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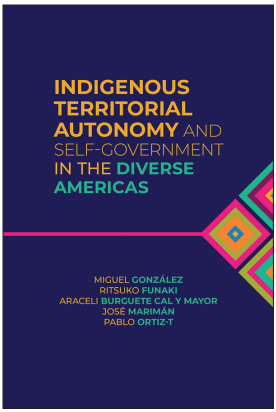

INDIGENOUS TERRITORIAL AUTONOMY AND SELF-GOVERNMENT IN THE DIVERSE AMERICAS

Edited by Miguel González, Ritsuko Funaki, Araceli Burguete Cal y Mayor, José Marimán, and Pablo Ortiz-T

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Foreword

The academic work that I am honored to present is steeped in history, paradigms, realities, experiences, denunciations, questions and struggles, from the point of view of an outstanding group of professional specialists or activists committed to the defense, promotion and enforcement of the human rights of Indigenous peoples.

The compendium of writings collected in *Indigenous Territorial Autonomy and Self-Government in the Diverse Americas* is one more milestone achieved in this process of recovery of rights.

There are 22 authors, mostly women, and Indigenous women, who share the different experiences they have lived within the states of the region, in this rugged journey along the path towards the recovery of fundamental rights.

The book is organized in three sections, based on chapters written by the different authors. The first part, entitled "Post-multicultural *Constrictum*," begins with a critical look at multiculturalism and Indigenous recognition policies. It addresses the advances, restrictions and setbacks that Indigenous autonomies have experienced in relation to the states. The second section, called "Possibilities: Recovering What Has Been Lost and Rebuilding," identifies and describes certain spaces of openness in the exercise of Indigenous autonomy and self-government. In this area, the importance of the agency of the Indigenous peoples themselves in defending their rights to political autonomy is highlighted.

Finally, the third part, entitled "Autonomies as Emancipation: Own Paths," presents various instances in which Indigenous peoples, regardless of official recognition by the states, have advanced in the exercise of their autonomous rights, as an emancipatory process expressed in self-determination.

Undoubtedly, this work constitutes an ample space for reflection that allows the reader to enter into the thinking and knowledge of the Abya Yala. A commendable effort that permeates not only the academy but the entire society and all democratic institutions and public policies aimed at making "the dignity of and for Indigenous peoples a custom."

Our unique and diverse America has been the stage for a history of countless injustices, exclusions, dispossessions, inequalities, aggressions and even exterminations against Indigenous peoples, paradoxically the original

ones. From the conquest to our times of supposed democracy, the value of Indigenous culture, their cosmovision and ancestral knowledge has been undervalued; they have been dispossessed of their lands, territories and natural resources, for which today they maintain their struggle to recover their autonomy, self-government and self-determination. And they continue to suffer exclusion and marginalization in conditions of inequality and discrimination.

International organizations in this quest for respect, promotion and protection of the human rights of Indigenous peoples have made significant progress, but we are still far from the legal and practical consolidation of their right to self-determination.

An important normative movement has been developing in a group of countries in our region, including the recognition of the autonomy of Indigenous peoples to decide on their own development processes, forms and rules of coexistence, self-government and autonomy, assigning it constitutional status. This raised great expectations of progress in these areas, but translating it into practices and actions continues to be a great challenge for the states.

Unfortunately, Indigenous peoples continue to face new forms of colonialism, restrictions to their rights, setbacks, confrontations and even the criminalization of their leaders for their struggles in defense of their lands, territories and natural resources.

This panorama is described from the diverse America, with the different approaches presented by the authors of the book; advances, regressions, contradictions in public policies and the search for new paths to build firm autonomies, among other aspects.

In addition to being inspiring, this book requires the IACHR, from the Rapporteurship on the Rights of Indigenous Peoples, to reaffirm its commitment to accompany, monitor and defend their rights, in the context of the international obligations assumed by the countries of the region, employing all the mechanisms and tools available for this task

Finally, I would like to highlight my appreciation to the Indigenous peoples, as well as to all the national and international organizations that serve as a voice in accompanying the initiatives of these collectives to achieve their autonomy, self-government and self-determination. The work of the IACHR in these matters cannot wait.

Esmerelda E. Arosemena de Troitiño
Inter-American Commission on Human Rights/OAS
Commissioner Rapporteur for the Rights of Indigenous Peoples

Introduction

Miguel González,
Araceli Burguete Cal y Mayor,
José Marimán,
Pablo Ortiz-T. and
Ritsuko Funaki

The collection of articles in this volume came about through an invitation to a group of colleagues to reflect on Indigenous Peoples' struggles for autonomy in the Americas a decade on from the publication of the book *La autonomía a debate. Autogobierno Indígena y Estado Plurinacional en América Latina* (González, Burguete Cal y Mayor & Ortiz-T., 2010).[1] *Autonomía a debate* was a collective work which, at the time, sought to synthesize the growing interest in Indigenous Peoples' autonomies in Latin America following two decades of political, legal and socio-economic changes that had been fundamental to the relationship between States and Indigenous Peoples.

Unlike that publication, this book is not the result of a specialist meeting on the subject, nor does it attempt to offer a synthesis of the autonomous processes in the region, given their inherent plurality. On the contrary, this book is the result of a unique collaborative effort between people who, while they had no previous history of working together, did have a common interest in the same topic: the exercise of autonomy and self-government as expressions of Indigenous Peoples' right to self-determination in a diverse America. Another notable common feature among the contributors is that most of them are women, with extensive experience in research committed

to Indigenous struggles. Also notable is the fact that some chapters are the result of research by Indigenous scholars or activists in positions of leadership and influence within their respective communities, peoples and organizations, or the result of long-standing and well-placed collaborations between Indigenous and non-indigenous colleagues contributing to the struggles for autonomy in the Americas.

****

Policies of multicultural recognition peaked in the region around a decade ago but criticisms of this paradigm, now being more forcefully formulated (Hale, 2005; Kaltmeier et al., 2012), were already evident at the time. Critical perspectives have come from different sectors and from a multiplicity of ontologies but particularly from Indigenous Peoples who are facing — in different areas of struggle and with varying degrees of intensity — the onslaught of new dynamics of cultural and economic dispossession, this time especially violent and persistent (Dest, 2020).

Kaltmeier et al. (2012) rightly note that:

> Although the emergence of new social movements claiming recognition, participation and redistribution has occasionally been met by repressive institutional responses and open acts of violence, multiculturalism suggests a politics of symbolic recognition with only limited need for restitution or redistribution (p.105).

While policies of recognition began to neutralize the collective action being expressed by Indigenous Peoples in their demands of the State, Indigenous Peoples called (and continue to call) for equitable redistribution mechanisms and policies, and respect for and recognition of their sovereign forms for expressing political autonomy as a fundamental condition for reversing the historical legacies of racism and colonialism.

The limits and challenges to multiculturalism as a policy of recognition have been especially evident in the struggles for autonomy in the Americas. Autonomy — that variety of practices, processes and mechanisms of self-governance by which the inherent rights and sovereign aspirations of the world's Indigenous Peoples to self-determination are expressed and given meaning

— is an intrinsic part of the contemporary socio-political life of Indigenous societies in our Americas. Around the turn of the century, a number of works attempted to capture the origins, dynamics and diversity of the Indigenous self-determination processes that were resulting from constitutional reforms, inspired in part by the multicultural paradigm (Assies, 2000; Sieder, 2002; Van Cott, 2005; Postero & Zamosc, 2005; Yashar, 2007; Bengoa, 2009; González et al., 2010; Rice, 2012). As reflected in the articles published in this volume, the range of Indigenous autonomies is now far more complex, diverse and, at the same time, contradictory (González, 2016; Esteva, 2015). In one group of countries such as Bolivia, Ecuador, Colombia, Nicaragua, Panama, Canada and, more recently, Mexico, autonomies have managed to achieve State recognition, establishing themselves as political-administrative systems of self-government at differing sub-national levels (González, 2015). In other countries such as Chile, Brazil, Argentina, Guatemala, Honduras, El Salvador, the United States and Peru, there are still significant challenges to Indigenous Peoples being able to exercise their right to autonomy, especially in terms of these countries recognizing, respecting and strengthening self-government, promoting plurinational democratic coexistence and politically empowering those who are participating in these processes on a daily basis (Cameron, 2013).

It should be recognized that some States in the Americas have transformed their legislation to provide support to autonomies, and that the region as a whole is putting remarkable regulatory developments and public policies in place in relation to the rights of Indigenous Peoples (Aylwin & Policzer, 2020; ECLAC, 2020). The world's Indigenous population currently totals some 476 million inhabitants living in more than ninety countries (IWGIA, 2020, p. 7), of which the Americas accounts for around one-tenth (ECLAC, 2014, p. 98). If we compare this with the Asian region (China, South Asia and South-east Asia), where the vast majority of Indigenous Peoples reside (Hall & Patrinos, 2012, p. 12), the Americas are notable for its advancement of the recognition of rights (Inguanzo, 2014). And yet, in practice, this recognition has often been undermined by the dynamics of neoliberal economic globalization and the centralizing power of a bureaucratic State apparatus, particularly in terms of the dispossession of their ancestral land by extractive economies. The State has, not infrequently, and indeed perhaps most of the time, either colluded with (in some cases illicit) economic power groups in these processes or treated them with kid gloves, rendering the framework of rights recognized

in national and international legislation virtually toothless (McNeish, 2013; Ortiz-T., 2016; IWGIA, 2019). Moreover, in some countries this state of affairs has led to intransigence and a hardening of the political elites in relation to demands for autonomy together with a consequent radicalization or *de facto* self-proclamation of the peoples by founding or establishing their own autonomies and political sovereignty *vis-à-vis* the State (Sieder, 2020b; Dest, 2020).

In their most general aspects, Indigenous autonomies can be viewed as a specific and flexible method of dividing up power — a constructive arrangement — by means of which States can move toward the construction of more inclusive societies and citizenships (Lapidoth, 1997, pp. 174-5). Beyond that possibility, however, the exercise of autonomy promotes and drives new social relationships based on inclusion rather than integration, on self-affirmation rather than domination.

A large proportion of the experiences considered in this volume coincided in time with the shift in several countries of the Latin American region toward governments elected on progressive political platforms, the so-called "pink tide", which now seems to have faded away (Larrabure, 2020). These governments pledged to support Indigenous and Afro-descendant agendas, deepen democratic spaces and target their efforts toward the most dispossessed (Rice, 2020, p. 161). The "pink tide" governments adopted more inclusive policies with regard to wealth distribution and managed to reduce inequality and poverty (albeit to varying degrees) in comparison to countries under conservative governments over the same period (Huber & Stephens, 2012; Flores Macias, 2012; López Calva & Lustig 2010; Balam & Montambeault, 2020). These policies were based on universalist visions of social policy, however, and their implementation was accompanied by a more active role for the central State institutions. From this perspective, policies lost sight of a more integrated and differentiated perspective for Indigenous Peoples and, in practice, tended to overlook — and frequently undermine — mechanisms for the participation and inclusion of Indigenous Peoples, their institutions, organizations and communities.

It should nonetheless be noted that the conservative governments of the same era did no better in addressing Indigenous Peoples' demands for autonomy. More conservative administrations frequently used social welfare programs to contain Indigenous protest as a counterinsurgency tool, as documented in the study by Yörük et al. (2019) in the case of Mexico. In addition, the rise in commodity and mineral prices on global markets promoted an

expansion of the extractive frontier and, in some cases, a return to primary economies both in those countries governed by the Left and those under conservative administrations, which as a whole showed a moderate level of economic growth. In our opinion — and as other authors have observed — this momentum in a growth model based on natural resources and primary goods brought into focus new and acute contradictions in the relationship between States and Indigenous Peoples and peasant communities (Rubio, 2012). For Indigenous Peoples, it was a struggle to preserve the integrity of their territories in the face of a new onslaught from neoliberal capitalism, and a struggle for their cultural survival. For governments, however, it was an opportunity to ride the wave of the commodity boom before it dissipated. It is no coincidence that, both in those countries governed by Left-leaning administrations and those governed by conservative governments, Indigenous Peoples initiated new cycles of mobilization and activism, often not to achieve new rights but to defend those already constitutionally recognized, and also to construct new meanings for those rights *on the basis of their exercise* (Santos, 2014, pp. 29-30).

At the international level, in terms of protecting the human rights of Indigenous Peoples, the scenario is both promising and declarative. Article 3 of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) states: "Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development." Meanwhile, Article 4 states that:

> Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions. (United Nations, 2007)

However, there are significant challenges to this supranational body of law, and it is not always legally binding on States to materialize these texts in a practical way such that Indigenous Peoples are able to effectively exercise their autonomy. Sambo Dorough (in this volume) draws attention to the difficulties of UN member states "have difficulty digesting the fact that the right of self-determination is one whole right, which has various forms, dimensions,

and contexts, including autonomy and self-government." James Anaya made the same observation when he noted that:

> Self-determination cannot be viewed in isolation from other human rights norms but must rather be reconciled with and understood as part of the broader universe of values and prescriptions that constitute the modern human rights regime. (2005, p. 141)

Despite all this, in those countries where agreements on autonomy and self-government have been established, rights are still not fully respected and, in the best of cases, they are adhered to sporadically, giving rise to what Victoria Tauli Corpuz, former UN Special Rapporteur on the rights of indigenous peoples, has called the exercise of "fragmented self-determination" (Tauli Corpuz, 2020, p. 14).

In States that are reluctant to recognize Indigenous Peoples as political actors demanding formal mechanisms through which to dialogue with the State, Indigenous autonomies are perceived as a threat to their jurisdiction. They therefore emphasize the need to defend their exclusive sovereignty over and above autonomy, together with apparent prerogatives over the legal, administrative and territorial competences that derive from this internationally-established principle. This position not only ignores the gradual developments in international human rights standards for Indigenous Peoples but is also outdated and anachronistic in the world today. For their part, Indigenous Peoples propose transforming the State through autonomies, which means facing up to and challenging important implementation gaps and, above all, improving the quality of democracies, making them more inclusive of those who have remained on their fringes. This they intend to do by means of a sub-national distribution of power/government, i.e. through mechanisms of political and not only administrative decentralization (Marimán, 2017, p. 32; IWGIA, 2019; Arteaga, this volume).

Autonomies are also challenged by the lack of an institutional or political environment conducive to Indigenous Peoples' aspirations for self-determination. One example of this is the right to free, prior and informed consent (FPIC), the adoption of which is still uneven in different countries' regulatory frameworks and, in some cases, has suffered setbacks caused by a predominance of sham practices. This frequently results in consultations being a mere formality that allows States and domestic and global private agents

to advance their projects to dispossess the peoples of their natural resources and ancestral territories (Aylwin, 2013; McNeish, 2013; ECLAC, 2020, p. 49; Mendoza, 2019; Ortiz-T., this volume).

Given their relevance as Indigenous Peoples' processes of social, cultural and, above all, political construction, Indigenous autonomies now hold great significance as a political and epistemic concept for their peoples and communities in their relationship with States, which is why exercises in Indigenous self-government are gaining relevance, since they are struggling for their recognition, or sometimes simply self-proclaiming it in the face of State opposition. Autonomy can be uncomfortable and challenging to deep power structures that impose exclusive and totalizing systems of law, and States often therefore perceive it as a threat. And yet it is of strategic interest for States to identify best practices by which to improve the defence and protection of Indigenous Peoples' political rights as a distinct ethno-national human group because the State would thus be able to gain stability (peace and order), social justice and coexistence-tolerance-respect for the human rights of all its inhabitants; in addition, however, beyond formal recognition with all its inherent ambiguities, respect for the political rights of Indigenous Peoples lead to improved exercise of the democratic life of their national societies.

For Indigenous Peoples, the consolidation of their autonomies represents a social, cultural and political process that goes beyond the full exercise of recognized rights within contained or open territorial spaces. It may, in particular, mean their epistemological, sociocultural and political survival as distinct peoples, together with respect for their sovereignty to collectively self-recognize (Melin et al., 2016, p. 120). This volume attempts to offer an overview of experiences of autonomous self-government, some in the process of being established, others already operational and, more generally, of the different struggles for autonomy in the diverse Americas, bearing witness to the progress made, the challenges and threats.

Organization and Content of the Book

The volume is organized into three sections, covering experiences from thirteen countries in the Americas. The first section, which we have entitled "Post-multicultural *Constrictum*", brings together chapters that address the adversities that autonomies have faced in relation to States in an era of a rollback of rights. The second section, "Possibilities: recovering what was lost

and rebuilding", includes contributions that bear witness to important openings and opportunities, whether in national legal orders or in the practices of peoples and their organizations in terms of continuing to make progress toward building their autonomies and self-government, despite the obstacles. The third section, "Autonomies as emancipation: own paths", includes chapters that highlight the plurality of own practices, the cultural, political and institutional processes being led by Indigenous Peoples on different levels, within different social orders, and with varying degrees of complexity. These processes offer new prospects for emancipation and creative futures in the struggles for autonomy. This plurality of autonomous actions reveals both the collective agency of peoples and their organizations, and the limits of a post-multicultural era.

Post-multicultural *Constrictum*

Many of the contributions to this volume deal directly or indirectly with the inescapable question of the consequences of multiculturalism for autonomous processes and, in particular, self-government: what are the prospects for Indigenous Peoples today? One post-multicultural innovation, which was novel at the time, was the constitutional reforms in Bolivia and Ecuador. These incorporated the plurinational nature of their respective societies into their political charters, along with Indigenous Peoples' right to self-determination and autonomy (Aparicio, 2018; Schavelzon, 2015; Santos, 2010). In the years following these reforms, however, not only did the avenues for realizing these rights become restricted, but States also often became actively involved in circumscribing these rights to self-government or actively dismantling the fragile community consensus necessary for forging viable agreements and building autonomies from the vision and practices of the peoples. This method of disabling autonomist aspirations is often accompanied by racist ideologies and colonial rhetoric that attempts to delegitimize Indigenous Peoples' desires for self-determination, as highlighted by the contributions of the chapters on Bolivia to this volume, particularly those of María Fernanda Herrera, John Cameron and Wilfredo Plata, as well as that of José Marimán on Chile.

It can be seen from most of the contributions in this section that once multicultural policies of recognition had been adopted, limitations on their parameters and apparent hegemony became almost immediately evident

(Harvey, 2016; Postero, 2009). In practice, in a multicultural era, the globalized neoliberal State often behaves like a constricting machine: it restricts, contracts, compresses and frequently disables processes of collective self-determination and self-government by means of different strategies and technologies, resorting to judicial actions, economic policies and political manoeuvres. But this constrictor effect does not revolve exclusively around State power. Reflecting on the effect of Indigenous recognition policies in Canada, Coulthard observes that, while these have enabled a series of devolution agreements as regards Indigenous land rights, economic development initiatives and self-government arrangements, at heart such policies do not change the structures and relationships of domination upon which *settler states* are sustained (Coulthard, 2014, p. 3). These structures do not constitute single or immutable entities but rather form relationships of domination that *converge with the power of the State*, along with capitalism, patriarchy, racism and colonialism, to form the "constellation of power relations that sustain colonial patterns of behaviour, structures and relationships" (Coulthard, 2014, p. 14). Rather than an analytical category, we use the metaphor of a post-multicultural moment and constrictor effect in its heuristic and descriptive sense to investigate its tangible expressions (and its contradictory, non-hegemonic effects) on the possibilities of States entering constructive agreements that emerge from the struggles of the peoples for autonomy and self-determination.

Our colleague Ritsuko Funaki opens this first section with a rigorous comparative study of the implementation gaps existing in ten countries as regards recognized land and natural resource rights, qualities necessary for effective Indigenous autonomy. It is clear from her work that the greater the gap the fewer possibilities there are for "safeguarding other legally recognized rights, such as the right to life and the right to self-determination". Her reflection reminds us that the exercise of the right to self-determination is an indispensable condition for the exercise of Indigenous Peoples' other human rights (Sambo Dorough, in this volume).

After this regional comparative overview, the following chapters of this section provide insights into national cases and specific experiences, all of which reflect the multiple dynamics of instrumental constraints on autonomies. The chapter by María Fernanda Herrera, for example, offers an analysis of the regulation governing Indigenous self-government in Bolivia and she suggests that, far from producing a wealth of Indigenous and peasant

autonomies and inclusive and plurinational political decentralization, this regulation has instead resulted in a bureaucratic labyrinth of State control characterized by restrictive and centralizing tendencies. Herrera offers a careful documentary analysis to explain how the Law on Autonomies and Decentralization places limitations on the Constitution, establishing a minor form of autonomy backed by a State that ends up forcing its original nations to accommodate to the rationale of the State rather than bringing about their own territorial and political transformation.

John Cameron and Wilfredo Plata's contribution coincides with Herrera's assessment in noting that the right to Indigenous autonomy in Bolivia was broad in its expectations to begin with but, in practice, became highly restricted in the years following its constitutional approval. The result has been that few Indigenous Peoples and organizations have been able to exercise their theoretical right to autonomy or even express an interest in exercising that right. The authors explore the reasons for these institutional constraints and find that "the political and economic imperatives of the Morales government to control extractive resources and rural voters took priority over the implementation of the right to Indigenous Autonomy". These conditions resulted in different kinds of responses from the communities, ranging from continuity and persistence in the struggle for autonomy despite the existing restrictions and obstacles (such as the Guaraní experience discussed by Pere Morell i Torra in this volume), to "pragmatic and hybrid strategies to govern themselves through already existing state institutions", illustrating their capacity to act in the face of institutional adversities. The chapter also includes a careful analysis and updated data on the variety of community responses to paths to building , Indigenous and peasant governments.

In this section, for example, Miguel González' chapter on the Caribbean Coast of Nicaragua documents how regional autonomy has gone from being a platform for inclusion and restitution of rights to defensive life strategies, often in conditions of a clear deterioration of the social fabric, roll-back of rights and violence against communities. This contribution describes the restrictive system of autonomy and citizenship rights imposed on the country by the second Ortega administration and the tensions and contradictions looming over Indigenous Peoples as a result of the authoritarian and extractivist turn of this government.

Meanwhile, in Verónica Azpiroz' chapter, we read how the way in which States are politically organized and how their bureaucracies act can have

an impact on the manner in which the discourse of autonomy emerges and develops. She tells us that Argentina's non-ethnic federalism (a federalism tailor-made for Spanish-European settlers that did not include Indigenous nations or their territories), and a State bureaucracy that co-opts/captures/atrophies Indigenous Peoples (seen as poor) by means of State subsidies or jobs, has caused Mapuche ideas of political empowerment to develop slowly and diverge in at least two different directions: first, toward a search for spaces of recognition and integration by becoming subsumed in Argentina and its nationalist State discourse (a kind of multicultural neocolonialism in the field of ideas that does not question their political-military incorporation into the Argentine State). And, secondly, toward an autonomism that emulates the experience of the Mapuche on the Chilean side in that it attempts to politically empower Mapuche society but by applying formulas mechanically to an Argentine reality that they do not really fit, since there is no clear or compact territory in which to achieve this utopia (the Mapuche communities are scattered across seven provinces of enormous dimensions). The author recognizes that the discourse of autonomy is reuniting the Mapuche, particularly the young but that, if it is not coordinated with the country's politics or does not dialogue with this and only seeks to confront it, it will have little chance of success.

This section closes with an essay by José Marimán on the recent changes in Chile's political situation, particularly the approval of an historic constituent process and, with this, the possibilities for constitutional recognition of Mapuche Indigenous autonomy and self-government. Marimán values the fact that the social protest of October 2019 has brought into question "the nationalist-assimilationist discourse of the elites, expressing an openness to and acceptance of ethnonational pluralism" — and possibly— Indigenous self-government. However, the author reflects that deeper change is still needed to dismantle the colonialist mentality of the elites, which is preventing the political empowerment of the Mapuche people through various political and legal chicanery. One challenge of great significance is that of overcoming the atomizing dynamic that has already become a part of Mapuche activism and political action, and which is preventing the cross-community, multi-organizational and strategic consensus necessary for the exercise of the right to self-determination.

Possibilities: recovering what has been lost and rebuilding

As discussed in the chapters of the first section, even though the State has actively placed restrictions on the right to Indigenous self-determination, Indigenous Peoples have still found opportunities to make progress in their autonomous processes within a degraded multicultural framework and a fairly active, albeit not hegemonic, neoliberalism. This is a complex and contradictory scenario, however, both in the internal and external dimensions of the peoples' struggles and in their interactions with different actors. These new socio-political landscapes highlight the agency of Indigenous Peoples to defend or assert their rights to political autonomy through the national courts and the Inter-American Human Rights System — what observers have called the judicialization or juridification of Indigenous political action (Sieder, 2020a) — albeit often combining such strategies with actions of open resistance and active mobilization. In her study on neoliberal multiculturalism in Bolivia, Nancy Postero intuitively warned that "subjects of neoliberalism find in it a number of resources and tools", since the latter "is not an all-encompassing or hegemonic paradigm that dominates society but rather a philosophy that is expressed in various policies, practices and institutions that are constantly being conserved and/or contested" (2009, p. 39). This dynamic is present in the chapters of this second section, which brings together a body of contributions that describe and reflect on the counter-hegemonic fissures in the post-neoliberal *constrictum* while also turning their gaze toward the different autonomous struggles among the peoples.

Autonomy is also a political process internal to the movements that is built and constructed from the experience of mobilizing organized men and women (binary and complementary genders). The political subjectivity of the subjects as they mobilize and organize to demand rights represents a sphere of socio-political reflection that needs to be interpreted, from the local, micro and experiential levels, the agencies and resistance, right through to the impacts of State power, organized crime, social racism and market logics. This glimpse into the social dynamics within the movements and the construction of social identities (binary and non-binary) places the challenge of inclusion in Indigenous political processes at the very heart of the matter, as suggested by some of the chapters included in the volume, especially Figueroa and Hernández, Azpiroz, Arteaga and Mora.

In the second section, the chapters by Consuelo Sánchez and Araceli Burguete on Mexico, and by Bernal Castillo on Panama, relate the progress made in terms of the right to autonomy as enshrined in the constitutional principles of their countries, but they also reflect on how insufficient such legislation can be when its content is filtered into secondary legislation, significantly restricting Indigenous Peoples' right to autonomy. Despite this, both Burguete's and Sánchez' contributions (and Aragón's, in this volume) demonstrate that, in the case of Mexico, the struggle for self-determination, autonomy and self-government continues to find new opportunities in the processes of constitutional reform and through the courts, making the enforceability of rights and the construction of political alliances effective. The chapter by Consuelo Sánchez, in particular, relates how the constituent process of Mexico City, in which the author participated as a member of the Constituent Assembly, enabled the construction of political agreements and a community consensus in order to incorporate recognition of the collective and individual rights of the Indigenous Peoples of the Valley of Mexico (former seat of the Triple Alliance of Tetzcoco, Tlacopan and Tenochtitlan) but also made it possible to recognize the rights of urban Indigenous residents from other parts of the country. The city's constitutional reform thus opened up a path to creatively include rights to functional autonomy — for example, the right to Indigenous identity on the part of populations who were residents of but not native to ancestral territories that are today urbanized — through territorial autonomies that protect and guarantee the collective right to Indigenous lands and self-government as a different (but complementary) scale of jurisdiction to the scope of the city and its municipalities.

Araceli Burguete Cal y Mayor, on the other hand, recounts the experience of an election process using Indigenous Normative Systems in Oxchuc municipality, Chiapas. After a long battle in the streets and in the courts, and in the context of an acute post-electoral conflict that began in 2015 with violent effect, the Permanent Commission for Peace and Indigenous Justice of Oxchuc obtained a favourable ruling from the Electoral Tribunal of the Federal Judiciary on 28 June 2017, ordering the Chiapas Institute for Elections and Citizen Participation to consult its population on their preference for one or other electoral system: that of political parties, or that of Indigenous Normative Systems, thereby initiating a process of autonomy for municipal self-government. The chapter focuses on documenting this election experience (2016-2019), which was the first in Chiapas, and examines the challenges

faced by the municipal authority resulting from this election. She concludes by reflecting on the challenges of replicating this electoral model in other of the State's Indigenous municipalities.

Bernal D. Castillo's text reviews the Gunadule people of Panama's experience of autonomy. Its relevance lies in the fact that this experience is one of the oldest in Latin America, dating back to the second decade of the 20th century, so it is important to consider how it has developed in recent years. The Guna have articulated their own perspective on autonomy, in which the development of their institutions of self-government is notable. The chapter describes the functions of the Guna General Congresses (the Guna General Congress, which is the political-administrative unit, and the General Congress of Culture, which is spiritual and cultural in nature), as the highest authorities of the Guna people of Gunayala *Comarca*. It also reflects on the central importance of the *Sagladummagan* (General *Caciques*) as the authorities of the region, recognized since 1953. The chapter provides a detailed record of the socio-political structure of the Guna people in Gunayala *Comarca* based on the norms of the *Gunayar Igardummadwala* (Gunayala Fundamental Law). It also documents other strengths of the Guna autonomous experience, such as territorial and economic control. At the same time, it reflects on the challenges currently facing the region given its gradual integration into the market economy.

The chapter by Dolores Figueroa and Laura Hernández offers an intimate look at the internal dimension of autonomy, exploring the analytical and strategic-political elements that Indigenous women organized in the *Coordinadora Nacional de Mujeres Indígenas de México* [National Coordinating Body of Indigenous Women of Mexico / CONAMI] deploy to advocate for their inclusion in the community's political life and, simultaneously, to call for a gender justice that encompasses other dimensions of social life. These other spheres also form the terrain for their autonomous struggles. The analysis thus focuses on understanding how the discourse and critical action of young women within the organization, the change in policies toward Indigenous Peoples, and the effect of public policies on gender equality and prevention of gender violence and femicides, has been shaping the conditions within CONAMI for a paradigm shift in its activism. Figueroa and Hernández suggest that this new type of activism is based on a "double gaze": on the one hand, it "implies a critical and reflexive intersectionality" that constantly challenges the mixed Indigenous movement in the country; on the

other, it questions hegemonic feminism since this simultaneously articulates the struggle of their peoples with demands for gender equality within their communities and organizations.

Magali Copa, Amy M. Kennemore and Elizabeth López share an analysis of the Bolivian State's bureaucratic barriers to autonomy in the Jatun Ayllu Yura territory of the Qhara Qhara Nation, in the face of which the peoples are developing creative strategies by which to challenge the State — both in the courts and in the streets — and, in the process, strengthen self-government and create new forms of social and political organization, which the authors call a form to "re-appropriate the plurinational". This dynamic usually takes the form of pragmatic actions of articulations both to build community consensus — and thus avoid conflict — and to establish new relationships with the State, as observed by Morell i Torra in the case of the Charagua Iyambae Guaraní Autonomy, also in Bolivia. The novelty of the Jatun Ayllu Yura process lies in the fact that its autonomy process is a territorial reconfiguration that includes strengthening its self-government. However, it also illustrates an important challenge to the limitations of the Bolivian territorial order since its protagonists see in it the possibility of creating "a much broader strategy toward the reconfiguration of an entire nation, the Qhara Qhara Nation". This implies, in the voices of the authors, a challenge to the configuration of the Indigenous and native nations established in the plurinational State.

In Chile, on the other hand, there is still no constitutional recognition of Indigenous Peoples and, therefore, issues related to their rights, including the exercise of Indigenous jurisdiction (customary law) are debated between the dilemma of their denial and their *de facto* enforcement. In this context, the chapter by Elsy Curihuinca and Rodrigo Lillo describes the Chilean legal framework, which recognizes Indigenous Peoples' access to their own justice system while still living tensely under the dilemma of hierarchical orders of legality (Sieder, 2020b; Melin et al., 2016). In other words, degrees of legal pluralism are permitted but Indigenous Peoples are at all times reminded that State law is pre-eminent and that their own law is unquestionably and arbitrarily subordinate to this. From the authors' perspective, the recognition of a special Indigenous jurisdiction as an expression of their own law is a legitimate and necessary mechanism for peoples to be able to exercise their right to self-determination. And, with this opinion, we have raised a strategic question that needs to be addressed in future discussions of legal orders and autonomous processes: what is autonomy in its essence if not the capacity to

dictate one's own laws and be governed by them?[2] In a political reality dominated by the figure of the State, a pluralist restructuring of the State without questioning its unity-sovereignty but encouraging plurality of government (a government at the country level plus governments at the level of Indigenous territories, and others) requires the capacity to have one's own laws respected at sub-state levels. Otherwise, there is no autonomy/self-government, only administrative decentralization (Máiz, 2008).

In Pablo Ortiz' contribution on Ecuador, it can clearly be seen how institutional staging and ethnocentric political practices have neutralized the intention of the 2008 Constitution to facilitate the creation of special autonomous regimes as the only option for accessing control and administration of local governments. To support this idea, Ortiz studies two experiences in detail: the Kichwa Kayambi community government of Pukará Pesillo, Cayambe in the Sierra Norte; and the self-government of the Pastaza Kikin Kichwa Runakuna-Pakkiru in the Central Amazon. These processes, each in their own way, illustrate some of the paradoxes, deviations and challenges facing Indigenous Peoples in the exercise of autonomy, as well as the recurrent tensions and conflicts they face with the central State, especially as a result of policies linked to the expansion of the extractive industry, agribusiness and deterritorialization.

The overall perspective of this second section is that struggles for autonomy develop creatively, and not without conflict, both in the field of dialectical relations between Indigenous Peoples and State institutions, and internally, as a space of contestation for effective forms of inclusion, representation, voice and contested legal orders, and of intergenerational and gender changes within the organizations, which is of fundamental importance for autonomy.

Autonomies as emancipation: own paths

The last section of the book comprises chapters that reflect on Indigenous autonomy beyond, in opposition to, or having rejected official recognition in order to extend its status as an emancipatory process and thus protect life. It is a section dedicated to autonomy as emancipation, i.e., as a sovereign process of a political and cultural nature capable of expressing Indigenous Peoples' right to self-determination.

The dawning of a multicultural era offered new rights and recognition to Indigenous Peoples in a number of countries, including the right to autonomy,

but at the same time reinforced the State's capacity to limit these rights in practice. The materialization of rights has thus been characterized by force fields that have opened up possibilities both within Indigenous Peoples' movements and in their relationship with States, as reflected in the chapters in the second section of the book. Orlando Aragón (this volume) observes that, in the case of Mexico, multiculturalism "reconstituted the playing field between communities and the Mexican State through the appearance of new narratives, new sectors, actors and instruments of struggle". These new conditions offered opportunities, not without risk, for innovation in Indigenous forms of governance and self-governance, judicial recognition, and new autonomous political relations and practices, including the creation of non-liberal social and political orders and institutions of governance or, occasionally, the open refusal to recognize or participate in interactions with State institutions and other actors (Simpson, 2015).

The contributions included in this third section also suggest that it is critically important to understand how and to what extent the autonomous practices of peoples who are in the process of building their own knowledge and powers (usually focused on interaction with politics as regards State officials) also have a counterpart in other aspects of social community life, for example, in social reproduction and the possibility of creating new social consensuses. Or they are perhaps inseparable, one a dimension of the other, where the politics of rejection of the State in turn enacts "multilayered forms of engagement, internal to the rebel autonomous project", as Mora reflects with reference to Zapatista autonomy (2017, p. 3). Ana Cecilia Arteaga, whose contribution opens this section, seems to corroborate Mora's observation. Arteaga provides an analysis of the struggles of the Aymara women of Totora Marka in Bolivia to promote changes in the gender hierarchies and oppression present in their communities. Women's criticism of these orders (and their possible dismantling) transfer simultaneously to the public sphere through their struggles both to obtain internal consensus in favour of the statutes of autonomy and to achieve external recognition from the State. Starting from women's proposals for local and national transformation, the author conducts a broader analysis focused on the progress and challenges facing Indigenous Peoples in obtaining their institutional recognition within the framework of the plurinational State.

Mariana Mora, on the other hand, reflects on the transition in meanings that the peoples confer on autonomy in Mexico, in an era marked by a

regressive and repressive turn toward extractivism and State security policies. Her analysis clearly shows that such conditions have limited the struggles for autonomy and put the organizations and territories that are today articulating polítics of "life-existence" on the defensive in the face of the eliminating and incriminating actions characteristic of the State and other agents, and which result in extreme violence. This same "turn towards self-protection" is described by Viviane Weitzner in her chapter on the Cañamomo Lomaprieta resguardo in Caldas and the Black communities of the Palenke Alto Cauca, where forms of Afro-Indigenous solidarity and territorial governance mechanisms have been established through the creation of unarmed autonomous guards as an expression of territorial self-government. Weitzner's text also offers an approach to plural conceptions of autonomy, highlighting its conception as an inherent right (albeit limited by external conditions and therefore in "jeopardy"), rooted in the community, territory and cosmovisions of Indigenous and Afro-Colombian peoples.

With a similar aim, that of exploring the plurality of conceptions of autonomy and looking at internal strategies of self-determination (in a context of relatively less violence), in his contribution Pere Morell i Torra offers a look at the process of the gestation, construction and implementation of the Charagua Iyambae Guaraní Autonomy, the first Indigenous autonomy officially recognized by the Bolivian State. The socially participatory design of new institutions of self-government, conceived on the basis of Guaraní political practices and traditions, albeit in dialogue (and tension) with other institutional traditions that coexist alongside Indigenous ones in inter-ethnic contexts such as that of the Bolivian lowlands, illustrates the great propositional capacity of Indigenous autonomous projects. They are capable of incorporating within them (of "Guaranizing", in the words of a Guaraní intellectual quoted by Morell i Torra) even the traditionally hegemonic white-*criollo* population of the region, which is essential when designing other hegemonies that can provide the peoples with new spaces of power.

An autonomy that forms part of this emancipatory generation, albeit self-proclaimed, is presented in the chapter by Shapiom Noningo and Frederica Barclay, on the Wampís nation in the Amazonian region of Peru, bordering Ecuador. This experience tells how the Wampís nation came to the conclusion that autonomy — which implies a painstaking process of political-territorial reconstitution — is a cultural survival strategy, a fragile but

important line of defence for life in the face of "a point of no return [could be reached] in which there is no longer the ability to imagine a different future".

While the chapters by Mora, Morell, Weitzner, Shapiom and Barclay do not ignore the important transformations of the State and its relationship with peoples in the construction of autonomies and self-government, they focus instead on recounting how the practices of organizations, communities, territories, self-affirmed municipalities, and autonomous governments are being implemented 'inwards' in order to create collective consciousness, build new meanings for autonomy, accumulate power for self-advocacy, and create *life-narratives* that give primacy to political and cultural emancipation (Burguete Cal y Mayor, 2018). As Coulthard observes, the nature of these more radical forms of practising and exercising rights belongs to *permanent* alternative epistemologies of Indigenous Peoples, not necessarily or exclusively operating as responses to official recognition (2014, p. 23).

The third part of the book closes with chapters by Orlando Aragón on Mexico, and Roberta Rice on Bolivia, Ecuador, Nunavut and Yukon, Canada. Aragón documents the emergence of Indigenous self-governments in Michoacán the creation of which is the expression of a particular path to autonomy via the judicialization of Indigenous struggles, and a type of "community-level constitutionalism" of litigation that feeds both interactions with the courts and the building of local consensus. However, Aragón warns of the inherent risks of judicialization in disrupting the "habit and custom" of the communities and, in some cases, the result may be to fuel a kind of intra-communal fragmentation and animosity that could destroy the path to self-government.

Roberta Rice's chapter reminds us that autonomies, even under favourable institutional and political conditions, are not inevitable but require strong Indigenous movements and States willing to reach lasting and comprehensive agreements. By comparing the process of building autonomies in Ecuador and Bolivia with self-governing agreements and land claims in Nunavut and Yukon in Canada, the author concludes that the possibilities of realizing recognized rights in realities as different as northern Canada and the central Andes can only be achieved through strategies of "institutional engagement" between civil society and the State. Rice comments that, in defining these strategies, there is room for innovation in the processes of self-government and public policy more generally, but she also suggests that "the capacity for political innovation lies within the realm of civil society, while the possibility

for uptake of such innovations is found within the state and its willingness to work with Indigenous communities." Rice's conclusions echo one of the most important strands of this collection: autonomy as a constructive agreement and a democratic method of inclusion.

At the time of writing, the COVID-19 pandemic is not over, and it continues to affect the entire world albeit with particularly strong impacts on the most vulnerable communities, and a profound effect on Indigenous Peoples. This crisis has shone a light on the cumulative problems and barriers that have always existed: poverty, a lack of basic services, a lack of health care, a lack of territorial protection, etc. (IWGIA-ILO, 2020, p. 7). As the first regional report of the Regional Indigenous Platform against COVID-19 (2020, p. 39) warns, it is vital to involve Indigenous Peoples in any action taken by governments or institutions of cooperation and to respect the decisions of Indigenous Peoples. This is in line with respecting their autonomy and self-determination. We will thus be able to overcome this critical situation. As the same report states: "more than vulnerability, Indigenous Peoples have demonstrated resilience over several centuries of pandemics and this will not be the last" (p. 4).[3]

Finally, our book seeks to understand the multiple political, cultural and legal dynamics by which Indigenous self-government has been able to assert (or not) the right to self-determination in the light of both global standards and national legislation, or as an exercise of self-assertion. In people's exercises to affirm spaces, practices and relationships within their communities and in their interactions with State institutions, the right to autonomy is imbued with new meanings. In many of the experiences studied here, the right to autonomy is not a pre-defined right, and the very content of this right is therefore established *in its exercise*, which is readapted in relation to changes in historical relations, political conditions and cultural transformations.

More importantly, we seek to identify and examine common challenges and discuss specific local features that speak to the complexities of implementing different orders of rights in different experiences in the Americas. Many of the chapters included in this book suggest that exercising the right to autonomy is fundamental for the protection of other rights, not only economic, social and collective rights but also so-called individual rights. Autonomy thus becomes a condition for the full exercise of other rights. In the same vein, we seek to contribute to global conversations on Indigenous Peoples' perspectives of autonomy around the world, as it is quite clear that the current

trends and agendas of international civil society organizations are shifting toward understanding and supporting Indigenous struggles for self-determination and autonomy (ECLAC, 2020; IWGIA, 2019).

Our imagined audiences

The collective that is coordinating this work gladly offers up the chapters that have shaped this book to an imagined audience that is as diverse as the Americas. We had in mind at every stage of its formation the Indigenous Peoples, their leadership and their activists, as diverse as our diverse Americas in terms of culture, gender, generations and political experience. Among them we highlight the young people, new generations who are seeking and deserve a life of dignity, political subjects who are masters of their own destiny, far removed from the subjugation to which their parents and, above all, their grandparents and past generations were condemned. Young people who have generously embraced the ideas of and struggle for the self-determination of peoples and the political empowerment of their nations and societies.

We hope that our publication will inform interested individuals, groups and organizations in the Americas and around the world who seek to better understand the processes of implementing autonomy, Indigenous rights and self-governance arrangements in the countries and experiences researched here. As for the specific use that our collection may have for the Indigenous Peoples of the Americas, we have to say that given that the politically more advanced segments of the Indigenous movement have begun to raise the demand for the self-determination of their peoples in many States (no longer content to ask those who have subjugated them to solve their problems but demanding the power to participate in decision-making on all matters that affect them), our book is critical for Indigenous Peoples' leaders and activists. We say this because the publication addresses successful and unsuccessful experiences of the use and exercise of political power by Indigenous Peoples (by themselves or in shared spaces). In the same way, our volume examines the paths that some have taken to achieve this strategic objective. Most of the time these paths are tortuous, among other reasons because actual recognition has become a formality that has not been accompanied by the will to put actual changes into effect in the exercise of the rights and powers of peoples.

This is undoubtedly not the only research that takes this perspective. *Autonomía a debate* was certainly a much needed publication at a political

moment when progressive governments, in Bolivia and Ecuador for example, were emerging in Latin America, a time of hope for the Indigenous Peoples of those countries and the continent. The more political of the movement's leaders will find inspiration in this book to discuss their own strategies for progressing the goals they have set for their peoples and organizations, or to review what has been achieved in the exercise of self-government, extracting elements from an analytical and comparative reading that will enable them to contrast their own experiences in order to draw positive lessons from it and improve their political actions. We hope that our effort will encourage these sectors of the Indigenous movement to approach a critical reading of the ideas contained in this book and to reflect on their own political experiences, with the hope of overcoming the pragmatism that is present in some movements and which is stalling the possibilities of advancing toward the goal of self-determination for the peoples in the form of autonomies.

This book is also designed for the "others", for those who, without belonging to the Indigenous world, have been heavily involved in creating positive solutions to the much desired strategic demands for political empowerment of Indigenous Peoples. This includes non-governmental organizations and international cooperation programs, human rights defenders in judicial processes and litigation in national courts, as well as the bodies of the Inter-American Human Rights System, such as the IACHR and the Inter-American Court of Human Rights, which play a fundamental role in protecting human rights. The positions of the political, religious, business and other elites of the dominant nation-state groups in each State of our diverse Americas are also relevant to this discussion, and we hope that a reading of this book may motivate positions and actions in favour of Indigenous Peoples' right to self-determination. This book also shows them that their anachronistic and 19th-century nationalist conceptions of the State ("one nation one State" = nation-state) are meaningless in the modern world. The demand for Indigenous Peoples' autonomy does not threaten the unity and stability of States with their imposed and designed "nations". National ethno-political plurality is possible within the current State formation, positively honouring one of the most significant political values of our times: democracy. Autonomies involve a decentralization of power and simply broaden the spectrum of this democracy, breaking down power in order to create valid and operational regulations in specific areas of the territory claimed by the State for those who were previously only marginal, inferior citizens or election fodder in the political

societies constructed in the aftermath of the break with the European colonial metropolises (Marimán, 2017). Through the experiences recounted here, we hope that this audience will re-evaluate the principles and ideologies on which the State has operated and act generously to redress the political perversions of past generations of State nationalists. These policies are regressive and persistent, and therefore need to be overcome.

Finally, because of our professional university training, we cannot fail to mention the world of academia. Colleagues from so many different disciplines will draw inspiration from these works when developing their critique of our ideas and their own visions. Hopefully, this book will motivate them to write on the subject, helping to make visible after decades of neglect the political demands of Indigenous Peoples and thus contribute, from their classrooms or publications, to advancing a more fraternal future in tolerance, respect and national plurality, for future generations of both Indigenous and non-Indigenous peoples.

NOTES

1 Autonomy is understood here as a form of self-determination. The substantive element of self-determination is not the creation of or demand for a state but the fact that it is a universal human right not deriving from international law between states. Secession, or the creation of a separate state, as *the ultimate goal* of self-determination is tantamount to reducing the concept to one of its attributes, that of statehood. James Anaya suggests that "understood as a human right, the essential idea of self-determination is that human beings, individually and as groups, are equally entitled to be in control of their own destinies and to live within governing institutional orders that are devised accordingly" (Anaya, 2010, p. 197). The chapters included in this volume consider the forms of autonomy that are being achieved, or the aspirational processes of peoples struggling for self-government within States, and we therefore consider them to be statements and practices of self-determination. This book is about those experiences.

2 Boaventura de Sousa Santos makes an interesting comment in this regard. Indigenous justice is not "an alternative method of dispute resolution like arbitration, conciliation, justices of the peace, or community justice. It is the ancestral justice system of native peoples anchored in a whole *system of territories, of self-government, of their own cosmovisions*" (Santos, 2014, p. 24, emphasis ours).

3 In relation to the practical resilience demonstrated at this time, a notable example is the "small measures" taken by Guatemalan Indigenous authorities. As Gladys Tzul shared in a virtual chat, communal political structures or organizations are taking the lead in measures such as disseminating culturally relevant and useful information in their own languages on how to raise the body's defence system against the virus, decentralizing markets to the communal level to avoid price hikes and shortages, and implementing isolation policies (CLACSO TV, 26 May 2020). In turn, Yásnaya Elena Aguilar invites

us to be aware that there is no conflict between individual and collective well-being. To save ourselves from this pandemic, we each need to act responsibly as a collective and only then will we ensure the lives of each individual (Aguilar, 2020).

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PART I

Post-multicultural *Constrictum*

1

The Right to Self-Determination and Indigenous Peoples: The Continuing Quest for Equality

Dalee Sambo Dorough

Recent Developments

Long before contact with colonizers, Indigenous peoples lived by their own traditional rules, protocols and laws (Borrows, 2017a; 2017b) to ensure social order and harmony within their communities. These guidelines found expression and are sourced in self-determination, representing pre-existing practices that foreshadow the development of international law and legal instruments by centuries.

Despite this backdrop of the erroneous and misguided views of organized religion and colonial forces, the highly sophisticated protocols of Indigenous peoples have survived and thrived. Our powerful economic, social, cultural, spiritual and political measures became subsumed by imposed notions of nomadic "savages" by those ignorant of good governance and lacking democratic skillfulness.

This short essay provides a glimpse of the right of self-determination and autonomy in favor of Indigenous peoples and argues that this prerequisite to the exercise of all other human rights attaches to Indigenous peoples, without qualification or limitation. Yet, for many Indigenous peoples, they are caught

in a continuing quest for equality. We are at a place and time for the quest to end, a time for Indigenous peoples to exercise and enjoy this right throughout their lands and territories, to pursue and practice their rules, protocols and laws as they did before contact. More importantly, the right to self-determination must be recognized and respected by those outside of our nations and communities and it must also be perfected or reconstituted within our communities.

The essay will not comprehensively trace the history of the Peace of Westphalia, the Papal Bulls or the acts of domination, subjugation, and exploitation of Indigenous peoples. Rather, the focus will be on the products of such actions and the existing legal order of the United Nations, including the human rights of Indigenous peoples, recent history and the current status and conditions of Indigenous peoples and their efforts to genuinely exercise the right of self-determination. The intent is to illustrate how these well-established international norms are useful tools to employ in a multi-pronged, multi-scalar effort driven by Indigenous peoples to gain recognition of and respect for their right to self-determination and its diverse elements.

With the adoption of the *United Nations Charter*, June 1945, Article 1 outlines the Purposes and Principles of the UN on behalf of the world community:

> To maintain international peace and security…
>
> To develop friendly relations among nations based on *respect for the principle of equal rights and self-determination of peoples*, and to take other appropriate measures to strengthen universal peace;
>
> To achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in *promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion*; and
>
> To be a centre for harmonizing …. [emphasis added]

To believe in the maintenance of international peace and security, to achieve international cooperation, there must be acceptance of equal rights and self-determination of all, without discrimination. These concepts are essential elements of harmonization among diverse peoples and cultures – these words provide an important context for interpretation of the whole of the instrument – and for arriving at a place that truly reflects a family of nations.

For a people, the prerequisite of self-determination, and to ensure the exercise and enjoyment of all other human rights, pivots on the "self." In the context of Indigenous peoples, the self is determined by the distinct status of the peoples concerned: those who are different. Our history of being different was strictly and barbarically used to perpetuate racial discrimination, to diminish rights and to destroy what is different about us. Today, it must be understood that we have the "right to be different and to be respected as such" and to be free of discrimination in every political and legal environment. It must be remembered that the scourge of racial superiority was formally denounced by the international community.

An important distinction of the rights of Indigenous peoples is that they are inherent or pre-existing rights. The pre-existence of Indigenous peoples as sovereign peoples must be recognized. Indigenous peoples had and continue to maintain highly developed and sophisticated concepts of governance and social control not only internally but also in their external relations with others, including other Indigenous nations and peoples.

In addition, recognition of inherent or pre-existing rights to lands, territories and resources is fundamental. Like self-determination, Indigenous peoples have consistently advanced regimes of land tenure and use of their lands and territories as well as extraordinary knowledge about their surrounding environment and ecosystems. This knowledge has been and continues to be accumulated on the basis of their profound relationship with the environment and is embedded in their respective languages, protocols, values, customs, practices, institutions and laws. The foundational right of self-determination and rights to lands, territories and resources are inherent in our legal status as distinct peoples.

For further clarity on the matter of inherent or pre-existing rights, it is important to underscore that our individual and collective human rights were not created or "given" by anyone and certainly not by governments, including those that remain holdovers to the notion of superiority.

The Nature of Human Rights

To understand the relevant human rights instruments, it is important to be clear about the nature of human rights. Human rights are

> interrelated – each component interrelates with all the others
>
> interdependent – dependent upon one another
>
> interconnected – mutually joined or connected between elements
>
> indivisible – cannot be divided

Therefore, the denial or violation of one human right will have an adverse impact upon all other human rights and a community's ability to exercise and enjoy all other human rights. As the International Law Association has affirmed "it would be inappropriate to deal with these areas separately, for the reason that – in light of the holistic vision of life of indigenous peoples" because the rights are all "strictly interrelated…." (ILA 2010, 43).[1]

The characteristics of human rights are important to keep in mind in the context of Indigenous peoples, many of whom hold the same all-inclusive perspective about their way of life and their relationship to all within their territories – everything is interrelated, interdependent, interconnected and indivisible. We hold a holistic worldview.

Human rights are universal, applying equally to all human beings. Fortunately, the current human rights regime of the United Nations, the Organization of American States, the International Labor Organization, and a growing number of other intergovernmental organizations, have begun to turn the corner, moving away from a Western European understanding of human rights of Indigenous peoples to ensure the distinct cultural context of Indigenous peoples.

In terms of the distinct cultural context of Indigenous peoples, it is imperative to recognize that the right of self-determination is a collective, pre-existing right that attaches to the distinct legal status of Indigenous peoples. Another crucial example is the collective nature of the rights of Indigenous peoples to their lands, territories and resources, which has many dimensions that are not reflected in the notion of individual property rights of others. Additional examples exist. However, the point here is to recognize

the significant contribution that Indigenous peoples have made to understanding the collective nature of their human rights in other areas, such as language and culture, education and a host of other communal dimensions of the day to day lives of Indigenous peoples.

Importantly, human rights cannot be destroyed – it is a different matter to deny or violate human rights, but such rights cannot be destroyed or alienated. In this regard, past "extinguishment" policies have been thoroughly denounced and challenges to the so-called plenary power of governments have been and continue to be made. And, human rights are the key rationale or compelling force to counter such challenges and outdated, racially discriminatory policies.

International Covenants

Some twenty years following the adoption of the UN Charter, the *International Convention on the Elimination of All Forms of Racial Discrimination* emerged. In contrast to many international human rights instruments, this Convention has one unique feature – it defines its subject matter, which is explicitly provided for in Part I, Article 1:

> In this Convention, the term "racial discrimination" shall mean any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.

As stated, this language applies to every field of public life and it has extraordinary meaning when one considers the collective nature of those of a different race, color, descent, national or ethnic origin. The wording of "the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise" of human rights is extensive and captures policies that may not appear to but eventually may impair the exercise of a right.

Less than a year later, to further codify the rights enunciated in the 1948 Universal Declaration of Human Rights in the form of a legally binding human rights instrument, the international community and specifically, UN

member state representatives adopted the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) in 1966. Unsuccessful in adopting a single treaty, civil and political rights favored by the West were purportedly segregated from economic, social and cultural rights favored in the East in response to then and to a large extent continuing entrenched views of Communist regimes and democratic states such as the U.S.

The two Covenants were adopted by the United Nations and contain exactly the same language in common Article 1 of the two treaties:

> 1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.
>
> 2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.
>
> 3. The States parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.

Clearly, both Covenants are relevant to Indigenous peoples and in particular, the language affirming the *equal* application of the *right* of self-determination to all peoples.

Significantly, Article 27 of the ICCPR refers to "minorities" and in this regard it must be understood that for a majority of Indigenous peoples across the globe they may be numerical "minorities" but they are dramatically distinct from such categories of civil society.

> In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied

> the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.

Friendly Relations Declaration, 1970

Beginning in 1961, a few UN member states introduced a proposal in the context of "the codification and progressive development of international law" (A/C.6/L.492, 1961)[2] to focus on the elaboration of key principles to promote the "friendly relations and co-operation" of states (GA 1686 (XVI), 1961).[3] This exercise was a careful analysis of key principles related to self-determination and was adopted on the 25th anniversary of the United Nations, resulting in the *Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations* in 1970 (GA 2625 (XXXV), 1970).[4]

Central to the Friendly Relations Declaration and Indigenous peoples are the provisions that address the fact that every state is committed to the progressive development of international law, including within the legal order of human rights. The Friendly Relations Declaration is significant in order to:

> … constitute a landmark in the *development of international law* and of relations among States, in promoting the rule of law among nations and particularly the *universal application of the principles embodied in the Charter*

The Declaration goes on to emphasize:

> … the importance of maintaining and strengthening international peace founded upon *freedom, equality, justice and respect for fundamental human rights* and of developing friendly relations among nations irrespective of their political, economic and social systems or the levels of their development,

UN member states affirm that they are:

> Convinced that the subjection of peoples to alien subjugation, domination and exploitation constitutes a major obstacle to the promotion of international peace and security,
>
> Convinced that the *principle of equal rights and self-determination of peoples* constitutes a significant contribution to contemporary international law, and that its effective application is of paramount importance for the promotion of friendly relations among States, based on respect for the principle of sovereign equality,

They further affirm that:

> Every State has the duty to refrain from any forcible action which deprives peoples referred to in the elaboration of the principle of equal rights and self-determination of *their right to self-determination* and freedom and independence.

A crucial imperative in the elaboration of the right of self-determination in the Friendly Relations Declaration is the fact that:

> By virtue of the principle of equal rights and self-determination of peoples enshrined in the Charter of the United Nations, *all peoples have the right freely to determine, without external interference, their political status and to pursue their economic, social and cultural development, and every State has the duty to respect this right in accordance with the provisions of the Charter.*

Furthermore, "Every State has the duty to promote, through joint and separate action, realization of the principle of equal rights and self-determination of peoples" and "To bring a speedy end to colonialism, having due regard to the freely expressed will of the peoples concerned."

A key provision of this Declaration, which must be read in the context of the full instrument, is the requirement or the obligation that states must conduct themselves in a manner consistent with these principles if they themselves want to maintain their own "territorial integrity," including the fact that "compliance" includes that they are "possessed of a government

representing the whole of the people belonging to the territory." The full language of this pivotal paragraph states:

> Nothing in the foregoing paragraphs shall be construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States conducting themselves in compliance with the principle of equal rights and self-determination of peoples as described above and thus possessed of a government representing the whole people belonging to the territory without distinction as to race, creed or colour.

Indigenous peoples were not party to the dialogue, negotiation, and adoption of the Friendly Relations Declaration. However, in effect, it attaches to us as distinct peoples, the requirement of State compliance with its many provisions to ensure the exercise of Indigenous self-determination and to promote friendly relations.

International Labour Organization C169, 1989

Throughout the 1970s, Indigenous peoples began national and international political organizing around the persistent violations of rights, including treaty rights. Interestingly and separately, the International Labour Organization (ILO) has a long history of policies, conventions and recommendations aimed at safeguarding Indigenous peoples in the context of exploitation by corporations and companies' intent on free or cheap labor. Dating back to the 1930s, the ILO worked to protect Indigenous "employees" from forced labor and slavery as well as unsafe working conditions.

In 1953, the ILO adopted Convention No. 107 (ILO C107, 1957),[5] which became a legally binding international human rights treaty for those member states that ratified the instrument. In the face of UN developments, including increasing attention given to the gross violations of rights that resulted in the creation of the body that would begin the drafting of international human rights norms in favor of Indigenous peoples – the Working Group on Indigenous Populations [WGIP] – Indigenous peoples became vociferous about the "assimilationist" nature of ILO C107. This open criticism as well as the progressive development of Indigenous specific standards by the UN in

the context of the WGIP, the ILO undertook to revise C107. This two-year revision process resulted in ILO Convention on Indigenous and Tribal Peoples No. 169 (ILO C169, 1989)[6] adopted by the ILO plenary in 1989.

Though few states have ratified ILO C169, it is important to underscore that the norms affirmed in the Convention are Indigenous specific human rights norms and are legally binding obligations of states under international law. ILO C169 is the only legally binding treaty specifically concerning the individual and collective human rights of Indigenous peoples.

Article 3(1) of ILO C169 affirms that Indigenous and tribal peoples shall enjoy the full measure of human rights and fundamental freedoms without hindrance or discrimination. This necessarily includes Indigenous peoples' right to self-determination. Furthermore, Article 35 of ILO C169 affirms that:

> The application of the provisions of this Convention shall not adversely affect rights and benefits of the peoples concerned pursuant to other Conventions and Recommendations, international instruments, treaties, or national laws, awards, custom or agreements.

Even more significant, the ILO has reviewed the relationship between their Convention and other progressive developments, including the *UN Declaration on the Rights of Indigenous Peoples*. Specifically, the ILO has highlighted the legal status of the *UN Declaration* by stating that:

> A Declaration adopted by the General Assembly reflects the collective views of the United Nations which must be taken into account by all members in good faith. Despite its non-binding status, the *Declaration has legal relevance*. UNDRIP is a Declaration adopted by the General Assembly of the United Nations. … For instance, it may reflect obligations of States under other sources of international law, such as customary law and general principles of law. Differences in legal status of UNDRIP and Convention No. 169 should play no role in the practical work of the ILO and other international agencies to promote the human rights of indigenous peoples through advocacy, capacity building, research or other means.

In addition, the ILO has affirmed that C169 and the *UN Declaration* are "compatible and mutually reinforcing:"

> Crucial for the technical and promotional work of the UN system is the commitment of governments wishing to benefit from such assistance to promote and protect indigenous peoples' rights … The provisions of Convention No. 169 and the Declarationare *compatible and mutually reinforcing*. (emphasis added)

American Declaration on the Rights of Indigenous Peoples, 2016

Consistent with the trend of intergovernmental organizations undertaking efforts responsive to Indigenous peoples' human rights, the Organization of American States, as far back as 1989 began the process of drafting a regional instrument to complement its diverse human rights regime and to be taken up by its Inter-American Institute of Human Rights, the Inter-American Commission on Human Rights, and the Inter-American Court on Human Rights. The *American Declaration on the Rights of Indigenous Peoples* was finalized on June 16, 2016. Here again, this regional instrument must be read in the context of other international human rights standards, including the *UN Declaration*. Making the linkage clear and also reinforcing the interrelated, interdependent, and indivisible nature of human rights, the *American Declaration* actually invokes the *UN Declaration* in its preamble by:

> BEARING IN MIND the progress achieved at the international level in recognizing the rights of indigenous peoples, especially the 169 ILO Convention and the United Nations Declaration on the Rights of Indigenous Peoples ….

UN Declaration on the Rights of Indigenous Peoples, 2007

These extraordinary developments have come as a result of the persistence and advocacy of Indigenous peoples from across the globe. It is clear that much progress has been made but more must be done for Indigenous peoples

to actually exercise and enjoy the norms that we have gained. Implementation is lacking and few "good practices" can be identified by Indigenous peoples worldwide. However, to keep on this path remains crucial for our survival and our overall cultural integrity. Because the right to self-determination is a prerequisite for the exercise and enjoyment of all other rights, it is useful to reiterate how key preambular paragraphs and operative provisions of the *UN Declaration* are interrelated.

The Preamble of the *UN Declaration* acknowledges that historical injustices have had damaging and devastating impacts upon Indigenous peoples and as such human rights standards should guide UN member state behavior toward Indigenous individuals and Indigenous peoples collectively. Essential, contextual paragraphs instruct the interpretation of the whole *UN Declaration* and in relation to self-determination. These provisions reflect the intentions of UN member states by:

> Affirming that *indigenous peoples are equal to all other peoples*, while recognizing the right of all peoples to be different, to consider themselves different, and to be respected as such,
>
> Acknowledging that the Charter of the United Nations, the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights, as well as the Vienna Declaration and Programme of Action, *affirm the fundamental importance of the right to self-determination of all peoples*, by virtue of which they freely determine their political status and freely pursue their economic, social and cultural development,
>
> Bearing in mind that nothing in this Declaration may be used to deny any peoples their right to self-determination, exercised in conformity with international law …

When understood as a whole, the operative paragraphs make it clear the *UN Declaration* is consistent with the understanding of the right of self-determination in international law as well as its equal application to Indigenous peoples.

> Article 2
>
> Indigenous peoples and individuals are *free and equal to all other peoples* and individuals and *have the right to be free from any kind of discrimination*, in the exercise of their rights, in particular that based on their indigenous origin or identity. [emphasis added]

The explicit recognition of the right of self-determination and its attachment to Indigenous peoples mirrors the language affirmed in common Article 1 of both the ICCPR and ICESCR discussed above:

> Article 3
>
> Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

In consideration of the inherent right of self-determination of Indigenous peoples in the context of their traditional forms of governance and in relation to the rights and responsibilities of their distinct membership, collectively, the *UN Declaration* affirms self-government and all of its multiple, diverse forms of expressions, institutions, relationships, and protocols:

> Article 4
>
> Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions.

There are some that have argued that because of the concluding provisions of the *UN Declaration* and the insistence of States to include a reference to territorial integrity within Article 46 that this somehow diminishes the right of self-determination of Indigenous peoples. It must be made clear that the language found in Article 46(2) must be read to understand that the principle of territorial integrity already exists and is clearly articulated in international

law. And, more importantly, there is no way that this understanding can be validly expanded upon by the *UN Declaration*. Furthermore, the other elements of this specific article provide some very well founded doctrines that must guide the application of the whole of the *UN Declaration*, including the right of self-determination. Specifically, Article 46(3) affirms that:

> The provisions set forth in this Declaration shall be interpreted in accordance with the principles of justice, democracy, respect for human rights, equality, non-discrimination, good governance and good faith.

Finally, all of the elements affirming the right of self-determination cannot mean that Indigenous self-determination can only be exercised within the parameters of Article 4. Such a conclusion is wholly illogical. It must be recognized that Article 3 is neither synonymous with, nor limited to autonomy or self-government.

Autonomy and Self-Government

Unfortunately, across the globe, UN member states have difficulty digesting the fact that the right of self-determination is one whole right, which has various forms, dimensions, and contexts, including autonomy and self-government. Though good examples of self-government arrangements exist in Bolivia, Colombia, Nicaragua, Mexico and Peru, this volume illustrates the fact that Indigenous peoples continue to face obstacles. Numerous hurdles have hampered efforts to exercise self-government as a central expression of the distinct characteristics of Indigenous peoples. The right to autonomy and self-government is at the core of the survival of Indigenous peoples. Most hurdles are set by the UN member state of mind bent on "ownership" of Indigenous peoples, treating them solely as objects that they have unilateral control over. Such actions only serve to diminish the content of this primordial right, ultimately leading to injustice, mistrust and antagonistic relations between Indigenous peoples and the State as well as the perpetuation of colonial attitudes.

Therefore, it is important to elaborate upon Article 4 of the *UN Declaration* and the constructive need for collective autonomy and self-government of Indigenous peoples as an element of the right to self-determination. Again,

the anchor is the pre-existing capacity to exercise authority over their internal and local affairs as a dimension of the right of self-determination. To be sure, in order to exercise the comprehensive array of rights affirmed in the *UN Declaration* that apply to the internal and local affairs of a collectivity, autonomy and self-government are essential. Here, Indigenous customs and traditional decision-making practices are important and must be honored, respected, and recognized. In this way, the unique characteristics of the Indigenous peoples are able to thrive in a way that cannot be reproduced elsewhere and especially in their relations with external actors, ranging from States to third parties to civil society.

Again, Article 4 specifies the content and contexts of a particular form of the right of self-determination. Therefore, Article 4 must be understood in relation to the internal affairs of Indigenous peoples and communities as well as their lands, territories and resources. However, another context for the exercise of self-government includes those affairs that have direct linkage to governance by the State that impacts the internal and local affairs of the Indigenous peoples concerned. For example, programs and funding to build infrastructure such as potable water and sewer systems, where State consultation and cooperation in good faith with Indigenous peoples must be the standard in both substance and procedure.

To be more specific, in terms of the implementation of Article 4 of the *UN Declaration*, full effect must be given to ensure Indigenous peoples' representation, according to their own terms, within the various bodies and branches of government, including the executive, legislative and the constitutional framework of the country concerned. For example, the Inuit-Crown Partnership Committee (Inuit-Crown Partnership Agreement, 2017)[7] in Canada provides a structure and procedures for Inuit to have ongoing dialogue with the executive branch of the federal government. Regarding recognition of rights within the constitutional framework, section 35 of the Constitution Act in Canada provides:

> (1) The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed.
>
> (2) In this Act, "aboriginal peoples of Canada" includes the Indian, Inuit and Métis peoples of Canada.

> (3) For greater certainty, in subsection (1) "treaty rights" includes rights that now exist by way of land claims agreements or may be so acquired.
>
> (4) Notwithstanding any other provision of this Act, the aboriginal and treaty rights referred to in subsection (1) are guaranteed equally to male and female persons (Constitution Act, 1983).[8]

In addition, specific norms must be developed to ensure that the status, identity, rights and interests of Indigenous peoples are reflected within the national legal system. Within the United States and elsewhere, the recognition of the inherent right to self-determination and the distinct collective rights of Indigenous peoples are a substantial feature of federal Indian law (US President Message on Indian Affairs, 1970).[9] It is also crucial for the federal or national government to recognize the validity of the laws, customs, traditions, practices and institutions of Indigenous peoples – the core or essence of the right to autonomy and self-government for Indigenous peoples.

There are numerous examples where autonomy and self-government institutions and structures are needed to effect Indigenous peoples' decision-making concerning their affairs, such as the ways and means to determine membership (*UN Declaration*, Art. 33)[10] of Indigenous peoples – their self-identification, often based on successive generations of understanding of language, life within a particular environment, spiritual practices, families and extended families, even the name that one is given. In addition, identifying the responsibilities (*UN Declaration*, Art. 35)[11] of the members of an Indigenous nation and peoples necessitates a form of social order and/or political institutions to do so.

Again, many of these "institutions" are pre-existing and reflect inherent values, customs, practices, protocols, and yes, institutions. The subject of traditional land tenure (*UN Declaration*, Art. 26)[12] within Indigenous territories also requires methods for ensuring that these systems are maintained as well as the collective nature of safeguarding these important understandings, methods, and usages. Essentially, autonomy and self-government touches upon all matters relevant to the day to day lives of Indigenous peoples within community. The realms of health and welfare, education, Indigenous knowledge, hunting and harvesting, traditional laws, and many other individual

and collective cultural practices must be taken into consideration through customarily appropriate autonomy and self-government.

A central feature of autonomy and self-government is the legitimacy of Indigenous laws, traditions, and customs in relation to those within a community and the ability of Indigenous peoples to organize their economic, social, cultural, spiritual and political life through such attributes. The right of self-determination speaks to this dimension of self-government when referring to Indigenous peoples determining their political status and freely pursuing their economic, social and cultural development.

Additional articles are crucial to highlight as evidence of the nature and understanding of autonomy and self-government. In particular, Article 5 (*UN Declaration*, Art. 5)[13] explicitly recognizes that "Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions" and if they so choose to participate fully in the political life of the State. Article 18 can only be given full effect through forms and measures of autonomy and self-government in order for it to be fully manifested by Indigenous peoples:

> Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves inaccordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions.

Here, the State must both procedurally and substantively ensure that the effective participation of Indigenous peoples is secured in matters which would affect their rights. And, in order to do so, the Indigenous peoples concerned as well as their institutions must have access to materials and information for review and determination of their views, interests and concerns for their effective participation to be realized. Significantly, Article 19 invokes the important standard of free, prior, and informed consent, which is a key characteristic of autonomy and self-government sourced in the right of self-determination:

> States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent

> before adopting and implementing legislative or administrative measures that may affect them.

Recalling that human rights are interrelated, interdependent and indivisible, articles 18 and 19, when read and understood in tandem, Article 18 affirms the right to participate in decision-making and further articulates by whom and how – matters wholly in the purview of the Indigenous peoples concerned. Article 19 affirms a responsibility of national government to consult and cooperate in good faith, recognizing the autonomy and self-government of Indigenous peoples and their decision-making processes before taking actions that may affect them. Such actions may have positive or negative impacts, but this is for the Indigenous peoples concerned to decide. These requirements alone beg the need for the exercise of the right to autonomy and self-government in the collective political life of the Indigenous peoples concerned in order to engage in consultation and cooperation with government over measures that may affect them as a people. It must be noted that the obligation of States to "consult and cooperate in good faith" with Indigenous peoples is affirmatively stated in no less than seven provisions of the *UN Declaration*.

As noted above, the need for States to accommodate Indigenous peoples' cultural context into the national legal system is imperative in relation to Article 27 of the *UN Declaration*.[14] In fact, the provision itself specifies that

> States shall establish and implement, in conjunction with Indigenous peoples concerned, a fair, independent, impartial, open and transparent process, giving due recognition to Indigenous peoples' laws, traditions, customs and land tenure systems, to recognize and adjudicate the rights of Indigenous peoples pertaining to their lands, territories and resources, including those which were traditionally owned or otherwise occupied or used.

Another weighty example is Article 34 (*UN Declaration*, Art. 34)[15] overall but specifically in the context of its reference to Indigenous peoples' juridical systems or customs in relation to their members. This right is often infused with important traditions and practices, embedded in languages that are distinctive to the peoples concerned as well as their environment and life ways. Many are long-standing measures to maintain balance, harmony, and

sustainability. At the same time, one must also recognize that there may be progressive developments that alter traditions, especially where consistency with international standards may arise.

Finally, it is imperative that the language related to Article 4 explicitly recognizing that Indigenous peoples have the right to the "ways and means for financing their autonomous functions" is given full effect and support by UN member states at the domestic or national level. Too often, financial resources are insufficient, thereby stifling full exercise and enjoyment of autonomy and self-government of Indigenous peoples. In addition, in those regions where the Indigenous peoples themselves have pushed for or developed ways and means to financially support their own autonomy and self-government, States have challenged their capacity to do so in a discriminatory fashion, attempting to claim sole power to regulate this dimension of self-determination and self-government. Such actions must be curbed and eliminated.

International Law Association

From 2011 to 2014, the International Law Association Committee on the Rights of Indigenous Peoples undertook and prepared an Expert Commentary on the *UN Declaration* wherein they confirmed a number of important features about its legal status and the effects of its comprehensive provisions. The ILA Committee concluded that the *UN Declaration* has diverse legal effects and in particular, a number of its provisions fall into the category of customary international law, thereby creating significant legal effects and UN member state obligations.

Regarding the ILA 2010 Committee Report delivered at The Hague, the Committee affirmed that:

> The relevant areas of Indigenous peoples' rights with respect to which the discourse on customary international law arises are self-determination, *autonomy or self-government*, cultural rights and identity, land rights as well as reparation, redress and remedies (ILA 2010, 43). (emphasis added)

The right of self-determination has important foundational elements. As stated above, the right to self-determination is a prerequisite to the exercise and enjoyment of all other individual and collective human rights of Indigenous

nations, peoples, and communities. It is also one whole right, including the important elements of self-government and autonomy but also the important features manifested in the expression of the right in relation to those outside of respective Indigenous peoples and nations, including UN member states. Again, the right of self-determination is inherent, pre-existing.

And, when one considers the essential doctrine of the equal application of the rule of law to protect against racial discrimination – a peremptory norm of international law – a fundamental principle of international law that is accepted by the international community of states as a norm from which no derogation is permitted,[16] it is clear that the right of self-determination of Indigenous peoples is the same right that applies to all other peoples and it is consistent with international law.

In the ILA Committee Report in Sofia, 2012, where members delivered their final conclusions and recommendations, the Committee restated their collective view that:

> States must comply with the obligation – consistent with customary and, where applicable, conventional international law – to recognize, respect, protect, fulfil and promote the right of indigenous peoples to self-determination, conceived as the right to decide their political status and to determine what their future will be, in compliance with relevant rules of international law and the principle of equality and non-discrimination (ILA 2012, 35).

Furthermore, specific to autonomy and self-government, the Committee stated that:

> States must also comply – according to customary and, where applicable, conventional international law – with the obligation to recognize and promote the right of indigenous peoples to autonomy or self-government, which translates into a number of prerogatives necessary in order to secure the preservation and transmission to future generations of their cultural identity and distinctiveness; these prerogatives include, *inter alia*, the right to participate in national decision-making with respect to decisions that may affect them, the right to be consulted with respect

> to any project that may affect them and the related right that projects suitable to significantly impact their rights and ways of life are not carried out without their prior, free and informed consent, as well as the right to regulate autonomously their internal affairs according to their customary law and to establish, maintain and develop their own legal and political institutions (ILA 2012, 35).

Additional foundational rights that are sourced in the right of self-determination is the right to free, prior and informed consent (FPIC). FPIC is the principle that a community has the right to give or withhold its consent to proposed projects that may affect the lands they customarily own, occupy or otherwise use. UN member states attempted to advance an intellectually dishonest argument about FPIC by erroneously suggesting that the right to free, prior and informed consent is a "veto." This term was solely being used by regressive governments to incite fear among other governments. However, these states did not succeed with this distortion of FPIC. FPIC is now a key right of Indigenous peoples in international law and jurisprudence. All Indigenous peoples have the right to say yes, no, or yes with conditions.

Informed, non-coercive negotiations between investors, companies or governments and Indigenous peoples prior to development or other enterprises on their lands, territories and involving their resources is an essential pathway consistent with the right of self-determination. Those who wish to advance their interests must enter into dialogue and negotiations with the Indigenous peoples concerned, recognizing their interrelated, inherent rights. Again, the Indigenous peoples concerned have the right to decide whether they will agree to the project or not once they have a full and accurate understanding of the implications of the project on them and their lands, territories and resources.

It is substantial that one of the operative paragraphs of the *UN Declaration*, Article 26, refers to a genuine measure of "control" and is directly related to the right of self-determination.

> 1. Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.

2. Indigenous peoples have the right to own, use, develop and *control* the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.

3. States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned. [emphasis added]

As noted above, there are few, but a growing number of positive examples where Indigenous peoples have achieved the exercise of self-determination that is closely aligned with what they held prior to contact. The comprehensive land claims agreement in favor of the Inuit in Labrador, Canada affirms the Nunatsiavut right of self-determination and management of their lands, territories and resources, including the offshore "territorial sea" consistent with the definition under the UN Convention on the Law of the Sea. In addition, the Inuit of Greenland presently have extensive autonomy over affairs within and outside of Greenland and they have carefully researched and adopted an agenda for the political enterprise for full independence from the colonial state of Denmark. All of their efforts have been consistent with international law and the international understanding of the right of self-determination of peoples, including Indigenous peoples.

Conclusion

In conclusion, we have numerous and harrowing examples of the urgent need for equality, respect, and recognition of the basic human rights of Indigenous peoples. However, the *UN Declaration* has diverse legal effects and reflects rights already found in human rights treaties and customary international law as well as conventional international law. Since the US government endorsement in 2010, we should celebrate the fact that the *UN Declaration* is a consensus international human rights instrument. It is noteworthy that the *UN Declaration* has been reaffirmed on numerous occasions by consensus of the General Assembly. It is increasingly being regarded as an authoritative source of guidance for diverse institutions, including parliaments,

governments, courts, national human rights institutions and regional as well as international human rights treaty bodies. Yet, the quest for equality continues.

Indigenous peoples, wherever they are in the world, have such extraordinary insights and a wealth of Indigenous knowledge about who they are and how they relate to everything that surrounds them – their homelands and all living things – there is so much that we have to offer. Our strength lies in our identity as distinct peoples. The world community has acknowledged this through adoption of the various Indigenous specific international human rights instruments. So, the intent of this essay is to encourage Indigenous peoples to consider, in pragmatic terms, how to use not only the strength of their profound knowledge, but to also the tools of international human rights law at the local, national, regional and international levels as well. Again, the intent is to illustrate how these well-established international norms are useful tools to employ in a multi-pronged, multi-scalar effort driven by Indigenous peoples to gain recognition of and respect for their right to self-determination and its diverse elements. And, this is only a glimpse into what is possible.

We, as Indigenous peoples and Indigenous advocates, must make greater use of the international fora to advance the relative effectiveness of all international instruments and standards in the protection of the rights of Indigenous peoples. Through our participation and advocacy at the international level, we can educate UN member states and others about the advances we have made and the implementation gaps that need to be closed.

We should be doing all that we can at the local, regional and international level, through increased use of the treaty bodies associated with the UN, including the Committee on the Elimination of Racial Discrimination (2007), the Special Rapporteur on the Rights of Indigenous Peoples, the Special Rapporteur on Contemporary Forms of Racism (2008), the Special Rapporteur on Violence Against Women (2011), the Human Rights Council, the Permanent Forum on Indigenous Issues, the International Labor Organization, the Organization of American States and the African Commission on Human and Peoples Rights. Finally, we can educate our future generations about the momentous strides that we have made against great odds, thereby adding to the force of reality to gain the equality aspired to by our people as a central feature of our right of self-determination.

NOTES

1 Interim Report, International Law Association, The Hague Conference (2010), Committee on Rights of Indigenous Peoples, p. 43. (s.f.) https://bit.ly/32YZklV

2 Sixth Committee of the General Assembly, Future work in the field of the codification and progressive development of international law (A/C.6/ L.492), December 2, 1961). Accessed 6 August 2021: https://documents-dds-ny.un.org/doc/UNDOC/LTD/N61/292/19/PDF/N6129219.pdf?OpenElement

3 General Assembly Resolution 1686 (XVI) of December 18, 1961 (Future work on the codification and progressive development of international law). Accessed 6 August 2021: https://documents-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/167/39/PDF/NR016739.pdf?OpenElement

4 General Assembly Resolution 2625 (XXXV) of October 24, 1970 (Declaration on the principles of international law regarding friendly relations and cooperation between States in accordance with the Charter of the United Nations).

5 Indigenous and Tribal Populations Convention, 1957 (No. 107), International Labor Organization, entered into force on June 2, 1959, 328 U.N.T.S. 247. Accessed 6 August 2021: https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C107

6 Indigenous and Tribal Populations Convention, 1989 (No. 169), International Labour Organization, adopted in Geneva, ILO session No. 76, 27 June 1989 (entered into force 5 September 1991). Accessed 6 August 2021: https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C169

7 "The Committee will advance shared priorities between Inuit and the Government of Canada, including the implementation of Inuit land claims agreements, social development, and reconciliation between Inuit and the Government of Canada. The Committee will monitor and report back on progress on advancing these priorities moving forward." The Committee includes the Prime Minister and select federal ministers, President Natan Obed on behalf of Inuit Tapiriit Kanatami, Chair/CEO Duane Smith on behalf of the Inuvialuit Regional Corporation, President Aluki Kotierk on behalf of Nunavut Tunngavik Inc., President Jobie Tukkiapik on behalf of Makivik Corporation, and President Johannes Lampe on behalf of the Nunatsiavut Government. Accessed 22 June 2021 https://pm.gc.ca/en/news/news-releases/2017/02/09/prime-minister-canada-and-president-inuit-tapiriit-kanatami-announce..

8 PART II, RIGHTS OF THE ABORIGINAL PEOPLES OF CANADA, section 35. Accessed 12 December 2022 https://laws-lois.justice.gc.ca/eng/const/FullText.html#h-53

9 "It is long past time that the Indian policies of the Federal government began to recognize and build upon the capacities and insights of the Indian people. Both as a matter of justice and as a matter of enlightened social policy, we must begin to act on the basis of what the Indians themselves have long been telling us. The time has come to break decisively with the past and to create the conditions for a new era in which the Indian future is determined by Indian acts and Indian decisions." PRESIDENT NIXON, SPECIAL MESSAGE ON INDIAN AFFAIRS [JULY 8, 1970). Accessed 22 June 2021 http://www.ncai.org/attachments/Consultation_IJaOfGZqlYSuxpPUqoSSWIaNT

kEJEPXxKLzLcaOikifwWhGOLSA_12%20Nixon%20Self%20Determination%20Policy.pdf

10 *UN Declaration*, Art. 33. (1), Indigenous peoples have the right to determine their own identity or membership in accordance with their customs and traditions. This does not impair the right of indigenous individuals to obtain citizenship of the States in which they live. (2), Indigenous peoples have the right to determine the structures and to select the membership of their institutions in accordance with their own procedures.

11 *UN Declaration*, Art. 35. Indigenous peoples have the right to determine the responsibilities of individuals to their communities.

12 *UN Declaration*, Art. 26 (3). States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned.

13 *UN Declaration*, Art. 5. Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State.

14 *UN Declaration* Art. 27. States shall establish and implement, in conjunction with indigenous peoples concerned, a fair, independent, impartial, open and transparent process, giving due recognition to indigenous peoples' laws, traditions, customs and land tenure systems, to recognize and adjudicate the rights of indigenous peoples pertaining to their lands, territories and resources, including those which were traditionally owned or otherwise occupied or used. Indigenous peoples shall have the right to participate in this process.

15 *UN Declaration* Art. 34. Indigenous peoples have the right to promote, develop and maintain their institutional structures and their distinctive customs, spirituality, traditions, procedures, practices and, in the cases where they exist, juridical systems or customs, in accordance with international human rights standards.

16 The peremptory norms of international law include crimes against humanity; war crimes; piracy; racial discrimination; genocide; apartheid; slavery and torture.

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Interim Report, International Law Association, The Hague Conference [Informe interino, International Law Association, Conferencia de La Haya] (2010), Committee on Rights of Indigenous Peoples [Comité sobre los Derechos de los Pueblos Indígenas], p. 43. (s.f.). Accessed 27 March 2020 from https://www.ila-hq.org/index.php/committees

2

The Implementation Gap for Indigenous Peoples' Rights to Lands and Territories in Latin America (1991–2019)

Ritsuko Funaki

Introduction

The last two decades of the 20th century saw a rise in Indigenous social movements in several Latin American countries. New constitutional claims led to a recognition of the demands for the rights embodied in political and territorial autonomy (Van Cott, 2001, pp. 30–31).

Academic researchers and international organizations such as the Inter-American Development Bank have noted considerable variation in the extent of the claims included in the new constitutions in the region that, in response to demands, now recognize the rights of Indigenous peoples, as well as in the degree of progress in related legislation (Barié, 2003; Iturralde, 2011). At the same time, as the then United Nations (UN) Special Rapporteur on the Rights of Indigenous Peoples Rodolfo Stavenhagen (2006) warned in his report, there is a large "implementation gap" between the content of the constitutional texts and their application in practice.

While sufficient and consistent legislation is an essential precondition for applying the rights established in the constitution, the "main problem" in this implementation gap, according to the Special Rapporteur, is "administrative,

legal and political practice" that violates the formally recognized rights of Indigenous peoples (Stavenhagen, 2006, par. 83).

Experts monitoring this reality have thoroughly analyzed this gap, focusing on the noteworthy cases of Bolivia, Colombia, Ecuador, Panama and Nicaragua, among others (Aylwin, 2012; Muñoz, 2016; Ortiz, 2010, 2015; Tockman & Cameron, 2014). If we know, then, that no country in Latin America is fully complying with what it has promised, what is the relevance of the struggles for constitutional reform to address the claims of Indigenous peoples? It would not seem to make any sense to seek a legal guarantee of Indigenous peoples' right to self-determination in a modern state in which constitutionality, ironically, has no real impact on improving these communities' situations.

Nonetheless, if we look at the issue from a constructivist perspective, it is only natural that no country has automatically become what is set forth in its reformed constitution; such a transformation always requires a process of large-scale social learning. The challenge is to find a way to implement these new rules of the game to improve the conditions of coexistence among different Indigenous and non-Indigenous peoples and nations.

To advance this objective, this chapter first asks how big the implementation gaps are in the Latin American countries that have made progress in legalizing Indigenous peoples' rights. Answering this question is indeed a challenge according to Inguanzo, a Spanish political scientist who carried out a comparative analysis of the legal recognition of Indigenous peoples' rights in countries in Southeast Asia. In her book, Inguanzo (2016) indicates that "these gaps are tied to particular local (and even personal) experiences, such that carrying out a rigorous comparative analysis of such great magnitude becomes immense and unfeasible" (p. 16). In line with Inguanzo's methodological perspective, then, this article proposes a way to carry out a comparative analysis of the gaps in the Latin American cases that have already begun the implementation phase.

The methodological foundation for this study is the logic of fuzzy sets — more specifically, Fuzzy Set-Qualitative Comparative Analysis (fsQCA). However, I do not carry out an fsQCA here in this paper. Instead, due to the lack of available data on the dependent variable — or in QCA terms, the lack of results that show the degrees of the phenomenon under study, the implementation gap — I will carry out the fsQCA in the next phase of my research.

The fsQCA methodology permits an analysis of the causal complexity of social phenomena that include *conjunctural causation* and *equifinality*. The first attribute suggests that influencing a certain group of factors yields a specific result; however, this same result would not be achieved without the presence and interaction of this group of factors. In other words, it allows variables to not be *independent*, as statistical methodology otherwise assumes.

The second attribute, *equifinality*, is a presupposition that there are different pathways and combinations of factors that can lead to the same result. The methodology, then, while allowing for the complexity of social realities, enables us to identify general rules through systematic comparison based on mathematical theories such as Boolean algebra and set theory (Ragin, 1987; Schneider & Wagenman, 2012).

The first phase of this research seeks to identify the conditions that hinder the effective functioning of institutions for Indigenous self-determination. Thus, it is of great importance to first *measure* the gaps with full awareness of how complicated this phenomenon is.

Creating an index that can compare the different cases across the region has both advantages and disadvantages. The greatest advantage is the ability to ask, for the first time, the following question: Why does the implementation gap persist to a great extent in some countries while less so in others? We may thus discover which conditions affect the implementation of Indigenous peoples' rights from a comparative perspective. At the same time, one of the greatest disadvantages is the considerable loss of information about each of the cases subject to comparison. As explained in the following paragraph, facilitating this comparative analysis requires operationalizing and, inevitably, simplifying the concepts that comprise the gap, yet without losing sight of their essence.

As mentioned above, positioning the countries and their different levels of implementation requires operationalizing the qualities that reflect diverse aspects of non-compliance according to objective references. In this regard, Bennagen's instructions, delivered at a meeting of experts organized by the United Nations in 1991, shall serve as a guideline. The purpose of the UN meeting was to review the experiences of countries around the world with internal Indigenous autonomous governments. The Filipino anthropologist suggested that there are certain general values that have crystallized throughout the development of Indigenous peoples' movements for self-determination

and that these can serve as a standard for evaluating concrete situations of Indigenous autonomy. Bennagen (1992, p. 72) identified five operational features to consider:

- Control of territory and its natural resources;
- The inclusion of corresponding Indigenous institutions in legislative, executive and judicial bodies;
- Proper actual representation of the Indigenous cultural communities in the various organs of power, not only in the autonomous territorial unit but also in the national government;
- Fiscal autonomy (including the power to raise revenues), a just share of national revenues and a capable fiscal administration; and
- Respect, protection and development of Indigenous cultures.

The original plan for this study was to analyze these five areas qualitatively to then develop a comprehensive implementation index. However, upon review of the information available in the preliminary research phase, I concluded that a huge amount of qualitative data would be needed to examine each of Bennagen's suggested features, which would not be feasible to investigate within the time and space available for this chapter.

Therefore, to prevent an inevitably superficial assessment, this study focuses on a single feature. Given its most essential and controversial significance, I analyze the first element of Indigenous autonomy; that is, the control of territories and natural resources.

Methodology

The procedure for selecting which cases to analyze was as follows: First, I collected legal information (established up to the end of 2018) for the seventeen Latin American countries in the region. Second, I reviewed their constitutions and laws related to Indigenous peoples' rights.[1] In this initial phase, I looked not only at rights to lands and territories but also at rights to autonomy and self-determination; that is, the second and third areas proposed by Bennagen. I have thus ensured that the countries analyzed have the legal foundation for an autonomous regime as well as access to land. Nonetheless,

Table 2.1. Rights to collective ownership and self-determination recognized in constitutions and legislation

Country	Constitution (Updated)	Territorial law Community ownership	Entity to exercise autonomy	Selected	ILO C169 (C107) Ratification
Argentina	1994	Guarantees the respect for community possession and ownership of lands (art.75, section 17)	not indicated		2000 (1960)
Bolivia	2009	articles 30, II, 4th, 6th; 56; 388; 393; 394, III; 395; 403	Peasant Native Indigenous Autonomy, articles 269; 270; 271; 272; 273; 275; 276; 289; 290; 291; 292; 293; 394; 295; 296; 304	x	1991 (1965)
Brazil	1988 (2002)	articles 20, XI; XXV; 231, 1st, 4th, 5th, 6th, 7th; 174, 3rd	not indicated, except indirectly in art. 231		2002 (1965)
Chile	1981 (1989)	not indicated	not indicated		2008 (not ratified)
Colombia	1991 (2016)	articles 58; 63; 72; 79; 80; 95, 8th; 329	Reserves, Indigenous Territorial Entities, articles 286; 287; 329; 330; 357	x	1991 (1969)
Costa Rica	1949 (2015)	not indicated in const. *Guarantees as indigenous reserves (Law No. 6172, 1977)	Not indicated. *Indigenous reserves are not state entities (art. 2, Law No. 6172)		1993 (1959)
Ecuador	2008	articles 57, 4th, 5th, 11th; 60	Indigenous and Pluricultural Territorial Circumscriptions (articles 57, 9th, 10th; 242; 257)	x	1998 (1969)
El Salvador	1983 (2014)	communal lands in general (art. 105)	not indicated		Not ratified (1958)
Guatemala	1986 (2002)	articles 66; 67; 68	Only respects their ways of life (art. 66) *Indigenous Alcaldías, Assistant Alcaldías (Decree No. 12-2002)	x	1996 (not ratified)
Honduras	1982	art. 346	not indicated		1995 (not ratified)

Table 2.1. (*continued*)

Country	Constitution (Updated)	Territorial law Community ownership	Entity to exercise autonomy	Selected	ILO C169 (C107) Ratification
Mexico	1917 (2018)	articles 2, A-V, VI; 27; 27, VII	Municipalities and municipal subdivision art. 2; 2 A; 2 A VIII	x	1990 (1959)
Nicaragua	1987 (2014)	articles 5, 6th, 7th; 89; 180	Autonomous Regions, (articles 2; 5; 89; 175; 177; 180; 181)	x	2010 (not ratified)
Panama	1972 (2004)	art. 127	In the const., with respect to the political participation of indigenous communities (articles 124; 147; 314) **Indigenous Comarcas	x	Not ratified (1971)
Paraguay	1992	articles 63; 64; 66; 115, 11th	articles 63; 65 *Municipal subdivision, indigenous communities (Law No. 904, 1981)	x	1993 (1969)
Peru	1993 (2005)	articles 60; 88; 89	Municipal subdivision, Peasant and Native Communities (articles 89; 149)	x	1994 (1960)
Uruguay	1966 (2004)"	not indicated	not indicated		Not ratified (not ratified)
Venezuela	1999 (2009)"	art. 119	only within the autonomy of the municipality (articles 119; 125; 169)	x	2002 (not ratified)

** The self-management rights of Indigenous peoples are enshrined in the laws that establish the Indigenous comarcas. (Guna Yala: Law No. 16 of 1953; Emberá Wounaan of Darién: Law No.22 of 1983; Guna de Madungandi: Law No.24 of 1996; Ngäbe-Buglé: Law No.10 of 1997; Guna de Wargandi: Law No.34 of 2000). **Source**: Prepared by the author based on the constitutions and laws.

in the next phase I focused specifically on the implementation gap with respect to land rights.

Based on the legal research mentioned above (see Table 2.1), I selected ten countries: Bolivia, Colombia, Ecuador, Guatemala, Mexico, Nicaragua, Panama, Paraguay, Peru and Venezuela. These countries have political-administrative or community-based entities with the legal status to exercise Indigenous autonomy, as well as the legal guarantee of collective ownership for Indigenous peoples.

Sources

The database for this study consists of the documents published by different international organizations that monitor and promote the implementation of Indigenous peoples' rights.

The first of such document collects the comments of the International Labour Organization's (ILO) Commission of Experts on the Application of Conventions and Recommendations (CEACR)[2] (see Annex 1, Table 2.6 for CEACR citations hereinafter). This commission publishes comments in two forms: *Observations* and *Direct Requests*. The *Observations* are generally used for the most serious cases of non-compliance of a country's obligations. The *Direct Requests*, in contrast, mainly address technical questions and help qualify certain points that government reports do not explain with sufficient details and examples. I have also reviewed reports by the tripartite committee established to examine *Complaints*. These reports are published when there are allegations that provisions of an agreement have been violated.

Taking advantage of the characteristics of these documents, which make it possible to identify cases of non-compliance through a filter of international norms, I analyzed the comments and reports related to the implementation of the Indigenous and Tribal Peoples Convention (C169). This agreement was adopted in 1989 and entered into effect in 1991.

Twenty-three states ratified the agreement, including all the countries analyzed in this study except for Panama. For the case of Panama, I consulted the documents on Convention 107, which precedes C169 and is equally useful for obtaining similar information.

Although these documents have the great advantage of being recognized as a reliable official source for studying different situations, we must be careful about their possible disadvantages. When there is a serious problem with

Indigenous peoples' rights in a country, the government of that country tends to not present the required information or simply to overlook its obligation to report to the ILO, which makes it difficult to identify clearly what is happening in the country.

Therefore, to complement this aspect of the study, I have used another source of information. This second source consists of reports prepared by the special rapporteurs on Indigenous peoples' rights. This position was created in 2001 by the UN Commission on Human Rights and is charged with presenting annual reports on Indigenous peoples' rights as well as visiting the countries involved, communicating information about the human rights situation, presenting recommendations, and carrying out monitoring activities. At the time of writing, there have been three rapporteurs: Rodolfo Stavenhagen (2001–2008), James Anaya (2008–2014), and Victoria Tauli-Corpuz (2014–2020). This position allows us to understand the critical human rights situations of Indigenous peoples in greater detail. On many occasions, the rapporteurs themselves chose to visit precisely those countries identified in the first source as having governments that no longer respond to the ILO Commission.

Finally, the third source consulted here consists of the documents published by the Inter-American Commission on Human Rights (IACHR) and the Inter-American Court of Human Rights (I/A Court H.R.). Both institutions belong to the Organization of American States (OAS). While the first two sources provide relevant information in summary form, allowing diverse problems to be addressed, this third source makes it possible to examine concrete cases of non-compliance in greater detail. The IACHR documents I have used include admissibility reports and merit reports, as well as both the precautionary measures that describe the specific complaints examined by the commission itself and thematic and country reports. Of the documents produced by the I/A Court H.R., I have consulted the sentences in cases of alleged violations of Indigenous peoples' rights, especially those related to lands in the countries under study. I have reviewed the closed cases up to 2018 and their corresponding case summaries.

The sources mentioned above make it possible to remain up to date on relevant cases of Indigenous rights violations based on the international standard. Though governments often declare that they are making every effort to fulfill their international obligations, pointing to legislation, specific programs, dialogues and workshops organized with Indigenous peoples, the

words of these governments do not ensure the effect they suggest. In this regard, the sources mentioned above allow us to verify those situations that show *non-compliance* by such governments. The index developed in this study can therefore measure the gaps that exist between legalities and their practices in qualitative terms.

Text analysis

The next four stages of this study include the procedure for analyzing the documents.[3] In the first stage, I examined all the documents for each country.[4] The objective of this stage was to explore the key points to distinguish situations of severe non-compliance from other relatively mild situations. It was also useful for getting a sense of what types of land-related issues have been identified as problematic for the countries under study. Therefore, I have taken notes on each document and marked all the relevant texts. At the same time, I consulted other sources such as audio and video recordings of the IACHR hearings on the issue of Indigenous peoples' rights and reviewed the news items and blogs published by non-governmental organizations (NGOs) that report on relevant cases. While these sources of additional information were not used as direct sources for examination, they help to understand the cases described in the documents from multiple angles.

In the second stage, I created a text analysis guide based on the knowledge obtained in the first stage as well as on the fundamental concepts expressed in the second part of Convention 169, which deals with land (arts. 13–19). I have thus established four points of comparison to re-examine the documents:

1. Collective property titles for Indigenous peoples (arts. 13, 14-1, 14-2).[5]

2. Territorial security against invaders (arts. 14-2, 14-3, 18).[6]

3. Territorial security against evictions and displacement (arts. 14-2, 16).[7]

4. Consultation about natural resources in the lands occupied by Indigenous peoples (art. 15).[8]

I then prepared a provisional rating scale for each point to serve as a guideline, which was then adjusted based on the review of the texts in the next stage.

In the third stage, I carried out lexical searches for points 2 to 4 and identified all the texts that included the most-used words or codes for each point.[9] I then used the results of the searches to check the original documents to confirm their relevance for the points of comparison under study. Where confirmed, I applied codes to the segments to then analyze them thoroughly.

I organized the coded segments by country and time period in an Excel document and analyzed them again to create summaries for both categories (segments and countries). For point of comparison 1, due to the complexity of the information related to progress in land titling, I evaluated the situations quantitatively, which I describe in detail in the following section.

In the fourth and final stage, as mentioned above, I adjusted the provisional rating scale based on the results of my re-examination of the texts. This new scale serves as the criterion for measuring the implementation gap in qualitative terms.

Analysis

Territory with collective property title

The first criterion is related to the implementation of the "rights of ownership and possession of the peoples concerned over the lands which they traditionally occupy" (ILO Convention 169, art. 14-1). Point 2 of the same article refers to the governments' obligation to "identify the lands which the peoples concerned traditionally occupy." In my review of the documents, I did not find a shared criterion for evaluating the state of implementation of these aspects, as there are different presentations of the number of titles granted, the size of the area titled, and the number of beneficiaries — counting beneficiaries as individuals in some countries and as communities in others.

Governments tend to show the numbers that offer the most successful impressions. However, special care is needed to interpret such numbers when comparing countries with large degrees of geographic and demographic diversity. The following is an imaginary example: it is not easy to determine which of two countries is in a more favourable situation for its Indigenous peoples if we compare country X, with an area of 120 million hectares, 50% of which is titled for Indigenous peoples, who represent 30% of the national population of 40 million inhabitants, with country Y, which has an area of 40

million hectares, of which 2.5% is titled for Indigenous peoples, who represent 2% of the total population of six million inhabitants.

As a result, I decided to calculate the area per person of collectively and/or individually titled lands for Indigenous peoples and peasants, including peoples of African descent in some cases.[10] Although it is uncommon to consider the amount of land that corresponds to each individual in a collective that holds a single property title, it works well for comparing different countries. The calculation helps us to understand relative magnitude in the implementation of the right to property and land ownership. In the case of the example above, the amount of titled land that corresponds to an Indigenous person in country X is 5 hectares, while in country Y it is 8.3 hectares.

Importantly, this study does not aim to propose a standard amount of land per person that would be sufficient for Indigenous peoples; rather, it aims to identify a point of reference tied to the current reality in Latin America using the most recent available data.

Furthermore, I am conscious of the cultural and historical diversity between different Indigenous groups. Intuitively, ethnic groups whose livelihoods depend on hunting and gathering, who live in voluntary isolation and move from place to place depending on nature's offerings, should have a larger territory than other ethnic groups who always live in a certain place and depend on traditional family agriculture. Nonetheless, it is not as simple as applying different criteria based on characteristics apparently linked to land use. We must also consider the different meanings of these characteristics for each group, including spiritual and sacred uses. Similarly, there are groups that were originally hunters yet have been forced to become precarious workers, no longer occupying the land they previously used due to having modified their habits.

Calculating the area per person of lands titled as collective property for Indigenous peoples and peasants shows the distribution for the ten countries in the database. These countries are, in fact, the countries in Latin America that constitute a legally advanced group in terms of the pursuit of Indigenous self-determination. The average area corresponding to an Indigenous person in this set of countries is 6 hectares, with a deviation of 4.1 hectares. This number has been used to calculate the Z scores that indicate where a country is situated in the distribution of all countries.

As there is no overall ideal amount of land for an Indigenous person, I have established an anchor in the data extracted from the countries under

study. Based on these previously defined scores, I established Z ± 0.5 as the anchor and chose two concrete area measures to differentiate the levels of implementation of the right to land titling. To distinguish the most advanced group from the middle group, I used the area measure for Paraguay, which is 8.2 hectares per person, with a Z score of 0.53. As this is the Z score closest to the anchor, the applicable number is 8.0 hectares per person. Similarly, to choose a number that separates the intermediate level from a low level, I looked for the Z score closest to −0.5, which is the case of Venezuela, with a Z score of −0.48 and an estimated area of 4.1 hectares per person. Thus, the applicable number in this case is 4.0 hectares per person. Finally, based on this process, I created the criteria and assigned them gap scores as described below.

Territory with collective property title: Gap scores

a. Indigenous land area with property title per person greater than 8.0 hectares. ---------- 0

b. Indigenous land area with property title per person between 4.0 and 8.0 hectares. ---------- 0.5

c. Indigenous land area with property title per person less than 4.0 hectares. ---------- 1

Table 2.2 shows the data used and the final scores. I have thus differentiated three groups with different levels of progress in implementing the right to lands and territories in terms of our first point of comparison: collective property titles for Indigenous peoples. The first group, whose implementation gap is the lowest with a score of 0, includes Colombia (14.9 ha), Bolivia (10.8 ha) and Paraguay (8.2 ha). Despite the outlying figure for Colombia, it is important to consider, as a safeguard, that a sizable portion of the titled lands are probably occupied in reality by non-indigenous agents.

Another important point to take into account to better understand these figures is related to Paraguay. According to official country reports, an estimated 34.5 percent of its titled lands correspond to deforested areas (Dirección General de Estadística, Encuestas y Censos [DGEEC], 2016, p. 32). This means that 333,023 hectares of forest — the original habitat of the

Table 2.2. Lands with Indigenous and peasant (and of African descent) collective property title

Country	National Territory (ha)	Land titled for Indigenous peoples and peasants (%)	Land titled for Indigenous peoples and peasants (ha)	Indigenous Population (and of African Descent) (%)	Indigenous Population (and of African Descent)	Estimated titled land/person (ha)	Z-Score	Gap Score
Bolivia[1]	109,858,100	41.4	45,500,000	41.7	4,199,977	10.8	1.16	0
Colombia[2]	112,991,858	27.9	31,569,990	4.4	2,123,374	14.9	2.14	0
Ecuador[3]	25,523,697	23.0	5,879,256	8.6	1,249,893	4.7	-0.32	0.5
Guatemala[4]	10,888,800	16.3	1,777,124	43.7	6,491,199	0.3	-1.40	1
Mexico[5]	194,451,758	25.0	48,620,634	21.8	26,156,467	1.9	-1.01	1
Nicaragua[6]	12,033,954	31.0	3,725,291	8.9	518,104	7.2	0.28	0.5
Panama[7]	7,449,100	22.9	1,705,464	12.3	417,559	4.1	-0.47	0.5
Paraguay[8]	39,721,538	2.4	963,953	1.8	117,150	8.2	0.53	0
Peru[9]	128,521,560	30.4	39,056,849	29.3	9,176,591	4.3	-0.43	0.5
Venezuela[10]	91,644,530	3.2	2,951,853	2.7	724,592	4.1	-0.48	0.5

Source: 1. Bolivia. Titled land refers to the sum of peasant and intercultural communities (Small Property and Community Property) of 21,700,000 ha along with Peasant Native Indigenous Territories (TIOC, Territorios Indígenas Originarios Campesinos, first called Native Community Lands (*Tierras Comunitarias de Origen*, TCO)) of 23,800,000 ha cited in Table 2 (Bautista D., 2018, p. 79). The indigenous population includes 23,330 Afro-Bolivians (INE-Bolivia, 2015, p. 103).
2. Colombia. Titled land represents the total area registered for 773 indigenous reserves (DANE, 2016, p. 23). The indigenous population was calculated based on the estimated total of 48,258,494 registered and omitted people (DANE, n/d). As there are 1,905,617 registered indigenous people, equivalent to 4.4% of the national population (DANE, 2019, pp. 8-9), the total estimated population was simply multiplied by this percentage representing the registered indigenous population. This figure does not include 2,982,224 people in the Black, Afro-Colombian, Raizal, or Palenque population, as a different land system is applied to this population: the Collective Territories of Black Communities (TCCN, Territorios Colectivos de Comunidades Negras), through which 181 territories were legalized with a total area of 5,322,982 ha (DANE, 2016, p.23).
3. Ecuador. The total area of legalized lands covers 848,634.79 ha in the Costa region, which consists of 121,000 ha for the Awá nation and 515,965.38 for the Manta-Huancavilca-Puná people (Ormaza and Bajaña, 2008, pp. 5–6, Table 1), 91,817.38 ha for the Chachi nations, 347.01 ha for Eperaara Sepidaara, and 129,504.65 ha for the Afro-Esmeraldan People, based on the land registry of the Eloy Alfara and San Lorenzo cantons and field work carried out in 2012 by Pablo Minda (FEPP-Acnur, 2012, p. 42, cited in Antón (2015, p. 79)). The Amazon region has 4,141,470.5 ha of legalized lands as follows: A´I Cofán nation with 63,571 ha; Kichwa, 1,569,000 ha; Shuar, 718,220 ha; Siona, 7,888 ha; Secoya, 39,414.50 ha; Waorani, 716,000 ha; Shiwiar, 89,377 ha; Achuar, 884,000 ha; Zapara, 54,000 ha (Ormaza and Bajaña, 2008, p. 7, Table 2). The area of legalized lands in the Sierra region has been calculated as the total of

Table 2.2. (*continued*)

the following three numbers: first, 194,394 ha from 331 communal and ancestral lands in 9 provinces, except Tungurahua, according to the property survey carried out between 2012 and 2016 (SIGTIERRAS, 2017, p. 41); second, 11,074.88 ha with community land tenure in the province of Tunguraha, estimated from the database of the Annual Agricultural Area and Production Survey (INEC-Ecuador, 2019); and third, 673,681.74 ha of individually owned land under 5 ha in five provinces (Chimborazo, with 170,214.27 ha; Imbabura, with 91,120.04 ha; Cotopaxi, with 176,662.89 ha; Tungurahua, with 75,554.88 ha; and Pichincha, with 160,129.66 ha (INEC-Ecuador, 2019)). These are the five most representative provinces of the Sierra region with a large indigenous population (INEC-Ecuador, n/d, p. 53). The indigenous population in Ecuador for this study is 1,018,176 indigenous inhabitants (INEC-Ecuador, n/d., p. 14), with 231,717 Afro-Ecuadorian inhabitants residing in parishes with more than 20% of the population being Afro-Ecuadorian, according to the 2010 Census, prepared by Antón (2015, pp. 119–121).

4. Guatemala. Titled land is the sum of 1,577,124 ha (Elías et al., 2009, p. 42) of communal lands and 200,000 ha added according to the Updated Diagnosis of Communal Lands in Guatemala (preliminary report, Rural and Land Studies Program, Faculty of Agriculture, University of San Carlos, Guatemala, unpublished, cited in Rights and Resources Initiative (2015, pp. 7, 31)). The indigenous population includes the Maya peoples, who represent 41.7% of the total national population, along with the Xinka (1.8%) and Garifuna (0.1%), according to the 2018 Census (INE-Guatemala, 2019, p. 10).

5. Mexico. Titled land is estimated as the sum of 17,437,951 ha of Registered Communal Land (SCR, Superficie Comunal Registrada) at the national level (RAN, 2019a) and 31,182,683 ha of Registered Ejido Land (SER, Superficie Ejidal Registrada) (RAN, 2019b) in the sixteen states with an indigenous population of more than 20% in each state (Campeche, Coahuila, Colima, Chiapas, Guerrero, Hidalgo, Michoacán, Morelos, Nayarit, Oaxaca, Puebla, Quintana Roo, San Luis Potosí, Tabasco, Tlaxcala, Veracruz, and Yucatán) and the state of Mexico, which has the largest indigenous population, thus covering 78.8% of the national indigenous population (INPI, 2017, p. 54). The indigenous population is the sum of the indigenous population of 25,694,928 people (INPI, 2017, p. 54) and the population of people of African descent including 461,539 people. This figure has been calculated as the total population of African descent, 1,381,853 (1.2% of the national population), minus both those of African descent who self-ascribe as indigenous, 896,823 (64.9% of the population of African descent), and those of African descent that were born abroad, 23,492 (INEGI, 2017, pp. 3, 24, 56).

