés 1996; Roldán 1997). Although political liberalization and its concomitant schemes of democratization and decentralization were among the most important forces that opened up opportunities for an increased recognition of indigenous authority, this recognition has remained confined to the lowest administrative level, while regionally and nationally indigenous peoples continue to be excluded from meaningful participation in decision-making on public policy directly affecting them (Cortés 1996; Roldán 1997; Van Cott 2000). Concurrently, the state has reduced public spending and has withdrawn from antipoverty and social investment programs like CONPES, and in the countryside in general, leaving indigenous communities and their fragile economies extremely vulnerable to the pressures and potentially disruptive influences of the free market and global economy, the effects of which can clearly be discerned in the cases of Jambaló and Puerto Nariño.

Giving consideration to all the above, it must be concluded that in Colombia the adoption of the 1991 constitution thus far has not produced a structural transformation of relations between indigenous peoples, the state and nonindigenous society,<sup>25</sup> or at least not in the sphere of property, economy and development.<sup>26</sup> The prevailing political regime, ruled by national and regional political elites, has basically retained its imbalanced and exclusionary characteristics, and in relation to the country's indigenous peoples has failed to provide the material and institutional basis for their communities' pursuit of a self-determined, autonomous economic and cultural development, in spite of the formal recognition of indigenous territorial autonomy and institutions of communal resource tenure. In the meantime, extreme socioeconomic inequality and the US-financed 'Wars on Drugs and Terrorism' have combined to spawn a new cycle of violence currently sweeping the countryside, which in many parts of the country is seriously hampering indigenous efforts to organize politically and find solutions to their problems (Van Cott 2000: 253; see also Wouters 2002). Under these conditions, the question arises whether the recognition and protection of the ethnic and cultural diversity of the nation, as decreed by Article 7 of the Political Constitution, is not merely impotent rhetoric and Colombia's model of constitutional multiculturalism no more than a more benign version of 'weak' or 'unitarian' political and legal pluralism (cf. F. von Benda-Beckmann 1997; Hoekema 1999).

To draw this (indefinite) conclusion, however, is not to say that the 1991 Constitution and subsequent legislation have been irrelevant to indigenous communities. This is not the case because the social significance of the constitutional recognition of indigenous peoples' rights (as group rights), most

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<sup>25</sup> By 'structural transformation' here is meant "a genuine transformation of the character and habitual mode of operation of a society's political and legal institutions" (Pogany in Van Cott 2000: 7), which also refers to the concept of 'belated state-building' elaborated by the UN Working Group on Indigenous Peoples (see also note 4 above).

<sup>26</sup> It could be asserted that the functioning of the Constitutional Court, which over the past years has been actively defending new constitutional rights of indigenous peoples is an exception to this case (e.g. Cepeda 1995; Roldán 2000; note 24 above). The practical consequences of these rulings for the aggrieved indigenous communities concerned seem to be disappointingly limited however. For example, in the 1991-1997 period not one of its rulings in favor of indigenous communities was carried into effect (Valencia 1997).

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inclusively exemplified by their right to territorial autonomy, also is determined by the degree to which indigenous communities themselves succeed in appropriating and making use of these rights to develop solutions to their problems and further their demands. These practical implications of the new legal framework on the local level refer to what Merry (1995: 14) has called the 'constitutive effect' or 'culturally productive role' of law: the fact that law and legal processes influence the construction of social and cultural life. In the case studies of Jambaló and Puerto Nariño, we can clearly see this constitutive effect of law when taking a closer look at the ways in which new indigenous legislation is entering into these communities' strategies to solve their organizational problems by adapting, to varying extents, their characteristic cultural patterns and social institutions to a changing social, economic, political and legal situation, a process which has been referred to as 'ethnic reorganization' by Nagel and Snipp (1993: 204).

