

Environmental democratization and water justice in extractive frontiers of Colombia



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ABSTRACT

Mechanisms of democratic participation have been activated in Colombia since 2006 for the purpose of protecting water sources, hydrosocial territories and peasant livelihoods. A chronological perspective on the numerous and varied cases illustrates their cumulative, transformative effect on judicial decisions taken by the high courts, which have endorsed these mechanisms of direct democracy and expanded the scope of democratization to socioenvironmental issues. The process of environmental democratization in Colombia has been gradual, starting with the creation of opportunities for citizen participation in the Constitution of 1991; followed in the first decade of this century by the activation of the mechanisms of democratic participation created; and culminating with the watershed Constitutional Court ruling T-445 of 2016, which confirmed the right of municipalities to consult with their citizens about mining and oil extraction in their territories. The cases are analyzed here through the lens of democratization and transformative and judicialized politics. The paper argues that the reconfiguration of power through the use and contestation of participatory mechanisms reveals an ambiguous state-formation process characterized by repressed democratization. It also demonstrates that the process of environmental democratization that started with the activation of the democratic participation mechanisms introduced in the Constitution of 1991 has been one of transformative democratic politics, in which a dynamic array of political actors have consolidated democratic participation on environmental issues through constitutional lobbying and activism.

1. Introduction

In August 2016, the Colombian Constitutional Court issued ruling T-445, the first ruling of this high court regarding popular consultations and environmental justice, which confirmed the municipalities' right to consult their citizens about issues dealing with mining and oil extraction in their territories. The ruling came in response to a legal action filed by a citizen of the municipality of Pijao who had been denied the constitutional right to participation by a regional administrative tribunal a year earlier. It came after several years of intense political struggle to extend the scope of the mechanisms of participatory democracy incorporated in the Constitution of 1991 to include environmental issues, which I will refer to as a struggle for environmental democratization. This struggle started in the first decade of this century largely as a call for water justice in extractive frontiers, and was characterized by continuous social mobilizations, legal lawsuits, governmental coercion, and multiple successful and blocked attempts to activate institutions of democratic participation.

The democratic participation mechanisms introduced in the

Colombian Constitution of 1991¹ were explicitly intended to encourage the process of democratization, but their activation to expand the scope of democratic processes to environmental issues has been extremely arduous. The mechanisms that have been activated for environmental issues since 2006 include the normative popular initiative, the referendum, the popular consultation, and the open hearing, as shown in Fig. 1. These institutions have been called upon in order to protect water sources and local economies, and to propose alternative visions to an economy based on the extraction of non-renewable resources. Through the popular normative initiative citizens promote the adoption of laws or regulations within the respective jurisdiction (Congress, departmental assemblies or municipal councils); in a referendum people have the opportunity to vote to approve or reject a draft legal rule, or to revoke one that is in place in the respective jurisdiction; popular consultations give an electorate the opportunity to vote on a particular "yes or no question" relevant to their jurisdiction (Rodríguez-Franco, 2016). The open hearing is a public meeting of the district, municipal and/or local administrative council where communities can raise an issue of concern, to which authorities are obliged to respond—without making

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¹ The legal framework for the mechanisms of participation is found in Article 40 of the Constitution of 1991, Law 134 of 1994 and Law 1757 of 2015.

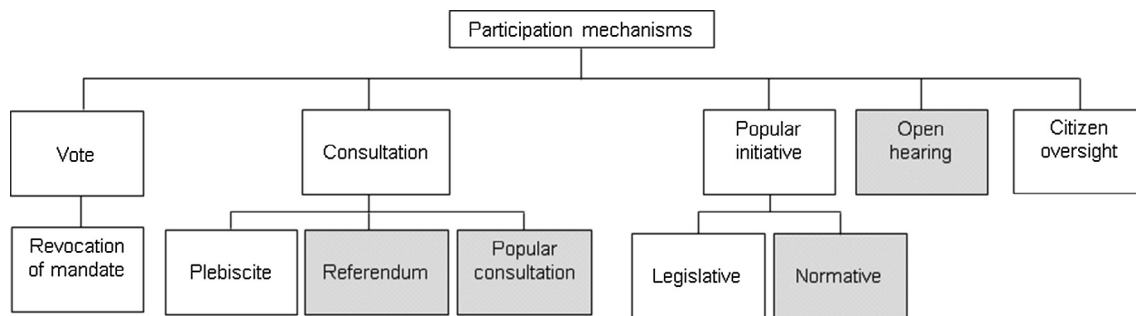


Fig. 1. Mechanisms of political participation in Colombia. The ones shaded are discussed in this article. .
Source: Murcia-Riaño (2014)

decisions.