6. Nicaragua. Titled land corresponds to twenty-three titled territories of indigenous peoples and people of African descent as of 2016 (MARENA, 2017, p. 66). The indigenous population includes the population of African descent, based on the 2010 estimate produced by ECLAC (2014, p. 98).

7. Panama. The total area of five comarcas (Gunayala, Emberá/Wounaan, Kuna de Madungandi, Ngäbe-Buglé, Kuna de Wargandi) with 1,689,022 ha and five titled territories (Caña Blanca, Puerto Lara, Arimae, Ipeti, Piriati) with 16,442 ha (data presented in the talk "Status of the Adjudication of Indigenous Lands in Panama" delivered by indigenous representatives from Panama at an event organized by ANATI (Autoridad Nacional de Administración de Tierras [National Land Administration Authority]), the FAO, the World Bank, and the Inter-American Network of Cadastre and Property Registration, an initiative supported by the OAS, 28–30 May 2018). The indigenous population consists of the sum of the eight indigenous peoples along with the categories of "other" and "not declared". This figure includes 10,691 people who self-identified as both indigenous and of African descent, and does not include 3,092,524 people of African descent (INEC-Panama, 2010, Table 20; Rodríguez, Aquino, and Diéguez,, 2014, p. 24).

8. Paraguay. Titled land refers to the area of the 343 indigenous communities with their own land and title (DGEEC, 2016, p.32). The indigenous population is the sum of the 19 indigenous populations based on data from the 3rd National Census of Population and Housing for Indigenous Peoples, 2012, and the 2012 National Population and Housing Census (DGEEC, 2016, p. 18).

9. Peru. Titled land consists of the following: 5,141 titled peasant communities with 24,084,763 ha; 1,365 titled native communities with 12,159,400 ha (Instituto del Bien Común, 2016, p. 25); and five indigenous reserves with a total area of 2,812,686 ha for indigenous peoples in voluntary isolation (Ministry of Culture, 2016, pp. 65–66). The indigenous population refers to the population with self-identified ethnicity from the following groups: Quechua, Aymara, native or indigenous to the Amazon, part of another indigenous or first people, and of African descent. The number of people has been estimated based on the proportion of the registered population aged 12 and over who self-identify with these same ethnic groups, which is 29.32%, multiplied by 31,237,385, the total estimated population in the 2017 Census (INEI, s/d).

10. Venezuela. Titled land corresponds to the sum of lands titled for 545 indigenous communities between 2005 and 2014 (De Zayas, 2018, p. 14). The indigenous population refers to the 52 indigenous peoples registered in the 2011 Census (INE-Venezuela, 2015, pp. 29–31). The Afro-Venezuelan population, representing 3.6% of the total population, is not included (based on self-identification as Black or of African descent) (INE-Venezuela, 2014, p. 29).

country's Indigenous peoples — have been lost. The net figure of titled and, in practice, habitable lands is thus 5.7 hectares, which would put the country in the intermediate group. However, the aspect under evaluation here is strictly the size of lands already officially recognized with property titles — not their use in practice. I explore this situation in greater detail in the next section.

The second group, with a score of 0.5, includes Nicaragua (7.2 ha), Ecuador (4.7 ha), Peru (4.3 ha), Panama (4.1 ha) and Venezuela (4.1 ha). For the case of Nicaragua, its relatively large area reflects the progress it has made in the titling process in twenty-three territories in the North Caribbean Coast Autonomous Region, the South Caribbean Coast Autonomous Region, and the special area of Alto Wangki-Bocay (Ministerio del Ambiente y de los Recursos Naturales [MARENA], 2017, p. 66). If it had also met the territorial demands of the Indigenous peoples in the Pacific, Central, and Northern regions (Procuraduría General de la República, Proyecto de Ordenamiento de la Propiedad [PRODEP], 2013, p. 126), Nicaragua would likely have been included in the first group.

The final group, with a score of 1, has the largest implementation gap and includes Guatemala (0.3 ha) and Mexico (1.9 ha). Guatemala's starkly low number is worthy of note. Even though the country's constitution sets forth the right to collective ownership by Indigenous peoples (arts. 67–68), no appropriate mechanisms have been developed to date to resolve the land issue.

Territorial security against invaders

The second and third points of comparison address *territorial security*. The second half of point 2 in article 14 (C169) indicates the obligation of governments to "guarantee effective protection of their rights of ownership and possession." To reflect this primordial aspect of the right to land, I use here the term *territorial security* instead of *effective protection*; the two terms mean the same thing, but with different perspectives. As the vast majority of documented situations lack government-provided territorial protection, it makes more sense to focus our attention on the Indigenous subject to describe this dimension.

I have thus created two categories related to possible threats to territorial security. The first is for *invasion*, and the second is for *evictions* and/or *forced displacements*. Based on my review of documents in the first stage of this

analysis, I have identified these as the main territorial problems that occur frequently in all the countries used to develop the criteria.

In cases of *invasion*, the agents are mainly non-Indigenous settlers or peasants who may also be loggers, ranchers, miners, or soybean farmers, as well as other Indigenous groups. For instances of *eviction* or *forced displacement*, the agents are landowners, companies, government authorities and/or armed criminal groups.

I distinguish between these two types of risk because their impact on territorial security is different. While an *invasion* makes the traditional lives of Indigenous peoples difficult over the long term, *evictions* and *forced displacements* expropriate the right to these lands either immediately or over the relatively short term. It is therefore more appropriate to consider incidents of *forced displacement* as embodying a larger gap between the right to land and the implementation of this right, and as such, these incidents should be assigned a higher score than other criteria.

To determine the scores for territorial security in cases of invasion, I reviewed the measures taken by the relevant governments. The existence of invaders has been recorded in all cases except for Guatemala. This is because Indigenous peoples in Guatemala lack legal certainty with respect to their right to land, which, in turn, affects this fundamental aspect. During the internal armed conflict in Guatemala between 1960 and 1996, most Indigenous peoples were forcibly displaced. After the peace accords, some returned to their lands of origin and others went to new places to pursue a life free of violence. However, when the areas where they lived were declared a natural protected area, the Indigenous inhabitants were accused of being *invaders* (CIDH, 2017a, par. 217). Given this context, though *invaders* have not been noted in the lands belonging to Indigenous peoples in Guatemala, I consider the country deserving of the highest score for a gap in this criterion.

To compare the rest of the countries that do note the existence of invaders, I have identified differences in how the various governments reacted to situations in which Indigenous families or communities suffered an *invasion* of their lands. As no government *effectively protects* the right to land in advance of an *invasion*, it seems convincing to assess their performance after the event. The criteria and their scores are shown below.

Similarly, to evaluate the effectiveness of the measures taken by different governments — that is, to determine if a measure was apparently *insufficient* (criterion b, score of 0.5) or *insignificant* (criterion c, score of 1), I checked

both the characteristics of the measures themselves as well as the situations that developed after steps were taken.

Territorial security against invaders: Gap scores

a. When situations of territorial invasion are found, the government takes effective measures to resolve the problem. ------- 0

b. When situations of territorial invasion are found, the government takes apparently insufficient measures to resolve the problem. ---------- 0.5

c. When situations of territorial invasion are found, the government does not take any measures or takes apparently insignificant measures. ---------- 1

Table 2.3 shows a summary of the situations related to territorial security against invaders and the measures and/or responses by governments. Only Bolivia and Panama obtained a score of 0.5 in this criterion.

In the Bolivian case, the database includes six segments extracted from two documents: the ILO Direct Request (CEACR) adopted at the 1994 International Labour Conference (par. 21) and the report of the Special Rapporteur on the Mission to Bolivia (Stavenhagen, 2009, pars. 33, 40, 46, 48, 49, 53). The first source provides information about the existence of invaders and the measure taken by the government with supreme decree number 23107 of 9 April 1992, which created the Indigenous Forest Guard, constituted by Indigenous peoples themselves. This Guard oversaw the monitoring and protection of their territories, with sufficient power to impose sanctions on those who broke the law (CEACR, 1994, par. 21).

However, the second source shows that threats to Indigenous lands persisted. The Rapporteur, who visited Bolivia from 25 November to 7 December 2007, reported that in the lowlands there was pressure on and an *invasion* of Peasant Native Indigenous Territories (TIOC, Territorios Indígenas Originarios Campesinos, first called Native Community Lands (*Tierras Comunitarias de Origen*, TCO)) by Indigenous settlers and peasants from other regions in the country, creating situations with high levels of conflict (CEACR, 1994, par. 33).

Table 2.3. Gap in territorial security against invaders

Country	Summary of the Situation	Government Measures/Responses	Score
Bolivia	The most vulnerable groups, such as the Yuqui and Ayoreo that inhabit the Amazon and Chaco regions, are subject to constant territorial pressure by settlers, other indigenous communities, and loggers (Stavenhagen, 2009, par. 46).	Despite several measures, such as the creation of the Indigenous Forest Guard (CEACR, 1994r), designating TCO lands, declaring "intangible zones", etc. (Stavenhagen, 2009, par. 46, 49), a reduction in territorial pressure cannot be confirmed.	0.5
Colombia	There are acute territorial conflicts between Indigenous peoples and settlers or other non-Indigenous peoples, and even after legalizing the land as a reserve, invasions cannot be stopped (Stavenhagen, 2004a, par. 59, 60, 64; 2007a, par. 121; 2007b, par.192, CEACR, 2009o; 2010; CIDH, 2013)	The government's position with regard to this situation is that once the reserve is titled, it is the responsibility of the communities to prevent the territory from being invaded (CEACR, 2009o).	1
Ecuador	The Tagaeri-Taromenani group in voluntary isolation face Huaorani invaders and loggers, which has caused three massacres (CIDH, 6 Nov 2014). Indigenous people on the northern border face invasions due to the internal conflict in Colombia (Tauli-Corpuz, 2019, par. 70).	The government did not take effective measures for the Tagaeri-Taromenani group and ultimately rejected its responsibility to fulfill the Precautionary Measure requested by the IACHR (CIDH, 6 Nov 2014, par. 11).	1
Guatemala	Indigenous people are considered "invaders" in the department of Petén if the area they occupy becomes declared a natural protected area (CIDH, 2017a, par. 217).	Given the extreme territorial legal uncertainty, Indigenous peoples face considerable difficulty filing complaints against an invasion (CIDH, 2017a, par. 217).	1
Mexico	Especially in Guerrero, Chiapas, and Chihuahua, several Indigenous communities complained of invasions that affected their lands (Stavenhagen, 2003b, par. 18). This trend continues (Tauli-Corpuz, 2018a, pp. 26, 27, 32, 33).	Although the government has reported certain progress in attending to territorial conflicts (CEACR, 2014r), its impact appears to be minimal, as the IACHR issued 9 Precautionary Measures between 2014 and 2018 (MC60-14;77-55;106-15;388-12;277-13;60-14;452-13; 685-16;361-17).	1
Nicaragua	Following the land titling process for Indigenous peoples in the Autonomous Regions, territorial conflicts arose between indigenous people and settlers (CIDH, 14 Oct 2015).	The government received the precautionary measure request (MC505-15) from IACHR in 2015, 2016 and 2017 (Res.37/15; 2/2016; 44/2016; 16/2017) and from the I/A. Court H.R. (1 September 2016). The situation remains tense, and the IACHR requested an extension of the preventative measure in 2019 (CIDH, 6 September).	1

Table 2.3. (*continued*)

Country	Summary of the Situation	Government Measures/Responses	Score
Panama	The Kuna de Madungandí comarca and the Emberá de Bayano people face invasions by settlers. The lack of delimitation and titling of new lands for them has allowed the settlers to invade systematically and exploit the forest (CIDH, 13 Nov 2012; I/A Court H.R., 14 Oct 2014).	Legislation created the Kuna de Madungandi comarca (L.24, 1996) to title lands to benefit peoples outside their comarcas (L.72, 2008) and appoint a corregimiento authority in the Kuna de Madungandi comarca (L.247, 2008) (CIDH, 13 Nov 2012; I/A Court D.H., 14 Oct 2014).	0.5
Paraguay	Since 1991, the invasions of indigenous lands by landless peasants has increased (CEACR, 1997r). In the Chaco region, the Ayoreo people are threatened by ongoing invasions and the deforestation of these lands caused by authorized ranching activities (Anaya, 2010a, par. 316–339).	After more than 15 years, there are no legal provisions to address the problem of the "landless" nor any investigations of the situation (CEACR, 2007r). The government recognizes its inability to carry out the needed expropriations to benefit indigenous peoples (Anaya, 2010a, par. 338).	1
Peru	The Mschco Piro, Yora, and Amahuaca—indigenous peoples in voluntary isolation—were threatened by the illegal extraction of wood in their territory (CIDH, 22 March 2007). The native community Nueva Austria del Sira faces invasion (CIDH, 6 Nov 2019).	In both cases, given the lack of government measures to guarantee the life of the indigenous peoples in their territory, the IACHR granted a Precautionary Measure in favour of the Indigenous peoples (CIDH, 22 March 2007; 6 November 2019).	1
Venezuela	The Yanomami tribe, who live in the area next to Brazil, faces invasion by the garimpeiros (small-scale gold miners). The Pemón people in the state of Bolívar face conflict with illegal miners and 5 members were murdered (CEACR,2019o).	The government reached a friendly solution with the Yanomani tribe (CIDH, 20 March 2012). The Pemón people created a territorial guard, demonstrating the government's failure to provide territorial protection (CEACR, 2019o).	1

Source: Prepared by the author based on the source of data (CEACR and Tripartite Committee (TC) of the ILO, IACHR, and UN published between 1991 and 2019). For the CEACR references, the "o" after the year of publication means "observation" and "r", "request". When the ILO is the author, the reference is to the reports about complaints prepared by the organization's tripartitite committees. The references are one part of the set of documents analyzed for each country. Though the number of texts examined for each country varies as a function of the availability of information, it is their qualitative characteristics that are essential for this analysis.

Hydrocarbon extraction activities contributed to the *invasion* and appropriation of Indigenous lands in Bolivia's Amazon and Chaco regions (CEACR, 1994, par. 40). With respect to the most vulnerable peoples, the Rapporteur described the situation of the Yuqui people with special attention. The Yuqui were first contacted in 1959, and in the 1980s they were moved to the Bia Recuaté community where they were given a Yuqui TIOC. Nonetheless, this population of 200–230 people were subject to constant pressure on their land from settlers, other Indigenous communities, and loggers (CEACR, 1994, par. 46). As a result, the government's measure to protect the life of the Yuqui people, granting them a TIOC, was not sufficient to halt the threat of an *invasion* of their territory.

In this context, in April 2007, the country's Ministry of Rural Development, Agriculture, and the Environment implemented a policy to defend vulnerable peoples, constituting an Interministerial Commission on highly vulnerable Indigenous peoples. This commission developed an emergency plan to serve the Yuqui people, and the Vice-Ministry of Lands prioritized work with the Yuqui, Araona, Ayoreo and Uru Chipaya peoples (CEACR, 1994, par. 48).

In 2006, with the same intention of protecting the most vulnerable peoples, the Bolivian government approved the declaration of an "intangible and integral protection zone of absolute reserve" inside the Madidi national park, which coincided with the traditional territory of the Toromona people, who live in isolation (CEACR, 1994, par. 49). With the same aim, in December 2007 the government granted the Guaraní people of Chuquisaca (Huacareta, Ingle, Machareti and Muyupampa communities) 180,000 hectares of land under the land reform's Law of Community Renewal (CEACR, 1994, par. 53). Nonetheless, and because it has not been possible to confirm a reduction in territorial pressure, the case of Bolivia was given a score of 0.5.

The other case with a score of 0.5 is Panama. Fourteen segments in seven documents were consulted for this case: six ILO Direct Requests (CEACR, 1989, pars. 12, 13; 1992, par. 12; 1996, par. 8; 2003, par. 11; 2005, pars. 20–21; 2010, arts. 11–14; 2016, art. 13) and one report by the Special Rapporteur (Anaya, 2014, pars. 8, 9, 30, 34–36), as well as two complete documents from the IACHR (13 November 2012) and the I/A Court H.R. (14 October 2014).

To summarize the case, Indigenous peoples in the Kuna region of Madungandí and the Emberá people of Bayano were *invaded* by other settlers in the region. The source of the problem was a dam construction project in the area. After moving the inhabitants, the government did not fulfill its

promise to delineate and title their new lands, thereby allowing the settlers to invade and exploit the forest in a systematic fashion. More than three decades later, thanks to diverse complaints by the population, the case made it to the I/A Court H.R. in 2014. Although the government did legislate decrees during this period to create the Kuna de Madungandí *comarca* (Indigenous territory) (Law no. 24, 1996), to title land in favor of peoples outside their *comarca* (Law no. 72, 2008), and to appoint township authorities in the Kuna de Madungandí *comarca* (Law no. 247, 2008), the Special Rapporteur's report noted that there were persistent concerns among the Indigenous communities both within and outside the *comarcas* due to the presence of third parties (Anaya, 2014, par. 30).

Based on this situation and on a CEACR Direct Request indicating, following a government report, in 2012, the *comarca* district carried out an *eviction* of thirty peasants who were occupying land in the area of the Botes river and the Piragua river (CEACR, 2016, art. 13), the Panamanian case has been granted a score of 0.5, as the government did adopt concrete measures, though they proved to be insufficient.

For the cases given a score of 1, I cannot explore the results for each country in depth, but it is worth reiterating the importance of the efficacy of the measures governments take to address complaints. Colombia offers an example of a symbolic type of government response. According to the CEACR (2009), which cites a text from the Workers' Trade Union Confederation for the Oil Industry (USO) received by the ILO in 2008, the Chidima reserve was created in 2001 with three discontinuous lots, which facilitated the invasion of the third lot by settlers. The settlers arrived with plowing machinery and burned the grass, threatening to kill the Indigenous inhabitants. As a result, the Katío people have asked for the three lots to be joined in a single reserve. The government has promised that this would be done, yet it ultimately was not, and in the end the government responded with a letter that clearly demonstrates its position, exactly as the USO text denounces:

> The USO attaches a letter from the Colombian Institute of Rural Development (INCODER), stating that 'there is no budget for regularization for 2006'. The USO reports that when the indigenous people sought protection against such invasion, INCODER replied that once a title has been issued for the reservation, it

> would be up to the indigenous communities to prevent the territory from being invaded. (CEACR, 2009)

For other cases with a score of 1, as with Ecuador, Mexico, Nicaragua, Paraguay, Peru and Venezuela, I have examined the qualitative characteristics of events. What these cases have in common is a lack of effective measures for resolving conflicts and threats created by the presence of invaders in indigenous territory.

Territorial security against evictions and forced displacements

The practices of *eviction* and *forced displacement* have been treated with the same criteria. *Forced eviction*, according to the UN's definition, is the "removal against their will of individuals, families and/or communities from the homes and/or land which they occupy" (Committee on Economic, Social and Cultural Rights, 1997, general comment No. 7). The agents of this action have the clear objective of *removing people* from these lands. For *forced displacements*, the actions can be more complex: intimidation, theft, kidnapping, murder, massacre or mass fumigation. Nonetheless, both methods have almost identical effects upon people, forcing individuals, families and/or communities to abandon their land.

The ownership status of a territory is not in question here, but rather the fact that there are *evictions* and/or *forced displacements* documented in the sources. Therefore, there may be cases in which Indigenous communities do not have territorial rights to the lands they have inhabited de facto for years, and where, for this very reason, they have been evicted for the *crime of usurpation*, as was the case in both Guatemala and Ecuador. In Ecuador, while preserving their full right to continue inhabiting the land, Indigenous communities were *evicted* from areas where concessions were granted inside their territory. Both Guatemala and Ecuador are included in this same category.

To develop the criteria and scoring for evaluating situations of territorial security against *evictions* and *displacements*, I have used the frequency of incidents documented in the database. Though the numbers documented are often only partial, which does not allow us to fully understand the overall situation, there is a clear divergence in the number of incidents.

Therefore, even taking into account the high level of diversity between the populations under study and the different degrees of margin of error in the information, I consider it to be a useful basis for the purposes of comparison. I have defined the criteria as described below, and the concrete numbers mentioned in the criteria have been extracted from the database.

Territorial security against evictions and displacements: Gap scores

a. No cases of forced eviction/displacement. ---------- 0

b. Less than ten cases of forced eviction/displacement in the period between 1991 and 2019. ---------- 0.5

c. Between ten and forty cases of eviction/displacement in the period between 1991 and 2019. ---------- 1

d. Forty-one or more cases of eviction/displacement in the period between 1991 and 2019. ---------- 2

Before examining the summaries, I wish to note that some of the cases of *invasion* described in the previous section increased the extent of violence in the region, as was the case in Mexico, Nicaragua and Peru. Though not all *invasions* were carried out in the same way, when exacerbated violence — which contributes to *forced displacement* — is noted to be present, *invasions* are also considered *forced displacement*. This allows a distinction to be made between an *invasion* that does not lead to *forced displacement* and an *invasion* that does meet this more violent criterion, and the latter cases are thus considered in both categories.

The exception applied to the case of Venezuela also requires further explanation. The country has been facing a serious economic, social, and political crisis since the mid-2010s, presenting a clear situation of *forced migration*. As a result, and despite the documents and texts not providing any evidence of *evictions* and/or *displacements* of Indigenous peoples in the country, the criterion for Venezuela is as follows: d) there are *mass evictions* and/or *displacements*. The summaries and their corresponding scores are presented in Table 2.4.

Table 2.4. Gap in territorial security against evictions and displacement

Country	Summary of the Situation	Documented Frequency	Score
Bolivia	Forced evictons are carried out by landowners as well as through INRA resolutions in the land title regularization process (CIDH, 2007, par. 238). An increase in evictions to benefit mining and logging concessions in the Chaco region has been reported, although the information available is limited (CIDH, 2009a, par. 164).	The data available do not indicate the frequency of events.	0.5
Colombia	The magnitude of forced displacement is incomparably harsh. The information received during the 2012 visit is of utmost concern, as it shows an alarming increase of indigenous forced displacement caused primarily by constant armed conflicts in indigenous territories (CIDH, 2013, par. 798)	There were 41 events in 2012 alone. The most affected peoples were the Embera (4,860), Nasa (4,674), Awá (1,725), Wounaan (237) and Jiw (100) (CIDH, 2013, par. 798).	2
Ecuador	Three mining megaprojects were approved in the Cordillera del Cóndor, territory of the Shuar people. Inhabitants of the Kupiamai, Cascomi, Tundayme, and Nankints communities were evicted, and the last confrontation created displacements in San Pedro de Punyus, Kutukus, and Tsuntsuimi (Tauli-Corpuz, 2019, pars. 27–29). On the northern border, the Awá de Guadalito were forced to abandon their territories when 180 members of the military moved into their community for two months in 2018 (Tauli-Corpuz, 2019, par. 70).	There were at least 4 forced evictoins (2 in 2015, 2 in 2016) and 3 displacements in 2016 in Shuar communities and 1 displacement in the Awá community in 2018 (Tauli-Corpuz, 2019, pars. 27–29).	0.5
Guatemala	There is a trend of evictions through court orders (CEACR, 2019o). In many cases, evictions are ordered by the Public Ministry for the crime of aggravated usurpation, a legal concept adopted in 1996 that does not afford the communities an opportunity to prove their rights to the occupied lands (Tauli-Corpuz, 2018b, par. 46).	In 2018, 45 evictions were recorded, despite the government's commitment to apply international standards (Tauli-Corpuz, 2018b, par. 49).	2
Mexico	The main eviction and displacement agents are landowners, companies, indigenous communities fighting for their territory, and organized crime groups. Cases are observed in the States of Chiapas, Chihuahua, Guerrero, Campeche, Oaxaca, Sonora, Sinaloa and Veracruz (Stavenhagen,2003a, par.26; CT, 2004,par.113; Anaya, 2009a, pars.247-248; Anaya, 2010, pars. 277-281, Tauli-Corpuz, 2018b,pp.21, 23,24,26,29,30)	At least 10 specific documented cases of evictions and forced displacement are observed.	1

Table 2.4. (*continued*)

Country	Summary of the Situation	Documented Frequency	Score
Nicaragua	There were multiple acts of violence, including the displacement of members of at least 12 communities, in the territorial conflict between Indigenous communities and settlers in the North Caribbean Coast region. Of a population of 10,800 people in indigenous territories, at least 4,159 have been forced to leave their homes (CIDH, 8 Aug 2016, par. 8-B-iv).	Acts of violence have been observed that caused the forced displacement of at least 4,159 people inhabiting the 12 communities in the area (CIDH, 8 Aug 2016, par. 8-B-iv).	1
Panama	The Naso residents of the communities of San San and San San Druy were forcibly evicted on 30 March, 1 and 4 April, and 20 November 2009. The government supports the position of the third ranching company in the area, ignoring the demand from the communities to create a comarca (Anaya, 2009a, pars. 342–346; 2010,pars. 304, 305).	There were at least 4 evictions in the same communities of the Naso people in 2009 (Anaya, 2009a, pars. 342–346; 2010, pars. 304, 305).	0.5
Paraguay	The Indigenous communities whose lands are in the process of seeking official recognition, such as the case of Avá Guaraní de Y'apo, are the most threatened by the current landowners. The community suffered an attempted eviction in May 2014, followed by an attack by about 50 armed civilians who invaded the community and injured, robbed, and fired at its inhabitants (Tauli-Corpuz, 2015, par. 27).	The fact that the INDI brought more than 10 legal actions related to precautionary measures in the face of evictions and displacements by landowners, ranchers, and soybean farmers confirms the magnitude of the threats (CEACR, 2010s).	1
Peru	The native community Nueva Austria del Sira faces invasion. The "invaders" carry out ongoing acts of harrassment against the community, which has led to the forced displacement of almost half of the families in the community. Of the community's 23 families, currently only 14 remain (CIDH, 6 Nov 2019, pars. 9, 30).	No forced evictions have been observed. There was one displacement in the same case of invaders in the Nueva Austra del Sira community (CIDH, 6 Nov 2019, MC, pars. 9, 30).	0.5
Venezuela	The UN Refugee Agency has recorded a 8,828% increase in requests for asylum from Venezuelans. An investigation by Brazil's National Immigration Council found that indigenous people of the Warao ethnicity migrated due to hunger and a lack of public services (CIDH, 2017b, par. 466)	Due to the socioeconomic and political crisis over recent years there has been forced migration, which indicates a serious situation of internal mass displacement.	2

Source: Prepared by the author based on the data source (CEACR and Tripartite Committee (TC) of the ILO, IACHR, and UN published between 1991 and 2019. For the CEACR references, the "o" after the year of publication means "observation" and "r", "request". When the ILO is the author, the reference is to the reports about complaints prepared by the organization's tripartitite committees. The references are one part of the set of documents analyzed for each country. Though the number of texts examined for each country varies as a function of the availability of information, it is their qualitative characteristics that are essential for this analysis.

Table 2.4 shows the summary of results with respect to the gap in territorial security against *invasions* and *displacement*. Bolivia, Ecuador, Panama and Peru are in the group with the smallest gap (score of 0.5). There have been *evictions* and/or *forced displacements* in all these countries, though fewer than those found in the other two groups.

Bolivia, for example, has had cases of *eviction* by both landowners and government authorities, the latter of which took place in the context of the land title regularization process, though the frequency of such evictions cannot be determined (CIDH, 2007, par. 238). Similarly, though there is scarce information, there was an increase in *evictions* to benefit mining and logging concessions in the Bolivian Chaco (CIDH, 2009, pars. 164–165). As the documents do not reveal the number of incidents, I have granted this case a score of 0.5, which implies less than ten such events. Of course, there may have been more than ten, but what is essential for this analysis is the fact that specific cases have been noted and recorded in the documents, thus when the frequency cannot be specifically determined, I have chosen to apply the lower score.

Let us now turn to the other cases in this group. In Ecuador, there were four *evictions* and three *displacements* caused by mining megaprojects (Tauli-Corpuz, 2019, pars. 27–29) and one *displacement* due to the military settlement on the northern border (Tauli-Corpuz, 2019, par. 70). In Panama, four *evictions* affected the Naso inhabitants in the San San and San San Druy communities in 2009. In this case, the government supported the position of the third party, a local ranching company, ignoring the communities' demands to create a *comarca* (Anaya, 2009a, pars. 342–346; Anaya, 2010, pars. 304–305).

Among this group, Peru is the only country where there are no records of *evictions* in the sense of *removing* Indigenous peoples from the homes or lands they occupy.[11] Furthermore, there was only one case of *forced displacement* in the context of an exacerbated invasion by non-Indigenous settlers and their ongoing acts of harassment against the native community of Nueva Austria del Sira. Of the twenty-three families in the community, only fourteen families remained in the area by the time the IACHR received the request for precautionary measures in 2019 (IACHR, 6 November 2019, par. 9).

In the intermediate group (score of 1), we have Mexico, Nicaragua and Paraguay. In Mexico, the primary agents of *eviction* and *displacement* are landowners, companies, other Indigenous communities fighting for the same territory and organized criminal groups. *Evictions* and *displacements* have been recorded in the states of Chiapas, Chihuahua, Guerrero, Campeche,

Oaxaca, Sonora, Sinaloa and Veracruz (Stavenhagen, 2003a, par. 26; Tripartite Committee-ILO [ILO-CT], 2004, par. 113; Anaya, 2009a, pars. 247–248; Anaya, 2010, pars. 277–281; Tauli-Corpuz, 2018a, pp. 21, 23, 24, 26, 29, 30).

In the case of Nicaragua, *forced displacements* have occurred as a result of the land dispute between Indigenous communities and settlers in the North Caribbean Coast. As a result, there have been multiple acts of violence, including the *displacement* of members of at least twelve local communities.[12] In a population of 10,800 people in the Indigenous territories, at least 4,159 people have been forced to leave their homes (IACHR, 8 August 2016, 8-B-iv).[13]

With respect to Paraguay, the CEACR Request notes that according to a report sent by the government,

> cases of *eviction* or *forced relocation* of indigenous communities by landowners, soya farmers and other farmers often remain pending before the judicial authorities for several years and that in 2008 and 2009 INDI [Paraguayan Institute of Indigenous Affairs (Instituto Paraguayo del Indígena)] took legal action on more than ten occasions to secure protective measures. (CEACR, 2010, arts. 16, 17, 18)

Though we do not know the details of each *eviction* and *displacement*, we can confirm that they surpass the established criterion in number.

In the final group, with the highest score (2), we have Colombia, Guatemala and Venezuela, with the latter constituting an exception due to the phenomenon of *forced migration*. In Colombia, the *forced displacements* are incomparably harsh and are mainly caused by constant armed clashes in Indigenous territories. According to the IACHR report, there were forty-one events in 2012 alone, and the most affected peoples were the Emberá (4,860), the Nasa (4,674), the Awá (1,725), the Wounaan (237) and the Jiw (100) (IACHR, 2013, par. 798).

In Guatemala, the CEACR notes "a trend of *evictions* by court order" (CEACR, 2019, art. 14, par. 4). The UN Special Rapporteur visited Guatemala and reported that, on many occasions, the *evictions* are ordered by the Public Ministry due to the crime of aggravated usurpation, a legal concept adopted in 1996 that does not allow the communities to prove their rights to the occupied lands (Tauli-Corpuz, 2018b, par. 46). 45 *evictions* were recorded in 2018,

despite the government's commitment to apply international norms (Tauli-Corpuz, 2018b, par. 49).

The right to be consulted about natural resources in traditionally occupied land

With respect to the right to be consulted about the natural resources that exist in the lands occupied by Indigenous peoples, article 15 of Convention 169 sets forth the government obligation to establish appropriate procedures for consulting Indigenous peoples "before undertaking or permitting any programmes for the exploration or exploitation of such resources pertaining to their lands" (art. 15-2). This is one of the most controversial points related to territorial autonomy.

I have chosen to focus on aspects of actual implementation and their consequences instead of on processes of legislation and regulation. While there is certainly variation in terms of legislative progress in the region, there are cases where even when there are significant laws in place, they are not put into practice and, hence, do not have significant effects.

Therefore, following my first review of the texts, I identified the criteria described below. While all the countries under study present problematic features with regard to the right to consultation, it was essential to determine where to draw the line separating severely deficient countries from those less deficient. I have thus defined criterion b) as shown below.

The right to be consulted about natural resources: Gap score

a. Consultations are carried out and no complaints have been recorded about inadequate practices. ---------- 0

b. There has been at least one consultation that resulted in an agreement. ---------- 0.5

c. There have only been cases of omission and/or inadequate consultation processes. ---------- 1

The ideal and correct terms for point b), however, should be that *there has been at least one consultation carried out using an appropriate procedure*. This entails a consultation that satisfies the qualities outlined by the I/A Court

H.R. in the 2012 Sarayaku vs. Ecuador case; namely, that the consultation be "prior," in "good faith," "culturally appropriate and accessible," include an "environmental impact assessment," have "the purpose of reaching an agreement" and inform about the possible risks of the proposed project (27 June 2012, pp. 55–66). Yet it is impossible to verify if a consultation has been carried out in compliance with all these requirements using only the documents examined in this study. As a result, I sought an alternative and examined which of these aspects could be confirmed in the available texts, finding that two of them — *prior* consultation and *reaching an agreement* — met this condition.

The first aspect was immediately ruled out, as the only project where *prior* consultation was carried out according to the government (and for which no complaints were found in the database) was found in an external source to not have in fact been *prior*. As the document (a Direct Request) includes the concrete name of the case — the hydroelectric project Las Cruces in the state of Nayarit in Mexico (CEACR, 2014) — additional information was easy to collect, and online searches yielded several complaints. One such complaint is a letter written by the lawyer for the Inter-American Association for Environmental Defense addressed to the social communication manager of the Federal Electricity Commission (Moguel, 2015, pp. 2–3). The letter clearly alleges that the process was not *prior*. *Reaching an agreement*, then, became the only viable criterion.

Table 2.5 shows the summaries. Colombia and Peru are the only two countries with a score of 0.5, as they have documented cases of consultations that managed to *reach agreements*. All the other countries have only complaints about the *lack of consultation* or *inadequate consultations* that lacked one or all the qualities described above.

Though Colombia and Peru have received numerous similar complaints, there are also references that document *progress in consultation processes* in these two countries. This is particularly relevant in the case of Colombia, as the texts include a positive comment made in this regard by an external expert and not only by the government itself. Of the eighteen documents about consultations in Colombia studied here, there is one comment by the Special Rapporteur, Stavenhagen (2004), who visited the country, that notes:

> The communities maintain that the mechanism does not operate in the same way in all parts of the country. In the indigenous

Table 2.5. Implementation gap for consultations about natural resources

Country	Relevant Cases	Existence of a Consultation with Agreement	Score
Bolivia	There is a contradiction in the construction of the highway in TIPNIS. Although the Bolivian Workers' Central (COB, Central Obrera Boliviana) denounced the lack of prior consultation and the criminalization of protest (CEACR, 2013o), the government indicated that it did carry out prior consultation (CEACR, 2014o).	Before the TIPNIS case, there had been observations of only the lack of consultations, 27 logging concessions that affect 6 Indigenous territories (TC, 1999), the activities of an oil company in the territory of Guaraní communities of Tantayapi (CEACR, 2005o), etc.	1
Colombia	A lack of consultations has been noted in Antioquía. In contrast, progress has been reported in consultation processes in Sierra Nevada, La Guajira, and Nariño (Stavenhagen, 2005, par. 55). In the Mandé Norte project, there was a consultation in 2013, and as a result, they changed the path of the road to be constructed (CEACR, 2016r).	The government indicates that during the period between 2003 and 2015, a total of 4,891 consultation processes have been carried out with ethnic communities, of which 4,198 ended with agreements (CEACR, 2016o, art. 15).	0.5
Ecuador	A proper consultation process was not carried out with the Independent Federation of the Shuar People of Ecuador (FISPE, Federación Independiente del Pueblo Shuar de Ecuador) for a hydrocarbon exploitation project in Block 24, where 70% of the FISPE's territory is located (TC, 2001).	Despite the sentences at the I/A Court H.R. for the case of Kichwa de Sarayaku Indigenous People vs. Ecuador, the government continues to overlook its obligation to carry out prior consultations and issues tenders that affect the same territory (Tauli-Corpuz, 2019, par. 32).	1
Guatemala	Despite the Commission's comments in 2005, 2006, and 2007 with respect to the Montana Company's mining exploitation, the government has not complied and has continued to grant mining licenses without consultation (CEACR, 2009o).	The communities were not able to access information about the implementation of a project in their land until construction began (CIDH, 2015b, par. 500).	1
Mexico	Consultations are occasionally carried out, but a posteriori. In the municipality of Muna, Yucatan, the ejido and environmental authorities authorized a solar park that would entail the construction of more than one million solar panels in indigenous territories, without prior consultation with the affected Mayan communities (Tauli-Corpuz, 2018a, par. 40)	Most megaprojects have led to the assault of the defenders of land and environmental rights. More than two thirds of the assaults recorded have been perpetrated in the states of Mexico, Sonora, Oaxaca, Puebla, Colima, and Campeche (Forst, Kaye, and Lanza, 2018, par. 64)	1

Table 2.5. (*continued*)

Country	Relevant Cases	Existence of a Consultation with Agreement	Score
Nicaragua	At the IACHR hearing (154th period), claimants denounced the complete lack of consultation with indigenous peoples and peoples of African descent affected by the construction of a transoceanic canal (CIDH, 2015a, pp. 42–43).	One case of a megaproject concessioned without any type of consultation with the affected peoples has been observed (CIDH, 2015a, pp. 42–43).	1
Panama	The government did not carry out the proper consultations with the Charco la Pava community for the Chan 75 project (Anaya, 2009b, par. 28). Proper consultation was also not carried out for the Barro Blanco project, whose reservoir would flood the lands of an area next to the Ngäbe Buglé comarca (Anaya, 2014, par. 42).	Only inadequate consultation processes and cases of their absence have been observed. The government declared that it would not ratify Convention No. 169 for "constitutional, economic, political, administrative and social, legal, and environmental" reasons (Anaya, 2014, par. 26).	1
Paraguay	There is "a widespread breach of the state's duty to consult before adopting legislative, political, or administrative measures that directly affect indigenous peoples and their lands, territories, and natural resources" (Tauli-Corpuz, 2015, par. 39).	For most of the institutional programs and projects for Indigenous peoples about which the Special Rapporteur received information, they had not ben consulted (Tauli-Corpuz, 2015, par. 40).	1
Peru	The government described 22 processes carried out since law no. 29,785 (2011) went into effect, related to contracts for exploration and exploitation, among others, of which 20 processes led to agreements (CEACR, 2018o, art.6).	Although law 29,785 has limitations that contribute to the lack of prior consultations with peasant communities, at least 20 consultation processes with agreements have been observed, though not all were related to land or natural resources (CEACR, 2018o, art. 6).	0.5
Venezuela	Although the government indicates it has carried out consultations with Indigenous communities prior to establishing the Orinoco Oil Belt through multiple assembles (CEACR, 2019o, art. 15), they are considered to be inadequate due to complaints about the authority's political discrimination (CIDH, 2017b, par. 429).	As part of the Orinoco Mining Arc project in the state of Bolívar in 2017, operations were carried out thorugh the mining company without prior consultation with the affected indigenous communities (CEACR, 2019o, art.15).	1

Source: Prepared by the author based on thedata source (CEACR and Tripartite Committee (TC) of the ILO, IACHR, and UN published between 1991 and 2019. For the CEACR references, the "o" after the year of publication means "observation" and "r", "request". When the ILO is the author, the reference is to the reports about complaints prepared by the organization's tripartitite committees. The references are one part of the set of documents analyzed for each country. Though the number of texts examined for each country varies as a function of the availability of information, it is their qualitative characteristics that are essential for this analysis.

> territories of Antioquia, the Special Rapporteur was told that mining and other projects were launched without prior consultation or the consent of the indigenous communities. On the other hand, the indigenous peoples of the Sierra Nevada, the Wayuu people in Guajira and the Awa in Nariño report that they have made some *headway with consultation processes*. (par. 55) [emphasis added]

In addition to this reference, there are two segments that reflect circumstances of relevance for this country. First, the CEACR Direct Request reports that for the mining project Mandé Norte, a national megaproject in the departments of Antioquia and Chocó, the Colombian government indicated that the inhabitants of the Chidima reserve were consulted in 2013, and as a result, the route of the road to be constructed as part of the project was changed (CEACR, 2016, art. 15).

This report does not indicate if all affected inhabitants agreed with this change; surely some of them rejected the construction of the highway or the project itself entirely. However, the information in the report does show that for these consultations to take place in 2013, the Constitutional Court's sentence T-769 of 2009 was crucial, confirming the lack of *prior* consultation and the existence of attempts by the mining company to impose the project. This sentence ordered that the project's exploration and exploitation activities be suspended and requested that *prior* consultation be repeated with free, prior, and informed consent in all communities that might be affected by the project. This constituted a major legal precedent in the country.

A CEACR Observation also shows that the government reported a total of 4,891 *consultation processes* with ethnic communities between 2003 and 2015, 4,198 of which ended with *agreements* (CEACR, 2016, art. 15). In comparison, the information about consultations agreed to in Peru shows twenty-two such processes carried out between 2011 and 2017 (CEACR, 2018, art. 6, par. 2), highlighting the number of agreements and possible degree of commitment by authorities in Colombia.

Results

Applying the four criteria discussed above shows the implementation gaps in rights to land and territory in the ten countries analyzed here (see Figure 2.1).

First, Guatemala stands out with the largest gaps in all areas, obtaining a final score of 5.0. It is followed by Venezuela, with a score of 4.5. In these countries, Indigenous peoples are severely unprotected in terms of their rights to their land, which also affects other, more fundamental, rights, such as the right to life.

The case of Mexico comes next (4.0), followed by Colombia and Nicaragua, which share a score of 3.5. Together, these three countries all share the problems of *eviction* and *forced displacement*. In Mexico and Colombia, the violence caused by armed criminal groups surpasses the governments' capacity to maintain citizen safety, and in Nicaragua, the government ignores its responsibility to stop the aggressive acts carried out by settlers in Indigenous territories.

Paraguay and Ecuador follow these countries, with a score of 3.0. The difference between the two lies in how much progress they have made in titling and in the number of *evictions* and *forced displacements*. While Paraguay has seen greater progress in terms of land titling for Indigenous peoples, it turns out to have the same gap as Ecuador due to its inability to guarantee security from invaders, *evictions* and *forced displacement*.

With a score of 2.5, Peru and Panama are the next two countries. They differ from one another in terms of security against invaders and how they handle consultations. While Panama made several attempts, though with setbacks, to stop *invasions* by settlers in Indigenous territories, Peru did not help its native inhabitants who needed territorial protection. They received the same score, though, because the government of Peru attempted to make advances with *consultation processes*, while the government of Panama has a more reticent policy in this regard.

Finally, Bolivia comes through with the lowest gap (2.0). It has made progress in land titling and has distributed relatively more land to Indigenous peoples than the other countries analyzed here. Nonetheless, the lack of citizen consultations persists, as is the case in the vast majority of the countries examined.

Conclusion

All the countries studied here present implementation gaps; no country is perfect. However, there is variety in the magnitude of these gaps, as this study

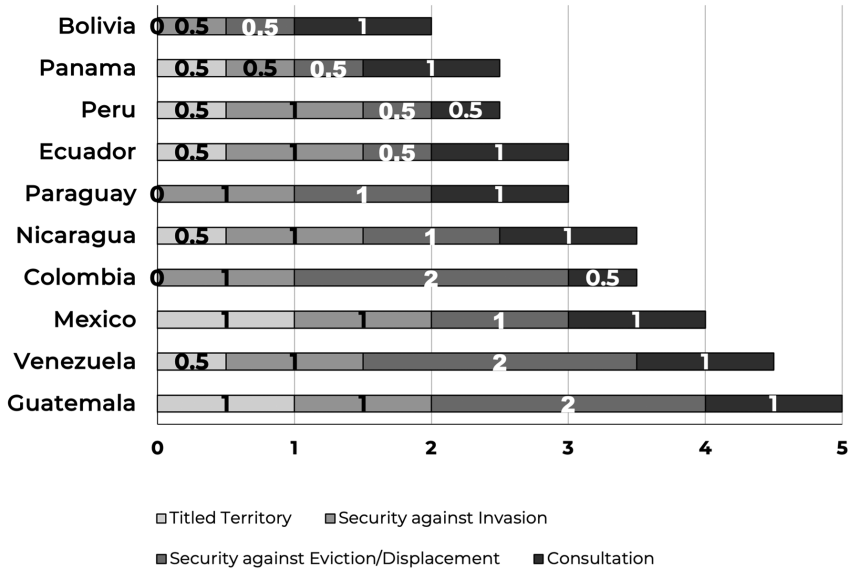

Figure 2.1. Results: Implementation gap in rights to land

shows. The larger the gap, the lower the possibility of safeguarding other legally recognized rights, such as the right to life and the right to self-determination.

Now that the gaps in terms of the implementation of land rights is clearer, the next steps are 1) to explore the necessary and sufficient conditions that have influenced the results obtained in this study; and 2) to investigate the four other operational features that Bennagen proposed for evaluating concrete situations of Indigenous autonomy (Bennagen, 1992, p. 72).

For the first step, it is essential to distinguish between two types of factors to carry out the fsQCA in two phases: *remote factors* and *proximate factors* (Schneider and Wagemann, 2006). *Remote factors* are relatively stable over time; their distance from current results is large in terms of both time and space. As a result, they are beyond the conscious influence of the actors involved, thus we can consider historical and/or structural contexts to be *remote factors*.

For the cases analyzed in this study, *remote factors* may be 1) the existence of territorial institutions for Indigenous peoples prior to the 1990s (for example, *reserves* in Colombia, *comarcas* in Panama, as well as *autonomous regions* in Nicaragua); and 2) the lack of internal armed conflict (unlike in Colombia, Guatemala and Nicaragua). While the existence of a territorial institution historically recognized by Indigenous peoples would strengthen the process of implementing the right to lands and territories, the repercussions or perpetuation of internal conflict may impede this process.

Proximate factors, in contrast, change over time and are vulnerable to changes made by actors, thus they are closer to the results in terms of time and space. In the Latin American context, these factors include 1) a high degree of democracy; 2) a lack of organized criminal groups; 3) a high level of political representation in the national congress (Stavenhagen, 2006, par. 84); and 4) the existence of political will represented by financial resources allocated to the regularization of Indigenous lands and territories (Aylwin, 2002, p. 74).

Not included here, for example, is the neo-extractivist development policy that has clearly affected the implementation of land policy for Indigenous populations (Tockman and Cameron, 2014), as all the cases studied share this tendency and it would be difficult to find variation within the group in this regard. Each of these factors requires extensive, in-depth analysis and will thus be examined in greater detail in the next phase of this research.

I hope that this attempt to take stock of the situation can serve as a point of departure in the ongoing pursuit of effective strategies that can reduce the region's implementation gaps.

Acknowledgements

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References

NOTES

1 The professional collaboration of my colleague, lawyer Rubén Rodríguez, was vital for this phase of the research. I am deeply grateful for his help.

2 This Commission examines the reports submitted by governments that have ratified one of the Organization's conventions. Governments have the obligation to provide reports on the application of the ratified convention within one to five years, depending on their urgency. The Commission is made up of twenty independent experts from all over the world and meets once a year to examine the reports submitted by the governments as well as the communications sent by the organizations of employers and workers. These communications, however, are not received periodically as are the government reports; instead, they are only issued when emergencies are detected, and they aim to either support the government's position or, in contrast, to expose the State's non-compliance with the provisions of a convention. Based on the information received sufficiently in advance of the annual meeting, the Commission analyzes the status of the application of a convention and adopts a unanimous conclusion among its members, though it is also possible to make decisions by majority rule (ILO, 2019, pp. 17–21).

3 I would like to thank Xavier Basurto and Johanna Speers for sharing their inspiring methodology for calibrating qualitative data (Basurto and Speers, 2012). Their work has been an essential contribution to the development of this study.

4 Specialized software (MAXQDA 2018) has been used for qualitative data analysis in this study.

5 "1) The rights of ownership and possession of the peoples concerned over the lands which they traditionally occupy shall be recognised. In addition, measures shall be taken in appropriate cases to safeguard the rights of the peoples concerned to use lands not exclusively occupied by them, but to which they have traditionally had access for their subsistence and traditional activities. Particular attention shall be paid to the situation of nomadic peoples and shifting cultivators in this respect" (C169, art. 14-1). "2) Governments shall take steps as necessary to identify the lands which the peoples concerned traditionally occupy . . ." (C169, art. 14-2, first half).

6 "… and to guarantee effective protection of their rights of ownership and possession" (C169, art. 14-2, second half). "3) Adequate procedures shall be established within the national legal system to resolve land claims by the peoples concerned" (C169, art. 14-3). "Adequate penalties shall be established by law for unauthorised intrusion upon, or use of, the lands of the peoples concerned, and governments shall take measures to prevent such offences" (art. 18).

7 "1) Subject to the following paragraphs of this Article, the peoples concerned shall not be removed from the lands which they occupy. 2) Where the relocation of these peoples

is considered necessary as an exceptional measure, such relocation shall take place only with their free and informed consent. Where their consent cannot be obtained, such relocation shall take place only following appropriate procedures established by national laws and regulations, including public inquiries where appropriate, which provide the opportunity for effective representation of the peoples concerned. 3) Whenever possible, these peoples shall have the right to return to their traditional lands, as soon as the grounds for relocation cease to exist. 4) When such return is not possible, as determined by agreement or, in the absence of such agreement, through appropriate procedures, these peoples shall be provided in all possible cases with lands of quality and legal status at least equal to that of the lands previously occupied by them, suitable to provide for their present needs and future development. Where the peoples concerned express a preference for compensation in money or in kind, they shall be so compensated under appropriate guarantees. 5) Persons thus relocated shall be fully compensated for any resulting loss or injury" (C169, art. 16).

8 "1) The rights of the peoples concerned to the natural resources pertaining to their lands shall be specially safeguarded. These rights include the right of these peoples to participate in the use, management and conservation of these resources. 2) In cases in which the State retains the ownership of mineral or sub-surface resources or rights to other resources pertaining to lands, governments shall establish or maintain procedures through which they shall consult these peoples, with a view to ascertaining whether and to what degree their interests would be prejudiced, before undertaking or permitting any programmes for the exploration or exploitation of such resources pertaining to their lands. The peoples concerned shall wherever possible participate in the benefits of such activities, and shall receive fair compensation for any damages which they may sustain as a result of such activities" (C169, art. 15).

9 The codes used for the lexical searches for point of comparison 2 are *invasion, invader, settler* and *invade*; for point of comparison 3 they are *eviction, displacement, dispossession,* and their derivatives; and for point of comparison 4, *prior consultation* and *no consultation* [in Spanish: 2) *invasión, invasor, colono*, *invadir*; 3) *desalojo*, *desplazamiento*, *despojo*; 4) *consulta previa* and *sin consulta*].

10 Peoples of African descent have been included for the cases of Bolivia, Nicaragua, and Peru in their entirety, and partially for Ecuador, Guatemala, Mexico and Panama. They have not been included for the other countries — Colombia, because it has separate institutions for Afro-Colombians; and Paraguay and Venezuela, because they lack institutions for titling land for peoples of African descent, who, furthermore, cannot be included among their country's ethnic groups.

11 I found five documents that use the words *displacement, eviction, abandonment*, and/or *dispossession* [in Spanish, *desplazamiento*, *desalojo*, *abandon*, and/or *despojo*], including their lexical derivatives or applicable term in a specific context. The first four documents refer to the risk of displacement and not an actual act of displacement: 1) a report by the committee charged with examining a complaint indicates the concern of the General Confederation of Workers of Peru (CGTP, Confederación General de Trabajadores del Perú) in the face of the Land Titling Law for Coastal Communities (Tripartite Committee-ILO [ILO-CT], 1998). 2) A CEACR Observation notes the CGTP's comments that question "the existence of a bill which allows the displacement

of people in large-scale projects" (CEACR, 2011, par. 1), and the Committee asks the government "to ensure that section 12 of Legislative Decree No. 994 of 2008, which provides for the possibility of eviction from unclaimed lands in case of invasion or usurpation, does not apply to indigenous peoples who traditionally occupy lands even if they do not have any formal title of ownership" (CEACR, 2011, art. 14). 3) A complaint about a concession granted without proper consultation with the Ashaninka communities alleges that the construction of a hydroelectric plant will directly affect the communities, thus involving "the possible displacement of the peoples" (ILO-CT, 2012, par. 29). 4) Finally, in the CEACR Direct Request about the "protection of peoples living in isolation," the Committee refers to the "risk of epidemics, displacement and disputes over living space" (CEACR, 2014).

12 This refers to the communities that were beneficiaries of the CIDH Precautionary Measure no. 505-515: Esperanza, Santa Clara, Wisconsin, Francia Sirpi, Santa Fe, Esperanza Río Coco, San Jerónimo, Polo Paiwas, Klisnak, Wiwinak, Naranjal and Cocal (Resolution 37/2015; Resolution 2/2016; Resolution 44/2016).

13 IACHR Resolution 29/2016, Precautionary Measure No. 271-05, Extension of beneficiaries, Community La Oroya, Peru. Available at: http://www.oas.org/es/cidh/decisiones/pdf/2016/MC271-5-Es.pdf

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Annex 1

Table 2.6. Reports on the Convention No. 169 (No. 107 for Panama) of the ILO

Reports on C169 (C107 for Panama)					
			Year of Publication		
Country	**Ratification**	**No. Documents**	**Observation (CEACR)**	**Direct Request (CEACR)**	**Complaint (tripartite committee)**
Bolivia	1991	16	1995, 1999, 2003, 2004, 2005, 2006, 2010, 2012, 2013, 2014	1994, 1995, 2006, 2010, 2014	1999
Colombia	1991	28	1994, 1996, 1999, 2001, 2003, 2004, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016	1994, 1996, 1999, 2001, 2004, 2009, 2010, 2014, 2016	2001, 2001
Ecuador	1998	13	2003, 2004, 2007, 2010, 2014, 2015	2003, 2004, 2007, 2010, 2014, 2015	2001
Guatemala	1996	24	1999, 2002, 2004, 2006, 2007, 2008, 2009, 2010, 2012, 2013, 2014, 2015, 2019	1999, 2002, 2004, 2006, 2007, 2010, 2012, 2015, 2016, 2019	2007
Mexico	1990	32	1995, 1996, 1997, 1999, 2000, 2002, 2005, 2006, 2007, 2008, 2009, 2010, 2012, 2014	1993, 1995, 1996, 1997, 1999, 2000, 2002, 2006, 2010, 2012, 2014	1998, 1999, 2004, 2004, 2004, 2004, 2006
Nicaragua	2010	6	2019	2014, 2016, 2017, 2018, 2019	
Panama	1957 (C107)	20	(1989), 1991, 1992, 1995, 1996, 2003, 2005, 2009, 2010,	(1989), 1991, 1992, 1995, 1996, 2003, 2005, 2009, 2010, 2014, 2016	
Paraguay	1993	29	2000, 2001, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2012, 2013, 2015, 2018	1997, 1998, 1999, 2000, 2001, 2003, 2004, 2005, 2007, 2008, 2009, 2010, 2012, 2015, 2018	
Peru	1994	25	1998, 1999, 2001, 2003, 2004, 2006, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2018	1999, 2003, 2006, 2009, 2010, 2011, 2014, 2018	1998, 2012, 2014
Venezuela	2002	11	2005, 2010, 2013, 2014, 2015, 2019	2005, 2008, 2010, 2015, 2019	

Source: Prepared by the author. The comments by the Commission of Experts (CEACR) are available in "NORMLEX" on the ILO website del sitio web de la OIT, (https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:20010:0::NO::). The tripartite committee's reports submitted in the context of the complaints are available at https://www.ilo.org/dyn/normlex/en/f?p=1000:50010:::NO:50010:P50010_ARTICLE_NO:24.

Annex 2
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3

Framework Law on Autonomy and Decentralization for Indigenous First Peoples Peasant Autonomies (AIOCs): Autonomous Regulation or Institutional Restriction?

María Fernanda Herrera Acuña

Introduction

The year 2006 marked an important milestone in Bolivian history: the arrival of Evo Morales to power as a representative of social movements with a strong Indianist vision, influenced by international Indigenous viewpoints. His promise of a new constitution raised a series of expectations with regard to recognizing the diversity of nations and improving the weak regulation of their polysemic cultures and identities. Morales represented a challenge to the unitary, homogenizing and segregationist Republican State. The constitutional (multicultural and communitarian) and territorial bases of a new concept of citizenship and a Plurinational State, as outlined by the Constituent Assembly (Lazarte, 2009), were legitimate in the wake of the diversity of the country's peoples. In practice, however, Indigenous inclusion – promoted through territorial and political autonomy — has in many ways been aligned

in regulatory terms more with the objectives and opportunities of the very government that proclaimed and pseudo-delineated these diverse original nations as a space of conquest and self-determination than with the requirements and needs of the peoples themselves.

The purpose of this essay is to review the legal contradictions and barriers that place restrictions on the formation and implementation of Indigenous First Peoples Peasant Autonomies (AIOCs), through a study of the institutional regulations. This study will first consider the fundamental concepts of the composition of AIOCs as set out in the Political Constitution of the State (CPE). It will then present the intentions of the "Andrés Ibáñez" Framework Law on Autonomy and Decentralization (LMAD) which, by monitoring and clearly delineating the CPE, exposes a stereotypical view of Indigenous peoples set within a classic liberal and pro-extractivist political framework.

Political Constitution and Inclusion of Indigenous Peoples

Declaration of Autonomy

Article I of the Constitution states that "Bolivia is a free, independent, sovereign, democratic, intercultural, decentralized and autonomous Unitary Social State of Plurinational Community Law." Such plurinationality takes a decolonizing focus as its route for deconstructing the republican, colonial and liberal State, and it recognizes the pre-colonial pre-existence of the original Indigenous nations as the source of its population (CPE, art. 2). Plurinationality shines a light on the reconstruction of the State (CPE, Preamble), not ignoring the contributions of the Republic but rather recognizing within the classic institutions of the State a mechanism and capacity for social engineering (De Sousa, 2010) aimed at reconstructing and integrating Indigenous peoples (Landívar, 2015). This recognition establishes a democratic pluralism — mainstreamed throughout the constitution and structuring the whole of the State's organization — based on an extension of the concept of nation. By accepting the collective identities and political communitarianism of cultural institutions, plurinationality brings about changes in State structures and institutions, expanding economic (CPE, art. 30, 14, IV), legal (CPE, art. 190, 1, IV) and language (CPE, art. I) rights and conduct

to all Indigenous and peasant peoples as well, as the intercultural population of the countryside and city (Pinto, 2012).

The end result of this process is an openness to Indigenous inclusion based on the universal principle of equality of all citizens before the law, without this being a barrier to the recognition of other specific proclaimed rights that are only applicable to certain population groups, such as those belonging to Indigenous or Afro-Bolivian nations and peoples (CPE, art. 14, II). This is with the aim of "Indigenous and non-Indigenous people [being able to] enjoy equal rights and consequently equal access to guarantees and exercise of institutionalized powers"[1] (Clavero, 2010, p. 199), framed within a territoriality that expressly recognizes their autonomy.

The system for autonomy, set out in the third chapter of the Constitution (Structure and Territorial Organization of the State):

> Involves the direct election of their authorities by the citizens, the administration of their economic resources, and the exercise of legislative, regulatory, supervisory and executive powers ... within the scope of their jurisdiction ... competences and attributions. (CPE, art. 272)

Such territorial organization is based on a principle of intent, understood not as an obligation but as a right: "The creation, modification and delimitation of territorial units shall be done in accordance with the democratic will of their inhabitants, in line with the conditions established in the Constitution and law" (CPE, art. 269, 2). The direct election of authorities forms the initial process for vesting initially dispersed powers in the sovereign people[2] (CPE, art.7), embodied in multiple units of institutionalized government spread across the territory.

The constitution establishes four types of autonomy "not ... subordinate to each other and [of] equal constitutional rank" (CPE, art. 276): departmental (CPE, arts. 278-280), regional (CPE, arts. 281-283), municipal (CPE, arts. 284-285) and Indigenous First Peoples Peasant Autonomies (CPE, arts. 290-297). In practice, however, their scope and nature are not the same. Although territories that so wish may become autonomous by means of a statute or organic charter (municipality) — provided it is not in contradiction with the Constitution and it regulates only those institutions and powers taken up by the autonomous entity — their distinct nature lies in the particular

coordination of their territorial, material and elective[3] spheres. This coordination marks out and classifies four decision-making levels with legislative capacity: the central State level, the departmental autonomous government, the municipal autonomous government and the Indigenous First Peoples Peasant Autonomies (according to their own institutions). Regional autonomy is distinct as it has no legislative power but is only of a deliberative, regulatory and administrative nature (CPE, art. 281).

AIOCs: territorial, elective and demographic criteria

The new Constitution defines *Indigenous First Peoples peasant peoples and nations* as "the entire human collectivity that shares a cultural identity, language, historical tradition, institutions, territoriality and cosmovision, whose existence predates the Spanish colonial invasion" (CPE, art. 30, 1, IV). It explicitly recognizes — under the comprehensive concept of Indigenous First Peoples peasant peoples and nations — the rights of Indigenous peoples (CPE, arts. 30-32), their jurisdiction (CPE, arts. 190, 191 and 192) and their autonomy (CPE, arts. 289-296).

Territorially, the formation of an AIOC is based "on the ancestral territories currently inhabited by ... peoples and nations, and on the will of its population, expressed via consultation" (CPE, art. 290, I). Ancestral territory is understood as the Community Lands of Origin (TCOs) or those geographic spaces that form the habitat of Indigenous peoples and communities, to which they have traditionally had access and where they maintain and develop their own forms of economic, social and cultural organization in such a way as to ensure their survival and development. They are inalienable, indivisible, irreversible, collective, composed of communities or groups of communities (a 'commonwealth'), unseizable and imprescriptible[4] (Law 1715, art. 31, I, 5). The CPE establishes that the "State recognizes, protects and guarantees communal or collective property, which includes the Indigenous First Peoples Peasant Territory, the Indigenous intercultural communities and ... the peasant communities" (art. 394, III); the integral nature of the Indigenous First Peoples Peasant Territories (TIOCs) is established at the same time, including the:

> right to land, to the exclusive use and exploitation of renewable natural resources under conditions determined by law; to prior

> and informed consultation and participation in the benefits of the exploitation of the non-renewable natural resources found on their territories; the power to apply their own rules, administered by their representative structures and to define their development according to their own cultural criteria and principles of harmonious coexistence with nature. The Indigenous First Peoples Peasant Territories may comprise communities. (CPE, art. 403).

By recognizing the TIOCs as part of the territorial structure of the State, the CPE thus grants them the power to become an entity with the capacity for self-legislation, fiscal resource management and direct election of their authorities according to "their own norms, institutions, authorities and procedures, in accordance with their powers and competences" (CPE, art. 290, II). A territorial entity which, under Article 276, possesses its own territorial and jurisdictional limits, even if it is located partially or entirely within another territorial unit (Égido, 2010).

The CPE also recognizes the municipalities and eventual regions as a territorial basis for the formation of AIOCs (CPE, art. 291, I). In municipalities where there are peasant communities "with their own organizational structures and with geographical continuity, a new municipality may be formed, following the procedure currently tabled before the Plurinational Legislative Assembly for its approval" (CPE, art. 294, III). The constitutional text places no restrictions on the scope of the territory, even proclaiming the possibility of this being a single municipality. Where territories are located across one or more municipalities, a law shall indicate the mechanisms for the collaboration, coordination and cooperation necessary for the exercise of their government (CPE, art. 293, II). A region may become a regional autonomy, at the initiative of the municipalities that form a part thereof (CPE, art. 280, III).

To form an AIOC on the basis of an Indigenous territory, the Indigenous Peoples' own norms and procedures shall apply (CPE, art. 294, I) and to form an AIOC based on a municipality, a referendum shall be held as the procedure by which to establish the people's will (CPE, art. 294, II). The creation of an Indigenous First Peoples Peasant (IOC) region through the aggregation of municipalities, municipal districts and/or AIOCs shall be decided by referendum and/or in accordance with their own rules and consultation procedures (CPE, art. 295, II).

While the CPE states that the geographic nature of an AIOC shall be "the ancestral territories currently inhabited" (supported by arts. 2 and 30), this would seem, implicitly, to imply a certain change in the mapping of the State, accommodating its current territorial units to pre-existing ones — separated since colonial times and through to the 20th century with the agrarian reform of 1953; however, Article 291 clarifies this provision, establishing that "the Indigenous First Peoples Peasant territories, and those municipalities and regions that adopt such status, shall be Indigenous First Peoples Peasant Autonomies." This therefore subordinates the AIOCs to two republican territorial units: "the municipality and the Community Land of Origin" (Neri, 2012, p. 145).

With regard to the demographic criterion, the CPE is clear in determining the minimum numbers necessary to form an AIOC: the "Law shall establish minimum population requirements and other different requirements for the constitution of an Indigenous First Peoples Peasant Autonomy" (CPE, art. 293, 3). It does not, however, prevent an Indigenous population that does not meet this number from joining with other communities to form an AIOC: "Two or more Indigenous First Peoples peasant communities may form a single AIOC" (CPE, art. 291, II); it does not, in any case, define Indigenous autonomous 'commonwealths' by geographic proximity.

Based on these considerations, the formation of Indigenous autonomies, constitutionally speaking, is an open process with no time limit for its completion; all it requires is the will of the affected population (CPE, arts. 290 and 293). There is likewise no limit to the number of AIOCs, with the exception of departmental ones, where there can be nine; there can be as many as the voluntary and sovereign transformation wishes (CPE, arts. 291-293), at the level of the municipality (CPE, art. 291, I), Indigenous territory[5] or region (CPE, art. 291, I). Only their ancestral origin and their institutional declaration as such is decreed and required (CPE, arts. 289-291).

Powers of the AIOCs

By virtue of the Constitution and the rights of Indigenous nations (CPE, art. 30, II), the CPE divides the powers[6] of AIOC governments into: exclusive, shared and concurrent (CPE, art. 304, I, II, III and IV). In addition, it also assigns it the powers of municipalities undergoing conversion, in accordance with a process of institutional development and with their own cultural

Table 3.1. Powers of AIOC Governments

	Art 304	Powers of the Indigenous Native Peasant Autonomy
Exclusive	I	1. Production of their Statutes for the exercise of their autonomy, in accordance with the Constitution and the law.
		2. Definition and management of their own forms of economic, social, political, organizational and cultural development, in accordance with their identity and the vision of each people.
		3. Management and administration of renewable natural resources, in accordance with the Constitution.
		4. Production of land-use and land management plans, in coordination with central, departmental and municipal plans.
		5. Electrification in off-grid systems within its jurisdiction.
		6. Maintenance and administration of local and community roads.
		7. Administration and preservation of protected areas within its jurisdiction, within the framework of State policy.
		8. Exercise of Indigenous native peasant jurisdiction for the application of justice and conflict resolution through their own norms and procedures, in accordance with the Constitution and the law.
		9. Sports, leisure and recreation.
		10. Tangible and intangible cultural heritage. Safeguarding, fostering and promoting their cultures, art, identity, archaeological centres, religious and cultural sites and museums.
		11. Tourism policies.
		12. Creation and administration of taxes, patents and special contributions within its jurisdiction, in accordance with the law.
		13. Administration of the taxes within its power, within the scope of its jurisdiction.
		14. Preparation, approval and implementation of its operating programs and budget.
		15. Planning and management of territorial occupation.
		16. Housing, urban planning and population redistribution according to their cultural practices, within their jurisdiction.
		17. Promotion and signing of cooperation agreements with other nations and public and private entities.
		18. Maintenance and administration of their micro-irrigation systems.
		19. Promotion and development of their productive potential.

Table 3.1. (*continued*)

	Art 304	Powers of the Indigenous Native Peasant Autonomy
		20. Construction, maintenance and administration of the infrastructure necessary for development within their jurisdiction.
		21. Participation in, development and implementation of mechanisms for free, prior and informed consultation with regard to applying legislative, executive and administrative measures affecting them.
		22. Preservation of the habitat and landscape, in accordance with their cultural, technological, spatial and historical principles, norms and practices.
		23. Development and exercise of their democratic institutions in accordance with their own rules and procedures.
Shared	II	1. International exchanges within the context of the State's foreign policy.
		2. Participation in and control of the use of aggregates.
		3. Safeguarding and registration of collective intellectual rights to knowledge of genetic resources, traditional medicine and germplasm, in accordance with the law.
		4. Control and regulation of external institutions and organizations that are implementing activities within their jurisdiction and which are inherent to the development of their institutions, culture, environment and natural heritage.
Concurrent	III	1. Organization, planning and execution of health policies within their jurisdiction.
		2. Organization, planning and implementation of education, science, technology and research plans, programs and projects, within the framework of State legislation.
		3. Conservation of forest resources, biodiversity and environment.
		4. Irrigation systems, water resources, water and energy sources, within the framework of State policy, within their jurisdiction.
		5. Construction of micro-irrigation systems.
		6. Construction of local and community roads.
		7. Promotion of the construction of productive infrastructure.
		8. Promotion and development of agriculture and livestock.
		9. Socio-environmental control and monitoring of hydrocarbon and mining activities being carried out within their jurisdiction.
		10. Fiscal control systems and administration of goods and services
	IV	The resources necessary for implementing their powers shall be automatically transferred by the Plurinational State, in accordance with the law.

features (CPE, art. 303, I). This ensures that the AIOCs enjoy full autonomy and equal hierarchy with the municipality.

Within the context of the powers constitutionally attributed to AIOCs and their relationship to the right to self-determination and self-government, however, there is a certain inconsistency with the idea of an autonomous Indigenous government based on the rules and procedures of each people. Although the creation of these autonomous entities implies changes both in the institutional and territorial structure of the State and in the structures of each original nation, the allocation of powers that are strongly Western by nature could be considered rather imposed (Sarmiento et al., 2013). This is reinforced by Article 303 of the CPE: "In addition to its powers, the Indigenous First Peoples Peasant Autonomy shall take on those of the municipalities;" this seems more reflective of a transformation of the modern power structures of the State than of the aspirations of the Indigenous peoples.

At the same time, the self-determinist vision of the AIOCs becomes yet further distanced by establishing that the resources necessary for them to implement their powers (in addition to those that are self-managed) (CPE, art. 30, II, 6) "shall be automatically transferred by the Plurinational State according to the law" (CPE, art. 304, IV). This latter shall, at the same time, supervise their use. This means that Indigenous autonomy would — like other autonomous entities or any other autonomous regime — be just another level of territorial decentralization subject to State resources rather than an emancipatory demand emanating from the Indigenous peoples themselves (Neri, 2012).

Of the powers attributed to the AIOCs, there are three that are proclaimed in the constitutional text which do not appear in the other autonomous competences. Two are exclusive powers: the exercise of Indigenous First Peoples peasant jurisdiction (CPE, art. 304, 8) and prior consultation (CPE, art. 304, 21). The third refers to international exchanges within the context of the State's foreign policy (CPE, art. 255).

The Indigenous First Peoples and peasant jurisdiction (JIOC), deriving from the full recognition of Indigenous institutional structures, highlights the legal pluralism of plurinationality, which grants it equal hierarchy with the ordinary justice system (CPE, art. 179, II). Plurinationality recognizes the right of Indigenous peoples to have their own jurisdiction (art. 191), exercised by their own authorities (art. 179, I) — in the personal (art. 191, I), territorial and material spheres — and in accordance with their cosmovision (arts. 30,

14), without the ordinary justice system being able to review their rulings within its corresponding jurisdiction (Morell i Torra, 2015).

In order to prevent conflicts of competences between the JIOC and the ordinary and agro-environmental jurisdictions,[7] the CPE anticipates the existence of a Jurisdictional Demarcation Law, which establishes coordination and cooperation mechanisms between the JIOC and the ordinary justice system, the agro-environmental justice system and all other constitutionally-recognized jurisdictions (art.192, III). This law would need to establish the material, personal and territorial powers of each of the jurisdictions with far less ambiguity than the constitutional text and set out the application and scope of principles deriving from international treaties and agreements on Indigenous peoples signed by the Bolivian State (Núñez, 2009). And yet, the CPE clearly and precisely requires the Indigenous First Peoples peasant authorities to consult the Plurinational Constitutional Court (CPE, art. 202, 8, 11) on the application of its legal norms in any specific case.

Based on the rights of Indigenous nations and peoples (CPE, art. 30) (ILO Convention 169[8] and several precepts of the UN Declaration on the Rights of Indigenous Peoples), mechanisms for free, prio, and informed consultation of the Indigenous population affected (CPE, art. 352) are established with regard to natural resource exploitation (CPE, art. 304, 21). This is even though the State proclaims — constitutionally — its ownership and administration thereof (CPE, art. 298, II, 4).

On this point, it remains to be defined whether the consultation to be carried out by the State, which is understood to be mandatory, is merely of a consultative nature or, by contrast, is binding (Yáñez, 2009). In this regard, reference to the provisions of international treaties and conventions would make it impossible for the government to act in opposition to the decisions of the affected community. The only exception would be the mandate of the Plurinational Constitutional Court, which can rule on the principle of the social function of property and the interests of the State (CPE, arts. 56, 57, 393 and 401) and, here, other types of compensation are therefore possible (CPE, art. 30, II, 16).

Within the framework of the State's foreign policy, the negotiation, signing and ratification of international treaties shall be governed by "respect for the rights of Indigenous First Peoples peasant peoples" (CPE, art. 255, II, 4), and complemented by the State's intention to strengthen "the integration of its Indigenous First Peoples peasant peoples and nations with the Indigenous

Peoples of the world" (CPE, art. 265, II). This does not directly envisage the right to cross-border identitary-ethnic reconstitution between states. These measures are valid provided they do not transgress the State's reserve in this regard, and do not derive from the State's own international obligations and commitments (Benavides, 2007).

"Andrés Ibáñez" Framework Law: Clarifications and Criticisms

The "Andrés Ibáñez" Framework Law" (LMAD) repeals and replaces the most relevant articles of the Law on Municipalities No. 2028 (1999), the Law on Popular Participation No. 1551 (1994) and the Law on Administrative Decentralization No. 1654 (2000) (Égido, 2010) and is mandated by the CPE and the bases of the State's territorial organization as established in Chapter Three, Articles 269 to 305 (LMAD, Arts. 2-3): "to regulate the system of autonomies, autonomous statutes and organic charters, the transfer and delegation of powers, the economic and financial system, and coordination between the central level and the decentralized and autonomous territorial entities" (CPE, art. 271).

However, in both its development and its implementation, the LMAD not only regulates the exclusive powers of the autonomous governments to the point of destroying the very foundations on which they are based and imposing limits on their actions but also, with regard to concurrent powers, distorts and modifies the constitutionally accepted definition such that the central level can, by means of a formal law, assume regulatory and executive powers jointly alongside the autonomous territorial entities, creating a system of parallel and duplicate functions (Ortuste de Olmos, 2016).

Steps to accessing AIOCs

The LMAD specifies and details two processes for accessing AIOCs: via municipal conversion or via TIOC conversion. The LMAD's municipal conversion process results in a bureaucracy that both bogs down the State and potentially destroys the will of the converting community itself since it requires (in addition to the three basic constitutional requirements of ancestry, referendum and leadership, according to habit and custom) reliable evidence of their ancestry from the Ministry of Autonomies via the issuance of an *ad hoc* certificate: "The municipalities or regions that adopt the status of AIOC

may change their status of territorial unit to that of TIOC if consolidating their ancestral territoriality" (LMAD, art. 16). This is ratified later on in the same law, Article 56, which establishes the Ministry of Autonomy as the body in charge of "expressly certifying in each case the status of ancestral territory, currently inhabited by those peoples and nations," thus superimposing its power as the authority responsible for Land and Territory (National Agrarian Reform Service).[9] The requirement for a ministry to certify whether or not an Indigenous territory is ancestral subordinates the will of those wishing to become autonomous to a decision of the State. This subordination is clearly detrimental to Articles 30, 4, 6, 17 of the CPE, which provide that "The Indigenous First Peoples peasant nations and peoples have the right ... to self-determination and territoriality ... to the collective titling of lands and territories ... [and] to autonomous Indigenous territorial management," thus violating the fundamental rights of the Indigenous nations and peoples.

Subsequent to ancestrality, the LMAD then incorporates the requirement of territorial continuity, which demands — in the area where the AIOC is to be established — the existence of a territorial unit within the official set-up of the territory (LMAD, art. 56, III). This hinders the constitutional claim to collaboration, coordination and cooperation in the exercise of government without geographic continuity (CPE, art. 293).

The third requirement for municipal conversion set out in the LMAD is that of viability in terms of governance (LMAD, art. 57). This requires certification from the Ministry of Autonomies of evidence of existence, representation and effective implementation of an organizational structure and a territorial plan, also including institutional and financial strategies (Tomaselli, 2015). This is a requirement that establishes and institutes, from before its own construction, the presence and basic framework of a strongly liberal and republican organizational structure.

In terms of converting from a TIOC, the LMAD further complicates its implementation. The CPE indicates that: "The Law (LMAD) shall establish minimum population requirements and other distinct requirements for the constitution of the Indigenous First Peoples peasant autonomy" (CPE, art. 293). The Framework Law indicates the need for certification of the ancestral territory by the Ministry of Autonomies and also a requirement for government viability and a demographic base (LMAD, art. 57). Government viability is accredited by another certification issued by the Ministry of Autonomies, which assesses and verifies the existence of a territorial organization and plan

(LMAD, art. 57, 1, 2). The organization must be "existing, representative and effectively functioning as an organizational structure of the Indigenous First Peoples peasant nation(s) and people(s), and including all organizations of the same nature established in the territory, independent with respect to other actors and external interests," and the territorial plan requires it to have:

> a comprehensive development plan for the Indigenous First Peoples peasant nation(s) or people(s) living in the territory, according to their identity and way of life, and instruments for territorial management. The plan must include institutional and financial strategies for the territorial unit aimed at guaranteeing a process of strengthening its technical and human resource capacities, management and administration, as well as the integral improvement of the quality of life of its inhabitants.

At the same time, the LMAD indicates that such a plan must take into account the demographic structure of the population, establishing a population base equal to or greater than 10,000 inhabitants in the highlands and equal to or greater than 1,000 inhabitants in the lowlands (LMAD, art. 58). This demographic requirement does not clarify the criteria to be used for its formulation and, to a certain extent, standardizes the ethnic and social diversity of plurinationality (Rousseau and Manrique, 2019). While the TIOCs have a specific territorial base and their own organizational structure, they do not have the experience of management and public administration required by the LMAD and their conversion would therefore require not only time but also greater expenditure in terms of public resources and investment (Landívar, 2015, p. 497).

LMAD and territorial unity

In terms of establishing a TIOC as a territorial unit, there are discrepancies between the Framework Law and the CPE, as well as excessive and detailed requirements. The LMAD asserts that a TIOC becomes a territorial unit "once it gains access to Indigenous First Peoples peasant autonomy"[10] (LMAD, art. 6 Definitions), placing conditions on its status as a territorial entity and, therefore, contravening Article 269 of the CPE on the inclusion of the TIOC as part of the country's territorial organization. This puts them on

a lower level compared to other forms of territorial management. At the same time, such a requirement contradicts the constitutional principle, set out as a guiding principle in the LMAD (arts. 5, 7), that recognizes the pre-colonial existence of Indigenous peoples, on the basis of which their territories must also be recognized as territorial units (Égido, 2010).

These regulatory discrepancies are a result of the spirit of the LMAD since it endeavors to adapt Indigenous territoriality to the territorial organization established for the Plurinational Autonomous State, which cuts across or disrupts social and *de facto* territories and organizations that are properly Indigenous.

In this context, the LMAD does not consider the conversion of a municipality into an AIOC "the creation of a new territorial unit" (LMAD, art.15, IV); quite the contrary, colonial territorial divisions and republican institutional structures remain in place (Neri, 2012). The conversion is, above all else, a change of decentralized designation based on the same territorial structure and with the same functions (CPE, art. 303) rather than territorial reparation for the Indigenous peoples.

Regarding the AIOC transcending departmental boundaries, while the CPE does not explicitly establish this as impossible, the LMAD states: "In no case may those macro-regions that transcend departmental boundaries be constituted as a regional autonomy" (LMAD art. 22, III). The TIOCs "that transcend departmental boundaries may form AIOCs within the boundaries of each department, establishing 'commonwealths' among them, in order to preserve the unity of their management" (LMAD, art. 29, III). In contrast, the CPE states that "collective property shall be declared indivisible" (CPE, art. 394. II) and fully recognizes "the Indigenous First Peoples peasant territory, which includes ... the power to apply its own norms, administered by its representative structures and to define its own development according to its own criteria" (CPE, art. 403).

With regard to 'commonwealths', such as the Indigenous First Peoples and Peasant (IOC) Region, the LMAD does not clearly or specifically refer to these. Quite the contrary, Articles 46, II and 74, II[11] (LMAD) create a number of discrepancies by affirming the existence of an "Indigenous First Peoples peasant autonomy constituted as an Indigenous First Peoples peasant region," since the creation of an IOC Region as a planning and management space that functions with transferred or delegated powers in no case permits it to take the designation of AIOC as a fully constitutional entity.

LMAD and statutes

With reference to the regulations governing AIOCs, the CPE states (arts. 292 and 296) that Indigenous autonomies must produce their autonomous statutes in line with their own norms and procedures; however, the LMAD specifies that "the regulatory order of the central State shall, in all cases, supplement that of the autonomous territorial entities. In the absence of an autonomous law, the law of the central State shall apply" (art. 11), thus safeguarding the centrality of State power in the face of any structural silence in the construction of territorial units. It follows from this that, by virtue of the LMAD, AIOCs may be restricted to the general parameters of political modernity, establishing that:

> The AIOC government shall be shaped and exercised by its statute of autonomy, its rules, institutions, its own forms of organization in the context of its legislative, deliberative, supervisory, regulatory and executive powers, within the scope of its territorial jurisdiction and its powers in accordance with the Political Constitution of the State. (LMAD, art. 45)

The phrase "in the context of" reflects the limits of — or constraints upon — the policies of the Indigenous peoples who, in practice, are required to act within the confines of the State's organizational set-up (Neri, 2012).

From a logic of modernity, the LMAD urges the Indigenous communities to demonstrate their capacity to exercise their autonomous government from a modern and rational territorial approach to the State, noting that they must have:

> a comprehensive development plan for the Indigenous First Peoples peasant nation(s) or people(s) living in the territory, in line with their identity and way of life, and instruments for territorial management. The plan should include institutional and financial strategies ... in order to guarantee a strengthening of its technical and human resource capacities, management and administration, as well as the integral improvement of the quality of life of its inhabitants. The plan will need to consider the demographic structure of the population. (LMAD, art. 57, II)

This obscures and hinders the ancestral management that Indigenous peoples have always maintained over their territories (Neri, 2012).

The Framework Law disproportionately complicates access to AIOCs, so much so that it is easier for an Indigenous people to become a municipality[12] than an autonomy (Landívar, 2015). For the former, the requirements are basic and, for the latter, you need "government viability" and other additional certifications. In other words:

> If an Indigenous people wants to become a municipality, it is presumed that it meets the necessary conditions, but if that same group opts to be an AIOC, the opposite is assumed, such that it has to demonstrate the effective functioning of its organization and planning. (Égido, 2010, p. 279)

The plan should include institutional and financial planning:

> For the territorial entity, in order to guarantee a strengthening of its technical and human resource capacities, management and administration, as well as the integral improvement of the quality of life of its inhabitants. (LMAD, art. 57, 2)

Something similar is the case with the requirement for statutory structuring, required by the CPE (arts. 30 and 292) as an instrument or means of linking the communitarian to the modern State but which respects and is developed in line with their traditions and organic ancestral forms. In the Framework Law, however, statutes are determined as a "prior condition for the exercise of autonomy" (LMAD, art. 61) and once again the history and ancestral customs of self-government historically held by Indigenous peoples, and on which the institutionalization of autonomy should be based, is thus ignored.

LMAD and concurrent powers

With regard to concurrent powers, the Framework Law establishes that:

> For the exercise of regulatory and executive powers with respect to concurrent responsibilities, which fall to the territorial entities simultaneously alongside the central State, the Law on the

> Plurinational Legislative Assembly shall distribute the responsibilities corresponding to each level according to their nature, characteristics and scale of intervention. (LMAD, art. 65)

This is in contrast to the CPE (art. 297, I, 3), which defines concurrent powers as: "Those in which legislation corresponds to the central State and the other levels simultaneously exercise regulatory and executive powers."[13]

However, the autonomous statutes are:

> The basic institutional law of the autonomous territorial entities, rigid by nature, of strict compliance and agreed content, recognized and protected by the CPE ... and which expresses the will of their inhabitants ... their rights and duties, and establishes the political institutions of the autonomous territorial entities, their powers, their financing [and] the procedures by which autonomous bodies will develop their activities and relations with the State. (LMAD, art. 60)

In terms of the AIOCs' powers, the LMAD itself refers only to some of those contained in the CPE, without establishing the criterion for this discrimination. Thus, for example, in the area of natural resources, the Framework Law establishes only two concurrent powers for Indigenous peoples' governments:

> Management and sustainable use of forest resources, within the framework of the policy and regime established by the central State ... [and implementation of] the necessary actions and mechanisms according to its own norms and procedures for the execution of the general land and watershed policy. (LMAD, art. 87)

This ignores the exclusive constitutional powers of the AIOC (CPE, art. 304), such as participation in and development of the necessary mechanisms for prior consultation on natural resource use, the management and administration of renewable natural resources, the administration and preservation of protected areas within its jurisdiction and some concurrent powers such as socioenvironmental control and monitoring of hydrocarbon and mining

activities taking place within its jurisdiction. Together with some rights for which the LMAD needs to establish procedures (art. 403, II).

The powers not included in the LMAD are those that have the greatest potential for generating their own income and which, by the very nature of a TIOC, cannot be removed from the powers of any possible Indigenous self-government without delegitimizing it.

LMAD and autonomous financing

The Framework Law (art. 106) establishes that this is understood to include:

> Taxes, fees, patents, special contributions, taxes assigned to its administration ... transfers from departmental royalties for natural resource use ... [and] resources from co-participation in tax transfers and the Direct Tax on Hydrocarbons (IDH), according to the factors of distribution established in the current legal provisions.

This shows, once again, the extent to which everything Indigenous is dependent upon State regulations. Firstly, the allocation of taxes to the jurisdiction of the AIOC takes place from a Western viewpoint of taxation. This goes against the constitutional assertion of the State's recognition, respect, protection and promotion of the community's own organizational set-up, "which includes the systems for production and reproduction of social life, based on the principles and vision of the Indigenous native and peasant nations and peoples" (CPE, art. 307). And, secondly, the transfer of resources through the departmental level, while typical of a horizontal transfer, generates not only an unbalanced and disproportionate relationship of dependence between the two entities but also one of uncertainty, contrasting with the territorial equality asserted in the Constitution.

This is further complicated by the Third Transitory Provision, I-II (LMAD), based on a sustained perspective (Ameller, 2010):

> In order to fund their powers ... the autonomous municipal territorial entities and the autonomous Indigenous First Peoples peasant territorial entities shall receive transfers from the central State for the purposes of tax co-participation, equivalent to

> twenty percent (20%) of the cash collection of the following taxes: Value Added Tax, the Complementary System to Value Added Tax, Tax on Company Profits, Tax on Transactions, Tax on Specific Consumption, Customs Levy, Tax on the Free Transfer of Goods and Tax on Travel Abroad ... [distributed] according to the number of inhabitants under the jurisdiction of the autonomous territorial entity, based on data from the most recent National Population and Housing Census. (p. 130)

This circumvents management criteria based on relative fiscal effort, fulfillment of goals or institutional performance, among other things (Ameller, 2010, p. 130).

Conclusion

The restructuring of the Bolivian State in search of further democracy, greater citizen participation and the inclusion of its plural identities has been formally established in the form of plurinationality through autonomies. The aim is to use territorial means not only to promote the viable juxtaposition of two civilizational models (the Indigenous and the liberal) but, in particular, to establish a State focused on its own ancestral formation that is able to overcome the subordination imposed on its Indigenous peoples through balance and respect for its variegated structure.

In this context, the regulatory framework of the Political Constitution of the State and the Framework Law on Autonomy and Decentralization must be seen as the texts setting out the legal framework on which the new State's decolonizing project for Indigenous peoples is based.

And yet a critical analysis of both the Constitution and the Framework Law shows that rather than an openness toward Indigenous peoples, there exists a landscape of centralization and clear state-imposed delineation of the inclusion of Indigenous peoples and their communitarian forms and visions. Although the Constitution incorporates the rights of Indigenous First Peoples peasant nations and peoples, enshrining a very broad spectrum of guarantees, it sets out a dominant role for the State in a number of aspects, e.g., natural resources and exclusive and private powers, highlighting certain structural complications and placing limits on the development of Indigenous communities. The specific details set out in the LMAD go even

further in this regard. Instead of establishing the differentiated inclusion of diverse Indigenous nations through territorial transformation and regulatory openness toward Indigenous self-government, this law places limits on the Constitution and represses Indigenous self-government by imposing centralizing State criteria that condition and undermine Indigenous autonomy and superimpose a liberal and modern viewpoint on top of it. By contrast, what is needed of an autonomous territorial structure is not a hierarchical organization of power but a kind of regulatory coordination that clearly demonstrates the cooperation between sub-national governments and the different sections of the central level.

A preponderance of State guidelines has been developed by the LMAD, making the conversion to autonomy excessively bureaucratic, both via municipalities and via TIOCs, such that the law does not facilitate its implementation but rather complicates and hinders it. The Framework Law's instructions regarding the territorial structure of an AIOC in terms of geography and demography also establish the persistence of colonial boundaries and their administrative configuration based on unclear and unsubstantiated population criteria. The same is true of the statutes, the legal structure of which has to be developed within the framework of State regulations and approval. The situation is the same in the area of concurrent powers, where the LMAD superimposes simultaneity between the territorial entities and the central authority (e.g., prior consultation and natural resources), distorting the territorial distribution of powers according to the Constitution. The financing of the AIOCs is also constrained by a liberal State perspective that rejects other forms of community economic management promoted by the CPE.

The conclusion that must be drawn from the above is therefore that, rather than an historically libertarian view of Indigenous peoples and plurinationality, the concept of autonomy as it currently stands in Bolivian legislation is based instead on a form of political/administrative decentralization that simply enables the imposition of the centrality of the unitary State in the country.

NOTES

1 Constitutional Ruling No. 1662/2003-R (2003) of the Constitutional Court of Bolivia established that "international treaties, declarations and conventions on human rights are part of the legal order of the Bolivian constitutional system, of constitutional rank, such that these international instruments have a normative character and are directly applicable."

2 Article 7: Sovereignty resides in the Bolivian people and is exercised directly and by delegation. From this emanate, by delegation, the functions and powers of the organs of public power; this is inalienable and imprescriptible (CPE).

3 The territorial criterion: defines the jurisdiction of the area in which powers may be exercised; the material criterion: identifies the scope of public action that may be carried out in a specific sector; and the elective criterion: enables identification of the powers that may be exercised by each level of government (Bolivian Center for Multidisciplinary Studies, 2016).

4 Supreme Decree No. 0727: The seventh transitory provision of the Political Constitution of the State establishes that, for the purposes of applying paragraph I of Article 293 of the Constitution, the Indigenous territory shall be demarcated on the basis of the Community Lands of Origin. Within one (1) year of electing the executive and legislative bodies, the category of Community Land of Origin shall be subject to an administrative process of conversion to Indigenous First Peoples Peasant Territory, within the framework established by the Constitution.

5 Indigenous territory refers primarily to the current TCOs, regulated by agrarian legislation and formally constituted as a form of collective land ownership (CPE, art. 293).

6 In the Constitution, privative powers are those whose legislation, regulation and execution can be neither transferred nor delegated but are reserved solely for the central level of the State (CPE, Art. 297, 1). Exclusive powers are those where one level of government has legislative, regulatory and executive powers over a given matter, but may transfer or delegate the latter two powers (CPE, art. 297, 2). Concurrent powers are those where legislation corresponds to the central level of the State, but the other levels simultaneously exercise regulatory and executive powers (CPE, Art. 297, 3). And shared powers are those which are subject to the basic legislation of the Plurinational Legislative Assembly, but where their development corresponds to the autonomous territorial entities, according to their characteristics and nature. Regulation and implementation correspond to the autonomous territorial entities (CPE, art. 297, 4).

7 Article 186: with regard to the agro-environmental system, the Constitution establishes that the Agro-environmental Court is the highest entity of such jurisdiction.

8 ILO Convention 169, Art. 6(1) on consultation with the peoples concerned, through appropriate procedures and, in particular, through their representative institutions, whenever legislative or administrative measures likely to affect them directly are envisaged.

9 The organizational structure of the National Agrarian Reform Service (SNRA) comprises: the President of the Republic, the Ministry of Sustainable Development and Environment, the National Agrarian Commission, the National Agrarian Reform Institute (INRA) and the National Agrarian Tribunal.

10 On territorial organization: "It is a geographic space delimited for the organization of the State's territory, and may be a department, province, municipality or Indigenous First Peoples Peasant territory. The Indigenous First Peoples Peasant territory shall form a territorial unit once it gains access to Indigenous native peasant autonomy" (LMAD, art. 6, I).

11 "The establishment of an Indigenous First Peoples peasant autonomy in a region does not imply ... the dissolution of those that gave rise to it ... it will give rise to the establishment of two levels of self-government: the local and the regional, the latter exercising the powers of the AIOC, conferred upon it by the original holders that comprise it. The decision to dissolve the territorial entities that make up the region must be established through a consultation process or referendum in accordance with the law, as appropriate, and a single IOC autonomous government may be formed for the entire region" (LMAD, art. 46, II). "The AIOC, constituted as an Indigenous First Peoples peasant region, will assume the powers conferred by the autonomous territorial entities that comprise it with the elective scope established in the Political Constitution of the State for regional autonomy" (LMAD, art. 74, II).

12 "At the initiative of the Indigenous First Peoples peasant nations and peoples, the municipalities shall create Indigenous First Peoples peasant municipal districts, whether or not based on Indigenous First Peoples peasant territories, or on Indigenous First Peoples peasant communities that are a minority population in the municipality and that have not been formed into Indigenous First Peoples peasant autonomies in coordination with the existing peoples and nations in their jurisdiction, in accordance with the regulations in force and respecting the principle of pre-existence of Indigenous First Peoples peasant nations and peoples" (LMAD, art. 28, I).

13 By means of Constitutional Ruling No. 2055/2012 (16 October 2012), the Constitutional Court strangely declared this article constitutional by creating a series of forced legal arguments that enable its applicability under certain circumstances.

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4

Indigenous Autonomy in Bolivia: From Great Expectations to Faded Dreams

John Cameron and Wilfredo Plata

The recent story of Indigenous autonomy in Bolivia has followed a path from political struggle to high expectations to faded dreams. Indigenous autonomy was a central demand of Indigenous protest movements in Bolivia in the 1990s and early 2000s. Hopes for Indigenous self-government and territorial control were high when Evo Morales was elected as the first Indigenous president of Bolivia in 2005 and the country implemented a new 'plurinational' constitution in 2009. However, although Morales and the Movement to Socialism (MAS) political party highlighted Indigenous autonomy as a central pillar of plurinationalism, in practice the government seriously constrained Indigenous rights to self-government through secondary laws and complex bureaucratic procedures.

In this chapter, we analyse the evolution of the institutional framework for Indigenous autonomy in Bolivia, the political and economic forces that shaped that framework, and the responses of Indigenous peoples to it. Our central argument is that the political and economic imperatives of the Morales government to control extractive resources and rural voters took priority over the implementation of the right to Indigenous autonomy. In this context, some Indigenous communities have continued to struggle for self-governance and

territorial control, but many others chose to pursue pragmatic and hybrid strategies to govern themselves through already existing State institutions in ways that did not directly challenge the MAS government.

We develop this argument in four sections. In Section 1 we explain the research methods and our positionality in relation to the Indigenous communities with which we have worked. Section 2 provides a very brief history of political struggles for Indigenous autonomy in Bolivia. Section 3 analyzes the tensions and contradictions between the legal and policy framework put in place by the Morales government between 2005 and 2019 to promote Indigenous autonomy while simultaneously expanding its control over extractive resources and consolidating its rural political support base. In Section 4 we explore the diverse responses of Indigenous communities to the legal framework for Indigenous autonomy – with some seeking to take advantage of the new, albeit limited, political opportunity for self-governance, some ignoring it, and others explicitly rejecting it. In the concluding section, we speculate on the possible futures of Indigenous autonomy in Bolivia in the context of the 2019-20 political crisis and the return of the MAS to political power following the elections of 2020.

Research Methods and Positionality

Like many other researchers and supporters of Indigenous struggles for self-government and territorial control, we were both excited when the Bolivian government established a new legal framework for Indigenous autonomy in 2009. Initially, we focused our attention on the Indigenous communities where struggles for autonomy appeared to be most advanced, in particular in six of the eleven predominantly Indigenous municipalities that voted to convert their systems of local government to Indigenous autonomies in State-organized referenda in 2009: Jesús de Machaca and Charazani (La Paz Department), San Pedro de Totora (Oruro Department), Tarabuco and Mojocoya (Chuquisaca Department) and Charagua (Santa Cruz Department) (see Table 4.1). Our research methods involved a combination of participant observation, semi-structured interviews and focus groups with Indigenous leaders. Most importantly, we observed hundreds of hours of community meetings in the six municipalities where community delegates debated the institutional design of their future autonomous local governments, which also created many opportunities for informal conversations with local

Indigenous leaders as well as State officials and NGO personnel. Wilfredo Plata also participated in many dozens of meetings with officials from the Ministry of Autonomy and NGOs in the 'Inter-Institutional Platform of Support for Indigenous Autonomy' – a loosely structured group of NGOs and the Indigenous Autonomy Unit within the government's Ministry of Autonomies (restructured as a vice-ministry in 2017).

It gradually became clear to us that the six municipalities where we had focused our attention did not represent the diversity of Indigenous perspectives on Indigenous autonomy in Bolivia. Indeed, numerous Indigenous leaders explicitly rejected the idea of converting their municipal governments into Indigenous autonomies. We encountered various reasons for this apparent disinterest, including political manipulation by MAS party activists, a lack of information about Indigenous autonomy in rural communities, and political pragmatism on the part of Indigenous leaders who wanted to avoid expensive, complicated and conflictual changes to their systems of governance. Other Indigenous leaders were clearly committed to the so-called "process of change" led by the MAS government to strengthen the rights and well-being of Indigenous peoples (and all Bolivians) through control of the central state rather than by strengthening Indigenous autonomy. Moreover, we also encountered perspectives that reflected an internalization of racist ideologies that rejected Indigenous norms, culture and modes of governance as backward steps away from development and modernization (see Plata & Cameron, 2017).

Recognizing the diversity of Indigenous perspectives, we expanded the scope of our research to also include ten municipalities with predominantly Indigenous populations whose leaders had taken decisions not to exercise their rights to Indigenous autonomy. A first group of six municipalities is located in the Province of Ingavi in the Department of La Paz: Desaguadero, Guaqui, San Andrés de Machaca, Taraco, Tiwanaku and Viacha. A second group of four municipalities is located in the Department of Chuquisaca: Tarvita, Tomina, Yamparaez and Zudáñez. We chose these ten municipalities because Indigenous leaders in them actively debated Indigenous autonomy and also because one or more neighbouring municipalities were directly engaged in the process to convert to an Indigenous autonomy. In sum, the decisions to not convert to Indigenous autonomies in these ten municipalities represented conscious decisions, not a lack of information or debate.

Table 4.1. Indigenous Autonomy processes in Bolivia

Municipality and Department	Route to Indigenous Autonomy (Municipal / Indigenous Territory)	Population	Indigenous Population	Results of the 1st Referendum on conversion to Indigenous Autonomy		Results of the final Referendum on the Indigenous Autonomy Statute		Current Status of Indigenous Autonomy Process
				Yes	No	Yes	No	
Fully established Governments of Indigenous Autonomy (4)								
Charagua (Santa Cruz)	Municipal	24,427	67.02%	55.66% (2009)	44.34%	53.25% (2015)	46.75%	Government of Indigenous Autonomy established in 2017.
Chipaya (Oruro)	Municipal	1,814	97.08%	91.69% (2009)	8.31%	77.39% (2016)	22.61%	Government of Indigenous Autonomy established in 2018.
Raqaypampa (Mizque - Cochabamba)	Indigenous Territory	7344	--			91.78% (2016)	8.22%	Government of Indigenous Autonomy established in 2017.
Salinas de Garci Mendoza (Oruro)	Municipal	8,723	95.59%	75.09% (2009)	24.91%	51.80% (2019)	48.20%	Government of Indigenous Autonomy established in 2020
Municipalities and Indigenous Territories with Autonomy Statutes approved by the Plurinational Constitutional Tribunal (6)								
Pampa Aullagas (Oruro)	Municipal	2,975	98.39%	83.67% (2009)	16.33%			Autonomy Statute approved in 2016. Waiting for local approval.
Lomerío (Santa Cruz)	Indigenous Territory	6,481	89%					Autonomy Statute approved in 2018. Waiting for national law to approve the government of Indigenous Autonomy.
Corque Marka (Oruro)	Indigenous Territory	8,412	--					Autonomy Statute approved in 2018. Waiting for national law to approve the government of Indigenous Autonomy.

Territorio Indígena Multiétnico - TIM I (San Ignacio de Moxos, San Borja y Santa Ana – Beni)	Indigenous Territory	3,265	--					Autonomy Statute approved in 2017. Waiting for national law to approve the government of Indigenous Autonomy.
Kereimba Iyaambae (Gutierrez - Santa Cruz)	Municipal	11,393	--	63.11% (2016)	36.89%			Autonomy Statute approved in 2019. Waiting for national law to approve the government of Indigenous Autonomy.
Jatun Ayllu Yura (Tomave – Potosí)	Indigenous Territory	6,451	--					Autonomy Statute approved in 2019. Waiting for national law to approve the government of Indigenous Autonomy.
Municipalities and Indigenous Territories with completed Autonomy Statutes that have not yet been approved by the Plurinational Constitutional Tribunal (1)								
Cavineño (Riberalta y Reyes – Beni)	Indigenous Territory	2,954	--					Preparing to present Autonomy Statute for constitutional review.
Municipalities and Indigenous Territories in the process of drafting Autonomy Statutes (2)								
Consejo Indígena Yuracaré (Villa Tunari - Cochabamba y Chimoré - Beni)	Indigenous Territory	2,358	--					In process of drafting Autonomy Statute.
Marachetí (Chuquisaca)	Municipal	7,418	--	51.25% (2017)	48.75%			In process of drafting Autonomy Statute.
Municipalities and Indigenous Territories that have fulfilled the requirements to convoke a referendum on conversion to Indigenous Autonomy (2)								
Lagunillas (Santa Cruz)	Municipal	5,283	--					Documentation under government review.
Uribicha (Santa Cruz)	Municipal	7,026	--					Documentation under government review.

Table 4.1. (*continued*)

Municipality and Department	Route to Indigenous Autonomy (Municipal / Indigenous Territory)	Population	Indigenous Population	Results of the 1st Referendum on conversion to Indigenous Autonomy		Results of the final Referendum on the Indigenous Autonomy Statute		Current Status of Indigenous Autonomy Process
Municipalities and Indigenous Territories that are preparing the documents required to formally request a referendum on Indigenous Autonomy (6)								
Jatun Ayllu Toropalca (Potosí)	Indigenous Territory	5,031	--					Certificate of Ancestral Territory received. Waiting for Certificate of Governmental Viability and Population Base.
Ch'alla (Cochabamba)	Indigenous Territory	--	--					Certificate of Ancestral Territory received. Waiting for Certificate of Governmental Viability and Population Base.
Monte Verde (Santa Cruz)	Indigenous Territory	13,679	--					Certificate of Ancestral Territory received. Waiting for Certificate of Governmental Viability and Population Base.
Pilcol Lecos (La Paz)	Indigenous Territory	3,159	--					Submitted application for Certificate of Ancestral Territory.
Nueva Llallagua (Oruro)	Indigenous Territory	--	--					Submitted application for Certificate of Ancestral Territory.
Territorio Indígena Multiétnico II (Pando)	Indigenous Territory	3,594	--					Preparing documents required to apply for Certificate of Ancestral Territory.

Indigenous Territories that requested conversion to Indigenous Autonomy but do not meet the minimum population requirement (3)								
Puesto Araona (La Paz)	Indigenous Territory	116	--					Certificate of Ancestral Territory received. Does not meet population requirement.
Marka Camata (La Paz)	Indigenous Territory	1,195	--					Certificate of Ancestral Territory received. Does not meet population requirement.
Copacabana Antaquilla (La Paz)	Indigenous Territory	1,111	--					Certificate of Ancestral Territory received. Does not meet population requirement.
Indigenous Autonomy processes paralyzed by internal conflicts (11)								
Tarabuco (Chuquisaca)	Municipal	19,554	93.40%	90.80% (2009)	9.20%			Internal conflicts: Indigenous autonomy process unofficially ended.
Charazani (La Paz)	Municipal	9,161	96.62%	86.62% (2009)	13.38%			Internal conflicts: No progress since 2015
Chayanta (Potosí)	Municipal	14,165	97.85%	59.60% (2009)	40.10%			Internal conflicts: No progress since 2012.
Curva (La Paz)	Municipal	2,213	98.5%					Internal conflicts: No progress since 2014.
Turco (Oruro)	Municipal	4,160	97.4%					Internal conflicts: No progress since 2009.
Huari (Oruro)	Municipal	10,221	91.1%					Internal conflicts: No progress since 2009.
Santiago de Andamarca (Oruro)	Municipal	4,588	96.2%					Internal conflicts: No progress since 2009.
Inquisivi (La Paz)	Municipal	16,143	96.4%					Internal conflicts: No progress since 2009.
San Miguel de Velasco (Santa Cruz)	Municipal	10,273	--					Internal conflicts: No progress since 2016.

Table 4.1. (*continued*)

Municipality and Department	Route to Indigenous Autonomy (Municipal / Indigenous Territory)	Population	Indigenous Population	Results of the 1st Referendum on conversion to Indigenous Autonomy		Results of the final Referendum on the Indigenous Autonomy Statute		Current Status of Indigenous Autonomy Process
Jesús de Machaca (La Paz)	Municipal	13,247	95.73%	56.09% (2009)	43.91%			Internal conflicts: No progress since 2013.
Jatun Ayllu Kirkiawi (Bolívar -Cochabamba)	Indigenous Territory	8,635	--					No progress due to internal conflicts.
Indigenous Autonomy rejected through formal referenda (4)								
Mojocoya (Chuquisaca)	Municipal	7,962	94.58%	88.31% (2009)	11.69%	40.645 (2016)	59.36%	Indigenous autonomy rejected in referendum in 2016.
San Pedro de Totora (Oruro)	Municipal	4,941	97.15%	74.50% (2009)	25.5%	29.96% (2015)	70.04%	Indigenous autonomy rejected in referendum in 2015.
Huacaya (Chuquisaca)	Municipal	2,345	63.77%	53.66% (2009)	46.34%	41.4% (2017)	58.6%	Indigenous autonomy rejected in referendum in 2017.
Curuhuara de Carangas (Oruro)	Municipal	5,278	92.73%	45.08% (2009)	54.92%			Indigenous autonomy rejected in referendum in 2009.

Source: Elaborated by the authors with data from the Vice-Ministry of Autonomies (2019).

We are very aware that as outsiders in the communities where we conducted research, we did not hear and do not understand all the perspectives on Indigenous autonomy. Most of our research engaged with community leaders and we had few serious conversations with members of the communities who were not in positions of leadership. We also grappled seriously with ethical questions about our research and particularly the question of who should tell the stories about internal debates within Indigenous communities: outside researchers or members of Indigenous communities themselves. After many discussions, we decided that it was important for us to write about the internal divisions and debates about Indigenous autonomy to help other outside actors understand them and to respond more appropriately. There is still a tendency among some researchers to romanticize Indigenous autonomies and to assume that all Indigenous peoples support it. We decided that it is important to highlight the many different perspectives on Indigenous autonomy and to try to understand and explain those different perspectives.

The historical context for Indigenous Autonomy in Bolivia

Indigenous peoples in what is now Bolivia have struggled for a combination of autonomy from the colonial-republican State and inclusion in the state from the beginning of the colonial era (Choque Canqui et al., 1992; Irurozqui, 2000; Larson, 1998; Platt, 1987; Rivera Cusicanqui, 1984). That history is far too complex to recount in one chapter, so here we highlight two elements of the recent history of Indigenous political struggles that have had particularly important consequences for contemporary efforts to implement the right to Indigenous autonomy.

First, in 1994 the Bolivian state implemented the Law of Popular Participation (*Ley de Participación Popular* — LPP), which created more than three hundred municipal governments throughout the country, decentralized state resources to municipalities and introduced a new legal framework for municipal governments with stronger mechanisms for accountability to community members (Molina-Saucedo, 1996). The LPP was initially conceived as part of the second-wave of neoliberal governance reforms in Bolivia. However, Indigenous and peasant organizations quickly embraced the new political opportunities and gained control of hundreds of rural municipal governments throughout the country (Cameron, 2009; Postero, 2007). As a

result of the LPP, large numbers of Indigenous leaders gained important administrative and political experience in managing municipal governments and in many rural municipalities Indigenous organizations were able to wrest local political power away from local white-*mestizo* elites (see Cameron, 2009). In some municipalities, such as Jesus de Machaca in the Department of La Paz, Indigenous organizations also launched projects to create 'Indigenous municipalities' with the goal of merging Indigenous forms of governance with municipal administration (Colque & Cameron, 2009; Galindo Soza, 2009; Thede, 2011). As we explain in more detail in Section IV, in some municipalities, these experiences of hybrid governance became the foundation for subsequent struggles for Indigenous autonomy. However, in other municipalities the experience of successfully managing municipal administrations led Indigenous leaders to conclude that Indigenous autonomy was not necessary; they were able to control local power through already-existing municipal institutions with none of the risks, uncertainty or internal conflict involved in creating new systems of governance.