In Jambaló, the affirmation and extension of the legislative, administrative and jurisdictional powers of indigenous authorities in the 1991 constitution has consolidated *cabildo* authority and has given new impetus to a process of community organization that was initiated at the end of an episode of indigenous land struggle. Within this framework, the *cabildo* and community have recently embarked on a difficult process of territorial reorganization, which is aimed at reestablishing a more unified and coherent communal tenure regime as well as questioning equity aspects of past land allocations. Simultaneously, Law 60 of 1993 and elements of state indigenous policy are being used in restructuring economic activity, though until now, for reasons noted above, with only moderate success. In so far as constitutional rights, statutory laws or specific agreements such as the Jambaló Agreement have not been implemented or have not materialized, Andean indigenous communities including Jambaló are deploying these legal norms as resources in claim-making mobilizations against the state and its agencies. For example, during a highway blockade in La Piendamó in June 1999, indigenous communities led by CRIC declared a "state of social, cultural and economic emergency of the indigenous peoples of the Cauca department", demanding government compliance with Law 160 of 1994 (Agrarian Reform) and official norms regarding indigenous participation in the design and implementation of indigenous policy, as well as socioeconomic investment and special credit facilities for indigenous communities. Of late, Jambaló and 11 other Páez *resguardos* increasingly participate in a federative Association of Indigenous Communities of the Northern Cauca (ACIN), established pursuant to Decree 1088 of 1993 regulating the creation of this kind of association, both to more effectively defend themselves politically and to jointly work out proposals for the substitution for poppy and coca cultivation of culturally appropriate socioeconomic development alternatives.

In Puerto Nariño, the practical implications of the new constitutional order are maybe even more apparent. If the formation of the *resguardo* in 1990 (pursuant to Law 30 of 1988) had already aroused a ‘new indigenous conscience’ (Jackson 1996), political reorganization of the Ticuna, Cocama and Yagua population was really set off by a growing awareness of the mismanagement of tax revenues by municipal authorities, violating Law 60 of 1993, and even more by the discovery of uncontrolled timber exploitation by uninvited guests. Defending the community’s recently acquired territorial rights with the assistance of legal advisers from ONIC, new indigenous authorities in the shape of the *cabildo mayor* have been successively invoking constitutional rights and statutory legislation (PC Art. 329, Law 21 of 1991 and Decree 1320 of 1998) to take up position against CORPOAMAZONÍA, a corrupt state-agency which had thus far been able to arbitrarily act like a state within a state. Although this has considerably increased political awareness within the community, the struggle for control over natural resources in the *resguardo* and adjacent state-owned lands still continues. In 2000 several *curacas* of the Cothué-Putumayo *resguardo* (to the north) were seeking alliance with the *cabildo mayor* of Puerto Nariño as they also had reported illegal timber exploitations in their communal territory. Together, they established the Association of Indigenous Cabildos of the Trapecio Amazónico (ACITAM) to jointly fight for the recognition of their authority and elaborate indigenous proposals for the co-management of the Amacayacu National Park.

While these are clear examples of promising ‘constitutive’ or ‘culturally productive’ effects of indigenous rights and legislation among Colombia’s indigenous peoples, the focus on ethnic reorganization in this paper is not meant to deflect attention from potential drawbacks or ‘destructive effects’ of the new constitutional regime, such as internal fragmentation of indigenous communities and organizations as a result of new economic incentives (most notably Law 60 of 1993) and political opportunities, or the intrusion of the state and its ideology into indigenous communities’ internal affairs through their integration in the national political system (Padilla 1995), nor to obscure the persistence of the highly asymmetrical power relationship between indigenous peoples and the state. Nonetheless, although enormous challenges remain to the achievement of indigenous peoples’ territorial autonomy and self-determination, there is reason to hope for positive changes in the future, because, in the words of Roque Roldán, even

in the worst case scenario, where [the state ignores or attacks] the new constitutional vision, the new rights continue to interact with and nourish the heightened political consciousness and

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organizational capacity of social movements in the post-constitutional conjuncture (Van Cott 2000: 255).

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