The introduction of democratic participation mechanisms in 1991 opened up new possibilities for political engagement. In the twentieth century, before such mechanisms were introduced, socioenvironmental conflict, particularly in oil extraction regions, started once extraction had already begun and the consequences were being felt by local communities, and mobilizations were mostly led by unions and the waged workers of the oil companies (Legrand, 1986; Van Isschot, 2015). The struggles therefore mostly concerned the distribution of the environmental goods and impacts of extraction (environmental/water justice), inequality, working conditions and access to land. They were fueled by the sense of injustice resulting from the privatization of land and water, and from the socialization of scarcity and pollution.

The Constitution of 1991 opened up a window of opportunity for broadening the horizon of contestation. Since the first decade of this century, an alliance of peasant movements, environmental activists, legal and human right NGOs, and university students have activated the mechanisms not only to demand environmental/water justice through redistribution, but also to question the extractive model and demand decision-making power regarding the kind of development territories should pursue. They have started to demand the right to decide whether the extractive activity should take place or not. Conflicts in extractive frontiers have widened to encompass not only environmental/water justice, but also democratization and sustainability.

By analyzing the activation² of these mechanisms since 2006 on issues related to water, territorial transformation and local economies, and the obstacles put in place by coalitions of state and private actors, my goal is to make a contribution to the field of environmental democratization as a way forward in the transformation of socio-environmental conflicts. The relevance of this field of enquiry lies in the rapid spread of extractive activities in peripheral regions, the severity of the environmental impacts and landscape transformations, and the intensification of violence against environmental activists and leaders in Colombia after the signing of a peace agreement with the FARC rebel group in late 2016.

I argue that in order to recognize the potential of the recent use of democratic mechanisms to enhance participation in decisions with socio-environmental impacts, it is necessary to assess the numerous and varied cases from a chronological perspective. This makes it possible to see their cumulative, transformative effect on the judicial decisions taken by the high courts, which have endorsed these mechanisms of direct democracy and expanded the scope of democratization to water, territorial transformation and development models.

The work is based on two years of fieldwork that included (1) multiple visits to four sites where democratic participation institutions

were activated; (2) thirty-five in-depth semi-structured interviews with community leaders, environmental activists, NGO representatives and legal consultants involved in popular consultations, a water referendum, and a popular normative initiative; (3) participant observation of debates in four public audiences; (4) the review of archival materials such as minutes of meetings and public audiences; (5) the review of several lawsuits that led to judicial decisions by the high courts; (6) the review of judicial decisions from the two high courts, the Constitutional Court and the Council of State, plus a number of judicial decisions from regional administrative tribunals and regional environmental authorities; and (7) the review of national and local media to capture the narratives and arguments of the various actors. Additionally, in May 2014, together with the environmental NGO CENSAT Agua Viva, I organized a workshop in Fusagasugá with twenty leaders of social movements from various regions of the country to discuss barriers to and opportunities for using democratic participation mechanisms. Finally, the cases were compared in terms of two opposing trends: state agencies' strategies to repress participation in the context of state formation, and the effectiveness of legal activism and judicialization in the context of transformative democratic politics.

The paper is structured as follows. In section two I start by introducing the historical and geographical configuration of extractive frontiers in Colombia to provide a background to the local struggles for participation, with specific reference to the regions where the process started. Section three defines key analytical terms, while section four presents a chronological overview of the dynamic relationship between the multiple actors involved in the struggle to activate/block the institutions of direct democracy for socioenvironmental issues over the period 2006–2017, through the lens of transformative and judicialized politics and the process of state formation. Section five presents the main conclusions derived from the analysis: First, that the re-configuration of power through the use and contestation of participatory mechanisms reveals an ambiguous state-formation process characterized by repressed democratization. And second, that the process of environmental democratization that started with the activation of the democratic participation mechanisms introduced in the Constitution of 1991 has been one of transformative democratic politics in which a dynamic array of political actors have consolidated democratic participation regarding environmental issues through constitutional lobbying and activism.

2. Extractive frontiers and socioenvironmental conflicts

The communities leading the process of environmental democratization since 2006 within Colombia are located in extractive frontiers. These frontiers are the regions where social metabolism is more intense—that is, where economic processes linked to the consumption, depletion and appropriation of natural resources are concentrated and expanding (Martínez-Alier, 2009). Changing patterns of consumption and production, global capital's search for profits, and a fivefold increase in the human population since 1900 have led to social

² The process of activating an institution of citizen participation is defined by Rodríguez-Franco (2016) as the political process through which institutions go from dormant to active. The type of activation referred to in this article is the one she identified as citizen institutional activation, which occurs when an unusual coalition of actors line up in favour of or against certain rules or practices and disrupt existing institutional arrangements.

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