Second, over the course of 1995 to 2005 the Indigenous movement in Bolivia became increasingly powerful at both the local and national level, challenging the neoliberal economic policies of the elite-controlled State and electing increasing numbers of leaders to all levels of government. When the national government resorted to violence to repress opponents to the proposed privatization of water in the so-called Water War (*Guerra del Agua*) in the city of Cochabamba in 2000 and the nationwide 'Gas War' (*Guerra del Gas)* over the cheap export of Bolivian petroleum through Chilean ports in 2003, the legitimacy of the elite-dominated State finally crumbled. In 2005, with the support of Indigenous movements, Evo Morales was elected as Bolivia's first Indigenous president and the MAS political party gained control of the national congress.[1]

The contradictory legal framework for Indigenous Autonomy in Bolivia

The election of Morales and the MAS generated high expectations for the recognition of Indigenous rights and the economic, political and social inclusion of millions of Bolivians who had been historically excluded from the country's development. However, the Indigenous and popular movements that brought Morales and the MAS to power represented two contradictory

political projects, resulting in serious restrictions on Indigenous autonomy. The first project was the construction of a plurinational and decolonized state through Indigenous autonomy. As anthropologist Andrew Canessa (2012) highlighted, this project represented the struggle of Indigenous peoples to protect themselves from the State. The second project was the so-called "process of change" of the MAS party to gain control of State power in order to best respond to the needs of the majority of Bolivians who had been historically excluded from the country's development. Over the course of Morales' three terms in government, the contradictions between these two political projects became much clearer and the possibilities for exercising Indigenous autonomy were increasingly constrained.

Indigenous Autonomy in the first MAS government (2006-2009)

In response to the demands of Indigenous and popular organizations, the newly elected Morales government convoked a constituent assembly, which met between 2006 and 2007, to draft a new plurinational constitution with a strong emphasis on Indigenous rights. To negotiate with greater power, the major Indigenous and peasant organizations established a 'Unity Pact' which presented a collective proposal for the new constitution and initially supported the government's positions (Garcés, 2010). Key elements within the Unity Pact's proposal included the recognition of Indigenous rights to autonomy based on the reconstruction of pre-colonial territories and governed by the norms of each Indigenous nation or people, including the power to administer systems of justice and the right to Free, Prior and Informed Consent in relation to the extraction of non-renewable natural resources (Garcés, 2010, p. 80).

However, as a result of the negotiation process and the power of the MAS government, the final text of the 2009 Constitution recognized only a highly restricted version of the right to Indigenous autonomy (Garcés, 2010). Article 2 of Bolivia's 2009 Constitution recognizes the right of Indigenous peoples to autonomy:

> Given the pre-colonial existence of nations and rural Indigenous peoples and their ancestral control of their territories, their free determination, consisting of the right to autonomy, self-government, their culture, recognition of their institutions, and the

> consolidation of their territorial entities, is guaranteed within the framework of the unity of the State, in accordance with this Constitution and the law.

To implement the right to Indigenous autonomy, the Constitution created the legal category of Indigenous First Peoples Peasant Autonomy (*Autonomía indígena originaria campesina* — AIOC).[2] Chapter Seven of the Constitution (Articles 290 – 296) briefly outlined the basic process for Indigenous municipalities and territories to convert to Indigenous autonomies and to create autonomous regions, which were to be detailed in a subsequent secondary law. However, the Constitution also imposed important restrictions on the right to Indigenous autonomy, which became even more pronounced when the government introduced the secondary laws to implement the rights outlined in the Constitution. First, the Constitution establishes an administrative-legal hierarchy in which Indigenous autonomy is subordinate to the central state (Tapia 2011). Second, although the constitution recognizes the right to autonomy based in "ancestral territories" (Art. 290), the mechanisms to create Indigenous autonomies were limited to the conversion of municipal governments and legally recognized Communal Lands (*Tierras Comunitarias de Origen* — TCOs), renamed as Indigenous First Peoples Territories (*Territorios Indígena Originaria Campesinas* — TIOCs). The constitutional recognition of only these two pathways to Indigenous autonomy undermined the hopes of many Indigenous organizations to reconstruct systems of governance based on pre-colonial territories, which were generally much bigger than municipalities and TIOCs.

Bolivia's 2009 Constitution also limits the power of Indigenous peoples in decisions about the extraction of natural resources from their territories. Article 349 reserves for the central state control of all non-renewable natural resources, including those within legally recognized Indigenous territories. Article 359 further specifies central State control over hydrocarbons, including within Indigenous territories. Although Bolivia was the first country in the world to implement the UN Declaration on the Rights of Indigenous Peoples into a national law in 2007, the 2009 Constitution ignores the rights to Free, Prior and Informed Consent (FPIC) recognized in the Declaration. The Constitution recognizes only the right of Indigenous peoples to prior "consultation by the State with respect to the exploitation of non-renewable natural resources in the territory they inhabit…" (Art. 30, Para. II, No. 15).

However, noticeably absent from the recognition of this right is the condition that the results of consultations are binding on the State (Garcés 2010: 80). The affirmation of State control over natural resources and the limitation of the right to Free, Prior and Informed Consent poses a serious challenge to Indigenous understandings of "territory," which generally involve not just land but also subsurface resources, as well as the water, air and spiritual connections to ancestors and non-human life within the territory (de la Cadena, 2015; Salgado, 2011). The first version of the Constitutional proposal from the Unity Pact emphasized that "our right to the land and natural resources is of special importance" (Garcés, 2010, p. 146). However, as Garcés (2011) and Tapia (2011) explain in detail, these crucial elements of the Unity Pact's proposal for self-governance were excluded by the MAS and other political parties that negotiated the final text of the Constitution in 2008. As a result, the concept of plurinationalism articulated in the Constitution was "tamed and controlled" (Garcés, 2010, p. 30).

Indigenous Autonomy in the Second Term of Evo Morales and the MAS (2009-2014)

The contradictions between the concept of plurinationalism and MAS government policies became even more clear during Morales' second term as president, when the MAS government promulgated a series of secondary laws and public policies to implement the rights to Indigenous autonomy recognized in the constitution. Moreover, the relations between the government and the main Indigenous organizations in Bolivia seriously deteriorated when the government revealed its determination to pursue a neo-extractivist agenda during the conflict over the construction of a highway through the Isiboro Sécure Indigenous Territory and National Park (*Territorio Indígena y Parque Nacional Isiboro Sécure* — TIPNIS) in 2011 and 2012. At the same time, the launch of the new legal framework for Indigenous autonomy opened the doors for a series of important experiments – albeit complicated and contradictory – in the construction of new systems of Indigenous self-governance.

A few months after the promulgation of the 2009 Constitution, the MAS government introduced the secondary laws and supreme decrees to put in place the new legal framework for plurinationalism, including several laws directly related to Indigenous autonomy. In August 2009, President Morales promulgated Supreme Decree 231, which established the bureaucratic steps

for municipalities to convert systems of local governance to Indigenous autonomy (Plata, 2010; Federación de Asociaciones Municipales de Bolivia 2010). It is important to highlight that in August 2009, the legal framework for Indigenous autonomy did not yet exist. As a result, Indigenous organizations and municipal governments had to decide whether or not to initiate a process to convert to an Indigenous autonomy without knowing the legal framework that would shape their future institutional operation. Supreme Decree 231 opened a very narrow window of opportunity to comply with the bureaucratic requirements to convoke a referendum on the conversion to Indigenous autonomy in December 2009. Of the 19 municipalities that began the process, only 12 were able to comply with all the requirements (Plata, 2010, pp. 251-254; Federación de Asociaciones Municipales de Bolivia, 2010, pp. 2013-2014). In 11 of those 12 municipalities, a majority of the local population voted in favor of conversion to Indigenous autonomy. In the following years, Indigenous leaders in these eleven municipalities discovered that the path towards Indigenous autonomy was much more complex and restricted than they had imagined when they launched the conversion process.

In July 2010, the government promulgated the Framework Law on Autonomy and Decentralization (*Ley Marco de Autonomías y Descentralización* — known in Bolivia by its Spanish acronym — LMAD). The process to create the LMAD was highly contentious. High level Indigenous confederations such as CONAMAQ (*Consejo Nacional de Ayllus y Markas de Qullasuyu* — National Council of Ayllus and Markas of Qullasuyu) and CIDOB (*Confederación de Pueblos Indígenas del Oriente Boliviano* — Confederation of Indigenous Peoples of Eastern Bolivia) pressured the government to eliminate a series of complex requirements to access Indigenous autonomy and produced various proposals for alternative versions of the law (CIDOB, 2010; Enlared, 2010; IWGIA, 2011, pp. 174-176). However, the government ignored those demands. In response, in June 2010, CIDOB initiated a massive cross-country protest march, named 'The Great Indigenous March for Territory, Autonomy and the Rights of Indigenous Peoples' from the city of Trinidad, in the lowland Department of Beni, to the capital in La Paz (Wasylyk-Fedyszak, 2010). Government representatives met with CIDOB to negotiate, but the final text of the law did not respond to any of CIDOB's objections.

The Framework Law on Autonomy and Decentralization establishes three possible routes to Indigenous autonomy: 1) the conversion of already-existing

municipalities; 2) the conversion of collectively titled Indigenous territories (*Territorios Indígena Originaria Campesinas* — Indigenous First Peoples Peasant Territories — TIOC); and 3) the creation of autonomous regions composed of two or more legally-established Indigenous autonomies. The municipal route to Indigenous autonomy is most relevant in Bolivia's highland region, where Indigenous peoples represent the majority of the population in most municipalities. By contrast, the TIOC route to autonomy is most relevant in Bolivia's eastern lowland region, where Indigenous peoples are generally minorities within municipalities – making the TIOC route the only viable legal option for enhanced self-governance in most of the lowland region (Salgado, 2011). The main innovations of the LMAD and the differences between the legal structure for Indigenous autonomies and municipal governments are that Indigenous autonomies have jurisdiction over Indigenous justice (albeit with significant restrictions) and can determine the design of institutions of self-governance according to the norms and culture of each Indigenous nation or people, again with multiple restrictions.

Despite these opportunities, the Framework Law did not respond to the principal demands of Bolivia's Indigenous confederations. The first problem was that the law restricted the administrative jurisdiction of Indigenous autonomy to the level of municipal government and in practice simply reproduced much of the system for municipal governance established in the 1994 Law of Popular Participation (López-Flores, 2017, p. 56). The 'municipalization' of Indigenous autonomy radically undermined the dreams of many Indigenous organizations to recuperate control over their pre-colonial territories, which were much larger than the geographic boundaries of contemporary municipalities. As Bolivian researcher Giorgina Jiménez observed, "although the Constitution recognized the existence of ancestral territories, Indigenous peoples can only exercise autonomy by first subjecting themselves to municipal government" (cited in Rousseau & Manrique, 2019, p. 9). Reacting to the constraints on Indigenous autonomy, various Bolivian Indigenous leaders mockingly referred to it as a "municipality with a poncho" (*municipio con poncho*), highlighting that the legal framework represented little more than a municipal government with Indigenous decorations.

The second problem with the Framework Law from the perspective of Indigenous organizations is the long list of bureaucratic requirements to access Indigenous autonomy, which does not respect their norms and culture – as called for by Article 290 of the constitution. For example, to convoke

the referendum to begin the process to convert to Indigenous autonomy, municipal governments must submit a formal application for a Certificate of Ancestral Territory, with evidence that the Indigenous group occupied the territory before Bolivia was colonized and with the signatures of thirty percent of the adults living in the municipality (Ministerio de la Presidencia, nd/a). Moreover, Indigenous Territories (TIOCs) must also formally apply for a Certificate of Governmental Viability and Population Base (Certificado de Viabilidad Gubernativa y Base Poblacional) to demonstrate their management capacity – according to criteria established by the State – and to show that they have a population of at least one thousand people (Ministerio de la Presidencia, nd/b). After satisfying the requirements for the referendum and winning more than 50% of the votes, municipalities and Indigenous Territories must then establish a deliberative assembly to draft an 'autonomy statute' that establishes the institutional design for Indigenous self-governance. The next requirement is the review and approval of the autonomy statute by the Plurinational Constitutional Tribunal (similar to a supreme court), a slow process that in practice resulted in requirements to make significant changes to the text of the autonomy statutes (see Tockman, Cameron and Plata 2015). Until 2019, the final step was a second referendum to approve the text of the autonomy statute, supervised by the central State (Ley Marco de Autonomías y Descentralización, Art. 52). However, this regulation was eliminated in 2019 in response to pressure from Indigenous organizations and replaced with a requirement to approve the autonomy statute through local norms (Ley de Modificación a la Ley Marco de Autonomías y Descentralización 2019, Art. 2).

For Indigenous peoples in the eastern lowland region, the legal requirements to create Indigenous autonomies were especially onerous. First, the municipal route to Indigenous autonomy is generally not an option because most Indigenous peoples in the lowlands are minorities within their municipalities (Salgado 2011). To access Indigenous autonomy through the Indigenous Territory route, Indigenous peoples must satisfy four legal requirements, which exclude most of them. The first condition is a population of at least one thousand people (Ley Marco de Autonomías y Descentralización, Art. 58). The second condition is the approval by the State of Indigenous governance capacity and the granting of a 'Certificate of Governmental Viability (Ley Marco de Autonomías y Descentralización, Art. 58). The third condition is that the Indigenous territory cannot exceed the geographical boundaries of Bolivia's

departmental governments; the only option that the law offers for Indigenous peoples whose territories extend across departmental boundaries is to divide themselves into separate Indigenous autonomies (each in a separate department) and then create a federated structure (Ley Marco de Autonomías y Descentralización, Art. 29, III). The fourth condition is that the territories governed by Indigenous autonomies must be geographically continuous (Ley de Unidades Territoriales – Law of Territorial Units, Art. 6), which excludes more than half of the legally recognized Indigenous Territories in Bolivia's lowland region – which are not geographically continuous. Considering these four requirements, researcher Jorge Salgado conducted a rigorous analysis of the sixty legally-recognized Indigenous Territories in the lowland region and concluded that only fifteen could possibly meet the minimum requirements to exercise Indigenous autonomy (Salgado. 2011: 223).

For the municipalities and Indigenous Territories that want to convert to Indigenous autonomy, the bureaucratic requirements appeared to be intentional obstacles to block their way. Leaders of CONAMAQ and CIDOB explained in 2011 that they felt betrayed by the government for the imposition of "so many obstacles … so many requirements" to access Indigenous autonomy (ERBOL 2011). Reflecting on the Framework Law, José Isategua, a CIDOB leader explained:

> We believe that we have been betrayed, and they [the government] always tries to make us seasick and confused with regulations. We are very upset, it is time that each Indigenous people has the right to decide its own destiny… [However] within the government of Evo Morales there is a group that does not want Indigenous autonomy. (cited in ERBOL, 2011)

Other analysts referred to the bureaucratic requirements as "a labyrinth" (Tomaseli, 2015, p. 79), "a bureaucratic odyssey" (Morell i Torra, 2015, p. 127) and "a long march" (Exeni, 2015).

The Law of Jurisdictional Demarcation, also promulgated in 2010, created further restrictions on the rights of Indigenous peoples to administer their own systems of justice (IWGIA 2011). The Law established the jurisdictional limits for 'ordinary' and 'Indigenous' systems of justice in Bolivia, leaving the latter only authority over minor legal violations within Indigenous communities, such as the theft of chickens or livestock. Gualberto Cusi, one of the

first Indigenous judges elected to the Plurinational Constitutional Tribunal, argued that the Law was "a step backwards from decolonization" (La Razón. 2012a), while Leonardo Tamburini (2012), the former director of an NGO focused on Indigenous rights, described the law as "unconstitutional."

The rights of Indigenous peoples to be consulted prior to the natural resource exploration and extraction in their territories were also constrained by the 2010 Law of Electoral Regimes (Ley de Régimen Electoral), the 2014 Law of Mining and Metallurgy (Ley de Minería y Metalúrgica, and a series of supreme decrees. The Law of Electoral Regimes specified that the results of consultations with Indigenous communities are not binding on the government and that they must only "be considered" in the State's decisions (Art. 39) – a serious weakening of the principle of Free, Prior and Informed Consent recognized in the UN Declaration on the Rights of Indigenous Peoples (2007). The Law of Mining and Metallurgy eliminates the right to consultation from the prospecting and exploration stages of natural resource extraction (Art. 207, Para II), facilitates State expropriation of water resources (Art. 111-112) and effectively criminalizes opposition to natural resource extraction (Art. 99-101) (Schilling-Vacaflor, 2017). Deeply concerned about these restrictions on their rights, the Indigenous organizations CIDOB and CONAMAQ organized protests calling on the government to rescind the laws while Raul Prada, a Bolivian intellectual and former advisor to the MAS government, labelled the legal framework for prior consultation as a tool of "ethnocide" (Prada, 2013).

Beyond the formal legal framework, the implementation of public policies and the functioning of the machinery of the state operated in ways that simultaneously supported and constrained the right to Indigenous autonomy. In 2009, the government created the Vice-Ministry of Indigenous First Peoples Peasant Autonomies and Territorial Organization within the Ministry of Autonomy to support the creation of new Indigenous autonomies. Although the staff within the Vice-Ministry were generally committed to the goals of Indigenous autonomy, they lacked the human and financial resources to respond to requests for technical assistance or even to effectively disseminate information about Indigenous autonomy. As a result, State technical assistance to support the creation of Indigenous autonomies was weak and often totally absent. Various municipal authorities in the Departments of La Paz and Chuquisaca explained to us that the lack of State resources to help pay for the costs of converting to Indigenous autonomy was one of the

main reasons that they decided not to pursue conversion. Moreover, in many municipalities, accurate information on the legal implications of Indigenous autonomy was completely missing, making it impossible for local Indigenous organizations to seriously discuss and debate their options for self-governance. The lack of accurate information also contributed to situations in which opponents of Indigenous autonomy could easily spread and exploit false rumours, which further weakened popular demands for Indigenous autonomy.

During the second MAS government (2009-2014), the relationships with Indigenous federations deteriorated seriously and it became clear that Indigenous autonomy was not a priority for the State. The breaking point was the violent police repression in 2011 of the Indigenous protest march against government plans to build a highway to Brazil through the Isiboro Sécure Indigenous Territory and National Park (Territorio Indígena y Parque Nacional Isiboro Sécure – TIPNIS) without respecting the rights of prior consultation and consent (Fundación TIERRA 2012). As a result of the state repression, CIDOB and CONAMAQ withdrew from the Unity Pact that had supported the government since 2005. MAS Activists responded – with police support – by seizing control of CIDOB offices in 2012 and CONAMAQ offices in 2013 and putting MAS supporters into positions of power, thus dividing and seriously weakening both organizations (Achtenberg, 2014). Only with the political crisis and collapse of the MAS government in 2019 were CONAMAQ and CIDOB able to begin to reconstruct (Página Siete, 2019).

At the local level, the opposition of MAS activists to Indigenous autonomy was clear from 2009. In various municipalities, such as Jesús de Machaca, MAS leaders competed in local elections in direct opposition to the Indigenous organizations struggling to convert their municipalities to Indigenous autonomy. In the municipality of Charagua, local MAS leaders opposed the struggle for Indigenous autonomy (Albó, 2012) and only very gradually reached an alliance with the Assembly of the Guaraní People (Asamblea del Pueblo Guaraní - APG) that led the process (Morell i Torra, 2015, 2018; Postero, 2017, pp. 168-171). Although there was no evidence that local MAS opposition to Indigenous autonomy was directed by the central State, it is clear that the senior leaders of the MAS party did little to restrain the local activists. In the sub-national elections of 2010 and 2015, the MAS became the hegemonic party at the municipal level, winning more than 67% of the positions for mayor and more than 50% of the seats for municipal councilors (Órgano Electoral Plurinacional, no date). With the control of

more than 200 municipalities (out of a total of 342 in 2020), the MAS mayors and councillors could suffocate incipient movements for Indigenous autonomy through the control of information. In many cases, MAS mayors and councillors were able to formally reaffirm the municipal mode of governance without any public debate about Indigenous autonomy.

Indigenous Autonomy in the third term of Evo Morales and the MAS (2014-2019)

During its third mandate, the MAS government centralized its power even further,[3] resulting in considerable reductions of poverty throughout Bolivia but also a continual weakening of Indigenous rights. However, after trying to win a fourth mandate in the 2019 national elections, the MAS government collapsed in a political crisis when the Organization of American States declared irregularities in the vote counting (Turkowitz, 2020; Molina, 2020). In response to pressure from the police, military and various social groups, President Morales resigned and fled the country, while the ultra-conservative Senator Jeanine Áñez took over the presidency. Although Áñez initially declared that her only role would be to convoke new elections, she used the COVID-19 crisis to extend her mandate to November 2020 and acted quickly to undermine many MAS government policies and to intimidate its leaders.

Prior to the 2019 political crisis, the government decision with the biggest impact on Indigenous autonomy was the reduction of the Ministry of Autonomies into a Vice-Ministry within the Ministry of the Presidency. With this change, the unit responsible for promoting Indigenous autonomy "suffered a drastic reduction of personnel and resources" (Espinoza, 2017), weakening even further its capacity to support the conversion of municipalities and Indigenous territories to Indigenous autonomies (Postero & Tockman, 2020, p. 5). Luz María Calvo, the director of an NGO, commented "in the current unit for Indigenous Autonomy … the institutional capacity is much weaker, to the point that in Cochabamba [Bolivia's third largest city] there is no office and no staff" (Opinión, 2017).

Despite the lack of technical assistance from the government, between 2014 and 2019 10 municipalities and 18 Indigenous territories started the process to convert to the legal status of Indigenous autonomy (see Table 1). However, the autonomy processes subsequently collapsed in six of those 10 municipalities as a result of internal conflicts, while in the majority of the

Indigenous territories the conversion processes have been very slow, largely because of the lack of technical assistance to comply with the state's bureaucratic requirements as well as internal conflicts. At the time of writing (in June 2021), only four municipalities and one Indigenous territory had successfully passed through all the steps to establish new governments of Indigenous autonomy.

In the context of the weakening of the right to Indigenous autonomy it is important to recognize the positive changes in the well-being of many thousands of Indigenous Bolivians as a result of the developmentalist and neo-extractivist policies of the MAS government. According to Bolivia's national statistical institute, between 2005 and 2018 extreme poverty declined from 38.2% to 15.2%, while "moderate poverty" declined from 60.6% to 34.6% of the population (INE, 2019). Moreover, through the symbolic recognition of Indigenous cultures by the state, many thousands of Indigenous Bolivians also came to feel included as citizens for the first time in their lives (Postero, 2017). Only by understanding these positive changes brought about through MAS government initiatives is it possible to understand the relative absence of strong criticism of the weakening of State support for Indigenous autonomy. The central problem for Indigenous peoples was that the national development policies on resource extraction responsible for the reduction of poverty also conflicted directly with their rights to self-governance over their territories.

Indigenous Autonomy after the 2019 Political Crisis

The political and social power of the Indigenous organizations that had been the central advocates for Indigenous autonomy was seriously weakened by the aftermath of the 2019 political crisis. The racist attacks of the interim government of Jeanine Áñez (2019-20) forced Indigenous organizations into defensive positions. When the MAS won a fourth term in power in the elections of October 2020, with Luis Arce as President, a new set of actors had captured the locus of popular social and political power, the so-called 'intercultural communities' (*comunidades interculturales*) of the lowland region.

The 'intercultural communities' initially referred to themselves as 'colonizers' (*comunidades colonizadores*). They represented poor, landless and predominantly Indigenous families from the highland region who migrated

to the lowland region in response to offers of land and other resources from the Bolivian State (Escárzaga, 2011). The numbers of migrants increased rapidly following the implementation of a new agrarian law in 2009 (*Ley de Reconducción Comunitaria de la Reforma Agraria* — LRCRA), which empowered the State to provide land grants in the lowland region to migrants from the highlands, along with promises of local infrastructure. In 2009, the national organization representing this constituency of migrants removed the term 'colonizer' from its name to become the Sindical Confederation of Intercultural Communities of Bolivia (*Confederación Sindical de Comunidades Interculturales de Bolivia* — CSCIB), with dozens of member organizations representing over a million Bolivians (Escárzaga 2011). Closely aligned with the MAS government, the CSCIB and its member organizations effectively took over the political and social power previously held by Indigenous organizations such as CONAMAQ and CIDOB. As a result, by 2021, Indigenous autonomy was no longer a central topic of political debate in Bolivia and few Indigenous actors were advocating for its revival.

The MAS Government's Opposition to Indigenous Autonomy

The policies of the MAS government on Indigenous autonomy appear to be deeply contradictory, especially before the political crisis of 2019. On the one hand, representatives of the government repeatedly emphasized that Indigenous autonomy was one of the central pillars of the plurinational state, particularly during the first two terms in office from 2006 to 2015.[4] On the other hand, the government established a legal framework that restricted the right to Indigenous autonomy and failed to invest any serious resources to promote access to even the limited opportunities to enhance Indigenous self-governance. Two factors explain this contradictory position. The first factor is the MAS government's neo-extractivist national development strategy, which is based on the social redistribution of rents on mineral and hydrocarbon resources. The second factor is the MAS party's determination to control and expand its core base of political support in rural municipalities. It is important to highlight that although the MAS government came to oppose Indigenous autonomy in practice, it maintained a discourse on Indigenous rights that did not explicitly oppose the idea of Indigenous autonomy (see Postero, 2017).

Neo-extractivism: Since the beginning of the colonial period, Bolivia's economy and state have depended on non-renewable resource extraction (Dunkerley, 1984; Klein, 1992; Morales, 2010). Since the MAS came to power in 2005, Bolivia's economy has been more dependent on natural resource exports than any other country in Latin America (CEPAL, 2011, pp. 101, 2018: 41). The MAS government's national development strategy has combined increased mineral and hydrocarbon extraction with increased State rents on extractive activities, social redistribution of those rents and a nationalist discourse of resource control - all in the context of a global spike in resource prices (Kohl & Farthing, 2012; López, 2015, 2016). Labelled as 'neo-extractivism' (Acosta, 2011; Gudynas, 2009). This national development strategy resulted in a significant increase in State revenues, increased social investment, significant reductions in material poverty, and significant popular support for the government and its extractive economic model (Canessa, 2012; Kohl & Farthing, 2012). For example, the Bolivian State has made it very clear that social funds, such as the *Bono Juancito Pinto* for schoolchildren, *Bono Juana Azurduy* for mothers with infants, and credit distributed by the Productive Development Bank, as well as State support for municipalities and universities, are tied to rents on resource extraction (Mayorga, 2011, pp. 64–67). The nationalist political discourse and social investment policies of the MAS government generated considerable popular support for the neo-extractive economy from Bolivian citizens, including many who self-identified as Indigenous. However, as various observers have highlighted, this development strategy conflicts directly with the hopes for increased autonomy and territorial control of many Indigenous communities where valuable natural resources are located (Mayorga, 2011, p. 86; López, 2016, 2017).

It is against this political-economic backdrop that the lack of resources and political support for the implementation of the legal framework for Indigenous autonomy must be understood. A serious implementation of the right to Indigenous self-governance in Bolivia could have massive implications for the territorial organization and fiscal capacity of the Bolivian State. According to data analysed by Albó and Romero (2009, p. 22), in the highland region 73 out of 252 municipalities include populations in which over 90 percent self-identify as Indigenous, which in theory could easily convert to Indigenous autonomy. In the lowland region, Indigenous peoples are a minority in most municipalities, but have gained State recognition for 60 Indigenous Territories, many of which have expressed interest in Indigenous

autonomy (Salgado 2010). Countrywide, the 190 Indigenous Territories that had been legally recognized by 2011, represented 19% of Bolivia's national territory. If the long list of Indigenous Territories that have not yet been legally recognized is added, the proportion of national territory under the jurisdiction of Indigenous autonomy would be more than 35 percent (Fundación Tierra, 2011, p. 46). It is precisely in these territories where the most important mineral and hydrocarbon reserves are located (Fundación TIERRA, 2011, pp. 127-137).

State control of non-renewable natural resources does not undermine the aspirations for autonomy of all Indigenous groups, as many of them occupy territories that are devoid of strategic natural resources. Indeed, many of the municipalities and Indigenous territories engaged in conversion to Indigenous autonomy fall into this category. However, in the context of a single legal framework for the entire country, Indigenous control of Indigenous territory is not compatible with the state's neo-extractive development model. As Bolivian scholar and public intellectual Raúl Prada argued,

> The government's project ... is to preserve, continue, extend and deepen the colonial extractivist model of dependent capitalism, in addition to restoring and consolidating the nation-state, nullifying the possibilities of building the plurinational community and autonomous state. From this extractivist perspective, dependent and subordinate to international capital, as well as to the world imperial order, in the condition of a nation-state, the government cannot accept consultation with free, prior and informed consent, nor can it guarantee the rights of nations and indigenous peoples, or respect their territories, their autonomy, self-government and self-determination, established by the Constitution. (Prada, 2013, pp. 4-5)

The only way to resolve the contradictions between neo-extractivism and Indigenous autonomy is to separate the control of non-renewable natural resources from the jurisdiction of Indigenous self-governance. Some Indigenous peoples in Bolivia have accepted this constraint, such as the Guaraní people of the Chaco region in Eastern Bolivia. As Schilling-Vacaflor explained, the Guaraní seek to exercise their right to autonomy, but they generally do not expect to be able to stop hydrocarbon extraction within their territories; rather,

they aim to minimize the negative impacts of extraction and maximize the benefits.

Rural political control: The reticence of the state toward Indigenous autonomy also needs to be understood in the context of the efforts of the MAS party to win municipal elections as a strategy to build a base of popular support and to control local political power (Cameron, 2009; Harten, 2013; Komadina y Komadina, 2007; Postero, 2007, 2017). By contrast, one of the central goals of Indigenous autonomy movements in many municipalities is to exclude political parties from the systems for choosing local political authorities. All of the autonomy statutes completed to date involve electoral systems that block participation by political parties, which are widely criticized for distorting local political decision-making (see Tockman, Cameron y Plata, 2015; Postero, 2017, p. 168). In this context, any large-scale conversion of municipal governments to Indigenous autonomies would seriously undermine the MAS party's rural political networks and control of political power.

Indigenous responses to the framework for Indigenous Autonomy

The Bolivian government launched the legal framework for Indigenous autonomy in August 2009 with a massive spectacle full of Indigenous symbols and President Morales presiding over the ceremony.[5] At that time, many Indigenous leaders throughout the country as well as their supporters in NGOs and universities were optimistic that the new Framework Law on Autonomy and Decentralization would open the door for Indigenous peoples to finally exercise their rights to self-government. However, for the Indigenous leaders in the municipalities and Indigenous Territories involved in conversion to Indigenous autonomy, the process has been slow, frustrating and often conflictual. According to data from the Vice-Ministry of Autonomies, of the 22 municipalities that entered the process to convert to an Indigenous autonomy, three successfully completed the process and five were in various stages of progress while four had rejected Indigenous autonomy in local referendums and 10 were embroiled in local conflicts that completely paralyzed the autonomy process. Of the 18 Indigenous Territories engaged in conversion to Indigenous autonomy, just one (Raqaypampa) has completed the process, while five are near completion, one is in the early stages of the process, seven are preparing the documents to request access to the conversion process, one

is paralyzed by internal political conflicts, and three initiated the process but were denied because they lack the minimum population (see Table 1).

It is important to analyse these cases in the context of the full spectrum of municipalities and Indigenous Territories in Bolivia. In 2020 there were 342 municipalities. When the Indigenous autonomy process was launched in 2009, two teams of researchers identified the municipalities that had sufficiently large Indigenous populations to hypothetically convert to Indigenous autonomy. Albó and Romero (2009) identified 215 of 252 municipalities in the highland region where Indigenous peoples represented more than 50% of the population and 73 municipalities where they represented more than 90% of the population. Colque (2009, p. 48) identified 173 municipalities in the highlands where 80% or more of the population self-identified as Indigenous. In sum, of the total number of municipalities that could hypothetically convert to an Indigenous autonomy, very few initiated the process and even fewer have been able to satisfy the bureaucratic requirements to complete the process. In the lowland region of Eastern Bolivia the situation is very different as Indigenous peoples there have expressed much more interest in establishing governments of Indigenous autonomy to govern their territories but the legal requirements prevent most of them from doing so. Beyond the two municipalities in the lowland region that began the conversion process in 2009 (Charagua and Huacaya), researcher Jorge Salgado identified five other municipalities (from a total of more than 100) and fifteen Indigenous Territories (from a total of 60) that could theoretically satisfy the requirements to convert to an Indigenous autonomy (Salgado 2011: 223). Ten years later, five municipalities in the lowland region have initiated the process to convert to an Indigenous autonomy and six Indigenous Territories have done so (see Table 1).

These numbers point towards the diversity of responses from Indigenous peoples to the opportunities to create governments of Indigenous autonomy. Some Indigenous peoples – especially in the lowland region – want to establish Indigenous autonomy but cannot meet the State's requirements to do so, while other Indigenous peoples – especially in the highland region – could satisfy the legal requirements for conversion, but have chosen not to do so. Beyond the legal and political restrictions put in place by the MAS government, we see four main factors within predominantly Indigenous municipalities and Indigenous Territories that help to explain the apparent disinterest in Indigenous autonomy. We have explored these ideas in detail in other

publications (Plata & Cameron, 2017; Cameron, 2013) so here we just explain them briefly.

The MAS Government's "Process of Change" and Political Hegemony in Rural Municipalities

The first election of the MAS to political power in Bolivia in 2005 opened the doors to two big but contradictory political projects. The first project and central objective of the MAS governments is the "process of change" that aims to improve the wellbeing of historically excluded social groups through control of the central State. The second project is the construction of a plurinational state based on the right to Indigenous autonomy, which represents a strategy of Indigenous peoples to protect themselves from the central State (Canessa, 2012). Faced with these two projects, many Indigenous citizens and organizations in Bolivia chose the first, a choice that has been reflected in the impressive electoral victories of the MAS at all levels of government (see Órgano Electoral Plurinacional, nd). Moreover, MAS activists in rural municipalities have worked actively to undermine Indigenous autonomy projects, with the exception of only a few municipalities like Charagua where they formed alliances with advocates for autonomy. The return of the MAS to national political power following the 2020 elections – with Luis Arce as President – also highlights and reinforces the triumph of the first political project to improve social wellbeing through control of the State. As a result, the second political project to construct a plurinational state based on Indigenous autonomy has been largely sidelined.

Political pragmatism and hybrid governance

The emphasis on the formal legal conversion of municipal governments to Indigenous autonomies in Bolivia has diverted attention from the ways that Indigenous organizations have already appropriated and adapted municipal institutions to incorporate local norms and procedures into hybrid systems of local governance (Cameron, 2013; Postero, 2017; Thede, 2012; Ströbele-Gregor, 1996). Indeed, until the right to Indigenous autonomy was formally recognized in 2009, the creation of "Indigenous municipalities" that informally mixed Indigenous norms with municipal structures was the principal strategy of governance for local Indigenous organizations seeking increased autonomy (see Colque & Cameron, 2009; Cameron, 2015). Following the implementation of the Law of Popular Participation in 1994, which created rural

municipal governments throughout Bolivia, Indigenous leaders gained control of municipal power in large numbers of municipalities, primarily in association with the MAS political party (Albó, 2002; Cameron, 2009). With over two decades of municipal experience behind them, Indigenous and peasant organizations and leaders thoroughly control local political power in many municipalities and have appropriated municipal institutions and combined them with peasant and Indigenous forms of decision-making.

To understand the relative disinterest of local Indigenous organizations in Indigenous autonomy, it is crucial to take seriously these forms of appropriation and hybrid governance. Although hybrid municipalities lack the formal features of Indigenous autonomy, they do possess some significant advantages. Most importantly, local Indigenous authorities already know how to manage municipal governments and they do not have to enter into complex, time-consuming, expensive and conflict-ridden processes to design new institutions of local governance – which they have seen other Indigenous municipalities reject in local referenda after years of work. Indeed, some critics dismissed the legal framework for Indigenous autonomy from the very beginning as nothing more than an opportunity to create "municipalities with ponchos," that is, local governments that retain the core features of municipalities but with Indigenous name changes and other decorations to give them a superficial Indigenous appearance (see Albó, 2012, p. 297). In this context, given all of the restrictions on formal conversion to Indigenous autonomy and the relative ease of informal hybrid forms of municipal governance, the decision to continue governing through hybrid municipal systems must be understood as an appealing alternative to formal AIOC status and an important factor in understanding why more municipalities have not pursued conversion.

Examples of hybrid forms of municipal governance include the close relationships between communal authorities and municipal governments in many highland municipalities, where candidates for the positions of mayor and municipal councillor are pre-selected in communal assemblies prior to municipal elections and where the lines of accountability from the municipal government to Indigenous communities are generally strong. These informal norms do not block political parties from taking part in local elections and they do not guarantee that the candidates chosen in the assemblies will win local elections or that municipal officials will necessarily follow the directives of the Indigenous assemblies (see Colque & Cameron, 2009). However, they

do help to ensure strong lines of accountability and community control over municipal authorities. Other examples of the hybridization of Indigenous norms with municipal governance include the rotation of leadership positions among communities, the use of Indigenous languages in official deliberations and local public services, and a more general attitude of welcoming Indigenous residents in municipal offices (see Cameron 2015; Thede, 2011, p. 227). These practical forms of institutional hybridity highlight the ways in which Indigenous organizations in many other parts of the highland region have been able to control municipal power and informally incorporate local norms into systems of municipal governance – thus making formal conversion to AIOC status redundant in the minds of many Indigenous leaders.

Internal conflicts over Indigenous Autonomy within Indigenous communities

Another pragmatic consideration for many Indigenous leaders has been the high levels of conflict in many of the municipalities engaged in conversion to Indigenous autonomy. In ten municipalities, internal political conflicts over Indigenous autonomy were so intense that the conversion process completely collapsed, while three municipalities formally rejected Indigenous autonomy following divisive referendums (see Table 4.1). At the heart of those conflicts were local power struggles over both the principles of local governance and Indigenous norms as well as highly practical aspects of local power – such as the physical location of the offices of the future Indigenous autonomies.

Watching these conflicts from the outside, Indigenous leaders in many other municipalities concluded that the process to convert municipal institutions into new and unknown institutions of Indigenous autonomy was not worth the risks of internal conflict or political opposition from the Morales government. For example, Indigenous leaders in the six municipalities surrounding Jesús de Machaca all watched the conflicts over Indigenous autonomy unfold there and made explicit decisions after long debates in communal assemblies not to convert to Indigenous autonomy and to continue to govern themselves through the municipal system of governance (Plata and Cameron 2017).

Internalized racism and the quest for modernity

Beyond political pragmatism, the disinterest in Indigenous autonomy also reflects the internalization of the racist idea that Indigenous forms of

governance are backward and that only western institutions (such as the municipality) can lead rural communities to development and modernity. For example, the Indigenous mayor of Taraco, a predominantly Indigenous municipality in the Department of La Paz, asserted that Indigenous autonomy would be a "regression" because it meant "returning to the past" at a time when Taraco needed "to look to the future and become more modern (Interview with Authors 7/11/2012). We heard many Indigenous leaders compare Indigenous autonomy to giving up cell phones and other modern technology. As one Indigenous leader from Tiwanaku put it: "We don't want to go backwards. We want to progress. We want to be modern." The apparent rejection of Indigenous forms of governance can appear contradictory, especially after more than three decades of intense struggles for Indigenous rights. However, as anthropologist Andrew Canessa argues, the devaluation of Indigenous norms and traditions needs to be understood in the context of deeply ingrained racism in Bolivia and the ways in which Indigenous peoples "live with, resist, absorb and even reproduce it" (Canessa, 2012, p. 7). In this context, Canessa suggests that aspirations for progress and hopes for the future point toward what is perceived as urban, modern, Western and white – not "Indian" and "backward." Amidst such deeply ingrained and internalized racism, Indigenous autonomy is not always perceived as a positive option.

Conclusion: A future for Indigenous Autonomy in Bolivia?

The triumph of the MAS in the general elections of October 2020 and the shift in political protagonism from Indigenous organizations to intercultural communities appears to have consolidated the quiet death of Indigenous autonomy in Bolivia. Recognizing the dangers of predicting the future, we anticipate that the bureaucratic-legal framework for Indigenous autonomy in Bolivia will survive, albeit marginalized from the central policies of the State and with only a small number of legally recognized governments of Indigenous autonomy. However, the political and social pressure to re-establish Bolivia with Indigenous autonomies as the core institutional components of a plurinational State has fizzled into irrelevance. In a different political context, demands for Indigenous autonomy may re-emerge, but for now Indigenous actors have shifted their energies to other political priorities.

NOTES

1 The MAS party won the 2005 elections with 53.73% of the popular vote (OEP, no date).

2 The term '*indigena originario campesino*' *(IOC)* was a construction of the 2006-2008 Constituent Assembly, which sought a single term to refer to all of the pre-colonial peoples of Bolivia (see Albó & Romero, 2009: 3-4; Garces, 2011). Although national leaders agreed on the term, it was rejected by many local organizations that identified with one but not all three of the combined terms. For example, in the highland region the preferred form of self-identification is *originario* (Originary or First Peoples), in the Amazon region it is *indígena* (Indigenous), and in the central valley region it is *campesino* (peasant).

3 The MAS party won the 2014 elections with 61.01% of the popular vote (OEP, no date).

4 For example, in 2011 and 2012, Gregorio Aro, then Vice-Minister of Indigenous First Peoples Peasant Autonomy and Territorial Organization emphasized repeatedly in public speeches that "without Indigenous autonomy, there is no plurinational state" (Author's notes).

5 See the coverage of the ceremony in the August 2009 edition of the Ministry of Autonomy's magazine *Bolivia Autonómica* https://www.bivica.org/files/bolivia-autonomia-indigena.pdf

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5

The Tragedy of *Alal*: Regression of Rights in the Nicaraguan Autonomous Regime

Miguel González

Introduction

Nothing was unusual in the Sumu-Mayangna Indigenous community of Alal that warm afternoon on Wednesday, 29 January 2020; the least humid season of the year in Nicaragua's North Caribbean. As has been daily practice, some of the men were fishing while others worked in the agricultural areas near the community on the collective lands of the Mayangna Sauni As territory in the heart of the Bosawás Biosphere Reserve, an area that was officially recognized by the Nicaraguan State in 2001 (Nación Mayangna, 2014, p. 9). This was an important and unprecedented recognition after a decade of sustained efforts in which multiple actors, including local and regional Indigenous authorities along with non-governmental organizations, joined forces to identify, demarcate and finally demand that the Nicaraguan State title the ancestral lands of the Sumu-Mayangna people.

And yet, that January afternoon would be part of a tragic day for the people of Alal. The sudden shots broke the evening mellow and alerted the entire community. In a series of coordinated attacks, a gang of armed criminals murdered four men, wounded three — including women — and kidnapped

eight people. In addition, they burned to the ground their homes and stole their livestock. The people of Alal — which in the Mayangna language means 'strong man' — could not repel the attack, partly because of the swift action, but also because they were outnumbered by armed attackers under the command of "Chabelo" Meneses Padilla, apparent leader of the band.[1] It was an action of the *mestizo* "settlers," or illegal occupants of Indigenous lands. The following day, in a real-time broadcast to a national news outlet, the authorities and leaders of the territory denounced the events and demanded from the State: the right to communal property, support against its usurpation by non-Indigenous settlers, respect for life of the community and cessation of environmental crimes against their territory.[2]

The attack on Alal was not an isolated event, but clearly notorious for its lethality, level of operation and organization of the perpetrators. And although the intimidation of armed settlers against nearby Indigenous communities in the reserve had increased in the preceding years, the attack changed the daily scenario to a qualitatively different environment of violence. Alal, together with the rest of the 17 communities that make up the Mayangna Sauni As territory (First Mayangna Territory), comprises 1638.10 km² in an area inhabited by 8,330 people (see map). They are communities that share a history of struggle, resistance and dignity. The nine Sumu-Mayangnas territories of the country also share a historical struggle for self-government and self-determination centered on the community and the territory: an autonomy built and defended despite the weaknesses of the regional autonomy regime established in 1987 in Nicaragua's Caribbean regions.

The tragedy of Alal allows us to understand the dilemmas and the process of regression of rights of the autonomous regime of the Nicaraguan Caribbean, after a decade of fundamental economic and political changes in the country. On the one hand, the limited exercise of rights to autonomy granted to Indigenous peoples and Afro-descendant inhabitants of the autonomous regions, especially in relation to political and ethnic representation in regional governmental bodies and the lack of effective control over demarcated territories; and on the other, to gauge the new scenarios of violence that threaten to erode the weak balance of inter-ethnic social coexistence that autonomy aspired to promote since its creation. In some ways, Alal exemplifies a cumulative process of Indigenous-territorial disempowerment, dispossession and collective frustration of the coast with respect to the autonomous regime officially recognized by the Nicaraguan State. This chapter is based

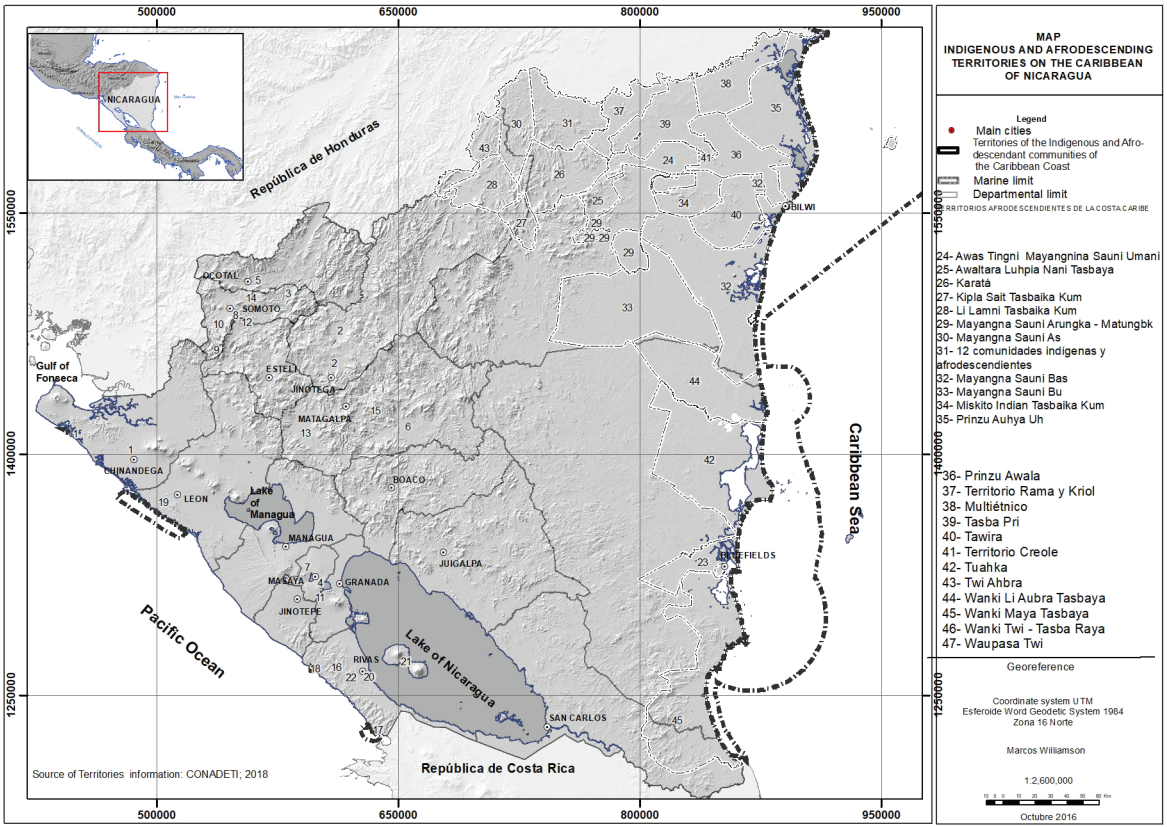

Figure 5.1. Map of Indigenous and Afro-descendant Territories

on the interpretation of secondary documentary sources, interviews with Indigenous leaders and a review of official statistics and reports produced by civil society and human rights organizations.

The chapter is organized as follows: first, I present the antecedents of the autonomy process; a question that I have dealt with in other works and therefore I summarize the key elements to understand its origin, development and historical evolution. Second, I document the process of regression of the rights of coastal autonomy, an initiative originally conceived as a 'State solution' of multicultural inspiration to the challenges of ethnic-national integration in Nicaragua. The criticism outlined here focuses on autonomy understood as an intermediation mechanism through which limited rights are granted to the inhabitants of the Coast to exercise certain levels of relative autonomy. In this section I argue that regional autonomy in Nicaragua has been limited by a hierarchical governance model centered on the State, which has prevented its full realization. The third section of the chapter is dedicated to identifying the scenarios of violence that have transformed social relations in the Caribbean regions and adds a new analytical dimension to understand their real impact. Finally, I present the conclusions, where I develop a critique of the autonomist multicultural model in Nicaragua. I suggest, on the one hand, to distinguish autonomy as an official process — subject to the logic and rationality of the *mestizo*-centric State that exercises relations of domination and control over subjects of regional rights; and on the other, autonomy as an emancipatory project, given the concrete political-cultural meaning conferred by the peoples and their organizations, as an expression of self-determination and self-governance.

Autonomy

In July 1979, the Sandinista National Liberation Front (FSLN) overthrew the Somoza dictatorship through a popular insurrection and inaugurated a time of profound changes in the contemporary history of the country. From the beginning, on the Coast, the changes promoted by the Sandinista Revolution caused friction that resulted in animosity. The FSLN decided to nationalize the country's natural resources, initiated an agrarian reform and created mechanisms for the social representation of the 'masses' that displaced the organizational forms of the Indigenous and Afro-descendant peoples of the Atlantic or Caribbean region of the country. After a few months of initial

empathy and euphoria, the Coast was shaken by its own forces of social mobilization, this time to reject the changes introduced by the revolution. The agrarian reform created animosity because of the risk it posed with respect to Indigenous claims to ancestral communal property; while the 'mass organizations' of the FSLN were not in tune with the main multi-ethnic associative organization on the Coast, the Alliance for Progress of the Miskitu and Sumo (*Alianza para el Progreso de Miskitu y Sumo*—ALPROMISU). ALPROMISU had been born in the wake of the socioeconomic and cultural changes of the Coast in the mid-1970s, and had high levels of popular support and legitimacy, especially due to its very close relationship between Moravian religious leaders and Indigenous activists (García, 1996, p. 100).

Faced with the growing coastal mobilization demanding differential treatment and participation within the revolution, the FSLN decided to respond with intimidation and force, seizing the main coastal political leaders, which hastily led to a military conflict. In 1984, after almost four years of armed conflict on the Coast and in the country, and in the light of socioeconomic impacts and human loss, the parties to the conflict sought efforts for a peaceful and negotiated solution. Thus, autonomy was born, in the midst of war and the search for peace.

The roots of the conflict on the Caribbean Coast, and the social and political conditions that led to the creation of the regional autonomy regime in Nicaragua, have been extensively examined, especially during the years preceding the approval of the Statute of Autonomy in September 1987 (Hale, 1994; Jenkins, 1986). During the following decade, a series of studies were published that provided insights into the complex challenges of building autonomy in adverse political and economic circumstances, especially when the FSLN was displaced from power in 1990 (Frühling et al., 2007). Ultimately, the FSLN had consulted, negotiated and approved the Statute with sectors of coastal society and reached peace agreements with the Indigenous insurgency led by MISURASATA (in 1985)[3] and later YATAMA (in 1987).[4]

The Statute recognized autonomy rights for the inhabitants of the Coast, including the right to preserve their forms of social and political organization, respect for communal property, political representation in regional government bodies, education in their maternal language, benefit from the exploitation of natural resources and guarantees of participation in decision-making on matters of regional interest. The Statute created two popularly elected representative bodies: the Autonomous Regional Councils, one

in each region — North and South — that are elected every five years, and where the Indigenous peoples and ethnic communities that inhabit the regions are represented.[5] Through a heterogeneous institutional design model of ethnic representation, autonomy was therefore granted on the regions of the Caribbean Coast. Until 2020, eight regional councils were elected in a succession of regional elections that began in 1990, and with varied results both in terms of ethnic, political and gender representation. In addition to the Regional Councils, the Statute established the creation of regional executive bodies, called Coordination Committees (*Coordinaciones)*, whose representation falls on an elected councillor. The problems that the Statute tried to solve were related to the exclusion of the coastal peoples, the mechanisms of discrimination in the regions, the relative isolation and gaps in socioeconomic development, in addition to the lack of integration with the rest of the country. The Statute was also an instrument of pacification and political cunning, that is, to demobilize the armed Front, which had set the scene for a war in the Caribbean that the FSLN leadership had concluded was impossible to win.

The regional autonomy of the Coast was approved in an historic moment and in exceptional circumstances due to the war and the active participation of the Indigenous insurgency in raising their visions of self-government and self-determination. But the autonomy agreement, expressed in the Statute of Autonomy of 1987, did not reflect Indigenous peoples' aspirations of a real autonomy that would protect their living spaces, their territory and their forms of local authority. The Statute was less than an intermediate point between the Nicaraguan State, that wished to contain the risk of secession in a context of war of external aggression, while at the same time recognizing the desire for coastal self-determination, expressed in different ways by the belligerent organizations of the conflict, especially the insurgent Indigenous movement (González, 2016).

The initial character of coastal autonomy was its political-administrative nature, granted on a regional jurisdiction — the former Department of Zelaya, later called Special Zones I and II – and subdivided into municipalities. This type of autonomy was not the vision proposed by MISURASATA, which centered on the ethnic character of Indigenous "nations" and inscribed in the territory, self-government and communal authority (MISURASATA, 1985). That is, an autonomy of separate spaces, of exclusive control of Indigenous and Afro-descendant peoples over their territories and through their own mechanisms of territorial governance. The official autonomy, however, tried

to avoid hegemonies "of one ethnic group over another," especially to contain the Miskitu leadership, but ended up imposing a *mestizo* hegemonic political representation model largely controlled by the national political parties (as can be seen in graphs 1 and 2 regarding regional political representation). Community autonomy was thus subordinated and secondary to official administrative autonomy at the regional level. Juan Carlos Zamora — a former Miskitu local authority — defines this subordination in the following terms:

> The autonomy law has a defect by definition, it depends on a democratic majority system defined by popular vote. In other words, as non-Indigenous people are in majority, the project of political and institutional autonomy with cultural relevance loses its strength. (Bilwi, personal communication, 27 February 2020)

Thus, administrative power only was transferred to the regional level, within a centralized system controlled by the national executive power.

In 2002, a decade after the Regional Councils were inaugurated, the Territorial Demarcation Law (Law 445) was approved with which local self-government, in the form of territorial authorities, acquired recognition and therefore established a new level of government in the autonomy system. Although the law created a procedure to demarcate and title communal lands, its actual implementation did not begin until during the second FSLN administration in 2007. Through a series of campaign commitments and regional alliances in its race to return to power, Daniel Ortega made the commitment to title the lands of Indigenous peoples and Afro-descendants of the Coast (González, 2016), a commitment that his government reached once he was elected president. Until 2018, 23 territories had been titled, covering almost all of the autonomous regions and 32% of the country's surface (APIAN, 2017, p. 5). However, for the fourth and final phase of the titling process, which consists of territorial *saneamiento* (determining the legal circumstances of the non-Indigenous occupants in the titled territories), the Ortega administration did not demonstrate real interest nor made progress through concrete actions of implementation. Paradoxically, the titling process unleashed massive illegal occupations by *mestizo* squatter settlers in most of the new territories, while accelerating the trend to establish illegal settlements that had begun in the previous decade. The Ortega administration worked to deter fears of expulsions or relocation of *mestizo* settlers occupying Indigenous lands by

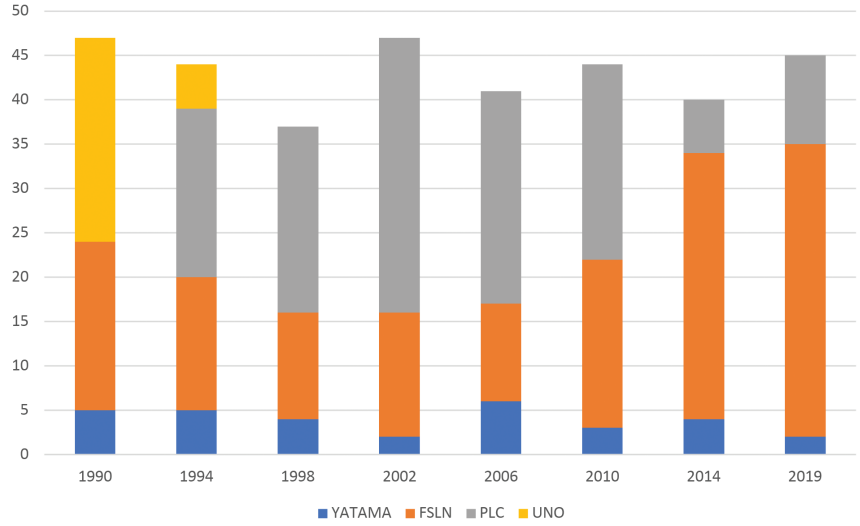

Figure 5.2. South Autonomous Regional Council: Political Representation, 1990-2019. **Source**: author's elaboration based on data from the Supreme Electoral Council (CSE, https://bit.ly/2Ksao4s). Note: Other minority political organizations were able to secure 16 seats between 1990 and 2019, while non-hegemonic national organizations obtained 13 seats in the same period. The acronym PLC corresponds to the Constitutionalist Liberal Party and UNO corresponds to the National Opposition Unity.

promoting a narrative of 'cohabitation' and 'coexistence' that Indigenous peoples rejected as a direct form of State omission and complacency with *de facto* usurpation of Indigenous lands (APIAN, 2017, p. 20).

It is in this context that the attack by armed settlers on Alal can be understood, as well as the systematic intimidation carried out by groups of illegal occupants of Indigenous lands to violently displace their ancestral owners. Since 2012, the coastal organization CEJUDHCAN (Center for Justice and Human Rights of the Atlantic Coast) has denounced the siege, intimidation and murder of Indigenous leaders in Miskitu communities in different territories, also subjected to violent forms of land take-overs. These complaints have reached the Inter-American Commission on Human Rights (IACHR), which has issued a series of precautionary measures, with limited effect in practice due to the lack of cooperation by the Nicaraguan State (CEJIL-CEJUDHCAN, 2019).

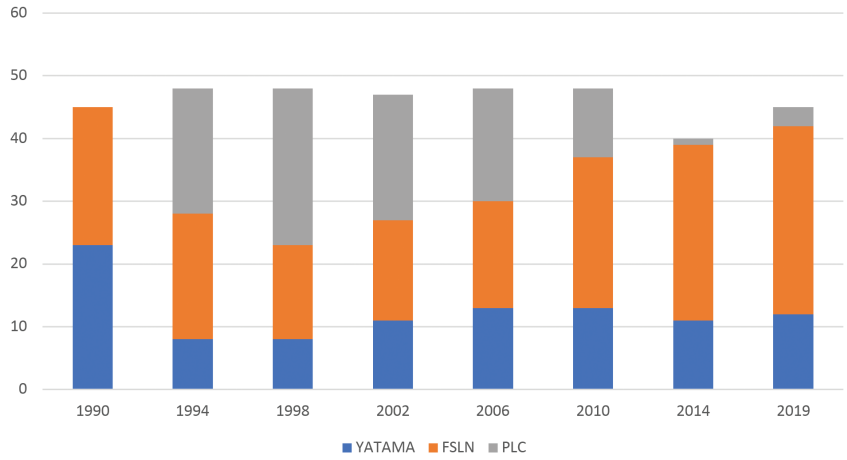

Figure 5.3. North Autonomous Regional Council: Political Representation, 1990-2019. **Source**: author's elaboration based on data from the Supreme Electoral Council (CSE, https://bit.ly/2Ksao4s). PAMUC is a regional political party that secured one regional councillor in 2002; while two national organizations, the Independent Liberal Party and UNO obtained five and three, respectively, in the period 1990-2019.

Despite its importance, the Territorial Demarcation Law arrived late and with little real capacity to provide Indigenous peoples with effective security and greater control over their collective lands. Moreover, while trying to solve a problem of property definition, Law 445 exacerbated others, such as encouraging the desire of settlers expelled by the agro-export model and the land grabbing of rural property in the center of the country, to occupy Indigenous lands. This renewed expansion towards the agricultural / community frontier has not been contained by the Nicaraguan State; on the contrary, the official narrative has been one of acquiescence with illegal occupations, including in natural reserve areas in the North Caribbean — such as the Bosawás biosphere reserve— and in the South, the Indio-Maíz reserve.

Conflicts over land in the Caribbean regions not only pitch poor and displaced peasants against poor Indigenous peoples, but also include other forms of occupations and large-scale property grabbing such as the plantation

economy, gold mining, large-scale agricultural businesses and infrastructure projects that also threaten to downgrade Indigenous property to a formal act of recognition, erode territorial autonomy and displace their communities. Unfortunately, the representation of the conflicts has focused on interpreting the problem as an "invasion of settlers taking over land" that tends to render invisible the diverse and systematic, institutional and socioeconomic mechanisms that legitimize and promote this expansion (Becky Mcrea, personal communication, 22 February 2020).

Although communal land is legally protected to prevent its commercialization and privatization, there are various "buy-sell" mechanisms and extra-legal agreements through which previous and new appropriations by precarious settlers are *de facto* legitimized. In certain cases, Indigenous authorities and individual community members issue "use and exploitation" permits on communal lands to non-Indigenous individuals; in others, regional and municipal officials — in exchange for political favors or simply to enrich themselves illegally — deliver "guarantees" for the use of communal property to individuals, families or groups of settlers without consulting territorial authorities. In both cases, these "authorizations" are based on precarious legality and often lead to contentious and conflictive situations. Finally, there are violent, directed and systematic occupations — such as the one carried out against Alal — that require a level of organization that is difficult to achieve without a certain level of permissibility on the part of the regional and/or State authorities.[6] The communities perceive that some of the violent actions are related to an "outpost" of the State to expand the extractive frontier and remunerate ex-military organizations for their political services to the Ortega regime (APIAN, 2017).

The issuance of permits by communal authorities to non-Indigenous individuals is more or less common practice in the territories, and it precedes the titling process. However, once the titles were acquired, these practices registered a significant increase, partly encouraged by a greater demand for land by precarious peasants for subsistence agriculture activities and the extension of areas for livestock (Cedeño et al., 2018). It is important to note that the territorial authorities have the power to extend "authorizations for the use of communal lands and natural resources in favor of third parties," but said authorities must receive the mandate of the communal assembly (in accordance with article 10 of Law 445). In other words, exploitation permits do not transfer private ownership of the property, but rather its usufruct. However,

under these mechanisms, Indigenous property has been *de facto* appropriated in favor of settlers in a great number of territories through leases and other mechanisms (Nación Mayangna, 2014, p. 17).

> The invasion of the Mayangna Sauni As territory — Arisio Genaro mentioned in 2014 — has been facilitated by Miskitu leaders who have sold land in the upper part of the Wawa River; due to the slow start of operations of the Ecological Battalion in the Bosawás reserve, and because of the message from the President of the Republic who said that he should not carry out evictions. (cited in Mairena et al., 2014, p. 53)

Authorizations for the use of Indigenous lands are also occasionally issued by regional and municipal officials, political leaders and "operators" in favor of non-Indigenous peasant organizations. A journalistic investigation prepared by Wilfredo Miranda in 2016 identified "land trafficking" as a series of illegal practices in the granting of permits "for life" in favor of "third parties" by regional councillors and authorities linked to the FSLN and YATAMA:

> Although no one can give permissions for land use in Indigenous territories, Müller and Collins [both FSLN regional councillors] delivered the most recent permissions on September 6, 2015 in favor of a subject identified as Justo Linares Obando. Linares Obando is granted, under the figure of 'life usufruct' (that is, for life), the possession of 211 hectares of land in the Pinares Tunga Tasba Pri sector, in the North Caribbean Autonomous Region. (Miranda, 2016)

Miranda documents other cases of illegal transactions of Indigenous lands by municipal leaders and authorities linked to YATAMA:

> In 2005, García Becker [former government coordinator] provided an authorization in which he acknowledged that "the group number 5" of Miranda Urbina [buyer] owns 5,036 hectares of land, located near the Wawa river in Waspam. This 'collective' is made up of 143 members of the former YATAMA resistance. (Miranda, 2016)

Dealings like these have been documented in recent reports and studies, in addition to complaints reported in the national media (Bryan, 2019, p. 60; The Oakland Institute, 2020). However, to date there is no judicial process in place to determine the responsibilities of the accusations.

Finally, there are the large-scale operations that also strip Indigenous and Afro-descendant peoples of property rights. In particular, the plantation economy and agribusiness, gold mining and infrastructure such as the interoceanic canal project, initiatives that have not observed the application of the right to free, prior and informed consultation (The Oakland Institute, 2020). For example, extensions of African palm in the Caribbean regions grew from 7,000 hectares in 1990 to 30,000 in 2019 (López, 2019) and in some areas these units include land grabbing mechanisms or are superimposed on Indigenous territories in contentious occupations or under usufruct agreements with territorial authorities. In 2017, the areas under concession for gold mining grew from 1.2 million to 2.6 million hectares, of which around 32% were located in the buffer area of the Bosawás reserve and in other Indigenous territories (The Oakland Institute, 2020, p. 26). In addition, the Interoceanic Canal project, which was granted by the Ortega administration to a Chinese consortium in 2013 without consulting in good faith with Indigenous and Afro-descendant communities, threatens to dispossess hundreds of peasant families and relocate Indigenous communities on the canal route (Mayer, 2018). In the scheme outlined by the Ortega administration, the communal land of the Rama-Kriol territory could be subject to expropriation for the canal project (González, 2018).

In the second decade of the autonomy regime, which began in 2000, new scenarios emerged that marked the dynamics of power and the subordination of the Coast to the economic model of agro-exports and accumulation adopted by the country's elites. At the political level, a 'pact' between the Constitutional Liberal Party (PLC) and the FSLN allowed these two parties to concentrate greater influence over State institutions including the judicial system, the electoral power, the national police and the army. Through an exclusive electoral reform, bipartisan control was extended to the municipal governments of the country by eliminating local constituency associations, a mechanism that allowed citizen participation independent of political parties. On the Coast, the new electoral participation rules forced coastal political organizations to register as political parties, in clear violation of the principles of political participation of the Statute of Autonomy. In the regional

elections of the 2000s, a less plural political system of participation was consolidated, while the Regional Councils and their Coordination Committees became spaces of control for the two national political parties, the FSLN and the PLC. This system of influence in the different spaces of authority in the autonomous regions, including the territorial governments, would increase with the coming to power of the second Ortega administration.

The economic model promoted by Ortega did not fundamentally distance itself from the neoliberal administrations that preceded it (Martí i Puig & Baumeister, 2017). This model is based on an open economy, integrated into global markets, agro-exporter and concentrated on the extractive exploitation of natural resources. International financial organizations characterized this model as "successful" because decision-making with regard to economic policies was accompanied, until the political crisis of April 2018, by a mechanism of "dialogue and consensus" with the country's business elites.[7]

> Nicaragua's expansion in foreign exchange came from increasingly diverse export sectors: diversified agriculture, livestock and agribusiness, gold mining, low-wage maquilas in free trade zones, emerging international tourism, and increased remittances of Nicaraguans who work abroad. (Feinberg & Miranda, 2019, p. 2)

However, the expansion of cattle ranching, agribusiness, the plantation economy and forestry operations at a time of rising international prices (Rubio, 2017) created inequalities in the country's property structure, with a distinctive effect on the Caribbean regions. Several interconnected processes of agrarian transformation took place: land concentration increasingly favored middle sectors and large landowners, while rural unemployment and underemployment grew in urban areas in the country's Pacific region. All this led to what Marti i Puig and Baumeister describe as a process of "re-peasantization" due to the resumption of agricultural activities in agricultural frontier areas a decade ago closed by the armed conflict (Martí i Puig & Baumeister, 2017, p. 388) — a frontier better characterized as a communal front of agrarian and extractive colonization and internal demographic reconfigurations in the regions, towards which it expanded with singular forcé, from the Central and Pacific, but also from other peasant areas of the Caribbean, to recently titled Indigenous territories. The "re-peasantization" of the rural *mestizo*

population is both a form of indirect displacement and economic exclusion: by re-concentrating the land on the historical agricultural frontier in favor of medium and large producers, and thus displacing poor landless peasants to the subregions of community colonization in the Caribbean territories.

In other words, a double process took place on the Coast: the expansion of the poor peasant population towards border areas, resulting from the fact of being displaced by the reconfiguration of property, but also due to the incentives emerging from the rise in agricultural product prices in the country and in international markets. However, for Indigenous and Afro-descendant peoples, this pressure required a struggle for territory, rights and their living spaces. These structural conditions have made communication between settlers and Indigenous peoples difficult and the reason why the latter have rejected the narrative of "coexistence" promoted by the State.

Regression of rights

The day after the attack on the community of Alal, Sebastián Lino, president of the Sauni As Territory expressed his frustration before an independent national media: "We have advocated, there have been decrees, but they only remain on paper. There has been no accompaniment or action, only papers and decrees of Mother Earth" (100 Nicaragua News, 2020). Lino was referring to Decree 15-2013 Defense of Mother Earth issued seven years back by the government with the intent to "accompany" the communities in their defense of the territory through the support of different State institutions (Government of Nicaragua, 2013). In reality, the Decree never came to life and to this day has remained a dead letter.

Arisio Genaro Celso, former president and current secretary of the Mayangna Nation —an entity of supra-communal representation of the Mayangna people — and who was also interviewed in real time with Sebastián Lino, was less critical but decisive towards the national authorities: "Our authorities have to accompany institutionally. We are on a par with the communities. Our authorities know, but we ask them to act" (100 Nicaragua News 2020). That same day in the country's capital, Eloy Frank, president of the Mayangna Nation, tried to minimize the events of Alal and reaffirmed his confidence in the support of the State and in the administration of President Ortega:

> The Mayagnas Indigenous organizations, through their territorial governments and the Mayangna Nation, have been working in close coordination with the National Police on the issue of territorial security; the patrols that have been developed, the accompaniment to guarantee the issue of security and peace in our communities, and that there is an effort, and we have full confidence in our police that this situation can be clarified. (Umaña, 2020)

The Mayangna Nation, founded in 2009, is a quasi-federative entity heir to SUKAWALA (*Sumu Kalpapakna Wahaini Lani*, Fraternal Union of the Sumu), which represents 72 Mayangna communities belonging to 9 territories in the North and South Caribbean.[8] SUKAWALA was the historical organization of the Sumu people founded in 1974 until it dissolved to give rise to a supra-community governing body capable of representing the newly created territories in their relations with the central government. Since its founding, the Mayangna Nation has faced tensions over its partisan control, in a context of rapid political reconfiguration in the country and the autonomous regions. For the FSLN, it was important to strengthen the political support of the Mayangnas communities. In terms of the territorial authorities, SUKAWALA had ceased to have the necessary capacity for representation as multiple territories were formed which had their own communal and territorial governments. In the Regional Councils, Mayangna representation has usually been minimal and fragmented since the election of councillors must take place through political parties. In the North Caribbean, Mayangna representation during five periods of the Regional Councils (1990-2014) only reached 4.5%, despite constituting 6% of the regional population. Therefore, the Mayangna Nation was born as a space for dialogue controlled by the FSLN in its intermediation with the Indigenous communities. At the same time, in 2007, the Ortega administration created a Vice Ministry of Foreign Affairs for Indigenous Affairs at the head of which it appointed prominent Mayangnas leaders, who also actively intervened in the decisions of the Mayangna Nation (Sirias, 2013). Although symbolically important, the Vice Ministry never managed to become a decision-making body and was eventually disbanded amid accusations of corruption.

The second Ortega administration was neither the first government in the country nor the only one that designed and promoted mechanisms of

intermediation and to establish parallel powers to the regional and community authorities. In fact, these mechanisms to a greater or lesser extent were embedded in the autonomous regime since its inception. For example, the Statute of Autonomy establishes the figure of the "representative of the Presidency" in the Autonomous Regions, a position that is "compatible" with the function of Regional Coordinator. Since their creation, the Regional Councils and their Coordination Committees have had to grapple with the figure of the "Presidential representative," a position that successive national administrations have used — with varying degrees of efficiency and opportunism — to undermine the functions of regional authorities.

In 1990, the Violeta Chamorro administration established the Atlantic Coast Development Institute (INDERA) and channeled through it the resources and political support that she denied to the newly formed Regional Councils. Her successor, Arnoldo Alemán, created the Secretariat for Atlantic Coast Affairs in 1997, which coordinated the relationship between the Executive and the Regional Councils and the Coordination Committees. These Secretariats — whose offices were located in the capital of the country — also operated as political operative units of the PLC, at a time of high partisan polarization in the life of the Councils. The following administration, presided over by Enrique Bolaños (2002-2007), did not fundamentally change this mechanism of interference in the Councils since — despite its unpopularity — it offered a certain level of control over the coastal authorities. After his election, the second Ortega administration went further in its vision of subordinating — and not complementing — the role and functions of the Regional Councils in accordance with the mandate of the Statute of Autonomy. In an effort to centralize political and public decisions regarding the Coast, the Ortega administration created a Development Council for the Caribbean Coast, although maintaining the Secretariat and changing its name, but left in place its mandate and operational functions. However, the Secretariat began to play a more active role as a political-partisan entity in the regions, micro-managing the activities of municipal mayors, of the Autonomous Regional Councils and regional Coordination Committees. This intermediation defined a pattern of political control at the different levels of authority in the autonomous system, from Indigenous and Afrodescendant communal governments, to territorial and municipal authorities, and regional councils and governments. In a period of two successive elections, the FSLN managed to control 75% of the popularly elected positions at

the municipal and regional level. In Indigenous and Afro-descendant territories, the Ortega administration has actively intervened and used the power of State institutions — including the judiciary and electoral power — to undermine those authorities that do not align with the ruling party (Dolene Miller, communication personal, February 20, 2020). In these circumstances, official autonomy — that network of authorities, legislation, practices and controls of different scales in the regional government system under a rigid system of centralist State control — is a model of regression of rights.

To express their grievances against the State's complicity, the Alal territorial authorities had to make an effort to depart from the official narrative about the autonomy and partisan control of the Mayangna Nation, which in itself was an act of defiance and resistance: "Our lands, our communities, our lives," claimed Sebastián Lino, "have been violated, threatened and we have been deprived of our livelihoods" (100 Noticias Nicaragua, 2020). An editorial comment by *19 Digital*, the official media outlet of the Ortega administration, responded to Alal's lament by mentioning that "the leaders of the Mayangna Nation highlighted the achievements and advances in the matter of restitution of rights in their communities by the Government of Reconciliation and National Unity." And to endorse the State's commitment, the comment quoted the words of Taymond Robins, also an authority of the Mayangna Nation:

> We have faith and certainty that our government will continue to apply the laws, it will continue to work *in situ* in the communities, in the territories, in the areas that are being affected in order to have a solution to the problem and apply the laws to these people [referring to the group that had carried out the attack]. (Umaña 2020)

With regard to the crimes committed against Indigenous property and the apparent confidence of the Indigenous authorities in State authorities, aggression and intimidation has continued and impunity has been the norm in cases of selective assassinations of Indigenous leaders and residents. In such a scenario, the official narrative of 'rights restitution' has remained an empty discourse, which contrasts with the frequency in which different forms of abuse, new occupations and the forced displacement of entire communities are reported in the national media (Miranda, 2020).

Sub-national violence, new realities

Central America is one of the most violent regions on the planet. With the usual exception of Costa Rica, most of the countries in this region carry decades of a violent past and structures of inequality that continue to be the norm in everyday life in cities and rural areas. In El Salvador, during 2017, the homicide rate (the number of murders per 100,000 inhabitants) was 62.1, while in Honduras it reached 40.7, both well above the rate for the Central American sub-region (25.9) and that of the Americas (17.2) (UNOC 2019a, p. 13). Part of this violence is rooted in historic social inequalities that have been reconfigured into a matrix of enduring structural inequity, contributed to by the dynamics and contradictions of capitalist accumulation, the power of the elites to deter structural changes, and the ability of criminal networks to seize State institutions, including sub-national governments (Torres Rivas, 2007; Martí i Puig & Sánchez-Ancochea, 2014).

Since the end of the armed conflict in the late 1980s, Nicaragua and Costa Rica were notable exceptions for their low levels of violence compared to Honduras, Guatemala, and El Salvador. However, in Nicaragua the reputation of the "safest country" in Central America began to change dramatically during the last decade, with an especially pernicious expression in the Caribbean regions. In 2017, the homicide rate in the Southern Caribbean was 28, while in the Northern Caribbean it was 15. During that same year, the homicide rate in the country was 8.3 (UNOC, 2019b, p. 46). Except for the State repression that took place in the context of the country's political crisis in 2018, a more complex and decentralized violence was already clearly notorious on the Coast in previous years - an issue that, despite its intensity and durability, until now it is still marginal to other conflict situations that exist in the country.[9]

The scenarios that include violent actions are a daily part of the lives of the inhabitants of the autonomous regions and impact their social fabric. Its spatial dynamics generally correspond to the pattern described by Hilgers and Macdonald who argue that "contemporary violence is a moving target, characterized by configurations of historical legacies, economic structures, institutions, and actors that are embedded in subnational space and identity" (2017, p. 4). On the Coast, relations between rural *mestizos* and Indigenous peoples have been characterized by animosity, mutual distrust, and spatial separation (Soto, 2011, p. 26). Although violence on the Coast has not been

studied in a systematic and in-depth way, an initial take allows us to identify at least four sub-national scenarios that usually involve individual and collective actions by agents and dynamics that generate violence: i) conflicts over the occupation of communal lands, and associated natural resources, owned by Indigenous peoples; ii) the punitive actions of the army and the police to eliminate "common criminals" and intimidate Indigenous and Afro-descendant communities under the mechanisms of a problematic security approach and a questionable legality; iii) the illicit activities of organized crime networks, especially for drug trafficking; and finally, iv) gender-based violence against Indigenous, *mestizo* and Afro-descendant women and girls.[10] These scenarios —and the institutional capacity and political will to face them — also test the viability and social legitimacy of the coastal autonomous regime.

Violent actions around communal land disputes have historical roots, but have been escalating, especially over the past five years. Until 2010, these types of conflicts tended to be located in a limited number of Indigenous and Afro-descendant territories in both regions, but as the titling process has progressed, paradoxically, the confrontations between settlers and Indigenous peoples have also become more generalized. According to human rights organizations, 40 Indigenous people have been killed since 2015 in conflicts related to illegal occupations (The Oakland Institute, 2020, p. 5).[11] Violent incidents include "destruction and theft of property," death threats, rape, kidnapping, murder, and disappearance (CEJUDHCAN-CEJIL, 2019, p. 4). However, the environment of intimidation, targeted homicides and threats in relation to conflicts over property began to incubate a decade ago, around 2005 — fueled by the expansion of agricultural activities, infrastructure projects and the narrative of "integration" of the Coast promoted by liberal administrations.[12]

The army and the national police constitute another type of agent that generates punitive violence in the Caribbean regions, and these are usually sustained by their legitimacy in the legal use of means of coercion. Under the narrative of persecuting organized crime in rural peasant areas, the army, in joint operations with the police, have been involved in acts of violence and violation of human rights, usually operating without court orders and contravening basic precepts of presumption of innocence. The murder of six people, including two minors, in La Cruz de Río Grande, a municipality in the South Caribbean — in November 2017 — is an example of this type of operation. Under the argument of persecuting "criminal elements," the army eliminated

a group of armed peasants against the Ortega government through what human rights observers called an extrajudicial execution due to the lack of transparency and precarious legality (Romero, 2017). Since the country's political crisis, these operations have been more clearly motivated by political ends, persecuting and intimidating opponents in rural areas and leaders of the anti-canal peasant movement (Bow, 2020).

The activities of the police, the army and the naval force in the coastal regions of the Caribbean — under the premise of combating drug trafficking have also been characterized by an approach to security, militarization and control that regularly violates the human rights of Indigenous and Afro-descendant communities, their families and individuals. In her extensive ethnographic work in the Afro-descendant community of Monkey Point, a community that is part of the Rama-Kriol territory and located south of Bluefields, Goett observed that the daily lives of men, women and girls are frequently "saturated and interrupted by state sexual violence" through acts of sexual abuse, intimidation and humiliation on the part of *mestizo* soldiers stationed in the area. More generally, Goett concludes that it is a form of control to establish *mestizo* State sovereignty in a "minoritized security zone" (Goett, 2015, p. 475). What is reported by Goett is not an isolated act or exclusive to coastal or rural areas of the South Caribbean. Similar acts of intimidation, illegal controls, and abuses by police and naval authorities are common in both community and urban areas in both regions of the Caribbean (APIAN, 2017, p. 109). As a whole, they reproduce a security pattern that militarizes daily life, monitors Indigenous and Afro-descendant bodies, and imposes racist practices tolerated by the State.

The forms of gender violence against Indigenous, *mestizo* and Afro-descendant women and girls have a specific sub-national expression on the Caribbean Coast that make it qualitatively different from the rest of the country. This violence is immersed in a context in which the forms of control and domination of the bodies of women and girls are intertwined both with their gender, racial and cultural identities, and in their socioeconomic and generational conditions. As Goett points out, gendered and colonial violence takes place in a systemic framework of oppressive historical relations of the Nicaraguan State towards the coastal Indigenous and Afro-descendant peoples, but also towards peasant communities — former residents and new occupants — in the agricultural frontier and in recently demarcated territories.

Two forms of gender violence and exclusion are important to highlight: the different forms of exclusion of women with respect to access to land and livelihoods; and physical violence against women and girls, including femicide, as well as the absence of effective justice mechanisms.

The modalities of land use and the use of natural resources among Indigenous, Afro-descendant and *mestizo* peoples on the Caribbean Coast are diverse because they are mediated by cultural norms, the sexual division of labor and the conditions that natural environments impose on forms of use and exploitation. It is not the objective of this section to provide a detailed description of these realities, but rather to highlight some practices that have had an influence in restricting the access of Indigenous and Afro-descendant women to livelihoods, including land and its resources. These diverse dynamics are, however, mediated by the gradual and cumulative process of dispossession that affects Indigenous and Afro-descendant territories to varying degrees. In this sense, it is important to note the specific conditions of women in territories subjected to forms of illegal occupation and that have resulted in situations of armed confrontations and conflict, such as the case of the Miskitu Wanki Twi Tasba Raya territory in the North Caribbean, which has been the subject of precautionary measures by the IACHR. In this territory, clashes with groups of settlers have created a climate of insecurity, loss of mobility, dispossession and violence that particularly affects Indigenous women (Cedeño et al., 2018; Flores et al., 2017). Cedeño and her collaborators observe that:

> In Tasba Raya, the conflict over land is shown in a multidimensional way, causing disorders at the individual level in women and men, and at the collective level, in the lives of families and at the community level. The limitations that young women themselves and their families are experiencing in the use and exploitation of land is a direct effect of dispossession from communities of their rights to land. (Cedeño et al., 2018, p. 12)

Similar reports are registered in the South Caribbean, both in Afro-Indigenous areas such as the Rama-Kriol territory, which has been the object of multiple forms of dispossession both by private companies and by precarious settlers and medium-size livestock producers; as in the areas of *mestizo* peasant population in areas of the community border, threatened by the construction of the Interoceanic Canal. In these communities, both Afro-Indigenous and

peasant women have taken on an important role in mobilizations and activism in the defense of their collective and individual rights.

The complex socioeconomic conditions of the Caribbean regions, with their high levels of political volatility and social conflict, have created an especially violent environment for women and girls. Despite the fact that judicial institutions tend to under-register femicides by applying its definition in a restrictive way, in the last five years this type of extreme gender violence has increased in the country, and especially in rural areas of the Caribbean. In 2016, the civil organization, Catholics for the Right to Decide counted 49 cases nationally, which in the following year increased to 51 (2017), 58 (2018), and 63 (in 2019).[13] In 2016, data from the National Police indicated 16 homicides of women in both autonomous regions, ten of which were registered in the region of the "mining triangle" made up of Bonanza, Siuna and Rosita (Luna, 2018).

In 2019, 13 femicides were registered in the Caribbean, six in the North and seven in the South, that is, 20% of the total — the highest in the country considering both autonomous regions (Munguía, 2020a). The visual testimony compiled by *Voces Contra la Violencia* (https://voces.org.ni) documents the stories of 18 female victims of femicide "or lethal violence" that occurred between 2014 and 2016 in the South Caribbean. Most of the victims, whose ages ranged from 18 to 80 years old …

> died at the hands of her ex-husbands, current partners and close relatives. Others at the hands of strangers or neighbors who aspired to own their goods or properties […] most of them were mothers at an early age. (*Vivas Nos Queremos*, 2019, p. 4)

The judicial system is also ineffective and delayed in the procurement of justice for victims of gender violence while cases that are not investigated accumulate. Frequently, the resolution mechanism is transferred to customary forms of community justice, which usually have a limited effect in compensating the victims of abuse (Figueroa & Barbeyto, 2014, p. 3; Asociación Red de Mujeres Afrolatinoamericanas, Afrocaribeñas y de la Diáspora, 2014, p. 22).

Conclusions

It is highly unlikely that the people of Alal could have anticipated the attack on their community, especially given the level of organization and the stealthiness and speed with which it was carried out. However, the confusion that followed the massacre was permeated with a sense of anticipation of violence that for more than a decade had accumulated on the borders of the territory, and at its heart, the core area of the Bosawás reserve. After all, the territorial authorities were aware that the population of settlers illegally occupying their territories continued to grow uncontrollably. They knew, for example, that, in a period of only five years, between 2010 and 2015, that the illegal settler population increased by almost 32% (Gobierno Territorial Mayangna Sauni As, 2015, p. 22) and that their constant complaints and requests for institutional support to deal with these occupations and acts of intimidation had been ignored by State authorities. Furthermore, it was not yet three months since the house of the Mayangna Amasau territorial government — a sister territory — had been reduced to ashes by a fire in circumstances that have not yet been clarified by the authorities. And although not all the Mayangnas territories occupy the Bosawás reserve area, their organization, the Mayangna Nation and their leaders, understood very well that without State support, not only would the attacks on their communities grow, but also the viability of the reserve itself would be at risk and with it, their own cultural survival, their autonomy and their livelihoods.

This is how it can be understood, all at the same time and with the obvious contradictions, both the optimism of Eloy Frank in his capacity as president of the Mayangna Nation, the restraint of Arisio Genaro, his secretary, and the frustration of Sebastian Lino, the president of the Mayangna Sauni As territory. Everyone had contrasting feelings regarding the will and responsibility of the Nicaraguan State to protect the human rights of the Mayangna people. However, these leaders shared both the aspiration and determination that autonomy could represent a process of emancipation to achieve their historic rights to land and self-government.

In this chapter the tragedy of Alal, in all its severity, is a metaphor to interpret the origin, evolution and current dilemmas of the autonomy regime in the Caribbean regions of Nicaragua. Part of the reflection presented here concerns the characteristics of the multicultural recognition model that outlined the current institutional design of coastal autonomy: the creation of

multi-ethnic or heterogeneous governance spaces in order to promote the inclusion of different groups under cultural criteria, regardless of their demographic weight and social organization. Some alternative views on multiculturalism theories, as summarized by Hooker:

> … tend to argue that indigenous peoples and other minority nations have the right to, and even require, the creation of separate autonomous spaces for the exercise of self-government in order to ensure the preservation of their cultures. (2010, p. 193)

Ten years ago, it was still too early to assess the effect of Law 445 that created exclusive self-government spaces for Indigenous peoples and Afro-descendants and thus establish in practice two modalities in the institutional design of autonomy: regional multi-ethnic governance and Indigenous and Afro-descendant territorial self-governments. However, after almost two decades since its approval, it is possible to identify some trends that this recognition has had in its degree of effectiveness in protecting the rights to self-government and the territory of Indigenous and Afro-descendants in the Caribbean regions.

First, the titled territories and their authorities, through their own means, have not been able to stop the multiple forms of occupation of their lands and the dispossession of their resources that threaten their cultural survival. It is and will be an impossible task to undertake given the magnitude of the demographic change and the *mestizo* migratory displacement to the border areas of agricultural / community colonization, unless Indigenous and Afro-descendant peoples receive the decisive and timely support of the Nicaraguan State and its institutions in the implementation of regional legislation. The lack of implementation has limited the exercise and practice of greater political autonomy capable of allowing Indigenous and Afro-descendant peoples to manage their resources and territories.

Second, the Regional Councils ceased to be spaces for multiethnic communication and effective representation of minority coastal peoples (Sumu-Mayangnas and Ramas) as they were captured by national political parties and thus ended up reproducing forms of structural domination that the Statute of Autonomy aspired to supersede. The Regional Councils and their Coordination Committees are perceived by the coastal peoples today

as spaces of State power (historically centralist and dominant) and not as the representation of their autonomy.

Third, community governments and their inter-communal representation bodies, the territorial authorities, were transformed (to a greater or lesser extent) into a terrain of unequal power conflicts where intense disputes for their autonomy take place — a result of the partisanship of the hierarchical governance model promoted by the Ortega administration. This tendency of the FSLN to undermine community autonomy seems to be more associated with a vision of control in an authoritarian orientation of the country's political regime, and less with the purpose of promoting development or the "restitution of rights" as has been argued by the current Ortega administration. A lesson that emerges from the Nicaraguan experience is that regional autonomy is closely linked to national processes of change, which clearly include: the definition of the economic model, the political orientation of the country, and the nature of the political regime.

Socioeconomic changes, with a tenacious orientation towards neoliberal capitalist integration to which a second FSLN administration has continued, have imposed a model of accumulation that gradually and inescapably violates the rights of autonomy. This model promotes an economically subordinated integration of the Coast and imposes the normalization of a formal political autonomy controlled by the State. That is, the fundamental decisions about the affairs of the Coast, such as concessions to exploit its resources or the State's permissibility of massive illegal occupations are concentrated in Managua and endorsed by State institutions on the Coast: the Regional Councils. Under this hierarchical governance modality, the State has adopted a security policy that has militarized the regions, operating under precarious forms of legality and selectively imposing a regime of impunity, racism and structural violence. In this sense, the multiple types of violence that fracture the coastal social fabric, especially through crimes that have a clear gender orientation, do not seem to be disconnected from a sub-national dynamic that brings with it an oppressive historical legacy, and that reproduce perpetrating agents — individuals, groups or institutions — and that are embodied in the socioeconomic and sociocultural dynamics that generate inequalities.

Overall, the evolution of the autonomy regime has reached its limits in the field of collective rights and the exercise of autonomy, configuring a scenario of threats to cultural survival, particularly in areas of extractive colonization. Despite all this, the Nicaraguan experience of autonomy was and

continues to be an important reference for other autonomy processes in Latin America, especially due to its early inauguration (on the eve of the multicultural paradigm) and more recently due to institutional innovation, such as a regime that is simultaneously regional-multiethnic and autonomic-territorial. Regarding its territorial configuration, many open questions remain, for example, about how to ensure that its modalities of recognition (regional and territorial self-government) can intertwine and operate organically to avoid overlaps and conflicts between different orders of authority, and thus strengthen Indigenous and Afro-descendant rights in regions with large *mestizo* majorities. However, a condition for this to happen is the existence of positive political will on the part of the State and the capacity for coastal action to drive and promote these changes.

NOTES

1 This narrative reconstructs the events through a series of public materials, including press articles, interviews, police communiques and journalistic analyzes. The attack received considerable national and international media attention. See especially the following: Munguía (2020b); Richards (2020); The Guardian (2020); Volckhausen (2020); and 100 Nicaragua News (2020).

2 Interview with Sebastián Lino (100 Noticias Nicaragua, 2020).

3 MISURASATA (Miskitu, Sumu, Rama and Sandinistas United), founded in November 1979 is the heir organization of ALPROMISU. According to García (1996, p. 103) this new organization was created in the context of the revolutionary changes in the country and its demands were ethnocultural in nature "from the beginning". A treatment of the political complexities of this transition is found in Frühling et al. (2007).

4 Yapti Tasba Masrika Nani Asla Takanka (The Organization of the Peoples of Mother Earth) was created in Rus-Rus (Honduran Moskitia) in 1987. This organization at the time brought together different Miskitu groups in armed resistance against the Sandinista revolution.

5 The term of the Regional Councils was initially established for four years. However, a reform of the Statute approved in 2016 extended this period to five years (National Assembly of Nicaragua, 2016).

6 A military unit of the Nicaraguan army — the Ecological Battalion — has been operating in the Bosawás reserve since 2012, commissioned to protect the natural area against environmental crimes, including deforestation and illegal occupations of Indigenous lands. Complaints from the communities about the inaction of this military unit have accumulated in the last five years.

7 In April 2018, social protests led by young people, women's organizations and the elderly took place to oppose changes in the pension system. The protests were violently repressed by the police and paramilitary groups. The Inter-American Commission on

Human Rights (IACHR) estimates that 212 people were killed and 1,337 wounded. As a result of the effects of this crisis, the country is in a process of economic recession and restriction of political freedoms. The IACHR report (IACHR Gross Human Rights Violations in the Context of the Social Protests in Nicaragua. 2018, Washington: OAS), available at: https://bit.ly/2KCE0fH

8 The nine territories are distributed in the two autonomous regions and include three sociolinguistic groups: *Twahkas*, *Panamakas* and *Ulwas*. The total Sumu-Mayangna population is approximately 20,000 people (5% of the population of the Coast) of which a third live in the territories of the Bosawás Reserve (Mayangna Sauni As, Territorial Government, 2015, p. 12).

9 A report by CEJIL-CEJUDHCAN makes this observation very clearly: "In the context of crisis that Nicaragua has been facing since April 2018, the marginality of the communities has worsened and the attacks against their members have increased, impacting in a serious and differentiated way the indigenous communities that for years have been demanding justice" (2019, p. 2).

10 Post-electoral conflicts, while important due to their significance and collective action, tend to be less systemic and of short duration. The discussion therefore focuses on lasting violence.

11 The data available on murders in property conflicts on the Coast should be viewed with caution. In general, local and national human rights organizations tend to report murders committed against Indigenous people, but they do not provide the same level of attention to murders or crimes committed against non-Indigenous people in situations of armed conflict. Nor does the National Police record homicides disaggregated by ethnic identity.

12 Between 2005 and 2006, killings and threats in property disputes — particularly in the Northern Caribbean - began to attract the attention of national newspapers and to be reported by human rights organizations. According to Mairena et al. (2015, p. 52): "On September 19, 2006, a group of twelve community members from Wasakín was ambushed in San José de Banacruz when they were preparing to clear the community lane. That day, the 32-year-old community member Warner Lockwood Benlys, was wounded in the left leg by a 22 caliber bullet"(citing a report in *El Nuevo Diario*, 13 September 2006, by Moisés Centeno). On 27 March 2011, in Wasakin, Rosita municipality, Denny Penn, 19, and Webster MacKensy, 12, were murdered when they were heading in a boat to the Moravian church (El Nuevo Diario, 15 April 2011, Edgard Barberena report). In the Mayangna Sauni Bu territory, in the Bosawás Biosphere Reserve, Jinotega department, four Mayangnas: Pascual Delgado Pérez, Orlando Cardenal Hernández, Vicente Chévez Hernández and Arsenio Hernández Torres who had been threatened by invaders of the territory, were killed by men hooded with weapons of war (*El Nuevo Diario*, 10 September 2011, report by Francisco Mendoza).

13 UNOC recognizes that there is no global consensus on how to define femicide, how to register it, especially in situations where associating it with gender relations is difficult to demonstrate or is not properly recorded. This makes global or sub-national comparisons difficult. UNOC instead collects and compares data on homicides against women globally by intimate partners (UNOC, 2019a, p. 21)

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6

Mapuche Autonomy in *Pwelmapu*:[1] Confrontation and/or Political Construction?

Verónica Azpiroz Cleñan

Introduction

Prior to the existence of nation-states in the Americas, the Mapuche were one of the great pre-existing societies in the region. Their territory stretched across the southern part of the continent from the Pacific to the Atlantic Ocean, an area covering a large part of what are now the nation-states of Argentina and Chile. Two great territorial identities, the land to the west and that to the east of the Andes Mountains, functioned as a single territory known as *Wallmapu*, with two major divisions known as *Fütal Mapu: Gulumapu* and *Pwelmapu* (Nagüil, 2010).

The most significant consequence of the Argentine army's invasion of Mapuche territory (1876-78) following independence from Spain, together with similar action from Chile (1860-81) on the western side of the Andes, was a genocide of the people (Lenton, 1999). It changed the way of life of those who survived this war of conquest, involuntarily incorporating them into the nation-state without collective rights as a political society (Azpiroz Cleñan, 2013), and putting their material and cultural reproduction at risk in both regions (Bustos, 2012).

This disruption of Mapuche society in the 19th century resulted in a loss of political community, i.e., of political self-determination and territorial sovereignty for Mapuche national society. It also resulted in the alienation of Mapuche citizens, both from their politically devastated society and from Argentine national society, which treated and continues to treat them as second-class citizens.

Years have passed and the older generations of Mapuche, knocked down and depressed by those events, are now beginning to take steps, hand-in-hand with the younger generations, to talk about and reinterpret history, with a consequent rebirth of Mapuche national identity. The purpose of this paper is to analyze contemporary Mapuche micro-experiences that discursively take up the narrative of Mapuche autonomy but which are macro-politically uncoordinated in terms of Mapuche ethno-nationalism in *Pwelmapu*.

The question guiding this analysis is: is there a desire within the Mapuche narrative to push the boundaries of procedural democracy[2] and work to reform the (neo-)colonial State into a plurinational one? This paper also endeavors to ascertain whether Mapuche autonomy could give rise, in a federal but not an ethno-federal Argentine State, to the recognition of the political rights of the Mapuche nation in the form of self-government?

My assumption regarding these issues is that the autonomist narrative has symbiotic overtones with Mapuche experiences in *Gulumapu* (Mapuche territory in Chile). In Chile, the Mapuche have been demanding autonomy in the form of self-government for three decades now. During the course of this article, we shall see whether the information I offer herein confirms my intuition or demonstrates that we are building a path to autonomy that is totally different and unconnected with these experiences.

The text is structured as follows: I will first analyze Argentinians' perceptions of the Mapuche and the autonomist ideas that Mapuche organizations have set out in three provinces: Chubut, Río Negro and Neuquén. I will then consider how the Mapuche view themselves, how they are "re-ethnifying" and creating/adopting new ethno-nationalist ideas. I will go on to look at the reaction of the national government under the Macri administration to the politicized Mapuche "otherness," and I will end with a personal reflection on the most viable political project for building autonomy *à la Pwelche*.[3]

The "other" as perceived by Argentinians: Reactions to Mapuche discourse on autonomy

The re-ethnification of the Mapuche in *Pwelmapu*, after decades of concealing their pre-existing cultural identities, commenced in 1992 at a time when the Catholic Church in the Americas together with colonial "spokespersons"[4] were trying to construct the narrative of an "encounter between two cultures" to refer to the five-hundredth anniversary of the Spanish Conquest, thus euphemistically erasing the Mapuche genocide. The new Mapuche leaders in Neuquén and Río Negro embarked on a tour of seven Argentine provinces with Mapuche populations and communities to gain support for the idea of a Mapuche political flag. This tour, conceived by Miguel Leuman,[5] revolved around the concept of a political symbol of the people's unity throughout *Wallmapu*. There was sufficient political resonance to challenge the King of Spain, who visited Argentina to celebrate the Conquest. The *wenu foye* (flag of the Mapuches) became the political banner of the whole of *Wallmapu*. This process should be seen as a symbolic re-territorialization of the Mapuche in political terms.

Since that time, a process of "re-Mapuchization" of their identity has been developing, although this has advanced only tentatively toward demanding autonomy and political rights because it initially took the form of a cultural revival. Insofar as this revival crossed the fluid boundaries of culture (understood as distinct from the political or apolitical) to assume that cultural rights would continue to be at risk without political empowerment, autonomist ideas did begin to make some headway. This was unlike the experiences that were developing in *Gulumapu*, however.

There are several elements that distinguish the discourse on autonomy in *Pwelmapu* (Argentina) from that of *Gulumapu* (Chile). First, the development of the welfare state with a focus on Peronism. Second, the presence of the Catholic Church, with an emphasis on the Salesians. Third, the configuration of an internal enemy within neoliberal multiculturalism. Fourth, access to free university education, and the social mobilization that has been growing since the mid-20th century, along with the alliances between the Mapuche movement and human rights organizations. Fifth, the geographical extent of *Pwelmapu*, with a presence in seven federal states (provinces). And, sixth, the media, which has constructed a Mapuche stereotype that ranges from the folkloric to the terrorist/Kurdish/Iranian Mapuche.

And yet, Mapuche political ideas on autonomy in *Pwelmapu* are also influenced by the different political realities between the two States and their political societies (as already demonstrated in the previous paragraph, and to which can be added the fact that Argentina's system of representation is federal, with three levels of State administration – national, provincial and municipal – superimposed).[6] A quick look at the situation of the Mapuche in *Pwelmapu* shows us that, in socioeconomic terms, their population suffers from economic impoverishment and wage dependency (especially at the provincial level) given that 45% of State employees are of Mapuche origin in Neuquén and 33% in Río Negro (Census, 2010 – author's compilation). This indicates dependency, and a system of political capture by the State's network of social policies that inhibits autonomous political action, alongside poor political mobilization by the Mapuche organizations. (This phenomenon is even more pronounced in the provinces of Chubut, Mendoza, Buenos Aires and La Pampa.) Furthermore, while we recognize that we form part of a binational community of people (in both Argentina and Chile), macro-political coordination and the transfer of political experiences between either side is still in its infancy.

The construction of the Mapuche "other" as another subject of Argentine citizenship (Azpiroz Cleñan, 2017) and as a political subject with collective rights has followed a certain course in Argentina. The media, largely national-run monopolies,[7] hold important sway in the provinces since these latter are largely dependent on a single newsprint supplier, particularly in Río Negro.[8] Until 2017, the stylization of the Mapuche in the media focused on the folkloric or the "permitted Indian," but from that year on, the "insurrectionist Indian" could also be seen. Authors such as Richards (2009) and Cusicanqui (2004) define this category as follows:

> The "permitted Indian", then, is one who is approved and validated by the government, who accepts without question the policies of the State that is promoting them and who does not demand more but accepts this. (Richards, 2009, n/p)

> ...With the permitted Indian comes, inevitably, the construction of his undeserving, dysfunctional "other", two very different ways of being Indian. The permitted Indian has passed the test of modernity, replaced "protest" with "proposal" and learned to be

> authentic and fully familiar with the dominant landscape. His "other" is rebellious, vengeful and prone to conflict. These latter traits worry elites who have pledged allegiance to cultural equality, sowing fears about what the empowerment of these "other" Indians might portend. (Hale, 2007 n/p)

This media portrayal broke down during the judicial case over the disappearance and death of Santiago Maldonado in 2017. Mauricio Macri's national government (2015-19) scaled up its xenophobic discourse against the Mapuche,[9] migrants and Afro-descendants. The media, grouped around Clarín,[10] began painting the Mapuche as violent and combative, and began to smear them by suggesting links to the Kurds, Iran, or the Colombian Revolutionary Armed Forces (FARC).

The world of politics picked up this discourse and allowed itself to be influenced by it, recreating it in its own way. The following are comments made by the *Juntos Somos Río Negro* (Together We are Río Negro) political party as regards the Mapuche construction process and its demands:

> The problem that arises with recognition of collective rights is that it encourages political attempts on the part of groups which, for various reasons, are challenging our current political and social organization. Every group that aspires to a new identity resorts to historical or mythical narratives to legitimize its political aspirations. These are myths that contain a certain historical truth, but they are intertwined with pragmatic interests that pursue other objectives. Identities are achieved by opposition, by pointing out an enemy. And, to make room for these, on occasion they resort to violent tactics or pave the way for the birth of more radical groups.[11]

They can be seen to be reacting to the Mapuche and their demands as follows: 1) as if they were a "problem" or perhaps a threat to the democratic system; 2) as if they were making demands without any real support and with unknown, perhaps sinister, nefarious, or frightening, intent; 3) as sowers of Argentine nationalistic (chauvinistic) division; and 4) as paving the way for potential racial ethnic violence or political violence in the style of 1970s Cold War Latin America.[12]

Another, more ethno-paternalistic, aspect paints the Mapuche and their demands in a softer way, as can be seen in these lines from the provincial newspaper *Río Negro*, which is the voice of the provincial government:

> The State of Río Negro has incorporated the issue of Indigenous Peoples as government policy, through the Advisory Council of Indigenous Communities (CoDeCi). At the request of the Mapuche people themselves, bilingual education — including their native language — has been included in Chacay Huarruca school in the provincial foothills near former Route 40.[13]

This narrative illustrates the concessions granted by the province to a political subject as distinct from the "Argentinity" that arrived off the boats.[14] There is no mention, however, of actions claiming political or territorial rights, as crystallized in the land disputes in that province. The situation is similar for Mapuche groups in the city of Bariloche, who position themselves in relation to the provincial State as Argentine citizens with specific and collective rights, albeit not of a political but a cultural nature. See the following opinion, for example:

> In Neuquén, Mapuche mechanisms for justice administration have been introduced, in some cases on an equal footing with the provincial judiciary. The organization to which I belong (*Espacio de Articulación Mapuche*) succeeded in getting the municipality of Bariloche recognized as intercultural, but we are still struggling for the intercultural public policies implied in that recognition to become reality. To put an end to this conflict, formulas are needed that will allow the Mapuche to recover their autonomy and exercise their self-determination. (Moyano, 2017)[15]

This Mapuche organization takes a discursive approach toward autonomy and self-determination, choosing interaction with the provincial State as the path for its political practice under the notion of "interculturality" (Walsh, 2008). This is without considering, however, that interculturality is a concept constructed and validated by the Washington Consensus and operationalized by the international financial institutions (WB, IDB, IBRD, etc.). It has certainly been successful in Argentina because it hides the asymmetry of

economic and political power between Indigenous peoples and the dominant society. The concept is useful and functional to the State's mechanisms for maintaining private property and a concentration of land. State plans and programs use the concept of interculturality most often to disguise assimilationist policies.

Ordinance No. 2641-CM-15 proposed by the *Espacio de Articulación Política Mapuche* (Space for Mapuche Political Coordination) collective in 2017 with the purpose of seeing intercultural policies flourish, expresses that vision. This ordinance remained in limbo for a while owing to the lack of regulations. It was allocated only a minimal budget in 2016, less than USD 10,000 per year to be applied in twelve rural communities around the city of Bariloche. They had to settle for the implementation of training workshops for municipal officials and employees, which took place in the months prior to the ordinance's approval by the deliberative council of the city of San Carlos de Bariloche. No concrete progress has been made since the approval of the ordinance and the declaration of Bariloche as an intercultural municipality. No programs, policies, or plans have emerged to demonstrate any progress in turning the municipality into an intercultural Argentine institution.[16] In addition, under Macri's administration, Bariloche was the scene of the murder of Rafael Nahuel, a young Mapuche man, during an attempted territorial recovery.

In sum, all three media narratives illustrated so far paint the Mapuche in a monumentally different way: violent, institutionalized and intercultural. This last category — interculturality — arises in an urban setting that is surrounded by monuments depicting the defeat of the Mapuche people. The monument to Roca in the city's civic centre is an iconic representation of the genocidal triumph (Perez, 2011) that founded Argentina and would hardly seem to represent interculturality.

The diverse Mapuche "we" in the autonomist discourse-demand

There is Mapuche diversity and heterogeneity in *Pwelmapu*. The experience in terms of their autonomous political demands has been different in Neuquén Province, where organizational processes were linked to alliances with trade union sectors and part of the Catholic Church. The Mapuche Confederation of Neuquén emerged in the 1970s and worked to create

alliances with trade union sectors from the 1980s onwards,[17] especially with the State Workers Association (ATE) and with the wage demands of the National Parks Administration — particularly Lanín National Park — in addition to human rights organizations. They injected strength and self-esteem into the mobilizations and demands made of the State by the province's different communities.[18] And, in the public space, the mobilized unions were able to form a significant and unified mass of people in clashes with the security forces that were sometimes planned, sometimes spontaneous. At key moments of political dispute, whether symbolic or legal, the alliance: unions, human rights organizations and "Confe" (a nickname used by the people for the Confederation) have been able to act as a sociocultural/union bloc.

The result of all this is that Neuquén's political authorities have historically responded to the Mapuche people's demands with social policies, generating clientelist relationships and strategic co-optation, ignoring demands made as political subjects distinct from Argentine society (Falaschi et al., 2005). In other words, they have accepted the Mapuche people's claims of being a "poor" sector of the Argentine population but do not recognize demands related to their cultural, environmental and political rights as a pre-existing nation. This did change somewhat in 2006, however, through reforms made to the Provincial Constitution that recognized the Mapuche identity in the terms of how people themselves understood it, assigning a name and surname to newborns. This institutional policy was known as *Meli folil kvpan*, the four origins of the person, embodied in the Civil Registry of the Province.

From 2010 on, Confe splintered and separated, resulting in a dispersion of both the political leadership and any cohesive common strategy in relation to the nation-state and oil companies. In the Confluencia area (the area surrounding the capital city of Neuquén, which was Confe's heartland), Jorge Nahuel (spokesperson), whose rhetoric used to be opposed to the Argentine State, began to dissociate himself from his historical position during the Macri period. He declared in public statements that:

> There has never [been] such an important loss of Argentine national sovereignty and I refer to this aspect because our [Mapuche] flag of free determination as a pre-existing people is conditional upon being able to conduct a process of negotiation with a free and autonomous government in relation to the subjugation of the great empires.[19]

Several conceptual observations should be noted in Nahuel's account. On the one hand, it uses the term "*libre determinación*" ("free determination"), a concept not used by Mapuche leaders in *Pwelmapu*. In Argentina, the term "*auto-determinación*" ("self-determination") is used to differentiate this from the claim of the "Kelpers" in the Malvinas (Falkland) Islands, who are calling for *libre determinación*. He then mentions another concept strictly linked to recognition of the State's power, which is "sovereignty", and refers to a sense of Argentine national identity. The contradiction in Nahuel is that while he considers himself to be a non-Argentine Mapuche, his words demonstrate his alignment with Argentine national autonomy. A Mapuche autonomist would see the weakness of its main oppressor (the Argentine State) as an opportunity to break away from the "republic" and form an autonomous Mapuche territory. This is the territorialist vision of autonomy "the Mapuche way," according to Nagüil (2020).

Reading the public documents issued by Confe (2017), which is no longer what it once was in the 1970s but rather a group of leaders from the Confluencia area, it is possible to note a change in the use of some concepts. The organization has publicly maintained precise language with which to oppose an invasive, imperative "otherness" such as the Argentine institutional structure. This means that, despite the intention to establish a rhetoric of autonomy (Millaman, 2001) in various governmental situations (at times of great roll-back of social, political and cultural rights), a language that is symbiotic with Argentine nationalism has emerged. It is important to distinguish between Argentine citizenship and nationhood. It is correct and desirable to retain the legal status of an Argentine citizen who is also a member of the Mapuche nation. However, this does not emerge clearly from Confe's discourse nor in the narrative of the organizations of Río Negro (Río Negro Parliament).

This observation is important for an intra-Mapuche political strategy. Since the Mapuche nation forms a political minority among Argentine citizens, alliances are needed with political parties in order to advance proposals that include Argentine sectors suffering the same or similar problems as the Mapuche nation rather than leaving Argentine "nationals" outside *Pwelmapu*. If such equating of autonomy with plurinationality is political, then political strength is needed to advance Mapuche — and other — political demands while being a minority.

To work effectively in these alliances from the sovereign perspective of a subjugated nation-peoples rather than ending up submerged within them, however, requires clarity as regards the distinction between citizens and nation. One is a citizen with respect to a State, but a State does not embody a nation. The language of the Argentine State was not born *in situ* but was instead appropriated from Spain, along with a spirituality brought by the Catholic Church; nor does the Argentine State have its own phenotypic and genotypic traits. It has a colonial language (Spanish), a Judeo-Christian religion or philosophy, and a Creole mix that has not yet acquired a genetic make-up of its own, being biological. It does not therefore constitute a nation. What the State does constitute is a political community with a republican form for the distribution of State functions and a democratic system for gaining access to the exercise of State power. In the words of José Marimán (2012), it can be observed that there are the different ethnic conditions in place to support the existence of a Mapuche nation but not an Argentine one. What exists is an Argentine State that encompasses multiple pre-existing nations not recognized as modern States.

Confe's discourse regarding Mapuche political participation in party politics also includes the following:

> In Neuquén, they are attentive to certain siren songs that have begun to sound in Argentina, including in Río Negro. There is a myth that says that the way in which the Mapuche people should participate is by having a seat in the legislature or the right to participate in electoral spaces. It seems to us that this is a very dangerous tool because, where it has been applied, whether in Colombia or Ecuador, it was in no way a recognition of rights but rather a new mechanism to divide Indigenous Peoples and pit them against each other behind a particular candidate or electoral space. This is not the way to recognize plurinationality.

This quote seems to contradict what has been said previously about the Mapuche being "tied" to the Argentine national environment. Nahuel dissociates himself from citizenship obligations by means of neoliberal multiculturalism. So, in his view, what should the path to plurinationality be? Should we rely on statements from the Macri government or on those mentioned above regarding the Argentine-Mapuche link? In the rhetoric of the

timid Confe, there is some discursive confusion. They like a "Russian salad" kind of mix. They propose plurinationality as a value but do not say how to achieve it. And once plurinationality has been achieved as a quality of the State, would this be a step in the transition toward Mapuche autonomy? Much of the Mapuche leadership is built on opposition to the Argentine majority society' but there is no internal political debate within the Mapuche movement to clarify whether they will follow a communitarian or a territorialist path for the reconstruction of *Pwelmapu* and *Gulumapu*. It would be sensible to have this.

The two paths for the reconstruction of *Wallmapu* were explained by Nagüil (2020) in a number of virtual public appearances in the run-up to Chile's referendum to approve (or not) a new Constitution (25 October 2020) but the analysis clearly fits *Pwelmapu*. In brief, and so that the reader has a better understanding, these can be summarized as follows: a) territorialist autonomy sees *Wallmapu* as a defined space (Araucanía Region) in which the Mapuche nation is a demographic and political minority but they have a Mapuche project (for Mapuche and non-Mapuche) established for that space; in Chile, this would require the decentralization of the State; b) communitarian autonomy conceives the political rights of the Mapuche nation as being within a plurinational State (Chile and Argentina) with diverse and dispersed territorial rights and therefore without the possibility of self-government.

An emerging young Mapuche man in Chubut Province, Facundo Jones Huala,[20] who has been travelling the various Mapuche historical territories in search of the promised land (and who gained his most significant media prominence during the judicial case on the disappearance of Santiago Maldonado), has said with regard to the links between Mapuche organizations and trade unionism (surely with Confe's experience in mind):

> There has been great State interventionism in this regard, much co-optation and bureaucracy, very similar to the process in many unions. This has been especially as regards some of the leaders that emerged in the 1990s and part of the 1980s. The problem with these organizations is that they do not have an in-depth political analysis of the idea of autonomy, territory and national liberation.[21] (*El Desconcierto*, 2016)

Other organizations from outlying areas of Bariloche city in Río Negro Province, located in rural and peri-urban communities, generally coordinate some of their actions at critical moments of confrontation with State security forces,[22] in times of climate crisis,[23] as well as in the face of natural disasters that threaten their survival or in contexts of racist violence.[24] These communities are: Millalonko, Xipay Ahtü, Maliqueo, Wiritray, Tacul, Wenu nirihau, Wala, Tambo Baez, Lafkenche, Calfunao, Buenuleo, Quijada and Rankewe.

In Río Negro, recognition of the existence of the Mapuche people as such took place during the two presidencies of Perón (1950-1955), with several decrees/laws governing the cession of lands. This process of provincialization occurred, according to Ruffini (2005), because the national territories were highly dependent on the central authorities (Buenos Aires) and the national territorial authorities in northern Patagonia had no functional or budgetary autonomy. They had limited political rights but these were not in line with Argentina's republican and federal system. Within this wider political framework, Perón's government gave special consideration to the "Indigenous reserves" and recognized them as such. In other words, there was a pragmatic/instrumental purpose in this early recognition.

In 1973, after several military coups and the proscription of Peronism, a new Peronist government took office and recognized eleven Indigenous reserves in the province of Río Negro. Until that moment, tutelary republicanism (during the transition from 1966 to 1973 when the armed forces "supervised" democracy under the governments of Onganía and Lanusse) had given rise to the existence of different Mapuche and non-Mapuche citizenships since the cultural and political rights of the Mapuche population were legally and *de facto* restricted.

In 1984, some Mapuche communities were organized as agricultural-livestock cooperatives and, together with the Bishopric of Viedma led by Monsignor Hesayne, began an organizational process to demand assistance from the State following a severe snowfall in which almost all herds of sheep, the only means of support for rural families, had been lost. The campaign, "A sheep for my brother," organized by this bishopric generated great social awareness of the needs of the Mapuche communities in terms of their economy but also of their right to pursue their livelihoods in their rural habitat.

This awareness set the conditions for a large mobilization around Mapuche demands in 1986/87, which resulted in the enactment of a Comprehensive Law on Indigenous Peoples (No. 2287). Ten years passed, however, without this law

(which proposed government and Indigenous community co-management in matters within their competence) being regulated or enforced. During all that time – even though there were no implementing regulations for the law — the communities met in the Indigenous Advisory Council (CAI), based in Jacobacci. Mapuche centres became established in the province's largest cities, such as Bariloche, Viedma and Fiske Menuko (Gral. Roca).

Given that many communities did not feel convened or represented by the CAI, for example those that defined themselves as autonomous (Cañumil, Anecon Grande), meetings were held to enable all the diverse forms of the Mapuche people to be given a voice and recognition (Papazian & Nagy, 2015). The category of "rural settlers", typical of the Río Negro area, refers to Mapuche individuals or families who were expelled from their communities of origin during the military campaign and are therefore recognized as members of the Mapuche people without belonging to a *lof che* (traditional Mapuche territorial community) and who instead live on small plots of land in the rural Patagonian steppe. The three actors – dispersed settlers, communities and Mapuche centres in the cities – all formed a political organization called the *Coordinadora del Parlamento Mapuche de Río Negro* (Coordinating Committee of the Mapuche Parliament of Río Negro) which was legally formalized through the Argentine system in 1997, ten years after it was founded.

In 1994, Argentina underwent a constitutional reform that recognized the pre-existence of Indigenous peoples (36 Indigenous peoples with 14 living languages, the Mapuche being one of these peoples) with the right to intercultural bilingual education (IBE) and cultural rights. This climate of openness to Indigenous demands, linked to the counter-celebratory movement that took place in 1992 (or re-Mapuchization), laid the ground for a process of political organization (Ojeda, 2016) that culminated, in 1997, in the issuing of regulations for provincial law 2287 and recognition of CoDeCi (the Council for the Development of Indigenous Communities) as a co-management body. Until that time, CoDeCi had not been operational, and it began its work with a Land Plan to prevent community evictions. Three Mapuche representatives participated in CoDeCi, one for each of the areas: Atlantic, Andean/Cordillera and Highland Valley. The Land Plan envisages a community land survey in order to obtain title to the land.

There are currently 70 urban communities grouped in the Coordinating Committee of the Mapuche Parliament of Río Negro, out of a total of 150

communities in the province; half of the communities have women occupying the role of "*logko*" or community leader, an autonomous and self-managing position.[25] The Mapuche Parliament of Río Negro could have offered an example of community self-government, but, by defining itself according to the provincial jurisdiction, it simply demonstrates how official Argentine history and State imposition have established a method of political construction and direction of political organization for inter-ethnic relations that falls outside the Mapuche worldview.

The emergence — or development — of women community leaders in that area of *Pwelmapu* is striking for two reasons: a) because this way of electing community authorities is not traditionally Mapuche but follows Argentine institutional rules of procedural democracy; and b) because, through these democratic practices, women in Argentina have achieved significant political participation in the public sphere since they won the right to vote in 1947. There is a stark difference between this and *Gulumapu*, where women have experienced great delays in achieving gender parity for election to positions in political parties or unions via the State structures and where everything seems to indicate that this will be the same for the Mapuche community bodies.

Argentine nationalism and Mapuche autonomist demands/practice in collision

The practice of Mapuche medicine continues on both sides of the mountain range. However, in *Pwelmapu* the figure of the *machi* (Mapuche ancestral healer) disappeared for forty years (Azpiroz Cleñan, 2013). Toward the end of the 1970s, the role disappeared with the death of the last *machi* in the central zone of Neuquén Province. In 2009, however, in Bariloche, a young Mapuche girl received her calling[26] as a *machi* and began her training at age 12 with the support of another *machi* living in Chile.

Since the young woman had no territorial space in which to carry out her work as a *machi*, the family began a process of communalization (Sabatella, 2011) with the aim of recovering territory. In order to complete the *machi* training process, a *rewe* (spiritual ceremony) has to take place. This cannot be done in a city, according to intra-Mapuche cultural protocols, but must take place in a territory with the natural strength to exercise the function of healing/curing and care.

The community was named *Lafken Wigkul Mapu* and, in 2017, recovered a small territorial space that was under national State administration, in an area known as Lake Mascardi National Park. It forms part of the historical Mapuche territory that was titled as State lands belonging to the nation. This land is in dispute with another Mapuche community known as *Wiritray*. In early November 2017, a judge (Villanueva) issued a court order to evict the community (Correa, 2011). This judge had already shown indications of a desire to challenge Mapuche communities in another nearby province, Chubut.

The members of *Lafken Wigkul Mapu* community did not comply with the eviction order, so there was an attempt to physically evict them. They resisted for two days. The federal police then took several women and children to the police station and held them in custody for more than 12 hours. On the third day, an advance party made up of the special state security command, known as Albatross, was sent in, and the cousin of the young Mapuche girl who was to be a *machi* was assassinated. Rafael Nahuel had gone to the recovered land on November 25 to take food and to support his Mapuche cousin, who was among those resisting eviction. His nickname was "Rafita". He was a Mapuche youth from a poor neighbourhood of Bariloche who was just embarking on his identitary process. His name was Rafael Nahuel, 22 years old.

Tensions between the government and the Mapuche communities escalated to the point that any Mapuche suspected of participating in the recovery of areas near Lake Mascardi, even those inside health posts and the hospital, would be prosecuted. As a result, a number of political actors gathered to intervene in the confrontation between the Mapuche and the security forces, who were refusing to hand over the body of the deceased Rafael Nahuel or to allow the paramedics up the hill to attend to those injured in the shootings during the attempted eviction.

During the repression of *Lafken Wigkul Mapu* community, a Mapuche roundtable was formed, organized by two Mapuche women, Patricia Pichunleo (*wariache)*[27] and Lorena Cañuqueo (*Lof Anecón Chico*), who invited leaders of the Coordinating Committee of the Mapuche Parliament of Río Negro to join this initiative. The Catholic Bishop of Bariloche was invited to mediate with the provincial government, and CoDeCi was invited to become a political conflict resolution body.

Human rights organizations, APDH (Permanent Assembly for Human Rights), representatives of the National University of Río Negro, the National

University of Comahue, the Union of State Workers of Río Negro-UNTER (which is a provincial-level union of provincial State workers), the National Institute of Indigenous Affairs (INAI), the Ombudsman of Bariloche, *17 de junio* (June 17 – an organization against police repression), and members of the deliberative council of the city of Bariloche joined the roundtable. Even though it was a direct stakeholders meeting, the National Parks Administration did not participate.

This roundtable was the most important political event to take place during the great repression of the Mapuche people of Río Negro Province by the Argentine State under Macri's administration, since it managed to bring together all the Mapuche communities around the city of Bariloche, human rights organizations, trade unions, and the entire opposition to the national government. This political tool was able to prevent an escalation of violence against those survivors who had remained on the hill, set up an emergency health service for the wounded, coordinate the search for missing persons between police stations and the international airport and obtain the body of the murdered man. The media tried to establish that there had been an armed confrontation because the Mapuche youths were carrying weapons, but this allegation was refuted by the ballistics expert in the judicial case.

The political dialogue was not exclusively linked to the right to health as there is an interdependence between this and demands for collective rights. "Autonomy" in health has become a political project that seeks to overcome inequalities and violence of different kinds. Finally, after a long process, in 2019, the *machiluwün*[28] of the young Mapuche woman took place in the recovered territory of the *Lafken Wigkul Mapu* community.

Throughout 2017, the State apparatus clearly defined the Mapuche as public enemy number one, something that became obvious in several events. During that year, Chile and Argentina's ministers of security – Mahmud Aleuy and Patricia Bullrich – met in Buenos Aires to exchange information on the Mapuche organizations. Only a few newspaper reports are available[29] with regard to these meetings,[30] but they show how a narrative of Mapuche militancy was constructed, along with an alleged transfer of weapons across both sides of the mountain range aimed at deepening Mapuche control across the border.

Bilateral policy during the Macri period defined the main objective of its Indigenous policy as being to implement special security measures for those Mapuche organizations that defined themselves as autonomist. These included

the most prominent in Argentina: *Resistencia Ancestral Mapuche* (Mapuche Ancestral Resistance / RAM), which was inspired by and follows the tenets of the *Coordinadora Arauco Malleco* (Arauco Malleco Coordinating Body / CAM) of Chile. This latter has been building a discourse around Mapuche autonomy since the 1990s, influencing/filtering over to *Pwelmapu*.

CAM skirts around the edges of armed violence with a rhetoric that promotes self-defence and *de facto* land recoveries. This is their publicly stated method. Their action focuses on the estates/properties occupied by logging companies and also on sabotaging the trucks and machinery used by that industry. According to statements made to the press by one of their spokespersons, Héctor Llaitúl, his organization has two features: one is the use of force and the other:

> ... an above all anti-capitalist focus. Both as a definition and also as a political practice. That is why CAM is a revolutionary organization. It confronts capital, and that confrontation generates conflict. And this has made us anti-oligarchic, anti-colonialist and anti-imperialist. Based on the reality and fate of our people, we have burst onto the scene as an autonomous, Mapuche and revolutionary movement. This has made us the object of the State's attention as well as that of detractors of the Mapuche cause, from within the historical oligarchy and national and international capital. We have thus become the enemy within the Chilean State. (Ñuke mapu, 2010)[31]

After several forceful actions by CAM in the 2000s, the Chilean police and intelligence services imposed themselves on the daily life of the communities, drastically changing their way of life. According to Almeida Filho (2000), way of life relates to daily social practices that are defined by geography, historical tradition, values, norms and means of production, as well as production relations for subsistence, all of which contributes to the social reproduction of life. Almeida Filho draws on Heller's (1977) definition to characterize this way of life as the quality of continuity: something that always happens, every day, in the everyday, i.e., it involves a dimension of time and repetition.

This change in way of life resulted in more than ten Mapuche being killed in territorial recovery processes during the period of Chilean democracy.[32] The Chilean Armed Forces also scaled up their patrols in areas where CAM

leaders lived. All this preventive, repressive action ended up turning into a real and renewed occupation of Araucanía.

In Argentina, leader Facundo Jones Huala, from the community of *Pu Lof en Resistencia del Departamento Cushamen* in Chubut Province (Sabatella, 2017) has ended up being the counterpart to the CAM's Llaitúl, his being the Mapuche rhetoric with the greatest media echo heard/developed during 2017. Huala was born in the suburbs of Bariloche and made contact with CAM leaders during their process of identitary strengthening. The origins of Huala's[33] autonomist discourse can be traced back to *Gulumapu*. He is currently a political prisoner in Chile (extradited to Chile from Argentina).

Huala has publicly maintained his dissent with the historical leaders of Confe and the Mapuche Coordinating Committee of Río Negro. He does not come from a traditional Mapuche *lof che* (territory) in *Pwelmapu* and does not speak *Mapuzugun* (Mapuche language) as his mother tongue, learning it only as a second language; he furthermore did not spend his childhood in a rural environment. The Mapuche Ancestral Resistance (RAM) never claimed responsibility for any violence but only carried out street publicity actions, so its actual strength was never demonstrated. Huala, at times, referred to RAM but did not involve his community in it, so its true composition was never known.

For the rural Mapuche of Río Negro, the narrative of Huala and *Pu Lof Cushamen*[34] is somewhat dissonant, both in its pace and in its way of expressing Mapuche *sentipensar* (feeling/thinking: a concept that comes from the tradition of R. Kush, and which proposes thinking located in territory). The Clarín media monopoly, however, decided that Huala would be considered the spokesperson of the Mapuche. Through their influencers, the right-wing in Argentina have ridiculed Mapuche aesthetics, statements and positions. The media managed to interview Huala inside Esquel prison at the height of the judicial case for the disappearance of Santiago Maldonado. In the Mapuche *sentipensar* (Kush, 1967), Huala's narrative was embedded neither in Chubut nor in Río Negro. It was embedded in Buenos Aires city and Greater Buenos Aires, among the anarcho-punk and pro-Trotskyist groups.

In one of his public statements to the Telesur channel, Huala mentioned that the conflict with the State was the result of the State's ignorance of "the ancestral ownership of the lands and the international principle of the peoples' self-determination."[35] By this way of thinking, self-determination would be born not so much out of the Mapuche people's traditional form

of decision-making itself but out of public international law. In the same interview, he went on to state that Mapuche resistance in Argentina was born "out of poverty, discrimination and State violence, from which a generation of young militants has emerged and is beginning to organize the Mapuche struggle, a resistance in response to the historical violence of the Argentine State." The terms by which he understands the Mapuche struggle therefore rule out dialogue with the State.

Huala raised the concept of the *weichafe* (warrior) in his narrative, as the figure that creates the conditions for autonomy in the territories undergoing re-territorialization. In the territory recovered by his community from Benetton,[36] however, there were no material conditions for the reproduction of their way of life given that they constantly had to resort to the solidarity of other communities and other Argentine national collectives to sustain their recovery while he was imprisoned in Argentina.

To provide a gendered perspective to the Mapuche organizations in this case, it can be seen that, in times of repression and very cruel moments, it has been the Mapuche women and their children who have occupied the public theatre of violence against the Mapuche. They were not the *weichafe*. Women would become trapped with their very young children, and their houses set on fire in their presence, along with their toys, etc. The *weichafe* would flee in times of repression to avoid being imprisoned, shot or tortured. That was a constant throughout 2017.

In the Mapuche narrative, the concept of *weichafe* refers to the masculine, there was no room for the feminine here, and this is why an intra-Mapuche gender imbalance became embedded, and also a masculinization of the practices of female territorial protection. After this process, Mapuche women leaders would proclaim themselves *weichafe* in public appearances in the mass media, in response to a preconceived image that was having an impact on the audience. Although principles of complementarity and reciprocity appear in the Mapuche narrative of women, patriarchy has been inherent in the Mapuche way of life and, during 2017, the exaltation of masculine values for self-defence was more in evidence than the complementarity of a way of protecting the recovered territory.

In terms of discourse, the autonomist narrative was indecipherable for the media, who did not understand its scope, fearing that it would end up as a demand for separation from the Argentine State. Those sectors of Argentine society that were linked to the social movements, to Peronism and human

rights organizations, were predisposed to or supportive of the Mapuche's demands for territorial recovery, especially the recovery of land from a landowner of Italian origin, Benetton. There was shakier support when it came to their demand for autonomy, however, since the leadership of *Pu Lof Cushamen* did not clearly set out the link between citizenship, autonomy and the specific rights of a Mapuche people-nation as a political subject. There seemed to be an inability to distinguish the concept of Mapuche nation from that of the Argentine nation. This was not clear in several interviews with the leaders of *Pu Lof Cushamen*, *Lafken Wigkul Mapu*, the Mapuche Confederation of Neuquén and the Coordinating Committee of the Mapuche Parliament of Río Negro. They were unable to describe the components of a concept of nation that was distinct from Argentinity. They either did not make explicit or were unable to describe the distinct ethnic conditions that marked their non-membership of the "Argentine nation".

There were three successes in the construction of the Mapuche narrative from within their own organizations in relation to territorial rights: a) opposition to political sovereignty (Argentine) versus the transfer of lands into foreign hands (Benetton); b) linking the interests of Macri and his cabinet (Bullrich) to the interests of the financiers of "Roca's Campaign" (the "Conquest of the Desert") as a thread of historical continuity; and c) opposing the sacredness of private property, the notion of territory as sacred.

This last point deserves special attention given that the naturalization of private property as a structural factor in the functioning of a modern and liberal State was publicly discussed in sessions of the Congress of the Argentine Nation in that same year of 2017. During the parliamentary debate on extending National Law No. 26160,[37] the conflict over private property escalated. Law 26160 was the mechanism prior to approval of an Indigenous Community Property Law in Argentina, enabled on the basis of a Reform of Article 18 of the Civil and Commercial Code in 2012.

Senator Pichetto, national senator for Río Negro Province, stated the following during the debate in the Senate of the Nation:

> For me there is no sacred land in Argentina. There cannot be any Argentine space that is not under the jurisdiction of the authorities. This is not tolerable from the point of view of constitutional logic: "I am sure that the vast majority of the Mapuche

> community in no way shares the violent perspective of the RAM (Mapuche Ancestral Resistance)."

This senator was later to become vice-presidential candidate in 2019 on the Macri-Pichetto ticket that lost to the *Frente de Todos* (Front for All) Fernández-Fernández ticket with 48% of the vote. With this new presidency, the issue of Mapuche demands and actions for autonomy has momentarily evaporated. The COVID-19 pandemic has obscured the public agenda on private property.

Alberto Fernández' national government has swung back and forth with respect to the property regime in force in Argentina. I will cite five cases over the ten months of the current administration: 1) attempted expropriation of the Vicentín company (agri-food export) to convert it into a mixed public-private/cooperative company; 2) statements on the amendment of private property laws for access to land for habitat and housing, contemplating the social function of property; 3) financial support to workers' self-managed cooperative enterprises; 4) silence regarding the evictions of Indigenous communities in northern Argentina; and 5) silence on the appropriation of bodies of water and Lago Escondido by a North American businessman. Strong media pressure from the Clarín group and the concentrated power of the Argentine economy linked to the financial powers-that-be is preventing progress in a broad social and political debate that could reshape the economy and politics during the pandemic. So far, several draft bills have been tabled before the National Congress that would offer a political solution and legal security to guarantee Indigenous community ownership of the Indigenous territories currently occupied.

Conclusions

The discourse on autonomy and Mapuche self-government is not gaining a foothold in the realms of possibility within *Pwelmapu* because the conditions for exercising autonomy are not in place. This is due to:

> The lack of a defined territorial space in which to exercise total political-economic control and in which the Mapuche people could be self-sufficient in terms of food. There is no demarcated territory in *Pwelmapu* in which to exercise a territorialist path to

autonomy. The area of *Pwelmapu* is three times larger than that of *Gulumapu*, and has a smaller Mapuche population, which makes interpersonal encounters difficult. Because of this, it has not been possible to agree to a communitarian path to autonomy among the Mapuche organizations, as suggested by Nagüil (2010). Perhaps they need to start from the grassroots or in a more modest way, recovering *Mapuzungun* (Mapuche language) as an initial condition for building the symbolic territoriality of a Mapuche political community.

Members of the Mapuche people are highly dependent on salaries and clientelist relationships in some provinces (Neuquén 43%, Río Negro 37%, in terms of State jobs)[38] and this limits or affects the Mapuche's different areas of political participation in terms of being an autonomist movement.

There is no clarity as regards the autonomist project or how the movement for autonomy will be financed, nor are there significant political discussions between present and former *logko* (leaders) as to what path this should take. And, from a gendered perspective, there is a high level of competition among the "*machos*" (males) who act as leaders, overshadowing the political fabric of Mapuche women. This is another determining factor that makes it impossible to reach agreements by which to build a path to autonomy through *pwelche* (people of *Pwelmapu*). These are micro-experiences that are socially uncoordinated on a macro level in *Pwelmapu*.

The path to the Mapuche nation's political autonomy in *Pwelmapu* could, however, offer a source of alliances between organizations, a space for negotiating local leaderships that are not yet coordinated at the level of *fütal mapu* (great Mapuche confederation). It could also be a source of temporary alliances with Argentine solidarity movements. Everything seems to indicate that the electoral route, as in Chile, is a way of re-shaping the colonial State into a plurinational one, as a path to political autonomy in *Pwelmapu*.

Autonomist ideas are found in *Pwelmapu* as the result of a collective political identity that generates an "I-us" without the State's permission, in

the face of the "otherness" united around the Argentine identity. However, there is no proposal for building power, either economically or by electoral means, and far less by armed means, which has already failed in *Gulumapu*. There have been some achievements in terms of placing the issue of autonomy on the public agenda in a largely whitewashed society that justifies a monocultural and monolingual State despite the fact that more than fourteen Indigenous languages are spoken in the country.

Autonomy with specific *pwelche* features needs to be achieved through alliances between micro-experiences aimed at strategically recovering the meaning of politics. Politics is composed of agreements, alliances and strategies in pursuit of an idea. Ours is the reconstruction of *Pwelmapu* as a territorial space for life and for *küme felen* (good living) with all the internal diversities and heterogeneities that lie within it. We are a demographic minority in *Pwelmapu* and so politics realistically means recognizing this and creating alliances with other sectors of the Argentine population that are suffering similar problems. The *reche* (pure people) alone are not enough, nor are the *weichafe* (warriors). We will need all the colours and shapes of the Mapuche women, all of whom continue to exist in *Pwelmapu*.

NOTES

1 Historic Mapuche territory east of the Andes Mountains, in what is now Argentina.

2 Procedural democracy is a type of formal, non-substantive democracy that recognizes the system of accessing government but not the exercise of democratic political practice at the electoral interface. Bobbio (1985) calls the normative principles pertaining to the process for accessing a form of government the "procedural universals" of democracy.

3 *Pwelche* is the cultural identity of Mapuche people born in the *Pwelmapu*: on the eastern side of the historical Mapuche territory.

4 I use the ironic concept "Colonial spokespersons" to refer to those politicians who justify the Hispanicization, evangelization and construction of Argentina as a melting pot to hide the genocide on which the foundations of the Argentine State were laid.

5 Mapuche activist, of *guluche* (western *Mapuche*) origin, who triggered Mapuche re-ethnification processes in *Pwelmapu*.

6 Argentina has 23 provinces plus the Autonomous City of Buenos Aires.

7 The paper used to print newspapers in the provinces of Río Negro and Neuquén, for example, comes from a single supplier, the economic group Clarín. Clarín defines the editorial and political line of the newspapers to which it sells newsprint. If they do not follow Clarín's political guidelines, the provincial newspapers are not provided with the basic supplies needed for their print circulation. It is an inherent practice of applying

pressure. The following gives details of the court case for the company's buy-out during the military dictatorship and the investigation that took place during the pro-Kirchner governments: http://www.nuestrasvoces.com.ar/investigaciones/asi-robaron-papel-prensa/; https://miramardiario.com/index.php/2021/09/16/asi-robaron-papel-prensa-2/; https://www.youtube.com/watch?v=B2hXH_b5mN4; https://www.lapoliticaonline.com/nota/nota-69652/; https://www.pagina12.com.ar/85253-la-corte-cerro-la-causa-por-papel-prensa

8 Available at https://www.tiempoar.com.ar/monitor-de-medios/el-poder-detras-de-los-medios

9 This discourse already existed in a substratum of Argentine Society, but the president inflamed it. Mauricio Macri belongs to a part of the Argentine oligarchy, a beneficiary of the territorial dispossession of the Mapuche. Some of his government team had relatives who participated in the "Conquest of the Desert", either as military personnel or financial backers. The Bullrich family, for example, had two ministers in Macri's cabinet (Patricia Bullrich, Minister of Security, and Esteban Bullrich, Minister of Education) and was directly involved in expropriating large tracts of Mapuche land. Esteban Bullrich vindicated the "Conquest of the Desert" during the 2016 election campaign in the city of Choele Choel, Río Negro Province, a place marked by a great slaughter of the Mapuche (https://bit.ly/2UglxqE).

10 Clarín, the monopoly that runs the Argentine media, comprises more than 250 companies linked to the economic group. They control the print press.

11 Available at https://www.rionegro.com.ar/cuales-son-los-argumentos-politicos-de-la-pretendida-nacion-mapuche-JRRN_5598965/

12 Ideologically, communism and liberalism are polar opposites.

13 Available at https://bit.ly/2IesuGD

14 The expression "arriving off the boats" refers to the European immigrants who arrived on ships sailing to the Río de la Plata in Argentina's first massive wave of migration. The Mapuche world uses this phrase as an identity marker to differentiate themselves from the *wigka*. The Patagonian provinces use the category "first inhabitants" to recognize the Indigenous presence on their territory.

15 Available at https://bit.ly/2UfjNOI

16 Further on, I will show how the city of Bariloche is a physical space marked by monuments to military figures such as Roca and others, just as — during the last military dictatorship — it became a refuge for German Nazis being hunted by the international justice system (Erick Priebke, for example). Roca was the Argentine army general who led the military campaign against the Mapuche people known as the "Conquest of the Desert".

17 The Catholic bishop, De Nevares, linked the "*logko*" of the oldest rural communities to make joint land titling claims through the incipient provincial government.

18 The organized labour movement in Argentina has a long tradition of political struggle, especially during Perón's first presidency. Since then, the unions have been a very significant political player in the political life of Argentina's democracy, as have the

human rights organizations since the last military dictatorship. Many State workers were and are of Mapuche origin and have received union and political training through teachers' and educators' unions, State unions and, more recently, oil and mining unions.

19 Available at https://bit.ly/3lIPifS

20 It is interesting to look at the paths of Nahuel and Huala, as they show differences by age, by *tuwün* – their territory of origin, by the organization from which they emerged, and by the path of their process of formation or re-Mapuchization.

21 Available at https://bit.ly/35ENjE4

22 Available at https://bit.ly/38XfTTb

23 Available at https://bit.ly/3f9UnLV

24 Available at http://www.laizquierdadiario.com/Bariloche-comunidad-mapuche-Buenuleo-denuncia-ingreso-de-patotas-a-sus-territorios

25 Available at https://bit.ly/3lF1Mp5

26 Receiving one's calling as a *machi* does not mean attending university to practise medicine, where anyone could study the career; it is instead something with which one is born such that, by lineage (*kepalme*) or territory (*tuwün*), the person's healing spirit can be developed, if their family and community so decide, in order to respond to a cultural responsibility that manifests itself in the body/spiritual belief.

27 A person living in the city, dispossessed of his or her territory.

28 Ritual ceremony consecrating a person as a *machi*, a traditional Mapuche doctor.

29 Available at https://bit.ly/36N7HCb

30 There is no information on how the agenda was handled between the two countries. In Argentina, there is a guarantee under the right to information that public officials must provide information on the subjects and people they receive in their hearings.

31 Source: Mapuche Documentation Centre, Ñuke Mapu. https://bit.ly/32VYZR0

32 A concept developed by O'Donnell, in *Teoría de la transición de las dictaduras militares latinoamericanas hacia la democracia*, where the case of Chile is established as a hard democracy in order to designate the union of a democratic regime that uses elections for the renewal of political authorities but whose government mechanics have authoritarian indications, for example, the senators for life that Pinochet installed over the course of a whole decade in the Chilean parliament.

33 The relationship built between Huala and CAM's most media-friendly leader, Héctor Llaitul, had its ups and downs. However, after being extradited to Chile, he did visit him in prison.

34 A new community that recovered a small territory from the landowner Benetton, near the northern area of Chubut, known as Cushamen.

35 Available at https://bit.ly/3kEtQaO

36 Italian businessman who owns a million hectares bought from Compañías del Sud, the

company that took over Mapuche territory after Roca's military campaign. One of the shareholders of Compañías del Sud was the Bullrich family.

37 Law 28160 suspended the evictions of Indigenous communities and the Territorial Survey Program of historical occupied lands, current and sufficient.

38 The author has taken data on the Economically Active Population (EAP) of the two provinces in question from 2010 census microdata.

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7

A Future Crossroads in Rebellious and Pandemic Times: National Pluralism and Indigenous Self-government in Chile

José A. Marimán

Introduction

This chapter does not analyze a specific experience of Indigenous self-government.[1] In Chile there have been no instances of Indigenous self-government, hence my intention here is more limited. I describe the country's progress in terms of Indigenous peoples' self-determination and self-government in a place where demands for political autonomy[2] are, for now, limited to discourse and to utopian claims. Some Mapuche[3] have been fighting for self-government since the return to democracy (1990),[4] without any significant changes on the horizon in terms of meeting this demand. The elites in control of the successive post-dictatorship governments and of the State in general (members of the dominant nation-state in Chile: Chileans) have refused to open up the State to ethnonational pluralism in terms of Indigenous self-government.

The social explosion unleashed in Chile in October 2019, and expressed by way of citizen mobilizations that continue to the time of writing (only slowed down by the COVID-19 pandemic since March 2020), challenges the

power of the elites in control of the executive and the State, and seeks to improve the material living conditions of all the country's residents. Wielding the slogan "dignity," this uprising has called into question the elites' narratives on issues as diverse as gender, environment, health, justice, immigration, corruption, educational content and age discrimination.[5] Along with all of this, it has called into question the nationalist-assimilationist discourse of these elites, expressing an openness to and acceptance of ethnonational pluralism, rendering the discussion of the issue inescapable in neighborhood assemblies, the press, the national congress and even the government. Has the time come for the Chilean State to attend to demands for autonomy and for Mapuche self-government?

Given the country's current political juncture, this chapter examines the possibilities for progress toward Indigenous self-government (political autonomy), attending to the discursive political-ideological determinants that might facilitate or impede such progress. Accordingly, it aims to respond to the question posed at the end of the previous paragraph. To do so, I focus on the political practices and speeches of this explosive juncture — which express the antagonistic relationship between Chilean elites in control of the executive and both the Chilean "people" (those who are not among the elite and who are in movement) and the Mapuche demanding autonomy — in terms of a future political coexistence.

The thesis guiding the narrative here is based on the following assumption: while ongoing mobilizations have helped highlight the issue of the inclusion of Indigenous peoples' political demands, the way out of the crisis in terms of Indigenous self-government nonetheless follows the course[6] charted by how Chilean nationalist elites comprehend — ideologically and politically — "their" State and the type of issues that Indigenous peoples represent within said State. This is related to the power the elites have to impose their ideas, even when they have become unpopular and appear to be weakened. The understanding of political processes by both political elites and Mapuche autonomists oscillates between, on the one hand, Mapuche participation and integration in the political process of the nation-state, and on the other, isolationism. The latter entails the self-exclusion of the Mapuche from the constitutional political process underway in the country.

I address the issue in a descriptive, explanatory and conjectural fashion with respect to the future. The chapter has three sections in addition to a general discussion and a conclusion. The first section is largely descriptive;

I outline the series of events that led to the recent protests in Chile which opened a door to possible changes in State-society relations that may affect Indigenous peoples in a positive way. The second section summarizes the explanations that members of both the nation-state and Indigenous peoples provide as to their understanding of the political moment or juncture. The third section highlights the political context of the nation-state following the jolt provided by the latest protest movement and the complex reordering of the political context as a result. The fourth section discusses expectations with respect to this episode of discontent: is Chile moving toward the construction of a plurinational state with Indigenous self-government? I compare the discussion of reserved seats in the constitutional assembly that is to begin in 2021 with other moments in the history of relations between Indigenous peoples and the Chilean elite, seeking continuities and qualitative leaps in the positions of these antagonists. Finally, in the conclusion, I speculate about an openness to a re-founding of the State with respect to the Mapuche demand for autonomy and self-government.

What happened in October 2019 in Chile? The context

October 2019 was to be a month like any other in Chile (which the president called an "oasis" in a television interview).[7] However, something happened that was not even in the president's worst nightmares nor those of his administration or the coalition of parties that supported him.[8] It was not even in the minds of those who transformed their role in the opposition[9] into a bureaucratic matter, disconnected from their constituents: the voters. They were enjoying the high politics of parliament, while nothing came out of there that would alleviate the suffering of the citizens.[10] The same can be said of the social movement branches of the opposition parties, such as the national trade union movement (CUT, Central Única de Trabajadores),[11] which should have detected warning signs of the ground-breaking social movement that was to come. (Often co-opted by nation-state parties, the trade unions have followed behind social movements during the post-dictatorship period, only rarely leading them.) Starting on 18 October 2019 (18-O), a social explosion[12] of a scale previously unknown shook the country from end to end.

The politicians' nightmare developed as follows. On 4 October, a group of transportation experts focusing on economic criteria (concerned about the

international rise in the price of oil) suggested that the government increase the cost of public transit, especially the subway, by 30 pesos (approximately USD $0.04 at that time). This amount represented nothing at all for elites, who do not use public transit and do not even know the price of a subway ticket (Pérez, 2017). However, this increase would have disastrous effects for the country's most impoverished sectors, whose expenses are greater than their income. That is, they live in debt (Durán and Kremerman, 2019; Mayol, 2019).

The increase would go into effect that weekend (6 October), and the Minister of the Economy suggested (7 October) that those who did not like it should get up earlier to take advantage of the cheaper fares (a statement for which he would have to apologize publicly on 24 October).[13] Meanwhile, that same day, a group of high school students, understanding the consequences of the measure, organized a fare evasion, which would be replicated by others in the days that followed. Interestingly, these first evasions did not entail large financial costs for the state, because many students jumped the turnstiles without actually using public transit, limiting themselves to the performance or the invitation to others to follow. Furthermore, the increase did not apply to students (though it did affect their parents, relatives and friends). They were only trying to show society a way to rebel and carry out civil disobedience in response to a charge seen as abusive.[14]

By 14 October, with adults joining, the action of "evading" had become widespread, developing into a true "evasion" movement. The government then made the worst move among the political options it had at hand. It sent the police to guard the subway stations, closing some of them — leaving riders who were not participating in the protest without service — and the police started to repress the evaders inside the subway buildings. The teargas and widespread and indiscriminate beatings ended up bothering everyone and many more joined the movement of discontent.

During this time, objectionable phrases became a national sport and served to fan the flames (Mayol, Big-Bang, 2019). On 17 October, a member of the Expert Panel, Juan Coeymans, justifying his recommendation to the government, mentioned that when some food products go up in price, nobody protests. The movement's response was to step up the evasion, and, this time, turnstiles and other infrastructure in the stations were destroyed. The Minister of Transportation then came onto the scene to declare with authority that the measure had already been taken and would be enforced (Equipo

actualidad y multimedia, 2019). She insinuated that the government would consider applying the Anti-Terrorist Law if necessary (CNN Chile, 2019).

The Minister's words, far from calming things down by calling for dialogue, did not intimidate anyone and did nothing to stop the movement. On the 18 October, faced with uncontainable evasions and protests, the subway shut down a few of its lines right after noon. By later that afternoon, when people were returning home from their workplaces, the entire system had been suspended. The population of Santiago was walking in chaos for hours. At the same time, the government officially announced the application of the National Security Law — the Anti-Terrorist Law — against the evaders deemed violent. The country then saw its largest-ever social uprising.

Spontaneously, expressing a discontent held in for a long time, people took to the streets by the thousands all over the country, banging pots and pans as a way to express their disgust with the government and with all politicians. The popular outrage was not only to reject the 30-peso subway fare hike; the range of complaints and demands on people's signs reflected a rejection of 30 years of abuses (which, for Indigenous peoples in Chile, was more like 500 years of abuses). The entire history of the return to democracy after the dictatorship and its economic (that is, macroeconomic) achievements were called into question. The successful Chilean model—an idea widely disseminated abroad (Davis, 2020)—had entailed subjecting Chile's citizens to a precarious life, with extreme debt and an uncertain future, experienced and suffered by each person in isolation, like a silent burden. With the protest, the model cracked and was on the verge of falling apart.[15]

Among the demands that emerged from the uprising, the following stand out: 1) an end to the system of Pension Fund Administrators (AFPs, Administradoras de Fondos de Pensiones); 2) efficient and preventive health care coverage and protection, with better hospitals, better treatment and addressing the lack of specialists and supplies; 3) free, high-quality education and social mobility to put an end to classist, racist, sexist segregation, and declare null and void the debts held by middle- and lower-class students; 4) stop the privatization of water, declare it a national asset, and lower the costs of water and electricity; 5) efficient public transportation with fares commensurate with users' wages; 6) an end to the corruption and abuses of power and punishment for collusion and for embezzling the treasury; 7) help for the environment, put an end to zones of sacrifice,[16] to droughts brought about on

purpose by plantations, and to the rerouting of rivers, and act against desertification and the destruction of glaciers.

More subjectively, a demand arose to put an end to the country's current constitution (the 1980 Constitution) and change to a new one produced through deliberation by the citizenry (local assemblies: *cabildos*). Chile is governed by a constitution that was developed during the military dictatorship, without any participation from any opposition, validated in a plebiscite without any electoral records and written to benefit the sectors in power at the time with the aim of perpetuating their political, social, economic, ideological and Euro/ethnocentric principles.[17] In fact, the country's three most important constitutions (1833, 1925, 1980) have all been imposed upon the citizenry with political and military violence sponsored and promoted by elites with a generally conservative ideology.

In the popular assemblies, strong debates about Indigenous peoples began to develop regarding the demand to construct a new type of State — a plurinational State or State that recognizes that the country is constituted by multiple nations and not just one (the nation constructed by the State following the emancipation of the colony of Chile from Spain). To maintain the unity of the country, these subjugated nations should recover their political rights, such as the peoples' right to self-determination, even if it is in a "domestic" sense and not a matter of secession. In fact, the idea of plurinationality is not only put forward by the Indigenous peoples, nor is it original to the current juncture (though its first use can be traced back to Indigenous peoples). Indeed, the notion is promoted both by Chileans and by members of Indigenous nations. Without going too far back in the previous government—Michelle Bachelet's second administration—the constitutional discussion at the time shows that plurinationality was already part of the political will of those participating (Chileans and Indigenous peoples), as shown in the summaries of the proceedings (Archivo, 2017; Proceso Participativo Constituyente Indígena, 2017).[18]

The political ideas within the Indigenous world, and particularly the Mapuche world, currently reflect discursive complexity and disparate political intentions. There have been Mapuche organizations — and organizations with Mapuche members, such as political parties, that aim to represent all the country's inhabitants — since the beginning of the uprising that endorsed the ethnonational pluralism with political empowerment that the grassroots movement on the streets and Indigenous peoples were calling for. (In fact,

they had already promoted this in the Bachelet constitutional process, mentioned above.)

Others removed themselves from the political process, positioning themselves instead as spectators of a fight among Chileans and pointing out that for Indigenous peoples, there is a different path, built by international law, that leads to the self-determination of peoples, without specifying what this might mean[19] but leaving a whiff of secessionism in the air. And there were yet others, politically oblivious, who continued and continue to advance their own agenda to take back what Chileans have usurped, asking nobody's permission and with no connection to the political process occurring inside the Chilean state.[20] This has helped transform the Araucanía region into a context of violent ethnonational relations, which is starting to take both Mapuche and Chilean lives (*El Mostrador*, PS condena, 2000; Díaz, 2020).

Unfortunately for the prospects of advancing a single national project of self-determination for all Mapuche, the different opinions described above do not engage in dialogue with one another. At times, there has even been hostility between them (Díaz, 2020).

The political: Explaining the context and its effects for Indigenous peoples.

Why did this happen in Chile? And what effects might it have for Mapuche claims of autonomy and self-government? This question is on the minds of all those trying to understand the current political moment in the country and to envision ways out of the crisis. In the professional, intellectual, academic and political world and in the world of social leaders, both of the nation- State and of Indigenous nations, explanations have been put forth both to address the need for clarification and knowledge and for more pragmatic reasons related to properly channelling the needs, interests and expectations of the social majority in these turbulent times. A brief sampling of these reflections and explanations offers the following clues.[21]

In Chilean think tanks, some believe these events reveal "a crisis of emotions without a narrative," where irrationality prevails. That is, all the actors and antagonists are acting based on their emotions: fear, distress, worry, uncertainty, hope. In this view, it is a social-emotional crisis that is shaking the country, in contrast to how politicians in the government see the issue, which is as a crisis of public order (Roberto Izikon of Asuntos Públicos/Estudios

Cuantitativos CADEM) (Cámara, 2020). Along these lines, others believe that there has been a "decoupling of subjectivities" due to insensitive statements by political technocrats with no connections to the population they govern. In other words, it is not about disputes between political and ideological projects in the political sphere, but about human groups with different amounts of power who share no connections in terms of language, intentions or emotions. For example, the word "growth", so valued by elites, means nothing to ordinary people, who do not see the economic model as having any positive effects on their lives. Rather, they feel that when there is growth, the rich win, but when the economy stagnates or declines, it is the middle classes and the poor who lose (Matías Chaparro, Criteria Research) (Cámara, 2020).

An economic emphasis attributes the "political crisis" to Chile having stopped growing over the last decade, thus speeches promising a better future enthuse nobody. Although recent decades have seen a reduction of poverty, an expansion and improvement of education and services, declining inequality (still large) and an expansion of the middle class, people feel like they live in a society where they are not valued (a meritocracy) and where social mobility is non-existent. To top it off, powerful groups abuse the rest with impunity, which has led the population to lose trust in its institutions: government, parliament, justice, church, political parties, police and military (Silvia Eyzaguirre, Centro de Estudios Públicos) (Cámara, 2020). Furthermore, this Chile that made so much progress combating poverty during previous governments was not able to engage the subjectivity of its citizens, who did not see true well-being in their lives. They did see, however, corruption and abuses of all kinds coming from people in positions of power (Gloria de la Fuente, Fundación Chile XXI) (Cámara, 2020).

Intellectuals and academics, meanwhile, think that the anger shown by Chileans has crossed "a threshold of mistrust" beyond which democracies are not viable. The country's citizens have stopped believing in politicians when it comes to solving their problems. We face a civilizational crisis in which those who hold most strongly to right-wing values believe that the left is incapable of governing competently, and those on the left see the right as unable to govern fairly (Marco Morenos, Observatorio Política y Redes Sociales, Universidad Central UCEN) (Cámara, 2020). These citizens feel "suffocated" in a system that manages them without their having any control over it and that sentences them to anonymity — a system in which they will not enjoy better lives than those of their parents. The inequality experienced by people

and that exhausts them is not about assets but about life prospects. The country, in this view, has lost its narrative — it has lost an explanation able to instill a sense of patience in the population. In this context, the example of the yellow vests in France helped inspire a collective sense of discontent (Eugenio Tironi, Consultant) (Cámara, 2020). Furthermore, this disconnect between narrative and prospects goes back to moments long past. The Coalition of Parties for Democracy — the political conglomerate that followed the dictatorship — lost more than a million votes in the 1997 parliamentary elections, while null votes rose. At that point, the divorce between citizens and politics had already taken place, leading to the discontent that would grow until 18-O (Alfredo Joañan, Universidad Diego Portales) (Cámara, 2020).

Others declare that uprisings are events that cannot be foreseen and that they express a crisis of the social and political rules in society. The uprising in Chile reflects a crisis of discourses. It is a hermeneutical crisis — a crisis of explanation. There is no narrative. Unlike the events of 1973 that ultimately gave way to the dictatorship, there are no well-articulated groups facing off territorially. It is the people against those in power (those not of the people). The political discontent is with institutions, and it is expressed without any leaders expecting that these same institutions will resolve the conflict. Violence is part of how the people express themselves in situations like this (Hugo Herrera, Universidad Diego Portales) (Cámara, 2020). In accordance with this vision, the uprising is seen as violence without semantics, a phenomenon of dimensions that are impossible to measure, with a meaning we do not understand. Discontent underlies things, but it is a discontent with politics (Alberto Mayol, Universidad de Santiago) (Cámara, 2020).[22]

Within a more traditional approach, some think that the uprising, which they prefer to call a rebellion, has to do with the more than forty years of the Chilean model of neoliberal exploitation, wherein the wealthy sectors of society have accumulated wealth by sacrificing the environment, without any mediating force or mechanism that might prevent such devastation. This caused the citizen masses to be indifferent to the model, to politicians and to the democracy tailored for the model, which the dictatorship established in Chile — masses that today are in the streets, expressing their discontent, without any leadership (Juan Carlos Gómez Leyton on *Telesur*, 2019).

Finally, there are those that maintain that the social uprising cannot be explained through solely socioeconomic analyses, even though there are profound structural inequalities. People can understand economic differences

and even accept them, but what they cannot understand or accept is the unequal treatment that results from these differences. There is a symbolic ingredient at work in the uprising that is related to how people feel abused in matters of gender, poverty and ethnicity. For example, someone might accept that another earns a salary twenty times higher than their own, but to be admitted, treated badly and humiliated in a hospital merely for being poor is intolerable and generates rage and hate. Add to this the distrust of a political world with permanent displays of corruption, with a justice system that promotes impunity for those with money and hellish sentences for those without, and the situation becomes explosive. At some point, the discontent previously endured becomes expressed as rebellion. People experiencing inequality and poor treatment came to have a goal: to put an end to it (Marcela Ríos, Programa de Naciones Unidas para el Desarrollo PNUD) (Cámara, 2020).

With respect to Indigenous peoples and nations, only a few have discussed the causes that account for the social uprising. Among the exceptions is the voice of the Mapuche History Community (CHM, Comunidad de Historia Mapuche). They think that the country is seeing a crisis of moral illegitimacy, in which the privileged groups of society have abused the rest of society, both Chileans and the Indigenous, without facing any consequences themselves. This is how influence peddling, collusion, cruelty and human rights violations have come to be the norm in relations between powerful groups and those without power. This became intolerable, hence the uprising (CHM, November 2019). The Rümtun Research Centre (CER, Centro de Estudios Rümtun) released a manifesto addressed to the Chilean national society and to Mapuche society in particular, declaring that the uprising is a consequence of institutionalized abuses long inflicted upon the country's plurinational population, with a great deal of emphasis on human rights violations, especially in the case of the Mapuche (Centro, 2019).

As a corollary to these explanations, things in Chile were not going as well as it had seemed (the triumphalism[23] of electoral democracy and the post-dictatorship economic model led elites to see themselves as the jaguar of Latin America, along the lines of the Asian tigers). The need for change became clear, echoing the cries in the streets coming from social movements. However, just as there are differences or nuances when it comes to explaining why the country is where it is, it would be a mistake to assume that everyone shares all of the movement's demands, especially as the assessments summarized above reflect perspectives from the entire political spectrum,

including supporters of the government and the political alliance that sustains it. Nonetheless, it is interesting to note that, in general, these reflections move in the direction of favoring changes to the nation-state and society. These changes include the notion that the relationship between the State and Indigenous peoples must improve, taking paths other than those pursued to date. We shall see in the sections that follow where these diagnoses lead us or how far they take us in terms of opportunities for the country's Indigenous peoples in the current juncture.

Politics: The social uprising shakes up the domestic politics of the Chilean nation-state, including Indigenous peoples

Until 17 October 2019, political life in Chile followed a routine that did not significantly change the position of power held by elites who, since the transition from the dictatorship to the current electoral democracy,[24] had fashioned a more or less secure area in which to operate their lives and businesses (Matamala, 2018).[25] The great promise of the transition was expressed in the campaign slogan that made the way for post-dictatorship democratic governments — "Chile, happiness is on its way." It managed to mollify many who believed their lives would improve (which they did, compared to the times of the dictatorship). By the late 1990s, this promise began to lose its appeal as a seductive narrative — it lost its capacity to instill patience, as identified by Tironi in the previous section. Citizens began to see the country's achievements as insufficient, especially for the newer generations with new expectations, and as new abuses became increasingly evident.[26] A defiance of authority began to emerge.

The 2000s saw people in the streets, protesting for a variety of reasons. In 2006, the movement of the so-called penguins[27] had a significant impact, with high school students protesting the State and the neglect of public education compared to private education. Their protests called attention to the fate of young people from the most vulnerable sectors in the country with respect to their ability to change their lives through the promise of education as a vehicle for upward mobility (IRG, 2007). In 2011, the students were once again in the streets, fighting against for-profit education and for free education at every level. At the same time, the environmental movement tried to prevent projects that would interfere with rivers, glaciers and the ocean and to avert plans

to construct coal-based or river-based power plants. The years that followed would see the rise of a movement against the pension system (AFPs). Marches that started with hundreds of people became larger and more frequent, ultimately summoning a million protesters in 2016 (AFP/Caracol televisión, 2016).

Indigenous peoples, too, carried out political mobilizations for their demands (in addition to participating in all the other protests). To an extent, they preceded the Chilean social movement with their own demands (at least the Mapuche did); by the early 1990s, in the first years of the first post-dictatorship government, the Council of All Lands (CTT, Consejo de Todas las Tierras) had already been formed to recover lands usurped by Chilean settlers dating back to the late 19th century. This initiative was followed by others in the late 1990s (for example, the Coordinadora Arauco-Malleco (CAM)). The Mapuche demand for autonomy and self-government, the seeds for which had already been planted by some Mapuche professionals and intellectuals, began to take shape, grow and develop in these acts of rebellion (Marimán, 1990a; 1990b). By the 2000s, there was an autonomist segment or current inside the Mapuche movement (Foerster, 1999).

In the meantime, another part of this movement had reached an agreement with those governing the transition to secure perks unrelated to political empowerment, promising votes and political loyalty in return (Acta de Compromiso, in Nueva Imperial, 1989).[28] By the late 1990s, they had been let down by the new ruling elites. The "permitted Indians," as some social scientists have called them (Hale, 2007), began to express their discontent as well, and some even adopted the discourse of plurinationality and the self-determination of peoples.

Starting in the 2000s, governments of the Coalition of Parties for Democracy,[29] the coalition that governed the country with four different presidents for twenty-two years, began to violently repress the Mapuche engaging in the recovery of their lands (applying the Anti-Terrorist Law). Since 2001, 17 Mapuche have been killed by the police and other forces of repression (La Izquierda Diario, 2018; Palma, 2021 and Alarcón & Huenchumil, 2022), and many have spent long periods of time in jail or remain there still (without sentences and only as a precautionary measure, or in questionable processes that used concealed witnesses or fabricated evidence tailored to secure convictions), creating what the Mapuche world and the Indigenous world more broadly call "Mapuche political prisoners."[30]

While this political context started to bother elites and their political system (fashioned during the dictatorship), reflected in the increasingly frequent use of repression and even the Anti-Terrorist Law, it did not keep the elites up at night. Acts of non-conformity happen to one degree or another in every country in the world, according to Piñera's Minister of Foreign Relations, Andrés Allamand: "countries with successful trajectories are not immune to social protest. The Arab Spring, for example, started in Tunisia, the most highly developed country in North Africa" (*El Mostrador*, Se le olvidaron, 2020). The president thus gave himself the luxury, as mentioned above, of calling Chile an "oasis" in Latin America.

This all changed on 18-O, when Chile exploded. What followed has been a story of political mistakes and panic by politicians and elites in general, worthy of academic analysis if not psychological study. Seeing that people were not returning to their homes even late into the night, and that they were raising barricades and starting to loot businesses in many parts of Santiago and throughout the country, the government declared a state of emergency and sent the military in to patrol the streets and break up the protests. Yet the people did not give up their movement. They withstood the police and military onslaught at the cost of human lives[31] and harassment of all kinds, in addition to the imprisonment of many.[32] On 19 October, aiming to de-escalate the protest, Piñera undermined his Minister of Transportation, saying that they had heard the people and were reversing the 30 peso fare hike. It was too late, though; the people wanted more (and continue to push for more). On the night of 20 October, the president declared war on his people (T13, *Presidente Piñera*, 2019):

> We are at war against a powerful, relentless enemy, who does not respect anything or anyone, who is willing to use violence and crime without any limits, who is willing to burn our hospitals, the subway, the supermarkets, with the only aim being to cause as much damage as possible. (Prensaruil, 2020)

This would prove to be Chile's shortest war. It was, in fact, a war of bluster that did not last long. First, because the military official in charge of the state of emergency declared on 21 October, "I am a happy man; the truth is that I am not at war with anyone" (Basoalto, 2019), thereby dashing any hopes for something like a self-inflicted coup as a way out — an idea that had been

floating around at the time.[33] The second reason for the war's short duration was that on 25 October, Chile saw its largest ever peaceful demonstration. With the president unable to use the military at will and with the people holding their ground on the streets, he and his government had to soften their warmongering discourse and try their luck by offering more to the insurrectionists. Between resigning and calling new elections or sacrificing something of similar value in symbolic terms (since other gestures to help the poor — such as a social agenda — did not placate anyone), the president ended by offering up the 1980 Constitution (the dictator's constitution) for the sake of social peace.

Late on the night of 15 November, without consulting the insurgent movement, the coalition of government parties and the opposition signed an "Agreement for Social Peace and a New Constitution" (without the consent of everyone inside each party), making it possible to eliminate the 1980 Constitution. The agreement included the following points: 1) a plebiscite to "approve" or "reject" a new constitution (non-compulsory vote); 2) if the approve option wins, a choice between either a Mixed Convention (equal percentage of Congress people and elected citizens) or a Constitutional Convention (exclusively elected citizens); 3) a 2/3 mechanism for approving future constitutional laws; 4) a compulsory plebiscite to ratify the new constitution at the end of the process; and 5) a Technical Commission to determine the details of the agreement, including gender parity and the possibility of reserved seats for Indigenous peoples in the Constitutional Convention.[34] The doors were thus opened to a re-founding of the electoral democracy inherited from the dictatorship and to changing the centralist, subsidiary, uninational state model into a new one by means of a new constitution.

How did different political actors react to this agreement? The political context took a new turn, which continued more or less the same until the plebiscite on 25 October 2020; having only partly recovered from the impact of 18-O in 2019, the political parties regained some of the power they had lost in the uprising. At the same time, the social movement reacted to the agreement with astonishment and dismay. They wondered who had authorized the center and left-wing politicians who signed it[35] to negotiate on behalf of the movement. It would cost some of them dearly. The Broad Front (FA, Frente Amplio) — created mainly by former student leaders that led the protests of previous years, with the most refreshing discourse in progressive terms within the nation-state society — ended up divided and accused of having stooped

to the same types of political practices as the rest of the parties (Marín, 2019). One wing, rejecting the agreement, left the alliance to pursue a direction that remains uncertain, though they did join the "approve" campaign for a new constitution. The Communist Party did not join the agreement and criticized it from the outside, yet at the same time it accepted it (T13, Por qué el Partido Comunista, 2019).

The Chilean right felt some relief with the agreement, as reflected in the words of Senator Jacqueline Van Rysselberghe, activist and leader of the Independent Democratic Union (UDI, Unión Demócrata Independiente), the most important right-wing party: "sitting here is an effort at dialogue in an environment that had been infused with fear, violence, and a lack of peace …" (Senado, 2019). But once recovered from the initial blow and seeing that the shaking and the aftershocks were weakening, some began to turn away from the idea of a new constitution, advocating rejecting it in the plebiscite (Alvarado, 2020). This ended up dividing the right between those who campaigned to "approve" a new constitution and those who campaigned to "reject" it (a division that has had consequences for passing laws, with the government losing some legislative battles, as well as with respect to ethnopolitics).[36]

In addition to these groups, which have taken turns in controlling the executive over the past thirty years, there are also those with more maximalist positions on each side. On the right, there are those still nostalgic about the dictatorship, grouped in a party that became known in the last presidential elections as the Republican Party (PR, Partido Republicano). From the start they were against changing the constitution and condemned Piñera's government for sacrificing the constitution of their champion: the dictator Augusto Pinochet. As they could not prevent the plebiscite, they called on people to vote to reject a new constitution (*Diario Financiero*, 2020). On the left, from the margins of the system, others supported not participating in the constitutional process and not exercising the right to vote. This political position, in their logic, would truly represent people's discontent with politicians and the current political system and prevent endorsing a new instrument of domination (Gómez, 2019).

Similarly, the Mapuche have not responded with a single position or voice to issues of relevance in the current conjuncture. As suggested in the previous section, there are those who have welcomed the agreement and participated in the initiative, seeing a door open to their hopes of autonomy and self-government. Some Mapuche who hold this position are seen by the

movement as being right-wing: Aithue Foundation (Fundación Aithue) and Mapuche Enama Corporation (Mapuche Enama Corporation) are two examples. The Mapuche in the center and left are generally those active in nation-state parties, from Christian Democracy (PDC, Democracia Cristiana) to the Communist Party (PC, Partido Comunista), the Socialist Party (PS, Partido Socialista), and the Broad Front (FA). The Mapuche who self-identify as autonomists include the Association of Mapuche Mayors (AMCAM, Asociación de Alcaldes Mapuche), the Mapuche History Community (CHM), the Rümtun Research Centre (CER), and the Mapuche party, Wallmapuwen (WMW).

Others, also self-identifying as autonomists, are staying out of the nation-state constitutional process, arguing that it does not involve them, that it is a matter for Chileans, and that the Mapuche should carry out their own constitutional process (*El Mostrador*, Dirigentes mapuche, 2019). This is the case of the Council of All Lands, for example. Their leader, Aucán Huilcamán, has said that this process was underway even before the uprising:

> We would like to reaffirm our right to self-determination to this Commission on Constitution, Legislation, Justice and related regulation and to the Chilean Senate, for it to recognize and accept the Mapuche Constitutional Process we have been carrying out since before Chile's social uprising and which we have already entered into the record in a Session of the Chamber of Deputies on 12 June 2019, where we announced that we would definitively pursue the path of self-determination until a Mapuche government is created in the south. This government will be formed under the protection of international law, as the multilateral organizations that created international law have taken enormous steps against the Doctrine of Denial that the Chilean state has upheld with respect to the Mapuche People and their rights. (*Clarín*, 2020)

There are yet others not even paying attention to the process, as they are focused on conquering lands where they can create a territory and develop autonomy and self-government, de facto, without asking for anyone's permission (El Libero, 2019). Héctor Llaitúl, leader of the CAM and of the idea

of rebuilding the Mapuche nation through political action and praxis (taking self-defence into consideration), puts it this way:

> The constitutional process does not guarantee a structural transformation that can resolve the underlying problems and the colonial violence to which we are subjected. It is therefore contradictory for some "enlightened" individuals, supposed intellectuals of our history and the history of the peoples in Abya Yala, to aspire to participate in these lofty institutional spaces with plurinational features that have been used at the continental level to intensify the neoliberal cooptation of ambivalent sectors who are accustomed to pleading with elites for political representation. (Díaz, 2020)

In synthesis, all the actors in Chilean nation-state politics are to some extent injured or fragmented and coming to the Approve or Reject plebiscite on a new constitution — seen as the mother of all battles for some, as "happiness is on its way" (irony) for others — unable to overcome their internal disagreements. The social uprising made the entire political system in Chile tremble and even caused panic among the ruling elites and permanent residents of the State. And although it has managed to excite citizens of different social strata, genders, ethnicity and ages, inspiring them to dream of a better or more dignified future, as they call it, things are not so clear in terms of a force able to carry out a plan for the country. The movement itself, lacking leadership as discussed above, does not have a long-term plan. Rather, it has short-term motivations: a set of complaints and demands already described in the first section of this paper.

The current environment in Chile resembles a war of positions in which everyone is fighting and reproaching everyone else and where the messianism of each limits the possibilities of articulating a general alliance against the current rulers and the model they support (rulers who, according to polls, could even form another government (*El Mostrador*, El presidenciable, 2020)). Indigenous peoples are not beyond this political game, in which the re-founding of the State that some talk about [37] seems captivating but has only an uncertain likelihood of becoming reality, at least in the short or medium term and in a fully comprehensive sense.

Discussion: Hallucinating a "decent" Chile, yet staying grounded

Are we currently seeing momentum to re-found the State in Chile? On 25 October 2020, there could be no more doubts about what Chile's inhabitants wanted in terms of the constitution. The "approve" option won the plebiscite that came out of the agreement on 15 November 2019 by a resounding 78.27% (*El Mostrador*, Con pandemia, 2020). The option for a Constitutional Convention won by 78.99%. These numbers have become the epitaph for the tombstone that will mark Pinochet's constitution once the new one emerges. Yet they also describe a Chile that is not divided like the propaganda in favor of "rejecting" claimed. They describe a country held captive by political and socioeconomic elites who live in three districts in Santiago, where the "reject" option won, but not even overwhelmingly. (The "reject" option won in only five districts in the whole country, two of which are in the extreme north and extreme south of the country and three in Santiago's rich neighborhoods).

The immediate consequences of the vote were a new slap in the face to the political system, and more precisely, to the political parties and blocs that have been alternating in controlling the executive (conservatives or the right vs. progressives or the centre and centre-left). The right, in particular, was resoundingly defeated. The part that insisted on defending the dictator's constitution fell with their beloved constitution. The centre and centre-left, or the reformed left of the 1990s, tried to capitalize on the win, but there are those in the movement who do not forget that the governments it led as part of the Coalition of Parties for Democracy are as guilty as the right for the consequences of introducing the free-market model (with extreme privatizations in the economic sphere) and the neoliberal model (individualistic in the ideological sphere). Lastly, the maximalist left,[38] revealing its opportunism without a plan, tried to capitalize on the 49% of voters who did not vote in the plebiscite, with the idea that "the party of the NON-VOTERS continues to be the majority" (Gómez, 2020).[39]

However, not all is said and done to ensure a happy ending to this story. In the months to come there will be another vote to elect the constitutional members who will write the new constitution (11 April 2021). And here there is something to which we should pay attention, because it has and will continue to have a decisive impact on Indigenous peoples and their ability to move the agenda toward autonomy and self-government. As described in

the previous section, the agreement from 15 November 2019 had a fifth point (item ten in the official document) that says that a Technical Commission[40] would determine how Indigenous peoples would participate in developing the new constitution. Well, no progress was made at all in this regard between 18 October 2019 and 25 October 2020, which suggests that although a year of protest ended up laying some ghosts to rest (the weight of the dictator, his dictatorship and his constitution, for example), others continue to flutter about.

Let me elaborate. The procedure in the Technical Commission for agreeing to establish gender parity in the Constitutional Convention was more or less straightforward. Parliament took up the Commission's proposal (and the wish of the feminist movement) and issued a law to allow parity. Chile will be among the world's first cases where a constitutional process will have 50% of its members from each gender. In contrast, the idea of granting reserved seats to Indigenous peoples for the same Convention has become an almost insurmountable obstacle. This obstacle has transformed into a debate about who is Indigenous and who can vote as such.

Party elites in the right-wing government have proposed creating an Indigenous voter registry (and they are not budging from this position), in which people would have to register if they hold a document certifying they are Indigenous issued by the State institution that certifies indigeneity: the National Indigenous Development Corporation (CONADI, Corporación Nacional de Desarrollo Indígena (González, 2020).[41] Meanwhile, representatives of Indigenous peoples and opposition forces contend the following: 1) it is too late to do this; 2) Indigenous status is already determined by the Indigenous Law in effect in the country since 1994 (No. 19,253) and by the censuses conducted over recent decades in the country, which use self-identification (self-ascription) to determine the ethnicity of the State's population; and 3) insisting on such a registry would leave more than half of the country's Indigenous peoples out of the process, as they do not have the required certification. It would also reduce their representation in the constitutional process, which should be proportional to the sociological significance of the Indigenous population as found in the last census of the population in 2017: 12.8% (Carvajal, 2020).

Certainly, there are those who see no advantage in participating in the discussion if they do get reserved seats. They see the debate as an:

> arbitrary imposition seeking to establish a colonialism regardless of the right to self-determination…[that] is utterly lacking in legitimacy due to the flawed process that has been established. In practice, in Latin America and the Caribbean, reserved seats are a failed political formula. (*El Desconcierto*, Aucán Huilcamán, 2020)

Apart from this last position, political life continues to debate the issue of reserved seats, although this discussion has become a drama as the date for electing the constitutional members nears (candidates must still be chosen, signatures collected to endorse them, campaigns waged, etc.). The frustration of not having assured Indigenous representation in the constitutional process a whole year after 18-O has been expressed as follows by the only two Mapuche parliamentarians, who occupy seats in both the chamber of deputies and in the senate and who have been spearheading the debates in the Congress:

> The right should assume its responsibility to the country… the representatives of the executive and the ruling party have maintained a permanent position of requiring Indigenous voters to build a special [voter] registry… Indigenous representation in the Convention may be equivalent to 12.8 percent of the Indigenous population, in line with the 2017 Census (Senator Francisco Huenhumilla, PDC, in: Cambio 21, 2020).

> Today, and given the current context, they are demanding that Indigenous people register in a special registry, and it is based on enrollment in this registry that they will calculate the percentage of reserved seats, which seems ridiculous to me, they just want to reduce Indigenous participation to a minimum. The government and the economic powers surely do not like us being able to write a constitution, because they are afraid of the Indigenous view with respect to territorial and political rights, which they have always denied us…. The Pre-Existing Nations are almost 13 percent of the population according to the national census, and as such, our representation should be in proportion to this percentage of the population in order to have legitimate

> and democratic participation when writing a New Plurinational Constitution. (Deputy Emilia Nuyado, PS, in: *Clarín*, 2020)

These arguments, which reveal frustration, reflect how the elites — primarily but not exclusively of the right[42] — seek to manoeuvre things to exclude Indigenous peoples from the constitutional process, or at least to reduce their representation in the process as much as possible. They thus buy time with their tricks until, out of exhaustion, it can be declared that no agreements could be reached with respect to reserved seats for Indigenous peoples, thereby excluding Indigenous peoples from the process. Indeed, the representatives of this position think that having been willing to consider reserved seats is already a concession or exceptionality in itself, because "in comparative constitutional law," it is understood that something like this would go "against representative democracies" (opinion of Natalia González (2020), member of the right-wing think tank Libertad y Desarrollo (Liberty and Development), a think tank with a high degree of influence with the current government). But, according to this view, accepting self-identification to determine who can vote as an Indigenous person would be going too far, because:

> a system of self-identification has many problems that go against the justification for reserved seats—which is to guarantee the representation of members of First Nations—and this system creates electoral uncertainty and permits a potentially implicit double representation. (opinion of Luciano Simonetti, Libertad y Desarrollo, in González, 2020)

Finally, they note that granting the number of reserved seats requested by their antagonists would mean a failure to respect other Chileans, whose votes would have less weight than Indigenous constituents because, they claim, there are very large districts in the country, "mega districts like Maipú, with more than one million voters, that have the right to elect eight seats. Failing to consider this in the debate threatens the principle of equality and proportionality of the citizens' vote" (*El Mostrador*, Escaños reservados, 2020). They have therefore offered 15 seats out of the 155 constituents to be elected. This is five seats less than what should correspond to Indigenous peoples, considering that they make up 12.8% of Chile's population (according to the 2017 census there are 2,185,792 people who identify as Indigenous). This particularly

affects the potential Mapuche representation, as they alone make up 87% of the country's Indigenous population. Proponents of this view continue to argue that "the participation and representativity of Indigenous peoples" must be combined with "the principle of equality and proportionality of the vote that prevails in our electoral system" (*El Mostrador*, Escaños reservados, 2020). With this argument, they seek to have the representation of Indigenous peoples meet the requirements of "best practices at the global level" in terms of minority representation (*El Mostrador*, Escaños reservados, 2020).

After losing the plebiscite so overwhelmingly, why does the right continue to act against the popular will, which, in line with the spirit of the vote on 25 October 2020, clearly favors the inclusion of Indigenous peoples in the constitutional assembly in proportion to their population in the country? Perhaps we have to look further back in the immediate history of the country's post-dictatorship democracy to understand this attitude. As Nuyado suggests above, elites fear the political empowerment of Indigenous peoples because they associate it with the atomization of the country (leaving aside explanations that allude to racism, as seen in Richards (2016). The great fear of these elites is reflected in a debate that took place in parliament two decades ago. On 16 June 1999,[43] in a climate full of tension between the national executive and the Mapuche, when the Minister of Planning and Cooperation asked to revisit the long-stalled discussion about the constitutional recognition of the country's Indigenous peoples and approving ILO Convention 169, the right responded as I summarize below.

First, constitutional recognition, bilingual and intercultural education, and permitting international organizations to become involved in our affairs is bad policy. It would lead the country to a disintegration like Kosovo. Furthermore, in contrast to all the historical, anthropological and archaeological research that says otherwise, according to the right, the Mapuche cannot claim territory in Chile because it is a group that came from Argentina in the 19th century, and as such, it is an extraterritorial minority (military-appointed senator Martínez Bush). Second, no subjects can be recognized as distinct from Chileans when they are part of Chile. The Mapuche are Chileans, and like any other Chilean, they have particular ancestral origins, but these do not make them special. As a result, their claims of autonomy seek to divide the country that has been so difficult to create. Granting them land, on the other hand, would be to condemn them to misery. Human development goes hand in hand with technological progress. They must be educated so they can

best be incorporated into Chilean civilization (Senator Sergio Diez, former Minister of Foreign Affairs under Pinochet and landowner in the Araucanía region).[44]

There is clearly, then, a 19th-century assimilationist nationalism in the subconscious ideology of the Chilean nationalist elites, who believe that every nation should have a State and that the Mapuche are Chileans, as that is the nation of the State. It is not that this nationalism has not evolved over time (with new generations). In a 2012 investigation by the United Nations Development Program (UNDP), one of the chapters with interviews of Mapuche notes that today's young settlers and landowners in territory that was once exclusively Mapuche treat the Mapuche better than their parents and other ancestors did. Moreover, sometimes they do not even treat them in any way at all, because they live in Santiago or other important cities and leave their estates and properties in the hands of overseers who understand and relate to the local population (De la Maza & Marimán, 2013).[45]

According to this argument advanced not very long ago, then, constitutional recognition (a demand currently formulated as a plurinational state) could not be granted because it would be a prelude to a division of the State. Much less could autonomy or self-government be conceded, because Chile is a unitary State with a single government, and this too would make a fragmentation of the State more likely. These elites have since shifted to language that is more politically correct but effective nonetheless when it comes to preventing progress toward the political empowerment of Indigenous peoples, which is viewed with the same fears now as it was then. Ultimately, these elites, in terms of political culture and nationalistic ideology based on the nation-state, continue to be — or to operate unconsciously with the logic of — the large landowners (*encomenderos)* of the past, only in Christian Dior suits.

This is the big obstacle to progress toward Indigenous autonomy and self-government in Chile in the short term: the existence of (an) elite(s), anachronistic in their manner of facing the "other" and unable to recognize the other as a subject with political rights. Their delay in ratifying ILO Convention 169 gives them away (it was not ratified until 2008, almost twenty years after the first countries ratified it, and they only finally did so because they were facing a true Mapuche rebellion due to the murder of a young activist). Their failure to then implement C169 in good faith further betrays them, as seen with the precariousness of consultations and decision-making processes that would take into account what Indigenous peoples want, repeatedly

denounced by Indigenous peoples. It has thus been and will continue to be difficult to advance toward Mapuche autonomy and self-government in Chile as long as there are no changes to this 19th-century nationalist political culture and prevailing conservatism of the elites (including among those who deem themselves progressive).

Nor does the attitude of some citizens in the Indigenous community help toward this goal; they marginalize themselves from the political processes in the nation-state society, arguing that such processes do not concern them because they are an issue for the Western world, while they have their own issues. They ignore the fact that solutions depend on opening up the nation-state society from the top, freeing it from the padlocks the dictatorship placed on it forty years ago with its constitution, and making the country more decentralized politically and more inclusive in democratic terms than it is today, when it is currently considered the most centralized country in the world after North Korea (Valenzuela, 2017). And they believe that it is only with their own strength that they can defeat the ethnonational enemy, while they are a minority even in the very territory they claim and lack the social and military strength there to carry out such a strategy successfully (though some play with it, dangerously).[46]

Finally, waving C169 or the 2007 UN Declaration on the Rights of Indigenous Peoples in the faces of their national antagonist, Chileans, or filing complaints in international organizations without the support of their own, has proven to be no better a strategy than direct confrontation. The current juncture shows that articulating alliances with those members inside the dominant nation-state who are receptive to the changes we want can lead to wins (however partial). Of course, these alliances cannot be built in the same way as Mapuche who are active in Chilean nation-state parties build alliances. Although they act with good intentions toward their ethnic group and may be good allies to them there, 30 years of post-dictatorship governments have shown that their actions from within these parties are of little to no weight when it comes to the transcendental political decisions of these political forces. And in some cases, their activism ends up being compromised in their positions of power, resulting in abusive acts toward their brothers and sisters: the activists in the autonomist Mapuche movement.

Yet, what weighs most negatively upon the Mapuche movement, while also a reason for pride for some, is its fragmentation when it comes to presenting its demands and fighting for them. Not having a single State-based

form of representation for all the Mapuche may have been a successful strategy for societal survival in the past, but it does not currently benefit the Mapuche in the context of today's nation-state macropolitics. Each organization thinks it has the right to reach its own agreements, although they all negotiate as if they were doing so on behalf of their "people" as a whole (the language in their declarations). The nation's dominant elites, depending on their political stripes, seek their own Mapuche with whom to negotiate. They create their "permitted Indian" that allows them to legitimize what are often integrationist and assimilationist Indigenous policies, thereby avoiding the political demand for autonomy and self-government. Along the way, they create in-fighting within the national Mapuche society, leading some to classify others as sell-outs, receiving in return the label of subversive or terrorist. If no efforts are made in the current, possibly more favourable, juncture toward a national Mapuche unity, it will be difficult for the rise of a united Mapuche nation — with the weight of almost two million inhabitants — to take hold and fight for autonomy and self-government.

Conclusion

> More than a year ago, at the Salvador Allende Museum of Solidarity, the self-organized neighbors in the República Stgo neighborhood demanded a People's Constitutional Assembly, a Chile with more culture, a state that guaranteed human rights and social rights, more democracy, more neighborhood organization, some fought for the end of neoliberal capitalism, the self-determination of the Mapuche people and nation, and for life without inequality. One year since that assembly, these demands continue to enjoy good health in the Self-Organized Assembly of the República neighborhood, so we are basically celebrating its birthday today, 24 October, and that is worth celebrating.

These words were written in a Facebook post by one of my former students in Chile[47] and shared among circles of friends. Her words describe the motivations of the people in her neighborhood, expressed in a self-organized assembly in the heat of the protests in Chile. Her as-yet-unmet expectations, though they "enjoy good health," may never be fulfilled. At least those that

seem too ambitious, like the end of capitalism. Among other reasons, this is because the elites of the Chilean right (sometimes tempered by the consent of other, more progressive, elites), despite the blow of the uprising, remain strong and continue to manage to stop processes like the participation of Indigenous peoples in the constitutional assembly. These elites know and fear what Indigenous peoples will promote in this shared space: the opening up of the nation-state society to the political rights of Indigenous peoples, which include autonomy, self-government and the recognition of the plurinational nature of the State.

The battle for this space continues at the time of this writing, and there may yet be some type of favorable outcome to what the Mapuche are requesting (being optimistic), but this will undoubtedly not be the final battle. The Chilean right, and the nationalist Chilean elites more generally, no matter their political stripes, have not made the road to political empowerment an easy one for Indigenous peoples, either in the past or today, and nothing indicates that they will do so tomorrow, because their nationalist ideology compels them to act politically in this manner. If the right does not change its 19th-century way of thinking in terms of the nationalism it professes and its Cold War thinking in terms of seeing everything that threatens its privileges as communism, it will be difficult for it to promote a coexistence between nations that is any different from what we see today. Ideological and cultural changes tend to be slower. Even though the right is currently in a precarious state following the results of the plebiscite, we do not know if, after licking its wounds, it will turn a new page or hunker down and do more of the same (which is how we see its negotiators operating with respect to the reserved seats for Indigenous peoples).

Yet, tomorrow is a new day (so we shall see if Indigenous peoples indeed participate in the constitutional assembly and help bend history in its favor, even if just a bit). Other obstacles will have to be overcome if we are to continue to advance toward the objective of politically empowering Indigenous peoples within the Chilean nation-state society. It is worth taking a rest, enjoying and savoring for a moment having overcome one of the greatest obstacles on the road toward the empowerment of Indigenous peoples: getting the dictator's constitution out of the way. The converging wills of citizens from all the nations in the country made this moment of enjoyment possible. And it is not only a great victory. It is also a great lesson for Indigenous peoples — valuing what can be done along with "others" in alliance.

The words of my former student radiate hope, passion, and still one year after the events that triggered the developments described here, enthusiasm. They make us — those who in addition to our training as social scientists belong to the independent Mapuche nation — see that there are people among the "others" in the nation-state who also want to see us free or as free as possible, just as some of us wish the same for them. Given demonstrations of good faith and empathy such as these, it seems misguided to consider this a struggle in which all the "others" are our enemy (at least in the Chilean nation-state context). We must go beyond such polarized views of the conflict and take on our challenges united, both within the nation to which we belong and at the level of all the nations in the state. Perhaps it is too early to speak of re-founding the State. Surely, there is more road to travel. Yet there is no doubt that it is a desirable objective; it is the road we must travel.

NOTES

1 This chapter uses the concept "Indigenous" to denote the descendants of the pre-Columbian population, in contrast to the descendants of Hispano-European colonizers. The contrast entails the notion that the descendants of the pre-Columbian population were violated and dispossessed of their assets by the non-native population descended from Hispano-Europeans, with the most important asset being land.

2 Political autonomy is understood here as a form of peoples' right to self-determination, which does not involve secession but rather the exercise of government by Indigenous peoples inside a State.

3 Mapuche is used in this text without an "s" for the plural form. The word means/is translated as people of the land (mapu=land; che=people). That is, it is already pluralized. The Mapuche are the largest Indigenous population in Chile. With 1.7 million people, they make up 87% of the country's Indigenous population and approximately 10% of the country's entire population (Servel, 2017).

4 Chile lived under a military dictatorship from September 1973 to March 1990.

5 The main contradiction in Chile is not between some kind of socialism vs. capitalism but between a life with dignity for all the country's inhabitants and a form of (free-market, neoliberal) capitalism. It is about "going from a right-wing state [*de derecha*] to a state of law [*de derecho*]" (La Cosa Nostra, *La alegría*, 2020). Translator's note: the quote plays with the similarities between the Spanish words for "right-wing" and "law".

6 By "course" I imply a continuity in the ideas and political praxis of the elites in terms of excluding other social and ethnonational sectors from State power (government-State).

7 On 8 October 2019, President Piñera described Chile as an oasis amid a Latin America in upheaval. In his words, Chile was a stable democracy with employment on the rise (Romero, 2019).

8 The government coalition, "Let's go, Chile" (Chile vamos), is made up of the following parties: National Renewal (RN, Renovación Nacional), Independent Democratic Union (UDI, Unión Demócrata Independiente) and Political Evolution (Evopoli, Evolución Política).

9 The opposition is made up of the following parties: Christian Democracy, Socialist Party, Radical Party, Party for Democracy, Communist Party and Broad Front (FA, Frente Amplio). There are also very small parties outside the institutional framework, whose strength and impact are difficult to measure (anarchists, Trotskyists and others).

10 As a result of the social uprising, parliament has debated and passed laws at a speed never before seen (*El Desconcierto*, De dos años a 15 días, 2020).

11 Co-opted by political parties since its origins and with enormous problems of political corruption within, as described in the article by Macarena Segovia (2019).

12 Social explosion is the term I use to refer to the mobilization of protest. The concept describes an uprising without political leadership, lacking the leadership of any political force.

13 Some workers travel for up to two hours on public transit to get to their jobs and then to return home. Getting up earlier in this context is no joke. It has an enormous impact on their family lives.

14 Associated with the evasion movement, graffiti began to appear inviting people to evade and using the image and name of President Sebastián Pïñera. In a case widely publicized in the press just a few months before, the president had reached an agreement with Chile's Internal Tax Service (SII, Servicio de Impuestos Internos), requiring him to pay five years of contributions for a recreation/holiday property for which he had not paid the corresponding taxes for thirty years (Carreño, 2019). The Chilean population saw this verdict as an example of benevolent justice for the rich and ruthless justice for the country's impoverished sectors.

15 Some add to these 30 years the 17 years of the dictatorship, making it a half-century.

16 Zones of sacrifice in Chile are geographic places inhabited by humans where highly polluting economic projects are carried out. These projects are harmful for human life, causing diseases and miserable living conditions in the population as a result of water contamination, toxic fumes and more.

17 It is true that the 1980 Constitution has been reformed since its original version, but its essence and its main articles remain unchanged.

18 A process that Michelle Bachelet tried to move forward in the final months of her mandate, expressing very little political will to achieve it (along with the centre and centre-left parties in her coalition) and ending in nothing (Navia, 2018). Another instance of disrepute for the politicians, now in the opposition.

19 Position of the Council of All Lands (CTT, Consejo de Todas las Tierras) (*El Mostrador*, Dirigentes mapuche, 2019).

20 Position of the organization Coordinadora Arauco-Malleco (CAM) (El Libero, 2019).

21 The opinions mentioned here have been taken from lengthy debates and summarized considerably.

22 In the last two presidential elections, 42% and 48% of registered voters voted, respectively. Some attribute these numbers to the fact that since Piñera's first mandate (2010–2014), voting has been voluntary. Others, in contrast, attribute it to a disenchantment with the political system (T13, PNUD, 2016).

23 Triumphalism, according to the *Canadian Oxford Dictionary*, is "extreme or ostentatious pride or excessive exultation over one's achievements or those of one's country, party, etc." (Barber, 2004).

24 Electoral democracy, because it includes voting every certain number of years for political authorities, without any other form of citizen participation or citizen control such as the revocation of mandates, citizen initiatives or frequent plebiscites or consultations on matters of national interest or matters that affect the lives of all.

25 Thirty years of post-dictatorship democracy have seen the emergence of a political-corporate elite tied both to those formerly in opposition to the dictatorship and to those who sympathize with it, who alternately participate in governments and on the executive boards of companies (a perverse relationship that favours lobbying and corruption). The long list of names is available in the following sources: De Ovalle, 2019; WenaChile, 2020; Miranda; 2020; Meganoticias.cl, 2019; CNN Chile, *10 años*, 2018.

26 Example: university students in Chile from the lower and middle social strata must secure student loans that keep them indebted to the banks for 15 to 20 years (Freixas, 2018).

27 The uniform for high school students—usually grey, blue and white—is similar to the color of penguins.

28 The organizations that signed this agreement were those that confronted the dictatorship starting in 1979 and 1980. Most were fractions of the first and most important such organization that decade: Ad-mapu. Most ended in the mid-1980s, transformed into branches of nation-state parties: Ad-mapu (controlled by the Communist Party), Nehuen mapu (controlled by the Christian Democracy party), and Calfulicán (controlled by a fraction of the Socialist Party). There are also smaller ones (see Marimán, 1990).

29 Made up of the Christian Democracy, Socialist, Radical and For Democracy parties, and which the Communist and Democratic Revolution parties joined in Bachelet's second administration under a new label: New Majority.

30 Several international rapporteurs sent by the UN have called attention to Chilean governments due to procedural abuses against the Mapuche. See, for example, the report by rapporteur Ben Emmerson (EFE, 2013).

31 The UN Office of the High Commissioner for Human Rights recorded t26 deaths in just the first month of protest (oficina Alto Comisionado, 2019).

32 According to Chile's National Human Rights Institute (INDH, Instituto Nacional de Derechos Humanos), there were 4,075 human rights violations between October 2019 and March 2020, including 3,230 cases of physical violence, 432 of sexual violence and 309 of psychological violence. The uniformed police — the *carabineros* — are the main accused party, implicated in 93% of the cases (INDH, 2020). Amnesty International, citing Chile's Ministry of Health as its source, mentioned that 12,500

people had gone to hospital emergency rooms as a result of the protests, and 347 had suffered eye damage. Amnesty International further denounced that, according to the Public Prosecutor's Office, 5,558 had been abused by State agents, with 1,938 hurt by firearms. Furthermore, almost 1,000 children and adolescents had been affected and approximately 250 people suffered sexual violence (Amnesty International, 2020). The Minister of the Interior has acknowledged abuses (T13, Ministro Brumel, 2019).

33 This was a rumor at the time which has since been confirmed implicitly by the former mayor of the Santiago Region and current minister in Piñera's government, Karla Rubilar, in a recent television appearance. See "Tolerancia Cero," CNN Chile 19/Oct/2020.

34 Given its importance, I shall return to this point in the next section. Full text of the agreement: https://bit.ly/3pEDNIT

35 Throughout the protests from 18 October 2019 to 25 October 2020, and with very few exceptions, no politicians have been allowed to join the marches and no space has been made for their signs or publicity. The protesters' rejection of politicians is so large and wide-ranging that it has protected the movement from being utilized instrumentally to benefit any particular political party.

36 As an example, despite talking a lot about social support in times of economic difficulty and during the pandemic, the government has not done much to mitigate people's suffering. Parliament intervened and passed a law, without the government's consent but supported by votes from legislators in the governing coalition (causing a rupture in the coalition), to allow Chileans to withdraw 10% of their retirement savings. This was celebrated by the population and represented a huge relief for many. It ended up leading to a reactivation of the economy in the short term (Cooperativa.cl, 2020).

37 On refounding, see the seminars organized by "La Cosa Nostra" (2020).

38 This includes small groups self-identified as anarchists (they tag their graffiti with the A in a circle), Trotskyists, the proletariat Communist Party, the Revolutionary Left Movement (MIR, Movimiento de Izquierda Revolucionario) and others. In general, their struggle is to end capitalism right now, without clarity about what will replace it. Their influence on institutional political processes is minimal.

39 50.90% of registered voters voted in the plebiscite, which is considered the country's highest participation in a non-mandatory voting process. More than 7.5 million people voted (Servel, 2020). While the march of more than a million people had an impact on what has happened since October 2019, the more than 5.8 million "approve" votes conclude the transition to a post-dictatorship democracy and put an end to the right's guardianship of the political system.

40 The Technical Commission is a group of professionals, with diverse expertise from universities and research centers, who were put forward by all the parties who signed the Agreement to work on the details of the Agreement not resolved on 15 November 2019. Their resolutions are non-binding proposals. The details they were tasked with include the gender parity issue (already resolved), the question of reserved seats for Indigenous peoples and representation for disabled people in the constitutional process (still under discussion). There are no representatives of Indigenous peoples on this Commission.

41 This was an original proposal by right-wing senators Ena Von Baer (UDI), Rodrigo Galilea (RN) and Felipe Kast (Evo), later complemented with other additions by like-minded senators Luz Ebensperger (UDI), Julio Durana (UDI), Francisco Chahuán (RN) and Kenneth Pugh (independent).

42 I have already described how the Coalition of Parties for Democracy started to use a heavy hand with the Mapuche starting in 2000, which has led to the loss of human life. What characterizes part of the center-progressive elite is their hypocritical actions in more "politically correct" terms, as they seek to put on a good face with respect to the challenges presented by Indigenous demands, yet they either work against these demands when they could be helping to advance solutions like the ones requested or they just respond with repression.

43 This corresponds to the 6th Session of the 340th Ordinary Legislative Assembly, titled "Debate about the 'Indigenous question' in the Chilean senate: Summary of the Ministry of Planning Report and debate."

44 Both of these summaries of opinions come from interventions in the 6th Session of the 340th Ordinary Legislative Assembly.

45 European settlers moved into the area, brought by Chilean governments to colonize the Araucanía region with a non-Indigenous population in the second half of the 20th century. Today, the great-grandchildren of these early settlers live in large cities (for professional or other reasons), leaving their inheritances in the hands of local workers. Contact between the owners of large properties and Mapuche often either does not exist, is very infrequent or is mediated by those who work on the property (Betancur, 2020).

46 Araucanía is certainly no Nagorno-Karabakh, with its own army and the support of an Armenia or a Russia that can ultimately run to protect it if the danger becomes too imminent.

47 Ximena Sepúlveda. Name provided with her authorization.

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PART II

Possibilities: Recovering What has Been Lost and Rebuilding

8

Restoring the Assembly in Oxchuc, Chiapas: Elections through Indigenous Normative Systems (2015-2019)

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Over the last decade, a new momentum has emerged in the struggle for Indigenous self-government in Chiapas; a struggle aimed at displacing the political parties from control of the decision-making process in municipal council elections. This trend has been visible for the last seven years (2015-2022). The municipality of Oxchuc, which forms the subject of this chapter, was the first to achieve council elections run through the electoral procedures of Indigenous Normative Systems (INS). These are also known as Internal Normative Systems or the customary ("habit and custom") electoral system, terms that I will use interchangeably in the following.

In the years that followed the signing of the San Andrés Accords[1] between the Zapatista National Liberation Army (EZLN) and the federal and state governments[2] in 1996, the government's delays in implementing the agreement resulted in stagnation. A worldview thus began to emerge from within the Indigenous territories around the notion that "autonomy" referred to those controversial areas that were exercising *de facto* autonomy, self-proclaimed in practice. The EZLN was recognized as the main protagonist of this demand

(Mora, 2010). Constitutionally recognized rights to self-determination and autonomy were simply not available or accessible. The failure to enforce these rights was partly the result of government omission, since State[3] institutions had long ignored them despite their inclusion in the Political Constitution of the United Mexican States since 2001 (González, 2002).

From 2011 on, however, things began to change. That year marked the beginning of a new stage, one in which the courts and the Supreme Court of Justice began to play a role in resolving issues of Indigenous consultation with regard to electoral matters. This has led to a judicialization of the right to self-government, the result of the impact of international law, and has culminated in a normative transformation and unprecedented activism on the part of the courts (Sieder, 2011; Hernández, 2016; Bustillos, 2017; Aragón, 2018; Alejos, 2018). It was a constitutional reform in the area of human rights in 2011 that opened the path for Indigenous Peoples to take their demands for autonomy to the courts, with the municipality of San Francisco Cherán pioneering this breakthrough. Since then, local political actors have gained new resources in the dispute over municipal political power, opening up cracks in the monopoly of political parties and displacing them. At the same time, they have sought to revive their INS, strengthening the assembly as the electoral space (Martínez, 2013).[4] Successful results have been obtained from this strategy in the municipalities of Cherán, Michoacán in 2011 (Aragón, 2015, 2018), Ayutla de los Libres, Guerrero in 2018 (Gálvez & Fernández, n/d), and Oxchuc, Chiapas in 2019 (Méndez, 2020).

A trend is therefore emerging. The good results in other municipalities and, above all, the minimum floor of rights to political autonomy that has been created by jurisprudential bodies such as the Electoral Tribunal of Judicial Power of the Federation (TEPJF) (Alejos, 2018) has motivated political actors to fight for a change in their electoral system, i.e., to move from elections through political parties to appointing their authorities through their own normative or customary system. This is seen as a way of regaining control over decisions regarding their local authority, a power that had been strongly violated by the intervention of political parties. The judicial avenue has been shown to be very effective as a space for disputes over Indigenous Peoples' collective political rights.

Political Opportunity Theory, developed by McAdam et al. (2005), refers to the notion that the fate of social movements depends on the opportunities that arise for them to change the institutional structure, at times when power

is sensitive to the demands of social actors, by finding allies within the structures of power. In the case in point, the regime change toward INS in the municipality of Oxchuc in 2019 occurred in a context of political opportunity, favoured by the unprecedented activism of the courts (Aragón, 2018) at a time when a powerful social movement within the municipality was disputing the State's control of its political decisions and found a political opportunity to change the electoral system.

Progress in exercising the right to Indigenous political self-determination in the area of municipal self-government is also fuelled by other experiences. Since 1998, Oaxaca has recognized the coexistence of two electoral systems by which to elect its local council: political parties and Indigenous Normative Systems (Canedo, 2008), within a context of broad recognition of Indigenous law (Hernández, 2016). Each of the state's 570 municipalities has the power to choose one or other of the systems, by means of internal self-consultation procedures. By 2019, 73% (417 municipalities) of the 570 municipalities had opted for a customary system,[5] giving rise to a great diversity of procedures in the renewal of office (Velásquez, 2001).

Due to its long history and the large number of municipalities organized under this system, the TEPJF has received numerous challenges in this regard (JDCIs: Judgment for the Protection of People's Political Electoral Rights under the Regime of Indigenous Normative Systems) and issued resolutions on these together with copious jurisprudence (Bustillo, 2017), resulting in "a wide range of rights." On this basis, the Permanent Commission for Peace and Indigenous Justice of Oxchuc Chiapas (CPJIO) took advantage of this normative framework as a political opportunity and appealed to the courts to be able to exercise their autonomous right to elect their local council through procedures determined by their own assembly, without the interference of political parties.

The jurisprudential criteria set out by the TEPJF, based on an human rights principle, recognize that the legal system of Indigenous communities, as producers of law, is in constant flux, creating, recreating and transforming itself (De la Mata, 2018). This recognition establishes that the general assembly is the highest body of regulatory production (Jurisprudence 20/2014) (Protocol, 2017, p. 75). This capacity to produce regulations has been called the "power of normative self-determination." In the event of conflicts, it is therefore recognized that the assembly has the right to resolve such issues through its own procedures.

Since 2014, jurisprudential criteria have resulted in changes to electoral law. These point toward the formation of a pluricultural State that recognizes that the Mexican legal system comprises both Indigenous law and statutory law. In this respect, Thesis LII/2016 establishes that:

> Indigenous law should not be considered as mere habit and custom constituting, according to the sources of the legal system, a subsidiary and subordinate source, since they are two distinct legal systems in coordination. The Mexican legal system therefore forms part of a legal pluralism, which considers that the law is made up of the law formally legislated by the State, as well as Indigenous law, generated by the Indigenous Peoples and the communities that comprise them. (Thesis LII/2016) Mexican legal system consists of Indigenous law and formally legislated law) (Protocol, 2017, p. 33).

These theses and jurisprudence, issued as resolutions to the challenges, have their origin in and are directed mainly at grievances coming from the state of Oaxaca, but their scope is not limited to the municipalities of that entity. They also form a source for other Indigenous Peoples' litigation in other areas, as well as for the courts that have to resolve these matters and, as we shall see in the case at hand, also of the Local Public Electoral Bodies (OPLE). The Indigenous consultation process and the election that took place in Oxchuc municipality, organized by the Institute of Elections and Citizen Participation of the State of Chiapas (IEPC), passed through this filter of jurisprudential criteria. The CPJIO, promoting the demand for autonomy, also appealed to them.

After a long battle in the streets and in the courts, and in the context of an acute post-electoral conflict that led Oxchuc to the verge of a political crisis, the CPJIO finally obtained a ruling in its favor on 28 June 2017 (TEECH/JDC/19/2017). The court ordered the IEPC to consult its population so that they could decide on their preference for one or other electoral system: that of political parties or "customary" system (i.e., INS). After the Indigenous consultation process, which is documented in this contribution, an assembly of 11,921 voters gathered on the esplanade of the central park on 13 April 2019 to elect their new local council by means of a "show of hands" procedure. Prior to this, more than 300 community assemblies had been held all around the

municipality, contributing to the restoration of its assembly system through deliberative exercises in different areas. This innovation sought to overcome more than two decades of political conflict created by party-political disputes that had left a long aftermath of violence. Ten days after the election, the new council took office in a smooth handover that was celebrated with a festival.

The question guiding this contribution is as follows: how was it that Oxchuc, a municipality with a long history of internal conflict, fragmented into 11 electoral assemblies organized by the different political parties in order to elect their candidates, was able to restore the "single community assembly" and elect its local council through a system based on habit and custom? And how did the CPJIO take advantage of the political opportunity created by the electoral jurisprudence of the TEPJF to transform a post-electoral conflict into a struggle for autonomy?

What follows here is the result of my attendance at different activities throughout the municipality, the participant observation carried out, interviews with actors and my participation as an electoral observer registered with the IEPC, as well as an analysis of documentary information. This contribution contains a description of the documented process and a critical analysis in this regard. The text is organized into four sections. The first documents the post-electoral conflict that erupted in 2015 and the gradual shaping of the CPJIO as an autonomous political subject; the second focuses on describing the consultation process for a change of system as well as the way in which the handover of authority was implemented; the third refers to the difficulties faced by the new council once it was established, and I conclude with a final reflection on the challenges of replicating this electoral model in other Indigenous municipalities around the state.

The 2015 Post-electoral Conflict and the Shaping of an Autonomous Political Subject

Indigenous municipalities in Chiapas have undergone profound transformations since 1994. After the armed uprising of the EZLN, the municipality became the locus for the construction of different subjects with distinct political actions. Authors such as H. Zemelman (2010) emphasize the importance of the subjectivity of the subject in the potential for change that they engender and develop, in the context of their own history. In this sense, the social actors in the Indigenous municipalities are subjects within their own historicity

and, in turn, are constituent members of new realities, which they create and are capable of transforming, this potential being one of the features of the subject. After 2016, the Oxchuc dissent was shaping to be an emancipatory subject that would make it possible to change the instituted social order, making way for new forms of social organization and prospects for the future developed within a framework of autonomy, highlighting the emancipatory potential of the law (Aragón, 2018).

At the turn of the 21st century, a significant number of Oxchuc citizens were disappointed with the electoral system that was being used to elect their local municipal council. The Institutional Revolutionary Party (PRI) had for several years prevented any other party from winning an election. In the Indigenous municipalities of the Chiapas highlands, a form of political organization was in place which J. Rus (1995) denoted as, "Institutional Revolutionary Community." This name was a parody of the dominant single-party system in Mexico, characterized by corporatism, coercion and vote-buying. This is why, when the EZLN called the people to rise up to oppose this political system, a group of dissidents in Oxchuc, such as Juan Encinos, joined as sympathizers of the rebel army. But the local PRI, structured as a *cacicazgo* ['fiefdom'] did not permit them to become an opposition force and instead repressed them heavily, with their main leaders becoming internally displaced. Some communities remained as rebellious supporters but with a very low profile, having no impact on local politics. This was until all this pent-up frustration suddenly manifested itself in a post-election conflict in 2015.

The period 2015-2018 was particularly intense in the political struggle in Oxchuc municipality. It began with an internal political dispute within the PRI (February 2015) regarding the procedure that named María Gloria Sánchez Gómez as its candidate for municipal president. She would be running for a second time (she had already held office from 2005-2007), succeeding her husband, Norberto Sántiz López, who had been president in 2012-2015 and 2002-2004, and federal deputy from 1997-2000. This couple had therefore held power for a 15-year period due to their activism in the PRI. Their long tenure in power had allowed them to shape a fiefdom characterized by a lack of transparency in public resource management and violence against their adversaries (Burguete, 2020a).

The conflict within the PRI intensified when, a month before the election (19 July 2015), María Gloria Sánchez abandoned the PRI to run under

the banner of the Green Ecologist Party of Mexico (PVEM), then the ruling party in the state. As on previous occasions, the election results again favored the *cacicazgo* candidate, as she had resorted to vote-buying and intimidation, both common political practices (Méndez, 2020).

Dissatisfied, her opponents came out to protest. A few days after she took office, party activists occupied the municipal palace building. They set up barricades and blocked the road. Up to that point, her opponents had lacked coordination, they had stood under the banners of 11 different political parties; however, their rejection of the president and defence of the municipal building to prevent her from taking office was a force that unified them. The population declared their resistance and confronted the police, who tried to evict them. In this spontaneous uprising, an intense collective action of blockades, house and vehicle fires and road takeovers led the state government to pressure the elected municipal president to request an "indefinite leave of absence," which she obtained on 11 February 2016.

Following this decision, it was up to Congress to decide which councillor should replace her, as established by municipal law. Their opponents, however, were determined to prevent this. On 16 February 2016, they gathered on the esplanade of the central park and formed themselves into an assembly, taking the decision to appoint a council by self-proclamation, which promptly rejected the elected president. The assembly of dissidents appointed Oscar Gómez López as interim municipal president and added Juan Encinos and Ovidio López Sántiz as members of the self-proclaimed council, both of whom had, at different times, been close supporters of the EZLN. To back up their decision, they organized a demonstration in San Cristóbal de Las Casas (50 kilometers away), taking advantage of the media interest at that time due to the imminent visit of Pope Francis. Other contentious actions such as the closing of the tourist highway from San Cristóbal de Las Casas to the archaeological zone of Palenque, thus preventing foreign tourists from visiting, moved things in their favor. Under such pressure, the state government gave in. On 10 March 2016, the State Congress issued Decree 178 ratifying the council elected by the assembly a month earlier.

María Gloria Sánchez Gómez and her council were unhappy with the congressional decisión, so she took action through the courts. Her appeal (TEPJF SUP-JDC-1756/2016) was resolved on 31 August 2016, determining that the evidence provided by the complainant was proof that she had been forced to sign her leave of absence from office and that, given the manner in

which this took place, it lacked constitutional or legal justification. The TEPJF therefore ordered the State Congress to reinstate her in her post. At that same time, another woman, Rosa Pérez Pérez (2015-2018), president-elect in the neighboring Tsotsil municipality of Chenalhó, was also forced to request a leave of absence under similar conditions of violence and pressure to resign (Eje Central, 2016). She, too, was unhappy and went to court to denounce political gender-based violence. Just like the president of Oxchuc, Rosa Pérez obtained a ruling in her favor (TEPJF, SUP-JDC-1654/2016).

In the case of Oxchuc, however, the assembly and the CPJIO rejected the court's ruling and refused to hand back the municipal building. Feminists demonstrated in support of María Gloria Sánchez in various parts of Mexico, demanding her reinstatement. The "*Red de Redes por la Paridad Efectiva*" [Network of Networks for Effective Parity], made up of women from 15 states around the country, launched a campaign through Change.org that obtained 24,882 signatures (Cintalapanecos.com, 2018). Feminist support for Sanchez brought the clash between two human rights paradigms into perspective: that of the right of an Indigenous people to self-determination in order to decide their own government, which had been elected by popular assembly, and that of the human rights of Indigenous women, including the right to be elected and to hold office.

Legal anthropology has emphasized the relevance of approaching the study of diverse realities through intercultural dialogue, ensuring not to lose sight of the fact that the human rights discourse can become a colonial and globalizing ideology of the dominant sectors, while at the same time stressing the relevance of recognizing power inequalities within that reflection (Sousa Santos, 1998; Sierra, 2004; 2009; Sieder, 2010). This analysis does not ignore the recurrent tensions between both paradigms, since the expulsion of elected women presidents from office has been a frequent practice in the Indigenous municipalities of the Chiapas highlands over the last five years when women have gained access to these spaces due to policies of gender parity (Burguete, 2020b).

The decision taken in the electoral tribunal session called to discuss the case of the Oxchuc president, ruling in favor of restoring her municipal powers, was not unanimous. In the SUP-JDC-1756/2016 ruling, Justice Manuel González Oropeza put forward a dissenting view, positing that the tensions experienced in Oxchuc were situated in the realms of a conflict between normative systems. He felt that the people of Oxchuc had the right

to self-government in the context of exercising Indigenous Peoples' right to self-determination, for which reason the community assembly should decide on the system by which they wanted to elect their authorities, whether political parties or their own normative systems. He urged the government authorities to convene an immediate consultation before proceeding to restore the president who had been elected through the party-political system.

Justice González Oropeza's opinion opened a window of political opportunity that had initially not been foreseen. The CPJIO accepted this proposal and focused its strategy on demanding a change of system toward "customary elections," suppressing political parties in the fight for municipal power and preventing the president from returning to the municipal palace. The CPJIO then proceeded to litigate the autonomous right to self-government through the justice system by appealing to the strong "gamut of rights" that had been generated by the courts. After a long journey, on 28 June 2017, the Electoral Tribunal of the State of Chiapas issued judgement TEECH/JDC/19/2017 ordering the IEPC to "determine the viability of implementing the customs of said community" through a cultural opinion (expert or anthropological) aimed at verifying "the historical existence of an Indigenous Normative System in accordance with the constitutional framework of human rights..." In addition, it was to document "the situation of social stability in the municipality," and then proceed to an Indigenous consultation in line with ILO Convention 169, so that the population could decide on the electoral system they preferred to use to elect their municipal authority.

Although this ruling accepted the CPJIO's demand, the conflict on the ground in the municipality did not cease, thus hindering the possibility of an immediate consultation. There was growing polarization against a backdrop of further upcoming elections (2018). Finally, an unfortunate and violent event was to define the confrontation. On 24 January 2018, Board members of the CPJIO suffered an armed attack in which four people lost their lives, including Ovidio López Sántiz, a member of the self-proclaimed council, and another 10 community members were injured. Council president María Gloria Sánchez was identified as the intellectual author behind these acts and members of her council as the material authors and likely perpetrators of various crimes. This led to her removal from office. The State Congress then proceeded to form a municipal council composed of the main leaders of the CPJIO. Oscar Gómez remained as council president, ratifying the decision of the February 2016 assembly.

From that point on, a new chapter opened up for the autonomous subject that had been in the making and which now had elements in its favor. Other circumstantial events worked in the CPJIO's favor. Polarization waned when a new federal government headed by Andrés Manuel López Obrador, who had been elected in July 2018, came to power. Unlike the previous one, the new head of government in the state, Rutilio Escandón, elected in 2018, did not oppose the renewal of the Oxchuc council using the Indigenous Normative System but rather encouraged it by means of various actions, thus giving his approval. New officials at the highest level of the *Instituto Nacional de Pueblos Indígenas* [National Institute for Indigenous Peoples / INPI], such as the director Adelfo Regino and his team of lawyers, also visited Oxchuc to show their support for an Indigenous people that was walking a path to autonomy, in exercise of their right to self-government.

In this new scenario, the IEPC, especially the Permanent Commission on Citizen Participation presided over by councillor Sofia Sánchez, began preparing and organizing the consultation process, holding more than 300 community assemblies and thus contributing to paving the way for a single community general assembly, which the IEPC itself had determined would be the legal and legitimate space in which to elect the new council. In taking this route, the IEPC followed jurisprudential criteria on the importance of the assembly when recognizing INS (Sánchez, 2020). The Higher Chamber of the TEPJF had determined that the Indigenous consultation on system change should take place through community assemblies (SUP-REC-193/2016 and SUP-JDC-1740/2012). It is noteworthy that Thesis XL/2011.9 March 2011, states:

> INDIGENOUS COMMUNITIES. FORMATION OF THE COMMUNITY GENERAL ASSEMBLY (OAXACA LEGISLATION).
>
> The term community general assembly refers to the expression of the majority will. This can be obtained in an assembly or through the sum of assemblies carried out in each of the communities, since in both cases it implies a form of joint decision-making such that the will to form the body responsible for appointing the municipal authority can validly be issued by the municipality's community general assembly with the participation of its

> members or based on consultations carried out in each of the communities that make up the municipality. (Protocol, 2017, p. 188)

Although this thesis was issued to resolve a specific case in Oaxaca, the IEPC nevertheless interpreted this jurisprudential criterion and proposed that a general assembly should elect the new council once assemblies had been held in all of the municipality's communities. And while such a guarantees-based decision favored recognizing Indigenous Peoples' rights, achieving this in Oxchuc — a municipality with 48,126 inhabitants (99. 5% of whom are Tseltal speakers) (CDI, 2015) spread out across 130 communities (unlike Oaxaca where there are fewer)[6] — was, nevertheless, a challenge.[7] In addition, Oxchuc was faced by an atomization of its assembly, since 11 parties had contested the 2015 elections, each of them having formed its own electoral assembly. A further challenge therefore consisted of restoring the municipal general assembly to be able to conduct the election, if so decided by the population following the consultation.

The IEPC had a duty to abide by the court's ruling, so, in compliance with this, it proposed being guided by the jurisprudential criteria as these were the only references available to it, given that the entity lacked any implementing regulations.

Restoring the Assembly in the Process of Indigenous Consultation for Electoral System Change

On 28 June 2017, the State Electoral Tribunal of the State of Chiapas (TEECH) issued judgment TEECH/JDC/19/2017 ordering the IEPC to take a series of actions culminating in a consultation by which Oxchuc would decide on its electoral system. This would commence with an expert or cultural report documenting the electoral practices in the municipality, the situation of "social stability in the municipality," and then proceed to the Indigenous consultation in accordance with ILO Convention 169. In order to comply with these mandates, the IEPC had to reach a common understanding of what is meant by "Indigenous Normative Systems" from the legal framework established by the jurisprudential bodies, a notion that was new for the inhabitants of the municipality since the usual concept was that of custom. It also had

to listen to the voices of those who were opposed to any system change. The first to express their opposition were activists from the 11 political parties. Others were also doubtful, for different reasons: some likened it to the return of the main Elders as authorities, figures associated with ancestral ceremonial rituals. This is what is usually called "traditional religion," something that was undesirable in a municipality in which around 50% of the population professed to be evangelical Christian (Bastian, n/d).

Women's associations also expressed concern, doubting that women would be included in the council. This was the position of the *Frente Estatal de Mujeres Indígenas de Chiapas* [State Front for Indigenous Women of Chiapas], as stated in a meeting on 24 January 2019 with IEPC advisers (Memoria, 2019b, p. 75). Other citizens were not in favour of a return to the assembly voting procedure, since the party-political assembly had been the arena for legitimized exclusion. Standing up to speak in full view of others, without anonymity, was seen as a risk. Showing dissent in an assembly was punishable. The show of hands had become a means of political control.[8]

The first task of the IEPC, then, was to disseminate information on what was understood by "Indigenous Normative Systems" while drafting the guidelines for the consultation. From 9 to 15 October, together with the council president, members of the council and representatives of the CPJIO, the IEPC established working groups to clarify doubts and make progress in planning the work. These working groups collated information on the number of communities in the municipality, validated the electoral roll and prepared a map to designate the roads by which the communities could be accessed. In addition, applications were received from people to be hired as route guides and Tseltal-Spanish interpreters. All of this was agreed by those participating in the groups, and the membership of these was plural, including dissenters, to ensure that concerns could be heard.

The planning process identified that there were 130 communities spread across the municipal territory and recognized that each of them had its own community assembly, its own body of authorities and its own forms of organization. It was agreed that each community assembly should have the power to decide on the procedure by which it would issue its support for (or rejection of) a change of system. It was also agreed that such decisions would be respected, as would the electoral procedure, whether by a show of hands or the ballot box. The latter was one of the most difficult agreements to reach, since the CPJIO stated that "true habit and custom" was a plenary assembly with

a show of hands and not the ballot box, which was a party-political tool. The IEPC did not accept this condition.

For its arguments, the electoral body referred to an anthropological opinion that had been prepared by the National Institute of Anthropology and History (Megchun et al., 2018). Appealing to an interlegal approach, this body recognized that, in Oxchuc municipality, the "electoral custom" included both practices, and that they were not opposing. Limiting the communities to and imposing on them just one procedure — a show of hands — was in contradiction with the autonomous rights of the communities. The IEPC was insistent that the consultation should be carried out in compliance with democratic values and human rights, from a guarantees-based and intercultural perspective (Chacón, 2020). In other words, the consultation was to eradicate the vices of the party-political assemblies which, over the last two decades, had become embodied in the local political culture.

At moments of tension, the IEPC appealed to jurisprudential criteria, for example, to jurisprudence 37/2016 issued by the Higher Chamber of the Electoral Tribunal of the Judiciary of the Federation, entitled: "INDIGENOUS COMMUNITIES. THE PRINCIPLE OF MAXIMIZING AUTONOMY IMPLIES THE SAFEGUARDING AND PROTECTION OF THE INDIGENOUS NORMATIVE SYSTEM,"[9] which states:

> Indigenous Peoples' and communities' right to self-determination must be recognized, seeking their maximum protection and permanence. In this sense, within the framework of the application of individual and collective Indigenous rights, the jurisdictional bodies must prioritize the principle of maximizing autonomy, safeguarding and protecting the Indigenous Normative System that governs each people or community, provided that human rights are respected. This entails both the possibility of establishing their own forms of organization and that of regulating them, since both aspects constitute the cornerstone of Indigenous self-government.

The working groups agreed on the universality of suffrage, without excluding anyone on the basis of religious, political, ideological or other differences. The inclusion of women, and respect for their right to vote and to be elected, was also discussed, this being another point of tension around which it

was difficult to reach a consensus. In the Oxchuc communities, land is an asset that is in the hands of men; women do not have land rights and they therefore lack the status of "*cooperante*" (citizen with rights and duties). At this time, the authorities and political leaders were resisting giving women equal political and electoral rights. Finally, however, the guidelines for the consultation established that women would be able to vote and be elected and would participate in all the commissions created as part of the consultation process, under conditions of parity. It was also stated that the municipal council should be composed of half men and half women. Such acceptance was pragmatic, however; in fact, the incorporation of women was a pretence given that the male-female pairings established were spouses. "Parity" was thus met, but it was a sham (Burguete, 2019a).

Another relevant aspect that was included in the guidelines was the certainty of the election. It was established that the rules, agreements and procedures would be recorded in minutes, and that these would be validated by the signatures of all participants. Given the context of conflict, however, disagreement frequently broke out, which is why it was necessary to create a "conciliation commission" to resolve differences or disagreements and avoid any possibility of affecting rights. For this commission to function, the IEPC provided training in mediation, seeking to make respect for human rights the route to internal peacebuilding (Chacón, 2020; Jiménez & Ocampo, 2019). Finally, the "guidelines" were approved on 25 October 2018 (IEPC/CG-A/216/2018).

Once the electoral rules were defined, the next step was to implement the consultation, which would be carried out through assemblies. It began with the establishment of six "informative assemblies" held in key locations in micro-regional administrative centers. The purpose was to bring the communities' authorities together within their area of influence to inform them of the guidelines and plan the 130 "community consultation assemblies." A committee made up of traditional authorities, municipal workers and committees was in charge of preparing the consultation in each community. To ensure that all communities participated, the commission in charge of the consultation, including IEPC officials, needed to visit each community more than twice. They needed to get as many communities as possible to give their opinion. It was agreed that the community would have the authority to decide which method of election they wanted to use, whether a show of hands or the ballot box. The final result was that 73 communities decided to use a "show

of hands," and 47 preferred the use of the ballot box. The voting results from each assembly were recorded in minutes that were then notarized (Memoria, 2019b).

At the conclusion of the entire consultation process, on 5 January 2019, the IEPC and local electoral authorities finally convened a "Plenary Assembly for the Results of the Indigenous Consultation in Oxchuc Municipality" (IEPC, 2019a). Community representatives (one man and one woman, elected on a parity basis) were selected by their community assembly to present the results. Each community statement, in favor or against changing the electoral system, was added in full view of everyone, to a giant screen showing those who supported it. The final result was that 59.18% of all the communities voted in favor of electing their local council through INS, while 38.40% voted in favor of political parties, out of a total of 116 communities that attended the plenary results assembly. The missing percentage, 2.42%, refers to consultation assemblies that were not held. Support for change was therefore won by a margin of 20.78% which, although not huge, given the unlikely result was nevertheless a significant achievement.

The election took place at the end of the consultation phase. The local stakeholders formed a "discussion group" as an electoral body to build a proposal for electoral rules. Achieving this was not easy. The debate continued to be whether the election would be by a show of hands or through the ballot box. The decision reached was that the assembly would be held on 13 April in an assembly that would elect "by a show of hands." This was going to be a major challenge to achieve in an assembly that was expected to involve more than 10,000 voters. Another agreement was that the municipal president would be a man, and the trustee a woman, and then councillors ["*rejidores*"] would be selected alternately by gender, in order to form a parity council. A meeting was called for 13 April 2019 on the esplanade of the central park. The electors were appointed by each community, in equal numbers of women and men. Once a quorum of 50% plus one of the list of registered voters had been achieved in the assembly, the election was held by a show of hands. The official number of voters was 11,921, from 115 communities (Hernández, 2020, p.131). On this occasion, no competing slates were fielded (as occurs in the party-political system), but people were instead voted in to fill the positions.

The atmosphere prior to the election was tense, and there were fears of a conflict erupting. The IEPC called on the population to "conduct themselves peacefully and civilly during the election of their municipal authorities."

These fears were more than overcome, and the assembly was seen as a great popular celebration. Adelfo Regino, head of the INPI, attended as an observer "on behalf of President Andrés Manuel López Obrador" (INPI, 2019). At the conclusion of the event, the state government secretary, Ismael Brito Mazariegos, expressed his delight at the way in which the election had been conducted (Ronda Política, 2019). The Bishop of the Diocese of San Cristóbal (Gómez, 2019) and the deputy president of the State Congress (3Minutos, 2019) commented the same.

A council composed of 15 people was elected. The position of president was held by Alfredo Sántiz Gómez, a young teacher, and Rufina Gómez López was elected as the trustee. Women were also elected to the posts of substitute trustee and three full and three substitute councillors. Of the total number of council members, seven were men and eight were women. They were inaugurated ten days after the election. In fact, the assembly passed without conflict, although there was some dissent since one of the candidates for municipal president, teacher Hugo Sántiz Gómez, who came second, did not accept the result, and left the podium after the winner's name had been declared.

The election in Oxchuc was a statewide political event. Numerous observers and journalists, some of them foreign, were present on the day of the vote. The achievement of forming a single electoral assembly and holding the election without conflict was made possible because, during the consultation process, numerous mechanisms for deliberation were implemented that built a consensus, thus restoring the community assembly system. After the Oxchuc result, elections through INS were perceived as a new paradigm for peacebuilding among the Indigenous municipalities of the Chiapas highlands, which are often burdened by internal conflict as a result of party-political struggles (Burguete, 2019b).

Municipal Authority in the Midst of a Storm

These good results were quickly tarnished, however. Barely four months after the election, conflict erupted once more, with the same belligerence as displayed in 2016. I do not intend to analyse the operations or running of the municipal government that took office on 23 April 2019 here but rather to draw attention to the difficulties it has faced as a result of decisions made during the electoral process.

Since it commenced its work, the municipal authority has been like a tiny boat on a rough sea in the midst of a storm. One initial difficulty it faced was its lack of cohesion as a government team. Given that there were no contending slates in the election process, united by affinity, but simply individuals selected by their communities and voted on separately in the assembly, this meant that the members of the council had no prior or clearly defined common plan of the actions their government would take. This problem was exacerbated because the requirement for gender parity among the councillors meant that this legal requirement could only be met through the inclusion of peasant leaders who had little schooling. Despite their history of community work, they thus faced many difficulties in holding down these positions.[10] The young president-elect effectively arrived alone, without a government team to support him in his decisions. This lack of cohesion also manifested itself in a dispute among its members over a decision to distribute the benefits of municipal funds, each favoring the members that they were sent to represent.

In the local corporatist political culture that had been established by the PRI, and reproduced by the *cacicazgo* that governed the municipality, voters supported candidates and/or political parties with the expectation of gaining direct benefits, either as individuals or as a community. In the country's political history of the last half century, the municipal budget had been used for corporatist purposes, with no oversight from the state government, since there had been a tacit agreement that social policy would be used for electoral purposes. Conflicts therefore frequently broke out as a means of applying pressure by which to obtain benefits. In this sense, the vote in favour of the CPJIO, and the support for a change in electoral system that this resulted in, also contained this expectation, and activists expected an immediate return. When they did not obtain this, some of them turned against the council. This dispute over access to money from municipal resources weakened the council's management. Municipal planning is hampered by the fact that the communities' inhabitants are demanding cash distributions because "that's the customary way."

In order to lobby for this, a significant number of residents took to the streets and blocked the municipal building, among other contentious acts, replicating the same belligerence of 2016 when they fought for the resignation of council president María Gloria Sánchez. The opposition erupted very early and remained in place throughout 2020 (Moon, 2020). To resolve these conflicts, actors from outside the municipality, operators from the federal and

state governments and the State Congress, have had to intervene as mediators, such that the municipality has effectively lost much of its autonomy in the exercise of government.[11]

Other problems that have arisen derive from doubts that have been sown over who the actual winner at the electoral assembly really was. When the "discussion group" decided that the method of election in an assembly of 11,000 participants would be a show of hands "because that is the customary way," it knew the risk it would run but decided to continue because it would thus have the certainty of controlling the result. In these post-electoral conflicts in Oxchuc, opposition groups were led by teacher Hugo Gómez Sántiz, the candidate who came second in the election and who did not accept the result. In his opinion, hundreds of raised hands voted in his favor and not that of teacher Alfredo Sántiz Gómez (they are not relatives but rather lineage surnames), who was declared the winner by the "discussion group," which was the electoral body that validated the elections.

He may be right, of course. In reality, either of them could have won. I participated as an electoral observer and the number of hands raised and the shouts heard in support of each candidate looked more or less equal. It could have been a draw. Alfredo Sántiz Gómez, former municipal president (2019-2021), is identified as a political actor close to the CPJIO, while Hugo Gómez Sántiz is not, as he has been linked to former president María Gloria Sánchez.

It is difficult to process non-conformities through one's own institutions. The general assembly has fractured once again and the design and membership of the council is not as politically plural as it could have been given the change in electoral system. There is a lack of checks and balances in the municipal government and the council that was formed offered no space whatsoever to those who were unsuccessful. In Mexico, municipal law provides that municipal councils elected through the political party system should include councillors elected by proportional representation, also known as "plurinominal councillors," being a total of three to five people (depending on the municipality's population) who sit without having been part of the directly elected council. Each plurinominal or proportional representation councillor is appointed by the losing political party. It may be the candidate for president who did not win the election, or any other person designated by the losing political party. This "proportional representation" was created to achieve political balance in a municipality, and thus include representatives of the defeated political parties in the spaces of municipal power and

decision-making.[12] But the customary council that was elected on 13 April in Oxchuc did not include such a process.

Nor did it achieve plurality in any other way, although there were other options. For example, on changing the electoral system to INS, the municipalities of Cherán and Ayutla de los Libres altered the design of their town halls, turning them into government councils, with a slightly different form of councillor (*concejiles*, in extended municipal councils) and plural representation (Aragón, 2018;[13] Gálvez & Fernández, n/d[14]). In Oxchuc, however, this step was not taken. In conversation with community lawyer Gabriel Méndez (13 March 2019), who was one of the main ideologues behind the process being documented, he commented to me that this change was not made in Oxchuc for two reasons. First, because it would give fuel to their opponents' arguments, given that an extended council was not customary and, second, because this municipal design lacked certainty given that it is not recognized in either federal or state legislation, and the fear was that this could have repercussions on the process for accessing municipal financing, as was initially the case in Cherán and Ayutla. Perhaps in the 2021 elections, a next step could be to redesign the council to include opponents as part of the autonomous construction of Indigenous self-government, as this has been so haphazard in the first stage and appears to have failed completely.

This is not the first time that a struggle for autonomy has been frustrated in an Indigenous municipality in the Chiapas highlands due to the local political culture. C. Renard (2005) documented a process of "*de facto* autonomy" in the Tseltal municipality of Amatenango del Valle in the state's highlands on the part of a group that declared itself Zapatista at the time of the armed uprising. Their political practices were soon to reproduce those inherited from the culture of the "institutional revolutionary community" (PRI), however, even though they continued to consider themselves "autonomous," a sort of *gatopardismo* [saying one thing and doing another], with the transformative spirit of the experience finally evaporating. In this sense, Cruz and Long (2020), who analyzed the experience of the Indigenous consultation in Oxchuc, referred to the intolerance and exclusion that the leaders of the process resorted to as "*gatopardismo*." Recondo (2007) had already observed *gatopardismo* in Oaxaca in the Indigenous municipalities in the middle of the first decade of the 21st century.

In this general context, we can therefore conclude that the features of the local political culture may be a factor that limits and constrains social

transformation (Gutiérrez et al., 2015). This has been the case in Oxchuc, where the process was tarnished by a stubborn clientelist political culture that held back the proposed momentum for autonomy. The results or the impact of the change in the electoral system will differ depending on the historical and cultural features of the subject, and so the transforming effects in Cherán, Ayutla or Oxchuc will be different by virtue of the different political culture in the municipality in question.

In the same vein, it is not possible to conclude conclusively on the role of the courts. On the one hand, their excessive intervention — in what has been called "a judicialization of politics" — has been questioned (Sieder et al. Al., 2012). However, while such an issue may be true in contexts like Mexico, where the executive and legislative powers often act against the rights of Indigenous Peoples, preferring neoliberal policies, the behavior of the electoral courts that is documented here, i.e., Aragón's (2018) proposed use of the law as a tool for emancipation, seems to be closer to the Chiapas and Mexican reality. The electoral courts have created a political opportunity for the Indigenous municipalities to emancipate themselves from the political parties, at least thus far.

Challenges of an Electoral Model Using Indigenous Normative Systems in Chiapas: Final Reflections

The difficulty facing peace in Oxchuc is the strained coexistence between the various factions at dispute over power; some of them have proposed a return to the political party system, although they are unlikely to have much success. The jurisprudential criteria do not favor them: the TEPJF has given municipal assemblies of representatives the power to elect their authorities by means of INS and not the electoral institution (IEPC), and this decision has undergone a consultation process. This was determined by the TEPJF when resolving a challenge by citizens of Ayutla de los Libres municipality in Guerrero, who demanded a return to the political party system after having held elections through INS on 15 July 2018. In response to their petition, the Mexico City Regional Chamber of the Electoral Tribunal of the Judiciary of the Federation (TEPJF) reaffirmed that the "Municipal Assembly of Representatives of Ayutla de los Libres" is the authorized customary authority because it was "recognized as such when the municipal council was established following

the election held through the Indigenous Normative System in exercise of the powers of the Indigenous Peoples and communities" (SRCDMX, 2020). With these measures, electoral bodies are thus transitioning from a stage of protectionism to one of minimal intervention and maximum autonomy of the Indigenous Peoples (De la Mata, 2018).

Interpreting these jurisprudential criteria, it can thus be stated that the decision to elect by means of INS has already been taken by a community assembly in Oxchuc and is therefore irreversible. The challenge that now remains is for the people of Oxchuc to proceed to elect their authorities in 2021 through their own normative systems, rectifying the mistakes made in the 2019 process and eradicating the political culture inherited from the PRI and the party-political assemblies, which persist even though there are no longer political parties.

It is worth noting that this exercise in autonomy on the part of the Tseltal people of Oxchuc is important for Indigenous social organizations interested in the struggle for Indigenous autonomy. In fact, many followed it with interest and contributed to it, such as the *Red Nacional Indígena* [National Indigenous Network / RNI], and it was hoped that this experience might trigger other processes and be replicated in other municipalities in Chiapas. And indeed this is what happened. The "Community Government Commission for Chilón and Sitalá" and its team of lawyers took their request to the courts to obtain a ruling in their favor aimed at electing their councils by means of their Indigenous Normative Systems, dispensing with political parties. The TEECH responded by issuing rulings in its favor in June 2018 (cumulative SX-JDC-222/2018 and SX-JDC-223/2018 plus TEECH/JDC/154/2018), instructing the IEPC to conduct the necessary anthropological research and proceed with the consultation to find out whether or not the citizens were in favor of changing the electoral system.

In order to comply with the rulings, in August 2019 the IEPC decided to commence a consultation in Chilón municipality. They first had to produce the anthropological report, and then complete the information and planning stages of the consultation with all local stakeholders. The consultation was to consist of two assemblies held in each of the municipality's communities followed by a "results assembly" where the votes from each community assembly would be received. If they were found to be in favor of changing the system for a customary one, then they would proceed to hold elections without political

parties. This is an action plan that replicated the methodology developed in Oxchuc.

The conditions were not the same, however. First of all, there were challenges in terms of population, geography and orography. In 2015, Chilón, a Tseltal municipality with a 98% Indigenous population, recorded 127,914 inhabitants, three times more than Oxchuc; in that same year it had 654 communities (four times more than Oxchuc) spread across a vast rural territory of more than 1,685 km², of which one-third was located in the Lacandón Jungle region of the state. In addition, it faced adverse political conditions. A survey could not be carried out in the field because the anthropologists were met with violence from opponents who wanted to prevent the research from being conducted (SIPAZ, 2019). Unlike in Oxchuc, the IEPC did not have the support of the municipal authority to facilitate the consultation and, in contrast, was seen to be sabotaging it (EDUCA, 20199). Not only that but both the IEPC staff and the members of the "Community Government Commission for Chilón and Sitalá," who were promoting the initiative and who accompanied them, were attacked by opponents of the system change. All this was in the midst of a wider repressive context, with several dozen people forcibly displaced due to the militarization of the municipality.

Against this backdrop of violence, the IEPC demanded a certain level of security to be able to carry out the tasks required for the consultation process (Chiapas Paralelo, 2020). By 2020, further problems had emerged. The COVID-19 pandemic was preventing entry into the communities and they had closed their internal borders to avoid infection. Despite the fact that Chilón and Sitalá had obtained rulings in 2018 to enable a consultation by which to express their support (or not) for a change of system, this consultation had therefore not taken place by the end of 2020 and it is now unlikely to be held before the elections of 2021, since the electoral processes are already underway. This election process recommenced in 2021, when forty local parliamentarians and 123 councils were elected. And any system change that is agreed will not now be implemented until 2024.

Faced with these challenges, the IEPC has become tougher. When it conducted the Indigenous consultation in Oxchuc, it took the jurisprudential criteria that considered community assemblies to be subjects of the right to make decisions as a roadmap for its strategy. In the case of Chilón, however, the challenges it has faced have made it difficult to replicate this model. In a scenario of new municipal elections held in 2021, the IEPC "Chiapa-nized"

the rules and, on 20 March 2020, approved a "Regulation to deal with requests for Indigenous consultations on electoral matters, submitted to the Institute of Elections and Citizen Participation of the State of Chiapas" (Agreement IEPC/CG-A/008/2020), which distanced itself from the way the system had been applied in Oxchuc. Reinforcing the regulations, the state's constitution was amended to recognize the Indigenous Peoples of Chiapas' right to elect their authorities through their own normative systems (24 June 2020) so that autonomous demands for a change of electoral system would no longer have to go through the courts to obtain this right. The IEPC is now the point of contact for the process.

These decisions mean there are several new developments. The regulation establishes that a request for system change must be filed by legally recognized community authorities and not by social organizations, as was the case in Oxchuc, Chilón and Sitalá. The authorities and the local population must build an internal consensus such that the request to be channelled to the IEPC is a product of a "general assembly of requesting communities" that "comprises the equivalent of twenty-five percent of the communities in the municipality, which in turn represent at least twenty-five percent of the electoral list of said municipal geographic demarcation"; furthermore, the request must be submitted once an electoral process has concluded in order to begin its preparation, which will take some time given the large number of assemblies that need to be held to gain the support and community consensus required.

Unlike in Oxchuc, where it was the IEPC that took on the task of restoring the assembly system in order to proceed with the Indigenous consultation, in the regulations now governing the consultations the IEPC has distanced itself from any excessive intervention and will now simply be the recipient of an Indigenous people's demand when they are fighting to recover their political autonomy. Even the "management committee" will have to gather the documentation to establish the existence of an Indigenous people, without the necessary involvement of external anthropological experts, as the TEECH judgments had required in the cases of Oxchuc, Chilón and Sitalá. Given the atomization of their assembly due to political party membership, this challenge is perceived as difficult for those Indigenous municipalities that are interested. However, they believe that by changing to an Indigenous Normative System, these municipalities will have the opportunity to embark on a new path toward the restoration of their assembly system and, with it, their recovery as an Indigenous people.

NOTES

1 The San Andrés Accords were the result of a process of dialogue between the EZLN, the federal government and the state government in 1996 in San Andrés Larrainzar, Chiapas.

2 I write "state" with lower case to refer to the state federative entity, within a federally organized system, as is Mexico.

3 I write "State" with a capital letter to refer to the national political organization.

4 "Indigenous normative systems" are understood as the set of oral customary standards that Indigenous Peoples and communities recognize as valid, which they use to regulate their public acts and which their authorities apply when resolving their conflicts, including the internal rules for electing the municipal authority (Martínez, 2013).

5 Decree number 278 dated 11 May 1995, recognizes "the democratic traditions and practices of the Indigenous populations which, up until now, have been used in the renewal of their authorities, recognizing two systems: that of political parties and that of "habit and custom" (IEEPCO, 2020).

6 Of the 570 municipalities in Oaxaca, 149 are formed of a single community with the category of "*cabecera*" [administrative centre], without dependent localities, while the remaining 421 have between one and 25 dependencies (Velasco, 2020). These are very small figures compared to the average for Chiapas.

7 There are currently 420 municipalities in the country that elect their councils through INS, of which 417 are in Oaxaca and the remaining three in the states of Michoacán (Cherán), Guerrero (Ayutla de los Libres) and Chiapas (Oxchuc). There are 2,458 municipalities and 16 town halls [*ayuntamientos*] in Mexico, the latter being in Mexico City (2015), which means that 17% of the national total elect their authorities through their own normative systems.

8 The exercise of power wielded in community assemblies has been studied in other contexts, as documented by María Teresa Sierra (1987) in the Mezquital Valley, Hidalgo state.

9 Capitalized in the original. Jurisprudencia 37/2016. Consulted at: https://bit.ly/32sK4h0

10 Oxchuc is a municipality that has long had a significant number of professional women, especially primary school teachers. More recently, they have trained as accountants or lawyers. Some of them have graduated from the Intercultural Indigenous University, which, since August 2009 has had a campus in the municipal seat of government, where three bachelor's degrees are offered: Sustainable Development, Language and Culture and Intercultural Law. However, none of these women were chosen to form the new council, since the criteria for distribution of candidacies was based on the micro-regional representation of the regions that had participated in the political struggle.

11 For example, on 17 February 2020, Congresswoman Patricia Mass Lazos from the local congress travelled to Oxchuc to mediate a conflict of this nature. A media outlet gave the following summary of the Congresswoman's intervention: "Although the resources destined for the Municipal Development Planning Committee (Coplademb) should be focused on public works, in Oxchuc municipality this money will [have to] be

distributed in the form of sheet metal, coffee pots and water tanks so that the people's protests can be peacefully resolved, stated Patricia Mass Lazos, vice-president of the Executive Committee of the local congress. This money, sent by the Federation, has a well-defined focus, but 8,000 inhabitants are asking that it be distributed on the basis of 'habit and custom' ... This social unrest has occurred just months after the council president (sic) failed to fulfil his promises, with only a small percentage of communities receiving the support, thus alerting the rest of the population ... He added that the population does not want Sántiz Gómez to step down; they are only asking that he provide the Coplademsupport on the basis of habit and custom" (Abosaid, 2020) "*Coplademse repartirá con láminas y tinacos,*" 17 February 2020).

12 Proportional representation also exists for both local and federal parliamentary members. Here it has the same purpose of giving voice to the opposition and seeking a balance of power (Espinosa, 2012).

13 In Cherán, the municipal authority is the Greater Council of Communal Government, which comprises 12 members known as K'éris (highly respected people in the P'urhépecha language), elected by a community assembly and representing the four neighborhoods (three from each neighborhood). The Greater Council exercises the mandate of the Communal Assembly and must direct, govern, monitor and evaluate the work of the six Specialist Operational Councils.

14 In the election of Ayutla de los Libres in Guerrero state, the municipal assembly of representatives was held on 15 July 2018 and attended by 270 full and 260 substitute representatives. It was determined that the municipal governing body would be the Community Municipal Council, made up of representatives of the 140 communities in Ayutla municipality but represented by the three full and substitute coordinators from the Mixtec, Mestizo and Tlapaneca zones. It was therefore decided, by a majority vote, that the municipal government would be in the hands of a Community Municipal Council, represented by three coordinators and three substitutes from each ethnic group: Tu' un savi, Mestiza and Me' phaa, while the remaining representatives – i.e., 554 – would be members of the aforementioned council, maintaining their appointment as representatives in order to have an assembly as the highest decision-making body (Gálvez & Fernández, n.d.).

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9

Building Autonomies in Mexico City

Consuelo Sánchez

The first Political Constitution of Mexico City was published on 5 February 2017. It recognizes the intercultural, multilingual, pluriethnic and pluricultural nature of the capital city of Mexico, establishes the collective and individual rights of the peoples, neighborhoods and communities and creates a system of territorial autonomy.[1]

In this chapter, we will discuss the actions of the Constituent Assembly that led to territorial autonomy for Indigenous Peoples and neighborhoods being established in the Constitution of Mexico City, based on my experience as an assembly member. I will first briefly consider the historical and contemporary basis of the Indigenous Peoples' demand for autonomy and its links to the demands of the capital city's population for a broadening of their rights and freedoms.

The Historical Basis of Autonomy

The Constitution of Mexico City begins with a phrase in Nahuatl and Spanish by the author of the *Colhuacan Memorial*, Domingo Chimalpáhin: "For as long as the world endures, the fame, the glory, of Mexico Tenochtitlan will neither end nor perish." The city of Mexico Tenochtitlan was the main seat of the Triple Alliance of Tetzcoco, Tlacopan and Tenochtitlan, which dominated much of Mesoamerica from its foundation in 1428. Each of the three parts of the Alliance was composed of numerous *altépetl*, which were the

basic political-territorial units of belonging and sociopolitical differentiation among the different peoples of the region: Culhuaque, Cuitlahuaca, Otomí, Mixquica, Xochimilca, Chalca, Tepaneca, Acolhuaque and Mexica. The *altépetl* comprised a territory, a dynastic ruler or *tlatoani* and a set of territorial sub-units known as *calpulli*: each with their own authorities.

After the war of conquest (1521), the city of Mexico Tenochtitlan became the capital of New Spain. The defeated *altépetl* were reorganized into administrative centers along with their subjects and their forms of government, within the institution of the *cabildo* [town hall]. The administrative center was where the *tlatoani* had their main seat and it continued to be the seat of Indigenous government in the form of the *cabildo*; the neighborhoods, farms and villages (*calpulli* and/or *tlaxilacalli*) were subject to it. The villages and neighborhoods were given the Christian name of a patron saint along with the old Indigenous denomination. The Indigenous *cabildo* was made up of a governor and a variable number of mayors, councillors, notaries, bailiffs and other positions. At the end of the colonial regime, the Cortes of Cádiz enacted the Spanish Constitution of 1812, which annulled the system of Indigenous government and jurisdiction and instituted the *ayuntamiento* [town or city council] as the only form of local government, without any ethnic distinction in its configuration or operation.

In the run-up to independence, the Creole oligarchy that led the formational process of the Mexican State upheld the liberal ideology of the Cortes of Cádiz as the foundation on which to organize the nation; re-confirmed the cancelling of Indigenous governments and territorial jurisdictions; demanded the transfer of their assets and communal funds to the town councils; and prepared for the ascension of Creoles and *mestizos* to the main positions on the council, subsequently seeking to impose their class interests and their ethnic vision. At the same time, the liberal reforms of the second half of the 19th century prohibited the peoples from administering, owning or acquiring their own property; declared that the Indigenous Peoples no longer existed as legal entities; annulled communal property and imposed the privatization of communal lands. And yet, Indigenous Peoples endured, despite the State denying their existence (García Martínez, 1991; Powell, 1974).

In 1824, the Republic opted for federalism and the Federal District was created as the seat of the federation's powers. The jurisdiction of the Federal District included Mexico City, proclaimed capital of the Mexican Republic, as well as numerous peoples and neighborhoods incorporated into different

municipalities. The Federal District was not granted the same political status as other states in the federation, which had their own congresses with the capacity to draft their respective constitutions, laws and decrees. It was argued that, as the seat of the federation's powers, the Federal District depended on the Federal Executive (President of the Republic) for its political and economic system, this latter having delegated its powers to a public official known as the Governor, while the Chamber of Deputies had the power to legislate for the Federal District. The Federal Constitution of 1857 maintained the same political status for the Federal District and diminished the political rights of the capital.

Once the Federal Constitution of 1917 had been promulgated, in the aftermath of the Mexican Revolution, the constituent congresses of each federal state drafted their respective local constitutions. In contrast, the Federal District continued under the same political limitations as in the 19th century; the capital's legislative functions continued to fall to the Congress of the Union. In the capital, as in the rest of the country, free municipalities were established, administered by a directly elected local council. In 1928, the municipal system was abolished in the Federal District and the right of the capital's inhabitants to elect local authorities was removed. The capital's government continued to be under the responsibility of the President of the Republic through the Head of the Department for the Federal District, which exercised its powers via delegates sitting in delegations, thus replacing the local councils.

As a result of the agrarian reform, more than 90 farming settlements were created among the Indigenous Peoples of the Federal District, and these ended up covering almost half the district's territory. At the same time, the capital was emerging as a powerhouse of industry, commerce, infrastructure and urban and educational services, leading to an accelerated process of urbanization of rural areas and undermining of self-sufficient peasant agriculture. The population of the Federal District thus grew from 1.2 million inhabitants in 1930 to nearly nine million (8,831,079 inhabitants) in 1980 (Espinosa López, 2003).

The contradictions inherent in the capitalist urbanization of the city largely explain why it became the epicentre of social movements such as those of the workers (the railroad workers, in particular), students (as in 1968) and urban-popular organizations. These latter were particularly active in the 1980s, especially in the aftermath of the 1985 earthquake. This is considered

a key period of social ferment and politicization of the capital's inhabitants, accompanied by attempts to coordinate social and civil organizations around urban demands and policies of change in the relationship between the capital's society and the State. These organizations joined forces with groups of the Left to demand political rights for the capital and the conversion of the Federal District into an additional state of the federation, the "State of Anáhuac," with the same sovereign conditions. The protests led to the creation of the Legislative Assembly of the Federal District in 1987, initially only with regulatory powers although these were later extended to the legislative sphere. In response to this meagre gain, the peoples of the capital promoted and organized a referendum in 1993. This influenced the constitutional reform of that same year, which empowered the Federal Congress to issue a Statute of Government for the Federal District. This was approved in 1994. In 1996, another reform took place that finally recognized the political-electoral rights of the capital's population to freely and secretly elect their Head of Government in 1997 and, starting in 2000, the heads of delegation as well (Espinosa, 2004; Coulomb & Duhau, 1988). Notwithstanding these gains, many inhabitants of the capital continued to demand that the Federal District be granted the same powers as other states of the federation.

In January 2016, the Political Constitution of the United Mexican States was again amended with regard to political reform in Mexico City. It ordered the creation of a Constituent Assembly that would promulgate the *first* Political Constitution of Mexico City. The assembly was to be installed on 15 September 2016 and would conclude its legislative work on 31 January 2017. The amendment established that the Federal District would be known as Mexico City, and that it would be considered a federative entity without, however, being recognized as a state of the federation.

In this reform, the term *federative entity* includes both the states of the federation and Mexico City although Article 2 distinguishes between "the sovereignty of the states and the autonomy of Mexico City."[2] Some analysts interpret this political reform as instituting a special system of autonomy for Mexico City. Enrique Rabell García comments that:

> The reform did, however, entitle the document the "Constitution" of Mexico City, and call it a constituent power; given this constitutional method, it is in reality the Statute of Government of an autonomous entity. (Rabell García, 2017, p. 265)

In my opinion he is mistaken because, according to the system for autonomy set out in the constitution, the statute of autonomy can be a law of varying rank: "constitutional law, organic law or ordinary law" (Díaz Polanco, 1991). This law or statute is approved by the legislature of the national or plurinational State in question, and any statutory reform is also limited by the intervention of the legislative state power, which is the power authorized to approve the planned reform (Álvarez Conde, 1980, pp. 105-144). The above corresponds to the Statute of Government of what was then the Federal District, approved by the Congress of the Union in 1994; this is not, however, the case of the Constitution of Mexico City, which was approved and promulgated by the Constituent Assembly of this entity itself; the approval of "additions or amendments to the Political Constitution of Mexico City" likewise corresponds to the congress of this entity.[3] The Federal Congress has no authority to approve, enact or amend Mexico City's Constitution. It is therefore not a statute of autonomy but a Constitution, even though Mexico City is not specifically named as another state of the Republic.

The legislators who approved the federal reform did not want to attribute Mexico City with the status of "free and sovereign state" like the other federative entities, but they had to go beyond the system of autonomy that had already been achieved in the capital city as a result of the political reforms of the 1990s. On this occasion, as already mentioned, it was the Congress of the Union that drafted and approved the Statute of Government of the Federal District in 1994. For the 2016 reform to bear the political fruits expected by its advocates — especially as regards the Head of Government — it therefore had to go beyond the existing system of autonomy in the city. The fact is that the 2016 reform reduces the gap between the federal states and Mexico City; Mexico City acquires virtually the same powers as other member states of the federation while not actually being designated a state.

Mexico City continues to be the capital of the Republic and the seat of the Union's powers; it is for this reason that it was not established as another state of the Federation — the 32nd state as the people of Mexico City had been demanding for decades — based on an argument maintained since the 19th century that the two federal and State powers cannot coexist in the same space. This is an unconvincing argument since other countries with a federal regime have established their capital city as a city-state: Berlin, for example, is the capital of the Federal Republic of Germany but also forms one of the 16 states of the German federation.

The Preamble to the Constituent Assembly

The decree heralding Mexico City's political reform, published on 29 January 2016, contained three problematic aspects that limited the sovereign power of the Constituent Assembly and which this latter had to abide by, namely, the form of its make-up; the powers given to Mexico City's Head of Government to prepare the draft Constitution and then submit it to the Constituent Assembly; and the instructions on the structure of the city's government, established in Article 122 of the Federal Constitution, with which the Constituent Assembly had to comply. All of this seemed in contradiction to the transitory provision (Article Seven, paragraph F) of the same reform, which established that: "The Constituent Assembly shall exclusively exercise all the functions of Constituent Power for Mexico City."

Mexico City's political reform was part of the agreements of the so-called Mexico Pact, signed in December 2012 by President Enrique Peña Nieto and the leaders of the Institutional Revolutionary Party (PRI), National Action Party (PAN) and Democratic Revolutionary Party (PRD). The pact included commitments to promote neoliberal structural reforms in the areas of education, employment, telecommunications and energy, among others, thus completing the reforms initiated by President Carlos Salinas de Gortari (1988-1994). The reforms were framed around privatizing energy resources and oil revenue in the hands of transnational corporations; expanding the private sector in telecommunications and broadcasting; privatizing public education and restricting teachers' employment rights; and generally reducing workers' rights and promoting the casualization of labor (Contreras Carbajal & Mejía Montes de Oca, 2018; Cárdenas Gracia, 2016). It was a question, in short, of shoring up private business and "the power of the ruling classes" (David Harvey, 2007). The "Mexico Pact" was possible because, in short, the PAN was in favor of such reforms and the PRD had become a neoliberal party.

As part of Mexico City's political reform, the legislators from these parties established the procedure for creating the Constituent Assembly; it was to be made up of 100 deputies, of these, 60 would be elected by popular vote, according to the principle of proportional representation, and 40 would be appointed by the established powers; 14 by the Chamber of Senators; 14 by the Chamber of Deputies; six by the President of the Republic (Enrique Peña Nieto, from the PRI), and six by the Head of Government of the Federal District (Miguel Ángel Mancera, from the PRD). The legislators from the National

Movement for Regeneration (Morena) opposed this process and voted against it.[4] Social and civil society organizations also expressed their disagreement at the appointment of 40 non-democratically elected Constituent Assembly members. It was argued that this violated the sovereignty of the Constituent Assembly and the democratic principle of popular representation, which held that it was for the inhabitants of Mexico City to elect all the members of the assembly, not the constituted powers — the Congress of the Union, the federal and local Executive — who had attributed themselves the role of the "great electors."

According to this reform, the 60 directly elected members would either be candidates from the political parties or independents. The legislators did not contemplate sectoral or geographic representation. Community members from Milpa Alta filed an injunction against the city's political reform, arguing that the peoples had not been consulted and nor had their participation in the Constituent Assembly been considered, even though they owned a significant part of the territory of the metropolis.

The Higher Chamber of the Electoral Tribunal of the Federal Judiciary issued a ruling on 25 February 2016 ordering affirmative actions on behalf of young people and Indigenous persons, peoples and communities to guarantee their participation in the Constituent Assembly. To this end, it instructed the electoral institute and "the political parties that intend to register candidates [to] include at least one Indigenous candidate in the first block of ten they propose," as well as a young person.[5]

Several analysts felt that there was a clear intention underlying this procedure for designating 40% of the Constituent Assembly members: firstly, to ensure an over-representation of the coalition parties (PRI, PAN and PRD) who would thus be able to control the constitutional process among themselves; and secondly, to prevent Morena from gaining a majority and thus being able to influence the direction of the new constitution. The Federal District elections for delegates, assembly members and federal deputies on 7 June 2015 had set a precedent, as Morena obtained the most votes in those elections, this being the first time it had participated in any electoral contest (Ascencio et al., 2016).

Within Morena, the question was raised as to whether or not the party should participate in the Constituent Assembly, knowing that the parties of the Mexico Pact had secured a prior advantage in terms of approving the constitution and thus blocking anything that did not suit them. There was

also a risk that they would use this advantage to impose a neoliberal agenda on the local constitution and deflect some of the social rights that had been achieved in Mexico City, such as the decriminalization of abortion (2007) and same-sex marriage (2009). A discussion took place in which it was concluded that Morena should participate in order, on the one hand, not to give the neoliberals free rein to produce a constitution that suited their needs and, on the other, to fight for citizen rights to the maximum and defend a city model other than the one produced by "urbanizing capital."

Morena presented its list of 60 candidates for the Constituent Assembly members, based on a principle of gender parity; 30 women and 30 men. It refused the financial resources (more than 10 million pesos) granted by the electoral institute to each political party to finance their election campaign. Our campaign was therefore run on a shoestring, relying only on our own resources.[6] The candidates travelled to public squares, villages, neighborhoods and districts; we attended delegate and sectional assemblies organized by the party and provided information on the Constituent Assembly and the issues we would promote. In this process, Morena succeeded in placing several issues on the public agenda, some of which appeared in the draft Constitution for which the Head of Government was responsible.

The election of the sixty Constituent Assembly members took place on 5 June 2016. The following election results show that Morena obtained 22 Constituent Assembly members, followed by the PRD, with 19; the PAN, seven; the PRI, five; the New Alliance Party (Panal), two; the Social Encounter Party (PES), two; the Green Ecologist Party of Mexico (PVEM), one; the Citizen Movement, one; plus one independent. The balance changed somewhat following the appointment of 40 unelected members.

Morena was the only party that refused to appoint members, so it remained with only its 22 members elected by popular vote. The PRD obtained a total of 29 (19 elected and 10 appointed); the PRI, 22 (five elected and 17 appointed); the PAN, 15 (seven elected and eight appointed); Panal, three (two elected and one appointed); the PES, three (two elected and one appointed); the PVEM, three (one elected and two appointed); and the Citizen Movement, two (one elected and one appointed); plus one independent.

The PRI, which came fourth in the electoral preferences of the capital's voters, benefited most from these appointments, ending up with the same number of members as the party that had come first in the elections: Morena. The number of deputies appointed and elected from the PRD, PRI and PAN

came to exactly the two-thirds required to approve or veto the articles of the constitution.

Morena members rejected the appointment of members to the assembly at every turn. Our protest was linked to another very heartfelt one in the country, through the slogan devised by the Morena parliamentary group coordinator, Bernardo Bátiz: "We've got 40 too many and we're missing 43" (the latter alluding to the 43 young students who went missing from Ayotzinapa on the night of 26 September 2014 in an event that shocked the country, culminating in huge social discontent at the atrocious toll on human life caused by the so-called war on drugs).[7]

Another source of disagreement with the political reform was the provision that granted the Head of Government, Miguel Ángel Mancera, the "exclusive power" to prepare the draft of Mexico City's Political Constitution and then submit it to the Constituent Assembly for discussion, amendment, addition and vote. The granting of such authority to a *constituted power* was considered another limitation on the exercise of the *constituent power* of the Constituent Assembly.

In February 2016, then president of Morena in the capital, Martí Batres, suggested drawing up an alternative proposal for Mexico City's Constitution, with the participation and collaboration of citizens, social and civil society organizations, academics, and experts in the city's different problems. A Drafting Council was therefore established, comprising a hundred personalities from different fields: philosophers, jurists, writers, economists, anthropologists, urban planners, ecologists, sociologists, artists, historians, filmmakers, sportspeople, human rights defenders and defenders of sexual diversity and women's rights.[8] I had the opportunity to participate in this council, which was formed before Morena had decided on its Constituent Assembly candidates.

At the same time, Morena promoted a series of debates, through thematic forums, with the different social sectors (youth, Indigenous, intellectuals, LGBTQI community, etc.), in addition to consultations in all the delegations. At these events, proposals and future prospects for the city were shared. These occasions were also an opportunity to gather the historical and contemporary demands, desires and aspirations of residents, groups, social movements, Indigenous Peoples and communities, all of which were incorporated into the alternative draft Constitution.

After the elections on 5 June 2016, Morena's 22 elected Constituent Assembly members pursued the alternative proposal for the capital's constitution initiated by the above Drafting Council. We met once, twice and even three times a week to discuss each of the issues to be included in the Constitution and to try to reach a unified position in all areas. This work was intense but highly worthwhile as it required ideas and arguments to be discussed in order to achieve the internal consensus necessary by which we could jointly defend the fundamental proposals that were emerging from these meetings, one of which was Indigenous Peoples' autonomy.

Morena's assembly members were a highly diverse and pluralistic group of people. There was gender equity (11 women and 11 men), and the group included academics, artists and representatives of the civil and social organizations; many were "external" to the party but sympathetic to the ideals and fundamental approaches set out in the movement's political program, which helped both in the process of jointly constructing what was called "Morena's Constitutional Agenda," as well as gaining support for it. There was no party discipline, not only because many were not Morena activists but also because they were given the freedom to contribute on all issues, including those central to the party such as halting the privatization of water, services and public spaces; getting the social programs created by Andrés Manuel López Obrador when he was head of the Mexico City government (2000-2006) enshrined in the Constitution; expanding the rights and freedoms of the capital's inhabitants; the right to the city; measures to combat corruption and electoral fraud; and ensuring the rights of Indigenous Peoples and neighborhoods and resident Indigenous communities. There was unanimity on this latter point among the members; as for the proposal to institute a system of autonomy, however, there were certain objections from some of our fellow members. These were gradually resolved, however, as the scope, meaning and contribution of autonomy to democracy, justice and equality in the city became clearer. Only one member remained in disagreement, arguing that what was needed was a city government institution that would be responsible for protecting and ensuring the rights of social subjects, focusing particularly on the Indigenous peoples who had settled in the city from other regions of the country. We explained the need to address the different situations of Indigenous peoples in the city (Indigenous Peoples / neighborhoods, resident Indigenous communities and the Indigenous population transiting or living seasonally in the city) and to provide fair solutions for each case. This meant combining

different policies and enshrining them in the Constitution. It would not be fair to block the right to autonomy of those peoples who were claiming it. In addition, it was a right recognized in the Federal Constitution, and our legislative work consisted of instituting the local system for its exercise within the local constitution. Morena's president in Mexico City, Martí Batres, agreed with the autonomist position and also agreed to come to internal agreements.

At the end of August 2016, Morena Constituent Assembly members presented a document entitled "Sentiments of the City" to the general public of Mexico City. It contained 20 principles (which we were committed to promoting and defending in the Constituent Assembly), based on Morena's Constitutional Agenda (Morena, Constituent Assembly Parliamentary Group, Mexico City, 2016). These points became our unwavering and implacable precepts in the Constituent Assembly. We pledged that the Constitution of Mexico City would recognize the city as a "pluricultural, pluriethnic and multilingual community"; that there would be protection and expansion of the "human rights, both individual, collective and social, enshrined in the Federal Constitution and in international treaties signed by Mexico," as well as providing "the legal resources and means to guarantee their respect"; that there would be guarantees of political freedoms (for all, especially young people and women); freedom of assembly, demonstration, belief, thought and expression of ideas, including the right to civil resistance; that the rights of (international) migrants and their families would be respected; that there would be the right to sexual diversity; and to women's rights, ensuring gender equality and substantive equality of women and men, gender parity in legislative, judicial and government bodies, and the right of women to decide over their bodies; that Indigenous Peoples and neighborhoods would have the right to *self-determination and autonomy*, and the right to be consulted; that there would be the right to culture, collectively and individually, as well as to the preservation and enhancement of culture and urban, artistic and historical heritage; there would be the right to free, secular, universal and free education at all levels and grades; the establishment of free public education from preschool to higher education; the protection and preservation of the ecosystem and natural areas; the restoration to "workers [of] the labor rights and social guarantees of which they had been stripped in recent decades"; the "creation of cooperative enterprises, as well as plans and programs for workers to have the option of participating in the direction, management and ownership of enterprises"; institutionalization of the human right to water

and a guaranteed right to clean water for all; a halt to the privatization of water, establishing the public status of water collection and distribution systems in the city, as well as a ban on any privatization of these public services; the "right to sufficient, economical and non-polluting public transport"; the "right to health, to decent housing, to safe and efficient mobility"; the right to a pension for senior citizens and all social rights and programs to be included in the Constitution; the right of everyone to receive a universal basic income; promotion of the availability of the media, particularly electronic media, for higher education institutions, communities, Indigenous Peoples and organized citizens; the "right to free Internet access."

We would also be responsible for establishing the sovereignty of the capital's people and its exercise "through legislative, executive, judicial and popular or community citizen powers." *Popular citizen power* would be exercised "through institutions of direct democracy such as people's initiatives, referendums, plebiscites, revocation of mandates and citizen actions." We would establish that major issues of interest to the city be "submitted for consultation, particularly high-impact urban development projects." We would promote laws to combat corruption such as "transparency, oversight and citizen audits," the removal of corrupt governors and legislators and the seizure of "assets resulting from their acts of corruption," among other measures. And we would uphold the demand that the final text of the Mexico City Constitution be submitted for "the direct approval of the people by referéndum."

In short, our commitment was to promote a democratic, participatory, multiethnic and popular constitution, with a vision of the law and rights that was opposed to the neoliberal approach, in other words, conceived from a position centered on the vital needs of individuals and communities, taking into account their sociocultural heterogeneity, an approach very different from that aimed at consolidating the dominance of business and the ruling classes.

Constructing an Autonomy Project

I saw in the Constituent Assembly an historic opportunity to institute in Mexico City the longed-for autonomy claimed by the Indigenous Peoples and neighborhoods, one that would allow them to govern themselves and actively participate in the political, economic, social and cultural life of the city, as many of them had been demanding. In the 1990s, I had the opportunity to

collaborate with the country's Indigenous organizations in reflections on and the drafting of a political project for autonomy through the Plural Indigenous Assembly for Autonomy (ANIPA), and to participate as an adviser to the EZLN in the San Andrés dialogues that resulted in the agreements signed between the Zapatistas and the federal government in 1996, the central premise of which was the right of Indigenous Peoples to self-determination and autonomy (Burguete Cal y Mayor, 1995; Díaz Polanco & Sánchez, 2002).

The emergence of the EZLN had a dual key effect. On the one hand, it placed the issue of constitutional recognition of the rights of Indigenous Peoples in the spotlight of national public debate as never before in the country or city, particularly the issue of self-determination and autonomy. On the other, it encouraged Indigenous Peoples to affirm their identity and fight for their rights.

In general, the Zapatistas created an ethical and political scenario that was more favorable to the demands of Mexico City's Indigenous Peoples. It should be recalled that an EZLN delegation, made up of 23 *comandantes* (commanders) plus *Subcomandante* Marcos, had toured various parts of the country from 11 to 29 March 2001 in their March of the Color of the Earth, spending 18 days in Mexico City with the purpose of promoting recognition of Indigenous rights and culture in the Mexican Constitution, as an essential requirement for fulfilling the San Andrés Accords. During this time, they visited different Indigenous Peoples and universities, in very well-attended events, in addition to organizing a mass mobilization in the city's main square (March 11) and another outside the Chamber of Deputies on March 28, when *Comandante* Esther and *Comandantes* David, Tacho and Zebedeo spoke at the highest level of the Congress of the Union.

A few days after the Zapatistas had returned to Chiapas, the Congress of the Union approved a constitutional reform on Indigenous rights and culture. The EZLN and the Indigenous organizations were not satisfied with this because it did not meet their aspirations, nor was it in line with the San Andrés Accords.[9] Such disagreement discouraged the Federal District from promoting local legislation to implement the constitutional reform. The debate on the relevance of having local legislation on the rights of Indigenous Peoples and resident Indigenous communities was triggered by the growing demands of the subjects themselves to make it a reality and by the reports of the Human Rights Commission of the Federal District (CDHDF) on the alarming situation of discrimination, exclusion and harm to the individual

and collective rights of Indigenous peoples in the city (particularly resident communities). The CDHDF also made recommendations to the Legislative Assembly on the urgency of reforming the city's legal system to guarantee the rights of peoples and communities in accordance with the Mexican Constitution, the San Andrés Accords, ILO Convention 169 (ratified by the Mexican State in 1990) and the United Nations Declaration on the Rights of Indigenous Peoples (Human Rights Commission of the Federal District, 2007).

The CDHDF noted that, when legislating on recognition of Indigenous rights, the Legislative Assembly:

> Must *take into consideration the different components of this plurality of which Indigenous peoples are a part*, bearing in mind, in addition, the differences that exist among them and *the variety of their respective situations*, including that of Indigenous Peoples and resident Indigenous communities and even that of Indigenous migrants in transit through the city itself. (CDHDF, 2007; italics added)

These legislative recommendations were repeated in the Human Rights Program for the Federal District, published in 2009, which stated that the first strategy was to "guarantee autonomy." It therefore established two lines of action. In the first, it reiterated the responsibility of the Legislative Assembly to "make proposals for reforms to the current regulatory framework in Mexico City, through consultation and participation of the resident Indigenous communities and Indigenous Peoples themselves, in order to implement the right to self-determination." In the second, it assigned the Legislative Assembly and the Ministry of Rural Development and Equality for Communities (SEDEREC) the responsibility for drafting a proposed Indigenous Law, specifying that the "drafting process must guarantee, as a *sine qua non* requirement, broad consultation" (CDHDF, 2009).

In the Federal District, the demand for: 1) a legal framework to "implement the right to self-determination" and "guarantee the autonomy" of Indigenous Peoples and communities; and 2) an assurance of the consultation, participation and consent of the Indigenous Peoples and communities in the drafting of such legal framework, was thus beginning to take shape.

In this context, between 2010 and 2011, three bills on Indigenous rights were tabled before the Legislative Assembly of the Federal District (ALDF). These were tabled, in the order of their submission, by: 1) the *Unión de Artesanos Indígenas y Trabajadores no Asalariados, A.C.* [Union of Indigenous Artisans and Unwaged Workers]; 2) SEDEREC (Secretary of Rural Development and Community Equity); and 3) the *Consejo de los Pueblos y Barrios Originarios del Distrito Federal* [Council of Indigenous Peoples and Neighborhoods of the Federal District].[10] Each of these proposals was received by different deputies.

The initiatives were referred to the ALDF's Commission on Indigenous Affairs, Indigenous Peoples and Neighborhoods and Care of Migrants. After examining them, the Commission resolved to pass an Opinion on the Bill of Rights and Culture of Indigenous Peoples and Communities in the Federal District, 2012. The opinion provided for the creation of a Monitoring Commission and a Mechanisms Committee to develop consultation with the Indigenous Peoples and Indigenous communities, "with the purpose of obtaining their free, prior and informed consent to the legislative measure proposed in this opinion."

The Mechanisms Committee was made up of representatives of the capital's government (the heads of the ALDF's Indigenous Affairs Commission, the Ministry of the Interior and SEDEREC, the Legal Counsel's Office and Legal Services); representatives of the Indigenous Peoples (six from the Indigenous Peoples and six from the resident communities, with their respective substitutes) and six "experts in culture and Indigenous rights," three of them belonging to the peoples and communities.

I was invited to join the Mechanisms Committee as an "expert". This collegiate body was formally established in December 2013. Within the Committee, we agreed to prepare a proposal for a draft bill, based on the initiatives received in the ALDF, the legislative measures in the opinion of the ALDF Indigenous Affairs Commission, the San Andrés Accords, the Mexican Constitution, ILO Convention 169 and the UN Declaration.

We adopted an autonomous approach to this process that guided the whole direction of the norms and rights that were being set out in the proposed law. New formulations of several rights were therefore produced in order to widen their scope and guarantee their effective exercise, including Indigenous Peoples' and resident Indigenous communities' right to self-determination and autonomy. I was responsible for developing the section on the system of autonomy, which was reviewed and agreed upon by the Committee members.

The policy document prepared by the Committee was entitled "Proposal for a Preliminary Draft Bill for the Law on Indigenous Peoples and Neighborhoods and Resident Indigenous Communities of the Federal District" (2014), which was submitted for consultation (Sánchez, 2018, pp. 305-336).

We also designed the consultation methodology (principles, rules and procedures). The consultation began in August 2014. Once the results of the consultation had been incorporated, the Preliminary Draft Bill was formally submitted to the Legislative Assembly of the Federal District on 22 March 2015. However, it was never tabled for review or approval by the assembly members. This was the same year in which Mexico City's political reform was being discussed nationally.

This experience helped us to design the methodology for the consultation that we conducted in the Constituent Assembly. It also helped me to prepare the initiatives that I presented to the Constituent Assembly, especially the one on autonomy, which had the agreement of the members of the Indigenous Peoples and neighborhoods and Indigenous communities who participated in the consultation on that proposed law and gave their consent.

Once I was designated a candidate for the Constituent Assembly I visited Indigenous Peoples and neighborhoods, where we talked about the proposal for autonomy that we would promote within the assembly, among other issues, while gathering opinions, proposals and solutions.

Constituent Process

We were not aware of the content of the Head of the City Government's draft constitution for Mexico City until the day the Constituent Assembly was formally installed, 15 September 2016, when he formally handed it over.

Several of the Morena group's demands were included in the Regulations for the Internal Governance of the Constituent Assembly, drafted by a drafting commission composed of assembly members from all political groupings, approved in a plenary session and published in the *Parliamentary Gazette* on 30 September 2016. These demands were aimed at making the Constituent Assembly a process open to citizens. Article 2 states that the assembly:

> Shall be governed by principles of transparency, maximum publicity, access to information, an open parliament and the right of citizens, representatives of institutions and social organizations

> to be received and heard by the commissions in order to make known their proposals regarding the drafting of the Political Constitution of Mexico City. (Regulations for the Internal Government of the Constituent Assembly of Mexico City, 2016)

We were appointed honorary members and received no remuneration. The assembly members had the right to submit possible additions, amendments or deletions with regard to any matter in the draft constitution submitted by the head of the city's government. The deadline for doing so was October 30. The initiatives were presented in the plenary and then referred to the corresponding commissions.

The regulations established the formation of eight legislative commissions,[11] each assigned that part of the Head of Government's draft constitution relevant to them. The commissions had to prepare their respective opinions or draft resolutions based on the amendments and additions proposed in the assembly member and citizen initiatives referred to them by the plenary. The opinion had to be approved by an absolute majority of the members present in the commission and issued no later than 30 November 2016. After this date, the commissions had to present their opinions to the plenary, where they would be discussed and voted on article by article.

Within the Morena parliamentary group, each of the assembly members drafted their own initiatives for the areas in which they had the greatest knowledge and interest, especially on issues that had been raised and agreed upon in the working meetings prior to establishing the Constituent Assembly, described above. There was a small team of advisers who provided support on technical issues. The Morena assembly members met several times a week to discuss the constituent process and the position of the parliamentary group on different issues.

Assembly members were able to participate in two commissions as voting members, and to attend the meetings of other commissions as an observer. I participated as a full member in the Commission on Indigenous Peoples and Neighborhoods and Resident Indigenous Communities and in the Commission on Citizenship, Democratic Exercise and System of Government.

On the first theme, I prepared and tabled three initiatives in a plenary session of the Constituent Assembly. Two of these were referred to the Commission on Indigenous Peoples and Neighborhoods and Resident

Indigenous Communities. One of the initiatives was aimed at establishing a system of autonomy for Indigenous Peoples and neighborhoods, their rights to lands, territories and natural resources, and establishing a new relationship between the urban, rural and environmental aspects of the city. The other was on the collective and individual rights of resident Indigenous communities. A third initiative, which was referred to the General Principles Commission, established the creation of a *fourth level of government* in the city, that of territorial autonomies.[12]

In my first two initiatives, I proposed amendments and additions to Articles 63, 64 and 65 of the city executive's draft constitution, which referred to the rights of "Indigenous peoples and communities and Indigenous neighborhoods." Let us first take a look at the weaknesses in the executive's draft constitution, and I will then address the content of our autonomy initiative.

The Head of Government's draft constitution did not adequately address the nature of the city's sociocultural diversity, particularly the differences that exist between Indigenous Peoples and resident Indigenous communities; it treated them as equal and standardized their rights. Article 65, section B entitled "Autonomy", diminished the scope of the right to self-determination (as set out in the United Nations Declaration on the Rights of Indigenous Peoples) and reduced it to "their internal affairs in accordance with their normative systems." It established the Indigenous jurisdiction and transferred into law the way in which it would be exercised and the powers it would have over criminal matters. It should be noted that, although autonomy includes Indigenous jurisdiction, it is far more than simply this. Autonomy includes *self-government*, and powers in various areas (political, cultural, economic, etc.) in addition to Indigenous jurisdiction, and budget. None of this was contained in the city executive's proposal. The most noteworthy aspect of this proposal was the recognition of peoples, neighborhoods and communities as subjects of public law, with legal status and their own assets.

The same Article 65, paragraph C, included a list of rights of the peoples and communities, as well as the obligations of the authorities, but it did not specify how the exercise of such rights was to be guaranteed. Section D established rights over the lands, territory and natural resources of the peoples, but, instead of providing measures to ensure their effective protection, it introduced the possibility of the city government and private individuals exploiting and using the natural resources (including minerals) existing on their lands. I observed that this was nonsense in Mexico City, since the lands

that are still held by the Indigenous Peoples are located in the city's environmental conservation area, meaning that their exploitation would have harmful environmental effects for the lands and, of course, for the peoples.

In the initiatives I presented, I sought to address the ethnic diversity of the city and to try to provide fair solutions in different cases, as the people themselves had been pointing out. Members of the Indigenous Peoples and neighborhoods are living on their traditional territories; in contrast, members of the resident Indigenous communities have moved from their traditional territories to Mexico City. This difference means that they have different experiences, problems and needs in the city, although they are united by the purpose of ending their situation of oppression, discrimination and exclusion. These are two categories of Indigenous peoples that need to be understood in terms of their specific characteristics, and to have their particular cultural, social, political, economic and territorial demands in the city fairly addressed.[13]

The constitutional basis for our initiative to create a system of autonomy in the local constitution was Article 2, section A, of the Political Constitution of the United Mexican States, reformed in 2001 to supposedly meet the requirements of the San Andrés Accords. I argued that this article states that "Indigenous Peoples' right to self-determination shall be exercised within a constitutional framework of autonomy that ensures national unity" (Political Constitution of the United Mexican States, 2020). However, instead of establishing said constitutional framework for autonomy as demanded by the various expressions of the Indigenous movement, it transfers power to the constitutions and laws of the federal entities to determine "the characteristics of self-determination and autonomy that best express the situations and aspirations of the Indigenous Peoples in each entity."[14] I therefore argued that it was up to the Constituent Assembly to establish the nature of the self-determination and autonomy of Indigenous Peoples and neighborhoods, which implied *not repeating* what the Federal Constitution says but setting out in the Constitution of Mexico City the bases, principles, instruments and norms for the establishment and functioning of autonomy — this being understood as the concrete form of exercising the right to self-determination — so that the peoples would be able to effectively exercise this right.

Our proposal recovered the national Indigenous movement's project for autonomy as defended in the San Andrés dialogue, adapting it to the reality of the Indigenous Peoples and neighborhoods of Mexico City. It also rescued the

system of autonomy that we introduced in the Proposal for the Preliminary Draft of the Law on Indigenous Peoples and Neighborhoods and Resident Indigenous Communities of the Federal District (2014) prepared and put out for consultation by the Mechanisms Committee. And, of course, it gathered the feelings and desires expressed by the city's Indigenous Peoples and neighborhoods in meetings, interviews and documents issued by them.

I also emphasized that, in all countries where Indigenous Peoples' right to autonomy had been instituted, such as Nicaragua, Bolivia and Canada, the constitutional framework included the new territorial spheres as a new level of government.

Another source to support our proposal was the United Nations Declaration on the Rights of Indigenous Peoples (approved by the UN General Assembly on 13 September 2007), especially Article 3, which states: "Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development." And Article 4:

> Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions. (*United Nations Declaration on the Rights of Indigenous Peoples, 2008*)

It was necessary to understand that autonomy is not only a right but also *a means* to ensure that peoples can exercise all their rights: political, social, economic, cultural, legal, territorial, environmental, etc. Consequently, our initiative set out the essential mechanisms for establishing the system of autonomy, as summarized below.[15]

a. *Principles*. These established the right of Indigenous Peoples to self-determination, and the exercise of this right "within a legal framework of autonomy under the political and administrative organization of Mexico City." This section further established the principles on which autonomy is based: strengthening Mexico City's unity through diversity; "equality in plurality, democratic participation, recognition and respect for cultural diversity, intercultural coexistence and good living for all."

b. *Territorial sphere*: "Territorialities with the powers of self-government shall be instituted in those areas of Mexico City where Indigenous Peoples

and neighborhoods are located." Adding: "The demarcation of the territorialities shall be based on historical, cultural, social and identitary characteristics, and on the will of the members of the peoples and neighborhoods, as expressed in assemblies or in consultations."

"The different territorialities of the Indigenous Peoples and neighborhoods shall be recognized as subjects and entities of public law, with legal status, their own assets and autonomous forms of political and administrative organization."

c. *Self-government*. Each territoriality to be constituted "shall have an internal government, which shall be formed and exercised in accordance with its own rules, institutions, authorities, forms of internal organization and election of authorities, and with the powers and competences that shall be conferred on it by the Constitution and the corresponding law..."

"The governments, authorities and representatives of the peoples and neighborhoods shall be elected in accordance with their own normative systems and procedures and recognized in the exercise of their functions by the authorities of Mexico City."

d. *Powers and competences.* It shall confer "competences and powers in political, administrative, economic, social, cultural, educational, judicial, resource management and environmental matters on the territorialities of the Indigenous Peoples and neighborhoods"

The initiative listed a set of powers that would fall to the territorialities of the peoples-neighborhoods, arranged in 18 bullet points, and including: normative functions of a statutory nature; the application of their normative systems in the regulation of their territories and in the resolution of internal conflicts; the organization of consultations; the drafting, execution and monitoring of programs of health, education, housing and economic activities within their territory, in coordination with the city authorities, as well as in the protection of the environment, restoration and management of forests, lakes, aquifers and wild flora and fauna; the control of their knowledge and natural assets (medicinal plants, seeds); historical, architectural, cultural, symbolic, sacred, artistic, artisanal and linguistic heritage; the administration of their community assets and spaces, and so on. In addition to the powers set out in the initiative, it was noted that they could have access to other powers established by the corresponding laws and other applicable ordinances.

It established "an institutional body for the coordination of the *three levels of city government*: the city government, the mayor's offices and the autonomous territories of the peoples and neighborhoods."

e. *Budget*. It established a budgetary allocation to the territorialities of the Indigenous Peoples and neighborhoods, essential "to guarantee the exercise of their competences and powers, and to overcome socioeconomic and sociocultural inequalities." It stated that the "Congress of Mexico City shall assign the State funds to be transferred to the Indigenous Peoples and neighborhoods," and which would be destined for community welfare, agro-ecological production, ecological conservation, etc. In short, the idea was that they would manage, as peoples — without the intermediation of the municipalities or any other authority — their own resources and have access to funds and the public budget in the exercise of a cooperative system of solidarity, essential for their bodies and authorities to carry out the tasks of government, administration and justice that the legal order itself assigns them.

f. *Representation in the local Congress*. Autonomy also includes the peoples' participation in the decision-making bodies of Mexico City, and so these need to be shaped in line with the multiethnic composition of the entity. Autonomy is not self-absorption, isolation or autarchy but a search for full participation in the life of Mexico City. Our initiative established the following: "In order to guarantee the political representation of Indigenous Peoples in the Mexico City legislature, a special electoral constituency shall be created. The law shall define such a constituency."

Sections C and D of the initiative established the rights of the peoples to their lands, territories and natural resources and the basis for a new relationship between urban, rural and ecological spaces and ways of life in Mexico City.

Our autonomy initiative contrasted with that of the other Constituent Assembly commissions. The assembly members from the PRI, PAN and PRD considered the Head of Government's draft proposal to be acceptable and agreed to establish a body or institution whose function would be to promote the rights and development of the peoples, neighborhoods and communities. The PRI assembly member proposed converting the Council of Indigenous Peoples and Neighborhoods (which, as mentioned above, was created in 2007 as a body to coordinate between the city's public administration, composed of various ministries of the capital's government, the heads of the delegations and the representatives of the peoples and neighborhoods) into an

autonomous and decentralized body "subject to the instructions" of the executive branch of Mexico City to "assist in the governance" of the entity (Gómez Villanueva, 2016). A PRD assembly member proposed something similar, adding the following to the Head of Government's proposal: "To have a body for the representation and participation" of subjects of law, which would be responsible for "producing, implementing and guaranteeing public policies for the attention and development of the Indigenous Peoples and neighborhoods and resident Indigenous communities."[16] The PAN member proposed creating "adequate institutions to guarantee the rights and integral development" of the peoples, neighborhoods and communities.[17] In truth, proposals to create these types of organizations or institutions (whether or not they comprise Indigenous peoples or neighborhoods) is nothing new in our country or in Mexico City. They have been part of the various indigenist formulas that have been imposed on the people for the last century. In all cases, this has been done by denying or supplanting the autonomy of the peoples.

It was quite another thing to create a body to implement the autonomy of the peoples, *once this has been established* in the constitutional framework, as was finally established in the Constitution of the city.

Another member basically proposed what the Federal Constitution states in Article 2, section A, adding rights for resident Indigenous persons and communities, as well as the obligations of Mexico City's authorities in fulfilling said rights (Mardonio Carballo, 2016). The point here is the absence of references to self-government, to consideration of the different situations of the Indigenous Peoples and neighborhoods as well as the resident communities, such that these groups would continue to depend on the capital's authorities and institutions for many of the matters that could have been handled by the collectivities (resident and Indigenous) themselves. A comment from a representative of an Otomí community comes to mind:

> What we want now is to no longer depend so much on the institutions, we have the capacity to help our families, our people, for us to do this ourselves, because an institution may or may not be concerned with a problem but as an Indigenous person we are concerned, because we are living the problem. (Quote taken from Lemos Igreja, 2005, pp. 305-306)

This was the initiative of the Chair of the Commission on Indigenous Peoples and Neighborhoods and Resident Indigenous Communities. He and his technical secretary were not in favor of autonomy and tried to get my proposal left out of the draft opinion. I objected to this, clarifying that the draft should include the initiatives presented in the plenary and referred to this commission for its examination and a vote by commission members. They agreed to include it but extracting from it the core issues of autonomy. I objected to this, pointing out that any change to my initiative would have to be the result of a vote of a majority of Commission members. At the last minute, we succeeded in retaining the fundamental elements of autonomy proposed in my initiative.

After the Commission chair had presented the draft opinion, the Commission secretary proposed putting the overall opinion to the vote, before discussing and voting on the individual details. I said that I would not vote on the overall text first because its content could turn out to be quite different after the vote on each article. The point was discussed and it was agreed to begin by deliberating and voting on the details, article by article, trying to seek a consensus. And this is what was done with the first two articles, which we reworked together.

The sticking point came when it was time to discuss the issue of autonomy. The assembly members from the PRD, PRI and PAN were opposed to establishing a system for autonomy.[18] The PRD deputies resorted to issuing reservations, with which they intended to eliminate all the provisions of my initiative on autonomy and territorial rights. Their reservations were, however, rejected. They then tried to avoid any discussion of the subject, trying to undermine the quorum on the day of its discussion.

They agreed to discuss the matter on the last day we had to approve the opinion, since the majority of Morena assembly members refused to approve the opinion if it did not include a system of autonomy within it.[19] The presence of a large number of individuals from the peoples, neighborhoods and communities at that day's session must also have influenced our opponents' mood. This presence was vital.

Once they had agreed to discuss the autonomy proposal, those opposing members admitted that they were rejecting the provisions on territorialities, self-government, competences and budget. So we discussed each point by point, as summarized below. My Morena colleagues allowed me to defend

the proposal and on behalf of my opponents it was the PRI member, Augusto Gómez Villanueva, who took the lead.

Our opponents said that they did not agree with establishing a level of Indigenous self-government or self-rule in the local constitution. I replied: autonomy is by definition self-government, and not recognizing the peoples their own government would be to invalidate their right to self-determination. It would be a mockery. To the PRI member, who had been the Minister for Agrarian Reform during the presidency of Luis Echeverría (1970-1976), I argued that, as he was well aware, the agrarian law had established *ejido* (cooperative) and communal authorities for the administration of their lands; in the case of autonomy, it was a matter of recognizing whatever government structure the peoples determined for the conduct, administration and determination of the affairs of their territoriality. I also argued that, in all countries where autonomy had been established, it had involved self-government. Furthermore, I added, the UN Declaration on the Rights of Indigenous Peoples identifies autonomy with self-government. The PRI member argued that there was no basis in the Federal Constitution, to which I replied that the constitution orders us to establish "the characteristics of self-determination and autonomy" and one of its characteristics is self-government. They ended up conceding, but instead of the term "own government" or self-government, it was established as "the forms of political-administrative organization that the peoples give themselves." This empowers self-government. I discussed it, outside the hall, with some of the members of the Indigenous Peoples. They agreed with the formulation. And so it remained.

The aforementioned party bloc was also opposed to establishing territorialities for the exercise of autonomy. I argued that it was inconsistent to leave territory out, for a number of reasons: autonomy requires a space in which to implement it; it therefore implies establishing a territorial area with its own jurisdiction in which the peoples can exercise government, justice and their other cultural, socioeconomic and other rights and powers. The territory, I specified, would be the sphere of organization and operation of their "political-administrative forms" in which they would have jurisdiction. In addition, the Indigenous Peoples and neighborhoods already have a territorial base and identity, and have been demanding its recognition, which has been unjustly denied. They ended up agreeing to the inclusion of territory.

They also refused to set out the competences and powers of the autonomous territories in the Constitution and proposed that their definition should

be left to secondary legislation. We said that we did not agree since, as experience in our country shows, secondary legislation tends to reduce the scope of the rights enshrined in the Constitution. We argued that the issue of powers was central, as it is this that determines whether or not the peoples are able to effectively exercise their rights in a comprehensive manner, empowering them to make decisions for themselves on certain vital matters. Many of these decisions were currently under the control of the city authorities and needed to be transferred to the peoples. For this reason, I asserted, it was necessary to specify within the constitution some of the matters on which the peoples would be able to decide exclusively and those that required coordination with the city authorities. Autonomy implies political and administrative decentralization, I said. We therefore insisted on establishing a list of powers in the constitution that should be conferred on the peoples so that their substance would not be left to the discretion of secondary legislation. At the last minute, almost all of the powers set out in our initiative were included in the opinion.

The opposing assembly members tried to get some important aspects left out such as, for example, the power of the peoples to administer their community cemeteries. I argued that this should remain in the opinion since there was a vigorous Indigenous movement aimed at defending their cemeteries and their right to administer these, as well as to manage the cultural, religious and community practices surrounding them. For many Indigenous Peoples (especially those who have suffered the expropriation and urbanization of their territories), the cemetery is one of the few community assets they have been able to preserve. I stated that their claim was just and that not recognizing it would be an injustice. Even so, they did not consent; probably because the PRD and the PAN had been promoting the transfer of community cemeteries to the administration of the delegations, now mayoral offices (Romero Tovar, 2010). I repeated that the peoples' demands would become clear following the consultation; the most appropriate thing would therefore be to leave it in the opinion. They did not agree to this. Yet this demand did indeed come up in 42 of the sets of community minutes from the consultation. This issue was therefore reincorporated into the opinion and finally included in Article 59 paragraph F, section I of the Constitution of Mexico City, as follows: "The Indigenous Peoples and neighborhoods shall have the power and responsibility of administering and caring for the community cemeteries."

After an arduous battle of ideas and arguments, which space prevents me from fully detailing in this chapter, the Morena assembly members thus succeeded in ensuring that the basic elements of a system of autonomy for Indigenous Peoples and neighborhoods remained in the commission's report, albeit not quite as we would have wished.

The General Principles Commission, however, rejected my initiative to create a *fourth level of government*. I did not have a chance to participate in the Commission's session to defend it. Jaime Cárdenas, a fellow member from the Morena group in the Constituent Assembly, notes one of the shortcomings of the city's constitution as precisely its failure to recognize this fourth level of government (Cárdenas Gracia, 2017).

Consultation

The rules of procedure of the Constituent Assembly assigned the Commission on Indigenous Peoples and Neighborhoods and Resident Indigenous Communities the responsibility of carrying out consultations "as determined by international standards" (Article 22, section 8). The commission's members designed the consultation protocol in accordance with ILO Convention 169 and the United Nations Declaration on the Rights of Indigenous Peoples. Once the assembly members in the Commission had approved the above opinion, it was submitted for consultation to the peoples, neighborhoods and communities.

The approval of the consultation protocol took some time. The PRD, PRI and PAN members wanted the consultation to be conducted by Mexico City government agencies or other contracted bodies. We objected, arguing first that this violated the sovereignty of the Constituent Assembly; second, that it was up to the Commission's members to "carry out the consultations," as the regulations stated; and third, that the opinion to be submitted for consultation was the product of the Commission's work and, in line with the principles of consultation (informed, in good faith, prior to its approval in the plenary of the Constituent Assembly, free, based on dialogue and consent), we were required to submit it directly to the peoples and communities, without the interference of persons or organizations outside the constitutional process, who might obstruct the free and good faith nature of the consultation.

After long discussions, we reached an agreement that the Commission's members would be responsible for the consultation on the opinion on Articles

57, 58 and 59 of Chapter VII *Pluricultural City*.[20] Given the short timeframe we had in which to carry out the consultation (around a month) and the range of topics to be consulted, in addition to the fact that the Commission members also had to attend the plenary sessions of the assembly, since the articles of the constitution were beginning to be discussed and approved at that time, we proposed asking the peoples, neighborhoods and communities to help us organize the consultation, in an autonomous manner (Rodríguez Domínguez, 2019, pp. 228-232). In other words, our duty was to provide the infrastructure through which to achieve community assemblies for the consultation (divided into three phases: informative, deliberative and dialogue/consent); provide them with all the material and documentation for the consultation (the opinion of the Constituent Assembly's Commission on Indigenous Peoples and Neighborhoods and Resident Indigenous Communities, together with the protocol for the consultation and other materials); and disseminate the notification and the consultation process itself. We asked the subjects of the consultation if they were happy for us to disseminate and organize the assemblies in their communities. In addition, a technical team from the Commission was created to support all the requirements of the consultation subjects. The Commission members devoted the whole of Sunday (the only day the full Constituent Assembly was not in session), part of Saturday and any other opportunity to attend the consultation assemblies, especially the informational ones. In the deliberative assemblies, only the people involved by the consultation were convened (so that they could examine and deliberate independently with regard to the opinion in question). Their participation in organizing the consultation helped to ensure that 940 deliberative assemblies were held in a very short space of time, and the minutes of each were submitted to the Commission. Of these, 709 minutes approved the opinion without any proposed additions, and 231 approved the opinion generally, with proposed additions and/or clarifications. In all, 99% of the minutes from the community assemblies gave their consent.

Some of the minutes stated that the consultation should have included the entire text of the Constitution. The Morena members were of the same opinion. In the transitory provisions of my three initiatives, I stated that the Constitution of Mexico City would be understood as approved if it were endorsed by the Indigenous Peoples and neighborhoods and the resident Indigenous communities through consultation and consent. This could not be achieved, however.

Another issue that delayed the approval of the consultation protocol within the Commission was the binding nature of the consultation. We proposed that the results of the consultation should be binding on the plenum of the Constituent Assembly. In other words, once the subjects consulted had given their consent to the opinion, the plenum should abide by it and it could not therefore be modified or rejected. The members from the other parties said this was unacceptable, that we could not force the rest of the members to agree to the provisions of the opinion following consultation. We replied that the Commission members were representative of the different political forces in the Constituent Assembly and that, having approved the opinion, it was to be assumed that they had done so with the endorsement of their political grouping, and that the changes and/or additions resulting from the consultation were the product of dialogue and agreement between those consulted and ourselves. In any case, I stated, any changes made in the plenary session to an opinion for which the peoples, neighborhoods and communities had given their consent would need to be submitted to a further consultation.

Finally, consensus was reached on the binding nature of the consultation, with the support of assembly member Porfirio Muñoz Ledo and the recommendation of Victor Toledo, in his capacity as special advisor to the UN Special Rapporteur on the Rights of Indigenous Peoples. The fact that the Constituent Assembly agreed to the binding nature of the consultation was an important triumph since it meant that no assembly member put forward reservations in the plenary session of the assembly with the aim of changing the content of the opinion, and those who had reservations even withdrew them.

At the end of the consultation, the proposals made in the community minutes arising from the consultation were thus ordered and incorporated into the Commission's opinion and presented to the plenary session of the Constituent Assembly, where it was unanimously approved. No other opinion received such approval. This is largely explained by the *binding nature* of the consultation, as noted above. Also, above all because of the strong legitimacy that the consultation gave to the opinion: an unprecedented event in our country.

Autonomy in the Constitution of Mexico City

Although the city's constitution does not envisage a fourth level of government in its political organization, it does create territorial autonomies in Article 59 section B, entitled "Self-determination and autonomy."[21] This discrepancy is likely to be a matter of controversy. It will, however, depend on the actions of the Indigenous Peoples themselves to resolve it in their favor. Let us now take a look at the provisions of the Political Constitution of Mexico City (2017) that establish territorial autonomy.

a) Territory. The Constitution's text establishes that "*autonomy shall be exercised in the territories* in which the Indigenous Peoples and neighborhoods are located, within the *demarcations* based on their historical, cultural, social and identitary characteristics." And it adds, "In *their territories and for their internal regime*, the Indigenous Peoples and neighborhoods shall have competences and powers over political, administrative, economic, social, cultural, educational, judicial, resource management and environmental matters." It also specifies that "In this *territorial dimension of autonomy*, social property, private property and public property shall be recognized and respected under the terms of the current legal order" (Article 59, B, 2 and 5; italics added).

b) *Political/administrative body.* The Indigenous Peoples and neighborhoods shall define their own *forms of political-administrative organization*: "The forms of political-administrative organization, including the traditional authorities and representatives of the Indigenous Peoples and neighborhoods, shall be elected in accordance with their own normative systems and procedures, and recognized in the exercise of their functions by the authorities of Mexico City" (Article 59, B, 7). It is understood that each *territorial demarcation* — which will be formed for the exercise of autonomy — shall have a *political-administrative* body, configured in accordance with the institutions, norms, authorities and forms of internal organization of the peoples.

And, in accordance with their self-determination, the constitution adds, "No authority may decide the forms of coexistence, or economic, political or cultural organization, of the Indigenous Peoples and communities; nor the forms of political-administrative organization that the peoples give themselves" (Article 59, B, 6).

c) *Powers and competences*. The constitution recognizes a series of powers to the Indigenous Peoples and neighborhoods to guarantee the exercise of

self-determination and autonomy. The powers are set out over fourteen paragraphs. In addition to these powers, the city's constitution indicates that they may have access to other powers as indicated by "the corresponding law and other applicable ordinances" (Article 59, B, 8, I to XIV).

d) *Budget*. It states that "the city authorities shall recognize this autonomy and establish specific budgetary allocations to fulfil their rights, as well as coordination mechanisms, in accordance with the relevant law" (Article 59, B, 4).

This forms the constitutional framework for autonomy in Mexico City. Finally, the Mexico City Constitution mandates the creation of a body to implement policies to guarantee the "exercise of autonomy," among other tasks (Article 59, M).

Once Mexico City's Constitution had been enacted, the Attorney-General's Office filed an action of unconstitutionality before the Supreme Court of Justice of the Nation (SCJN) in relation to all the articles of the city's constitution that referred to the rights of peoples, neighborhoods and communities, arguing that the consultation conducted was inadequate and that nineteen articles consequently had to be invalidated. After analyzing all the documentation and information on the consultation carried out by the Constituent Assembly's Commission, the Plenary Court of the SCJN found that the consultation had "complied with the requirements of the aforementioned convention [ILO Convention 169] since it was carried out in good faith and in a manner appropriate to the circumstances, with the purpose of reaching an agreement or achieving consent for the proposed measures, as set out in its text." The draft judgment was put to a vote and was "approved unanimously by 11 votes of the justices" with regard to "recognizing the validity of the legislative procedure that gave rise to the Political Constitution of Mexico City, on the grounds that consultation with Indigenous Peoples and communities was carried out" (Judgment of the Supreme Court of Justice of the Nation, 2017).

Conclusion

A Constituent Assembly is an eminently political space, made up of representatives of different political forces, ideological narratives and projects for the country and the city. It is not then a uniform, neutral or even space but the arena for a battle of ideas and positions regarding the different issues of a

constitution; it is a contest over the meaning and scope of the norms that need to prevail in any constitutional text. In this context, formulating Indigenous Peoples' demands in a rights-based language entailed at least three interlinked risks: the omission of the key issues that form the basis of Indigenous demands; the disconnection of Indigenous Peoples' rights from the changes (political, economic and sociocultural) that are necessary in Mexico City's structure for their realization; and the disarticulation of Indigenous Peoples' demands into a multiplicity or summation of rights, disregarding their integral nature.

One of the core issues at the root of Indigenous Peoples' demands is that they wish to stop being dominated and oppressed by the State and to exercise their right to self-determination and autonomy. Two basic positions were expressed among the Constituent Assembly members with regard to this collective right: one that recognized this and other collective rights (already instituted in the Federal Constitution, thanks to the struggle of the Zapatistas and other Indigenous organizations) but without establishing the legal-political means or instruments that would enable the peoples to decide on the exercise of their rights for themselves, leaving such decisions to the authorities or institutions of the city government. This was a heteronomous position that would have kept the peoples in the same situation as before. The other, which was the one we advocated, was to establish a system of autonomy within the constitution so that the peoples could govern themselves and decide collectively on the various issues that are central to them, establishing a relationship of coordination with (rather than subordination to) the city government. This position was achieved with the consent of those peoples and neighborhoods consulted, and was thus included in the constitution.

NOTES

1 Parts of this paper were originally published in Sanchez (2019).

2 This distinction established in Article 2, paragraph A, section III, forms part of the 2016 reform of the Political Constitution of the United Mexican States. Article 122 establishes that Mexico City "is a federative entity that enjoys autonomy in all matters concerning its internal regime and its political and administrative organization"; and Article 40 states "...in a representative, democratic, secular and federal Republic, *composed of free and sovereign states* in all matters concerning their internal regime, *and of Mexico City*, united in a federation established according to the principles of this fundamental law." (The italics are ours.)

3 Article 122, paragraph A, section II of the Federal Constitution.

4 Morena is a left-wing party/movement, which obtained its official registration in 2014. Its leader, Andrés Manuel López Obrador, is now President of Mexico. I was a constituent assembly member for the Morena party, so my view of the process is inevitably clouded in some way by this.

5 TEPJF. Judgment No. SUP-RAP-71/2016 and following.

6 The political campaign began on 28 April 2016 and lasted 45 days.

7 The government of former President Peña Nieto (2012-2018) not only failed to solve the case of the 43 missing students but also covered up the facts, as has been documented by investigations being conducted by the Special Prosecutor's Office for the Ayotzinapa case, created at the behest of President Andrés Manuel López Obrador at the start of 2019.

8 Among them were Enrique Dussel, Laura Esquivel, Enrique Semo, Héctor Vasconcelos, Guadalupe Ortega, Héctor Díaz Polanco, Paco Ignacio Taibo II, Gabriela Rodríguez, Bernardo Bátiz, Irma Eréndira Sandoval, Jaime Cárdenas Gracia, Julio Boltvinik and John Ackerman.

9 In a communiqué of 29 April 2001, the EZLN stated its position with regard to the constitutional reform on Indigenous rights and culture (Indigenous Revolutionary Clandestine Committee-General Command of the Zapatista National Liberation Army, 2001).

10 The *Consejo de los Pueblos y Barrios Originarios del Distrito Federal* was created in 2007, "as a coordinating body between the Public Administration of the Federal District and citizen participation, focused on the promotion, preservation and dissemination of the original and traditional culture of the Indigenous Peoples and neighborhoods of Mexico City." The Council comprised the head of the capital city's government and the heads of the ministries of Government, Environment, Social Development, Health, Tourism, Culture, Civil Protection, Education and Rural Development and Equity for Communities, as well as the delegations. The Council was also to include "representatives of the Indigenous Peoples and neighborhoods and of social and civil organizations interested in the matter," according to its internal regulations. The Council reported to the entity's Ministry of the Interior of (*Agreement creating the Council of Indigenous Peoples and Neighborhoods of the Federal District*, 2007).

11 The Commissions were as follows: i. General Principles Commission, ii. Bill of Rights Commission; iii. Sustainable Development and Democratic Planning Commission; iv. Commission on Citizenship, Democratic Exercise and System of Government; v. Commission on the Judiciary, Procurement of Justice, Citizen Security and Autonomous Constitutional Bodies; vi. Mayors' Commission; vii. Commission on Indigenous Peoples and Neighborhoods and Resident Indigenous Communities; and viii. Commission on Good Governance, Combating Corruption and the Regime of Public Servant Responsibilities. Article 22.1 of the Regulations.

12 See bibliography for references to the three initiatives.

13 For further reflections on these differences see the compilation of texts in Yanes, Molina and González (2005); in particular, Figueroa Romero (2005).

14 This provision of the federal constitution left the right to autonomy to the local authorities. As mentioned above, the EZLN and the country's Indigenous organizations did not agree with either the procedure or the content of the reform. The EZLN stated in this regard: "With this reform, the federal legislators and the Fox government (...) are trying to divide the national Indigenous movement by passing a duty of the federal legislature down to the state congresses." (Indigenous Revolutionary Clandestine Committee-General Command of the Zapatista National Liberation Army, 2001)

15 The initiative can be consulted at: "Proposal for draft decree modifying and adding to Articles 63 and 64 of the Draft Political Constitution of Mexico City proposed by the Head of Government, regarding Indigenous Peoples, Communities and Neighborhoods and Resident Indigenous Communities, by assembly member María Consuelo Sánchez Rodríguez, of the Morena Parliamentary Group." *Parliamentary Gazette*. Constituent Assembly of Mexico City, No. 23-I, Friday, 28 October 2016.

16 Initiative of constituent assembly member Nelly Antonia Juárez Audelo, in the *Parliamentary Gazette*, Constituent Assembly of Mexico City, No. 26-VI, Thursday, 3 November 2016.

17 The PAN deputy also proposed eliminating the chapter on the rights of these peoples and incorporating them into two articles that would be moved from Title Four, On the Distribution of Power, to Title One, Bill of Rights. Carlos Gelista González, 2016.

18 The commission comprised five assembly members from the PRD, one from the PRI, one from the PAN and five from Morena.

19 I should emphasize that my fellow Morena assembly members on the Commission, Patricia Ruiz Anchondo and Bruno Bichir, supported the project at all times.

20 It should be noted that the article numbering of the Head of Government's draft constitution was changed during the constituent legislative process. In the latter, the rights of Indigenous Peoples and neighborhoods and of resident Indigenous communities were set out in Articles 63, 64 and 65; in the Political Constitution of Mexico City they were set out in Articles 57, 58 and 59.

21 Distinct forms of autonomy were established for each subject of law: territorial autonomy was established for the Indigenous Peoples and neighborhoods, while the resident Indigenous communities "will exercise their autonomy in accordance with their internal normative systems and forms of organization in Mexico City."

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10

Neggsed (Autonomy): Progress and Challenges in the Self-government of the Gunadule People of Panama

Bernal D. Castillo

Introduction

One of the great strengths of the Gunadule people is that they have their own concept of autonomy. It is an essential part of the fight for their rights. Since time immemorial, the Gunadule people have had their own institutions for the self-government of their territory, including their own political, legal, economic, social and cultural institutions, in addition to their own forms of social organization (laws regulating biocultural access, use, control and protection). Exercising the right to self-determination includes practising autonomy. It is an inalienable right of all Indigenous Peoples to decide their own form of governance, and they have a right to free, prior and informed consent over all initiatives that may affect their cultural, social, environmental and spiritual ways and means of life. The continuity of these institutional practices, a legacy passed down by the Elders, is embodied in *Igardummadwala*, which is the administrative political platform of the Guna people (Guna General Congress, 2015).

There are many threads to unpick in this. Governments throughout history have refused to accept Indigenous Peoples' right to their autonomy and

this, as we know, has been the case since the time of the European — and particularly Spanish — invasion. On the contrary, Indigenous Peoples were deceived, by sword and by cross, into ceding their natural resources and biodiversity-rich lands to the invaders.

Recognition of the autonomous rights of the Gunadule people has served as a model for other peoples of Abya Yala (Americas) in their struggle for autonomy. Until a few years ago, the people had retained their own autonomy, with strong traditions and culture. With the cultural changes that have recently arrived in the communities, however, the very integrity and sustainability of this autonomy is now being threatened. The main questions posed by this study are: What is happening in the *comarca* (region) that has the longest history of autonomy in Panama? What challenges is it facing? And, how is it trying to overcome them and seek alternatives by which to consolidate its autonomy?

The chapter will attempt to put the current situation of Guna autonomy into historical perspective by means of four major themes: the historical process of the Gunadule people's territorial struggle; the structure of Gunadule self-government; *Neggsed* (autonomy) or land and territory; and the challenges facing the Gunadule people's autonomy.

The methodology applied was a participatory one: with the Gunadule authorities in the region, via meetings of the Guna Cultural Congresses in May, June and October 2019, and then through another visit in January and February 2020. Field interviews were conducted with youth and women in the communities, and I participated in the *Onmaggeddummagan* (Guna General Congresses) in order to understand their current perspective on the situation in the *comarca* and the demands being made of the Panamanian State as regards the ancestral lands of Nurdargana.

History of the Gunadule People's Territorial Struggle

The self-government of the Gunadule people dates back to time immemorial,[1] with leaders who laid the foundations of the social, political and cultural structure through the creation of the *Onmagged* (Congresses). Later, with the arrival of the Spanish, the Guna people organized and came together to defend their ancestral territory throughout the colonial period and up until the end of the 19th century. In 1871, while Panama was still a part of Colombia,

they managed to consolidate their territory with the creation of the Tulenega *comarca*. This laid the foundation for Guna autonomy and was the first Latin American Indigenous *comarca* (Castillo, 2018).

At the start of the 20th century, when Panama separated from Colombia in 1903, the Guna territory was divided in two, with one group remaining in Colombia and the other coming under the new republic. In the Panama region, the Guna territory was divided into different areas: Madungandi, Wargandi, Dagargunyala and Gunayala. It was in the Gunayala region that the historical events of the 1925 Tule Revolution took place, when the Guna rose up against the Panamanian government in defence of their autonomy, their identity, their culture, their human rights and, especially, protection of their women, since their traditional dress, the *mola*, a symbol of Gunadule identity, was being vilified (Howe, 2004; Wagua, 2007).

The first *comarca* was thus founded in 1925 following a Gunadule uprising in an attempt to break away from the Panamanian State due to its internal colonialism, expressed via an indigenist policy of assimilation and forced integration (Leis, 2005). As a result, the Panamanian government included the Indigenous issue in the country's constitution for the first time in 1925, via a legislative act of March 20 of that year, which allowed for the establishment of *de facto* regional autonomy. The Panamanian government therefore had to reform the 1904 Constitution in order to include the issue of the Indigenous *comarca*, this with the aim of seeking peace with the Gunadule living in the Gunayala region (Valiente, 2002).

As a result of this conflict, the Panamanian government recognized Indigenous territories as reserves (for example, through Law 59 of 1930, which created the San Blas Reserve), and these subsequently served as a model for the territorial claims of other Indigenous Peoples in Panama. Later, under pressure from the Guna authorities in areas where many lands were not included, Law 2 of 1938 was passed creating the San Blas *comarca*, known since 1998 as the Kuna Yala *comarca* (Valiente, 2002).

Law 16 of 1953 approved their administrative and legal status, recognizing the Organic Charter as an Indigenous form of government, and recognizing the authority of the Guna General Congress and the *Sagladummagan* (*caciques* or chiefs) as the authorities in the region. Because of this legal act, this is today the model for the current Indigenous *comarcas* whereby each *comarca* has an Organic Charter governing the internal functioning of its self-government in the region. Later, in the 1946 Constitution, a chapter was

included on peasant and Indigenous communities in which the State undertook to reserve land for Indigenous communities, in addition to making other commitments related to political, economic, social and cultural matters (Valiente, 2002).

Since the late 1960s and early 1970s, induced by the military government of General Omar Torrijos and under the influence of the *Sagladummad* or Guna Chief Estanislao López (who travelled to the various Indigenous regions), a process of permanent dialogue was commenced with the rest of the Indigenous Peoples aimed at settling them in villages (Alvarado, 2001). Indigenous congresses were also organized at which the demarcation of *comarcas* was requested. The presence of Estanislao López helped other leaders learn about the system of organization via congresses and the figure of the chief. Thus, little by little, the other Indigenous Peoples began to introduce changes to their political and historical organization by adopting the Guna model of congresses. The presence of *Sagladummad* Estanislao López was vital to the rest of the country's Indigenous Peoples finding out about the Gunadule form of self-government, since this *sagla* himself, knowing both Guna and non-Guna culture, spoke to the other leaders, telling them that the territories needed to be unified so that they could be legalized in the eyes of the State, and so that Indigenous self-government could be implemented in Panama. This influence led, in 1975, to Estanislao López being appointed National Chief of the Five Indigenous Peoples of Panama until his death in 1982; a unique appointment in Panamanian history.

Self-Governance Structure of Gunayala *Comarca*

The regional government of Gunayala *comarca* is composed of the General Guna Congresses (the General Guna Congress, which is the political-administrative unit, and the General Congress of Culture, which is spiritual and cultural in nature) as the highest authorities of the Guna people in Gunayala *comarca*. In exercising their functions, the regional government's assemblies have produced a regulatory legal document for the *comarca* that brings together all the important aspects of customary law with the aim of having it recognized and approved by the Assembly of Deputies as national law, thus replacing Law 16 of 1953, which currently governs the *comarca*. This 2013 document entitled "*Gunayar Igardummadwala*" (Gunayala Fundamental Law) is a good example of the codification of an Indigenous people's laws.

This law would replace Law 16 of 1953, which does not represent the aspirations of the Gunadule people. This Guna Law emerged from discussions held in the assemblies and communities but has not yet been approved by the State. The Guna authorities are, however, applying it in practice (Castillo, 2005) and the Panamanian government bodies are, indirectly, recognizing this internal regional law.[2]

The Guna Fundamental Law, which is the governing law of the *comarca*, states that Gunayala *comarca* is a political division whose organization, administration and functioning shall be subject to a special regime established in the Constitution of the Republic, in this Law, and in the Statute of the Comarca (*Onmaggeddummagan de Gunayala*, 2013).

The sociopolitical structure of the Guna people in Gunayala *comarca* is based on the norms of the *Gunayar Igardummadwala* (Gunayala Fundamental Law):

> *Onmaggeddummad Namaggaled*: General Congress of the Guna Culture. The highest cultural and spiritual authority whose function is to establish the cultural and identitary policies of the Gunadule people.
>
> *Onmaggeddummad Sunmaggaled*: General Guna Congress. The highest political and administrative authority whose function is to coordinate the region's development projects with the Panamanian State; it also controls the *comarca*'s finances.
>
> *Onmaggeddummagan*: Guna General Congresses. The two Gunayala Congresses mentioned above.
>
> *Sagladummad* (*cacique*)/*Sagladummagan* (*caciques*): Person or persons legally representing the highest authorities of Gunayala, namely: *Onmaggeddummad Namaggaled* and *Onmaggeddummad Sunmaggaled*, both composed of three *caciques* (chiefs). The choice of the *Sagladummagan* for both Congresses is determined by the 49 communities of the *comarca* through general assemblies.
>
> *Neggwebur Onmagged*: Local Congress. Highest authority of each community or village. It is established with the full participation of each community's members.

Neggwebur/Gwebur: Community. A group of people inhabiting a territory (island or mainland area) delimited under the authority of a *sagla* and *onmaggednega* (Congress House), with relative autonomy in comparison to similar entities, and recognized as such by the *Onmaggeddummagan*.

Sagla: Person representing the main authority in each community or village and who, during the session of the *Onmaggeddummad Sunmaggaled*, relays the vote of their village to the plenary session.

Delegate/delegates: Persons elected by the plenary session of each local congress and who represent their community in the deliberations of the *Onmaggeddummagan*.

Statute: Gunayala Statute, a set of rules implementing the *Gunayar Igardummadwala*.

Babigala: Guna history, a set of treatises that establish the spirituality of the Guna people.

Law 16 of 1953 establishes that the highest administrative authority of the Panamanian State is the "intendant", who is the equivalent of the "governor" in other Panamanian provinces, although this position holds little power in the region since it is a symbolic figure compared to the authority of the Guna General Congresses. Decisions taken at the Guna General Congresses, which in general terms are constituted by the General Assembly, are binding on all authorities and communities in the *comarca* and cannot run counter to Guna social, cultural and religious values (*Onmaggeddummagan de Gunayala*, 2013).

However, due to the changes that are taking place in the structures of self-government in some Guna communities, a new figure has emerged below the hierarchy of the traditional *sagla*: the *sabbindummad*, or administrative *sagla*, whose role is to draw up and implement the community's projects (Castillo, 2005). In more acculturated communities,[3] the *sabbindummad* is the highest authority in the community, even though they are not a traditional *sagla* (although they do know the culture, history and problems of the community). This change is occurring for two reasons: first, because of the changes faced by Guna society, with a gradual loss of identity in these

communities, which is now extending to other Gunadule communities; and, second, because of the need to deal with the administration of cooperative projects that many government and bilateral institutions have been financing in the *comarca*.

Several years ago, as the highest cultural authority, the General Congress of the Guna Culture began to promote a rapprochement with the other Guna *comarcas* and with Guna populations in Colombia in order to strengthen and discuss their history and sacred songs. This resulted in the Gunadule Nation Meetings, with the purpose of strengthening the political, cultural and spiritual autonomy of the five Guna territories across Panama and Colombia. This is an initiative that began in 2006 in Maggilagundiwar community, where the leaders and spiritual guides of the Guna peoples of Madungandi, Wargandi, Dagargunyala, Gunayala, Maggilagundiwar (Arquia) and Ibgigundiwar (the last two in Colombia) gathered in an event that has become known as "We sing not to die" (General Guna Congress, 2009). Since then, the authorities of the Gunadule Nation of Colombia have been participating in the Assemblies of the Guna General Congresses.

Through their cultural and administrative entities, the two General Congresses form a dual power: each has clear objectives as regards its influence on the life of the Guna people, and both have been working alongside each other, without interference in the other. When there is an imbalance in governance, the Congress of Culture can take decisions just like the General Administrative Congress, if needed to guide the *comarca*'s destiny. This has in fact already happened on several occasions. This is because its legitimacy is based on its cultural and spiritual character, which forms the basis of the Guna people's life. In addition, it is they that choose the authorities of the Guna General Congress when there are changes in power or when there is a lack of authority in the Guna General Congress.

The Guna authorities are creating new commissions and secretariats for the proper functioning of the region, thus strengthening their autonomous government:[4]

Secretariat of Tourism

Secretariat of Land Transportation

Secretariat of Maritime Transportation

Secretariat of Food Security

Court of Justice Commission

Anti-Drugs Commission

Secretariat of Territorial Defence

Legal Advice

Both Guna General Congresses have likewise created an Institute[5] for each congress: the Institute for Research and Development of Kuna Yala (IIDKY) for the Guna General Congress, and the Institute for the Cultural Heritage of the Guna People (IPCPG) for the General Congress of Guna Culture, both with the purpose of promoting self-management projects in the *comarca*.

Neggsed (Autonomy): Land and Territory

To speak of land and territory, for the Guna, is to speak of their autonomy, of guiding their own destiny, their self-government, of having their own territory and life plan. As the Guna Elders would say: "*We an nabba, we an nega*" (This is our land, our territory, this is our home). The concepts of territory, territoriality and autonomy are seen as complementary and intended as an approach aimed at their protection, custody and a rational use that excludes any exploitation or domination. Through various Guna stories, such as the story of Ibeler and his siblings, they narrate the struggle for their identity against those who subjugated their roots.

The social structure of the Gunadule people has ancestral roots. It is based and built on the model of the *nega*, a word that means house or headquarters; in other words, the Gunadule social organization takes the shape of a house. This symbolizes unity, participation, strength and solidarity (Pérez, 1998).

What is *Neggsed* (Autonomy) in the eyes of the Gunadule people?

These concepts are based on "*massered iddoged,*" which refers to "*wargwen negseed,*" "*bundor gannarbagwa na wargwen neg aggwed*." *Nega* (house, home, territory), in turn, is based on another symbol that refers to the absolute unity of parts:

> "Being a man or being a woman" guarantees the capacity to carry strength and authority in one's own home, which translates into being a subject. The "house = territory" leads us directly

> to a defined land, oriented toward the great house that is *Nana Olobibbirgunyai* (the mother who dances, who turns, Mother Earth).
>
> Without a house, no one can educate their children as they want; without land, no one is free to make their own decisions but has to follow those of the person who is letting them live in the house or is lending them the house or renting them the land, the Guna Elders say. A person who acts according to the desires of his or her creditor, for the Guna, is considered "*eigwa*", "*wileged*" (poor, disabled, lacking ...).
>
> It is when you have a house or a land to build it on that you can freely choose your friends, guide your children to follow in the footsteps of their grandparents, consolidate the present and trace the future. The things you own then become your absolute property and you can cherish them, celebrate them, even stop enjoying them or change them if you so wish. In this sense, the house (territory, home, land) carries the full spirit of ownership and allows for multidimensional enrichment that can be passed on to new generations. (General Guna Congress, 2015)

The Gunadule people maintain a solid cultural foundation on which to make changes or administrative reforms to the General Congresses. They merely need to consolidate and apply their vision of *negseed*/policy, the fundamental basis of which lies in *Ibeler* and *Ibeorgun*, and in the concepts of:

> *Wargwen negseed*: this is an awareness of one's own identity, of being master of one's own house and therefore rejecting all kinds of tutelage and subordination. It is a proclamation of the right to self-determination.
>
> *Bulagwa negseed*: the unity of the hut sticks is symbolic of a model of society in which no one is excluded, where everyone has responsibility and value. In other words, knowing how to choose quality leaders in the search for alliances, unity and co-ordination between different *galumar*.[6]

In Gunayala *comarca*, land is collectively owned in accordance with Law 56 and the Basic Law and cannot be sold or alienated. When there is a boundary problem in the territory, the Guna General Congress works with the competent authorities to resolve it, for example, addressing issues such as settler invasions (non-Guna) within the region's boundaries. In addition, at the communal level, the community has its communal plots for crops, and each person also has his or her own plots, which are passed down from generation to generation. According to Guna tradition, the woman inherits the land, since it is the woman who will bring her husband to work on the land once her father dies. Land can also be sold among community members as long as it has the authorization and recognition of the communal authorities; it cannot, however, be sold to an outsider.[7]

Anmar Nuedgudi (We are living well)

For the Gunadule people, the concept of well-being is "*Anmar Nuedgudi*"[8] (we are living well), within the collectivity. For the Guna, their well-being is collective: they work together to build a house, on the land, in sacred ceremonies — they work for the Guna, *Anmar Nuedgudi*, which means:

> In this land we are fine, we own the land, we have land to grow, to hunt, to search for our medicine, to fish, whenever we want, without the "other", outsiders, coming to usurp our territory (*We nabba neggi an nuedgudi, we anmar nabba, anmar nabba nigga inmar digega, anmar nainu nigga arbaed, ibdurgan amied, ina amied, ua amied, waimar anmarga sogosuli, we nabba anmargadi*).[9]

It is different in the cities, where you need money for everything — to eat, buy a house, etc.

Threats

The *Babigala*[10] or historical memory is the inspiration for the Guna identity and this holistic vision of life. *Onmaggednega* (Congress House) is an expression of this integrality of life because it is where all aspects of life are proposed, experienced, considered and confronted.

Therein lies the strength of the Gunadule people, in their culture, which strengthens their autonomy, governing their own destiny. And yet they are surrounded by threats wanting to destroy their culture, their territory, their social and environmental structure.

In recent years, the extractive capitalist economic system has invaded the communities with greater force. Economic individualism, acculturation and the introduction of different values have weakened the Guna's social structure, creating multiple imbalances and deficiencies. Some aspects of this have been overcome, but others, in contrast, have continued and are even worsening. Wanting to fragment the Guna identity means wanting to impoverish and weaken it.

Economic Dimensions of Guna Autonomy

To understand the current situation in Gunayala *comarca*, we need to analyze it from an holistic perspective whereby the structures of self-government are adapting their internal regulations in order to face up to a capitalist and neoliberal market that is affecting the social, cultural and political life of Gunadule.

Based on cultural concepts, and taking into account the experiences of the Comarca General Development Plan,[11] the Guna General Congress and the General Congress of the Guna Culture authorized the formation of an interdisciplinary team of Guna professionals to produce the Gunayala Strategic Plan. The aim of this document is to act as a guiding document for the endogenous development of the Gunadule people. This document has been discussed with the 51 communities of the region, who were the real decision-makers in this strategic situation plan. The plan was approved by an Ordinary Assembly of the General Congress in 2015, in Agligandi community.

This current reality of the Gunadule people is clearly diagnosed in the Gunayala Strategic Plan 2015-2025. Five themes are established: autonomy, governance and territory; Mother Earth (*Nabgwana*) and its natural resources; education, culture and spirituality; health and traditional medicine; and economy and sustainable development. The document also sets out challenges and goals for a better tomorrow with their own culture, as strong and respected as any other nation in the world, thus strengthening their autonomy.

The Gunayala Strategic Plan 2015-2025 (Guna General Congress, 2015) indicates that the first theme involves "fostering and promoting respect,

recognition and a strengthening of institutional structures." This is not limited solely to their various forms of internal organization but also covers the rules governing access, control and protection of territory, land and natural resources, in addition to their own justice and decision-making systems. Guaranteeing territorial governance is also established, strengthening traditional practices in the administration of justice, and consolidating mechanisms or procedures for consultation and full and effective participation in projects within the Gunayala territory.

The second theme proposes "promoting ancestral knowledge and environmental and territorial management in order to renew the solidarity-based economy and a region that is environmentally sustainable and resilient to the effects of climate change." The stated aim of the third is "to contribute to educational, cultural and spiritual development as a right, a factor of cohesion and identity and a transforming force in society, developing the human potential of the Guna population." The fourth refers to "promoting ancestral knowledge and conventional medicine, interacting to promote quality health in the Gunayala region." And the fifth is aimed at "creating opportunities and well-being for families and community enterprises by developing and implementing a policy of food production and sovereignty."

Based on the *comarca's* General Development Plan, the region is taking steps to consolidate its autonomy in several aspects and is therefore establishing complementary bases aimed at avoiding dependence on the national government's administration for the *comarca*'s self-management. To this end, they have reorganized their self-governance structure through the creation of secretariats. One of them is the Secretariat of Tourism, the objective of which is to plan and organize actions to develop a self-managed economy from a cultural point of view. Implementing this vision has, however, led to conflicts with the national government due to efforts to control the area's waters, since the territorial sea is controlled by the Guna for the development of their tourism, their commercial maritime market and, particularly, in an attempt to control their sea and fisheries without the intervention of outsiders (unlike other regions of the country, which are subordinate to the government and to fishing companies). The Secretariat of Land and Maritime Transportation is another form of territorial control in the region, since only the Guna can transport passengers and goods and sell products coming from the city and vice versa.

Controlled Tourism

Tourism is a new area from which the Guna are obtaining an economic income, mainly in the western sector of Gunayala where territorial and administrative control of tourism is in the hands of the Gunadule themselves. There are also small hotels in the easternmost communities of the region. Tourism in Gunayala is controlled and regulated by the Guna General Congress and the local community, with visitors staying in hotels and cabins owned and managed by the Gunadule.

The arrival of visitors to the region, mainly for "beach tourism," has become a good source of employment, especially via the creation of new hotels and a proliferation of tourist cabins (whether family, group or individual). It has brought with it a myriad of problems, however (Guna General Congress, 2015), including: unscrupulous and even illegal intermediaries who charge tourists for services provided on the islands but do not declare the profits to the islands or communities; waste disposal problems, particularly the solid waste generated by the activity, which results in pollution and health problems; and the presence of floating hotels (yachts) that are generally run by private foreign companies offering services that are not declared to the communities or to the Secretariat of Tourism of the General Guna Congress.

Tourism has now become the main income-generating activity in the region. According to the administrator of the Guna General Congress, they raise around US$2.2 million each year from this (Moreno, 2018). A tax is charged on both nationals and foreigners, and on the Guna themselves, when entering the *comarca* from the ports of embarkation. The Guna General Congress itself, in the face of the tourism boom, is also promoting its own tourist packages on its tourist island known as *Anmardub* and, with this income, will oversee the administration and operation of the region's tourism policy.

These charges have been criticized by the national authorities and Panamanian citizens themselves, who state that they live in Panama and should not be charged such taxes. However, the Guna authorities say that these taxes are helping to consolidate their autonomy for local self-management since, not being a municipality, the Panamanian government does not provide public funds to the Gunayala region, and, for this reason, the area suffers from under-development. Despite the presence of regional directorates of central ministries, there is a lack of employment and production

routes, schools are in poor condition, health centers are run down and suffer from a lack of medicines, and there is a lack of port maintenance.

For the communities, this income has been used to maintain their ports, and the profits are distributed at the end of the year for activities to benefit children and the community. They have also been useful in helping communities in the event of natural disasters — fire or flood — as has already occurred in the *comarca*. The taxes have also been used to pay for the upkeep and staffing costs of the congressional liaison office located in the capital city and the Porvenir headquarters. In short, it is one way of applying their political autonomy in the region.

Tourism planning and policy is needed in the region for its sustainable development. The Secretariat of Tourism has also provided training to tour guides on various topics such as waste management, culture, history and the structure of the Guna General Congresses. Associations of hotel, cabin and tour boat owners have also been created to promote tourism.

Control of Land and Maritime Transportation

Internal access to the different communities is by three routes: land, sea or air. Only those of Guna origin are permitted to provide land and maritime transportation services, and they must operate under the supervision of the Guna General Congress.

By sea, you can travel from island to island in commercial boats or *pangas* belonging to the communities that offer this service. It is a recent service, and permission and endorsement must be obtained from the executive committee and the maritime secretariat of the Guna General Congress to operate in the region.

There are also Guna and non-Guna commercial boats in the region that sell products coming from the province of Colón. There is international maritime communication via Colombian coastal vessels trading in the Colombian Caribbean. These Colombian boats, called "*canoas*", bring edible and commercial products to the area. Flights to and from the region are only available in four communities, due to the high cost of fares. The vast majority of villagers therefore travel by boat.

With the 2007 improvements in the road connecting the *comarca* to the rest of the country, it is now open to four-wheel drive vehicles. In 2011, the Guna Congress established the Secretariat of Land and Maritime Transport,

which began to organize, plan and run activities. Subsequently, in 2014, a plenary session of the Guna Congress decided to separate both activities once more into Land Transport and Maritime Transport, in order to optimize and give greater profile to both areas (Guna General Congress, 2015).

Another road, the Mordi-Muladub Production Route (currently undergoing a feasibility study), in the east of the region, will also exist in a few years' time. This road will provide access to the Puerto Obaldia and Dubwala *corregimientos* (townships) and part of the Ailigandi *corregimiento*. It is well known, given the experience of the El Llano-Carti road, that the opening of a road will create all sorts of environmental, social, cultural and economic problems for which a strategy will need to be sought (Guna General Congress, 2015). Once it has been built, there is also a proposal to extend this road to other nearby communities.

Molas

The "*mola*" is the traditional attire of the Gunadule women, handmade, and a symbol of Guna identity. Not having steady jobs, the women use the art they have learned from their mothers and grandmothers to financially support the family. It has now been commercialized on a large-scale nationally and internationally. The proceeds have, in many ways, served to educate many young Guna people in the city.

Most *molas* are produced for sale in Panama City, either directly by urban buyers who come to the islands or by one of the *mola* cooperatives. Due to the boom in tourism, with the arrival of cruise ships and yachts, they are also being sold in the western sector in particular. In conversation with the women, they told us that women sometimes come from other sectors to sell their *molas* (some from the Usdub communities) during the cruise ship season, from October to April.

This income for Guna women is currently being threatened by unscrupulous businessmen who buy *molas* in large quantities at low cost and then sell them at higher prices to tourist agencies or to other countries. Countries such as Costa Rica and Nicaragua sell imitation *molas* made there without any kind of regulation, without the Guna General Congress or State entities taking action to protect the native *mola*, which is one of the symbols of Panamanian nationality. There are also foreign fashion designers who hire Guna women to sew dresses with *mola* designs for their fashion shows and then sell them at high prices in their stores.

Another major challenge for the art of *mola*[12] is that its designs are used for marketing purposes. For example, the liquor company of former Panamanian President Juan Carlos Varela put *mola* designs on its "Herrerano" bottles, for which the Guna General Congress had to sue him. In the end, the lawsuit went in favor of the Guna people. NIKE also tried to market the "Air Force 1 Low" design on its trainers. This attempt finally failed in 2019 (Guna General Congress, 2019) when the Guna culture's ability to protect its sacred knowledge, and at the same time consolidate its cultural autonomy, was clearly in view.

Other Economic Revenue in the *Comarca*

Traditionally, coconut used to be the most important source of income in the region, used for trading among the Gunadule communities. Today its value has diminished, but it is still one form of economic income for households and communities.

The Gunayala *comarca* has other forms of income that have served as a basis for maintaining its infrastructure in the region and in the city. In this regard, it negotiated a 25-year contract with the transnational company Cable & Wireless (without government intervention) to pass fiber optic cable through Gunadule territory by means of the ARCOS 1 project.

In summary, the financial resources circulating in the Gunayala *comarca* can be divided into the following: taxes levied on Colombian, Guna and coastal boats; taxes or contributions from public and private officials; economic contributions from communities at each session of the Guna General Congress and the General Congress of Culture; taxes on Colombian, Guna and coastal boats that wish to use the docks; use of the docks by each community member or tourist that arrives; sales of seafood; issuing of permits and fines to each community member; and the collection of taxes from small commercial stores in each community.

There is no current data on non-governmental organizations (NGOs) or international organizations offering cash donations in the region. The *corregimiento* representatives (B/.40,000 per year) and the government bodies manage the annual budget allocations for projects in the *comarca* on behalf of the Panamanian State.

Challenges Facing Autonomy: Identity and Transculturation

The Guna communities have a deep sense of identity and great awareness of the value of their way of life; they keep their cultural traditions alive, including use of their language and songs, their spirituality and philosophy of life, all of which are closely related to the forest. For the Guna, forests, land and water have life.

Like other Indigenous regions of Panama, the Gunayala *comarca* faces a myriad of social problems, including migration, loss of identity among the youth, poverty, unemployment, malnutrition, school dropouts, neglect of housing maintenance, drug addiction, increased teenage pregnancy, domestic violence, lack of recreational programs and areas, and a lack of training centres.

Local authorities are currently undergoing changes in their self-governance. One of these factors is cultural change: they are in a process of acculturation of their traditional structures, which are based on a Guna sociocultural organization that dates back hundreds of years. Guna communities that were previously antagonistic to contact from non-Guna visitors and commercialization are now opening up to intensive trading exchanges aimed at promoting community development.

According to our field research and conversations with local authorities, they tell us that there is a weakening of their culture due to the impact of cultural globalization. The use of solar panels has led to a proliferation of television and cable in the communities. In some areas, electricity is available 24 hours a day, and most of the community members pay for their electricity. A study needs to be conducted into the basic need for electrification in the region, since it has reached the region's shores via the road sector. It is important to note that the Guna General Congress decided not to accept the electricity transmission line project that was to stretch from Colombia to Panama through the eastern sector of the *comarca*, passing through Gunayala territory. Their refusal was due, among other things, to the fact that the opening of the road and the electricity transmission line would affect sacred sites and because, with the opening of a road, guerrillas, paramilitaries and drug traffickers would gain easier access and thus have a greater presence.

The use of mobile phones and other means of communication has, in some ways, diminished the Gunas' interest in their cultural heritage; for

example, many do not attend meetings or songs in the local congress, preferring to watch television programs. They show little interest in valuing their culture, listening to their history or sacred songs, since their parents talk little to them about these things and, particularly, because of the presence of the school and churches in the community, which have changed the Guna mentality. This can also be seen in the construction of concrete houses instead of more traditional ones; more people are going to health centers instead of the *inaduled* (herbal doctors); and funeral ceremonies are carried out in a festive manner (when someone dies, their relatives or mourners offer food to all those attending the cemetery or the wake).

One of the greatest challenges relates to youth and children, since they are the future leaders who will steer the ship of Guna autonomy. There is a huge difference between those studying in the *comarca* and those who go to the capital to study. Young people who have studied in the region, unlike those living in the cities, have a desire to care for and protect nature within their ideological and cultural make-up — they have lived on the land, they know the language and are involved in cultural events. Young people studying in the cities are more prone to a loss of cultural identity and to being assimilated by the dominant culture due to a lack of cultural policies in the Ministry of Education's programs that could guide them in Indigenous culture. Some take this "fashion for cultural globalization" back to the communities, bringing televisions, radios, DVDs, CDs, mobile phones, computers and audio equipment to help them feel like they are in a city environment, and the young people who live in the communities then imitate them.

Not everything is negative, however, as there is a group of young people, some of whom were born in the region and others in the city, who are consolidating their roots by organizing in youth associations, theater groups, singing, dancing, learning the sacred *Babigala* chants together with the Elders in the capital city and using virtual platforms to disseminate their culture. The Guna General Congresses are also implementing Intercultural Bilingual Education (IBE) to strengthen the foundations of identity in the Gunayala region. This began in the 1970s at the initiative of Guna teachers. The IBE project was inaugurated in 2014 with the aim of strengthening the Guna culture and language. It was promoted by the local authorities and today has the support of international agencies such as the Spanish Agency for International Development Cooperation (AECID).

Agricultural Production

One of the great challenges for Indigenous Peoples in terms of strengthening their autonomy is agricultural and marine production. In the Gunayala region, communities face uncertainty that is resulting in a transformation of their social and economic patterns, as many have stopped working in the fields or on their plots (*nainugan*) for their daily subsistence. This has led to dependence on the province of Colón and the capital city and on ships arriving from Colombia, from whom most of the communities buy basic necessities such as rice, bananas, plantain and sugar. In the past, these were products they obtained from their own harvests. Today, they are purchased from the vessels that arrive on their shores, or vehicles arriving by land. This is due to the young people's lack of interest in working the land, their desire to obtain easy money, to study to become an educator or work in government institutions such as health, police or other State entities, or even to work in tourism as a guide, renting boats and selling *molas*, leaving behind their agricultural and fishing work.

One of the consequences of not working the fields is that goods have to be purchased on credit from Colombian ships, and many natural products have been replaced by canned foods.

The Guna authorities have therefore created the Food Security Secretariat to support agricultural production in the communities.[13] It is important to note that, without agricultural production and the use of medicinal plants, a people cannot be independent of the market. Only by ensuring the agricultural and maritime production of their own food as well as the use of their own herbal medicines for treating illness can a people be considered autonomous.

Using the Courts to Recover Nurdargana's Ancestral Lands from the Panamanian State

A boundary issue arose with the creation of the Panamanian State in 1903, as this divided the Guna people between Panama and Colombia. This boundary issue still persists, aggravated by the invasion of local settlers (from Santa Isabel), those from Los Santos province and also from Colombia, which is harming the territorial integrity of Gunayala. Today, this problem is even more acute due to the Panamanian government's sale of the ancestral lands of Nurdargana (west of the *comarca*) to national and foreign businessmen (Castillo, 2020). It was for this reason that the Guna authorities decided to sue

the Panamanian State in order to recover those lands, which were not included in the laws of 1930 as an Indigenous reserve, nor that of 1938 creating the San Blas region, nor that of 1953 by which the San Blas region was organized, and nor that of 1957 when it was declared an Indigenous reserve and the lands were declared non adjudicable (Guionneau-Sinclair, 1991). For the Gunadule people, these laws are fundamental for the recovery of their ancestral lands.

In 2009, with *Cacique* (Chief) Gilberto Arias, the Guna General Congress decided to authorize the Guna Congress' legal team to use all legal means provided by the agrarian reform to call on the Panamanian courts to incorporate approximately 5,000 hectares of the Gardi region into the Gunayala *comarca*. This is an area where Guna communities have occupied, used and exploited the land and natural resources for more than two centuries. The Guna General Congress also decided to petition the Inter-American Commission on Human Rights, based in Washington, D.C.

The Guna General Congress' complaint to the Panamanian State, which is before the Inter-American Commission on Human Rights (IACHR),[14] is for violations of their ancestral territorial rights as enshrined in the Inter-American Convention and other human rights instruments. Given that Panama has not approved ILO Convention 169, many land claim petitions have not been recognized by the Panamanian State.

The Guna General Congress is therefore demanding that the Panamanian State be ordered to put a halt to the private titling of the communities' collective lands; that all concessions or construction permits within the area of conflict be suspended; and that the Guna communities be allowed to make use of their traditional lands.

Since 2009, the Guna Congress' legal team has filed 20 opposition proceedings in relation to Panama's agrarian reform, identifying 15 land title applications and more than 20 objections. In addition, at the local level, appeals for titling have been filed under Law 72 of 2008, but these remain in limbo and a claim of unconstitutionality has therefore been filed with the Supreme Court of Justice. The Inter-American Commission on Human Rights has been kept constantly informed of all these legal proceedings.

The Commission took some time to study the documents and prepare its report, finally declaring the complaint of a violation of the human right to land admissible (indicating that it was aware of it or was investigating it). This report is referred to as an "Admissibility Report" and the complaint was known throughout this time as Petition 1528-09.

By means of Admissibility Report 125-20 (which considered that there may have been a human rights violation), the Commission has completed its evaluation of the evidence, and so previous Petition 1528-09 now moves to the category of "Case 13997 — *Guna de Gardi Communities of the Nurdargana Region v. Panama*", i.e., it is now considered an international case and the process is initiated before the Commission. The Commission will, after a period of six months, issue a "Merits Report" with recommendations. During this period, both the Panamanian State and the petitioners may present additional arguments, but the petitioners may not present new facts or human rights violations not contemplated or included in the Merits Report.

The Inter-American Commission on Human Rights notified the Guna General Congress on 23 June 2020, granting it four months expiring on 4 October and two additional months of extension expiring on 23 December 2020 in which to submit additional evidence and documents referred to as additional arguments. However, as of December 2022, the sentence has not been ruled on by the IACHR or by the Panamanian government, it has not given a response to the territorial demand, nor to the intentions of the French businessman to open a road in the affected area without the authorization of the Guna authorities, violating national laws.

Women's Participation in Autonomy

Since time immemorial, women have played an important role in Gunadule culture: they are the givers of life, and they have worked alongside men in the struggles and organization of the Gunadule people. History since time immemorial tells of great women leaders such as Olowaili, Gigardiryai, Olonagergiyai and others who possessed great knowledge of Mother Earth. They also fought alongside the men on the arrival of the Spanish, for example Narasgunyai and Nagudiryai, and in the historical events of the Guna Revolution of 1925.

Women currently participate in the *onmaggednega* (General Assemblies) as community delegates, and in their own communities, where they have the power to take decisions on development projects in their village. They have also come together at the *comarca* level, with the support of the *comarca* authorities, to consolidate the role of women in the region.

Conclusion

Two aspects of regional autonomy are noteworthy: on the one hand, that of having a legally constituted territory and own culture and, on the other, the capacity for self-determination or self-government with one's own structure, recognized at the government and international level.

The culture of the Gunadule people is dynamic and acts as a foundation for the development of a society based on their worldview, understood as human creation, and their knowledge of nature, humankind itself and society. They have an accumulated knowledge that needs to be preserved, enriched, recreated, systematically transmitted, practised, adapted and widely disseminated.

The Gunadule people are taking advantage of economic opportunities for self-management, which are strengthening their territorial autonomy. In this process, the Guna people have gained the capacity to administer their *comarca* through their own laws, which the government authorities themselves recognize.

However, a lack of public policies for economic and territorial development and productive and social infrastructure essential for the growth and socioeconomic development of the *comarca* has not helped facilitate or promote agricultural and fishing production. This has resulted in the communities remaining dependent on food products from Colombia and the capital, an important challenge for the consolidation of their autonomy.

A social market economy is developing in the *comarca*, promoted by the Gunadule themselves, especially the owners of hotels and cabins and small merchants in the communities. In the case of Gunayala, social control and community ownership of the Guna General Congresses and the communities over their natural resources, territory and local and district self-government still prevails, despite strong pressure from foreign and national companies and businessmen who wish to invest. The "social control" established at the regional and communal level, by which those permitted to work in their territory are the Guna themselves, is therefore a mechanism of adaptation to the capitalist system. There are other rules for income distribution in the Guna territory over which the community has more control because the goods are communal. In the neoliberal economy, however, income concentration has deepened because governments have ceased to fulfill their role of equitable

income redistribution among the population. It could be said that there is a more equitable redistribution of income among the Guna community.

The nation-state has no public policy of territorial economic development for the Indigenous Peoples of the country. The Gunadule people themselves have therefore produced their own Regional Development Plan to consolidate their autonomy: a plan based on their own agricultural production in each community, with the aim of reducing their dependence on external agents when a regional or global crisis arises. The Secretariat of Food Security was created for this same reason: to promote a return to work in the fields and thus create mini-community agricultural enterprises to sell products to Guna stores and visitors or tourists.

Another aspect of empowerment is Guna medicine. In 2019, the General Congress of Culture founded the "*Ina Ibegungalu* Care and Learning Center" to train the *inadulegan* (herbal doctors) in their medicine, and to promote the care of patients by Guna doctors themselves. The importance of this has been clearly seen with the COVID-19 pandemic, during which the Guna authorities complained to the Panamanian government about a lack of coordination in implementing intercultural health, not only in their area but also in the other Indigenous territories of Panama. The influence of the World Health Organization has determined that the solution is the use of masks and the purchase of medical supplies, ignoring the importance of herbal medicine as a control and prevention method for the Indigenous communities as an alternative for Panamanian society.

Guna or *Neggsed* autonomy is therefore developing under the institutions of their own self-government, as a territory controlled by the Guna themselves in which to promote their own development in accordance with their cultural and political reality. The recovery of their ancestral lands of Nurdargana in the west of the *comarca* is the main political aim of the Guna authorities in order to prevent the incursion of settlers and transnational companies who see Guna lands as an area to be exploited to satisfy their own interests. It is therefore important that the Guna Fundamental Law be approved as national law since it consolidates their autonomy and self-determination. Since the basis of Guna autonomy is cultural, as the Guna Elders say, if we have a strong "*buar*" (central trunk) with no cracks, the destiny of the people will be consolidated in the strengthening of their political and territorial self-government.

NOTES

1 Ibeler and his sister Olowaili, millenary characters, together with their siblings, laid the foundations of the Gunadule people's struggle. For their part, Ibeorgun and his sister, Olokikadiryai, laid the foundations of the social, cultural and political organization of the Gunadule people prior to the arrival of the Spaniards.

2 Many Guna specialists believe this fundamental law will remain unapproved by the Panamanian State for many years since it reflects the regional autonomy of Gunayala in its self-government and the definitive demarcation of the *comarca*'s boundaries. The dissent of tourist companies and Panamanian officials is currently preventing recognition of the region's original boundaries. This "more autonomous" recognition is necessary to avoid dependence on State regulations, which are often more limited.

3 Acculturated communities are those in which the "traditional" *sagla* does not exist or, if it does, it is relegated to a secondary position; the main role is that of the administrative or political *sagla*, i.e., the *sabbindummad*.

4 These secretariats have been created with the objective of decentralizing the work of the traditional authorities; they have scarcely had a role, however, due to a lack of planning of their tasks in the communities.

5 The Institutes are the NGOs of the Guna General Congresses. They are "autonomous" and one of their functions is to raise funds. However, they do not have operating budgets and are not decentralized; they depend on the decisions of the *comarca* authorities for progress in their work. The Guna Heritage Institute has a long history of experience, having been originally founded as the Koskun Kalu Research Institute. Its directors include a traditional authority and professionals who have collaborated for its smooth operation in the communities. It is the only Institute that has a technical team of professionals.

6 The *galumar* are sacred sites or sites of wisdom where the Guna Elders gather for their joint decision-making. These sites are not to be desecrated. They are fortresses or protected areas.

7 "*Nainu* family farming" has been the historically prevalent form, however. Pers. comm., Geodisio Castillo, agroecological researcher on ancestral and traditional knowledge (05/01/20).

8 The Gunadule people also say "*An Yeeriddodisaed, anmar yeeriddodisaed* — be happy, we are happy."

9 Own interpretation and translation.

10 *Babigar* or *babigala*. Path of Baba and Nana; the treatise of Baba and Nana covers the attempt to explain the creation of the universe to Baba and Nana right through to the definition of human beings, their role on the path and the development of Mother Earth.

11 General Management and Development Plan for Gunayala Comarca, produced by the Management Study of Kuna Yala Wildlife Areas (PEMASKY) Project and approved on 7 November 1987 by the General Congress as a biosphere *comarca* in the community

of Assudub, Resolution No. 3. Currently known as the Nargana Township Wilderness Area (Área Silvestre del Corregimiento de *Nargana*).

12 Today, the design of the *mola* has gained importance among the four Guna nation authorities, as they have come together to defend and promote it. However, there are companies such as the Motta Foundation that have opened museums of the *mola* for marketing purposes.

13 With the COVID-19 pandemic, it was noted that agricultural production was vital in the region, as communities with strong agricultural roots were able to offer farm products to other communities that were running short of items. I believe there was no adequate public policy on the part of the government in this regard, which limited itself to merely delivering boxes of canned foods that lasted only a few weeks instead of distributing seeds to increase agricultural production and reduce dependence on the sale and purchase of products.

14 There is a precedent in the Indigenous land conflict with the Panamanian State. In the case of the Guna of Madungandi *comarca*, their main territorial problem is the invasion of settlers onto their ancestral lands. However, a case was made to the Panamanian State to pay compensation for the territories flooded during the construction of the Bayano Dam in 1976, a case that was taken to the Inter-American Commission on Human Rights (IACHR). One of the requests was to evict settlers from the territory of the Kuna de Madungandi *comarca*. It was not until 2015 that the Panamanian State undertook to pay due compensation to the Guna of Madugandí and Emberá of Bayano.

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11

Autonomy, Intersectionality and Gender Justice: From the "Double Gaze" of the Women Elders to the Violence We Do Not Know How to Name

Dolores Figueroa Romero
Laura Hernández Pérez

The stories of our grandmothers and mothers
are what encourage us to continue walking through painful situations
that we do not want repeated and experienced by other sisters;
and because it is important for us to stay alive,
with our cosmovision, our spirituality,
in this world that is so turbulent and so full of things.

(Norma Don Juan, Carrillo Puerto, 2018)

There are some forms of violence we have always known, and other new ones
we don't know how to name. It's not the same violence
we experienced 10 years ago. It's the violence of organized crime
that grows stronger every day in community spaces.

(Norma Don Juan, CIESAS,[1] Mexico City, 2017)

Introduction

In the late 1990s, "the double gaze of Indigenous women" was a widely used and referenced metaphor to show the complexity and positionality of Indigenous women in debates about power/gender, autonomy and self-determination in both Mexico and Latin America (Sanchez, 2005). Since then, there has been a transformation of Indigenous women's activism in relation to institutional and non-institutional actors for recognition of Indigenous peoples' rights and the rights of Indigenous women to have access to a life free of violence. In this essay we want to offer an analysis of the exercise of political articulation and changes in the agendas of the organized Indigenous women's movement due to the force of generational change, the impacts of neoliberal dispossession and the transformations that have occurred both at the community level and in government policies.

We recognize in the voices of the protagonists — of the women Elders and young women — a heritage and a cumulative process of struggles that question the State and the national Indigenous movement. These struggles have achieved the visibility and recognition of Indigenous women as subjects and political actors with their own particularity and rights (Valladares, 2017; Bonfil, 2017; CONAMI-ONUMujeres, 2012; Rivera, 1999). An important element in the formation and political learning of Indigenous women is their relationship with international spaces, cooperative agencies and global Indigenous activism where women from several Latin American countries have participated in training, worked with each other and organized into networks (Rivera Zea, 1999; Centro de Estudios e Información de la Mujer Multiétnica-CEIMM, 2005). The existence of transnational networks of Indigenous women has been vital to ensure the circulation and mobilization of knowledge and resources to strengthen their organizations at different levels and in different regions. However, despite these advances, there is a growing unease today among Indigenous women activists who seek a change of strategy to open up new areas of political work and renew agendas to respond to current challenges, which are considerably different.

The reading of generational and social changes that this essay refers to is the product of an exercise of co-authorship between a feminist *mestiza* academic woman (Figueroa Romero) and a young Indigenous professional woman and leader (Hernández Pérez). The conversation I have had with Laura Hernández Pérez about power, violence and gender has taken place

within the framework of my collaboration with the National Coordinator of Indigenous Women in Mexico (CONAMI - *Coordinadora de Mujeres Indígenas de México)* for the strengthening of an activist work initiative called the Community Gender Emergency (ECG - *Emergencia Comunitaria de Género*), which seeks to consolidate a platform for documenting violence against Indigenous women that critically dialogues with institutional policies for the prevention of gender violence. This dialogue with Laura and other young women leaders has allowed me to learn about the political work they are doing as a network, their political concerns and their trajectories of struggle as young women who are part of an Indigenous women's organization that has clear autonomy with respect to the mixed-gender Indigenous movement. As an academic, I feel the commitment to give an account of the organizational process of the Indigenous women's movement, recognizing that this implies not only analyzing the origin and past but also asking questions in the present, and questioning my own understandings about the new generation of activists' constitution of female political subjectivity.

Today's CONAMI is nourished by leaderships of different ages and regional origins, which have a very intense and diverse organizational life, ranging from advocacy in spaces of dialogue with the State to local actions for violation of the human rights of Indigenous women and their peoples. The Community Gender Emergency (ECG) initiative, for example, promotes internal reflection to understand the connections between old and new forms of violence against Indigenous women prevailing in Mexico. The ECG initiative is nourished by the concerns of women leaders of various generations — old and young, urban and professional, all with different sensibilities — who recognize the connections between criminal violence, sexuality, identity, territory and migration.

Looking at generational differences, the dialogue with Laura Hernández Pérez seeks to give a reading on gender justice from the young women's arenas of action and the constitution of diverse and porous communities. We see the change of era in relation to three mutually conditioning elements: (1) a generational change of leadership, especially of young women who move between the rural and the urban and have developed a critical reflective discourse towards intra-community violence,[2] always in dialogue with the Elders to put the struggles of the past into perspective; (2) a change of public policies towards Indigenous peoples that has moved from neoliberal multiculturalism to the current "post" moment that some have called violent pluralism, or

post-recognition of rights (Valladares, 2017; Zapata Silva, 2019). This change of era is marked by the resurgence of capitalist dispossession despite the existence of laws that dictate respect for Indigenous territorial and patrimonial rights. It is an era in which contradictions are so acute that the State itself is imbricated with and tolerates extreme violence and the generalized crisis of human rights violations of Indigenous peoples (De Marinis, 2019; Mora, 2017; Hernández, 2017); and, finally, (3) by short- and long-term effects of public policies of gender equality and prevention of feminicidal violence in Indigenous communities (Mora, 2017; Figueroa, 2017, 2019). These policies are seen by many as intrusive of community space as they essentialize derogatory and racist notions of local culture by mandatorily imposing forms of participation (Valladares, 2018) and "proper and modern" behavioral norms for family care (Mora, 2017; Seodu Herr, 2020).

To discuss these changes from an intersectional feminist perspective, we take two key frames of reference and two moments that account for Indigenous women's political positionality. The first reference is an Indigenous feminist reflection published by Margarita Gutiérrez and Nellys Palomo (1999) on the priority issues of the Mexican Indigenous movement. "Autonomy from a Woman's Point of View" (*"Autonomía con mirada de mujer")* is a work that echoes the revolutionary importance of Zapatista women and articulates a feminine reading of the Indigenous political project for self-determination, self-government and autonomy. This work summarized early on the complexity of the commitment to build community and self-government that considered women's social spaces and demands. It is a text about the ways in which Indigenous women do politics and project their voice to make their feelings known about the social construction of equity. In our opinion, the text has the particularity and analytical richness of conceiving autonomy from a feminine perspective that interconnects various levels of power ranging from the private and the community, to the national and the international.

Autonomy as a political project, a horizon of self-determination and self-government, cannot be conceived without considering the inclusive participation of men and women (Gutiérrez & Palomo, 1999); and these transformational processes must take place starting at home, but also in the community, in political organizations and in the nation. Autonomy with a woman's perspective includes a gradual notion of change and strategic involvement that nourishes and inspires Indigenous women's activist work to build networks and agreements with other women, but also with their peers.

What is profoundly transformative about this approach is that it contains a disruptive notion of power that starts in everyday feminine spaces, those spaces that are outside of community governance and ensure the reproduction of life (Mora, 2017).

Feminine autonomy starts from the most intimate core of community life to make a transformative multilevel call that connects and drives women's participation in decision-making and public spaces that are normally alien to their presence. This notion of connection invites a reversal of and challenge to prohibitions and discriminations that prevent women from raising their demands and taking part in decision-making processes. It is an approach that expands the very concept of autonomy by feminizing and depatriarchalizing it, as it makes visible the mechanics that deny spaces for women and promotes an appreciation of the feminine gaze to geopolitical debates and discussions where only male-specialized knowledge about territory and power reigns (Blackwell, 2012). Indigenous women, by simultaneously embracing their peoples' struggle and their own gender struggles, escape the imposition of the institutional feminist discourse. They reject being treated as "objects of equality rights," the stigmatization of their community identity and being seen as incapable of seeking social and gender justice for themselves. "Never an autonomy without us" demand these voices, this gaze that claims a leading place in the dignified resistance and in the political debate on the rights of Indigenous peoples (CONAMI, 2012).

The second framework of enunciation is in the approach to the political positionality of Indigenous women, in the metaphor of the "double gaze" (Sanchez, 2005). The double gaze of Indigenous women is a reflective exercise of a double nature, located at the intersection of the collective rights of peoples and women´s rights against gender discrimination. In this sense, it is a new generation of double gaze, where gender oppression is added to other discriminatory dimensions such as class and ethnic-racial and cultural identity. If the Indigenous double gaze in the 1990s invited solidarity with the exploited *campesinado*[3] and oppressed Indigenous nations (Hernández, 2005), the female double gaze adds yet another dimension of oppression, that of gender, intersecting with all the previous ones.

We find that the double gaze of Indigenous women activists implies a critical and reflexive intersectionality that engages in a constant questioning with the mixed Indigenous movement and hegemonic feminism. On the one hand, this interpellation with Indigenous activism involves deconstructing

the sexism of peers and, in the case of liberal feminists, the critical dialogue reveals the *mestizo* racism and ethnocentrism that judges and prejudices community living spaces as backward (Seodu-Herr, 2020). The task is complex, requiring a kind of vast dexterity to legitimize voice, show the specificity of the demands, and reverse the interstices of discrimination and its negative effects in the political and social field.

The activism of Indigenous women is one that emerges from within the communities and is symptomatic of the transition from a passive voice to an active one that has its own character (CONAMI, 2012). It is an activism that seeks to disrupt family arrangements and normative systems and confronts and questions male leadership in order to make their demands possible and legible (Sánchez, 2005). It is a scaled view that disrupts several orders and looks at the community, but it is constituted in reference to, and in concert with, national policies that threaten the lives of peoples. That is why Indigenous women respond critically to the State, which tries with its contradictory and racist policies to impose a minimalist version of rights on the peoples of Mexico on the one hand and criminalizes the Indigenous community for violating women's human rights on the other. By simultaneously embracing their peoples' struggles as well as their own gender struggles, Indigenous women avoid the imposition of institutional feminist discourse that stigmatizes their community identity and minimizes their capacity to seek social and gender justice (Blackwell, 2012; Seodu-Herr, 2020).

The political positionality of Indigenous women is complex and commonly silenced, which is why it requires the lens of intersectionality to make sense of the multiple (mis)encounters with non-Indigenous actors and activist discourses. The feminist concept of intersectionality has the potential and flexibility to make sense of the combination of discriminatory violence and orders, the construction of differentiated social identities, and the conjunctural interweaving of social, economic, political and gender justice activisms (Crenshaw, 1993; Suzack, 2017). Conceptually and methodologically, intersectionality offers several fruitful analytical lines: it explores the intersectionality of identities — social, ethnic, racial, age — of marginalized social groups; reveals the intersectionality of structural and historical oppressions and determinations of specific contexts; analyzes the political intersectionality of activist work that makes Indigenous women invisible (in the case discussed, pro-political parity/anti-feminicidal violence feminism versus Indianism for the sovereignty of Indigenous peoples); and helps push constructive and

revealing dialogues of the blinders and blind spots of political actions and vindicatory lexicons (Wright, 2017).

Specifically, this chapter takes up the concept of political intersectionality — a concept coined by Afro-descendant feminist Kimberlé Crenshaw (1991) — as it has the potential to illuminate the complexity of the positionality of Indigenous women's collectives that face diverse forms of violence on the margins of hegemonic activisms — whether feminist, ethnic or human rights. This perspective refers to the intersection of activist agendas that, in general, take parallel or contradictory paths and generate silences about the different ways of conceiving justice, as well as the routes to access it. Activisms are born and organized to seek justice, and in the case of hegemonic feminism, gender justice[4] contains Western epistemological blinders that deny Indigenous women the ability to seek their own ways of building equity between genders, in concert with local institutions, and from the cultural references of their communities (Seodu-Herr, 2020; Goetz, 2007).

The following sections of the chapter are organized as follows. First, we will address the background and origins of CONAMI in concert with political events in Mexico in the 1990s, following the Zapatista uprising. The second section will discuss the nature of distinct genealogies of Indigenous women's leadership and especially what these distinct life experiences mean for dimensioning generational change. The third section includes the narratives and thoughts of three young women leaders from CONAMI who were selected based on their divergent and complementary ways of addressing the internal contradictions of their communities. We will close with a section that discusses community emergency work and the challenges of gender justice from an intersectional and intergenerational perspective.

CONAMI and the Double Gaze 23 Years Later

CONAMI was founded in 1997, within the framework of the First National Encounter of Indigenous Women held in Oaxaca on 29-30 August. This meeting was attended by more than 800[5] Indigenous women from all over the country with the intention of formalizing a space for organized women to grow as a collective with their own identity and in dialogue with the national Indigenous movement. Inspired by the leadership of Commander Ramona[6] in the liberating imaginary of the Revolutionary Law of Indigenous Women, the founders of CONAMI opened a very important chapter in the

political and public life of Mexican Indigenous women (Espinoza Damian, 2009). This foundational moment was the result of the multiplier effect of Zapatismo throughout the country: "contemporary Zapatismo had exacerbated the enunciative field of and about Indigenous women, provoking a change in their self-awareness and self-representation ..." (Millán, 2014, p. 67 in De Marinis, 2019, p. 110). All the Zapatistas, but specifically Commander Ramona, inspired other Indigenous women to not be afraid, to leave their homes and set an example of rebelliousness to exercise a leading role.

Following this invitation, many of the women leaders who attended had already been participating in the mixed-gender organizations of their peoples and in the regional organizations that questioned the State about the alleged celebration of the 500th anniversary and the "Encounter of the Two Worlds." The mission was to legitimize a space to talk about sensitive issues for the Indigenous movement but also issues relevant to women, such as the right to political-social participation within the community, to make visible their contribution to the Indigenous political project, their freedom to make decisions about reproductive sexuality, have the right to land, achieve economic independence and have access to a life free of violence.

The women leaders who answered the call at that time were partners and/or wives of men who had a prominent role in some regional or national organization, and therefore, being close to the mixed collective, they found it appropriate to consolidate an autonomous space to meet as women. In order to achieve conflict-free meeting conditions, it was agreed that they would not get involved in the discussions of their mixed organizations and would concentrate their thoughts on discussing issues of common interest as Indigenous women (CONAMI, 2012). The women Elders recall that getting together was not an easy task, as many left their homes secretly, carrying their children, even if they later had to endure reprimands for failing to fulfill their household responsibilities (Jurado et al., 2018). But perhaps the most difficult thing to face was the criticism from within, from the male gaze that questioned the relevance of the process and threatened with divisionism the female initiative to achieve autonomous organization.

Twenty-six years have passed since then, and the existence of CONAMI has been marked by several milestones and various pathways (CONAMI, 2012). The founding women Elders, in addition to ensuring political spaces for women only, were also forerunners and actors in the transnational Indigenous movement, participating in forums, meetings and international

human rights training courses. During all these years they have maintained a healthy autonomy with respect to the mixed Indigenous movement and in dialogue with allied feminist organizations and international cooperation for procuring resources for training and political advocacy work. The tasks have focused on influencing national public policy in order to mainstream the concern for addressing the specificity of Indigenous women, generating training spaces for women who attend to the needs of their communities at the local level and actively strengthening continental networks such as the Continental Network of Indigenous Women of the Americas (*Enlace Continental de Mujeres Indígenas de las Américas* — ECMIA) (ECMIA, 2008).[7] At the national level, CONAMI is present in 17 states of the Mexican Republic through 23 community, municipal and/or regional organizations, with and without legal status, mixed or made up solely of women. CONAMI is currently governed through three decentralized regional coordinating bodies in the north, center and south, and has several working commissions that require the contribution and commitment of young women leaders, such as the Commissions for Children and Youth, Communication and the Eradication of Violence.

In terms of leadership genealogies, CONAMI has notable women founders and leaders such as Margarita Gutiérrez (Chiapas), María de Jesús Patricio "Marichuy" (Jalisco),[8] Tomasa Sandoval (Michoacán), Martha Sánchez Néstor (Guerrero), Felícitas Martínez (Guerrero), Fabiola del Jurado (Morelos), Ernestina Ortiz (State of Mexico) and Sofía Robles (Oaxaca), who have played an outstanding role in revealing the "voice and double gaze" of Mexican Indigenous women in international spaces on the subject of Indigenous women's issues, making visible the correlation and overlapping of these two levels of rights in specific contexts. During these years, several Indigenous women leaders have shown great abilities to carry out actions and processes autonomously, diligently and with scarce resources. In addition to the older women, there is a generation of young women who are taking on various responsibilities that are central to the organizational life of CONAMI. They know they are inheriting a political agenda that was outlined in 2012 within the framework of an accompaniment process provided by the United Nations Development Program (UNDP).

This agenda consensually encompassed five thematic areas: 1) cultural rights (identity, education and technology); 2) right to territory and natural resources; 3) political rights and free and informed prior consultation; 4)

economic rights and food sovereignty; 5) right to health, sexual and reproductive rights, and the right to a life free of violence. Without denying the relevance and centrality of these areas, we would like to point out that there is a new generation of demands, needs and work areas that young Indigenous women are developing, and that urgently need to be included.[9] The contemporary leadership of CONAMI demands the passing of the baton and the establishment of more consistent intergenerational communication channels.

An important input for the analysis of intergenerational dilemmas is to know to what extent organized Indigenous women recognize diverse positionalities within themselves and adapt their political reading to national problems. The longstanding social effects caused by modernizing development policies, territorial dispossession and the precariousness of the rural economy have detonated realities in rural and Indigenous communities that are already part of a naturalized reality (Bonfil et al., 2017). Rural-urban migration, loss of language, unwanted pregnancy, symbolic and media violence, disconnection with the world of the community and sexual and feminicidal violence against Indigenous women are some examples. What are the differences between the 2005 call of the double gaze and the gaze of young women leaders? The answers to this question are linked to the transformations that have taken place in the community as a geographical and metaphorical space for thinking and living Indigenousness, the migration and mobility of the new generations of Indigenous youth and the politicization of rights and identity from the intersectionality of contemporary violence.

Genealogies of Leadership and Intergenerational Change of CONAMI

At CONAMI's 20th anniversary celebration in 2017, held at the Central Library in Mexico City, the inaugural speech was given by Laura Hernández Pérez, a member of the Children and Youth Commission. Laura, of Nahua origin, of migrant parents in the Mexico City Valley's metropolitan area, and a social worker by training, was in charge of welcoming the regional participants from all over the country, as well as observers and visitors from abroad. Laura took the microphone to read the collective and political positioning of CONAMI, respectfully taking up the teachings of the Elders and honoring the path opened by Commander Ramona. It was highly symbolic that Laura, with her young voice, was the spokesperson of CONAMI's position after 20

years of work. At the celebration she emphasized that the struggle of women for the collective rights of peoples and the rights of Indigenous women to enjoy a life free of violence(s) is still very much alive. "What are our demands today? No to discrimination, racism, poverty, violence, death, dispossession, exclusion and repression" (August 2017).

In terms of political subjectivity, Laura said that participating in CONAMI taught her to get rid of her fear of speaking in public, to form collectives and to insist on defending the rights of Indigenous peoples and the human rights of Indigenous women in rural and urban areas. To continue promoting the transformation of relations between men and women from different fronts and from the community-local to the national and transnational levels. Laura pointed out that it has not been easy to have continuity in 20 years as, like any other organizational process, CONAMI has had crises. But together they have retaken the path thanks to the incorporation of youth leaders who are fighting with renewed interest, not for their own personal interests but for the interests of all Indigenous women in Mexico.

Continuing with the reading of the positioning statement, Laura pointed out:

> ... today there are many laws and specific programs aimed at benefiting Indigenous women. The Mexican State has been reactive to the lobbying and advocacy work of Indigenous organizations. As CONAMI we will always stand for the recognition of Indigenous women as subjects of rights and to have access to justice, health, education, employment and opportunities to participate in the political life of both our communities and our peoples. But after 20 years of existence as a coordinator group, we denounce that the changes have been few. Although there has been progress in legal matters in the international and national sphere, this is not reflected in the daily life of the communities and Indigenous peoples. Worse yet is the violence that has raged against social fighters for the defense of territory (August 2017).

Laura began her involvement with CONAMI doing grassroots work in technical support areas. She is now an outstanding leader who has assumed the role of Communications Coordinator. In addition to her leadership role within CONAMI, Laura is the founder of a collective called Yehcoa Um of urban

Indigenous youth who work with Otomi children and youth who live with their parents on a property in the Roma neighborhood of Mexico City, and sell handicrafts and sweets on the street. Their concern has been to prevent mistreatment, abuse and drug addiction through rights education with at-risk urban Indigenous youth. In reference to the women Elders, Laura also mentioned that:

> … the seeds have borne fruit; they have been seedbeds of several Indigenous women's organizations. They are all sisters with whom we make community, share information and accompany each other in this walk until dignity becomes a habit ... ! (August 2017).[10]

With these words she took up the clamor for justice of Indigenous women who have been unjustly imprisoned, and whose condition of poverty and defenselessness makes them prey to a police system that acts with impunity. The injustice of these cases not only harms the social life of the people but also represents clear events of gender injustice.

In Laura's words there are clear signs of a transformation in the political discourse, which at certain times insists on responding to the precarious living conditions in contexts where the experience of ethnicity is threatened. In this tenor we take up the work of anthropologist colleagues such as Laura Valladares (2017) and Paloma Bonfil (2017) who have documented the leadership formation processes of young Indigenous women and have published referential works for this analysis. For us, there are two key questions to answer after reviewing this literature: first, what has been written about the generational change of Indigenous women and the elements of analysis they provide? And second, what does the literature say about young Indigenous women?

For Valladares (2017), generational change, broadly speaking, is conceptualized in relation to three temporal segments that are also emblematic of different political-social epochs. The first segment refers to older adult women, 50 and older, whose life experience is closely linked to the domestic space, with little participation in community life, and a melancholic feeling towards the quiet and simple life, but with little possibility of questioning or even naming injustices against them. An epoch marked by industrial development promoted by the Institutional Revolutionary Party, rural political clientelism

and hegemonic nationalism. The next segment is of women between 35 and 50 years of age, which is a generational group that stands out due to the influence of Zapatismo and the times of the emergence of ethnicity as a salient banner of struggle. As negative structural factors linked to the neoliberal economic opening, the crisis in the *campesina* economy, the increase of migratory flows and the incorporation of Indigenous women into the paid labor market. Moreover, the feminization of poverty and the emergence of new gender roles within the communities and in the political and productive spheres are beginning to reemerge as a result of male migration to the northern region of the country. The positive aspects for Indigenous women at this time are related to access to formal and informal education, training programs on economic empowerment, human rights training and leadership. As a result of neoliberal multicultural recognition policies, outstanding Indigenous women leaders selectively entered government programs in areas of social attention with an intercultural and gender focus, as well as in programs financed by national and international cooperation agencies.

The last temporal segment is that of the new millennium generation, young women between 15 and 35 years of age, who are living survivors of the constitutional post-recognition era. This era represents the loss of Indigenous peoples' interlocution with the State, the marginalization of Indigenous demands in the Congress of the Union, the proliferation of network activism, the decentralization of mobilization towards the territories and the hyper-judicialization of Indigenous rights in the electoral field.[11] This generation is witnessing a paradoxical situation that Laura Hernandez pointed out in the anniversary speech, in which there are many legal frameworks that recognize the rights of women and Indigenous peoples but their impact on daily life is tenuous due to the huge gap in implementation and even more to the nonexistent guarantee of their justiciability. In terms of the country's economic and structural condition, young generations are affected by the lack of employment, the precariousness of agricultural work, the presence of organized crime and the impacts of the drug economy and criminal violence. Indigenous youth live in a country where expectations of having a dignified life free of violence are scarce.

For Bonfil (2017), even with all these negative elements already mentioned, the new generations of young Indigenous women leaders are resisting on many fronts. Partly because they are the granddaughters of old-style women leaders and partly as a result of their parents' efforts to provide them

with education in the cities, they are a generation that readapts tradition and identities from their hybrid and modernized experience. In many ways, they challenge the adult-centric bias that marks young people as apolitical and uninterested in community issues. The important themes of change in youth political discourse touch squarely on five nodal issues: (1) that the construction of community and autonomy is invariably crossed by the experience of migration and the porosity in the rural/urban divide. The community in the imaginary of young women is planned in more fluid, porous and spatially multi-situated terms; (2) that the experience of power and participation is posed in more contentious terms, more in the face of seeing substantive changes in community structures and traditional governments not very receptive to the demands and participation of women; (3) that reproductive sexuality and sexual/gender identity is conceived from more diverse, inclusive and autonomous terms; (4) that the experience of Indigenous identity is reclaimed from the scenario of urban socialization, in dialogue with other external cultural influences and in resistance against racial and spatial discrimination; and (5) that the experience of new, extreme and lethal violence, linked to different migration processes (whether forced or labor), has new names and new impacts on young people, and flows through social networks, drug use, human trafficking and criminal circles.

It is for this reason that Indigenous youth issues now have a more central place in CONAMI's agenda. In recent years, women leaders have shown receptiveness to and interest in incorporating young leaders, young professionals who are present in the speeches, debates and intergenerational dialogue. Political discussions between Elders and young people are now a common pedagogical practice, both in national events and in small-scale sub-regional meetings; but there is still much to learn.

When Young Women Speak Up and Make Demands: The Dilemma of Weaving Continuity or Dissent

In this section we would like to introduce the thoughts and experiences of three exceptional young women, members of the Yehcoa Um Collective, each with her own individuality and trajectory.[12] They represent different positions with respect to sensitive issues such as community, identity, rights and (gender) justice. In our perspective, even though all three share a commitment

to the consolidation of CONAMI, they have a different political subjectivity due to their life experience and the way they were inserted into organizational processes. We have selected their interventions based on three different perspectives with which these young women relate to the political community of "women Elders and men Elders," either seeking to weave continuity with them and listening to their teachings or, on the contrary, questioning the paradigms of unity within the communities and their impact on the lives of young women, women and community.

Weaving Continuity and Community

Laura Hernández Pérez, co-author of this essay, is a mother of a young girl, from a migrant family of Nahua origin from the state of Puebla and Veracruz. Her parents and their siblings lost the Nahuatl language due to discrimination in the city, but she remembers that both her maternal and paternal grandparents spoke it, and she, not being a speaker, feels there is a root pulling her to recognize herself as Indigenous. Laura, interested in social sciences, chose to study social work at the National Autonomous University of Mexico (UNAM). Laura's self-recognition process came about when she began accompanying Otomí children and young people living in a lot in the Roma neighborhood who sold goods on the street and were vulnerable to the violence of urban life. Laura saw in them many things in common with her own life experience, to the point that she recognized herself in them. Later, her search for resources to work with the urban Indigenous population led her to meet other young women leaders who, like her, were putting together proposals, seeking resources and knocking on the doors of government institutions in the city. The principle that mobilized an ethnically diverse group — Mazahua, Otomí, Totonaca, Nahua — was to build community in diversity and fight against discrimination in all its facets.

Trained in a diploma course on human rights by the Francisco de Vitoria Human Rights Center, Laura began to organize discussion groups and forums where she had the opportunity to meet leaders such as Fabiola del Jurado and Norma Don Juan. In 2016, Laura received an invitation to participate fully in CONAMI's Logistics, Management and Communication Commission, together with other young women such as Lynn Ramón Medellín and Patricia Torres Sandoval. Gradually the weight of responsibility she had taken on grew and became more complex, leading Laura to develop greater expertise and

the poise to attend international events where the Indigenous youth agenda was discussed.

For Laura, the participation of young women in CONAMI is vital because it allows them to make visible and position issues that are present in their personal lives, the lives of other young people and their community, such as sexual diversity, violence in networks, suicide and abortion. Airing and discussing these issues helps CONAMI's women Elders detect the problems and understand the need to position them. The young women push issues that concern them and that are an integral part of their experience in the cities, in many cases far removed from community life. Much of the young people's life experience has to do with the struggle to survive in the city, confronting racism and developing defense mechanisms. Laura points out reflectively that life in the city tends to develop an individual perspective in the sons and daughters of migrants, and that, in her experience, can lead them to act immaturely and break away from their own collectives.

For example, the issue of gender identity diversity is a complex terrain to address in community settings. Some older women leaders are reluctant to understand the diversity of identities and the political demands that derive from it. Laura considers that there is a responsibility in being a young leader, since one must learn to weave the new demands with the benefits that their discussion would bring to the community as a whole, that is to say:

> … that we are not only won over by positioning ourselves individually, but one wonders how this relates to or benefits your organization. There are some sectors of young Indigenous women who are critical and have reflected on the forms of relationship between women and men in their communities and find it difficult to accept sexist, unequal attitudes and/or attitudes that violate the rights of young women and Indigenous women, so the position at times is very hard, but I think that instead of postponing change we should learn to weave in community to generate good living. There are ways to make it compatible; we need to look for these ways, steps, and if in a given case there is no way, we need to opt for the most conciliatory path (Hernández, 2019).

Laura recalls that at the beginning of her participation in CONAMI she was very rebellious and radical, and little by little she listened to the teachings

of the women Elders, learning from them, and they offered her a community where she felt supported and not lost in the city. Now she recognizes CONAMI as her community:

> … it is my collective, because they have 22 years of organizational self-management and autonomous work. And that is enough. This experience makes me situate myself with a different perspective. The collective builds me up, but I contribute to the collective, we are walking together (2019).

Laura is a mother, and her responsibilities at home consume her time and energy, but she feels the need to continue working for the continuity of CONAMI by engaging new partners in the work. She is concerned about the task of renewing CONAMI's policy agenda, which was published in 2012. This agenda, according to Laura, needs to incorporate new issues. The ones on the agenda are rights and advocacy, territory and autonomy, education, political participation, reproductive health and gender violence. What is missing?

> … well, there are many problems that are very deeply felt in the communities — both urban and rural; for example, violence in social networks, alcohol and drug addictions, mental health issues such as suicide and self-inflicted injuries. All these are new things that didn't happen before. Similarly, there is the whole chapter on extreme violence such as femicide, trafficking, forced displacement, all related to militarization and organized crime. In the labor field there is a debt due in terms of labor exploitation of both agricultural day laborers and domestic workers (Hernández, 2019).

Much remains to be done, but Laura is always in a good mood. She leads her words and feelings with kind gestures and, although the problems she talks about seem immeasurable, she always keeps her tone of voice slow, giving herself time to think and reorganize her thoughts.

Indigenous Women's Sexuality is Not Just a Reproductive Issue

I met Yadira López at the CONAMI Central Region meeting in the city of Morelia in 2019. My task was to facilitate the reporting of the working group on sexual and reproductive rights organized by the Commission for the Eradication of Violence, and Children and Youth. Yadira was seated next to other colleagues from the region when it was her turn to participate and she began by introducing herself as follows: "I am a Zapotec woman from the Oaxacan Isthmus, and I am a lesbian." From the beginning of her intervention, she suggested to her colleagues that the discussion on the sexuality of Indigenous women should not be limited only to reproductive issues and violence. She was uncomfortable that Indigenous women's sexuality was limited to the issue of motherhood, and the experience of obstetric and sexual violence. She argued that the social order imposes social roles on the female gender such as motherhood or caring for the sick. Early marriage and unwanted pregnancies are a reality in the life experience of many Indigenous women in the country.

For Yadira, these issues should not restrict the topic of sexual rights to the reproductive sphere. Reproduction is only one part of human sexuality and, therefore, should include other issues such as pleasure and non-heterosexual sexual-affective orientation. From her perspective, it is a violation to see Indigenous women as alien to the enjoyment of sex. These concerns represent an important part of Yadira's socialization experience as a Oaxacan woman from the Isthmus. She explained that in the Oaxacan imaginary about the Isthmus there is a construct from the narratives of visitors and foreign anthropologists or naturalists who have represented Zapotec women as hypersexual. Hence, there is an external gaze that exoticizes the region, and above all hypersexualizes both female sexuality and sexual diversity. But this margin of tolerance towards sexual diversity is restricted to the figure of the Muxe. Muxe transsexualism is socially accepted within the community, but not so other diversities such as lesbianism among Indigenous women.

From Yadira's perspective, it is important to open the discussion among Indigenous activists about sexual experience from places other than just violence. In Indigenous languages there is no way to translate the Western meaning of sexual rights, but in Zapotec there is a word to name the enjoyment of both eating well and having a full life with a partner, and free of violence. To be full in all senses.

For Yadira, talking about sexual rights should include the right to pleasure and not only be restricted to the issue of motherhood and family reproduction.

> It is understood that a very important part of our activism is focused on making it a reality that Indigenous women have the right to be assisted in their births in a dignified and culturally appropriate manner. But they must also have the right to exercise a sexual and pleasurable life with dignity and free of violence. Reproductive rights should cover all facets of women's sexual and reproductive lives, including giving birth without suffering violence, not being discriminated against for having children of different fathers, living motherhood voluntarily and not forced, having the right not to choose motherhood, procreating with same-sex partners, knowing how to plan their family and having children in a spaced manner. All these rights are the most intimate, the most pertinent of being a woman, and there is no way to exercise them if they are not known. (Morelia, July 2019)

Pleasurable sexuality for women is also a right, but it is rarely exercised, because most of the time it is seen as an obligation, a sexual obligation for being a wife, and it is lived with violence. Yadira asked:

> How should Indigenous women make a distinction between these two spheres: reproductive and sexual rights? How can we understand our own sexuality? There is a lot of work to be done, to dialogue among ourselves and try to reach agreements on what is favorable to the movement and sexual rights education for boys and girls. These reflections should be part of the educational perspective to address these issues with Indigenous youth, from the right not to be raped to the right to live a pleasurable sexuality and decide the number of children to have or not to have. (Morelia, July 2019)

Yadira is a young university student who, thanks to a scholarship program for Indigenous students at Metropolitan Autonomous University (UAM), has been able to reach other social circles and develop intellectually and

organizationally, although a salient element of her passage through the university campus has been to experience sexual harassment by professors. I have had the opportunity to see Yadira participate in other CONAMI forums and political events, and it seems to me that she is an articulate and brilliant young woman in her reflections, although her words are sometimes not well received by leaders unfamiliar with these issues. Her open positioning of her sexual orientation breaks down the social fabric and imaginaries that I have not witnessed very often in my role as an external observer of the movement. I have seen the strength of Yadira's testimony in the public participation of young Indigenous women and professionals who use it to show their lesbianism, and talk about the experience of abortion, or the mistreatment of childbearing out of wedlock. Yadira is the daughter and granddaughter of healers, with medicinal wisdoms who suffered persecution and violence for using their knowledge in their traditional land in Oaxaca. Later, in a very difficult moment in her adolescence, depression took her prisoner, and her mother's knowledge of healing helped her move forward. Sexuality lived from other nontraditional referents is a point of rupture with the community and leaders like Yadira remind us that autonomy is also claimed from such intimate spaces as one's own body.

When Lethal Violence Disrupts the Community

Lizbeth Hernández Cruz is included in this review of voices of CONAMI's new activists because she is a young professional who has cultivated a strong bond of connection with her community despite migration. Her childhood was very close to her mother's family, with high demands for excellent school performance and experiences working in the fields collecting prickly pear cactus with her grandfather. Her good grades allowed her to earn scholarships and awards and to have several training opportunities in Mexico City. Her professional preparation has not been a pretext that has kept her away from "her people" — as she says — but always looking for a way to work for the community.

Originally from El Sauz, a community that is part of the municipality of El Cardonal in the Mezquital Valley region of the state of Hidalgo, Liz is the daughter of a well-known Indigenous education teacher, and her maternal grandfather was once elected municipal president. Liz has had a very successful educational trajectory, having studied everything from law to political

science, disciplines that have helped her critically analyze her relationship with her community's political order and her identity as an Indigenous woman. Liz has had four very important formative inheritances: one is her family, from which she has learned the discipline of studying; the second is the commitment to help her community in administrative and secretarial functions in community assemblies; the third has been her training as a feminist in dialogue with academics from the National Autonomous University of Mexico (UNAM) who are experts on these issues; and fourth, the connection she made with young leaders of CONAMI.

She says that between 2014 and 2016 she was very involved in the assemblies, following up on agreements, taking minutes and participating in the assemblies on behalf of her brother and her mother. Her mom is a "community citizen" (this is the denomination instead of *ejidataria*[13]) and has the right to participate in the assembly plenary sessions. In the case of Liz, her participation is in a representative capacity since she cannot be elected to positions and her name cannot appear on the signature of the minutes. Her mother has the same rights and obligations as any other citizen.

Involved in community politics because of her mother's privileged position, and partly out of self-interest, Liz also got involved in the celebration of the patron saint's day. She participated in the drafting of the community's internal regulations, although once she learned the rules of inclusion and exclusion, she became disenchanted because in her opinion there was no equal criterion for participation and commitment of community members. "The community assembly is a small state, with its internal rules of participation, hierarchies and functioning orders that go through consensus but are governed by the criteria of the male Elders" (Hernández Cruz, December 2019).

I met Liz during an internal workshop with CONAMI on issues of documenting violence in 2017, and on that occasion, she was part of a research team from UNAM that was doing data collection and recording life stories about leadership and power. In the dynamic of presentations during the workshop, she spoke of her work as a rapporteur in the assembly of her village and of a study that was about to begin on structural violence against Indigenous women. With her slow speech and attentive gaze behind light-colored glasses, I was pleased with her positive attitude toward sharing.

A year later, in 2018, I met her again at an event organized by CONAMI at the headquarters of the National Institute of Indigenous Peoples (INPI) in the task of supporting the political process, participating as a speaker in a

conversation on CONAMI's political agenda, but carrying a bitterness whose origin was difficult to guess from off stage. A resentment had grown in Liz that was noticeable, and once installed with microphone in hand, she made it clear to all listeners. Liz was struggling with feelings of great anger against the traditional authorities of her town because in her opinion they had not responded adequately to the femicide of a relative that took place in the middle of the patron saint's day dance at the beginning of 2018. A close aunt of Liz's was murdered in the town square by a jealous ex-boyfriend who shot her dead. Once the event took place, there was growing confusion, the murderer fled, the murder weapon was left in the custody of the traditional authorities, the evidence was lost, and the Public Prosecutor's Office was informed of the facts too late. The murderer was apprehended some time later. In her desperation to seek justice, Liz went to an extraordinary assembly convened just after the events took place, in which the authorities and stewards of the festival were more concerned about the expenses and economic losses of the festival that was affected by the femicide. Liz, for her part, could not believe the insensitivity of the authorities; she could not believe that what worried them the most were the monetary losses and not the life of her aunt. With an altered voice she sought to call the attention of the Elders. In her anger she hurled insults at everyone, and tears ran down her face at the lack of empathy and response. Liz wanted a plaque to be placed in memory of her aunt in the square where she was murdered. These efforts continue.

The traumatic moment described here happened more than two years earlier. When interviewed, Liz recalls that the authorities complained about the lack of respect and tact with which she confronted them. For Liz the pain of losing her aunt was very intense, so much so that she believes there is no going back. Her love for her people was affected and something in her was broken. She does not know if it will be forever, but for now it is damaged. For now, her community is not in Hidalgo, but in CONAMI where she finds friends who help her to understand and digest what happened.

Gender Justice, Autonomy and Community at the Scale of Femininity

In this section we would like to reflect on the life experiences of young women and their perspectives on "the community" — whether Indigenous or of a more metaphorical nature — as a social and political space. The activism of

organized young Indigenous women in Mexico plays a very important role in revealing and unveiling the most salient contradictions both within the mixed Indigenous movement and in the communities to which they belong (Bonfil, 2003, 2017). Autonomy in "young" women's eyes in CONAMI expands much more the senses of radicality embodied in the revolutionary Indigenous Women's Law enacted by the Zapatistas. The Zapatista effect on gender justice continues to inspire Indigenous women to achieve better conditions of equality and justice options for both their peoples and themselves, from the intersectionality of their identity, and politicizing demands such as control over their bodies, the right to have a presence in leadership positions, legitimize their youthful voice in adult-centric spaces and achieve economic and political empowerment.

As we have shown, the struggle for autonomy from the experience of young women has several interconnected levels: the body/person; the community/sociopolitical; and the organizational /praxis/strategy dimensions. This trilogy of spaces combines the complexity of the dimensions and spaces where Indigenous women's activism takes place and marks in a differentiated way their demands and expectations, either with respect to the community and/or in dialogue with institutional actors (Gutiérrez & Palomo, 1999, p. 59). In the foreground is the body/person dimension, which in Yadira's words is concretized in the new way of approaching the subject of female sexuality, reproductive life and sexual rights. Sexuality in the lives of Indigenous women is the inauguration of their adult life: in many cases it is a matter of motherhood and marital life that comes at an early age. Sexuality is a terrain of life and struggle that should not be seen in an oppressive way — as perhaps the older women experienced it — and that now represents for young women a terrain of dispute for change. Indigenous sexuality seen through the lens of enjoyment, sexual diversity and respect for the biological and mental maturity of women can help change from within social uses of early marriage that are harmful to women's proper physical and mental development. Diversity of sexual orientation is linked to enjoyment and the right to live loving relationships outside the heterosexual canon, and in the voice of activists like Yadira it becomes a central issue to discuss, review, reflect on and explain until it is naturalized within the collectives.

On a second level is community autonomy. A very important part of the political life of the Indigenous community passes through the functioning of the traditional power-decisional spaces, the community assembly, the

leadership positions system, the communal land authorities and even those of the municipal councils. This is a vital space for the political reproduction of Indigenous life, and a space of resistance against the State and its economic and developmental interference policies. Regarding this in particular, we would like to return to the idea of Eduardo Zárate (2005) referring to the community where the rationality of the collective is recreated as an opposition to modern individualism. Community is a powerful social ideal that inspires Indigenous populations to form collectives, but it is impossible to achieve due to the existence of conflicts, contradictions and power relations. Linking the idea of the impossibility of the ideal collectivity due to internal contradictions — such as gender and age — we wonder about the possibility of other imaginaries of community (fluid urban-rural, physical and virtual, local and global); other subjects of rights (migrants, women, girls, youth, lesbians, transgender) where individualism is not a pretext for exclusion but an invitation to include "other" collectivities.

The third level is organizational and political praxis. CONAMI is undergoing a generational change, and these new generations are taking on the challenge of fighting for women's rights with new arguments and technological resources at hand. This is the political intersectionality of CONAMI activists who react creatively to national issues and institutional policies that affect them. An example of this is an initiative called "Community Gender Emergency," which is a virtual space that has a portal on Facebook that allows all CONAMI affiliates and colleagues to feed this site with journalistic notes and complaints from family members — in order to document and disseminate the worsening conditions of violence in the country.[14]

CONAMI embraced the issue of gender violence in 2012, after the social and human impacts of the fight against drug trafficking in Morelos. Its purpose was to make the Indigenous reality visible in a context where national policies aimed to increase the militarization of Indigenous territories and those considered as drug producers (Mora, 2013). The open and frontal war against organized crime quickly began to take on particular dimensions in the forms of incorporating women into the political economy of drugs and the precariousness of the campesino economy (Tlachinollan, 2017; Jiménez Estrada et al., 2019).

The objective of the initiative was twofold: on the one hand, to compile notes from local and regional newspapers to gather information from different territories, and on the other hand, to respond to the need to document the

issue of gender violence from local spaces. CONAMI's network of Indigenous women is conducive to developing this task because each of the regional coordinators is a node in a dynamic spectrum of resource and information exchange. Each leader is in turn part of another state or local organization that is located on a geopolitical scale smaller than the national one. The CONAMI-node leaders simultaneously respond to local interests and national calls. This way of working enhances their presence throughout the national territory and at different organizational and geographic scales. This initiative that emerged in 2012 needs to be enriched through technical and methodological support, so much of the collaboration the young CONAMI leaders seek is to identify the means to develop methodologies for recording and collecting information on acts of violence against Indigenous women in various territories and migratory routes.

The literature points out that the new violence in Indigenous areas is partly due to militarization, and that the violence and sexual torture exercised by the army against women is a strategy of territorial control against the population in order to prevent them from organizing (Hernández, 2017a; De Marinis, 2020). For its part, domestic violence now has other, more dangerous connotations. Men at home are armed, part of groups of armed men whether they are hired killers or police or military. In this context of hyper-masculinization of violence, it is harder to do advocacy work both for young people victimized and used by organized crime and for women terrorized by violent partners (Hernández, 2019, 2017).

Young women have been at the forefront of pushing this reflection on the new violence, the extreme violence that afflicts the communities — trafficking, femicide, forced disappearance, ethno-porn networks — due to the presence not only of the army, but also of organized crime. Likewise, violence within the communities plays a role that can be explained by the patriarchal order of Indigenous households, by the paternal figure in the home. Normally, this violence is not talked about; it is silenced. In addition, it is very difficult to raise it within the community, as Liz showed in her testimony.

Within CONAMI, all these issues are aired and documented through the ECG portal, and in recent years they have promoted various methodological and technical efforts to systematize this information. Generating their own data for CONAMI is crucial politically because it allows them to have instruments to let the State know of its failure to prevent gender-based and feminicidal violence against Indigenous women. Public policies such as the Gender

Violence Alerts against Women mechanism of the National Commission to Prevent and Eradicate Violence (CONAVIM: *Comisión Nacional para Prevenir y Erradicar la Violencia)*[15] have been pointed out on several occasions as inadequate to understand and address violence against Indigenous women due to the insensitivity to distinguish the particularity of the problems and patterns of violence in rural contexts (Figueroa, 2019; Figueroa & Sierra, 2020). State policies against gender-based violence are of a universalist, unidimensional character, barely adopting intersectional, intercultural and contextual perspectives. CONAMI has insisted that in order to make public policies that respond appropriately to sensitive issues for Mexican women, it is necessary to start from the principle of consultation. In order to respond to the demands of Indigenous women, research must be done in the territories to improve information and inspire laws and institutions that respond to the popular mandate of service, since "... nothing about us can be published unless it is consulted" (Hernández Pérez, 2020).

Conclusions

We would like to conclude this essay by returning to the issue of the change of era, of generational change and the bridge that unites the activism of older women with the young women of CONAMI. We would like to show the preeminence of the structural forces of the present era because of the human rights crisis the country is going through and the social effects of post-recognition public policies. We believe that the greatest contribution of this reflection lies in what the women of CONAMI, from several generations, do and weave together, even despite speaking from different points of view and double gazes. The generational change of leadership means the opening of spaces and opportunities for young people in formation and entails dialogue and rapprochement. CONAMI has implemented it in the creation of work commissions that expressly include young people to position their topics and reflections, and not take for granted what could be taken away from them at the stroke of change.

The activism of CONAMI's young women incorporates and mobilizes notions of gender justice more clearly. Their political life experience brings them closer to organized women-only spaces, and to a lesser extent to mixed collectives. Working with women, whether in grassroots or health care spaces or with organized urban groups, makes them more involved in public policies

for gender equality and the prevention of feminicidal violence. The experience of the women leaders behind the ECG portal speaks of their agility to implement and explore strategies that open new areas of political work using tools such as virtual activism. The political intersectionality of young women draws on the contributions of older women and the benefits of past struggles, but it certainly requires dissecting the issues of now and what it implies for their lives today. The dignity of the women Elders' struggle, their ideologies and example are as present as the Revolutionary Law of Indigenous Women and with all the ideology of liberation that it implies inwardly and outwardly. But the generational handover also implies the change of baton and transferring the responsibility to understand and confront the "violence we do not know how to name" (Don Juan, 2017).

In the same vein, Sánchez (2005) would argue that the double gaze of young Indigenous women contributes to the contradictions of the community paradigm from the most sensitive point, the community citizenship of women. In what ways should it be exercised so there is an appropriate inclusion of women's demands — both in the traditional community and in the imagined communities? What forms of participation should be sought and what discourses articulated to make their contribution more visible? Perhaps there is no one answer, but rather an ethic of dialogue based on the heterogeneity of each community and built with the elements of each organization. Taking as a reference the diversity of local power spaces, the work of women is always — by principle — for the benefit of the community, and it would be ideal if gender violence and feminicide were also seen as a problem that threatens people's very existence.

Gender justice — or feminist justice — is biased from the State's point of view when approaching and looking at the community space, in terms of both traditional justice and Indigenous women. The country is very diverse, and some Indigenous women at the local level seek different mechanisms to make their claims and notions of justice heard, but such mechanisms do not take place in State institutions. The mediation, advocacy and mobilization of information carried out by CONAMI from an intersectional and intergenerational perspective is crucial to alert against the State's hypervigilance of the community, because without knowing the specificity of these spaces and how they culturally settle problems, mechanisms are designed that can potentially interfere negatively in the communities (Sierra, 2017; Valladares, 2017). Our appreciation as authors is that young Indigenous women from their double

gaze are eagerly seeking to mobilize discourses of inclusion, dignity and justice at a difficult time for organized communities disrupted by violence. Their voices challenge the adult-centeredness of the Elders and demand special attention from the organized Indigenous movement and State institutions, for the good of their peoples as well as themselves.

NOTES

1 Center for Research and Advanced Studies in Social Anthropology (CIESAS- *Centro de Investigación y Estudios Avanzados en Antropología Social)*

2 This critical thinking with respect to Indigenous gender orders could be called Indigenous feminism, but it would be advancing a statement that does not represent all Indigenous women leaders. What is important to mention is that there is a broad diversity of positions about this, from leaders who call themselves Indigenous feminists such as Alma Lopez (2005) or community feminists such as Julieta Paredes (2008) or Lorena Cabnal (2010). This critical thinking goes beyond the conceptual limits of Western feminism and reveals the complexity of the positionality of Indigenous women in emancipatory discourses of both feminism and Latin American Indianism.

3 *Campesinado* refers in Spanish to rural workers and small-scale food producers. It is also a social class and social actor that has played a central role in the popular rebellions, uprising and revolutions in Latin America. We use this term in Spanish to praise their assertive action and agency.

4 'Gender justice' is often used in reference to emancipatory projects that promote women's rights through legal change, or advance women's interests in social and economic policy. However, the term is rarely given a precise definition and is often used interchangeably with the notions of gender equality, gender equity, women's empowerment and women's rights (Goetz, 2007). However, in contexts where there is a cultural diversity of perceptions about what is fair in gender relations, the predominant definition of gender justice is the norm of Western ideology.

5 The organizations participating in this seminal CONAMI congress were UCIZONI, *Servicios del Pueblo Mixe, Mujeres Olvidades del Rincón Mixe* (Oaxaca), *ARIC-Democrático, Jolom Mayaetik, J'Pas Lumetik*, CIOAC (Chiapas), *Masehual Siuamej Mosenyolchicauani*, (Puebla), *Unión de Mujeres Campesinas de Xilitla* (San Luis Potosí), *Consejo de Pueblos Nahua del Alto Balsas* (Guerrero), Sedac-Covac (Hidalgo), *Comisión de Mujeres de la ANIP*A and the *Comisión Nacional Indígena*. In Sánchez (2005, pp. 93-94).

6 Commander (*Comandanta*) Ramona was a Tzotzil Indigenous woman and commander of the Zapatista Army of National Liberation in Chiapas, Mexico. She was one of the most important public figures of the first stage of the Zapatista uprising and central to the Zapatista Women's Movement and Indigenous women at the national level.

7 A strategic element of CONAMI's founding women's movement has been the link with Indigenous women's activism at the continental level (Valladares, 2008) in networks such as *Enlace* (ECMIA) where Mexican women leaders have contributed to the

formulation of agendas, the political training of cadres, attendance at international events and the organization of two international meetings on Mexican soil (Sixth Continental Meeting of Indigenous Women of the Americas in Hueyapan de Morelos in 2011 and the Eighth Meeting in 2020 in Mexico City).

8 María de Jesús "Marichuy" Patricio Martínez (of the Nahua People), intended to be the first Indigenous woman to run for president of Mexico but was unable to gather enough signatures to register her candidacy – see Mora in this volume.

9 An important precedent of the Sixth Continental Meeting of ECMIA in Hueyapan, Morelos, in 2011 was the decision that each region of Latin America would have a commission for Indigenous Children and Youth with the intention of involving young people in the formative processes and encouraging their participation. The main concern was to combat the adult-centrism of the movement and open a door of dialogue with the concerns and problems of young people that were marked by processes such as rural-urban migration, loss of language, symbolic violence, drug abuse, suicide, unwanted pregnancies, etc. By 2016, following a General Assembly of CONAMI, statutes and agreements on an internal governance structure of CONAMI were instituted, from which the Children and Youth Commission was created within CONAMI. Its mandate was to contribute to enriching the agendas and political work that was distant and alien to the reality of young people. This commission was formed by Patricia Torres Sandoval, Lynn Ramón Medellín and Laura Hernández Pérez.

10 "Until dignity becomes a habit" is a phrase expressed by Estela Hernández at the official public apology ceremony of the Mexican government for the imprisonment of three Otomí Indigenous women falsely accused of kidnapping six agents of the Federal Investigation Agency (FIA). They were arrested in 2006 in Santiago Mexquititlán, municipality of Amealco de Bonfil, Querétaro. Jacinta Francisco Marcial, Teresa González Cornelio and Alberta Alcántara are the names of the three people arrested. Estela, Jacinta's daughter, fought tirelessly with her sister Sara for their mother's freedom. The official apology by the Attorney General's Office (PGR) in 2017 was offered eight months after the third collegiate court in administrative matters of the first circuit ordered it to do so. https://bit.ly/2HQxaC7

11 This turn to the judicial-electoral in Mexico is a characteristic feature of the policies of recognition, which decentralized forms of election by customs and practices (*usos y costumbres)* to the municipal level, where autonomy and self-government have been recognized at the local municipal and community level. This type of legal conquest has been possible to achieve in several states of the republic but require the intermediation of lawyers and experts in strategic litigation, making this right inaccessible to those collectives or communities that do not have this support. We are grateful for the contribution of Araceli Burguete Cal y Mayor in this particular annotation (2020).

12 The narrative of the sections is written in the first person as they are interviews conducted by Dolores Figueroa Romero, although they are part of a working material that we have discussed and reviewed together with Laura Hernández Pérez, co-author of the chapter.

13 Ejidataria refers to an individual who is part of a group that collectively owns land. The collective ownership of land is called "Ejido" and it is an historical legacy of the

Mexican revolution that aimed to allocate land into the hands of peasant members of close-knit communities, regularly Indigenous.

14 Available at: https://bit.ly/2JxzRcb

15 Available at: https://bit.ly/37ldTBB

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12

The *Thaki* (Path) of Indigenous Autonomies in Bolivia: A View from the Territory of the Jatun Ayllu Yura of the Qhara Qhara Nation

Magali Vienca Copa-Pabón, Amy M. Kennemore and Elizabeth López-Canelas

Introduction

The path to formalizing Indigenous autonomy in Bolivia under the country's new Plurinational State framework is marked by legal obstacles and ongoing Indigenous struggle. On 27 November 2019, the Plurinational Constitutional Court approved Yura's draft autonomy statute,[1] which was one of the final stages in a long and arduous journey toward formal recognition as an Indigenous Autonomy.[2] Following the passage of the 2009 constitution, the subsequent 2010 Framework Law of Autonomies and Decentralization (Law No. 031) established procedures for this process. Yet, in the decade since this framework was put into effect, only three out of the 18 groups that opted for formal conversion to Indigenous autonomy have managed to meet the onerous requirements established by the law (Charagua, Chipaya and Raqaypampa).

Many Indigenous leaders in Bolivia are highly critical of the process, citing the excess in bureaucratic requirements and State supervision in all of the various stages for consolidating legal status as an Indigenous autonomy. Moreover, as we discuss below, Bolivia's autonomy law was designed within the framework of a State-centric model that limits the viability of Indigenous autonomy as a pathway to self-determination.

On 6 February 2019, Indigenous leaders from the Qhara Qhara Nation set out on a 41-day march from Sucre to La Paz in protest.[3] Protesters called for the modification or repeal of several articles of Law No. 031, especially the requirement for a second referendum vote on the Indigenous Autonomy Statutes. This procedure follows an initial referendum vote approving the contents of statute drafts, prior to their submitting to the Constitutional Court for review. As we discuss below, many of the marchers critiqued the process for going against their own norms and procedures as well as generating costly and tedious requirements that can cause significant setbacks at each stage. Moreover, many of them took a critical stance against President Morales and his political party, the Movement towards Socialism (Movimiento al Socialismo, or MAS) for using the law as an instrument of power for consolidating their own agenda of State power. Early on in Yura's path to formal recognition, internal conflicts with local social organizations generated significant setbacks. More recently, violent clashes in the Marka Quila Quila (Qhara Qhara territory located in the Chuquisaca department) with MAS-affiliated groups in their territory prevented them from consolidating collective territory rights. Leaders from both territories also denounce efforts to block direct representation as Indigenous peoples in municipal and departmental seats of government. As the marchers reached La Paz in late March 2019, media attention around the march and its demands amplified the critical voices of Indigenous groups throughout the country who denounced the shortcomings and weaknesses of State-led efforts to advance Indigenous rights.[4] The march was partially successful in pressing the MAS-led Legislative Assembly to modify articles of Law No. 031.[5] As Yura was on the path to finalizing their Indigenous Autonomy Statute drafting, these modifications would help accelerate them on the path to gaining formal legal status as an Indigenous autonomy.

What is notable about the Yura case is that it articulates a much broader strategy toward the reconfiguration of an entire nation, the Qhara Qhara Nation, an Indigenous territory situated between the departments of Sucre

and Potosí.[6] As Samuel Flores Cruz, former *Kuraka*[7] of the Quila Quila Marka explains:

> Their goal as well as ours [is that] Yura will serve as the basis to advance in the consolidation of the Qhara Qhara Nation, so other peoples can have their autonomy […] that they will use political rights from autonomy and to the benefit of the nation, so economic rights can also be granted to Indigenous autonomies. The aim is to have an impact for other [Indigenous] peoples as well […] we have taken advantage of key moments, TCO [collective land titles], autonomies, to make this our place. (personal communication, 4 October 2018)

From this perspective, Indigenous autonomy in Yura is seen not only as a pathway for its own self-determination but also for exercising political and economic rights for the Qhara Qhara nation as a whole. Yura's process of formal conversion to an Indigenous First Peoples Peasant Autonomy (AIOC) transcends the limits established by the Bolivian territorial order. In this way, its leaders are challenging the current configuration of "nations" within the Plurinational State by claiming a more direct role in State-making processes.

In this chapter, we show how Indigenous leaders from the Qhara Qhara Nation pursue this strategic agenda by combining their traditional practices and norms with new legal tools. Our methodology draws inspiration from the work of Briones, Cañuqueo, Kropff and Leuman (2007) in forging collective ways of thinking and writing about the complexities of Indigenous peoples' relationships to the State and processes of development. Focusing on the paradoxes of the simultaneous expansion of neoliberalism and multiculturalism in Argentina, they make the case for a methodology that seeks to "cross-reference accumulated experiences and reflections," that also seeks to break free from constraints of superimposed subject positions (related to gender, class, age, etc.), along with what such categories tend to imply in terms of political agenda and positionality (e.g., Indigenous activist/non-Indigenous researcher) (Briones et al., 2007, p. 269). We have taken a similar approach in our own collaborative projects over the years, as part of an open-ended critical reflection on how we might better learn from ongoing struggles and autonomous processes in Bolivia.

This chapter draws from previous research analyzing Indigenous autonomy and territorial management in relation to development processes (see Copa, Kennemore & López, 2018). The study was carried out as part of a series of investigations on civil society shaping Bolivia's Economic and Social Development Plans (PDES) as well as their relation to the United Nation General Assembly's 2030 Agenda for Sustainable Development. In planning our research, we realized the terms defining the broader framework for carrying out the study – autonomy, participation and development – were ambiguously defined. Through a series of organic conversations over the ways these terms are contested, we began to identify emerging themes, which served as a guide to organize the text. The aim was to analyze contested notions of these terms to decenter emerging hegemonic and regulatory frameworks. A major challenge that we faced with this approach was sustaining common points of reflection with the main protagonists themselves, as they engage in and contest top-down State-making processes.

The focus of the chapter is on the legal strategies of Qhara Qhara Nation leaders to center dynamic and ongoing forms of institution building "from below." To do so, we organize the text around the three main demands of their march in 2019: 1) reconstitution of ancestral territory; 2) fulfillment of the right to exercise Indigenous justice; and 3) Indigenous autonomies with self-determination. In each section, we walk the *thaki* (path) of the Jatún Ayllu Yura to gain formal recognition of their Indigenous autonomy to show how their efforts generate new and dynamic institutions that we suggest act as bridges for negotiating with the State. Following Yura's path toward Indigenous autonomy offers a window into different understandings around Indigenous autonomy that go beyond State-centric ideas of plurinationalism, which is an ongoing site of contestation and renovation under Bolivia's current administration.

The Demand for Restitution of Ancestral Territory and Self-Identification

A key demand of the Qhara Qhara Nation during their march was for the restitution of ancestral territory. The recuperation of ancestral links to territory and self-identification are both part of this demand as well as historical struggles against territorial fragmentation and dispossession. Shortly after Bolivian independence from Spain in the early 19th century, for example,

Indigenous leaders initiated campaigns to search for "ancestral documents" as a strategy to resist land privatization that outlawed their traditional *ayllu* communal landholdings. Throughout the 20th century, these leaders formed part of a movement that would be later referred to as the "*cacique apoderado* movement," a vast network of Indigenous legal activists (see Gotkowitz 2011). The strategy was based on leaders' "own legal interpretation" (Rivera 1991) of a former "reciprocity pact" with the Crown that predated the Bolivian republic (in which Indigenous leaders were allowed to keep their communal *ayllu* landholdings in exchange for paying tribute and labor to the Crown). In the specific history of the Qhara Qhara, their claims are based on arrangements with the Spanish Crown dating back to as early as 1582, when local lords petitioned for better tax and labor tribute (*mita*) deals, claiming ownership of mineral deposits from Potosí and Porco mines because they were located within their territory (Rasnaque, 1989).

The more recent movement to reconstitute ancestral territories followed the multicultural reforms in the 1990s. In Bolivia, multicultural reforms followed a series of marches led by lowland Indigenous groups. In these historic marches, the slogan "March for Territory and Dignity" generated a national discussion around demands for collective land rights (see CPICA, 1991). The marches led to multicultural reforms that recognized collective land rights, which fed into a highland "*ayllu* movement" to recuperate traditional Indigenous institutions and ancestral knowledges.[8] Qhara Qhara leaders spearheaded a large part of the movement, working with leaders from other Quechua-Aymara nations such as the Killacas, Chichas and Charcas Nations. Yura also played a central role in the formation of the National Council of Ayllus and Markas of Qullasuyo (CONAMAQ) in 1997, the national-level Indigenous organization that would go on to lead the "*ayllu* movement" to reconstitute Indigenous institutions for collective land claims. It was in this process that they decided to start the path towards the reconstitution of their ancestral territories, by pursuing status as a Community Land of Origin (Tierra Comunitaria de Orígen, TCO), the formal collective land ownership title awarded by the National Institute of Agrarian Reform (INRA). At the same time, leaders also founded the Council of Ayllus of North Potosi (CAOP) as an organization that could channel their demands to the State and articulate technical and economic support of the titling process.

In practice, the consolidation of collective land titles has been an arduous task, in many cases leading to conflict within Indigenous territories. For

example, in 2002 in Yura, a State commission headed by INRA attempted to demarcate boundary limits in the territory. However, their efforts largely failed due to an internal conflict over boundary limits with the Chaquilla community. The dispute itself was likely the result of errors from the misinterpretation of already existing and complex systems that went unrecognized in earlier land reform procedures dating back to Bolivia's 1953 land reform, which resulted in contradictory language recognizing two different landmarks (Carpalla and Negra Cuesta) as marking the boundary limits between the communities. As a result, in 2007 Yura lost financial backing of a Danish international aid organization that provided the logistical support for Indigenous communities in the consolidation of TCO titles throughout the country.

The Yura case illustrates the legacies of land reform policies that have shaped political identities and divided many communities. For example, following the 1952 Revolution and subsequent land reform in 1953, "*ex-pongos*" (hacienda workers under conditions of serfdom) formed agrarian unions to channel their demands to the State for individual land titles from expropriation of hacienda estates. The revolutionary government's discourse of "land for those who work it" was based on dominant ideologies of *mestizaje* that center on peasant identity and implemented policies of assimilation. The 1990s *ayllu* movement, in contrast, was focused on obtaining collective land titles as a form of repatriation as peoples and nations which pre-existed the Bolivian nation discussed above, a fundamental right also recognized in international human rights conventions such as ILO Convention 169.

Identity politics in these differing regimes of rights and recognition are extremely complicated and varied among highland Quechua and Aymara peasant communities. This has become increasingly more ambiguous following the passage of the 2009 constitution in Bolivia, which recognizes a new subject of rights: the "Indigenous First Peoples Peasant" (singular and without a comma). This category of rights emerged following debates among members of a "Unity Pact"[9] of Indigenous, peasant and worker's organizations during the Constituent Assembly to rewrite the constitution (2006-08). According to Schavelzon (2012: p. 93), a large part of the tension was due to the fact that many representatives of peasant organizations identified as Aymara and Quechua and thus did not want to give up recognition as "First Peoples," yet also were politically affiliated with unions and thus also identified as peasants. The debate over whether or not to insert the comma between

these categories centered on what it might imply in terms of access to specific rights or benefits (or their loss) on the basis of identifying with one or the other category of recognition.

While a great deal of the Unity Pact's proposals for plurinationalism were included in initial drafts of the Constitution, delegates' representation was filtered through the MAS political party, which was also engaged in tense negotiations with delegates representing oligarchic agro-industry interests (see Postero, 2017). As a result, modifications were made to the constitution without consultation of grassroots organization delegates in a final stage between 2008-09. This experience put us on alert, since the participation of Indigenous peoples in the Constituent Assembly, despite being the majority, was channeled through the MAS-IPSP[10] political party. As Huascar Salazar (2019) points out, this political party regime maintains old practices of political control through corporatism, patronage and the cooptation of Indigenous organizations.

In Yura, leaders are pressed to negotiate with influential local leaders who oftentimes no longer live permanently in the territory. Traditionally, these so-called '*residentes*,' or migrants who mostly live in nearby cities, have maintained community ties by complying with certain obligations to their local Indigenous peasant institutions as the basis of maintaining property rights. This might include throwing a party or serving in a one-year obligatory leadership role and can help alleviate economic poverty or competition over scarce resources within a territory. More recently, as Colque (2007, p. 141) points out, conflicting social organizations offer a way for *residentes* to refuse obligatory services to the community by claiming membership in an agrarian union with fewer rules, for example. This practice sows divisions or deepens already existing ones.

Shortly after losing sponsorship from the Danish organization for collective titling, Yura authorities discovered that local union leaders had carried out a disinformation campaign in various communities to convince members to withdraw their support for collective titling. As Tata Cenobio Fernández, former Kuraca of Jatún Ayllu Yura, explained during a seminar on Indigenous autonomy in their territory, "Those who do not want to live according to the principles of territoriality operate by spreading information [against collective land rights] that you will have to pay taxes, that you will have to survive on own resources, that you won't receive anything from State resources" (cited in Bautista, 2017).

In the case of Marka Quila Quila, the consolidation of collective territory rights was much more contentious. In 2014, state officials at the INRA departmental offices annulled collective titling procedures by refusing to recognize Quila Quila leaders as representatives of their communities. For their part, INRA officials argued that this was because there was an already-existing *personería jurídica*[11] belonging to the local agrarian union, a formal legal status that recognized them as town representatives to the municipal government. However, leaders of the Marka Quila Quila rejected this argument on the basis that the bureaucratic requirement for obtaining such as legal status was created for social organizations to participate in local development planning and thus violated Indigenous peoples' own norms and procedures for leadership and political representation. [12] Samuel Flores, ex-Kuraka of the Marka Quila Quila who was one of the main protagonists in the case, explains refusal of the legal status requirement in terms of auto-identification:

> We do not need another identity, because we, as nations, as people, self-determine [our leadership] and the State should directly act on that. But with the Decree [law requirement], the situation is the other way around, the State only sees civil society organizations and not the communities. So, having to relying on the State for legal status implies the lack of consultation at the local level, going against our rights to representation, participation and justice according to our own rules. It's a structural and bureaucratic limitation to demanding our right to land and territory. Thus, as Indigenous Peoples and Nations we depend on the State, which historically came after us, whether it's called a republic, as before, or Plurinational, as it's called now […] Indigenous Peoples and Nations have pre-existing territories and we don't need recognition, right? (cited in Kennemore, 2015, p.2)

This perspective draws attention to another dimension of ancestrality and self-identification in Indigenous struggles for territorial reconstitution, as mechanisms for direct representation for negotiating with the State.

Marka Quila Quila leaders also developed strategies for direct representation in autonomy processes at the municipal and departmental levels. These sub-national autonomies are deeply intertwined with Indigenous autonomy. In the Constituent Assembly, for example, Unity Pact proposals for

Indigenous autonomy were entangled with the demands of delegates from elite sectors of Bolivia's eastern region, many of which focus on agro-industrial production for export. Faced with the MAS government's proposed centralist development model based on the expansion of extractivism and greater capture of royalties (Espada, 2011), elites sought to establish a federalist system to protect their economic interests by calling for departmental autonomy. Given that the control of a large amount of natural resources and productive land was at stake, MAS constituents promoted the inclusion of additional other levels of autonomy (municipal autonomies, regional autonomies and Indigenous First Peoples Peasant autonomies) as a counterbalance to the political weight and power of departmental autonomies (see Postero, 2017; Schavelson, 2012). Within this framework, formal conversion to an Indigenous First Peoples Peasant autonomy, far from establishing a mechanism for the exercise of self-determination sought by Indigenous peoples, ends up as being merely functional; it serves as a channel of participation in relation to other sub-national autonomies (Copa et al., 2018, pp. 67, 68).

Following the passage of the constitution, we see another effect of the "domestication" (Garcés, 2010) of Unity Pact proposals in terms of a lack of representation and political participation on the part of Indigenous peoples in processes of drafting autonomy statutes for municipal and departmental autonomies. Since territories are situated within (and often cross) sub-national boundaries, the municipal and departmental development plans have a direct impact on Indigenous peoples' ability to manage natural resources and redistribute resources in their territories. For the Marka Quila Quila, this gap in participation and representation became evident when government officials began drafting and approving the Bylaws and Organic Statutes in their so-called "Statutory Assembly"[13] at the departmental level in Chuquisaca.

Indigenous leaders' reflections highlight a general concern about co-optation processes and party politics generating conflict and fragmentation in their territories. They remind us that their own institutions and justice systems, along with their commitment to autonomy and self-government, differ from Western democracy and its political party system.

Considering previous mishaps in pursuing their political agendas through political party representation, the Qhara Qhara Nation refused political representation through social organizations and insisted instead on self-identification as Indigenous Peoples and Nations. This strategy originated during the 2012 census, when they registered as peoples of the Qhara Qhara

Nation, demonstrating their presence in the territory. As a result of the census, the National Institute of Statistics (INE) issued Quila Quila a note certifying the existence of 1,478 inhabitants. With that, they were also granted the right to representation as minorities in the Chuquisaca Legislative Assembly. However, Chuquisaca's Statutory Assembly refused to incorporate direct representation as Indigenous peoples in the Organic Statute for Departmental Autonomy. So, in response, members of the Qhara Qhara Nation filed a complaint with the Plurinational Constitutional Court, demanding representative seats without having to be affiliated with a political party. The Court ruling was favorable, opening the possibility for the incorporation of Indigenous peoples in the departmental legislative assembly with direct representation, following their own norms and procedures for rotational leadership and consensus-based decision making.[14] Unfortunately, the draft Organic Statute was not approved in a later referendum vote, so this project of direct representation was not fully consolidated.

At the municipal level, Marka Quila Quila leaders' requests to be included in the Organic Statute of the Municipal Autonomous Government of Sucre according to their ancestral status as Indigenous peoples were met with a similar response. As in the previous case, they then filed various constitutional actions with the Constitutional Court. The leaders' main legal argument in this case was that since Marka Quila Quila had not been included in the process of drafting of the Organic Statute, it should not be admitted for review (one of the five steps for advancing autonomy status mentioned previously). These efforts led to significant advances. In addition to not admitting the Organic Statute for review, for example, the Constitutional Court declared the *personería jurídica* requirement unconstitutional and called for the modification of laws that had established it as a basis for political representation and participation in development planning.[15] Yet, the legal victories were not easy. Community leaders from the Marka Quila Quila took near constant legal actions and installed vigils of resistance in the doorways of the Court. This legal fight had the support of other Indigenous nations such as the Nations of Yampara, Killacas (Oruro-Potosí), Charkas, Suras, Kirkiawi and Karangas.

Despite their gains, access to procedures for the formal consolidation of territory through collective titling in the Marka Quila Quila remains blocked. Consequently, this also closes off legal pathways for the possibility of becoming an Indigenous autonomy. Conflicts remain between community

members and other union groups within the territory, which have resulted in several injuries and arrests. For their part, government officials with INRA annulled the entire process of collective titling, to then enter the territory to award individual land titles to union members that had been registered as collective land titles in earlier demarcation procedures. In this way, the path towards territorial consolidation in Marka Quila Quila, a process of nearly a decade of organizing and demanding collective rights, was not only blocked but reversed. As a result, clashes with trade union groups within the territory have increased, along with the number of injuries and ongoing legal persecution on the part of INRA officials. Seeking accountability and the guarantee of their rights, leaders have presented various complaints to national and international human rights bodies.

These cases offer mere fragments of the complexity of Indigenous territorial reconstitution, which are wide-ranging and vary according to a given context across Bolivia. They demonstrate the importance of self-identification as an instrument in the struggle for territory. This is not only due to State-imposed gaps that block access to procedures for formal recognition of Indigenous territory and autonomy. Rather, it is also important considering fragmentation within the Indigenous movement itself, as State mediation in autonomy processes is driven by a logic of political party co-optation that feeds off and contributes to local conflicts internal to the territories.

The Demand of Respect for Indigenous Legal Systems and the Right to Prior Consultation

In a context where formal pathways to Indigenous autonomy are blocked, Indigenous leaders have turned to Bolivia's constitutional framework for legal pluralism as a site of legal struggle and institutional innovation. A fundamental aspect of new forms of legal pluralism advanced in the 2009 constitution is article 179.II, which establishes that "hierarchical equality" between the jurisdictions of ordinary (liberal justice) judicial bodies and Indigenous First Peoples Peasant Jurisdictions (JIOC), with their varied local norms and procedures for administering justice.

Cases advanced by the Qhara Qhara Nation offer several examples of how Indigenous leaders are taking up this legal tool for demanding justice to build their own institutions. For example, in 2015, Indigenous leaders from the Qhara Qhara Nation participated in the creation the Indigenous First

Peoples Peasant Justice Tribunal of the Plurinational State of Bolivia (henceforth TJIOC), an organic institution that operates at the national level and unites Indigenous peoples and nations from across the country.[16] The TJIOC is headquartered in Sucre and has coordinated with local-level Indigenous leaders throughout the country to promote solutions to their various problems within the framework of Indigenous justice. In addition to challenging legislation as in the cases discussed above, TJIOC legal actions have shaped public policies by negotiating with the General Service of Personal Identification (SEGIP) to make it easier for Indigenous peoples to self-identify on State-issued ID cards, for example.[17] Many TJIOC leaders are trained as human rights experts and offer legal counsel to community-level Indigenous justice authorities to strengthen their jurisdiction. They also generate proposals for implementation of the law, such as for designing mechanisms for coordination and cooperation between jurisdictions.[18] Important to note is that TJIOC is just one out of many organic institutions that have emerged in recent years. There are currently hundreds of Consejos Amawticos (Spiritual Justice Councils) in the department of La Paz alone, pointing towards a wider-spread and organic movement among local communities to form their own justice institutions in their territories.[19]

A central tool in recent legal battles is a new legal figure called a "jurisdictional conflict" for contesting the competency for administering justice in a concrete case. Since 2012, the number of jurisdictional conflicts presented to the Constitutional Court have progressively increased. This has resulted in several favorable Court decisions which stand as symbolic victories for Indigenous peoples' historic demand for respect and equality for Indigenous justice in the face of the racist and discriminatory practices of the dominant justice system (see Copa, 2017). In a parallel process, social scientists and rights advocates collaborate with Indigenous leaders to systematize their legal strategies and disseminate them to other communities throughout the region, with the overall goal of supporting efforts to strengthen Indigenous self-determination.[20]

However, State institutions have significant limits in terms of regulatory design and public policy implementation. One example of this is legislation such as the 2010 Jurisdictional Demarcation Law (Law No. 073) which establishes competency and regulates the relationship between Bolivia's constitutionally recognized jurisdictions. The law is highly controversial, especially one article (art. 10) that severely reduces Indigenous jurisdiction and

subordinates it to those of the State's judicial system. Analyzing legislation such as this, a 2016 report by the Ombudsman's Office denounced the situation:

> The fact that the Plurinational Legislative Assembly has excluded NyPIOC [Indigenous First Peoples Peasant Nations and Peoples] from having jurisdictional competence over civil and criminal crimes in the Jurisdictional Demarcation Law, Labor Law, Social Security Law, Tax Law, Administrative Law, Mining Law, Hydrocarbon Law, Forestry Law, Computer Law, Public and Private International Law, and Agrarian Law, and only grants competency over matters related to the internal distribution of lands in communitiesthat have legal possession or collective proprietary rights, constitutes a huge SETBACK in terms of rights established in the CPE [Political Constitution of the State]. (2016, p. 192)[21]

Indeed, the fact that one of the central demands of leaders during the 2019 Qhara Qhara Nation march was the modification of article 10 of the Jurisdictional Demarcation Law, illustrates that it remains as a significant obstacle to guaranteeing the fundamental rights of Indigenous justice advanced in the constitution. Moreover, as the Ombudsman's Office also reported, Indigenous leaders commonly denounce that: "not only do authorities of the ordinary justice system disregard Indigenous justice, they actively persecute and repress [Indigenous leaders for exercising] Indigenous justice and it is largely disqualified by State authorities" (Ibid.).

Despite this situation, Indigenous justice authorities have made several advances in their demands for respect and equality before the law. An emblematic case in this regard is the case of Zongo, a rural Aymara community in the valleys of the Department of La Paz, where Indigenous First Peoples leaders managed to successfully challenge the Jurisdictional Demarcation Law to take over a case with criminal court and environmental court investigations underway in the ordinary courts, recognizing the validity of local norms and procedures in a local resolution to expel a miner from the territory.[22] The Zongo case is an important milestone for Indigenous justice as it generated jurisprudence that broadened the legal scope of validity to include "decisions taken with respect to situations of affectation by those who

are not Indigenous First Peoples Peasant peoples but who have committed acts in their territory and when community members or the property of the community have been affected by 'third parties', 'outsiders' or non-indigenous people" (fj, III.8 of SCP 0874/2014). Challenging the limits of the law, the Zongo Court decision established that people outside the communities can be submitted to the Indigenous jurisdiction, under its rules and procedures.

The demand for the right to exercise Indigenous Justice is also relevant for demanding the right to prior consultation according to Indigenous communities' own norms and procedures. While the constitution recognizes the right to free, prior and informed consultation on the basis of the "integrity of Indigenous First Peoples Peasant territory" (art. 403.II of the CPE), in its implementation State officials prioritize provisions benefiting the interests of two strategic economic sectors (the hydrocarbon sector and the mining sector). In the Mining Law, for example, the authorities of State institutions that oversee mining operations have the final say over its installation, making consultation a purely informative process in cases where compensation and indemnity are negotiated (Campanini, 2014). As a result, consultation procedures are distorted and do not have much significance for many Indigenous communities.

In contrast, consultation imagined from the grounds of Indigenous Justice is a truly intercultural enterprise. To analyze risks and benefits of mining operations, for example, Indigenous leaders combine local knowledge with technical language to assert rights within the framework of the law. In the case of a renewed consultation in the lowland Guaraní territory Charagua Norte, community members worked in Zonal Assemblies using socioenvironmental monitors for the management of natural and environmental resources. The consultation process facilitated the participation of all the affected communities and included requests for data from the Ministry of Hydrocarbons (see CEJIS 2012).

Similarly, in the Pokerani Community (of the Ayllu Qorqa, Jatún Ayllu Yura, Quara Qhara Nation) Indigenous leaders signed an "Inter-institutional Agreement" on 28 June 2017 with the Autonomous University Tomas Frías, for Chemistry and Mining Engineering majors to conduct research in their territory and share data measuring environmental impacts over time. One report that came out of the agreement was from a study on environmental conditions in the Pokerani Community, from the Wanqallapi River and Keuñamayu sectors of Yura. In September 2017, community members met

in a local assembly to discuss various harms caused by the mining operation such as forced displacement, destruction of fields for pasture and agriculture, opening of roads without consultation, discrimination and intimidation against community members and extraction and robbery of gold, among other claims. The resolution reached during this assembly meeting, combined with the University report demonstrating the existence of polluting elements in the water, served as the basis for an environmental complaint to the Mining Administrative Jurisdictional Authority (AJAM). Since AJAM has legal jurisdiction over the mining concessions, the complaint requests AJAM order the company to pay compensation for environmental damages to the community.

The strategies taken up in this latter case articulate efforts to exercise Indigenous justice across multiple scales. For instance, the TJIOC discussed at the top of this section played a major role in building the legal complaint and presenting it to AJAM. In doing so, this organically formed Indigenous institution gained formal recognition in subsequent litigation as a national-level institution of Indigenous justice. While the specific case is ongoing (and thus inconclusive; see López 2021), this is an advance in the demand for respect and equality of Indigenous justice in relation to the authority of State institutions over matters related to Indigenous self-determination and territorial control.

Indigenous Autonomies with Self-Determination

The barriers to accessing Indigenous autonomy and direct representation show how bureaucratic formalities become an instrument for protecting powerful political and economic interests.[23] As discussed previously with the case of the Marka Quila Quila, many of such obstacles are a result of top-down processes that institutionalize Indigenous demands to self-determination, reducing them to channels of participation within a dominant State-centric model. This is similarly reflected in procedures of State supervision and control implemented by institutional arms such as the State Service of Autonomies (SEA) of the Supreme Electoral Court and the Vice Ministry of Autonomies.

As a result of such procedures, accessing and exercising Indigenous autonomy is a tortuous road for many Indigenous peoples. As permanent Secretary of the TJIOC Samuel Flores Cruz Court points out, "Laws such as

the Autonomy Law and Jurisdictional Demarcation Law have obstacles. The requirements are tiresome and contain unnecessary formalities that are different from the direct procedures used by Indigenous peoples." From this perspective, the legal strategies deployed by Indigenous leaders from the Qhara Qhara Nation can be understood as part of a fight to overcome bureaucratic requirements that impede them from pursuing their long-standing agenda of restitution of their ancestral territory.

The Marka Quila Quila case also highlights how tensions within Bolivia's autonomy framework are rooted in earlier processes of the municipalization of the countryside and popular participation following the 1990s multicultural reforms and neoliberal decentralization. While the current centrist model of development increases State-control over natural resources within Indigenous territories, the current regulatory framework also exhibits a similar tendency to municipalize Indigenous autonomies as an administrative sub-national institution of the State.

Clearly, the policies related to strategic resources within Indigenous territories stem from a structural issue of national development that directly affects the rights of Indigenous peoples. Restrictions over Indigenous territorial management and control over nature codified in the 2009 constitution were solidified in the subsequent 2010 Autonomies and Decentralization Framework Law (Law No. 031). This legal framework grants subsoil rights to economic actors for exploration and exploitation in Indigenous territories. For example, Campanini (2014) identified 4,100 requests for mining exploration in 2008 alone, 32% of which were in Indigenous communities holding collective land titles in the highland region. Similarly, out of 20 legally recognized lowland Indigenous territories, 18 had existing contracts granting rights for the exploration and exploitation of natural resources (Ibid.).

The language used in Yura's Indigenous Autonomy Statutes reflect this legal framework. While Indigenous governing bodies are awarded a degree of control over renewable natural resources (livestock, some forestry, fishing, etc.), the central State maintains exclusive rights to non-renewable resources, managed by state authorities who oversee strategic economic sectors (mining, hydrocarbon, etc.). Furthermore, the statutes discursively locate the role of Indigenous cultural practices as guardians of nature, asked to "preserve their habitat and landscape,"[24] as if these territories were isolated spaces from extractive development policies and the intervention of various forestry, oil or mining companies. What the legal framework in Bolivia shows is a folkloric

vision of Indigenous Peoples and Nations who in practice have no veto power over extractive projects in their territories (see also Engle, 2018).

In this sense, the tendency to rely on concepts such as "territory," "development," "living well" and even "autonomy" in Bolivia is also striking. The codification of highly contested terms such as these into law create parameters that mask and impede efforts towards the full exercise of Indigenous self-determination, particularly in cases when this conflicts with the political or economic interests of powerful State and business sectors. In Ecuador, former Minister of Communication Mónica Chuji called attention to a similar phenomenon, commenting that the "philosophy of 'Vivir Bien' has been used by populist governments to cover up the expropriation of natural resources and Indigenous territories" (ANF, 2018).

This raises the question of what happens in subsequent years, as the communities work to construct an Indigenous autonomy that can serve as a pathway to self-determination. Will they be subject to the ideas and concerns emerging from the communities themselves, or will they adapt to the parameters imposed from "above"? In sum, the risk is that language around caring for the environment in the autonomy statute is already articulated to a narrowed understanding of what this implies in terms of the use of resources in the territory, namely a municipal framework (of water and waste management) aimed at guaranteeing access to health and basic services. That is, without being able to deepen Indigenous autonomy beyond the limited competency they have been awarded, to move towards a horizon of the reconstitution of Indigenous territory. From this perspective, we see how implementation gaps impede autonomy not only through an instrumentalization of the law on the part of the State but also through a "politics of subjectivity" (Briones et al., 2007, p. 270). In other words, in the Indigenous peoples' endless work to meet tedious requirements and parameters on the pathway to consolidate formal autonomy, there is little discussion around the relationship between autonomy and territorial management.

To this challenge, we can add the actual cost of consolidating Indigenous territory. In the case of Yura, for example, the withdrawal of financial support from the Danish NGO early in their process of consolidating the territory set back collective titling procedures for several years. Later, after Yura had started walking down the path towards formal conversion to an Indigenous First Peoples Peasant Autonomy in 2010, they faced subsequent financial burdens at each stage. For example, without financial backing, it is

the community members themselves who have to organize to cover expenses (transportation, food, photocopies and paperwork) when State officials come to "supervise" procedures such as referendum voting. The "costs" are also political. According to Franz Rosales, political scientist and technical advisor in the Vice Ministry of Autonomies, while the three different pathways (as an Indigenous territory, or via municipal or regional autonomy) are "open doors" to Indigenous autonomy, the "costs" are also political. "First is the money," he explained, "but then it's also very risky. You fight for nearly eight years to get the statute [drafted], then it goes to court and then comes back and in one step the entire thing can be lost"(personal communication, 21 January 2019).

Indeed, a mapping out of the external actors involved at each stage of formal conversion to Indigenous autonomy shows how institutional, financial and political factors can intersect at any given moment to thwart communities' efforts, limiting the viability of Indigenous autonomy as a pathway to self-determination (Villagomez, 2018). This was the case in Totora Marka (located in the Department of Oruro) when, after several years of struggling to get the autonomy statute drafted and approved in a preliminary stage, the final autonomic statute was not approved in the second referendum. In this case, Rosales explained, the "No" vote in the second round was likely due to a local mayor who had openly supported Indigenous autonomy but then campaigned against it, taking advantage of the extended time in the lengthy Constitutional Court review of the autonomy statute.

Procedures such as State supervision over drafting and approving autonomy statutes also go against local norms and procedures based on consensus and shared decision-making. In Yura, tensions over collective titling were addressed publicly through a series of public assembly meetings and workshops over the course of years. It is in these meetings where community members analyze issues related to territorial management and discuss ideas for creating a future for their children grounded in territory. Martha Cabrera, former Mama T'alla of the Qhara Qhara Nation who is from Jatún Ayllu Yura, led a great deal of such efforts and focused on generating greater participation in the process, precisely in efforts to avoid the setbacks of internal disputes mentioned above. On several occasions, she even traveled to nearby cities to talk with the *residentes* who were against the process, requesting they come meet with community members themselves, rather than spreading rumors. Later, when the community members who had opted for individual land

titles decided to rejoin the process of collective titling, the communities had to hold another series of meetings with the Indigenous justice councils for reconciliation.

Between 2010 and 2012, Yura developed their own strategies for pursuing Indigenous autonomy more organically, without dependence on NGO financing or social organizations, to avoid further setbacks. This involved establishing new Indigenous councils and generating momentum at the national level by pushing for legislation reform along with other Indigenous legal activists of the Qhara Qhara Nation and TJIOC discussed above. After securing the collective title and voting for Indigenous autonomy, Yura faced another decisive moment, drafting the autonomy statute. To do so, they held an assembly meeting in November 2016, where they formed two commissions to carry them down the path, a Steering Committee and a Drafting Committee. Working together, and in concert with ongoing public deliberation to find consensus, these two organically formed committees walked Yura down the final steps of the path to formal recognition as an Indigenous autonomy.

In all of these examples, it is also important to take the role of gender into account as a driving factor. Many Andean Indigenous institutions that follow the *thaki* (path) system of rotational government are governed by the Aymara-Quechua principle of *chachawarmi*, or male-female leadership in pairs (see Berman 2011). However, the reality of *machismo* and gendered violence against women in Bolivia is alarming. Berman cautions that celebratory discourses around complementarity and indigeneity act to conceal male domination within Indigenous organizations, and thus more critical analysis of such dynamics is warranted (Ibid.). In the case of Jatún Ayllu Yura, Cabrera and other female Indigenous leaders raise these discussions in their own organizations and insert themselves into active leadership roles to drive the movement forward. Similar to what Shannon Speed (2008) discusses among Indigenous women within Indigenous organizations in Chiapas, Mexico, these women combine human rights discourses with the principles and values that govern their own Indigenous institutions, to demand respect and participation in the face of intersecting forms of exclusion and violence.

Challenges of the Indigenous Autonomy Process in Bolivia

In the cases of both the Jatún Ayllu Yura and the Marka Quila Quila, the Qhara Qhara Nation demands representation as minorities in the other autonomous processes underway, in both departmental autonomy and municipal autonomy. Their demands draw attention to the lack of a decolonized institutional structure for guaranteeing political participation of Indigenous peoples in decision-making in executive and legislative branches of government. This contradicts forms of intercultural democracy advanced in the constitution, which recognizes direct democracy without the mediation of political parties. Indeed, a great deal of the challenges of the Indigenous autonomy process in Bolivia stem from the lack of direct representation in the design and implementation of its legal framework.

Here we see multiple related challenges to overcome. First, a political party system based on patronage and co-optation generates conflict and fragmentation within Indigenous territories and thus is inadequate for overseeing efforts to reconstitute Indigenous territories. Second, many Indigenous communities who follow principles of direct democracy based on public deliberation and consensus decision-making feel like their elected representatives in the MAS party have abandoned them. In the last decade of the Morales administration, representatives working in parliament were far removed from the mandates of their grassroots organizations. Third, as a result, legislation drafted and approved in the name of the MAS government's so-called "process of change" is directed at consolidating the power of a central government. This is evident in the "factory of laws" that run counter to Indigenous peoples' long-standing agenda of self-determination.[25] What the struggles of the Qhara Qhara Nation show is a dispute with formal democracy over a resistance on the part of the MAS political party to incorporate direct Indigenous representation. We feel a sense of urgency around the need for institutional bridges to articulate Bolivia's different forms of democracy, representative and communal, and aim to highlight common spaces of action and impact in the design of State institutions as Indigenous leaders seek to redirect State building back towards their project of self-determination.

Relatedly, in the area of Indigenous justice, the Zongo case draws attention to another obstacle Indigenous leaders face. The constitution mandates cooperation and coordination between judicial and administrative

authorities of the State and Indigenous authorities (art. 192 of the CPE). However, the lack of clear mechanisms for coordination and cooperation in subsequent framework laws has contributed to a weakening of Indigenous justice. Constitutional Court recognition of Indigenous peoples' legal decisions (such as a resolution to evict a miner from the territory, as in the Zongo case) does not guarantee their implementation in practice. This is due to a lack of respect and awareness on the part of lower-level State officials but also distrust among community members, as they fear legal persecution by these judicial authorities. An additional problem in implementing Indigenous laws stems from the fact that there is no form of financial or institutional support for the administration of Indigenous justice, outside of the contributions of community members who pool resources and supply food, lodging and transportation to Indigenous justice authorities. On the one hand, this practice is a fundamental part of communal organization in Indigenous communities as it breaks dependency from NGO or State funding. On the other hand, TJIOC leaders also point out, without having the same institutional infrastructure and means as other courts, especially at the national level, they are always at a disadvantage vis-à-vis the power of the ordinary justice system to maintain a hegemony as the sole arbiter of justice.

For their part, Yura leaders add that the path towards Indigenous autonomy is not only about breaking dependency for self-sufficiency but also about professional development of community members who can work in service of the ayllu. On collaboration with outside actors, Martha Cabrera, explains the need to break down asymmetrical relations and the importance of collective decision-making and action:

> If an institution comes along and wants to support us, they should know that they can only be collaborators and not be making the decisions. They can't take any actions unless they have consulted with the territory and it's approved. I emphasize the consultation because the leaders have placed too much trust in [Danish] support. At some point my authorities would say "I'll sign it [you] will manage it," but I think we were being really irresponsible in doing that. (personal communication, 5 November 2019)

The problem Cabrera draws attention to is quite common among social organizations. Since the 1990s, with the proliferation of technical experts and development NGOs working with Indigenous communities to implement multicultural reforms, local leaders spent more time outside their communities and made decisions according to their personal interests (see Postero, 2007).

Cabrera was also at the Constitutional Court the day the ruling was issued approving the constitutionality of Yura's Indigenous Autonomy Statute. Similar to the past, she explained, the leaders had to be vigilant. Two of the Court magistrates' signatures included fine-print, as "provisional" approval, with no explanation for how or why there would be any additional conditions for the decision to be formalized. This was likely an intentional tactic, Yura leaders suspected, and so they demanded it be clarified before accepting the dispatch. TJIOC leaders' acute knowledge of the legal culture and practice in Bolivia (and headquarters in the judicial capital of Sucre) acts as a form of oversight and supervision of Indigenous autonomy processes that otherwise go unchecked. In this sense, State supervision of their own referendum votes becomes all the more ironic. Moreover, for many Indigenous leaders who live in isolated communities the time, resources and technical knowledge to be vigilant of their own autonomy processes presents a huge challenge. Overcoming these asymmetries and institutional gaps for all Indigenous Peoples and Nations is part of the strategic vision of the Qhara Qhara Nation underlying their demands in the 2019 march.

New Struggles

Bolivia's political crisis was deepened following President Evo Morales' resignation on 10 November 2019. The months of upheaval around Morales' bid for a fourth term in office and accusations of electoral fraud were marked by polarization across multiple sectors of society, divisions that were widened by the racist and classist overtones of the regime of Jeanine Añez. In this scenario, representatives of the Qhara Qhara pressed their demands to the interim government, under the premise of continuing their struggle by negotiating with "any government in power."[26]

This new scenario of struggle is reflected in declarations in defense of the Whipala, the flag of Indigenous peoples and symbol of their constitutionally recognized homelands and for those urban Aymara and Quechua. The Qhara Qhara Declaration on 22 November 2019 was one of many in response to the

removal and burning of the flag shortly after Morales' resignation, sparking protests. While international media tended to portray the protests as a defense of the MAS and Evo Morales, such portrayals ignore the voices on the ground who were protesting in defense of their sacred symbol. In their statement, the Qhara Qhara Nation critiqued the use of the Whipala by political parties and criticized both the "left" and the "right" for misusing and defaming their national flag.[27] Urban Aymara collectives in El Alto organized around the banner of the "rebellion of the Whipala," which was echoed throughout the country. This pushed back on the actions of the Añez government and forced politicians, policemen and officials to publicly apologize for defaming the flag, to restore the dignity of the Whipala.

Conclusions

In this chapter, we have offered an overview of advances and challenges of Indigenous autonomy in Bolivia, from the perspective of Indigenous Peoples and Nations ongoing struggles for pathways toward self-determination. We conclude by highlighting important lessons we take from the analysis and political actions of Indigenous leaders on this path:

- The project of Indigenous autonomy is part of a strategy on the part of Indigenous peoples to strengthen autonomy processes towards a much more broadly defined form of autonomy as nations. They aim to overcome the obstacles or gaps in bureaucracy and a limited autonomy framework to strengthen their own governments. In doing so, they create new institutions to articulate with the State "from below."

- The struggles on the part of Yura's leaders shows how such gaps emerge in legal procedures in collective land titling and continue in their legal battles to gain access to Indigenous autonomy. In both moments, Yura leaders questioned government policies that generate fragmentation and setbacks, calling for the elimination of the second referendum to approve autonomy statutes and demanding equality in the exercise of Indigenous justice.

- There is a need for articulation between the institutional framework of departmental and municipal autonomies and autonomous

Indigenous institutions. A range of interlocutors emerge in these processes, as national Indigenous organizations and organic councils of the Qhara Qhara Nation create new institutions such as the TJIOC and collaborate with universities and State officials, among other examples offered in this chapter.

- The use of legal tools, such as appeals to the Constitutional Court to eliminate bureaucratic requirements for representation and participation as Indigenous peoples, and strategies for exercising the right to self-identification, as well as strategies deployed for prior consultation and strengthening Indigenous jurisdictions processes all demonstrate processes of constructing Indigenous autonomy "from below."

- Yura's legal strategies, which are directed at strengthening self-government, reducing barriers to accessing autonomy processes, and advancing toward Indigenous self-determination, make use of the legal tools offered by the Plurinational Constitution. In doing so, their experiences offer us an opportunity to reflect on ongoing efforts to re-appropriate the Plurinational State in the context of more recent shifts following the 2019 political crisis and return of the MAS government to power the following year.

In affirming that they are "materializing" the constitution, as Indigenous leaders of the Qhara Qhara Nation often do, they seek to redirect institutional processes of constructing the Plurinational State back towards their own social projects, towards self-determination. As we have shown in this chapter, their own institutions, which are based on communal forms of reproducing social life rooted in territoriality, have emerged in response to the very barriers that were imposed "from above," under the administration of Evo Morales. His fall does not signify the loss of these projects.

On the contrary, recent shifts in the political scenario in Bolivia might open critical space for renovating the plurinational project from below, through constant negotiation and refusal of State parameters, whether this State is led by the MAS party or by right-wing elites. For this reason, this chapter aims to draw attention and amplify the constant actions of autonomous spaces, where faced with the limits of a State-led "process of change,"

ayllus, collectives and others continue generating their own channels for negotiating with the State, to exercise self-determination over their territories.

NOTES

1 Autonomy statutes are basic institutional norms for all sub-national levels of government for legal autonomous status, as required by the guidelines established by the 2010 Framework Law of Autonomies and Decentralization.

2 The five stages consist of: referendum for conversion to autonomy, elaboration of the autonomous statute, constitutionality review, statute approval, and implementation of the autonomous statutes (see Villagoméz, 2018).

3 Other demands of the march included repeal of art. 10 of the Law of Jurisdictional Demarcation (Law No. 073), which severely limits the exercise of Indigenous justice, violating the recognition of "hierarchical equality" between Indigenous Justice and Ordinary Justice established in Bolivia's 2009 constitution (art. 179.II).

4 For an analysis of the march led by the Qhara Qhara Nation, see Bautista (2019) and Copa (2019).

5 Plurinational Legislative Assembly, Law No. 1198, July 14, 2019, "Modification of Law No. 031," available at: https://web.senado.gob.bo/sites/default/files/LEY%20N°1198-2019.PDF.

6 Researchers for the Regional Movement for Land and Territory have systematized the history and territorial organization of the Qhara Qhara Nation; see: www. porlatierra. org/ cases / 41.

7 Named leadership role as highest authority over territorial units *ayllus, jatun ayllus* or *markas*; following Aymara-Quechua principles of male-female complementarity, Kuracas exercise their leadership in partnership with their wives (*Mama Thallas*), serving as members of a Council Kurakas and Mama Thallas, of annually rotating leadership positions (see system elaborated within the Statute of Indigenous Indigenous Autonomy Peasant of Jatun Ayllu Yura).

8 For Yura leaders' reflections on the gains and challenges in these early processes as well as more recent efforts to convert to formal Indigenous autonomy, see Bautista, 2017.

9 The Unity Pact predated the Constituent Assembly, emerging in 2004 as a pragmatic alliance of Indigenous, First Peoples and Peasant organizations to articulate their different struggles. Then, in 2006, the Unity Pact was charged with the historic task of elaborating a proposal for plurinationalism following their popular election as delegates to the Constituent Assembly (see Garcés, 2010).

10 The IPSP (Political Instrument for the Sovereignty of the Peoples) of the party was seen as a bridge insofar as it was a mechanism that "provided support" to the liberal system of representative democracy through endorsement and support of candidates or the negotiation of alliances with political parties, flowing from the collective decisions of the bases (Yapur, 2018, p. 118).

11 *Personería jurídica* is the legal authorization for all non-profit entities representing civil society to be subject of rights and obligations and to carry out activities that generate full legal responsibility. For this reason, it is required of all social organizations, non-governmental organizations, foundations, etc., to have legal status.

12 See Flores and Herrera (2016), for a systematization of the case study of legal battles in the Marka Quila Quila case.

13 This refers to those who are in charge of the work of preparing the Autonomy Statute, normally at the departmental or municipal level. (In contrast, Indigenous communities, following their own norms and procedures, tend to collectively appoint a statute "commission" charged with this task).

14 Plurinational Constitutional Court, SCP 0039/2014 and SCP 0022/2015.

15 SCP 0242/2014 y SCP 006/2016.

16 TJIOC members include Indigenous peoples from the nations of Qhara Qhara, Yampara, Suras, Jachacarangas and Killacas-Coroma, as well as Guarani peoples from the lowland region.

17 For more on the SEGIP resolution, see Pachaguaya and Flores (2016).

18 Many of the legal battles of members of the Qhara Qhara nation serve as emblematic lessons for exercising Indigenous justice at the national-level, as illustrated by this instructional video: https://www.youtube.com/watch?v=ht-bvoawOx0&t=217s.

19 Important to note is that organizational structures and rules and procedures among these organic justice institutions are quite varied (even disputed) among different communities themselves: while the Consejo Amawtico of Chirapaca is reconstituted out of rebellious memories around the Aymara school Warisata and reaches the entire Department of La Paz (see Copa, 2017), in other instances such as the Mixed Court of Indigenous First Peoples Peasant Justice was formed following formal recognition by the Constitutional Court and thus has an organizational structure and judicial procedures that are shaped by the entanglement of State institutions in the very conflicts out of which it emerged (see Copa and Kennemore, 2019).

20 For more related case studies, see Movimiento Regional por la Tierra (https://porlatierra.org). In addition to holding meetings in Indigenous territories, materials are also produced and disseminated as part of online learning for courses on topics related to Indigenous autonomy and rural development; see Interaprendizaje del Instituto para el Desarrollo Rural Sudamérica (https://interaprendizaje.ipdrs.org).

21 Capitalization from original quote.

22 Plurinational Constitutional Court, SCP 00874/2014; for an analysis of the case, see IPDRS 2016.

23 The MAS government has used similar legal requirements to threaten several Bolivian NGOs; for an example of deploying this strategy for political ends see the 2015 interview with Susana Eróstegui, director of the research organization National Union of Institutions for Social Action Work (UNITAS), available at: http://eju.tv/2015/08/susana-erostegui. In the economic arena, similar requirements were implemented in response to actions taken by community members against the Rositas hydroelectric

plant; see https://www.noticiasfides.com/economia/tcp-exige-personeria-juridica-a-las-comunidades-indigenas-que-rechazan-proyecto-rositas-392191.

24 Art. 88, No. VIII, subsections 1 and 2.

25 During a national-level seminar with Indigenous leaders to strengthen Indigenous jurisdiction, one presenter estimated that more than 1,700 laws were passed in the legislative and executive branches (by decree) under Morales' three terms in office (15 years) (hosted by APDHB-UNITAS, La Paz, 16 November 2018)

26 During the October-November 2019 political crisis, authorities of the Qhara Qhara Nation also asked President Morales to resign; See the ANF news story available at: https://www.noticiasfides.com/nacional/politica/nacion-qhara-qhara-a-evo-34deja-de-enviar-indigenas-como-carne-de-canon-para- your-interests-34-402246.

27 *Correo del Sur*, 2019, available at: https://correodelsur.com/politica/20191122_rechazan-que-la-wiphala-se-use-para-hacer-politica.html.

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13

Indigenous Jurisdiction as an Exercise of the Right to Self-determination and its Reception in the Chilean Criminal Justice System

Elsy Curihuinca N. and Rodrigo Lillo V.

Introduction[1]

The international human rights system has made progress in strengthening and protecting the rights of Indigenous peoples, making it a good time to revisit debates about the recognition of, respect for and guarantee of Indigenous jurisdiction in Chile.[2] In recent decades, Indigenous peoples in Latin America have seen some of their demands met as their collective rights were recognized in international legal instruments and in some Latin American constitutions. Indeed, of the 22 countries that have ratified International Labour Organization (ILO) Convention 169, 15 are in Latin America and the Caribbean. In 2007, the United Nations General Assembly approved the United Nations Declaration on the Rights of Indigenous Peoples, and in 2016 the Organization of American States followed suit and adopted the American Declaration on the Rights of Indigenous Peoples. Similarly, during the last two decades of the 20th century, several countries in the Americas modified their constitutions to recognize the rights of Indigenous peoples.[3]

Nonetheless, although this issue has been the subject of debate and concern since the beginning of the 21st century,[4] Chile has seen scant progress.

With the social and ethnopolitical processes underway since the late 20th century, there has been a revitalization of the struggles of Indigenous societies, which seek self-government and self-determination in an increasingly explicit fashion and have grown to include the exercise of some collective rights such as Indigenous jurisdiction. The question about which legal system Indigenous peoples are fighting for has been part of discussions by legal anthropologists and sociologists since at least the 1960s and has led to the issue of legal pluralism, further discussed below. For now, it is sufficient to say that it deals with the exercise of a certain legal institutional structure, which has been maintained — though not intact — since the pre-colonial era. In most countries in Latin America, processes of European colonization[5] prevented Indigenous peoples from exercising their right to self-determination. However, drawing on Indigenous resistance and the appropriation of certain foreign and colonial elements, Indigenous peoples have maintained legal structures and practices that differ from those of States. These structures have been identified by some scholars as true systems of law, though they do not form legal systems equivalent to those of modern States (Borja, 2006, p. 663; Villegas & Mella, 2017, pp. 71–72; Melin et al., 2016, p. 14; Yrigoyen, 1999, pp. 129–42). Now, characterizing these systems of law as synonymous with legal systems does not mean trying to revive pre-colonial law; rather, as has been explained since the 1980s, it means exploring how Indigenous peoples currently apply their justice systems in an autonomous manner (despite lacking State authorization), made up of their own recovered and/or reworked elements or created and appropriated from existing State laws (Stavenhagen, 1990, pp. 34–35). Moreover, these systems do not consist merely of formulas for resolving local conflicts; they include their own norms of public law related to the designation and powers of authorities, the administration of territory, the safeguarding of natural resources and so on.

In debates about the legal recognition of Indigenous law, those who oppose it have suggested that it goes against individual human rights as it requires members of a society to subject themselves to sanctions not set forth by law. This, as Emiliano Borja explains, "seems barbaric and cruel from a Western perspective" (2006, p. 680), and is applied without the filter of due process.[6] This statement, however, can also be applied to those submitted to the State's criminal justice system,[7] revealing an ethnocentric view that sees

the law as an absolutely true and naturally given phenomenon. It is, in short, the old dispute between universalists and relativists — between those who believe that human rights are of identical value regardless of the latitude or political stripe in question (human rights arose as a universally applicable concept) and those who maintain that an institution born in the West cannot be applied uniformly because it cannot be applied in certain contexts, and doing so would be a form of imperialism. For Boaventura de Souza Santos (1998, p. 195), both extremes are universalist, mistaken, and unjust, and in their place he proposes an intercultural dialogue on human rights and a global transformation of their practice.

Along similar lines, Colombia's Constitutional Court attempted in some emblematic judgments in the 1990s to establish this dialogue between the collective rights of Indigenous peoples (particularly the right to special jurisdiction) and human rights based on a recognition of the principle of cultural diversity.[8] This work of the Court was obviously not completed decades ago, and we might say that the dialogue has become increasingly complex. Nonetheless, we might expect that this dispute should occur within each society without the false premise of some societies (or legal systems) being morally superior to others. This is a process that must take place, furthermore, in inequitable situations with high levels of conflict. In this context, recognizing special Indigenous jurisdiction and the exercise of this jurisdiction is not a matter of idealizing Indigenous peoples and their legal systems; it is directly linked to the survival of Indigenous peoples as ethnic collectives that are culturally distinct from the rest of the population, with the right to determine and protect their own cultural systems — in other words, with the right to self-determination. Jurisdiction, then, is based on the right to self-determination, as it is part of the forms of organization that Indigenous peoples grant themselves. They organize themselves and administer and apply justice through a normative system with their own institutions and procedures. According to James Anaya (2009, p. 197), "human beings, individually and as groups, are equally entitled to be in control of their own destinies, and to live within governing institutional orders that are devised accordingly."

However, another dilemma in the recognition of Indigenous legal systems is the enormous gap between their normative recognition and what occurs in practice. To what extent has the legal recognition of autonomies allowed Indigenous peoples to resolve their affairs and exercise their institutions effectively? This dilemma is more complex in the current context of

disputes over territorial control, affected by, among other things, the significant expansion of extractive industries and the implementation of infrastructure and investment projects promoted by States. These activities, which occupy a central place in the development strategies of several countries in the region, exacerbate the unequal distribution of power in society and have negative effects on Indigenous peoples' right to determine their own development priorities.

In this context, the exercise of Indigenous law is highly complex, as it runs the risk of being reduced to resolving minor local conflicts, like justices of the peace. Its applicability is thus directly related both to the relation of forces between Indigenous peoples, transnational companies and States and to how this struggle unfolds in the battleground that configures the law.

We may wonder: Who makes the decisions in Chile about matters of justice that affect Indigenous parties? Are there practices of Indigenous jurisdiction such as the exercise of self-determination? Is it possible to progress toward mechanisms of recognition and/or toward mechanisms for coordinating between Indigenous and State systems of jurisdiction?

This chapter addresses how conflicts that occur in some communities of different Indigenous peoples in Chile, who maintain their own normative systems, are taken over by the State justice system due to accusations of a criminal offence. Each jurisdictional system (Indigenous and State) attributes to itself the authority to resolve such issues, producing a conflict of powers in a Chilean legal system that lacks mechanisms of coordination.

Although the cases described do not reveal a recognition of the exercise of Indigenous jurisdiction in Chile, they do allow us to see how Indigenous law remains in effect in diverse community spaces (outside of the State), suggesting that certain elements or practices of this system can be incorporated into institutional spaces to the extent that the Indigenous actors themselves so demand. This chapter also presents some advances and difficulties observed in the exercise of Indigenous jurisdiction in Peru and Ecuador. These situations make it possible to see how the *de facto* failure to recognize Indigenous law has overshadowed constitutional norms which years ago promised a broad recognition of Indigenous rights in the region, and they reveal the urgent need for a new dialogue between States and Indigenous peoples.

Cultural Diversity and Justice in the *Corpus Juris* of Indigenous Law

The rights of Indigenous peoples both in the justice system and to access the justice system are recognized in several general international instruments currently in effect, such as the International Covenant on Civil and Political Rights (1966) and the American Convention on Human Rights (1969). But Indigenous peoples also have other, specific international instruments that consider their special characteristics. These include ILO Convention 169 (1989), the United Nations Declaration on the Rights of Indigenous Peoples (2007), the American Declaration on the Rights of Indigenous Peoples (2016), the International Convention on the Elimination of All Forms of Racial Discrimination (1965), the Brasilia Regulations Regarding Access to Justice for Vulnerable People (2008) and the Ibero-American protocol on legal action to improve access to justice for people with disabilities, migrants, children, youth, communities and Indigenous peoples (2014). All these instruments include provisions that cover diverse aspects of the sphere of justice, depending on whether they refer to procedural or substantive aspects of prosecution. This cluster of norms can be summarized in the following statement: Indigenous peoples possess a series of specific rights that, among other purposes, seek to guarantee appropriate access to justice under equal conditions.[9]

In the case of Indigenous peoples, considering access to justice on an individual basis is insufficient; it is essential to attend to the collective dimension, as they are a distinct group.[10] In this context, equality involves the recognition by States of Indigenous peoples' traditional and/or own methods for resolving conflicts, prosecuting infractions, and applying sanctions (Villegas & Mella, 2017, p. 71). This includes recognizing their own procedures and institutions and is closely related to recognizing their right to self-determination.

According to article 3 of the United Nations Declaration on the Rights of Indigenous Peoples (2007), self-determination is a right held by all peoples, by virtue of which they freely determine their political status and freely pursue their economic, social and cultural determination. Political determination consists of the pursuit of their own aims, which in turn requires organization and institutional structure. This is, in generic terms, what we call law.[11] Law does not only constitute a set of norms. Following Santos (2002), it is:

> a body of regularized procedures and normative standards, considered justiciable in any given group, which contributes to the creation and prevention of disputes, and to their settlement through an argumentative discourse, coupled with the threat of force. (Santos, 2009, p. 56)

Indigenous law, then, cannot be understood without Indigenous jurisdiction, which can be defined as follows:

> [T]he power of Indigenous peoples to turn to their authorities and internal institutions to solve the controversies that occur in their territories, as well as the power to make decisions, judge and enforce in accordance with their traditional norms. (Moreno, 2011, p. 117)

More precisely, we can say that the rights of Indigenous peoples to justice are dual; they have an individual dimension, which guarantees Indigenous people's access to state justice on an equal footing with the rest of society, and a second dimension, which consists of the right of peoples to have their own jurisdictional mechanisms, in equivalent terms and in coordination with the State justice system. The first dimension consists of the rights that Indigenous peoples can present to the State to access State justice. These rights are established in different human rights instruments for all persons, including, for example, the right to due process, to the presumption of innocence and to have recourse to a competent court.[12]

In addition, the Inter-American Court of Human Rights (I/A Court H.R.) has indicated that, in the case of Indigenous peoples, State courts must consider the subject of law's particular protection needs, whether due to their personal condition or to the specific situation in which they find themselves.[13] This right thus includes access to justice, by virtue of which Indigenous peoples must be protected in cases of violations of their rights and must be able to initiate legal proceedings either personally or through the bodies that represent them. This requires that their ability to understand and make themselves understood in legal proceedings be guaranteed, through the provision of interpreters or other effective means if necessary. It further requires the right to special sanctions, as their economic, social and cultural characteristics must be taken into account when applying criminal penalties

— preferably non-custodial penalties,[14] with forced labour being prohibited (unless set forth in the law for all citizens). Finally, it entails respect for their own law, as not only must their customs and customary law be considered in general; rather, the methods Indigenous peoples traditionally use to control crime must also be respected, as long as they are compatible with the national legal system and with human rights (Melin et al., 2016, pp. 75–86).

The Inter-American Comsission on Human Rights (IACHR) has also spoken on several occasions about Indigenous law, using the expressions "custom," "traditions," and "customary law." Specifically, it has addressed legal custom with respect to decision-making.[15] For example, in the case of the Kichwa de Sarayaku People v. Ecuador, it indicated that "consultation must take into account the traditional decision-making practices of the people or community."[16] The following paragraph refers to a different case in the I/A Court H.R. indicating that:

> regarding large-scale development or investment projects that would have a major impact within Saramaka territory, the State has a duty, not only to consult with the Saramakas, but also to obtain their free, prior and informed consent, according to their customs and traditions.[17]

In both cases, the Court clearly tied Indigenous custom to Indigenous or traditional internal decision-making processes — that is, to their own law.

The Court has also addressed the recognition of customary law in its broader sense, relating it to cultural identity and cultural rights. In the Awas Tingni case, it established that:

> Indigenous peoples' customary law must be especially taken into account …. As a result of customary practices, possession of the land should suffice for Indigenous communities lacking real title to property of the land to obtain official recognition of that property, and for consequent registration.[18]

Similarly, in the 2007 Saramaka People case, the Court indicated that Indigenous peoples have the right to:

> hold collective title of the territory they have traditionally used and occupied, which includes the lands and natural resources necessary for their social, cultural and economic survival as well as manage, distribute and effectively control such territory, in accordance with their customary laws and traditional collective land tenure system.[19]

The I/A Court H.R. has also recognized Indigenous custom with respect to other matters, such as traditional family structures,[20] non-discrimination[21] and freedom of conscience and religion.[22]

In any case, these Indigenous structures are not absolute forms totally separated from State law.

> Legal custom is often developed and modified as a function of its relation to dominant (national positivist) law and can be seen as an attempt by subordinated societies to adapt and reinterpret positivist state norms in accordance with their own structures, values, interests and needs. (Stavenhagen, 1990, p. 34)

Indeed, this relation of domination and resistance between State law and Indigenous law is a way to understand legal pluralism (Sieder, 1996).

The second dimension, in contrast, refers to the exercise of special Indigenous jurisdiction — that is, the exercise of self-determination independently of State justice. This pertains to the control and punishment of offences committed according to their own systems, regulated by their institutions and in accordance with their own procedures.[23] Both dimensions form part of the same right. Access to justice, therefore, cannot entail the imposition of one dimension over the other.[24] When Indigenous peoples file claims or are compelled to appear in the jurisdiction of courts of State justice, they are not renouncing their own justice system. Similarly, by exercising their own justice for some cases, they are not necessarily eschewing turning to ordinary courts of justice.[25]

Indigenous peoples themselves have understood the exercise of jurisdiction as an application of their right to self-determination. In Peru and Bolivia, for example, some communities have chosen the strategy of protecting their territory by exercising their own jurisdiction. This was evident in a judgment by the Plurinational Court of Bolivia on 29 August 2018, ruling favorably on

the consultation presented by the Chief (*Curaca Cobrador y Corregidor*) of the Jatun Ayllu Santa Isabel community, belonging to the Sud Lípez Council of First Ayllus in the department of Potosí. The consultation referred to the resolution adopted in his community on 21 December 2017 that applied penalties to the La Candelaria mining concession and owner, including their expulsion from the territory without any financial compensation due to damage to the fauna, the environmental contamination caused "and the constant discrimination, labour exploitation [and] failure to recognize the right to self-determination and self-government." This community decision was declared legitimate by the Court, as it was in line with the jurisdictional powers of First Peoples and peasant nations.[26]

In the case of Chile, while all the norms sustaining the validity of special Indigenous justice are part of the country's domestic justice system (ratified international treaties), their application and enforcement have given rise to a constitutional debate that features several different positions. In a 2000 judgment on a declaration of the unconstitutionality of Convention 169,[27] the Constitutional Court established that in a country's domestic system, treaties can contain two types of clauses — executable and non-executable:

> The former are those with sufficient content and precision to enable their application as a source of domestic law without requiring any other procedures. In other terms, they are self-sufficient and enter into national legislation when the treaty that contains them is incorporated into the existing body of law. The former are those that, to enter into effect, require the enactment of laws, regulations or decrees to implement them and, ultimately, make them applicable as a source of domestic law. In other words, they make it the duty of the state, in exercise of its public powers, to sanction the necessary regulations so the laws can be effectively enforced. (Judgment of the Constitutional Court, 2000, Recital 48)

This issue is not uncontentious. Meza-Lopenhandía, with whom we concur, suggests that by virtue of that set forth in article 5 paragraph 2 of the Political Constitution of the Republic, ILO Convention 169 and its norms are unquestionably mandatory at a domestic level, at least since ratifying the treaty that contains them. The author adds that this is different from the diverse ways the

norms can be applied: there are self-executing norms, programmatic norms and principles that require a reinterpretation of the legal system to conform to the international standard or the tacit derogation of incompatible norms and/or the enactment of new laws (2013, pp. 343–44). In contrast, Millaleo (2016), in line with the thesis of the Constitutional Court, suggests that the standard of article 8 of the Convention is self-executing but of a programmatic nature, "because it is not fully applicable in internal law: as it requires specific legislative recognition" (2016, p. 32). Valdivia (2011) holds a more limiting position, affirming that "the specificity that seems to characterize certain provisions of an international instrument does not alone guarantee their unambiguous application" (2011, p. 51).

Beyond the legal debate about the constitutional value of the norms regarding Indigenous law, Indigenous peoples exercise their law every day in what Villegas and Mella call "coordination from below" (2017, p. 183). The relation between Indigenous justice and State justice is not without conflict, as the law becomes a dialectic field marked by power struggles and disputes over knowledge, where the tension between Indigenous law and State law is dynamic, ongoing and susceptible to diverse social changes. In the recognition of collective rights, States "tend to see the creation of an internal legal competition, a challenge to the State monopoly on the production and distribution of the law" (Santos, 1998, p. 159).

From this perspective, modern law has two main shortcomings that, along with other factors, account for why it has become more an instrument of regulation than of emancipation. First, especially since the codification processes in Europe, law has been identified with the nation-state, as if the nation-state were the only center of normative production. The law has also always been associated with the notion of being scientific, as if it were a neutral zone. This law, State-based and supposedly neutral, rules out the possibility of legal pluralism, hence it resists the idea of Indigenous justice, which is different from and outside the State. If law is only produced by the State, then it is inconceivable to understand law as a "plurality of legal orders, interrelated and socially distributed in the social field in different ways" (Santos, 2002, p. 63).

Legal pluralism arises mainly in a context of colonialism — that is, the domination of one society by another — and in the way of articulating social relations between a colonizing State and traditional legal systems. Legal pluralism can also be identified in "countries with predominantly or exclusively

non-European cultural traditions, which adopt European law as an instrument for modernization and the consolidation of State power" (e.g., Turkey, Thailand, Ethiopia) (Santos, 1991, p. 70), as well as in contexts of socialist revolution, such as in the former Soviet Union, and in Islamic countries, where "revolutionary" law has come into conflict with traditional law. This situation is also present in different countries in Latin America, where the law and social forms of control acknowledged and used by Indigenous peoples were first ignored by the Law of the Indies (*derecho indiano*) and then by State law (Yrigoyen, 1999, pp. 129–42). Legal pluralism, then, describes a legal phenomenon and is not necessarily an emancipatory or counter-hegemonic tool. Legal pluralists thus distinguish between classical (or weak) legal pluralism and current (or strong) legal pluralism (Santos, 2009, pp. 54–55).

Currently, in industrialized societies,[28] these articulations are marked not by the correlation of forces between the colonized and the colonizer (Santos, 2009, p. 55) but by the coexistence of diverse legal orders. While classical pluralism was configured at the intra-state level, legal orders today are interwoven across the diverse scales of law, both at the level of the nation-state and globally. The discourses of social movements and international law, among others, shape a more complex legal system than simple State law (Santos, 1998, p. 80). Santos describes legal pluralism in current society as an interrelation of different legal orders at the three scales (local, national and global) and across the six space-time dimensions (domestic, production, community, market, citizenry, global) at which law operates. While these spaces produce and transform their own systems of law, they are related to the others in either a complementary or conflict-infused manner.

> Each of these spaces has its own power relations and its own struggles. As the legal field is plural, the struggles will tend to be plural, although they are based predominantly in one space as a single space has competence in different systems of regulation. (Ardila, 2002, p. 59)

The problem of legal or juridical pluralism lies in describing and defining the relation between two sub-fields of law. Ultimately, it lies in how we resolve the question of legal systems coexisting in the same geopolitical territory.

> In this context, one of the current challenges appears to be related to the coordination of state and Indigenous systems of justice in matters of conflict resolution. Hence, a fluid intercultural dialogue between authorities of Indigenous justice and state justice is needed for there to be understanding around the issues that operators of Indigenous justice consider they should resolve, and accordingly, their powers should be recognized based on the circumstances of particular Indigenous communities or peoples. This would also provide flexibility in cases in which Indigenous authorities believe that a particular matter should be heard by the authorities of ordinary justice, as part of a process of intercultural coordination and cooperation. (Tauli-Corpuz, 2016, p. 2)

In this regard, case studies allow us to observe how the operators of State justice, as well as Indigenous actors, apply and weave together law in different spaces.

Practices and Elements of Indigenous Jurisdiction and their Recognition in the Chilean Criminal Justice System

Indigenous law varies depending on the collective in question. Its roots lie in local traditions and customs and correspond to the needs of Indigenous communities with respect to maintaining social order and harmony, resolving conflicts of different kinds and punishing offenders,[29] all of which involve the existence of their own institutions and procedures.[30]

Still, as indicated above, Indigenous law is not equivalent to ancestral tradition, as it is eminently dynamic, and in the process of intercultural relations it has appropriated "exogenous elements giving them new values and cultural meanings" (Gómez, 2015, p. 198). At the same time, we know that these relations between different legal systems (legal pluralism) do not occur on equal terms; rather, it is a relation of domination and resistance (Sieder, 1996, p. 33).

Some of the legal systems described remain in effect among different Indigenous peoples in Chile.[31] In the case of the Aymaras, for example, Chiapa, an Andean town in the Arica and Parinacota region, has historically administered its water resources based on a system of shifts or mandatory

public service (*mitas*). According to customary law, each irrigator who wants to exercise their right is subject to the dictates of the community (the irrigators' organization) and to that set forth by the mayor of water — the authority who represents the principles of justice and reciprocity of the Andean world (Castro et al., pp. 40–41).

The Mapuche,[32] too, have legal forms in effect. The AzMapu is the system that regulates social relations (Antona, 2014, pp. 111–37), consisting of authentic "behavioral guidelines that are transmitted orally from generation to generation and regulate social relationships and people's connections to the natural environment" (Melin et al., 2016, p. 34). Mapuche justice is directly connected to *gvlam*, which is an ongoing process of education with the idea of restoring and re-establishing balance and harmony: "the need to maintain balance makes violence-prevention mechanisms work, which are put in place at the first hint of conflict instead of immediate punishment" (Villegas & Mella, 2017, p. 140). This is the type of Mapuche justice that Pascual Coña describes for the 19th century, where the theft of a *waka* (cow) was resolved by the *logko* (leader or head of the community) of the respective *lof* (communities) (Coña, 2000, p. 140).

The exercise of Indigenous law is a live phenomenon, carried out regardless of normative recognition. Its dynamic nature includes the disputes that occur in the different legal fields in which State law attempts to establish its hegemony.

The following case studies aim to describe the dialectical relationship between Indigenous law and State law, particularly in the judicial field.[33] Although the cases do not necessarily describe a process of juridification of Indigenous social demands,[34] they allow us to better understand the context in which struggles for the recognition of the right to Indigenous jurisdiction in Chile take place.

Case studies

Social Structure, Family Organization and Property from an Aymara Cosmovision

Three families, inhabitants of the Chucuyo Estate, were accused of the crime of causing simple damages to the private property of Ms. VMM. The alleged damage consisted of damaging the outer fence installed by the owner. The

defence managed to absolve the three accused, emphasizing the Indigenous mechanisms for resolving conflicts and the community use of Aymara property. During the trial, community members testified that "there have never been any fences, and problems have always been resolved in good faith, and Ms. VMM did not want to …." The Intercultural Facilitator in the Office of the Public Defender made a similar declaration, indicating that "the boundary markers have not been moved in more than four generations, and they cannot be removed because it would threaten the healthy coexistence of the community, it is a system agreed upon among the families" (Judgment of the Arica Court of Guarantee, 2013, RIT 648-2013, Recital eighteen).

The Aymara cosmovision was decisive, in this case. The complainant was occupying a land that was not hers, as she arrived there through an unaccredited succession and was residing there thanks only to the tolerance of the accused. When VMM enclosed a part of the land (without any consultation), in addition to circumventing the existing ancestral demarcation, she deprived the rest of the community of an alternative path, thus the court understood that if one of the three accused knocked down the stakes, it was only to re-establish the social balance.[35] This case clearly illustrates the effects of applying the system of private property — effects that continue to have repercussions today.

The imposition of the concept of fiscal ownership and the failure to recognize shared ownership, so characteristic of Andean tradition, triggered this privatization process. The Chilean State introduced a type of State-Individual arrangement instead of a State-Community one, unleashing major disputes among Aymara families (Comisión Verdad Histórica y Nuevo Trato con los Pueblos Indígenas, 2008, pp. 123–26).

Likanantai Assembly as Jurisdictional Body

An Indigenous community in Socaire used to carry out an old tradition every winter solstice involving young people and adults using fire.[36] In the middle of this activity, all of a member's bales of hay were burned — the product of one year of work. He reported the incident to the Public Ministry, which in turn filed an accusation of arson. However, the indictment was not successful, as the parties spoke with the community and decided to reach an agreement. The Calama Court of Guarantee moved to the town of Socaire and recognized the legality of the solution put forward by the parties. A restorative

agreement established that the accused had to pay an amount to the victim in two instalments. The first payment was verified at the hearing (Minutes of the Hearing of the Calama Court of Guarantee, dated 29 November 2013, RIT 4657-2012), and the second payment was given to the community manager, who was to pass it on to the victim.

Control of Crimes of Domestic Violence in Mapuche-Pewenche Communities

On the night of 7 October 2008, VVC assaulted his partner with blows to the face and to different parts of the body, cutting the victim on the face and arms with a knife. It was formally reported on 20 December 2012, and the judicial process ended in January 2014 with a sentence of 50 days in prison. Meanwhile, the community held an assembly (more than 200 attendees) led by the *Longko* to punish the assailant. The punishment consisted of suspending a range of rights to participate in the community indefinitely: 1) cannot represent as a homeowner; ii) cannot receive benefits in his name; iii) the animals belong to his wife, he loses everything; iv) cannot vote in the community; v) cannot be *werken* (a kind of spokesperson); vi) cannot participate in ceremonies; vii) does not have the right to voice his opinion; viii) cannot hold a leadership position. These kinds of punishments deprived him of his quality of *che* (person) and as a member of the collective to which he belonged. The ruling also included a group of *kimche* (wise people) from the community providing *ngulam* (counselling) to the couple. "I am not the same person I was, for now I am always being humiliated by family members," said the accused about this punishment (Pérez, 2013, p. 12).[37]

In the prosecution of the case, the defence argued that the accused had already been punished in accordance with the rules and procedures of his community, thus if the State court also ruled, two punishments would be applied for the same crime.[38] The argument of the defence was based on the premise that the punishment adopted by the community was a jurisdictional ruling. However, the court rejected this claim. According to the court, even though the punishment applied by the community was a sentence, it could not be validated by State justice because doing so would violate the right to a natural judge, and furthermore, because it was the State courts that had the exclusive authority to resolve a criminal accusation.[39] The judgment also indicated that any other forms of conflict resolution that Indigenous peoples may

use to control the crimes committed by their members were incompatible with the national criminal justice system.[40,41]

This ruling involves two different arguments that demonstrate (according to the court) that special Indigenous jurisdiction is incompatible with Chilean law.[42] First, it reaffirms the idea that Indigenous jurisdiction is in contrast with the principle of legality and the principle that everything which is not forbidden is allowed, which reserves the authority to judge for the bodies established in the constitution and the law and holds that whoever takes on such powers without being granted them in a legitimate fashion is acting unconstitutionally. Second, the exercise of Indigenous jurisdiction — that is, the prosecution of an act classified as a crime by bodies other than State courts — constitutes a violation of the right to not be tried by special commissions, contemplated in article 19 no. 3 of the Constitution.[43] The first argument is related to the debate mentioned above about whether the norms regarding Indigenous peoples' access to justice, included in Convention 169, are self-sufficient or require an additional norm to establish special Indigenous jurisdiction. As indicated above, the norms that recognize the right of peoples to grant themselves a system of special jurisdiction to form a part of our national legal system, although it is also true that there are no rules for coordinating with the State justice system, as there are in other countries discussed below. The second reproach in the judgment is based on an error: the prohibition of not being judged by special commissions is aimed at preventing a person from being subject to a criminal trial by an unknown court, appointed specifically for the case, such that the accused cannot properly prepare and is unaware of the court's interests and possible prejudices.[44] In this case, the jurisdictional rulings of an Indigenous community possess precisely the opposite characteristics, as they constitute the natural judge in this context: they are authorities who have been traditionally authorized among Indigenous peoples to impose sanctions and resolve legal conflicts that arise in their communities.

Administration of Water Use and Conflict Resolution in Aymara Communities

In the town of Saxamar, two brothers were in constant conflict with their neighbors over a water canal that ran through their land. Without regard for customary practices, they decided to block the waterway, depriving the

community of an essential resource. As a result, one of the most affected neighbors filed a complaint with the Public Ministry about the damage caused, and the brothers were accused of the crime of usurpation of water. Given the strong possibility that they would arrive at a restorative agreement, the Arica Court of Guarantee went to Saxamar and listened to the parties as well as to the Elders and other local authorities who were present. An agreement was reached in assembly that the conflict should be resolved through the modality of community work, requiring the two brothers to work, with support from the rest of the community, to repair the damage caused.[45] As this case shows, the solution to the problem did not only penalize the offending community members; it also involved the whole community as part of the arrangement to re-establish the balance.

Recognition of Mapuche Authorities as a Means for Conflict Resolution

After waiting several years for their land fund application[46] to be processed, a Tokiwe Indigenous community in the Araucanía region was able to purchase a farm. MMHP and AEHP participate in the organizational life of the community, and their family was well known for causing a lot of conflict within the collective. The community thus decided to gather in assembly and fine the family by denying them access to the State subsidies obtained. In response, MMHP and AEHP filed a complaint against the community's decision for the crime of misappropriation. As the criminal proceedings advanced, relations within the collective became increasingly tense, thus they developed a proposal to resolve the conflict. Through negotiation, they agreed to compensate the family that had been denied the community benefits. This agreement, signed under the authority of the *longko*, was brought to the court for approval right when the oral hearing was to take place — that is, outside the time limits prescribed by law. Nonetheless, the court approved it.

This case shows several phenomena typical of legal pluralism. First, the application of community sanctions is repudiated by the national legal system, which sees it as a crime, and because it has not been determined in advance which law is to be applied preferentially in such a case, those sanctioned can turn to State law to elude the sanction imposed in the *lof*. Then, thinking that the conflict can be brought to an end with community cohesion, the traditional authorities decide to re-establish the balance by accepting an

agreement that will void the community sanction. Finally, the finding of the State court validates the agreement presented by the community, recognizing its value in putting an end to the legal process and explicitly acknowledging the validity of Mapuche law (AzMapu).[47]

The court cases described here share certain issues. First, they are conflicts that have occurred inside Indigenous communities that, for different reasons, were resolved in the national judicial context. Second, the conflicts arose due to offences committed in the community, and the behavior was later classified as illegal by the State justice system.[48] In all these cases, furthermore, Indigenous institutions and State entities overlapped, and both sets of institutions claimed responsibility for resolving the matter. That is, in all these cases, Indigenous jurisdiction was activated, whether as a reaction to the judicialization of the case or in advance. In some cases, Indigenous justice operated by applying a punishment or an agreement, but always in pursuit of the composition or restoration of family or community order. The judicial reaction, in contrast, involved the acknowledgement or non-acknowledgement of such solutions. In any case, though, State justice never recognized the exercise of special Indigenous jurisdiction; when there was recognition, it still attributed to itself the quality of being the only body able to issue a ruling. In other words, Indigenous justice was considered only as a prior private conflict-resolution mechanism.

Indigenous Jurisdiction—Progress and Setbacks: Cases from Peru and Ecuador

All the cases from Chile described above take place in a legal context in which there is no constitutional or legal recognition of legal pluralism, much less rules for coordination. However, in other countries in the region, the situation is very different. For example, Indigenous jurisdiction has been recognized constitutionally in Peru since 1993 and in Ecuador since 2008.[49]

Beyond this legal enshrinement, the matter of stating which bodies can exercise justice has entailed an additional complexity: the different institutional proposals and solutions in law range between the extremes of, on one hand, the precision required for a justice system, and on the other, the need for the constitutional design to not wipe out the jurisdictional powers of Indigenous peoples. In Andean countries like those mentioned here, there is an implementation gap (Stavenhagen, 2006, p. 5) between the normative

recognition obtained and its effective enforcement. This gap is evident in damaging State practices like the criminal prosecution of Indigenous authorities who exercise their jurisdiction, which in turn leads to contexts of criminalization and stigmatization that affect the balance and social peace of the entire collective.

In this sense, practices of prosecution of Indigenous justice are varied. In Peru for example, Indigenous authorities have been criminally prosecuted for applying a community verdict, adopted in assembly, prohibiting the access of miners to the territory. Another case of infringement of rights involves the prosecution of hundreds of community guards (*ronderos*) accused of committing crimes of kidnapping, unlawful use of authority, coercion and so on after they have resolved cases of serious injury, homicide and sexual violence that occurred in their territories.[50] Indeed, even though Peru's new Code of Criminal Procedure (art. 18 par. 3) sets forth that ordinary criminal jurisdiction does not apply in cases that correspond to Indigenous jurisdiction, there are judges who allow lawsuits and rule on cases already resolved by the peasant rounds or patrols (*rondas*) instead of declaring them *res judicata*. This has meant that people have been sanctioned twice for the same offence, going against the principle of *non bis in idem*.[51] The work of the *ronda* authorities has also been impacted by protection measures granted by ordinary courts that favor people who do not belong to Indigenous territories, which has facilitated the entry of extractive companies and the resulting territorial devastation.

In Ecuador, the implementation gap is also evident in the prosecution of traditional authorities who, in the exercise of their special jurisdiction, have sanctioned members of the community for crimes they committed in the territory. The Constitutional Court of Ecuador, in Judgment No. 113–14 of 2014, found that the jurisdiction and competence to hear, resolve and apply sanctions in cases that put someone's life at risk is the sole and exclusive power of the ordinary criminal system, even in cases where those allegedly involved are citizens belonging to Indigenous communities, peoples or nationalities. Despite this reasoning, in this same ruling the Court also affirmed that "the administration of Indigenous justice maintains its jurisdiction to hear and resolve internal conflicts among its members" (Constitutional Court of Ecuador, 2014, p. 35). Similarly, in a public hearing held in 2018 by the IACHR, Indigenous representatives and leaders of the Cotopaxi people in Ecuador claimed that different Indigenous authorities were being tried and

condemned in criminal court for exercising and administering Indigenous justice inside their territories.[52] According to the Indigenous people's claims filed with the IACHR, traditional authorities are being accused of kidnapping.

These situations invite us to reflect on how legal provisions related to Indigenous peoples' exercise of jurisdiction are being interpreted and applied. In international human rights law, these precepts share a similar formula: they must respect the methods that the peoples involved traditionally use to control the crimes committed by their members, to the extent that this is compatible with the national legal system and internationally recognized human rights (art. 9, ILO C169). This standard, as it is included in a human rights treaty, must be interpreted in a person-centered, dynamic and comprehensive fashion (Medina & Nash, 2010, pp. 38–41). Furthermore, this standard must be applied in concrete cases from the paradigm of interculturality, considering the diverse manifestations of human rights within a context of non-discrimination (Tauli-Corpuz, 2016, pp. 1–4).

Based on the cases described, we note that policies of recognition can contribute effectively to progress in Indigenous rights, yet they may also lead to regression. First, by trivializing diversity, we run the risk of consolidating an essentialist view that, in turn, can reduce manifestations of autonomy to a few spheres of folklore and integration. The second risk lies in seeing recognition as an end in itself.

The coexistence of several legal systems within a single territory is based on an asymmetrical relationship, as all legal systems are subordinated to the State legal system. Law is a field of dynamic disputes, and it is also traversed by tension between regulation and emancipation (which shaped the paradigm of modernity): regulation in terms of State institutions focused on the stability of expectations, and emancipation in terms of the struggle of Indigenous peoples seeking recognition of their rights. Furthermore, law is not neutral, thus the effects of recognition will depend on dominant applications of the development and reconstruction of Indigenous law — on how Indigenous law is shaped in different spaces and at different scales (local, national and global). Pressure exerted by Indigenous movements and peoples through the effective use of their jurisdiction, and the use of this jurisdiction inside the State system, drives the transformations we have seen in the region over the last decades.

Ultimately, normative recognition by States only reflects the contours of how the ongoing dispute between the two legal systems has developed. Even

though the legal enshrinement of legal pluralism may constitute progress in the struggle for recognition of Indigenous peoples' rights, we must not lose sight of the unequal relation that exists between the two systems and the resulting risk that normative advances will end up becoming a mere "Stateification" of Indigenous law.

Conclusions

The right of Indigenous peoples to have their own system of justice, in accordance with developments in international human rights law, constitutes a collective right that follows from the right to self-determination. It is therefore possible to declare that in Chile, the right to special Indigenous jurisdiction (or Indigenous law) is legally recognized and that it forms part of the constitutional block.

While this statement may be controversial, primarily because of the Constitutional Court's ruling on the exclusive power of Chilean Courts to hear criminal and civil cases,[53] the Court's decision is, as discussed above, based on an interpretation of international legal norms that is not consistent with the standards and methods of interpretation issued by international human rights organizations such as the I/A Court H.R. At the same time, despite this position, the Supreme Court and some of the judicial rulings presented in this chapter are based on an understanding that Indigenous law does exist. The obstacle continues to be the value these judges confer to such law.

The cases analyzed in this chapter suggest that there is a significant gap, evident in the reduced value attributed to Indigenous law in the judicial sphere. Our analysis suggests "a weak consideration of Indigenous peoples' cultural particularities and the particularities of their legal systems" (Bertini & Yáñez, 2013, p. 160). There are good reasons to believe that underpinning this situation is the supremacy of a notion of law identified with the State and the nation, wherein the values and principles debated and upheld by special jurisdiction are considered to be subordinate to constitutional values and principles.

It is therefore useful to review the comparative experiences of other countries in the region, as the policies recognizing Indigenous law developed over the last several decades have not (necessarily) led to the effective exercise of special Indigenous jurisdiction. In those countries where there has been greater legal recognition, we see a regression underway as evidenced

by the prosecution and criminalization of traditional authorities who apply Indigenous law. This process is dynamic, however, and there will be advances and retreats depending on the prevalence and development of the different legal systems and their resulting conflicts. Although the current context is one of retreat, this does not necessarily determine the future of legal pluralism in Chile and the rest of the Americas. It is a debate in progress, and depending on the relation of forces, the context may change in the future.

NOTES

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2 While "Indigenous jurisdiction" and "Indigenous law" can refer to different topics, in this text they are used synonymously to name aspects of a single legal phenomenon: the legal expression of Indigenous peoples.

3 Panama (1972); Nicaragua (1986); Brazil (1988); Colombia (1991); El Salvador (1992); Guatemala (1992); Mexico (1992, 2001); Paraguay (1992); Peru (1993); Argentina (1994); Bolivia (1994); Ecuador (1994, 1998); and Venezuela (1999).

4 See Iturralde (2011, p. 34) and Stavenhagen (2007).

5 With the establishment of nation-states during the first half of the 19th century, all special jurisdictions distinct from State jurisdiction were excluded. The idea of the nation-state and the principle of equality before the law were constructed in Europe. Equality before the law implies a single source of law and a unity in the subjects for whom legal norms were intended. The concept of nation is an invention that performs a catalyzing function, transforming the State of the early modern period to a democratic republic (Habermas), as "belonging to the 'nation' made possible for the first time a relation of solidarity between persons who had previously been strangers to one another" (Habermas, 1999, p. 88). Local descendants of the colonizers [*criollos*] brandished the idea that new mixed nations had arisen, with an identity that was different from that of the colonizer, "yet they hegemonized the idea of nation under the characteristics of the dominant group, making official only one culture, one religion (Catholicism), one identity, one language (Spanish)" (Yrigoyen, 1999, p. 130).

6 Chile's Constitutional Court, ruling on the constitutionality of ILO Convention 169, declared that the regulations related to Indigenous justice are incompatible with the national legal system, because "our constitution is categorical in terms of ordering that all conflicts inside the territory of the Republic must be subject to the jurisdiction of the national courts to be resolved by means of due process."

7 Since the 1960s, critical criminology has described how the criminal justice system is applied in a segregated fashion. See Wacquant (2015), especially chapter 2; Baratta (2004), chapters 8, 9 and 14; Garland (2010, pp. 105–59); and Cuneo, (2017, pp. 191–203). With respect to the effects of prison violence, see Gofmann (2001, pp. 45–69) and Pratt (2006, pp. 141–71).

8 To protect the principle of cultural diversity enshrined in its constitution, the Constitutional Court of Colombia has indicated that cultural survival is only possible with a high degree of autonomy, establishing the maximization of autonomy and minimization of restrictions as a rule of interpretation. This implies that when ethnic diversity and the general interests of the nation are in conflict, it is only possible to limit the autonomy of communities when "it is a necessary measure to protect a higher interest" (such as domestic security); and … when "it is the least burdensome measure for the autonomy granted to ethnic communities" (Judgment pronounced in Constitutional Complaint [*Tutela*] T 349 of 8 August 1996).

9 As Rodolfo Stavenhagen (1997) has said, the principle of equality is at the base of the human rights pyramid. The same has been said about the construction of the discourse of Indigenous rights (in their individual dimension) at the regional level, articulated "around … the obligation to guarantee full enjoyment and exercise of the rights established in the American Convention on Human Rights (ACHR) … and the principle of equality and non-discrimination" (Nash, 2009, p. 164).

10 The Brasilia Regulations, for example, call attention to access to justice for members of Indigenous communities and emphasize the importance of stimulating "their own forms of justice in resolving conflicts that arise within the domain of the Indigenous community, as well as promoting the harmonization of the State and Indigenous justice administration systems based on the principle of mutual respect in accordance with international human rights norms" (Reglas de Brasilia, par. 48).

11 With respect to the dilemmas that arise around the traditional use of the concept "law" applied to Indigenous peoples, see López (2017).

12 American Convention on Human Rights, articles 7, 8 and 24 and International Covenant on Civil and Political Rights, articles 9 and 10.

13 I/A Court H.R., *Case of Vélez Loor v. Panama*. Preliminary Objections. Judgment of 23 November 2010, par. 98; I/A Court H.R., *Case of the Pueblo Bello Massacre v. Colombia*. Judgment of 31 January 2006, 140, par. 111; I/A Court H.R., *Case of González et al. ("Cotton Field") v. Mexico*. Judgment of 16 November 2009, par. 243.

14 These rights are established in article 10 of ILO Convention 169. Of course, this does not mean that just because one is Indigenous that one cannot receive a custodial sentence but that upon applying such a sentence, judges must raise the standard of enforceability. Indeed, the deprivation of liberty is considered an exceptional sanction (theoretically and from a human rights perspective), which should only be applied when it is necessary and proportional. When applied to Indigenous peoples, the judge must increase the requirements based on their particular condition and their disadvantageous position in society, thereby preventing any discriminatory applications. See I/A Court H.R. *Case of Norín Catrimán et al. v. Chile*. Judgment of 29 May 2014, par. 357.

15 According to Stavenhagen, while the customs of Indigenous peoples vary depending on the collective, their roots lie in local traditions and customs and correspond to the needs of Indigenous communities in matters related to maintaining social order and harmony, different types of conflict resolution and how to punish offenders. This requires the existence of Indigenous institutions and procedures (Comisión de Derechos Humanos, 2004, p. 19).

16 I/A Court H.R ., *Case of the Kichwa Indigenous People of Sarayaku v. Ecuador*. Judgment of 27 June 2012, par. 177.

17 I/A Court H.R., *Case of the Saramaka People v. Suriname*. Judgment of 28 November 2007, par. 134.

18 I/A Court H.R., *Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua*, Judgment of 31 August 2001. Series C No. 79, par. 151.

19 I/A Court H.R., *Case of the Saramaka People v. Suriname*. Judgment of 28 November 2007, Series C No. 172, par. 194.

20 I/A Court H.R , *Case of Aloeboetoe et al. v. Suriname*. Judgment of 10 September 1993. Series C No. 15, par. 58–66.

21 I/A Court H.R, *Case of Fernández Ortega et al. v. Mexico*, Judgment of 30 August 2010. Series C, No. 215, par. 200.

22 I/A Court H.R., *Case of the Plan de Sánchez Massacre v. Guatemala*. Judgment of 29 April 2004. Series C, No. 105, par. 85.

23 ILO Convention 169, articles 8.2 and 9.1.

24 The United Nations Declaration on the Rights of Indigenous Peoples (2007) reaffirms these rights, establishing that Indigenous peoples, in exercising self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs. It also recognizes the right of these collectives to maintain and strengthen their own legal institutions, maintaining at the same time their right to participate fully, if they so choose, in the political, economic, social and cultural life of the state (art. 4, 5, and 34). The American Declaration on the Rights of Indigenous Peoples (2016) also recognized the peoples' legal institutional structures, explicitly indicating that Indigenous juridical systems must be recognized and respected by the national, regional and international legal system (art. VI and XXII).

25 Without prejudice to the legal mechanisms that prevent a single case from having two different jurisdictional rulings, such as the principle of *non bis in idem* and the rules of competence.

26 "Thus, with respect to the punishment of expulsion from a constitutional perspective and from the perspective of the constitutional block, as it is an Indigenous legal institution, it is internationally recognized as long as it is compatible with the national legal system and human rights, which constitute the limit to Indigenous First Peoples peasant jurisdiction. It therefore behooves the constitutional justice system to provide an intercultural interpretation of human rights based on a recognition of cultural diversity" (judgment No. 0073/2018 of the Plurinational Constitutional Court of Bolivia).

27 The injunction requested that the entire Convention 169 be declared unconstitutional, especially articles 9 and 10, as according to the petitioners, both provisions violate the principle of equality before the law. For more on this point, see Melin et al. (2016, pp. 71–74).

28 The reference to industrialized societies is more historical than geographical. In general, according to Santos, sociology and anthropology "divided up scientific work in such a way that the former was dedicated to the study of industrialized societies while the latter focused on the study of *primitive* societies" (Santos, 2009, p. 55). Classical pluralism analyzed the relations between colonial law and the colonized. In the current postmodern period, industrialized societies are postcolonial societies organized under capitalist forms.

29 Consejo Económico y Social (2004) "Las cuestiones indígenas. Los derechos humanos y las cuestiones indígenas Informe del Relator Especial sobre la situación de los derechos humanos y las libertades fundamentales de los indígenas", Rodolfo Stavenhagen, +párr. 54 a. 82. (sin traducción)

30 Consejo Económico y Social, (2004) "Las cuestiones indígenas. Los derechos humanos y las cuestiones indígenas Informe del Relator Especial sobre la situación de los derechos humanos y las libertades fundamentales de los indígenas", Rodolfo Stavenhagen, +párr. 54 a. 82. (sin traducción)

31 For socio historical background on Indigenous peoples in Chile, see Comisión Verdad Histórica y Nuevo Trato con los Pueblos Indígenas (2008). Informe de la Comisión Verdad Histórica y Nuevo Trato con los Pueblos Indígenas.

32 Mapuche: people of the land. *Mapu* means land and *che* means people. Following the linguistic practices of *Mapudungün* (the Mapuche language), this document uses the term *Mapuche* to denote both the singular and the plural.

33 In this sense, this chapter does not seek to define what the Indigenous law of each Indigenous people "is" (if such a thing were possible).

34 See Sieder (2010).

35 "That, given the facts related to the present case and the actors in this case, both the summoned parties and VMM belong to the Aymara ethnic group, and even though Ms. VMM inhabited the land of the succession much later than the First Peoples did … she cannot be unaware of the rules that govern the community she is part of and that by custom are transmitted to subsequent generations" (Judgment of the Arica Court of Guarantee of 04 December 2013, RIT 648-2013).

36 "In Socaire, the sun rises on the 24th to the north of mount Lahusa, sacred and significant, to which people sing their requests for thunder and clouds, primordial elements for the creation of rain and the return of the water. In this cosmological context, the winter solstice occupies a central role in the cultural practices of Socaire … the use of fire is limited to the youth, who represent vigor and renewal for the people of the land. This widespread practice across all salt flats constitutes a rite of passage that announces the passage from childhood to youth; the sun's return in a new cycle and the renewal of ties to agriculture by way of the blessing of the seed, and a new opportunity for planting. Any accident or damages caused must be compensated as stipulated by custom" (Garrido, 2012, p. 15).

37 In this specific case, the sanction imposed was 541 days of prison. As the convicted person did not have any other convictions, he was ultimately never put in custody and served his punishment by signing in monthly in a Prison Administration office, without being subject to any type of control or preventive treatment. It is unknown if there were any other subsequent episodes of violence involving the same people. This contrast demonstrates the difference between State and Mapuche justice. In the case of Indigenous communities, considering their close and ongoing coexistence, punishments other than confinement are generally used, as they seek to re-establish balance. In the case of State criminal justice, the origins of balance lie in European thought, such as the retribution attributed to Kant; balance in this sense consists of whoever commits a crime having to suffer an equivalent pain, although it has also been said that penalties should seek to prevent, in general or in particular, the commission of new offences. Although this is the penal dogma, in discussions about the practical evolution of criminal law, contemporary criminologists indicate that its only objective is the self-affirmation of the State (Bustos, 2007, p. 72) and rendering the delinquent innocuous.

38 Violating the principle of *non bis in idem*, according to which a person cannot be condemned more than once for the same behavior.

39 "[T]he claim of the defence cannot be accepted as it contravenes the very norm it invokes, since it would involve ignoring constitutional norms such as article 19 no. 3 and article 76 of the Constitution, thus the custom is clearly incompatible with the national legal system that refers to the aforementioned Convention (Recitals 15 and 16 of the judgment of the Los Angeles Oral Criminal Court of 02 October 2013, RIT 104-2013).

40 Recital seventeen of the judgment.

41 See also Nash et al. (2015).

42 The Constitutional Court referred to this same incompatibility (Judgment, Case Number 309-2000, of 4 August 2000, recitals 52 and 53), ruling explicitly with respect to the exclusive power of Chilean courts to hear criminal and civil cases.

43 These are "ad hoc courts, created to judge a concrete case or a specific person or group of people, without guaranteeing the impartiality and independence of the judge, violating the principle of equality by which all citizens in identical situations must be tried by the same court" (Lübert, 2011, p. 93).

44 This is the typical objection made with respect to the war councils during the dictatorship, which would judge individuals for acts that were not military offences, where their competence lay, and whose nature was unknown by the accused. It is also the objection that the Inter-American court has presented in cases where the sentence is handed down by a court of "faceless" judges.

45 The accused "OQB and LHB agree to let the community fix the full canal from the point of water intake and along its entire length to reach the users, who are those who have rights, thus specific people that the community will select are authorized to perform the work and they will have specific days and times, and Mr. LHB and OQB will allow these people to enter and circulate freely along the entire length and surroundings of the canal …. That they agree to the full repair of the Chijuma canal from the Quilijiwata

gorge to mount Chijuma, consisting of clearing any obstacles in the canal including sand, stones, weeds, clods of earth, whatever is in the waterway" (Minutes of Hearing, 25 September 2012, Arica Court of Guarantee, RIT 9137-2011).

46 State subsidy system for purchasing land for Indigenous communities and people, regulated in Law No. 19,253.

47 "[T]he Court recognizes that … the parties have expressed they are part of the same Indigenous community and that their ancestral authority has proposed an agreement that makes it possible to re-establish balance inside said community, in the use and application of AZ MAPU (Ancestral Law). That the form of conflict resolution proposed in this concrete case is in accordance with numbers 1 and 2 of article 9 of ILO Convention 169 and that, having been passed on to our legal system, it meets the requirements of a restorative agreement; it is also consistent with the rights that the Code of Criminal Procedures recognizes for victims in its articles 6 and 109. That based on this understanding, the Court sees no obstacle to approving the restorative agreement announced by the parties, as it considers that this route is a legitimate and just way for victims and accused, informed of their rights, to agree to terminate the conflict that affected them and thereby continue to coexist in peace and harmony, regardless of the procedural stage we are in; especially when it comes to members of the same Indigenous community, who seek by means of this agreement to re-establish the balance lost inside their community (Resolution of the Angol Oral Criminal Trial Court of 11 October 2018, RIT 53-2018)

48 According to the Chilean criminal justice system, the criminal charge was formalized by the prosecution before a Guarantee Judge, giving way to criminal proceedings.

49 Though it was already recognized in 1998, its recognition was only implicit.

50 See Yrigoyen (2002, p. 4).

51 A classical principle of criminal law, according to which one person cannot be condemned more than once for the same behavior; Inter-American Commission on Human Rights (2011). Public Hearings. Period 141 of Sessions; Inter-American Commission on Human Rights (2019). Public Hearings, Period 172 of Sessions.

52 The authorities were in preventive detention under orders by State courts in the provinces of Cañar and Azuay (Ecuador). In the words of the complainants, criminalization affected not only their rights to exercise their (constitutionally recognized) Indigenous jurisdiction but also their freedom of movement; they could not enter their territory, they were under the obligation to appear before an ordinary judge on a weekly basis, and they were also forbidden from leaving the country. Inter-American Commission on Human Rights (2018). Public Hearings. Period 170 of Sessions.

53 Judgment in Case Number 309-2000, of 4 August 2000, recitals 52 and 53.

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14

Indigenous Autonomy in Ecuador: Fundamentals, Loss and Challenges

Pablo Ortiz-T

Introduction

A little more than three decades have passed since the Ecuadorian Indigenous movement made public its demand to recognize the country as a Plurinational State. This was one of the 16 demands presented during the "Indigenous uprising" of June 1990, along with others such as the legalization and award of land and territories; the right to self-determination and autonomy, which consists of creating a self-government regime that allows Indigenous peoples to have legal competence in the administration of the internal affairs of their communities, within the framework of the nation-state; and respect for their own worldviews, organizational forms and political practices.

The emergence of Indigenous actors in the political arena meant an open questioning of the failed *criollo* nation-state project established in the first half of the 19th century. This project, whose highly exclusive and ethnocentric character was based on a primary-exporting socioeconomic model that materialized in a stratified and highly inequitable way, condemned Indigenous territories and other areas to be zones of overexploitation and extraction. It also established an asymmetrical national territorial structure, with territories that are rich in the center and poor on the peripheries.

In this context, this chapter explores the main advances and limitations of the exercise of the right to Indigenous autonomy, including, on the one hand, the responses provided by the State and the premises that have guided its decisions; and, on the other hand, the actions carried out by Indigenous peoples in their territories. What elements explain the current situation of the collective right to autonomy of Indigenous peoples and nationalities in Ecuador?

An hypothesis surrounding this question is that the actions of the State to process Indigenous demands for autonomy have been extremely limited by two conditions: first, the urgency of the State to prioritize its territorial control and the income derived from extractive activities as the economic basis of its finances, especially in its national-populist period (2008-2016); and second, the aggressive outburst of neoliberalism (2017-2020) that suspended all institutional reforms derived from the 2008 Constitution and imposed policy that is subordinated to the demands of financial capital, extractive mining and oil industry and agro-exporting capital, intensifying the pressure on Indigenous territories and their resources.

But the hypothesis also includes an overview of the gradual disarticulation process of the subaltern and popular power that made possible the constitutional reforms and the recognition of Ecuador as a State of "constitutional rights and justice, intercultural and plurinational, that is organized as a republic and governed in a decentralized manner." In other words, a complex process fragmentation of positions within the indigenous movement has prevented it from having a coherent proposal on the right to autonomy, as well as a greater visibility to count on allies, and a favorable correlation of forces that allow the establishment of special autonomous Indigenous regimes in the country.

This has forced certain fractions of Indigenous peoples to try out ways of continuing their initiatives of territorial or community self-management, albeit with many difficulties. In some cases, in an autarchic way, without State recognition; and in others, combining this strategy with the access and management of local governments, which for some has allowed the creation of autonomous management spaces. To illustrate this, this chapter refers to two experiences that highlight several of the points mentioned. The first is of the Kayambi people in the community of Pesillo in the northern highlands. The second is in the territory of the Kichwa people of Pastaza and its

organization "Pastaza Kikin Kichwa Runakuna-Pakkiru" (Kichwa Nation of Pastaza) in the central Amazon.

The Communitarian Government of Pukará Pesillo, Cayambe: Northern Highlands

Pesillo in Cayambe is a good example of how the old heritage of colonial and *hacienda* (large landed estates) structures weigh on the rationality of the use and distribution of resources. The Kayambi people have a long history of residence and resistance in that place, dating back to the 14th century during the Inca expansion, passing through the entire colonial period until reaching the republic. A constant of the people in their actions as subaltern[1] individuals has been the permanent reconstitution of their identity and their struggle for the recognition of rights from time to time. To some extent, they have been able to respond to these different dynamics of domination by highly exclusive, shameful and despotic economic and political systems.

At the beginning of the 20th century, the Kayambi were involved in the struggles related to the Liberal Revolution. In the 1930s, in the context of the economic crisis, the emergence of the Socialist Party and the surrender to state entities of *haciendas* such as those of Pesillo — which were in the hands of the clergy — made it possible to form the first agricultural unions, whose initial slogans were the rights to receive payment and education. Two decades later, the demand for access and redistribution of land would mark the struggle of the people and their organizations. Historians such as Becker and Tutillo (2009) or Galo Ramón (1993) point out that despite the adverse working conditions of laboring on *hacienda* lands (legally alien), Kayambi had finally regrouped into an ethnic nucleus, to the point that in the census of 1950 they are identified in five of the six parishes, which, in addition to the influence of the socialist and communist parties, opened the possibility of reworking their organizational structures, both in the rural area and in the *haciendas* (Kaminsky Crespi, 1969; Ponce García, 2011).

To some extent, the repertoire of collective action and mobilization of agricultural unions and cooperatives linked to the Communist Party of Ecuador (PCE), first led by Dolores Cacuango and later by Tránsito Amaguaña, were oriented under indigenist premises of the time, and they included demands that sought not only to recover the land and the agrarian base of the communities, or to improve the working conditions in the *haciendas*,

but to expand communal organization and to establish productive bases for a fair insertion in the market, considering their identity as Indigenous peoples (Becker, 2004). But apart from the debate on the ethnogenesis of the Kayambi and the role played by the PCE in that process, its adherence to the emerging indigenist ideology and its attachment to the *Criollo* nation-state project is clear (Clark, 1998; Prieto, 1980).[2]

The 1937 Law of Communes (*Comunas)* protected the concept of communal organization and incorporated the Indigenous population of the highlands into the legal administrative order of the State. In other words, it was not a question of subjecting or disarticulating them, but of integrating or assimilating them to the project of the nation-state process (Silva Charvet, 2004).

In the late 1950s and early 1960s, the anticipated distribution of lands began in important areas in the highland region by a new generation of landowners like Galo Plaza and Emilio Bonifaz, who — educated in the United States since their youth — visualized the need for their families' properties to become modern capitalist productive units, including the elimination of servile forms of work, and incorporating the hiring of agricultural labor with wage payments. That initiative would coincide with the urgency emanating from the United States, through the "Alliance for Progress" program and the "Andean Mission," to neutralize the more radical demands for land distribution by the peasant-Indigenous movement (Velasco, 1983; Murmis, 1980; Guerrero, 1983).

The content of the Agrarian Reform and Colonization Act adopted by the military dictatorship of 1964 and its subsequent execution made it possible to hand over land to the ex-hacienda workers (*huasipungeros)*. Before the agrarian reform process, the rural and Indigenous communities of the highlands controlled only 17% of the land. This figure subsequently increased to 35% in the aftermath of the reform. The Ecuadorian agrarian reform never had a popular content, nor was it proposed to solve the land problem, but its aim was to neutralize peasant-Indigenous demands, co-opting that sector to the demands of modernization toward an agro-exporting capitalism (Martínez-Valle, 2016; Gondard & Mazurek, 2001; Guerrero, 1991; Velasco, 1983; Murmis, 1980; Prieto, 1978).

In the context of socioeconomic formation dominated by the agro-industrial dairy and flower industries, small and medium-sized agricultural producers also emerged in the region. In the latter sector, there are the Kichwa

families of Kayambi whose economy is based on three subgroups: wage earners integrated with agro-industrial enterprises (dairy farming and floriculture); floating population that migrates to large cities such as Quito and works in the construction or small trade sector; and farmers, who still prioritize production for self-consumption and surpluses to guide them to meet the demands of agro-industry and nearby urban markets (Becker & Tutillo, 2009; Martínez-Godoy, 2016; Korovkin, 2002a).

Almost two decades of neoliberal policies in Ecuador (1983-2006) had generated negative social impacts: increased poverty, high unemployment and underemployment rates, low levels of schooling and high infant mortality rates (Dubly & Granda, 1983; Becker & Tutillo, 2009; Ferraro, 2004). In agriculture, the general framework of neoliberal policies not only suspended the process of agrarian reform but also blocked access to land, which would have an impact on the destabilization of Indigenous communities (Bebbington, 2004). This dynamic changed the demands of the Indigenous communities for land: instead of expropriations, applications for titling became prioritized, leading to an acute process of subdivision of communal lands, especially in the highland plateau region. According to Luciano Martínez:

> This implied three negative consequences: (a) the properties that entered the land market were mainly small plots, which resulted in these properties being further reduced; (b) many of these properties moved from effective control of the communities to private individuals; and (c) ecologically sensitive areas in the highland plateau that are not suitable for agriculture were divided and sold for agricultural production. (Martínez, 2003, pp. 91, 92)

Capital investments in the region deployed during this period would be the main factor in the de-territorialization of Kichwa communities. The land was mostly concentrated in extensive livestock production linked to the dairy industry and agro-floricultural plantations for export (Haesbaert, 2013; 2014). In the flower export sector, for example, production is highly technical, characterized by the unregulated use of agrochemicals (Harari, 2003); the production and marketing chain has created a large number of jobs, but with low incomes and occupational and health risks. These are factors that have triggered demographic changes in the region: on the one hand, immigration

from other parts of the country, saturating the demand for housing and basic services that local governments have had difficulties in meeting; and, on the other hand, the recruitment of Indigenous, especially female labor (Martínez Godoy, 2016; Korovkin, 2002a).

Several families in Pesillo have managed to maintain agricultural production relatively efficiently. Temporary and seasonal migrants, however, have returned frustrated with their experience with non-stable and underpaid jobs. From this negative experience, they have shown interest in pushing family agriculture and community institutions within their communities (Ferraro, 2004). Within this framework, microcredit programs such as the one promoted by the Peasant House of Cayambe (CCC) in partnership with Aid in Action emerged as a response to the demand of Indigenous communities in the area to meet certain needs of the family economy (Herrán, 2011, pp. 58, 59).

The partial resurgence of peasant family farming also generated greater demand for water and water resource control disputes with other users such as medium-sized producers and especially the flower companies and the dairy industry (Poats et al., 2007). This fact, along with legal reforms resulting from the constitutional recognition of water as an inalienable human right which should be administered exclusively by the State and community and association organizations, influenced rural territories throughout the country and was the subject of disputes between the government, agro-industrial entrepreneurs and much of the Indigenous movement in the second decade of the 21st century (Hoogesteger van Dijk, 2013).

In particular, the creation of the National Secretariat for Water (SENAGUA) in 2008 as an entity attached to the Presidency of the Republic[3] and the approval of the Water Law were followed by some discussions, disputes and protest by organizations affiliated with the Confederation of Indigenous Nationalities of Ecuador (CONAIE), which caused the government to delay the project, postponing the debate for more than five years. In 2014, the National Assembly would review the deliberations on the new Act and approve it with the persistent rejection of Indigenous organizations (Guerrero & Hinojosa, 2017).

The recognition and enforcement of the rights of Nature and collective rights in the Constitution generated expectations ranging from changes in focus on water management (with more emphasis on environmental protection) to the establishment of spaces for the participation of Indigenous peoples

and organizations. CONAIE demanded the creation of an autonomous decision-making body, but ultimately the approved Water Law, although it incorporated almost all of the other points demanded, did not consider such a possibility. Instead, the Law merely created the Water Regulatory Agency (ARCA), which would assume powers around the awarding of the resource, the renewal of concessions and the resolution of conflicts between water users, among others. All this was interpreted by CONAIE and its allies as the establishment of highly restricted spaces in the face of more participation by Indigenous peoples and in favor of the government. This would deepen the already deteriorating relations between the Indigenous movement and the Correa government (Isch López, 2012).

In this context, the Kayambi of Pesillo had been actively involved in protest actions and discussions around the Water Law, which also linked it to endogenous processes of community organization, the defense of fragile ecosystems such as the highland plateau, the reconstitution of the ancestral Kayambi territory and the strengthening of their identity and local historical memory. As explained by Graciela Alba, governor of Pesillo:

> … the present Constitution includes rights recognized for our communities to preserve our knowledge. We follow the legacy of our grandparents, who sacrificed their lives to be where we are. We are not going to lose that vision and those principles, and despite the dominance of capitalism, we will continue to resist in our way and try to revitalize our knowledge. (Great-granddaughter of the historic leader of the Kayambi people. Personal interview, Pesillo, 10 October 2018)

In some ways, community water management has been seen as a path to strengthen the territorial and autonomous communal government proposal, as is evident from the process that started around the construction of the "Life Plan" of the Pukará Community of Pesillo.

In this region where the Kayambi people live, the dispute over water — in a framework of favorable distribution to the flower and livestock companies — would seem to be reduced only to the economic or technical dimension of physical infrastructure. In reality, water disputes also involve stories of convergence between opposing local actors on many other issues. In relation to water and irrigation, local actors have reached minimal agreements to share

efforts and responsibilities, whether to build or maintain infrastructure, to define rules for the use of irrigation or to operate in accordance with local reality and culture.

In this framework of space-territory control, Jorge Bastidas, spokesperson of the Confederation of Kayambi People, explains that they live a process of continuous recovery of their identity, which comes from a historical tradition, with a memory and a science developed by their ancestors. The hills, the rivers, the lagoons, the valleys, in other words the footprint of the Kayambi people, is present in all, marking the existence of agricultural systems of Andean crops, he explains. [4]

Since the mid-1990s, the communes of Pesillo, as part of the Confederation of Kayambi People, supported CONAIE's decision to participate directly in electoral contests by way of the Pachakutik Movement for Plurinational Unity (MUPP), to influence change through alternative proposals and forms of public management. As John Cameron points out: "Peasant-Indigenous organizations became increasingly involved in municipal policy, as a mechanism for exercising more control over rural infrastructure and local development processes" (Cameron, 2003, p. 164). Guillermo Churuchumbi, one of the main representatives of the Confederation, was elected mayor of this parish from 2014 to November 2022. He resigned this post to become candidate for governor of Pichincha in the 2023 regional elections.

The municipal council presided over by Churuchumbi, in one of its first acts, approved the ordinance that declared the municipality as a Plurinational and Intercultural Decentralized Self-Government (GADIP), which would set the pattern of its public management around the construction of plurinationality from below. This would enable some degree of transformation in the management of the use of political power and in the implementation of plans and policies for the resolution of local problems (GADIP, 2015, p. 17).

To illustrate, programs articulated between the municipal administration and the Confederation of Kayambi People, which seek to respond to the demands of community-based organizations and their processes of ethnic revitalization and political prominence, could be highlighted according to the following: (a) the strengthening of citizen participation mechanisms for planning and implementing the governance plan, together with accountability; b) the commitment to participatory budgets and the execution of "co-management works," in which priorities are set by neighborhood or communal assemblies and costs are shared between the municipal government and the

community through *mingas* or communal work projects; (c) the promotion of alternative production systems where ancestral practices and knowledge of Kayambi people are recognized, valued and made visible; and (d) the observance of the rights of Nature through the implementation of programs for the protection of the highland plateau area and water sources (Gendron, 2019).

The last two examples serve to illustrate the impact of community proposals on the decisions of the town hall. On the one hand, the establishment of the Community Water Protection Area of Cayambe, and on the other, the participatory construction of the Ordinance on the use of public spaces for the marketing of healthy products at the so-called "Agro-ecological Fairs of Cayambe."

The first refers to an area under the management of the Kayambi people, benefiting four communes and three development committees, and which corresponds to territories specifically designed for the maintenance and protection of the highland plateau and water sources that guarantee irrigation. It is an environmentally important area as it establishes an ecological corridor for species such as the spectacled bear, the highland wolf and the Andean condor, which live in this sector. [5]

The second, however, points to processes of strengthening organizations dedicated to the rescue and multiplication of seeds, soil conservation and agro-ecological production, and where the role of Kichwa women groups in communities is highlighted; those who formed the Network of Solidarity Economy and Food Sovereignty of the Kayambi Territory (RESSAK). The passage of the Ordinance allows these community organizations to recover spaces within the city to show their proposal for food sovereignty. According to Mayor Guillermo Churuchumbi:

> The Ordinance was a lesson for councilors and officials as it was created by agro-ecological women producers, who know the reality of planting, harvesting and marketing, since it represents the work of each of them. (Requelme et al., 2019, p. 102)

Despite these advances, not everyone in the organization is convinced of the importance of such proposals, highlighting internal discrepancies and contradictions, as Graciela Alba points out:

> … one of these is the disassociation and disarticulation between different organizations involved in the process. In the case of water management, for example, between the Irrigation Water Board, the Consumer Water Board and the Community Government. So far, we have not yet been able to reach a moment of unity in order to motivate the community. (Personal interview, Pesillo, 10 October 2018, not published)

For Humberto Cholango, one of the leaders of the Kayambi people, there are other elements of analysis that should be considered:

> … in the matter of the Plurinational State, it has had an impact by proposing the community as the foundation of the Plurinational State, the key is: how is that obtained? For example, here in the highlands, the thesis of communal governments […] [regarding] the administration of justice, control and management of natural resources, moors, water, direct relationship with State agencies have achieved an impact, but it must be understood that it is no longer the same Indigenous society as it was 25 years ago, when the Indigenous uprising occurred and when the thesis of the plurinational state was put forward. Indigenous society in the last 25 years has changed, economic relations are now very different; capital and the market have arrived and are inside the communities. (Personal interview, Quito, Salesian Polytechnic University, 29 November 2017)

The processes of internal social differentiation, market articulation and associated cultural changes are undoubtedly impacting community life and its future. According to Alba:

> … here we have some problems and difficult experiences that have generated distrust and the limits of coordination. Gaining that trust and fostering those levels of coordination do not occur in a short time. In the future we must leave documents and tools for the work to come, so that the community can be guided and that the Community Assembly has those tools. We want to

> restructure the statute and generate a regulation. (Personal interview, Pesillo, 10 October 2018, not published)

Articulating under a single entity of self-government and having the power to manage water and the territory seem to be the target of the communal government of Pesillo, which has *de facto* partially advanced in the organization and management of water boards, for both consumption and irrigation. Nevertheless, formal recognition of "community water management" by the State remains to be seen, even though the current restrictions imposed by the Water Law would make it possible for competences such as the issuance of authorization for water use to be in the name of the community and not of the boards, as is happening now.

Neither the political alliance between CONAIE nor the government of Moreno in 2017, formed by ruptures and resentments with the government of Correa, favored the problem so that notions such as "community water management" can be recognized. In addition to the internal conflicts within the Indigenous organization around the proposal for communal government, which according to Graciela Alba, "... nor is it accepted entirely by all the commoners, as the space of water associations are niches of power that are disputed internally" (Interview, Pesillo, 10 October 2018).

The alliance between CONAIE and the government of Moreno lasted a little more than two years and deteriorated during 2019 after a series of confrontations, mainly resulting from the implementation of neoliberal adjustment measures agreed with the International Monetary Fund (IMF), which provoked the greatest social protest mobilizations since the 1990s and led to a definitive rupture of this pact in October (Herrera, 2020; Ramírez Gallegos, 2020).

The neoliberal policies implemented by Moreno between 2017 and 2020 irreversibly paralyzed the reforms initiated in 2008, weakening the role of the State through the dismantling of the institution created in the Water Law of 2014. To a large extent, government policy has limited itself to executing an agenda agreed with the IMF, favoring holders of external debt bonds and fractions of the financial and agro-exporting[6] bourgeoisie.

Self-Government of the Kichwa of Pastaza: The Experience of the Pastaza Kikin Kichwa Runakuna-Pakkiru (Kichwa Nation of Pastaza)

In the last three decades, the Kichwa Nation of Pastaza — whose current organization is Pastaza Kikin Kichwa Runakuna-Pakkiru — has defended and managed its ancestral territory, the largest in the country with more than a million and a half hectares, located in the central Amazon. The Kichwa of Pastaza have played a leading role within the Ecuadorian Indigenous movement, demanding since the beginning of the 1980s the recognition of collective rights, particularly the right to autonomy and self-government.

Through the Organization of Indigenous Peoples of Pastaza (OPIP), whose origin dates back to 1977, the Kichwa of Pastaza raised the legalization and collective titling not only of their territories, but of all the nationalities of the Amazon and the Ecuadorian coast as well as the cessation of colonization programs and the total suspension of oil activities. The OPIP also called for a reform of the 1978 Constitution to make Ecuador a Plurinational State and for the adoption of the Indigenous Nationalities Act of Ecuador (Chirif et al., 1991; Whitten, 1987).

The OPIP amplified and made public these demands and presented them on 22 August 1990, at the Palace of Carondelet, the seat of the government in Quito, through the so-called "Territorial Agreement of Kichwa People, Shiwiar and Achuar of the province of Pastaza to subscribe to the Ecuadorian State" (Guzmán Gallegos, 2012; Ruiz, 1993).

Two years later, in May 1992, OPIP would ratify the agreement following a march from Pastaza to Quito (about 400 km away), *"Allpamanda, Causaimanda, Jatarishum"* (Let´s rise up for Earth, for Life), which called for the legalization and distribution of collective property titles of ancestral territories, one for each of the nationalities of this province, and for the recognition of the right to autonomy and self-government (Ortiz-T., 2016; Ruiz, 1993).

In terms of the first demand, the government responded by granting 18 titles of collective property, which partially recognized ancestral territories, although at the same time it did so by altering the ancestral limits and causing a cluster of internal conflicts of lynching and demarcation (Guzmán Gallegos, 1997; Ortiz-T., 2016; Garcés, 2001). Regarding the second demand, the government had a negative reaction and gave way to an aggressive campaign led

by the military and replicated by right-wing groups and the media that accused the organization of seeking to impose a "secession" project and create "one State within another" (Ruiz, 1993; Ortiz-T., 1997).

This situation would also be marked by the beginning of the largest oil exploitation project in this province: while titles were being granted, the Arco/Agip oil consortium announced the existence of proven reserves and commercial interest in the field. It would not be until 1998 that operations to exploit and transport heavy crude from this area would begin (Ortiz-T., 1997; McCreary, 1992; Guzmán Gallegos, 2012; Wasserstrom & Southgate, 2013).

It is estimated that, since then until now, crude oil extraction has generated revenues of over $3 billion for more than two decades, and given contractual arrangements, the main beneficiary has been the operating company itself (with more than 80% of the proceeds). The remaining 20% is distributed in royalties between the central government and local Amazonian government. In other words, from the entire stream of capital extracted, Pastaza failed to retain for itself any major taxes or royalties (Mendez et al., 1998; Korovkin, 2002b; Guzmán Gallegos, 2012; Diantini et al., 2020).

Both of these facts would mark to some extent the scene of recurrent conflicts between the State and the Indigenous nationalities of Pastaza. The desire of the Kichwa people to ensure the control and legalization of their territories, and thus the existence of an inherited ancestral space in which to exercise their autonomy and self-government, has frequently collided with the interests of capital linked to the extractive industry and the State in co-opting these populations and territories in order to ensure an area of exploitation and extraction of a commodity such as oil (Bebbington, 2013; Veltmeyer, 2013; Sawyer, 2016).

The partial legalization of the Indigenous territories of Pastaza obtained in 1992 provided, to a large extent, the impetus for the autonomous process, particularly of the Kichwa people, although soon internal differences would result in disputes and fractions.

The advance began with the elaboration of Plan Amazanga (1993-1996) whose central conceptual premises are summarized by Alfredo Viteri Gualinga, founder and first President of OPIP and coordinator of the plan:

> … our territory is not one thing, nor is it a usable, exploitable set of things, nor is it a set of resources. Our territory, with its jungles, its lagoons, its wetlands, its sacred places where the Supay

> live, with its black, red and sandy lands and its clays, is a living entity that gives us life, provides us with water and air; it cares for us, gives us food and health; it gives us knowledge and energy; it gives us generations and a history, a present and a future; it gives us identity and culture; it gives us autonomy and freedom. Then, life is along with the territory, and next to life is dignity; next to the territory is our self-determination as people (Viteri Gualinga, 2004, p. 31)

It would be the first time that the concepts of *Sacha Runa Yachay* (the knowledge of people of the forest), *Sumak Kawsay* (life in fullness) and *Sumak Allpa* (land without evil) guided an instrument of management and self-government. This also made it possible to create economic initiatives of its own through the organization's own companies, such as the OPIP Department of Aviation; Atakapi Tours organized with the purpose of promoting community ecotourism; Palati Savings and Credit Cooperative, oriented to the promotion of the production of family economies; Fatima Zoocrianza Center and the Amazanga Institute, the latter focused on research, conservation and education (Tapia, 2019; Merino Gayas, 2019; Escobar, 2008).

Subsequently, the OPIP Self-Development Plan (1996-1999) was implemented, which included education components, community infrastructure and communication and productive projects of various kinds (Stacey, 2004). Later, the OPIP Plan of Life (1999-2012) was developed and approved, which included as its central axis the consolidation of the autonomy process and territorial self-management; the mapping update at the association level; the strengthening of local capacities through a training program for local technicians and leaders; the promotion of sustainable productive projects at the family economy level; and the establishment of strategic alliances around the autonomic process of Pastaza´s Kichwa people (Silva Charvet, 2002; Guzmán Gallegos, 2012; Chauzá Samboní, 2016).

Alexandra Aguinda, from the Nina Amarun community on the Curaray River, belonging to the Association with the same name, explains the meaning of the process:

> … our *Sumak Kawsay* (life in harmony) has been to maintain the knowledge of our ancestors, especially biodiversity, just as we have built a management plan for *Sumak Kawsay*. Likewise,

> our children must continue with this knowledge; when they get old, they will pass it on to their children, and they on to their children and so on, forever. We still live to take care of our territories, so that resources are not extinguished; this vision must be maintained from generation to generation. Just as we have grown up knowing all diversity, our children must also know in their lives. We are living here with these visions, so it is not extinguished, so it is not altered, and other generations would continue to maintain and care for everything that exists in our territory. We inherit it from our grandparents and pass it on to our children. (ProIndigenous-GIZ, 2016, p. 47)

All the OPIP plans and programs between 1992 and 2018 have responded to differentiated demands and priorities of their organizations and *ayllus*.[7] There are communities such as San Jacinto del Pindo, Rio Anzu, Copataza and Santa Clara that live in the so-called colonization zone, close to the main road hubs and urban centers such as Puyo, Arajuno, strongly impacted by the most individualistic western markets and culture. On the other hand, there are other associations, such as Curaray, Rio Tigre and those of the Bobonaza River located in relatively isolated and distant territories, where there is still no direct connection by land, and transport is primarily by boat or air (Chauzá-Samboní, 2016; Silva Charvet, 2002).

In this second group, the cohesion around the autonomic project is greater and stronger, maintaining an integral perspective as the Kichwa nationality; while, in the first group, the autonomic perspective is weak, to the point that there have emerged positions openly contrary to autonomic theses and favorable to agreements with the State and extractive capital.

Two significant events occurred in the framework of the oil company offensive between 1988 and 2003: in 1994 the agreement between Arco/Agip and OPIP on the oil operations of block 10, and in 2003, the outbreak of the conflict between the original Kichwa people of Sarayaku against the State and the General Fuel Company CGC of Argentina, concessionaire of the so-called Block 23 on Bobonaza River (Melo, 2015; Sawyer, 2016).

The first was a forced exit from the conflict that started in 1989 and which jeopardized the demand for the titling of ancestral territories. But it also sought to mitigate the State's accusation against OPIP of "attacking national interests" by radically opposing oil projects in its territory, while setting a

precedent for a new type of State-Indigenous peoples and extractive companies relationship, on the basis of respect for collective rights, mitigation of environmental impacts and introduction of new oil exploitation practices that exclude the opening of land routes and the direct participation of Indigenous peoples in the economic benefits of the exploitation of the oil block. This last point is defined by OPIP as a potential source of funding for its "life plans" and the ability to access resources to sustain the regional process.

Both the State's apathy through the institutions involved in the oil sector, and the departure of the Arco company from the country in 1999, led to the suspension of the 1994 agreement; Agip Oil Ecuador (AOE), the new head operator of block 10, would abandon the commitment made by its predecessor and prioritize a vertical, focused and client-based relationship with the 17 communities of the area. In exchange for small donations for focused projects of road, productive, educational and health infrastructure, it conditioned the delivery of these projects to the formation of a new organization called AIEPRA (Association of Independent Pastaza Peoples) to the total exclusion of the OPIP and its associations (Ortiz-T., 1997; Diantini, 2020).

Secondly, the outbreak of the conflict between the original Kichwa people of Sarayaku against the State and the oil company CGC between 2003 and 2012 highlighted several issues: the recurrent practice of the State of not guaranteeing or respecting existing collective rights such as that of free, prior and informed consultation; negligence to prevent corrupt practices through intimidation, bribery and division of communities promoted by companies such as CGC; the intimidation and violent actions by the repressive forces of the State and paramilitary groups contracted by the oil company. However, it also showed the predominance of organizations like Sarayaku of an autarchic, short-term vision isolated from the autonomous demand of the whole Kichwa nationality of Pastaza, to give way to a narrative and fragmenting perspective of the problem (Ortiz-T., 2016).

Consistent with this position, and after the judgment issued nine years later by the Inter-American Court of Human Rights (IACHR), which condemned the State for violating the right to free, prior and informed consultation and sentenced it to compensate the affected communities (Melo, 2015), Sarayaku has developed an autarchic proposal called *"Kawsay Sacha"* (Living Forest) outside the rest of the autonomous political-territorial dynamics of the Kichwa nationality as a whole, and in which it stands out in radical opposition to the presence of extractive activities within its territory, which

represents less than 10% of the Kichwa territory of Pastaza. The Sarayaku thesis has been supported by some ecological networks and related academic groups inside and outside Ecuador[8] (Santi & Ghirotto Santos, 2019; Teixeira, 2020).

The adoption of the Constitution in 2008 would be the development that brought about the greatest organizational changes among the Kichwa, who decided to dissolve all existing organizations and give way to a larger representative body, which would be provisionally called the "Coordinator of the Kichwa Nationality of Pastaza" (CNKP). The CNKP would assume the responsibility of promoting the draft constitution of the Kichwa Territorial Community of Pastaza (CTKP), for which in 2011 they signed an agreement with the government, which included the Kuraray-Liquino Organization and the Association of Indigenous Communities of Arajuno (ACIA).

However, numerous difficulties have caused the initiative to go along a highly sinuous path, including structural, legal and institutional problems such as the differences between the ancestral territoriality of people and nationalities and the logic of national territorial administration and organization of the State, marked by the existence of parish jurisdictions, cantonal and provincial, which have historically been created from an ethnocentric matrix to the measure of the colonist interests and the extraction of resources, to the margin of ancestral territorial uses and management, imposing limits that have fragmented and divided ancestral territorial units (Ortiz-T., 2015).

Other conjunctural factors that influenced the interest and political will of the central government led by Rafael Correa added to process and concretized the establishment of the CTI (Indigenous Territorial Circumscriptions) regime. The straw that broke the camel's back was a controversial decision by the Sarayaku leadership to shelter three fugitives who were sentenced to prison for injuries caused against the President of the Republic. "The government considered that it was not right for Indigenous people to shelter fugitives and to condition the state as if it were another state." Thus, according to Franco Viteri, former president of the Confederation of Indigenous Peoples of the Ecuadorian Amazon (CONFENIAE), it set the discussion of the limits of self-determination of people (Chirif, 2016, p. 100).

After that moment, the process of forming the CTI had to be suspended as it did not receive any funding. Until then, the Institute for Amazonian Ecodevelopment (ECORAE), as a State body, had supported agreements with the Kichwa Nationalities of Pastaza, Achuar, Andwa and Shiwiar for

the updating of geographic information (physical and demographic changes); participatory construction of life plans through workshops and assemblies; socialization of the legal-constitutional framework and the development of statutes and training of communities around the new regional special regime (Chirif, 2016; Ortiz-T., 2015).

The initiative of the Kichwa of Pastaza was isolated and had no political support from Indigenous organizations of national scope such as CONAIE or CONFENIAE, which had declared themselves in opposition to the government.

> For some organizations of the Kichwa People of Pastaza, the interest in setting up CTI is due to the dream of going beyond the titling of ethnic territories, already achieved almost in their entirety, and to make progress in establishing administrative territorial jurisdictions that have a state budget to implement their life plans. Initially, in 2011, Ecorae socialized the national regulations and provided budgets to several Amazonian nationalities for a total amount of USD 3 000 000, to generate government proposals, statutes and life plans. At present, this competence was removed from this institution and its implementation was diluted over time. (Vallejo et al., 2016, p. 52)

The issue of the demand for the creation of the CTI would be resumed two years later in the government of Lenín Moreno, and through the National Assembly, which favored the demands of municipal and prefectural governments to impose the so-called "Organic Law for the Integral Planning of the Special Amazonian Territorial Circumscription (CTEA)," which looks for a "Fund for Amazonian Sustainable Development," whose resources will be managed by local governments, prioritizing basic services such as health and education, and which replicates the old practices of short-term, client-based, ethnocentric treatment that is focused exclusively on tangible demands of some Indigenous and peasant communities in the region.

> Our relationship with the public authorities is non-existent, because every initiative of its own is not supported by public powers; support is only encouraged at the client level, which does not respect the worldview of our people [emphasized by César

Cerda, also former president of the OPIP]. (Personal interview, Puyo-Pastaza, 23 August 2019, not published)

Problematic Knots Derived from the Ecuadorian Experience

The experiences described in this chapter show the difficulties and limitations of the process of building a Plurinational State. Even though the 1990s were marked by a triple crisis associated with the social impacts of neoliberal policies, the crisis of the nation-state project and the collapse of the political system, the emergence of the Indigenous movement on the public scene opened up new possibilities for the restructuring of the popular vision. This led to the development of proposals that ranged from the construction of alternatives to neoliberalism, to the criticism of the coloniality of power (understood as a domination pattern that combines the ethnic hierarchy of Europeans vis-à-vis colonized people, with the exploitation of capital on labor) and the Creole nation-state project established in the 19th century, that was ethnocentric and exclusionary (Guerrero, 1993).

The cases of the Kayambi people in the northern highlands and of the Kichwa nationality of Pastaza in the central Amazon, in some ways, reveal several elements that involve the State and its scope to process demands that include its own structural and institutional reforms, as well as the Indigenous organizations themselves in their capacity to deepen and concretize their demands and manage their strategies of political advocacy and negotiation with the State.

It should be considered that throughout the 20th century the State failed to consolidate the old Creole project of "integrating a single State into a single nation, based on a language, culture and religion," which meant the annihilation of cultural differences, either through bleaching or "de-indianization" or through the integration of Indigenous peoples into the dominant *mestizo* project, as advocated by indigenists. And in its breakup, such a project generated the exacerbation of regionalism with the resurgence of oligarchic secessionist theses, particularly in Guayaquil until the eruption of Indigenous peoples and their questioning of the current nation-state project (Zamosc, 2005; Ortiz-T., 2014, Silva Charvet, 2004, Taylor, 1994).

The long history of resistance of Indigenous peoples, widely alluded to in the two cases mentioned above, show in some way the evolution of Indigenous thought in its relationship with the dominant State and society in the 20th and 21st centuries, ranging from indigenism and multiculturalism through demands for access to land, legalization of territories, improvement of working conditions, access to bilingual intercultural education, or regulation of colonization programs, until arriving at the plurinational thesis, based on the recognition of people as collective individuals of rights, coupled with the notions of autonomy, self-government and self-determination, which mainly refer to a new type of State institutionality and territorial organization, as is the case in several Latin American countries (González, 2010; Dussel & Fornazzari, 2002; Silva Charvet, 2004).

In this context, explaining the situation of the collective right to the autonomy of Indigenous peoples and nationalities in Ecuador requires considering, on the one hand, the State in its capacity to process claims around collective rights or to ensure their validity, and on the other hand, the dynamics of the other actors who struggle to influence the direction of institutional reforms and public policies.

Indigenous demands in the last 70 years have never been fully met and promoted by the State. Three examples of State responses around land tenure, water distribution and mining and oil concessions by the extractive industry within ancestral territories can illustrate this point.

In the first case, between the beginning of the 1970s to mid-1980s, the struggles for land and agrarian reform, although they annihilated the forms of precarious work and the structure of the large properties of the *hacienda* system, especially in the highlands, the data show that Ecuador is a country with more than 94% of the agricultural area privately owned, while only 4.9% is for collective and/or community ownership. Land tenure has not changed substantially and the Gini coefficient in the rural sector exceeds 0.9, a highly inequitable distribution (Chirif & García Hierro, 2007; Gondard & Mazurek, 2001; Korovkin, 2002; Martínez Godoy, 2016; Martínez Valle, 2016).

In the second case, related to water, as the National Water Forum points out:

> The concentration of water in a few hands is similar or even worse than that of the earth. Peasant and Indigenous population have communal irrigation systems that represent 86% of the

> users, however, they only have 22% of the irrigated area and most seriously, they access to 13% of the flow, while the private sector, representing 1% of Agricultural Production Units (APUs), have access to 67% of the flow. (Hoogester van Dijk, 2013; Isch López, 2012)

In relation to the third case about the rejection of the presence of the extractive oil and mining industries, especially in Indigenous Amazonian territories, figures show that in the last 50 years (1970–2020), the State has not stopped exploiting oil and does so directly, through the state-owned company Petroecuador in a total of 12 oil blocks or fields, representing 20% of the Ecuadorian Amazon; or in partnership with private contracted companies, which operate 14 blocks on an area of 23.3% of the cadastral map. In the last 30 years, the State has tried, without success and in the framework of strong confrontations with the Indigenous organizations of the South Center, to license 21 new blocks, which, if concretized, would represent more than 4 million new hectares (Ministry of Energy and Non-Renewable Resources, 2019).[9]

In the case of mining, concessions prior to 2008 reached more than 5 million hectares (20% of the national territory) including protected areas and Indigenous territories. Following the Constituent Assembly and the legal reforms surrounding this activity, the new concessions from 2009 cover an area of more than 1 million hectares (4.5% of the national territory), focusing particularly on the south and south-east region of the country, peasant agricultural land and ancestral territories such as those of Shuar nationality (Sacher & Acosta, 2012; Ministry of Energy and Non-Renewable Resources, 2019).

What these data demonstrate is the persistence of a primary dependent capitalist export model established since the 19th century simultaneously with the Creole nation-state project. To some extent, this is a pattern of territorial organization and management accompanied by a system of population control and administration that has not changed substantially, and which is highly functional to the requirements imposed by global capitalism and the world market for commodities and other primary products (Burchardt & Dietz, 2014; Sachs & Warner, 1995; Bebbington, 2013).

The logic of accumulation and reproduction of capital that originated in industrialized countries and multinational corporations directs their investments in finance and extraction of raw materials at low cost. The small but powerful elites of the Ecuadorian bourgeoisie who endorse or participate in

such investments will hardly allow them to alter the favorable conditions for the investment, reproduction and accumulation of this capital (Conaghan & Malloy, 1995; Bunker, 2006; North et al., 2006; Sachs & Warner, 1995; Mehlum et al., 2006).

In the last 40 years, the extractive border of oil, mining and export agro-industry has only expanded and increased, together with acute deterioration and deprivation processes of vital resources for the Indigenous population, ecosystems and their sustainability (Sawyer, 2016; Valdivia, 2008; Veltmeyer, 2013)

In this context, the mixed, capitalist and dependent national State is limited in the face of the onslaught and pressures of the agro-exporters or the extractive oil and mining industry, and the State weakness exacerbated during two neoliberal periods (1984–2006) and (2017–2020) and barely interrupted by the emergence of a popular national coalition that reformed the Constitution and ruled the country between 2007 and 2016.

It is precisely this period which characterized the urgency to recover the State after two decades of neoliberalism, and that led the government of Correa and its allies to govern by prioritizing nationalistic policies and strengthening the State and its regulatory and redistributionist role, often in disregard of the high expectations and specific needs of Indigenous peoples, as shown by the inconveniences around the Water Law or the suspension of the CTI formation process in Pastaza (Conaghan, 2015; Andrade, 2012).

The paradox at the base of the deep misunderstanding between the progressive or "national-popular" coalition that ruled the country between 2008 and 2016 and much of the Indigenous movement led by CONAIE are the different conceptions of change around the scope and content of the State. If plurinationality, as a concept, requires another type of State institutional structure, a new territorial organization and an overcoming of representative or delegative democracy to a more participative, deliberative and intercultural one, the "Citizen's Revolution" of Correa barely limited itself to prioritizing in its redistributive political development plans through greater tax control and investment in social poverty reduction programs, mainly through the provision of basic services and road, education and health infrastructures (Andrade, 2012; Ramírez Gallegos, 2020).

The "Citizen's Revolution" left out substantial aspects such as combating discrimination, racism or cultural violence, or encouraging deeper and more comprehensive reforms of education and health systems, particularly

with more intercultural and inclusionary approaches (Ortiz, 2015; Ramírez Gallegos, 2016)

These difficulties in the government-Indigenous peoples relationship during the period of the "Citizen's Revolution" are few compared to the restrictions posed during the neoliberal periods (before 2007 and after 2016), in which certain State policies were dismantled or restricted to the maximum (oil contracts, tax policy, environmental regulation, education and health tax programs, water co-management and management, etc.). Instead, it would appear that targeted responses had more acceptance and sympathies in some Indigenous leadership circles (social emergency funds, Council of Indigenous Nationalities, Directorate of Bilingual Intercultural Education (DINEIB), programs funded by multilateral agencies, among others) (Herrera, 2020; Ramírez Gallegos, 2020).

The absence of a popular group capable of sustaining and advancing the rest of the political-institutional reform process and of building hegemony and a new consensus around a new type of Plurinational State, would thus end up deeply undermining the State's capacity to respond effectively to Indigenous demands (Chilcote, 1990).

Rather than negotiating and strengthening capacity in development plans and other public policy instruments (such as the National Agenda for the Equality of Indigenous Peoples and Nationalities), several Indigenous sectors linked to CONAIE preferred to exclude themselves from these discussions and processes and to deepen differences and establish their own agenda, regardless of the historical proposals that had guided Indigenous mobilizations years earlier. From this analysis, one can visualize the experience of the Sarayaku organization in Pastaza, that beyond the important content and scope of the historical judgment issued by the IACHR in 2012 against the Ecuadorian State (Melo, 2015), it is evidence of the loss of the leadership of this organization, which has chosen to privilege its interest to the detriment of the collective demand of the Kichwa nationality of Pastaza. In the case of the Kayambi people, by living accelerated processes of sociocultural transformation, occupying the same spaces as the *mestizos*, they would appear to be more open to political negotiation with the State, either to occupy public institutions and to manage them or to access municipalities such as Cayambe, to generate autonomy processes without having to opt for the path of a special CTI-type regime.

Beyond the difficulties and misunderstandings, it is important to note that the progress made through the Constitution in 2008 is a fact. The most important legal instrument of the country reflects historical demands made by Indigenous peoples: it recognizes the plurinational and intercultural character of the State; it establishes three fields of rights (individual, collective and of Nature) and it will continue to pose permanent challenges such as those described in the experiences. The question remains about the change in the model of society demanded by the Constitution in order to fully guarantee the rights.

A key issue of the new Latin American social constitutionalism is to promote change in the development model, the political model of the State and the transformation of power relations. This political-constitutional proposal has been driven by social movements, and the Indigenous movement has imbued it with its own distinctive sign (sociocultural approach), forged in its great mobilizations and emancipatory struggles (Narváez, 2017, p,127).

In this matter, Alfredo Viteri Gualinga, points out:

> … Indigenous have to build what we have conquered. Then, this is the exercise of law, it is the time of exercising rights and it implies the construction of a Plurinational State [...] We need to participate actively in the rights recognized in the Constitution. We must apply them, otherwise we cannot lay the foundations for the construction of a Plurinational State (cited in Lalander & Lembke, 2018, p. 203)

It involves some verbs like exercising, practicing, demanding, indicating and in one: practicing. A Plurinational State requires an intercultural society. As scholar Boaventura de Sousa Santos (2006) points out, exercising rights and building plurinationality involves experimenting, creating institutions, generating another democracy more tied to the deliberative and participative than to the delegative and representative, another type of institutionality where different modes of institutional membership (shared and collegial institutions) may be present in the area of electoral control, the defense of people, subnational governments and even the National Assembly itself, which are called to be plurinational and intercultural. It also implies looking at the whole country as a sovereign, unitary Plurinational State, which means not ignoring the demands of the whole.

Conclusions

The experiences of Indigenous peoples and nationalities of Ecuador in the exercise of autonomy and self-government show not only a clash of visions with regard to development, but also the difficulties involved in the transformational processes of the State, both subject to capital pressures.

If the State historically comes from a post-colonial and ethnocentric matrix and has sought to homogenize the whole population, in doing so, it faces a heterogeneous, diverse, multicultural and highly asymmetric reality. The imagined community of nation, of the Creole elites, certainly refers to the desire to replicate in the Andean-Amazon periphery that which has been generated in the center of Europe, as it is established as a reference. This model has excluded Indigenous peoples since the creation of the Republic, whether through invisibility or non-recognition of existing diversity.

The replica of the coloniality of power, as a system of domination and social classification that continued strongly until the end of the 20th century, defined Indigenous peoples as inferior, thus designing and creating institutions anchored in that ethnocentric, monocultural and post-colonial vision. The challenge posed by the current Constitution in recognizing the State as plurinational and intercultural goes beyond a simple role of guaranteeing certain collective rights. It involves developing a capacity to regulate and prevent such rights from being violated. And to this end, the exercise of interculturality and plurinationality must transcend the institutional sphere and encompass the entire political field, including the organizations themselves, as shown by the experience of the Kichwa of Pastaza, who dissolved their organizations, questioning the union and corporatist model that had grouped them for almost 40 years, and giving way to the constitution of self-governing bodies. By doing so, they have opened debates about the authoritarian, vertical and macho character in which they were created. Being collective subjects of rights and exercising autonomy demands another type of political and organizational subjectivity.

The two cases above show how state institutions, beyond the legal scaffolding reached, are designed and organized to sustain the basic relationship between capital and labor, between capital and Nature converted into object, merchandise, commodities, regardless of whether the Constitution has granted it rights. This results in a State that is fragile, generous and docile to the demands of the agri-exporting bourgeoisie and the extractive industry,

and narrow and sinuous with the multiple demands of historically excluded people.

Economically, the dependent, extractive and predatory capitalist model that prevails in the Amazon through large-scale oil and mining activities, as well as that of export floriculture, through its recurrent promise to achieve progress, generate employment, overcome poverty and integrate these peripheral or nation-border regions have been a permanent source of frustration, conflicts, labor rights violations and aggression against Nature, whose fragile ecosystems have led to the shortage or depletion of basic goods for the sustainability of the lives of many populations.

It is evident that in cases such as those mentioned above, the Kayambi people and Kichwa nationality of Pastaza, the historical Indigenous organizations have developed their own proposals for territorial self-management, self-government and experiences such as those described by the dominant development model, supporting the thesis of the re-founding of the State and the need to have a special autonomous regime that allows them to attend their affairs according to their knowledge, their norms, their practices, their identities and their specific realities. Autonomy is indeed made of this: praxis, and a process under construction. What underlies the protest and resistance of Indigenous nationalities is the concern to find guarantees to the integrity and integrality of their territories, thus understanding issues of pending legalization and integral security of ancestral territories, until achieving the recognition of self-governments, with full powers and resources to manage their living spaces.

That is the meaning underlying the Constitution in force in Ecuador. In other words, it is about making plurinationality alive and not a mere slogan without empirical reference. It is a matter of moving toward new institutional forms, which are based on recognizing what exists. The experience of the Kayambi people, the initiatives that continue to push the present generations of Kichwa in Pastaza, bring into view other epistemologies, other local practices and understandings of Nature and other institutions that are called on to enrich Ecuador's proposals for transformation.

Undoubtedly, planning experiences from below, from a holistic perspective that questions anthropocentrism, as shown in the so-called "life plans," are initiatives to continue to exercise autonomy or the right to deal with their affairs according to their rules, their authorities, and their institutions as

defined in Convention 169 and included in other instruments such as the United Nations Declaration on the Rights of Indigenous Peoples.

Finally, it is clear that the autonomy of Indigenous peoples is a fundamental right that can and should be exercised, regardless of the administrative and political organization of the State, as demonstrated by these experiences. In short, it is not a question of inventing new bureaucratic or administrative bodies, but of recognizing and strengthening the actual existing processes, which are the ones that make it possible and condition the exercise of autonomy and the observance of the right to self-determination in the framework of unitary and Plurinational States.

NOTES

1 My vision of subaltern goes beyond the Gramscian sense, and I refer to what is stated by Gyan Prakash, who holds subalternity as an abstraction used to identify the intractable emerging within a dominant system, and that refers to the thing that the dominant discourse cannot completely appropriate, an otherness that resists being contained. See cf. in (Prakash, 2001).

2 Historian Hernán Ibarra (1999) explains that Ecuadorian indigenism refers to an intellectual political current based on the middle classes and even humanitarian landowners. "Indigenists claim Indigenous peoples as the sustenance of Ecuadorian nationality. They conceived of Indigenous peoples with certain physical, clothing, language and culture traits identified in food and housing; it was assumed that the natural habitat was the highest areas of the highlands. Indigenists inspired the policies that privileged education as the main mechanism of integration, and introduced the problem of land redistribution" (p. 74).

3 Executive Decree No. 1088 that created the National Water Secretariat (SENAGUA) May 15, 2008. Published in Official Register No. 346 on May 27, 2008. Available at: https://bit.ly/38bjLik

4 Life Plan Socialization Workshop, Salesian Polytechnic University, held on 9 September 2018.

5 The country's first Community Water Protection Area is declared. Available at: https://bit.ly/3941S4r

6 NODAL, Lenín Moreno announces economic resolution as part of the agreement with the IMF, 02.10.2019. Available at: https://bit.ly/2wyLj0P. Cf. also in: El universo, Elimination of gasoline and diesel subsidies, among economic measures of the Government of Ecuador, 01.10.2019. Available at: https://bit.ly/2Trf9xc

7 After the dissolution of OPIP 2008 and the formation of the Kichwa Pastaza Nationality Coordinator, two important plans were generated: The "Plan of Life of the Kichwa Nationality of Pastaza" (2013) and the *"Kawsay Sacha"* Program called *"Sumak Allpamanta Kawsaymanta Jatarishum"* (2018).

8 About Sarayaku's *Kawsay Sacha* (Living Forest) proposal. Cf. at: : https://bit.ly/35cJwx4

9 Hydrocarbon Regulation and Control Agency "Daily production of oil and net natural field gas nationwide." Cf. in https://bit.ly/2JKHf4w

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PART III

Autonomies as Emancipation: Own Paths

15

Gender Orders and Technologies in the Context of Totora Marka's Autonomous Project (Bolivia)

Ana Cecilia Arteaga Böhrt[1]

Introduction

On 6 August 2006, a Constituent Assembly was established in Bolivia as a result of a long struggle on the part of both Indigenous organizations and organized civil society, who had been challenging the nation-state model and privatization policies in place since 1985. The outcome of this national meeting of representatives from all departments and sectors was a constitutional text, approved on 25 January 2009, which established a Plurinational State with the basic principles of Indigenous autonomies, decolonization, depatriarchalization and *suma qamaña* ("good living"). This has led to radical changes in the way the State and Bolivian society are perceived. It was within the framework of these important transformations that I documented the challenges of implementing this great commitment to self-determination from the perspective of Indigenous women, analyzing their efforts to get their voices recognized in collective decision-making bodies and to reflect their gendered perspectives and demands.

I investigated the role played by Indigenous women in constructing Bolivian autonomies on a subnational or "local" scale, starting with the case

study of Totora Marka (Oruro department).[2] This is one of 11 municipalities — out of a total of 339 — that voted "Yes" to self-determination (with more than 74.5% of the vote) in the municipal referendum of 6 December 2009, held to adopt the status of Indigenous autonomy. I had the opportunity to accompany Indigenous community members between 2010 and 2015 through an ethnographic, collaborative[3] and longitudinal study that allowed me to document this experience. This particular case was noteworthy among other autonomy conversion projects because it was one of the forerunners in this process for several years, making it a unique event by which to analyze the institutional structure of the Plurinational State.[4]

Throughout this chapter I will demonstrate how, in the fight for autonomy as a constitutional right, the women of Totora Marka opened up a space in which to discuss the structural principles of their social organization and cosmovision, and thus challenge gender orders and gender ideologies on the basis of their particular cultural significance.[5] By questioning this system and the disciplinary mechanisms that sustain it, the Totoreño women presented a series of transformative proposals that would result in changes in the rules and customs guiding the social practices of the *marka*.

Based on the women's proposals for local transformation, I also undertake a broader analysis of the progress and challenges facing Indigenous Peoples in obtaining their own institutional structures within the framework of the Bolivian Plurinational State. I focus on the important regulatory and institutional changes that have favoured decentralization and Indigenous autonomies, and the centralist government model that has hindered them. In this sense, from the experience of Totoreño women, I show the important transformative momentum that resulted from the constitutional reform and, at the same time, the technologies of governmental power.

Regulatory and Institutional Changes: Women's Struggles and Indigenous Autonomies

In the presidential elections of December 2005, Evo Morales Ayma of the Movement for Socialism-Instrument for the Sovereignty of the Peoples (MAS-IPSP) triumphed with 54% of the vote, becoming the first Indigenous president in Bolivia and South America. Within months of his election, and in response to social demands, a Constituent Assembly was established (in 2006), presided over by Silvia Lazarte, a Quechua woman who led the work to

draft a new Constitution in a decision-making space that enjoyed 34% female representation (*Coordinadora de la Mujer*, 2011).

Within the framework of the constitutional process, Indigenous and non-Indigenous women's organizations used a policy of alliances to join forces and produce a joint program with specific demands entitled "Consensus of the country's women for the Constituent Assembly." This consensus took up a key issue historically demanded by their parent organizations and social movements: decolonization and depatriarchalization as linked processes.[6] Such a link implies viewing the latter category as a two-way process that proposes the notion of decolonization on the basis of the need for depatriarchalization (Chávez et al., 2011). This and other proposals faced different forms of resistance from a racist, sexist and conservative society that felt its class and privileged interests were being harmed by "feminists" attacking good manners and by "*cholas*"[7] who had nothing to contribute to Western society.

Because of this resistance, Indigenous and non-Indigenous women's movements were excluded from participating in the final negotiations of the so-called "Congressional Agreement" of 5 October 2008, resulting in a weakening of the depatriarchalizing message of the original text. This may be the reason why there is no explicit regulatory framework of reference for depatriarchalization in the Constitution.[8] The result is that the Bolivian constitutional mandate, and thus the programmatic leitmotif of the Plurinational State, is that of decolonization, with depatriarchalization addressed more timidly within this.

Despite this setback, the Constituent Assembly still marked a before and an after as regards several issues related to Indigenous women:

- A gender approach was mainstreamed throughout the constitutional text and, particularly, in its catalogue of human rights, via the elimination of multiple forms of discrimination existing in the country, particularly gender discrimination.

- The political participation of Indigenous and non-Indigenous women has increased; for example, since 2010, 50% of ministerial portfolios have been held by women, many of them from the popular sectors (INSTRAW, 2006).

- The Constituent Assembly also generated a transformative scenario for ethno-political organizations, thus initiating a debate around

demands for specific rights and around lived experiences marked by inequality and subordination within ethnic communities (Ströbele, 2013).

In addition to the gender issue, another major advance established by the constitutional process was the legalization of Indigenous Peoples' self-determination, understood as the exercise of self-government, the election of authorities by habit and custom, the administration of economic resources and the exercise of legislative, supervisory and executive powers (Plurinational State of Bolivia, 2009, Art. 272; Plurinational Legislative Assembly, 2010, No. 031).

In accordance with the Bolivian constitutional mandate, the corresponding administrative structures were put in place from 2006 on. In terms of the above topics, particularly noteworthy are the creation of the Vice-Ministry of Indigenous First Peoples Peasant Autonomy (within the then Ministry of Autonomies) and the Vice-Ministry of Decolonization (within the then Ministry of Culture), in which the Depatriarchalization Unit was created. The Unit took up this proposed interrelationship between depatriarchalization and decolonization, promoting a broad theoretical debate in the country on the relationship between colonialism and patriarchy, even though in practice there was little evidence of any clear public gender policy from a perspective of cultural diversity.

With this brief review of the regulatory and institutional transformations, I have shown that the Constituent Assembly formed a new juncture that supported full recognition of the rights of Indigenous Peoples, with the constitutionalization of Indigenous autonomies being crucial as a fundamental basis on which to achieve a Plurinational State. In relation to gender, this space enabled patriarchal customs to be challenged and even replaced, at least in theory, with "new" values supporting the decolonization process in favor of Indigenous women's rights, both at the national level and in the communities to which they belong. Next, I describe the concrete forms taken by the State in the Indigenous regions of Bolivia and show how Aymara women took advantage of the spaces opened up by this new institutional framework, which they took up as their own and through which they disputed their rights.

The Long History of the Struggle for Indigenous Autonomy of the *Ayllus* and Complementarity

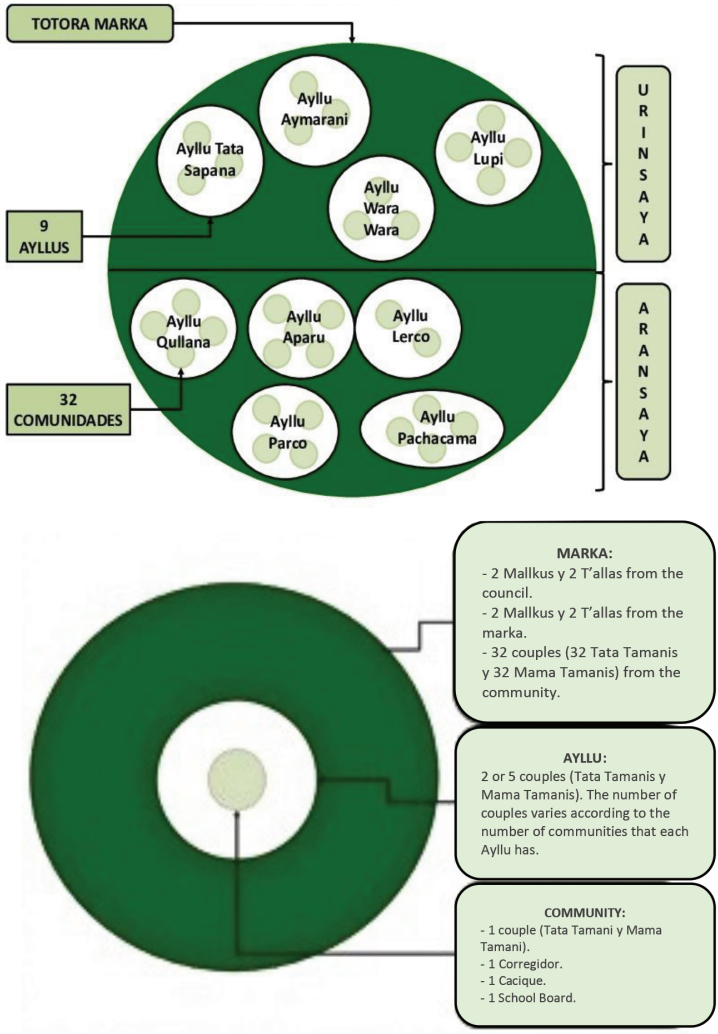
For Totora Marka, the consolidation of Indigenous autonomy implies official recognition of their territorial and organizational structures and ancestral regulatory systems. This demand has a long history in the country, with multiple struggles for the reconstitution of the Andean *ayllus* and the restitution of the rights of traditional authorities.

The ancestral organization of Totora Marka (see Figure 15.1) is based on the *suyu-marka-ayllu*-community logic:[9] at the national level, it forms part of the National Council of Ayllus and Markas of Qullasuyu (CONAMAQ);[10] at the regional level, it is part of the Suyu Jach'a Karangas, made up of 12 *markas* (current canton-level municipalities).[11] The *marka* is made up of nine *ayllus*, and each *ayllu* has two to five communities; each community has around 40 to 80 *sayañas* (plots belonging to a family). The *marka* in turn is subdivided into two sections under the duality of the *aransaya* (the *parcialidad* or set of community holdings on the south side of the *marka*) and *urinsaya* (*parcialidad* on the north side). The ancestral structure of Totora Marka, similar to the rest of the peoples of the Bolivian *altiplano* (highlands), is characterized by its complexity and a dense web of social relations, each with its particular variations.

According to the administrative division of the State, this territory is called the Province of San Pedro de Totora and comprises a single municipality of the same name. Since the ancestral structure is consistent with the political division of the State, establishing their Indigenous autonomy was expected to be quite simple. Because of this convergence, the municipal government (consisting of a municipal council and an executive body presided over by a mayor or mayoress), would become an Indigenous government following the norms, institutions, authorities and procedures of the Aymara communities. This concordance of territorial structures is not always the case in other *markas* around the country. In this scenario, the statute of autonomy would enter into force immediately.

Totora Marka is governed by two central principles that are fundamental for self-government and women's participation:

- That of *sarathakhi-muyu*, or the rotation of positions around the *sayañas*, involving the sequential holding of different posts within the system of authorities.



Urinsaya: Partiality of the north side of the Marka.
Aransaya: Partiality of the south side of the Marka.
Marka: Territorial unit made up of several ayllus.
Ayllu: Unit made up of several *sayañas*.
Sayaña: Basic unit made up of families.

Figure 15.1. Ancestral Territorial Organization of Totora Marka. **Source**: Author's elaboration.

- The principle of complementarity, translated as *chachawarmi* (*chacha* = man and *warmi* = woman), which is an Aymara principle linked to the idea of equality, duality and parity between the feminine and the masculine, present in all dimensions of life in the *marka* communities. In this sense, the deities are gendered, as are the sacred places, the spatial and territorial arrangement (*aransaya parcialidad* = associated with the masculine, *urinsaya parcialidad* = linked to the feminine). A series of explanatory pairings are thus established that are not antagonistic but complementary, i.e., neither exists without the other (Gutiérrez, 2009; Choque & Mendizábal, 2010).

The system of authorities (see Figure 15.1) is governed by the ancestral territorial organization of the *marka*: *suyu-marka-ayllu*-community and is structured around these two principles, such that the holding of positions falls to the *"chachawarmi"* couple. Most communities have four authorities: the *Tamanis* couple, the *Corregidor* ("Mayor"), the *Cacique* ("Chief") and the School Board. The highest authority at the communal level is the *Tamanis* couple (*Tata Tamani*: male authority; and *Mama Tamini*: female authority), also known as *Awatiris* (shepherds of the grassroots community). All *marka* authorities are led by two *Mallkus* (male authority) and *T'allas* (female authority) couples from the council, and two *Mallkus* and *T'allas* couples from the *marka*.[12] All the Indigenous positions are exercised in *chachawarmi* complementarity, while the community's political positions, such as *Corregidor*, *Cacique* and School Board, may or may not be held by couples. This system of authorities coexists alongside the State (present mainly in the municipal capital), so there is an entwining of different government structures superimposed one on top of the other, which often generates tensions between the ancestral system and the State.

The population of Totora Marka has strong identitary-territorial roots and a strong link with this system of Indigenous authorities, as well as with the territory's customary rules. At the same time, this population is distinguished by its great mobility between the rural and urban worlds, the result of constant temporary or permanent migration to the biggest cities of the country and even abroad; this process is in response to the growing number of small family farms. Because of this mobility, people who live in the *marka* are called "*sayañeros*" and permanent migrants to the city are known as "residents". The heterogeneity of the Totoreño population is also a result of the

presence of several established churches in the communities. As will be seen from the following, the resident population and the members of the different churches were those sectors most opposed to the *marka*'s self-government.

There has been an historical struggle for the self-determination of the Indigenous peoples and, in general, for the autonomy of the *ayllus* of the Bolivian altiplano. The *ayllus* are the basic organizational units of the ancient and current Andean community, and they determine its political, economic, religious and social form (Coaguila, 2013, p. 26). This institutional set-up is contrary to the model of Bolivian agrarian unions, characterized as being the free union of peasant farmers permanently established for the purposes of defending their interests.[13] Women participate differently in these two forms of organization: in the *ayllu*, their participation is dual, while union positions are held individually, either by a man or a woman.

To understand the historical struggle for self-determination, Table 15.1 summarizes the reconstitution and ethnogenesis of the *ayllu* (López-Ocón, 1985; Abercrombie, 1991),[14] and the gradual strengthening of complementarity.

The last 30 years have been characterized by important social movements led by the *Confederación de Pueblos Indígenas del Oriente de Bolivia* (Confederation of Indigenous Peoples of Eastern Bolivia — CIDOB) in the lowlands, and CONAMAQ in the highlands, resulting in notable uprisings that have been the basis for continuing the reconstitution of the *ayllus*. In addition to social movements, the inhabitants of Totora Marka feel that the legislative and symbolic changes that took place under the MAS-IPSP government resulted in a strengthening of their organizational structures, of complementarity (which is now a rule that must be respected in the exercise of Indigenous positions), of rituals,[15] festivities,[16] traditional dress and of their identities as Indigenous Peoples.

This brief reference to ethnogenesis and the reconstitution of the *ayllu* shows that, beginning with its relationship with the State, Totora Marka has had a history marked by disruption, tensions, subordination and resistance. It is a non-linear process which, despite multiple transformations and re-adjustments, has been maintained and strengthened in recent decades, becoming the banner of the struggle for the autonomy of the Andean *markas*. This dynamic and highly adaptive institution was further invigorated by the transformations brought about by the Plurinational State. Complementarity is based on this communal socio-political organization, being defined as an organizing principle of the identity of the *ayllus*.

Table 15.1. Reconstitution and ethnogenesis of the *ayllu* and strengthening of complementarity

The *ayllu* has existed since before the time of the Incas as a way of adapting to the environment of the altiplano through the use of ecological zoning and agricultural specialization (Harris, 1987; Murra, 1975; Golte, 1981).
The *ayllu* was assimilated into and became the basic unit of the Inca's structure, undergoing changes under the influence of new factors that occurred within that society (Villalpando, 1952). *Jachà Karangas* arose as an Inca administrative unit in the central highlands.
The Spaniards reformed the *ayllu*, making it functional to the regime and transforming it into Indigenous *reducciones* or resettlement areas (large estates (*haciendas*), *mita* (forced labor), mines and *reducciones*) (Guzmán, 1976; Espinoza, n.d.): 118).
Once it had become a republic, the State was built by the Creoles, who focused on social modernization projects largely aimed at destroying the *ayllu* (Marten Brienen, 2000). Laws were passed that quantitatively increased large landholdings, displacing the Indigenous people who were living a self-sufficient life in the rural areas of the republic (Coaguila, 2013, pp. 76-87). The increasingly large *haciendas* of the landowners locked the Indigenous communities into a system of feudal exploitation (Guzmán, 1976, pp. 205-206). • In contrast to other regions, few *haciendas* were established in Totora Marka (due to the altiplano's climatic conditions and scarce mineral resources). Despite this, a relationship of exploitation, *pongüeaje* (bonded labor) and servitude was still maintained. • Totoreño women were "practically enslaved as servants." "A mentality of submission" was established, a concept proposed by Cervone and Cucurí (2017, p. 209) that serves to analyze the historical processes in the formation of power structures and social hierarchies, and the persistence of dehumanizing practices in the daily life of Indigenous communities, which generated dynamics whereby men exercise violence over the bodies of the women and children in their families.c • Totora *Marka* was left under the responsibility of four central authorities: the *Jilacata* (elected by *sarathaki-muyu*), *Cacique*, *Corregidor* and Governing Mayor. According to oral history, the office of *Jilacata* was to be exercised as a couple although this was not yet a mandatory principle. In a context of *ayllus* insurrection, the *hacienda* owners' families willingly left the territory.
Despite the innovative reforms resulting from the national revolution (1952), "a *mestizo* (or peasant) identity became established rather than Indigenous" (Coaguila, 2013, p. 100), explaining the "transition from feudal to capitalist society" (Rivera, 1984, p. 87) and marking the State genesis of the legitimization and legalization of agricultural unions over and above the *ayllu*. • This led Totora Marka to take up the union structure, with the importance of the original position of *Jilacata* being lost. It ended up being a merely symbolic role. At the same time, the *Corregidores*, who were considered the *kamachis* (mandate, Law) or main authorities of the *marka*, acquired greater power. The stronger the union became in the *marka*, the weaker the exercise of *chachawarmi* became.

Table 15.1. (*continued*)

During the 1980s and 1990s, through Katarista Indianism, "the reordering of the State and decolonization of society from an Indigenous perspective and the reconstruction of Kollasuyo" (Díaz, 2014) was proposed: this implicitly meant the reintroduction of the Indigenous issue (Ticona, 2000, p. 44).
In this context, in 1987, the first assembly of *Jatun Karangas* (now called *Jacha Karangas*) was convened and, since 1990, multiple meetings of different Andean Indigenous organizations have been held with the aim of symbolically and organizationally reconstituting the *ayllus*, which had disappeared or lost its structure. The reference point was the pre-colonial political and economic structures of the *Tawantinsuyo* or Inca state's *ayllu*, in order to adapt them to the contemporary historical context (Coaguila, 2013: 137-141) and achieve self-determination. • With the reconstitution of the *ayllus* in Totora Marka, the *Caciques* became known as *Mallkus* and the *Jilacatas* have been called *Tamanis or Awatiris* (recovering the power they previously had, so they became *kamachis* once more). • Exercise of the principle of complementarity (*chachawarmi*) was consolidated in the *marka* and became mandatory for the entire system of native authorities; it also began to be demanded in regional and national spaces.

Source: Author's elaboration.

The Participation of Totoreño Women in the Process of Conversion to Indigenous Autonomy

The process of conversion to Indigenous autonomy in Totora Marka had two distinct stages with marked differences in women's participation, as well as different areas of progress in the self-determination project. The first stage — from 2009 to 2011 —, corresponding with the new constitutionalism in Bolivia, was characterized by the Totoreño population's sustained support for self-government, with a majority "Yes" vote, a commitment to producing a statute of autonomy and the active participation of women. The second stage — from 2012 to 2015 — reveals the long road that this *marka* had to travel to obtain approval for a referendum date for its statute. The protracted nature of this process demonstrates the swings and contradictions in the Plurinational State and the technologies of hegemonic power, which created local divisions around the autonomy project, a context in which women's proposals were abandoned.

From "*Chachawarmi*" to "*Chachawarmi-warmichacha*": Giving New Meaning to the Complementarity and Vernacularization of Rights (2009 to 2011)

The first stage followed several processes that revealed support for the autonomous project (see Figure 15.2). Several factors explain this majority support, despite a general ignorance of the recently approved Constitution and its implications for autonomy: the referendum took place in the context of a national political moment that was governed by the idea of a State transformation. This generated a strong process of self-identification with a reassessment of Indigenous rights (Molina-Barrios, 2018). The territorial reconstitution of the *marka* took place through the acquisition of Community Lands of Origin (TCO),[17] and it was this that was to motivate the search for Indigenous autonomy. This territory is characterized by a strong Indigenous identity and great rootedness in the traditional. There was also marked discontent and distrust in the administrative and financial management of the municipal government (Funaki, 2017).

After the referendum, the next step was to produce their statute of autonomy. During the drafting process, there was a collective interest in consulting the different sectors of the *marka*'s population on the content of this document. Despite these efforts, the scant participation of women in several of the processes described in the previous figure was evident, in addition to the constant omission of any of their proposals. Faced with this fact, a group of women demanded that a meeting be organized only for *mamas*, and this was held on 11 August 2011 and called a "Totoreño Women's Meeting." Representatives from different communities, grassroots women and *mama tamanis* participated in this event and came to an agreement to include their demands in the statute.

The participants in the meeting looked mainly at the practice of *chachawarmi* complementarity, concluding that it was a principle respected above all in the regional spaces of the *marka* where the authorities of the different territorial levels of Totora (community/*ayllu*/*marka*) converge. These spaces are public, collective and central to the reproduction of communal life, and notable among them are the *marka* assemblies, rituals and festivities,[18] characterized by discipline, surveillance and forms of complementarity. In

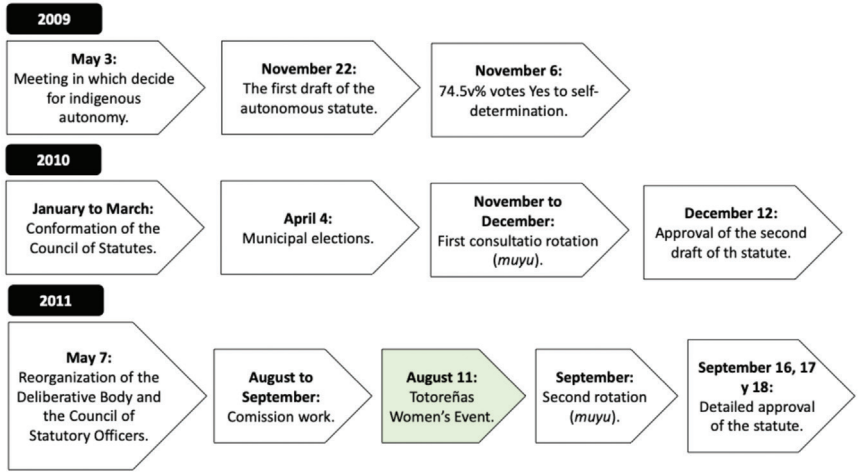


Figure 15.2. First stage of the conversion process to Indigenous autonomy in Totora Marka.
Source: Author's elaboration.

contrast, women felt there was a lack of compliance with the *chachawarmi* in the community space, with social control relapsing to "*this is just how things are*" in terms of gender ideologies. This does not mean that women do not face discrimination at the regional level, nor that complementarity is not fully complied with at the communal level; in reality there is a combination of the two dimensions at both levels, albeit with notable differences.

Succinctly, and for reasons of length, in this chapter I shall only consider the *marka* assemblies as an example of regional spaces in which complementarity is fulfilled. These assemblies (called *Jach'a Mara Tantachawis*) are attended by the 32 *Tamanis* couples representing each community and there is strict monitoring of the fulfillment of *chachawarmi*. For example, it is mandatory for *Tamanis* couples to sit together to ensure this principle, and couples in authority are required to be married by the civil registry with evidence of a marriage certificate. This rigor means that increasing numbers of women are attending these assemblies (49% of the authorities present at the 2015 *marka* meetings were women). In this kind of space, the *mama tamanis* and the *t'allas* play an important role as agents of discipline; for example, the *t'allas* of the *marka* are in charge of checking the clothing of the *Tamanis*

couples. Because of this important role, women feel they are listened to in the *marka* assemblies and considered in the decision-making process.

Despite this high female participation in the regional meetings, however, the Totoreño women themselves identified the following problems:

- These assemblies are chaired by the *Mallkus*, which means the role of the *mama tamanis* is reduced to collecting money and organizing food for the events.

- Although complementarity in theory implies the non-hierarchical exercise of positions, in practice the men generally dominate. This is linked to the patrilineal inheritance of the land, which means that men are the representatives of the *sayañas* and families in the community, so they hold the main positions. Women are then left simply as "companions." Despite this, they are constantly negotiating their place with the aim of obtaining greater participation in communal affairs, resulting in ever more instances of women holding the main positions.[19]

It was in the domestic and community space that women identified a series of oppressions that demonstrate the distance between *chachawarmi* in principle and in practice, interwoven with different systems of oppression such as class, race and gender. This intersectionality of violations is in response to a structural context marked by poverty — Totora Marka has one of the highest rates of unmet basic needs in Bolivia — resulting in constant spatial mobility, growing atomization of the land, poor access to education and health and, in the city, discrimination and racism.

On the basis of these elements, Totoreño women identified the inequalities they face within their own communities and families, and these can be understood on the basis of two cultural categories that are used in the *marka* to establish the differences between men and women, and which continue to mark gender relations: 1) being *pampa chhuxuñaw* (urinating sitting down), a term used pejoratively to indicate that women are "like animals that do not even know how to urinate"[20] and to maintain a series of discriminatory attitudes; and, 2) being *mayt'ata* (borrowed), a category widely developed by Choque (2009, p. 10) and which, in the domestic sphere, turns the woman into someone external, one who is not of the family, such that any investment in her upbringing should be minimal.

Table 15.2. Violations identified by Totoreño women

Multiple gender roles Totoreño women are responsible for raising the children, household chores, agricultural and livestock activities, weaving and spinning clothing, and "taking care" of their husbands, among other duties. Many women, especially those who are heads of household, are also responsible for economically supporting their households, resulting in a triple workload that includes reproductive, domestic and productive work. Due to increased male migration, women are responsible for both livestock and agricultural activities, the latter usually being the responsibility of men.
Lack of access to and ownership of land by Totoreño women In Totora Marka, the size of the farm or individual plots *(sayañas)* varies from one extended family to the next down the paternal line, that is to say, the sons inherit the land. The different variations in land inheritance in Totora *Marka*, taking gender into consideration are: a. in most cases, the land is inherited by the sons, so women are required exclusively to cultivate their husbands' lands. b. women usually inherit the grazing animals. c. women inherit only *chiquiñas* (small plots of land) which, due to the distance between the woman's community of origin and that of her partner, where she lives after marriage, often cannot be planted, and are thus left in the hands of her brothers. d. women inherit the land equally when the family has only female daughters. e. there are some cases of women who have inherited the land through the migration of their male siblings. f. in the case of divorced women, they can inherit their parents' land only if they live in the *marka*; if they decide to migrate, they lose access to that land. g. there are some cases of men who have left their land to live on their wives' land. This overview reveals that, despite official land reforms, women find themselves particularly vulnerable and facing constant violence when they try to gain access to *sayañas*.
Different difficulties in accessing education Totoreño women generally have lower levels of education and schooling than men and are also more monolingual. Both factors are a response to family gender ideologies whereby investment should be made in the education of boys and not girls due to the latter's status as *mayt'ata* (borrowed) and because they are *pampa chhuxuñaw* (they urinate sitting down), so they should only be in charge of herding animals and caring for their younger siblings.
Migrant women's unequal processes of urban integration Male migration is markedly higher than female. Men are usually involved in activities such as masonry and mechanics, while Totoreño women do jobs such as cooking, domestic work and market trading, highlighting the way in which their role of servitude has been naturalized (Peredo, 2006, p. 10; Díaz, 2014, p. 143). In general, male migrants are able to better integrate into the city, achieving a certain economic stability. The experience of Totoreño migrant women is different; because of their monolingualism and because they maintain their native dress, they experience greater cultural shock and, for these reasons, continued discrimination both in the street and in their jobs.

Table 15.2. (*continued*)

***Ayllu* and community assemblies as masculinized spaces** Across all the *ayllu* and community assemblies I observed between 2014 and 2015, 36% of participants were women, which is a markedly lower percentage than the 49% in *marka* assemblies. According to the Totoreño women, this is because there is no requirement for community members to participate according to the principle of *chachawarmi* in the *ayllu* and community assemblies, given that only the men have to attend as representatives of the *sayaña*. In addition to this scant presence, men sit at the front of the room in these assemblies and the women at the back to take care of their children. This creates a division between the men at the front, dealing with the community's issues, and the women at the back, discussing private and domestic issues. I was, however, able to observe some exceptions to this rule when there was a high female presence, meaning that women were seated at both the front and back of the enclosure.

Source: Author's elaboration.

Totoreño women attribute this discrimination to patri-virilocal post-marital residence, whereby newly married couples take up residence in the husband's paternal home. Both categories are linked to different forms of gender oppression within the national and local histories of the *marka*, related to racialized violence against men and particularly against Indigenous women in the *hacienda* system (as I mentioned in summarizing the ethnogenesis of the *ayllu* in Table 15.1). In relation to these categories, the Totoreño women listed different forms of violence that run counter to the principle of complementarity, and which I summarize in Table 15.2.

The plethora of local inequalities that directly affect women on the basis of gender ideologies (such as "*mayt'atas*" and "*pampa chhuxuñaw*"), along with other customs (such as patrilineal inheritance of land and patri-virilocal post-marital residence), impose a feminine and masculine *raison d'être* that preserves these different oppressions.[21] These violations place Totoreño women in the most subordinate position in asymmetrical power relations within the *marka*. For these reasons, the dynamics within the territory need to be viewed not only through colonial binarisms and hierarchies of "Indians" and "*mestizos*," as Marisol de la Cadena (2008) warns, but also through the gender hierarchies that are internalized within Indigenous families and communities, and which often place women on the bottom rung of a racialized system of subordination (Weismantel, 1989; De la Cadena, 2008; Radcliffe, 2015; Sierra, 2017).

The family, community and structural violence that Totoreño women face as a result of their class, ethnicity and gender cannot be separated out from the long history of racism and colonial oppression linked to the construction of the nation-state, which has constantly subordinated Indigenous Peoples. Based on these identified violations, the participants of the "Meeting of Totoreño Women" proposed a reformulation of complementarity, suggesting that instead of *chachawarmi*, we should speak of "*chachawarmi-warmichacha*" (see Table 15.3).

The proposal summarized above reveals the great creativity of Totoreño women in using the same concept of complementarity to expand its meaning and redefine the autonomous project of their people, from their female language, needs, directions and visions and with a perspective that allows them to link their cultural forms and references and collective identities with the demands of gender equality. Complementarity was thus the focus of the women's proposals insofar as it referred to a fundamental principle of communal organization based on practices within their own materiality.

These women's demands were also made using a rights-based language since they were generally demanding protection from the different situations of subordination they face at certain times in their lives, as well as equal access to education, health, land and justice. These actions demonstrate a process of vernacularization of human rights discourse which, according to Merry (2009), implies the adoption of a global discourse and values (such as human rights) in order to reappropriate it on the basis of the ideological and social attributes of the area (Levitt & Merry, 2009, p. 446). In this sense, although rights come from a more liberal register, they are a symbolic weapon to which Totoreño women were appealing in order to question subordination and gender violence, and to dispute their space both in the public sphere of their organizations and in their own domestic relations.

The women also discussed the rights of *chachas* (men), *yocallwawas* and *imillwawas* (boys and girls), *jaju* and *majta* (youth), *awichas* and *achachilas* (elders) and people with disabilities. In this way, Totoreño women showed that they are at all times part of the wider community of the *marka*. Herein lies the importance of overcoming the dichotomy between Indigenous rights, human rights and women's rights, proposing them in intersection and interrelation (FIMI, 2006), since the women's proposals for the reformulation of complementarity cannot be separated from the collective demands for the self-determination of the *marka*.

Table 15.3. Proposals for *chachawarmi-warmichacha* from Totoreño women

Definition of *chachawarmi-warmichacha*: • In the case of the Indigenous authorities, this means "walking together"; in the case of the grassroots community members, it means "mutual support and help".
It involves creating the following bodies: • A Totoreño women's organization to manage education and training projects and ensure economic income for women. • A women's committee to defend the rights of each community member, support victims of violence and propose strategies to prevent this.

It should be governed by the following mandates:
• The fundamental basis is the exercise of positions as a couple:
  • In one half of these couples, the main position holder should be the *mamas*.
  • All the positions in the Statute (territorial delegates, *corregidores*, members of the Indigenous Legislative Council, *Marka Irpiri*, and so on) must be exercised under this form of *chachawarmi-warmichacha*. This method should also apply to political office.
• In the case of positions that are not held in couples, political participation with parity and alternation must be respected.
• Women's opinions must be considered in decision-making.
• Assemblies should have 50% female participation at all levels (community-*ayllu-marka*).
• Assemblies must be held in Aymara.
• Women have the right to represent their *ayllu* or community even if they are single or widowed, with the support of their relatives.
• Eliminate the requirement to "have education up to secondary level" for the election of the highest executive authority of the future autonomous government, since this excludes the majority of the population, mainly women.

The autonomous government shall respect and promote the following rights of Totoreño women: • Prohibit all forms of discrimination against girls, adolescents and women in health centres, educational centres, workplaces, and public and private institutions, ensuring respect for their native identity. • They must be included in any consultation carried out in the territory. • Domestic work, mainly childcare, should be shared with their partner. • Provide "courses on *chachawarmi*" in which the importance of shared parenting is discussed. • Women should have the right to decide whether or not to take their husband's last name.

Right to education: • Equal access to education. • Establish *wawa utas* (children's homes) and family support for women with children so that they can continue studying. • Create a public university in the *marka* with technical courses. • Ban the discriminatory treatment of pregnant teenagers in schools. • Provide courses on leadership, law and human rights for adult and older women, taught in Aymara.
Right to health: • Allow them to freely decide the number and spacing of their children. • Allow them to choose the type of birth they want. • Provide informational courses on reproductive health and comprehensive care for women. Establish a school for midwives and traditional medicine in which women are able to pass on their knowledge and cultural practices of traditional medicine.
Right to land: • Equal inheritance of land. • Guarantee that widowed women will inherit their husband's land. • Land should be inherited by men and women living in the *marka*.
Access to justice: • Any case of physical, psychological or sexual violence must be sanctioned by the customary or ordinary justice system. • Cases of sexual violence must be severely punished by the jurisdiction handling the case. • For all cases of domestic violence, the authorities must draw up a good conduct report. • Reassess the importance of godparents, fathers and mothers as counsellors and advisers to the couple. • The Totoreño women's organization shall support the administration of justice, mainly in the follow-up to domestic violence cases. • Sanctions for men who do not accept their paternity.

Source: Author's elaboration.

The male authorities reacted in two different ways to the women's proposals:

- Some described their demands as contrary to complementarity, arguing that the rights claimed "would divide and fragment the collective." The contradiction between collective rights and individual rights is often also presented, at the local level, as a

strategy for ignoring gender demands and continuing to naturalize the subordination identified by the women themselves. This position shows that there is disagreement over the meaning of *chachawarmi*, since some men use the principle of complementarity as an essentialist and static concept, a strategy by which to ignore the women's specific demands (Sanabria, 2006). This contrasts with the Totoreño women's vision, who see *chachawarmi* as a flexible principle that can change over time.

- Other men supported the women's demands, arguing that the path to self-government required a debate on gender subordination; to these men, a change in the meaning of complementarity was a call for them to be consistent in their discourse, and something that invited them to put into practice the principles and values they were proclaiming (Hernández, 2001; Macleod, 2011).

The statute document approved by the deliberative body (18 December 2011) did not include the term *chachawarmi-warmichacha* proposed by the Totoreño women, nor did it include the creation of a Totoreño women's organization to support the Indigenous autonomous government. It did, however, incorporate a sense of some of the women's other proposals: it established that *chachawarmi* should be the basis of autonomous government; it instituted equal rights, duties, obligations and opportunities for men and women; it established that the election of representatives should be carried out with equity, expressed in parity and gender alternation, in accordance with the *marka's* own norms; it eliminated educational levels as a requirement for holding different positions; and it proposed mechanisms for the prevention and protection of women victims of gender violence, among other things.

A central element that contributed to the men's consideration of the women's demands was the fact that these visions and claims were made within the context of a broader process of reinventing the Indigenous government, this being a particular juncture that led to a debate on the relationship between the collective rights they have as Indigenous Peoples and the rights of Totoreño women.

The Long and Difficult Struggle for Autonomy in Totora from a Gender Perspective (2012 to 2015)

According to several Indigenous authorities of Totora Marka, during this second stage, the MAS-IPSP government "abandoned the Indigenous autonomies to their fate." This abandonment generated different tensions between the State and the Indigenous Peoples, who were focusing all their efforts on their self-determination, and these tensions revolved around two technologies of power (Foucault, 2006, p. 136) deployed by the Plurinational State:[22] 1) the loopholes and limits of the legal order; and 2) time delays and State bureaucracy.

In relation to the former, it is important to note that the Framework Law on Autonomies set out a series of requirements[23] and more than 14 procedural steps for Indigenous Peoples wanting to access self-determination. This marked the beginning of an extensive and exhausting path for the territories to convert to Indigenous autonomy, as set out in Figure 4.

In relation to the latter (time delays and State bureaucracy), Figure 4 shows that Totora Marka took around one month to prepare each request and response to the State institutions and agencies. In contrast, the State took between four months and one year. This meant that it took between two and six and a half years to establish the autonomies.

Alongside the counter-routes of the Plurinational State, differences in power relations, divisions and political factionalism, resulting from old local disputes, were exacerbated at the local level. As of 2010, the municipal authorities were mostly MAS-IPSP, this being on an interim or transitory basis until the process of conversion to autonomy could be consolidated. This meant reducing their mandate from five years to two. To avoid this shortening of their mandate and their subordination to the Indigenous autonomy, the municipal government thus became the main opponent of this project.

As mentioned above, the peoples who were converting requested that the referendum for approval of their statutes of autonomy be held prior to the election of new municipal authorities; however, this request was ignored by the State. Faced with this adverse context, and with the aim of obtaining a municipal council that would support self-determination, a majority of the population voted for the Popular Participation (PP) candidate in the March 2015 local elections. At the same time, two statutory post holders began working for this institution, one as a senior officer, the other as an adviser.

The strategy of the Indigenous authorities did not bear fruit, however, since the mayoress, the municipal council and the statutory officers all continued the campaign to oppose the self-determination of the *marka*.

The counter-campaign of the municipal government was joined by other actors such as the provincial structure of MAS-IPSP and the departmental government of Oruro, in which this same political party also had a majority representation, again highlighting the contradictions of the Plurinational State. Alongside these bodies, a united Indigenous front was formed of young people, residents, members of Christian religious groups and teachers all putting forward different arguments to oppose Totora Marka's Indigenous autonomy.[24] At the same time, there was a turnaround in the positions of several Indigenous authorities, who also ended up opposing self-government. Faced with fatigue caused by the protracted process for autonomy, the municipal government ended up being the safest option by which to access positions of power and decision-making, as was the case before the option of autonomy became enshrined in the Constitution.

As a way of resisting State technologies of power, and despite local political divisions and factionalism, Totora Marka participated in several mobilizations of peoples for conversion to Indigenous autonomy. During these actions, the Indigenous authorities appealed to the legal order as well as to the language of contention, in Roseberry's terms (2007), to the extent that they disputed the very meanings of the Plurinational State's rhetoric on constitutional autonomy.[25] To avoid cementing a "top-down" autonomy, which imprints relationships of power, bureaucracy and control over the top of community forms of organizing, the converting peoples demanded:

- The elimination of the State's requirement for the production of statutes of autonomy, for which they appealed to the Law on the Electoral System (Official Gazette of the Plurinational State of Bolivia, 30 June 2010, No. 026), which establishes that community democracy does not require written rules, statutes or compendiums of procedures for its exercise, unless by decision of the Indigenous nations or peoples themselves.

- That these statutes should not have to pass through the constitutional scrutiny of the Plurinational Constitutional Court (TCP), instead recognizing their autonomy in accordance with national and international regulations.

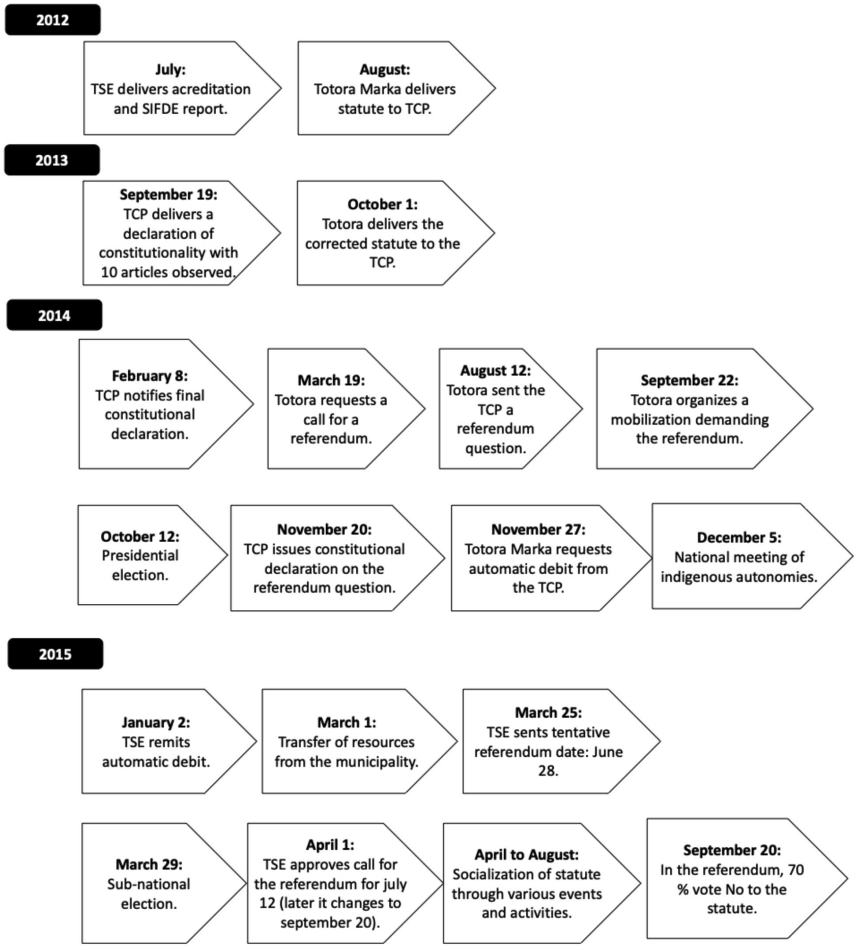


Figure 15.3. Second stage of the conversion process to Indigenous autonomy in Totora Marka

- The elimination of the double referendum, given that the Constitution only provides for one consultation in which the population expresses its will to become an Indigenous autonomy.

The demands show that the Indigenous Peoples were defending the legal reforms undertaken by the Plurinational State insofar as they were the result of

the constitutional process and thus of the peoples' long struggle for their recognition. This explains why the Law makes sense as a language of contention and how difficult it is for the Plurinational State to control the direction of the common framework of discourse, evidencing the "fragility" of this system of domination, which has overturned the very foundations that gave it legitimacy, as in the issue of Indigenous autonomies.

The marked prolongation of the process meant that the same referendum in Totora Marka was used to vote on both the statute for Oruro department and the statute for the territory's Indigenous autonomy.[26] The departmental statutes put out for consultation in 2015 were severely criticized nationally for being recent regulations and, consequently, unknown to the majority of the population. A "No" vote thus occurred across all departments, with more than 70% in the case of Oruro. The departmental statute of Oruro was also criticized by the Jacha Karangas Western Council of Ayllus and Markas, such that an organic resolution was taken for its *markas* to vote "No" to this law. The decision to conduct a joint consultation of the Indigenous and departmental regulations caused confusion in Totora Marka; consequently, many people thought that Jacha Karangas' opposition to the departmental statute also applied to the Indigenous autonomy statute.[27]

In this complex context, the referendum to approve the statute was held on 20 September 2015 and 70% of the Totora Marka population voted "No" to the basic law; this contrasts with the 74 % support for autonomy in the 2009 referendum. This result meant that the municipal government would remain the central institution of the *marka* and, at the same time, the system of Indigenous authorities would continue to have a presence. Should the authorities choose to resume the conversion process once more, they will need to rewrite the statute, and go through the whole procedure described in Figure 15.3 again.

Many Indigenous authorities believe that the delays in the process, by means of the technologies of power described above, was a political maneuver. Others consider that since Totora Marka was the first Indigenous peoples nationally to obtain constitutional compatibility from the TCP,[28] it was the first territory to face a deficient State institutional framework that did not know how to proceed in the face of the new regulations, and this ended up hindering the autonomy project.

Despite these counter-routes and technologies of power deployed by the Plurinational State, it is important to distinguish differences of opinion within

the MAS-IPSP government. For example, the Vice-Ministry of Indigenous First Peoples Peasant Autonomy was the State agency that provided most support and accompaniment to the conversion processes, despite facing the withdrawal of some non-governmental organizations that were assisting with these projects, constant budget cuts and a lack of political will on the part of the central government.[29]

In terms of gender, given the context, the proposals around "*chachawarmi-warmichacha*" resulting from the Totoreño Women's Event in 2011 were not taken up. Despite abandoning these women's demands, fundamental changes have taken place in recent years in relation to opening up participatory spaces for Indigenous women.[30] Among the most outstanding transformations is the election, for the first time, of a female mayor and three female councillors (out of the five members of the municipal council) in the municipal government. This is an historic result since the female participation rate increased from 16% between 2004 and 2010 to 66% in 2015. The second change was the establishment of the "Bartolina Sisa" women's organization in Totora Marka,[31] showing there is greater flexibility with regard to the possibility of having a women-only organization in the territory (this was one of the women's central proposals made in the context of giving new meaning to *chachawarmi*).

Totoreño women attribute these transformations to several factors, notably: the awareness generated by the production of the statute of autonomy in relation to gender rights; the national and regional opening up of political positions, which helped mobilize traditional gender ideologies at the local level; and the national struggles of Indigenous and non-Indigenous women for inclusion in formal politics, which promoted enactment of the Law on the Electoral System. This law establishes gender parity and alternation between women and men as candidates for various public positions.

Despite these important changes in the political action of Totoreño women, it is noteworthy that both stand in tension with the autonomy of the territory and the main issues surrounding this project since they imply, on the one hand, a strengthening of the municipal government and the permanence of political parties and, on the other, the establishment of a union model in a *marka* governed by the Indigenous system of the *ayllu*. In other words, the State itself has promoted a more liberal perspective on gender rights at the local level. I note this in order to highlight the contradictions of the Plurinational State, and not with the intention of detracting from the

important participatory spaces that have opened up for Totoreño women in recent years, who have pursued an historical struggle to increase their presence in different community areas as key players in political processes.

Conclusions

The transformative proposals brought about by the rewriting of the Bolivian Constitution overturned what were the foundations of the nation-state across most of Latin America and opened up new horizons and expectations of a re-founded Plurinational State on new bases. In this constitutional and legislative context, I have demonstrated the capacity of the Andean *ayllus* to exercise their autonomy in practice and to recognize in their institutions and cosmovision the legitimate language with which to enter into dialogue with the State and, on this basis, advance their proposals. The constitutionalization of Indigenous autonomies in Bolivia opened up a space in which to discuss gender ideologies and gender orders in Totora Marka. This enabled the Aymara women to build a gender agenda, focusing on the structural principles of their social organization and cosmovision in relation to *chachawarmi*, the redefinition of which was one of their main proposals. This process enabled them to connect with global discourse on gender rights and self-determination. The women thus took advantage of the momentum provided by the *marka's* collective action aimed at defending self-determination to confront male resistance, get their proposals incorporated into the final version of the statute of autonomy and, subsequently, gain access to spaces for political participation in areas that were previously closed to them.

To analyze the women's demands in the context of this *marka's* self-determination project, I took my starting point in a culturally based gender approach that views culture as an area of dispute in which symbols, principles and norms are constantly negotiated (Macleod, 2007, 2011; Hernández & Sierra, 2005). In analytical terms, I looked at the approaches of community feminism and decolonial feminism,[32] given the importance of gaining an appreciation of the complex realities of Totoreño women and the need to understand their worldviews and proposals, and the need to identify aspects of their subordination that are marked by class and ethnicity. Some clear results emerged from within the framework of these two feminist perspectives:

- The strong entwining of the specific rights of Indigenous women and the collective rights of this *marka* to self-determination.

- The dynamic nature and realignment of complementarity, which shows the possibilities that Totoreño women have to disrupt apparently immutable gender orders and their ability to move the boundaries of *chachawarmi* and redefine them from within to generate new directions.

- The complexity of the practices of complementarity which, while revealing the entwined oppressions that burden Indigenous women in particular, also results in the implementation of norms focused on *chachawarmi* in order to ensure a central role for women authorities and political participation with equality.

- The way in which Indigenous women view their problems and the identification of the gender oppressions they face due to the customs and cultural context in which they lead their lives and the contexts of structural exclusion, cyclical histories of indignities and economic marginalization.

The findings overall bear witness to the difficult nature of the process aimed at enforcing the constitutional right to convert to Indigenous autonomy and highlight the barriers and contradictions of the Bolivian Plurinational State, which alternated between a transformative momentum and counter-transformative processes, revealing a centralist and regulatory State that was failing to comply with its own mandate. Centralist interests were bolstered by local fragmentation due to disputes within the municipal and regional political arena. Confrontational scenarios thus arose that reflect a constant entwining of national and local dynamics and powers.

Within the context of these processes and disputes, the Law became the language of contention in its regulatory and emancipatory dimensions (Santos, 1998). In the regulatory context, the State hindered the process of autonomy by means of bureaucracy, regulations and time management. In its emancipatory dimension, it opened up a path by which to oppose and resist the regulations imposed by the dominant order, thus decentralizing power and establishing areas of rupture with the hegemonic process. To understand this emancipatory dimension, it is essential to consider that the discourse of the Plurinational State was the result of mobilization and agreement reached by various sectors fighting for historical demands.

In addition to these two dimensions of the Law, by highlighting the constitutional and legislative progress, the consequent strengthening of Indigenous identities and, at the same time, the government's contradictions and paradoxes, the case of Totora Marka clearly exemplifies the need to overcome binarisms in any analysis of the Plurinational State. In other words, the findings of this self-determination project, summarized in this chapter, invite us to contemplate the grey area of the political crisis that Bolivia has been going through since October 2019.

NOTES

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2 It has a population of 5,531 inhabitants who self-identify as Aymara (Population and Housing Census of Bolivia, 2012) and is located in the northern part of Oruro department, a region occupied by the *ayllus* of the Oruro altiplano. The *ayllus* are the basic institution and organizational unit of the Andean community (Coaguila, 2013).

3 One of the key outputs produced as part of this collaborative methodology was a video documentary entitled "*Our* thaki *(road) to self-government,"* which can be found on YouTube at the following link: https://bit.ly/3kuajdX

4 The findings presented below are the result of two stages of research: i) in the context of the Project "Women and Law in Latin America: Justice, Security and Legal Pluralism" (coordinated by the Christian Michelsen Institute of Bergen-CMI, and the Centre for Research and Higher Studies in Social Anthropology-CIESAS). From early 2010 to mid-2011, I accompanied the process of Totora Marka's conversion to Indigenous autonomy. I captured the findings of this first stage in the article "Caminemos juntos: complementariedad *chacha-warmi* y autonomías indígenas en Bolivia" (Arteaga, 2017), in which I set out the strategies that Totoreño women had developed in order to open up participatory spaces for themselves during the drafting of their statute of autonomy (written regulation required by the State to recognize self-governments); ii) From May 2014 to August 2015, I conducted the second stage of fieldwork for my PhD thesis in Anthropology at CIESAS, providing continuity to the previous study. I develop both stages of the research in this paper.

5 Gender ideologies or technologies are the positions women are assigned by the sex/gender system (Kelly, 1979, p. 57). They constitute disciplinary mechanisms founded in habit and custom that guide social practices and which can limit the possibilities of any new rights-based discourse aimed at challenging them (Sierra, 2007, 2010). On this basis, a system of social organization and historical construction known as the gender order is established in which all dimensions of human life converge and which systematically reproduces relations of power, hierarchy and subordination between men and women (Buquet, 2016; Jill Matthews, cited in Connell, 1987, pp. 98-99).

6 This connection was first made in 2009 by "Mujeres Creando", an anarcho-feminist movement formed in 1992, whose graffiti messages were later taken up by the government: "No decolonization without depatriarchalization". Decolonization focuses on addressing exclusion, marginalization, discrimination and racism as a legacy of the colonial era, the effects of which are manifested in postcolonial structures and in the present (Ströbele, 2013, p. 82). Depatriarchalization rescues the critique of a universalist, univocal and homogeneous view of "being a woman", which discursively colonizes the material and historical heterogeneities of women's lives in the Third World (Mohanty, 2008; Lugones, 2008). This implies an understanding that Indigenous and Afro-descendant women may experience patriarchy differently to white and *mestizo* women (Cumes, 2009).

7 Ethnic term, often used disparagingly, to refer to Indigenous women in the Bolivian highlands who continue to wear their traditional dress.

8 Reference to depatriarchalization is only made in subsequent legal instruments, which link it to the concept of gender equality, complementarity and the development of public policies based on a plurinational identity. See National Human Rights Action Plan (Official Gazette of the Plurinational State of Bolivia, 10 December 2008, No. 29851); National Plan for Equal Opportunities: Women Building the New Bolivia for Living Well (Ministry of Justice, 2008, No. 29850); "Avelino Siñani - Elizardo Pérez" Education Law (Official Gazette of the Plurinational State of Bolivia, 20 December 2010, No. 070); and Comprehensive Law to Guarantee Women a Life Free from Violence (Plurinational Legislative Assembly, 2013).

9 The *suyu* refers to the geographical region composed of several *markas*. In addition, as shown in Figure 1, the *marka* is a territorial unit made up of several *ayllus*, which group together several communities.

10 This represents the Aymara, Quechua and Uru *ayllus* and *urus* of the departments of Oruro, Potosí, Chuquisaca, La Paz and Cochabamba.

11 Organizationally, it answers to the Jacha Karangas Western Council of Ayllus and Markas.

12 One of the *Mallku* and *T'alla* couples from the council, and another *Mallku* and *T'alla* couple from the *marka* represent the *urinsaya parcialidad*; the other two represent the *aransaya parcialidad*.

13 These unions were created in the 1930s and were consolidated with the agrarian reform, between 1953 and 1954, imposed by the then Ministry of Peasant Affairs (Machicado, 2010, p. 11).

14 That is, the historical foundation that guides its constant institutional changes.

15 Rituals have an historical importance in the exercise of office. In line with Table 1, prior to the National Revolution of 1952, these ceremonies were carried out with a certain rigor. With unionization and the arrival of several religions to the *marka*, they lost their strength, being considered "pagan". With the reconstitution of the *ayllus*, they gradually began to take place once more, becoming increasingly widespread once CONAMAQ was organized. Since Morales took office, the rituals have become even more rigorous and public.

16 These festivities have been strengthened since 2007 when the municipality was declared the capital of the *tarqueada*. This is a tune played with a 46 to 64-centimetre flute called a *tarka*, made of wood, and accompanied by drums and bass drums.

17 Territories held by Indigenous Peoples through collective title.

18 See Arteaga (2018) for more on the topic of rituals and festivities.

19 Either because the husband has migrated to the city, or because his workload does not permit him to fulfill the responsibilities of the position.

20 Idelfonsa Choque, a grassroots woman, told me that being "*pampa chhuxuñaw*" meant that girls had to eat with their hands while boys could use spoons. This stems from a belief that when girls use spoons they cause the llamas to be born with deformed legs, to which she added that "it was a way of pushing us aside as *imillitas* (little girls)".

21 It is important to consider all aspects of the violations identified by the participants in the meeting. For example, it is a complex matter to interpret the silence of women in assemblies as clear evidence of their marginalization since the Totoreño women themselves note that it is in the domestic space where decisions on collective matters are actually made, with men subsequently being the spokespersons for what has been agreed at home.

22 Foucault points out that these technologies are understood as the set of institutions, procedures, calculations and tactics that make it possible to exercise power over the population.

23 For example, the territories had to obtain a certificate of ancestry granted by the Ministry of Autonomies, which meant proving that the current jurisdictions of the municipalities historically corresponded to the ancestral territoriality of the Indigenous peoples that inhabit them, whose existence is pre-colonial. This requirement shows that more value was placed on the legality of the process than on self-identification, as established in the international framework of Indigenous rights.

24 Notable arguments included that self-determination would result in a loss of the municipal budget, for which the State would charge taxes per family; that once MAS left government, the autonomous territories would be abandoned; that the *sarathaki-muyu* (rotation of positions) model would result in a "deferral of the highest positions." Among these arguments, a debate between communitarian democracy and representative democracy is notable, the latter appealing to young people because it coincides more with the liberal discourse they have on political participation, and which responds to their high urban social mobility and access to educational and work spaces, which differs from those of their parents.

25 Roseberry (2007, pp. 123-34) points out that the hegemonic process should be analyzed not only as consensus, coercion and domination from the State hegemonic bloc but also as the result of a struggle between the formation of the state and the popular forms of daily action that confront and actualize it. In this political process, a force field of controversy, struggle and debate is thus created in which the dominant and the subordinate are connected. It is through a "word-creating" and action-legitimizing discursive framework that States establish the rules and norms of domination.

26 The Framework Law on Autonomies (Plurinational Legislative Assembly, 2010) establishes three other types of self-determination depending on the territorial organization of the State: departmental, regional and municipal. The four autonomous regions had to draw up statutes to be approved in a referendum by the population.

27 A sample of the technologies of power imprinted on Indigenous autonomies can be seen in that the Framework Law of Autonomies (Plurinational Legislative Assembly, 2010) established a much more fluid process for municipalities that opted for the status of municipal autonomy, since they only had to draw up an organic charter.

28 Plurinational Constitutional Court: the body in charge of exercising control over all jurisdictions and all organs of public power. Control over the constitutionality of the Indigenous statutes of autonomy involves comparing the draft statutes approved by the deliberative body of the territories with the Constitution, the constitutional justice system pronouncing on such matters by means of a declaration.

29 A sign of this lack of political will is that, in January 2017, the Ministry of Autonomies was dissolved and became a Vice-Ministry under the portfolio of the Ministry of the Presidency. As a result of this change, the Vice-Ministry of Indigenous First Peoples Peasant Autonomies was downgraded and is now the General Directorate of Territorial Organization.

30 In the national context, women were elected as president of the *Coordinadora Nacional de Autonomías Indígenas* (National Coordinating Committee of Indigenous Autonomies) for two consecutive administrations. This body comprises representatives of the 11 municipalities that were at that time in the process of converting to Indigenous autonomy. The presence of Indigenous women was also key to the mobilizations for Indigenous autonomy, either leading the blockades or as representatives of their territories in the delegations that went to negotiate with the magistrates of the Supreme Electoral Court (TSE).

31 The only women's organization that has been a founding member of MAS since 1995, and a member of the *Confederación Sindical Única de Trabajadores Campesinos de Bolivia* (Bolivian Confederation of Peasant Workers — CSUTCB).

32 Albeit from different perspectives, both feminisms emphasize the imperative need to go beyond liberal discourse, which prioritizes individual rights and conceives of culture as "harmful to women" (Okin, 1999). It is therefore necessary to open up a debate on citizenship and cultural difference (Rosaldo, 2000, Kymlicka, 1996, in Sierra, 2006) without falling into its relativism.

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16

Autonomy as an Assertive Practice and as a Defensive Strategy: Indigenous Shifts in Political Meanings in Response to Extreme Violence in Mexico

Mariana Mora

Introduction

This chapter reflects on the ways that the meanings of Indigenous autonomy in Mexico shifted from the peak of the multicultural era (1990-2006) to a period marked by the undeclared war on organised crime (2006-2018). It focuses primarily in those states that have a significant presence of organized Indigenous peoples, such as Guerrero and Michoacán, and that experience conditions of extreme violence, as well as de facto criminalization of its populations. A closer look into the different expressions of autonomy during these two periods demonstrates how the practice of autonomy has shifted from a series of actions aimed at questioning the government and demanding profound transformations, to measures intended to protect the collective from dispossession and extreme physical violence carried out by both legal and illegal actors – including drug-trafficking groups and extractivist companies.

What new political meanings emerge from this shift? And how do subsequent actions by organized Indigenous communities question the limits to the collective rights to autonomy and self-determination imposed by the State? This chapter responds to these questions through examples from difference local scenarios, including: the Nahua community of Santa María Ostula and the Purépecha community of Cherán in the state of Michoacán, the Cho'l ejido of Tila in the state of Chiapas, the Triqui town of San Juan Copala in Oaxaca, communities belonging to the Regional Coordinator of Community Authorities (CRAC) in Guerrero, as well as political discourse of Nahua, Yoreme, Coca and Comca'ac women who are part of the Indigenous Government Council (CIG) – a self-governing space enacted by Indigenous communities and organizations of the National Indigenous Congress (CNI). While each case is rooted in a specific historical context, and there are few explicit coordinated efforts between peoples or organizations, most are inserted within complex networks that have as a main point of reference the experiences of the autonomous Zapatista municipalities in Chiapas, and their focus on de facto autonomy (at the margins of State institutions and juridical frameworks). At the same time, almost all of these communities and organizations form part, or have been part, of the CNI since its foundation in 1996. The one exception is San Juan Copala of Oaxaca. For various reasons, the town remained politically isolated from the Zapatista movement, though there was a time when it was heavily influenced by the Popular Assembly of Oaxacan Peoples (APPO), which took place in June 2006 as a response to the repressive measures made by the State against the dissident teachers' group, Section 22, and was made up by more than 300 Indigenous, *mestizo* and popular organizations and collectives who took up the Zapatista Indigenous philosophical idea of "mandar obedeciendo," rule by obeying (Poole, 2009).

This chapter provides critical insight into the shifts in the meaning of autonomy by this wide range of local cases that have been influenced by this particular broader Indigenous political genealogy and that respond to changing historical contexts.

The chapter is divided into four sections. The first describes the transition between the period when multiculturalism was at its peak and the current conditions of extreme violence. This context is necessary to enter into the focus of the second section, which examines Indigenous communities and organizations' initiatives that exercise their right to autonomy primarily as a mechanism of protection and defence. The third section focuses on the

changes in political discourse that are a result of distinct struggles for autonomy and self-determination in regions most affected by multiple forms of violence. The political discourses from the women of the CIG are the source of this analysis. The focus lies mostly in highlighting the ways in which the exercise of self-government and practices that define the way in which everyday politics operate against the norm that CIG members classify as a "war on life." The fourth section describes the actions taken by the assembly of the Indigenous Ch'ol ejido in Tila, in the northern region of the state of Chiapas, as part of a territorial dispute case that reached the National Supreme Court of Justice in 2010. The *ejido* (collective landholding system) assembly ruled its own "sentence" in 2015 as part of its exercise in self-determination, rather than wait for the court's ruling. The last section provides final reflections on the implications of these shifts during the current administration of Andrés Manuel López Obrador (2018–2024). Together, the elements analysed in this chapter provide a glimpse into the flexibility of the concept of autonomy and its adaptability in light of changing historical conditions, while at the same time the practices of autonomy contribute to the modification of these same conditions.

From the Multicultural Boom to Illegal Dispossession Policies

The year 1996 was a culmination of the years of tremendous efforts by Indigenous organizations and communities for the recognition of their collective rights as peoples. This year also propelled their collective energy in different directions, towards: a shift in social relations with the Mexican State; strengthening autonomous organizational processes (including supporting the Zapatista communities' autonomous initiatives); and the forging of new types of dialogues and possible alliances with *mestizos* in the country who were sympathetic to the cause (the absence at the time was and continues to be is a close and engaged dialogue with Afro-Mexican populations). That same year, the Zapatista National Liberation Army (EZLN) and the federal government signed the first round of the peace accords of San Andrés Sakamch'en de los Pobres focused on Indigenous rights and culture, which set the stage to establish a new social pact between Indigenous peoples and the Mexican State (Hernández Navarro y Vera, 1998). That year was also when several Indigenous peoples and organizations founded CNI – a unifying

space for many Indigenous organizations and communities in the country – to strengthen their political struggles and decision-making capacities.[1] This is also when Tsotsil, Tseltal, Tojolabal and Ch´ol communities, as civilian support bases to the rebel army, established new population centers in recovered land in the valleys of the Lacandon jungle and created their own government bodies and commissions as part of their autonomous municipalities.[2] Although academic research tends to highlight 1989 – when the Mexican State signed Convention 169 of the International Labour Organisation (ILO) – as the year when multiculturalism began in the country, 1996 is when key grassroots proposals for profound transformation converged, as reflected through numerous academic publications (Baronnet et al., 2011; Blackwell, 2012; Burguete Cal y Mayor, 2000; Cerda, 2011; Forbis, 2006; Mattiace et al., 2002; Marcos, 2011). At that moment, few would have imagined the scenarios of violence coupled with an increase in land dispossessions promoted by both legal and illegal entities, including organized criminal groups, that came to exist in Mexico for over a decade and a half.

At the time, one of main political debates centered on Indigenous autonomy's relationship to the State, specifically on whether communities and organizations should focus their energy on the implementation of state and federal legal frameworks or on implementing autonomy in a semi-autonomous fashion and at the margins of State institutions. While few actors took decisive and fixed positions, some organizations gravitated more towards the first option, under the argument that the State needed to assume its obligations and grant recognition as part of new juridical frameworks (Gómez, 2004; Regino Montes, 1998); others gravitated more towards the second option. They emphasized that to demand State recognition implied granting more power to the same oppressive and exploitative structures which affected communities and organizations (Reyes & Kaufman, 2011; Speed, 2008).[3]

At the more extreme end of this second position, we find more than 38 autonomous municipalities, which at the time were founded by Zapatista communities within the rebel army's territory, regardless of whether the Mexican State transformed the contents of the San Andrés Accords into constitutional reforms, something that was achieved, in a significantly diluted manner, in 2001. The related autonomous governing bodies, as well as their political-administrative commissions (education, agriculture, land reform, health care, justice, among others) operate outside official institutions, reject social programs and any source of State funding, whether municipal,

state or federal. In my book, *Kuxlejal Politics, Indigenous Autonomy, Race and Decolonizing Research in Zapatista Communities* (2017), I describe how the everyday practices of autonomy in the Zapatista municipalities led to a readjustment in relations with the State and to the *kaxlan* (local term used to refer to outsiders who are non-Indigenous peoples). The implementation of Indigenous autonomy at the margins of the State forced the government to respond under terms that were not established by its own institutions or authorities. I describe how, in the case of the implementation of justice, local people, both Indigenous and *mestizo*, had the option of resorting to an autonomous justice system or to its official counterparts, which generated a kind of competition over which institution could better resolve conflicts. At the same time, the justice commission sought to monitor the rights of people who resorted to official institutions such as the Public Prosecutor's Office, in order to avoid situations of extortion or threats. This led to a readjustment in the practices of the official institutions. In this sense, the practice of autonomy during the multicultural period, even in cases where autonomous bodies existed at the margins of the State, as in the case of autonomous Zapatista governments, was sustained by purposeful impulses, in other words by acting on the offensive.

During this period, Indigenous organizations and communities questioned the government's neoliberal policies, such as the significant cuts to farming subsidies, which began to skyrocket during the beginning of the Salinas administration (1988) and ended in 1992 with the constitutional reform to Article 27, that opened *ejido* (communal) lands to privatization. Several Indigenous communities and organizations argued that said privatizations would result in new cycles of land dispossessions (Hernández Navarro, 1992). Given that the State's multicultural policies began during the same period in which neoliberal policies intensified, many questioned whether there were possible ambiguous and uncomfortable connections between the two (Hernández Castillo et al., 2004; Speed, 2008; Maldonado Goti, 2011; Newdick, 2005) and whether this could be defined under the concept of neoliberal multiculturalism (Hale, 2004).

As critical and committed academics, we were so focused on analyzing the relationship between these two State policies that we failed to notice a third pillar of the Mexican State that similarly underwent reforms: its security apparatus (including the role of public security forces, armed forces and the justice system). Shortly after the Zapatista uprising, during the Zedillo

administration (1994–2000) and followed by the Fox administration (2000-2006), the three branches of government (executive, legislative and judicial) restructured the entire security apparatus in light of the presence of organized crime in the country (Lima Malvido, 2012).[4] In a recent publication, we argued that these reforms laid the foundation for several expressions of de facto criminalization towards populations living in extreme poverty, both in urban centers as well as in Indigenous and rural areas (Mora & García Leyva, 2020). The strengthening of the security apparatus has had critical repercussions for Indigenous peoples and those who inhabit Indigenous regions, as these reforms produce the criminal subject categories that it similarly targets. A clear demonstration of this came at the end of the Fox administration. In May 2006, the Federal Preventive Police (PFP) deployed a brutal repressive operation against Indigenous Nahua *ejido* landowners from the town of Atenco in the state of Mexico, who were struggling against the construction of an international airport in their territory and who sympathized with the Zapatista communities. Shortly after, in the state of Oaxaca, the Popular Assembly of Oaxacan Peoples (APPO), which promoted autonomous decision-making processes, endured brutal repressive actions by paramilitary groups known as the "caravans of death," as well as from the military and federal police. This included forced disappearances, murders, acts of torture and arbitrary arrests (Rénique & Poole 2008).

At the end of that year, Felipe Calderón took power and began his presidential mandate (2006-2012) with an undeclared war on organized crime that included the armed forces and marines (institutions which took over most public security tasks) as the main protagonists. The result was a steep rise in homicide rates, as well as grave human rights violations, particularly in regions of extreme socioeconomic marginalization, including in states with a high percentage of Indigenous population such as Guerrero and Michoacán. This State priority continued, with variations, under the Peña Nieto administration (2012-2018). Although quantitative data runs the risk of reducing human lives to mere numbers, the following statistics serve to highlight the context of de facto warfare at the time. According to official data, more than 275,000 people were murdered in Mexico between 2006 and 2019,[5] over 40,000 people were victims of forced disappearance and an average of seven women a day were victims of femicide.[6] It is unacceptable that, compared to other Latin American countries such as Brazil and Colombia, in Mexico there continues to be no data that identifies the ethnic and racial make-up of victims; there

are no statistics for Indigenous, Afro-Mexican or *mestizo* populations. While there is no way of knowing how many of these victims were Indigenous peoples, we can assert that states with high Indigenous populations, such as Guerrero and Michoacán, experienced some of the highest rates of extreme violence during both of those administrations. Guerrero, for example, had one of the highest homicide rates in the entire country; while official data from 2007 registered 766 cases, this number increased to 2367 in 2018.[7] At the same time, the state also concentrated the highest number of forced disappearances, with over 544 cases reported between 2014 and 2018.[8]

While Indigenous communities and organizations initially centered their critiques on State neoliberal policies, particularly the privatization of communal land, these expanded during that period to focus on extractivist policies, promoted and backed by a series of judicial reforms, including the Mining Law, the Hydrocarbons Law and the Natural Waters Law, among others. For example, the collective *Defensa de los Territorios* (Collective in Defense of Territory) highlights that at the end of 2018, Oaxaca had 322 mining concessions, most of these located in Indigenous regions.[9] The result was the increase in new waves of land dispossession which Indigenous organizations had been fearing and denouncing for more than a quarter of a century (Gómez Rivera, 2018).

Both processes (the increase in acts of extreme physical violence and in land dispossession pushed forth by extractivist policies) took place during the same period. However, several social actors, including human rights organizations and other civil society groups, tended to engage in separate struggles, with the activism against massive development projects largely divorced from that of victims' families struggles for justice against forced disappearances, assassinations and femicide. As we shall see in the next section, it was not until 2018, during the Indigenous Government Council's journey through several of the country's regions, that Indigenous authorities generated nuanced political discourses that connected both expressions of violence as part of the same "war on life"; they point out that both the models of economic development in place as well as illicit economies extract the life force of entire Indigenous populations and their territories.

In this context marked by territorial dispossessions and forms of extreme violence, the practice of autonomy and self-determination of Indigenous peoples transitions to actions focused on the defence and protection of life. In order to place our gaze on these transformations, we will now turn our

focus to the struggle for autonomy in the Triqui area of Oaxaca and in Nahua communities in the state of Michoacán.

Autonomy as a Mechanism of Defence and Protection

Given its contested nature, the right to Indigenous autonomy has been subjected not only to juridical disputes, but also to violent actions by opposing political actors. There are too many examples of repression against communities and organizations exercising their rights to autonomy and self-determination, including counterinsurgency strategies designed to contain, divide and limit the scope of these rights. For example, during the multicultural era, the *Máscara Roja* paramilitary group massacred 45 Tsotsil people, most of whom were women and minors, in the village of Acteal in the Chiapas highlands a few days before Christmas in 1997 (Hernández, 1998). The end of that decade also witnessed the assassinations, disappearances and forced displacement of members of Ch'ol and Tseltal communities in the Northern Zone of the state at the hands of the *Paz y Justicia* paramilitary group, which at the time was backed the local congressman of the PRI party, Samuel Sánchez Sánchez (Centro de Derechos Humanos Fray Bartolomé de las Casas, 1998). The most widely circulated representations tend to construe these acts of extreme violence as local phenomena, especially when members of paramilitary groups come from the same Indigenous communities as the victims. This often leads the mainstream media and a sector of academic scholars to claim that violence is between communities or led by *mestizo* leaders that manipulate Indigenous communities (Aguilar Camín, 2007), hence erasing from the equation the role of the State. These cases are a reminder that the exercise of autonomy always comes with measures of self-defence and protection against multi-level alliances between actors that wish to impede or contain it. Nevertheless, in this section I wish to highlight that since 2006, with the incursion of new players, mainly organized crime and extractivist companies, these measures of self-defence and protection have intensified as part of the exercise of autonomy.

In Mexico, this transition had, as a first anchor point, a series of violent events that began in 2007 in the Indigenous Triqui village of San Juan Copala in the state of Oaxaca. That year, Copala inhabitants released a public statement in which they declared themselves an autonomous municipality. The

statement was the first of its kind outside of Zapatista territory and responded to the attempts to put into practice rights to self-determination, through the use of *usos y costumbres* (customary law) and the principles of direct democracy such as the Zapatista concept of *mandar obedeciendo* (lead by obeying), which had been taken up by the APPO the previous year. The public statement attracted the attention and support from organizations and collectives from across the country. Natalia de Marinis in her book, *Desplazadas por la guerra, Estado, género y violencia en la región Triqui* (2020), describes how she decided to do field work for her master's degree in the village in order to document the process of autonomy. However, shortly after, between the end of 2009 and the end of 2010, a wave of violent events in the region culminated in a massacre of more than 30 people. Survivors and families who had supported the initiative for autonomy were forced to relocate from the village to the state capital, Mexico City, and other places. De Marinis explains how the initial push for autonomy was replaced by the creation of complex networks between displaced inhabitants of San Juan Copala that could provide alerts of possible incursions by violent actors in order to avoid more assassinations while also serving as protection mechanisms. Displaced groups, particularly Triqui women, set up camp in the main square of the city of Oaxaca to denounce impunity for wrongdoers and demand justice. The political focus shifted to prioritize survival strategies.

In contrast to the arguments that suggest that the violence in the Triqui region is the result of inter-community battles, de Marinis details several ways in which the State plays a key role. This includes accounts of the local reconfiguration of the State through the reactivation of PRI leadership networks, as well as a revamped articulation of local interests with State and federal ones. The incursion of new players in an interconnected web of political and economic interests created extremely adverse conditions for autonomy projects. Similar situations occurred in other regions of the country, particularly Michoacán and Guerrero, which had their complexities. It is evident in both these states that the introduction of organized crime and the increase in extractivist projects added even more complexity to this framework.

To provide an example, I now turn to the struggle over the recuperation of ancestral territories in 2009 by the Nahua community of Santa María Ostula in the state of Michoacán. Similarly to San Juan Copala, when Ostula declared that it would revert land dispossession through the establishment of its own governing body, it received the backing of several Indigenous and *mestizo*

organizations and collectives, especially by the network of Indigenous organizations that make up the CNI. On 14 June 2009, during a regional meeting for the Central Pacific region of the CNI, Purépecha, Wixaritari, Rarámuri, Hñahñü, Binnizá, Coca, Tsetal, Na'saavi as well as other Nahua communities backed Ostula's decision by way of their declaration, "Manifiesto por el derecho a la autodefensa" (Manifesto for the right to self-defence). The joint statement argued that as Indigenous peoples:

> We have exhausted all legal and judicial venues for the defence and recognition of our lands, territories. We have only received negative responses, deferrals, threats and repression from the State, as in the case of this community of Santa María Ostula. The road ahead implies the continuation of exercising our historic right to autonomy and self-determination. We insist that the Earth, that is our mother, is not for sale: we protect it with our life.[10]

The initial fight was against local *mestizo* leaders of La Pacita area, who decades before had confiscated lands recognized in the colonial Primary Titles of Ostula.[11] In 2009, Nahua inhabitants were able to recover most of their ancestral lands, more than 13,000 hectares that extend from the Pacific coast area to the highlands (Hernández Navarro, 2009). In an event carried out in Ostula to celebrate the anniversary of the recovery, one community member remembered that particular day:

> I arrived here in a caravan. There is an entrance through El Zalate, where the caravan went through, we were able to start entering. We were cut off by a black car with several people carrying high caliber weapons. They called out to us, "What do you want, damn dirty, foul, smelly Indians?" "Go back where you came from, or we will beat you up." I was sitting in the passenger seat … They started shooting at us. I heard several shots in front of me. I realized my friend was bleeding. They shot him. It was really sad. The missing and the dead … they gave their lives for the mothers and the children, and for the ground we are standing on.[12]

Once established in a new village, the first community actions were to organize a collective vigil system and police force to protect communal lands, both under the supervision of the community assembly. According to studies on Indigenous autonomous practices in the region, this General Government Assembly names and supervises other communal responsibilities, including the role of land, civilian and religious authorities. The decision to establish their own community police force as part of the exercise of autonomy resonates with other Indigenous communities and organizations, including the Pur´epecha community of Cherán, also in Michoacán, that in 2011 expelled organized criminal groups and corrupted members of political parties and was effectively able to keep them out of their territory through a form of self-siege that the community established through barricades and surveillance mechanisms set in place around bonfires placed in strategic corners of the village (Aragón, 2019).

Such actions also resonate with much longer autonomous processes, such as that of the Regional Coordinator of Indigenous Authorities (CRAC) and its Communal Police (PC), an organization made up by Me'phaa, Na Savi, Nahua and *mestizo* communities of the Guerrero Mountain that emerged in 1996 as part of the struggle against violence in the region and to implement its own justice system (Sierra, 2013). While the CRAC was originally created to tackle violence led by local authorities, party interests and other actors linked to local government and state government interests, in more recent years its activities of self-defence and justice have expanded to include actions against local drug-trafficking networks, which undoubtedly increased the risks of its membership. In addition, between 2013 and 2014, when so-called self-defence *mestizo*-led groups began to carry out their own self-defense actions throughout different regions of the country, government representatives of Guerrero took measures to criminalize the CRAC's administration of justice. Although their collective rights for self-determination as Indigenous peoples is protected by Law 701 of the state of Guerrero, government officials detained CRAC members, including almost a dozen of its leaders who were accused of crimes such as kidnapping and possession of weapons (Ocampo, 2013).

In the case of Ostula, the declaration of autonomy received an immediate repressive response, which began on the same day of recovery, as evidenced by the testimony above. Shortly thereafter, conditions became more complex, along with those actors participating in acts of violence. According to research conducted by Salvador Maldonado, in Ostula various interests

converged, including not only local interests but also those related to economic development as well as those of mining and tourism companies. This is partially due to its location on the coast. In this sense, Maldonado describes that, "The territorial deployment of security forces on behalf of these groups is reflected in disputes over spatial control for mining production, logging, animal and vegetation trafficking, etc." (2017). At the same time, since 2013, organized crime uses the region as a trafficking route, mostly to transport illicit merchandise to the state's main port, Lázaro Cárdenas, which is located a little over 100km away.

On several occasions, community members denounced that these actors are backed and protected by the armed forces. In 2010, a year after recovering its ancestral lands, 12 community members were killed and four were "*levantados*," a phrase used to refer to disappeared persons. In each of these cases, community members accused a group of heavily-armed local *mestizos*, backed by the armed forces, as those responsible (Camacho, 2010). In response, Ostula community members established road blockades to monitor the presence of these actors, as well as surveillance spots which were then violently targeted by State security forces.[13]

The complexity of the actors participating whether in an active or passive manner makes it likely for land dispossession, murders, and forced disappearances to replicate in other regions of the country, each with its own nuances and historical frameworks. Throughout the first years of Zapatista autonomous municipalities to the end of the 1990s, the aspects of autonomy related to self-protection strategies were mainly against the so-called "Guardias Blancas," private security forces of the local elite of *mestizo* landowner families, many of which were colluding with political parties or political authorities. However, starting in 2006, there was a diversification of players who were actively pushing land dispossession and spreading conditions of terror throughout different regions, which shifted the sense of autonomy towards defence, shelter and protection of the traditional lifestyle linked to a territory.

Patrick Wolfe, an Australian scholar, argued that settler states, that is to say, nation-states that emerge from the conquering of Indigenous peoples and the enslavement of people from the African continent, and that continue to be sustained by these colonial structures, maintain an eliminatory logic (2006). As a whole, both calculated and directed expressions, including genocide, land dispossessions as well as passive and seemingly non-violent ones, including integration policies based on "melting pot" ideologies, activate this

eliminatory logic directed towards Indigenous peoples. Depending on historical conditions, some of these elements take on more relevant roles than others. In this sense, we could say that during the multicultural period, this logic of elimination was expressed mainly in policies of State-recognition that did not alter the privileged location of *mestizo* populations within nation-state building and without dismantling the dominating neoliberal development model. However, in a context marked by the active participation of organised crime and extractivist companies, and by the militarization of everyday life, the balance is tipped towards actions that are openly eliminatory. The responses enacted by many organizations and communities, as seen in the case of Ostula, have been to protect and defend themselves, which at the same time modifies the meanings posited to the right of autonomy. Within these transitions, which political discourses emerge and in what ways do Indigenous authorities name current forms of violence? The answers to these questions are the focus of the following section.

Against the Permanence of Colonial Structures in the Present

> They do not care about polluting the water which runs beneath the Earth and becomes life for our peoples. They spread death with the wells, releasing vented gas and toxic spills due to damaged pipes. They pollute our communities' rivers and springs, which are our source of water. They dispossess and destroy the land spreading death, destruction, exploitation, contempt and repression against us. The capitalists want to make us believe that our territory is the thousands of oil wells, dozens of mining concessions, the murdered women, all of those who are missing … They spread fear, disappear our people, while the drug-trafficking violence seems more similar to the actions of mining companies, those that extract hydrocarbons through fracking, those that traffic and profit from our migrant brothers and sisters who cross through these lands, those that kill women just for being women, and those that ill-advisedly govern for the boss with the money. (National Indigenous Congress, 2017)

María de Jesús Patricio, popularly known as Marichuy, a Nahua Indigenous woman who is a traditional medicine healer and member of CNI, gave this speech in Totonacapan, Veracruz, during a tour through several locations in the country, which intended to gather enough signatures to assure her registration as an independent candidate for the 2018 presidential elections.[14] Between the end of 2017 and the beginning of 2018, Marichuy, along with other members of the Indigenous Government Council (CIG), a council made up by representatives, a man a woman, from each of the 90 Indigenous regions linked to the CNI, visited several cities, towns and communities throughout the country to listen to the needs and life conditions of local populations, and to learn about their struggles. In each location, these words were renewed and returned to other communities through speeches that were the result of dialogues with those previously visited communities and collectives. In this sense, the CIG's tour was one propelled by two overarching goals – achieving Marichuy's registration as an independent candidate (which was not accomplished) and as a practice of multiple listening, that is to say a back-and-forth of exchanges that in total generated novel grassroots narratives against violent conditions. This section begins with the words of Marichuy, as they reflect the type of political statements and analysis that resulted in this collective practice.

In order to analysze these narratives and reflect on their political implications, I reviewed all the transcripts and audio recordings of the political events of the CIG's tour between 2017 and 2018 that were available on the CNI's website, including the one stated in Totonacapan. I also reviewed the life stories of CIG members published in the multimedia project, *Flores en el desierto*, of the journalistic collective *Desinformémonos*, which is under the coordination of writer Gloria Muñoz. As for the speech that begins this section, I would like to start by stating that while Marichuy is referencing the specific conditions of that region of Veracruz, she offers a mapping of the kind of interconnected violence found in several Indigenous communities in the country. Thus, her words are a relevant starting point to understand how she, along other CIG members, name different forms of structural violence (land dispossession, racism, environmental destruction) as well as acts of physical violence (disappearances, murders, femicide) as part of what is called a "war on life." Both forms of dispossession act in an interconnected way against Indigenous territories and the bodies of those people inhabiting said territories, and have now spread to *mestizo* regions of the country.

While Marichuy's speech markedly focused on capitalist exploitation, she defines these relations as part of the forced occupation of Indigenous territories, along with the systematic devaluation of human and non-human life. In sum, these are tangible expressions of attempts to eliminate Indigenous peoples, given that they direct populations to the brink of social and biological death. At the same time, such expressions of territorial occupation are repeated and intensified through multiple acts of extreme violence, such as cases of femicide, murder and forced disappearances, within a narco-state economy. In the way that Marichuy weaves capital interests with the continuation of colonial forces, including patriarchal and racist structures that prevail in society, it would be erroneous to think that she is referring exclusively to class exploitation.

This "war on life" is also described and developed by other CIG women members when they refer to their experiences and to the struggles of their communities. As we will see below, the elements that these women highlight and repeat in their testimonies include the ways in which their peoples' territories are subject to threats of new cycles of land dispossession. At the same time, they highlight the multiple effects of these dispossessions including labour exploitation, forced displacement, assassinations, political repression and systematic acts that treat the communities as if they were strangers or foreigners in their own land. The combination weakens collective resilience to survive and creates conditions for a slow death pierced by extreme acts of violence.

In an interview by a Spanish radio station, Bettina Cruz of the Binnizá community, from the Isthmus of Tehuantepec, and leader of the Assembly of Indigenous Peoples of the Isthmus of Tehuantepec in Defence of Land and Territory (APIITDTT), refers to co-investments between transnational Spanish companies with the Mexican State for wind-energy projects in the Isthmus, calling it a form of "new colonization" (Ellos y Nosotros Show, April 26, 2018). In order to explain why these projects are defined as contemporary colonialism, Bettina explains that these were imposed by the Mexican State under the argument that energy sources are a common good that reflects on the "interests of the nation." Her criticism is that the government is essentially claiming that "the nation" does not include Indigenous peoples or their territories, which are impacted by these kinds of projects; she denounces that the affected peoples were not even consulted and that the benefits of the electric power generated barely reaches these communities. However,

the impacts experienced by the Binnizá inhabitants of the Isthmus include alterations to the landscape and farming activities. The vibration emanating from wind plants drive animals away and limit the growth of vegetation, and locals detect significant changes in the water and soil nutrients. These wind-energy projects do not represent the first megadevelopment project in the region, but are rather part of a long chain stemming back into the initial decades of conquest and that has included salt, gold, iron and silver mines (Desinformémonos 2018a).

From her region in the northern state of Sonora, Myrna Valencia of the Yoreme people refers to the destruction of the river that crosses the community's territory, the Mayo River, by agribusiness as that which has transformed "water that is life, into death." This is because the river as well as subterranean water sources have become polluted. As she describes the impacts this has on their territory, Myrna compares the project of "death" of private interests with the region's drug-trafficking economy that has had a particular impact on the community's youth. To emphasize her point, she describes young people under the influence of narcotics. This type of aggravated impacts brought about by the combination of extractivist projects with that of drug-trafficking activities is similarly described by the Comca'ac people's CIG member, Gabriela Molina Moreno, of the Desemboque de los Seris community, also in Sonora, who details how her people have been equally threatened by mining companies and organized crime. The presence of drug-trafficking organizations has served as a justification for the semi-permanent settlement of marine forces in Tiburón island (a sacred island of the Comca'ac, as it is considered to be the cradle of origin of its people). This third actor plays the part of a multidimensional forced occupation that, "instead of protecting our territory, defends organized crime" (Desinforménonos, 2018b.).

In speeches and interviews, other CIG members claim that the combination of these actions activates a "war on life," a war, that may have begun as part of the sociobiological erasure of Indigenous peoples and Afro-descendant peoples, but has since then expanded to include the transformation into waste of the life energy of other sectors of society. The widespread presence of security forces in Indigenous territories, the occupation of their lands by actors positioned outside of the collective interests, the imposition of external forms of government and modes of political participation, along with the extraction of people's life force in order to maintain the privileges of other sectors of society – these make up the historical colonial ground on which current forms

of extreme and structural violence find anchor. The shift towards conditions of extreme violence that threaten Indigenous and Afro-descendant communities, together with land dispossession and social geographical policies, is not something unique to Mexico. It is part of the trend towards the regression of multicultural policies, as well as the reactivation of explicit racism and land dispossession that several studies have documented across the continent (Hooker, 2020). In this sense, what we witness in Mexico represents an intensification of what Ayuuk scholar Yásnaya Elena Aguilar Gil refers to as the illegitimate pact of the Mexican State. Aguilar Gil states that the origin of the Mexican nation-state is illegitimate as Indigenous peoples were never asked whether or not they wanted to be part of Mexico (Aguilar Gil, 2020), which thus excludes Indigenous peoples from the social pact which established it.

If the struggle for autonomy and self-determination generates these types of political narratives, to which political horizon do they point? If we are to take the speech in Totonacapan, Veracruz, as a reference point, self-government continues to be at the center of such proposals. Marichuy insists that, when faced with land dispossession and projects that spread death, the responses lie in:

> Our lands are the Indigenous languages, the ancestral cultures, our resistance, community organizing which remind us to not sell out, to not give up, to not forget what we have inherited from our ancestors in order to protect, that invites us to coordinate and govern ourselves by practicing what we decide as a collective. (National Indigenous Congress, 2017)

Marichuy brings back the practice of autonomy as an axis for political action. She and other CIG members claim that these actions are created and nourished through collective care-work, which ensures material and sociospiritual conditions for the reproduction of social life as peoples (Mora 2020). It is important to point out that many women who are members of CIG are midwives or traditional healers, or come from a matriarchal lineage of *curanderas* (healers). Others participate in their communities by growing medicinal plants, while others, such as Marichuy, are traditional healers themselves. For her part, Gabriela Molina went to culinary school in Hermosillo, the capital of Sonora state, where she did research into traditional ingredients that generations of members of her community have used to strengthen and heal the

body of ailments, including diabetes (which has exponentially increased in the region). Osbelia, a Nahua woman of the village of Tepoztlán in Morelos state, trained as a teacher during the 1950s, when Indigenous women's access to education was rare. Myrna Valencia, also a teacher, teaches at a secondary school in her town. Lucero Alicia, Kumiaia of the state of Baja California Sur, followed the footsteps of her mother and other women in her community in working not only as a teacher but also as a spiritual guide and *curandera*.

In her testimony included in *Flores en el desierto*, Myrna states that these professions have an influence in how women who are members of CIG take on positions of authority within their communities and provide new meanings to the practices of self-government and autonomy, as they understand that their obligations are part of their everyday life, rather than seeing these leadership positions as being separate from the everyday. She describes the figure of authority as "being a guardian of life, [which is based on] protecting life and defending the people as a collective" (Desinformémonos, 2018c). The everyday practices through which they practice self-determination nourishes the conditions of the collective wellbeing as part of socioenvironmental relations.

Tila Before the Supreme Court: Fighting for Ethno-Racial Justice and against Colonial Legacies

Until this point in the chapter, I have referred to changes in the meanings posited for Indigenous autonomy as responses to the intensification of multiple expressions of dispossession carried forth by "legal" and "illegal" actors. I have also paused to focus on the type of political discourse which emerges from these experiences, specifically how women CIG members interpret their peoples' experiences, elaborate narratives through their interactions with people from different regions of the country and map out novel political horizons for the practice of autonomy. In an earlier section, I referred to the practice of de facto autonomy that exists at the margin of formal judicial recognition. In this section, I will reflect on how particular de facto autonomy practices question the juridical and political limits imposed by State institutions.

The focus will be on the land dispute case of the Indigenous *ejido* of Tila of the Ch'ol people, located in the northern region of the state of Chiapas, which

reached the Supreme Court in 2010. The Court debated the case in 2013 but failed to reach a verdict at the time. It was not until 2018 that the judges issued a tepid sentence, even though the *ejido*'s assembly had essentially resolved the dispute three years prior, at the end of 2015. In this section, I reflect upon this case, given that I participated in the elaboration of an expert witness report, in collaboration with Rodrigo Gutiérrez, researcher of the Institute of Judicial Investigation of Mexico's National Autonomous University (UNAM), upon the direct request by the Court.

I will provide a brief description of the case in order to later reflect on the role of each of the players involved. The *ejido* of Tila is largely inhabited by Indigenous Ch'ol and Tseltal people and is located in the northern region of Chiapas, within the municipality of the same name. At the same time, within the Tila *ejido* lies the town of Tila, an urban center that is the political-administrative center of the region and that houses public services and the Catholic religious image of the Lord of Tila, a black Christ image that is venerated by Indigenous and *mestizo* people throughout the Mexican southeast. The Tila *ejido* was founded in 1934, after a presidential decree expropriated 5,400 hectares that had previously belonged to Ladino and German estate-owning families. Through interviews conducted as part of the expert witness report, we described how the *ejido* was essentially the only available agrarian legal option for the Ch'ol and Tseltal population in the post-revolutionary period to recover patchworks of their territory. For that reason, the *ejido* symbolises a triumph against the local *kaxlan* elite (a local term for non-Indigenous outsiders) and against long-standing cycles of dispossession and repression (Mora, 2020).

The land dispute began in 1971, during the first attempt to expropriate 130 hectares of the center of the *ejido*, which includes more than half of the town of Tila. This first attempt was an indirect result of external circumstances. Years back, an outbreak of disease caused the municipal center, which at the time was based in the nearby town of Petalcingo, to temporarily relocate to the town of Tila. However, in 1971 a *mestizo* lawyer aligned with local public officials attempted to make the change permanent. The lawyer altered the *ejido*'s maps in order to justify that those 130 hectares had never belonged to the *ejido*. The *ejido* authorities initiated an *amparo*, or protective action, against this alteration. While waiting for a resolution, a parallel legal battle began as the Chiapas state's legislative branch approved a decree to separate the 130 hectares from *ejido* lands. Members of the *ejido* responded by way of another

amparo, which was conceded in 2009. However, the judge at the time declared that land restitution of those 130 hectares was physically impossible, hence proposing an alternate implementation of the ruling in the form of substitute compliance, which in this case meant economic compensation or granting of equivalent land. Finally, in 2010, the case reached the Supreme Court.

Between 2010 and 2018, when the Court finally issued the ruling, a reconfiguration of actors within the legal field took place, including human rights organizations, the judges themselves and us, as anthropologists and academics. In order to analyze the case of Tila *ejido*, the Supreme Court requested a total of four surveys, two of which were focused on sociocultural issues. This was one of the few occasions when the highest court in the country agreed to review a non-legal expert opinion for a case. At the same time, it is important to recognize that the case of Tila was one of the first cases involving Indigenous collective rights that at the time had reached the highest institution of justice. Other cases at the time included the 2013 case of the Yaqui tribe's fight against an aqueduct in Sonora state; the recognition of political participation rights for the Purépecha community in Cherán in 2014; and the recognition of the collective rights of the Me'phaa people in San Miguel el Progreso in Guerrero state, against extractivist policies in 2016. In this sense, at the time it appeared that the juridical terrain was shifting to rather favorable conditions for Indigenous rights, despite the overall context of adverse violence and dispossession.

In order to reflect on this possible new scenario, in March 2015 the forum "Identity, Territory and Jurisdiction: The Role of Anthropological Surveying in the Enforcement of Indigenous People's Collective Rights'" took place at the Autonomous Technological Institute of Mexico (ITAM). Speakers included Supreme Court judges, judges of other courts (particularly those that had ruled in favor of peoples' collective rights) and anthropologists who participated in these landmark cases as cultural experts. Most of the discussions focused on the perspective that judicial institutions were entering a phase that provided new opportunities to strengthen collective rights claims through the use of anthropological expert witness reports. However, some attendees noted the marked absence of members of these communities themselves, who need to be considered political actors within the judicial arena. One of main critical voices was Magdalena Gómez, an Indigenous rights lawyer who has worked closely with Zapatista communities and has been an advisor to many collective rights struggles. During her intervention, she pointed out a deep

contradiction, "Why is it that during judicial processes the anthropologist becomes the expert for interpreting Indigenous cultural practices instead of the authorities with these communities, who are the subjects seeking autonomy and self-determination?" Through this statement, Gómez demonstrated a critical limit to the rights to autonomy and self-determination (Mora, 2020). In contrast to Colombia, Canada and Australia, where spoken testimony and written documentation presented by representatives of Indigenous peoples or First Nations is a key aspect of judicial proceedings, in Mexico Indigenous authorities can solve internal issues but cannot be intermediaries for the State's institutions.

While several anthropologists, including myself, agree with Gómez's commentary, members of Tila *ejido* made this critique evident through political actions employed at the end of 2015. In December of that year, a sector of *ejido* members called for an assembly which reached the verdict of recovering the 130 hectares under dispute. They stated that after searching for justice against land dispossessions for more than half a century, the Indigenous assembly of the *ejido* decided to destroy anything that symbolized "the origins of all the acts of injustice and discrimination," which was the building housing the municipal government of Tila. They argued that their decision was based on the fact that their "ancestors founded Tila before colonial times" (Tila Ejido statement, December 2015) and that the multiple attempts to strip them of their land was part of the continuation of colonization which was evident in recent years through development projects promoted by the *Kaxlan* in alliance with a sector of the Ch'ol *ejido* members. They were designated as the guilty party, and as such they needed to be removed from their posts, in order for Indigenous *ejido* authorities to be established as the only legitimate local government in Tila *ejido*. While the case continued officially on the list of cases awaiting a verdict, the parastatal verdict implied a kind of de facto withdrawal from the Supreme Court (Mora 2020).

In order to implement this self-verdict and assure the necessary conditions to then implement their rights to autonomy and self-determination, the physical facilities of the municipal government were torn down. The municipal offices were forced to temporarily relocate, though two years later, through a decree from the local Congress, a decision was made for the municipal government to establish permanently in the village of El Limar (Chiapas, 2017). On the other hand, almost all *mestizo* and Ch'ol families that had remained on the side of the municipal government left the *ejido* in order

to establish themselves in other towns and communities.[15] After decades of a power balance in favor of the political and economic privileges of a local *mestizo* elite supported by other Ch'ol and Tseltal factions, the result was a tipping of power in favor of the faction of Ch'ol *ejido* members who promoted autonomy.

Rather than delegating the verdict to the state's judicial branch, the *ejido* members affirmed that their assembly, which is governed by "*usos y costumbres*," was the legitimate sphere to exercise their right to self-determination. Through their actions, this faction of Tila *ejido* members situated itself within a political genealogy that exercises autonomy at the margins of State institutions. At the same time, the *ejido* members responded directly to the contradiction raised by Magdalena Gómez at the ITAM forum in 2015. Rather than human rights organizations or anthropologists acting as the intermediary advocates in favor of the community's right to autonomy and self-determination, the *ejido* members demonstrated that they, too, form part of the judicial arena, and that they in fact can set the terms of their participation. In this sense, they questioned the mechanisms through which the judicial apparatus recognizes and limits their right to autonomy and self-determination, opening new possibilities.

Final Reflections Regarding the 4T (Mexico's "Fourth Transformation")

This chapter has reflected on how the practices of autonomy have shifted towards prioritizing mechanisms of collective protection and defence against the heightened eliminatory logics of the Mexican State. The focus was primarily on the period marked by the Calderón and Peña Nieto administrations. In 2018, Andrés Manuel López Obrador, of the center-left Morena party took office. The change in the federal government initially appeared to set the stage for the pendulum to swing towards the establishment of new relations between Indigenous peoples and the State, with executive promises to prioritize the protection and strengthening of Indigenous peoples' collective rights. At the same time, the recognition of Afro-Mexican populations was incorporated into Article 2 of the Constitution in 2019. During the first year of the new administration, the recently created National Institute of Indigenous Peoples (INPI) carried out hundreds of consultative forums throughout different Indigenous regions in the country in order to present a legislative

proposal for a constitutional reform that would enhance the collective rights of Indigenous peoples to autonomy and self-determination. Similarly, the executive branch declared that it was against security policies based on the militarization of public security and in favor of integrative "peace-making" strategies.

In terms of the first initiative mentioned, this was rapidly watered-down by the priority granted to mega-development projects and extractivist policies. One example of this is that during the COVID-19 pandemic, mining was considered as an essential activity starting June 1st 2020, and the same happened with the highly debated infrastructure and tourism project of the *Tren Maya* (the Mayan train). This mega-development project is the most controversial of the administration, as the train is projected to cross through Indigenous territories in four of the country's states, as well as invaluable archaeological areas and protected natural reserves. Despite strong mobilizations against the project, and the fact that international institutions like the UN declared that the "consultation" did not meet the required international standards, the Executive insisted on continuing forward. As for the second matter mentioned above, the Executive has resumed the militarization of public security through a decree that created the National Guard, a security force of more than 70,000 agents that are mainly former military and police agents and that are involved in matters deemed issues of national security. As for the data regarding extreme violence, rather than decreasing, it has increased significantly. According to a report published by NGO Frontline Defenders, Mexico is second to Colombia as the most dangerous country in the world for human rights advocates. Out of the 321 murders of social leaders in 2018, 54% of these took place in both of these countries – 126 in Colombia and 48 in Mexico (Front Line Defenders, 2019). All of this points to the fact that despite the change in the federal administration, these different forms of violence continue to frame the terrain on which autonomy is granted meaning.

This scenario leads to a series of critical reflections as to the tensions that emerge when transitions in the federal administration fail to substantially modify the conditions of extreme structural violence, forcing Indigenous communities and organizations to continue emphasizing autonomy as a measure of self-preservation and as a mechanism for the protection of life. One of the main tensions has to do with those priorities of protecting life, as highlighted by women who are members of CIG and the initiatives to create

protection mechanisms, such as barricades in the communities or the creation of community police as a way to protect land from dispossession by organized crime or extractivist companies. One of the main challenges is keeping these different defence barriers, which are at times enacted through the use of weapons, without leaving aside and possibly even strengthening collective care. Another challenge is reflected in the types of political debates held by Tila *ejido* members in their assembly before emitting their own sentence: In what ways should struggle prioritize political arenas limited by State juridical frameworks? And how much should be invested in highlighting the need for the practice of the right to autonomy and self-determination by para-state institutions? What are the implications of prioritizing one over the other, particularly in struggles taking place during the López Obrador administration, such as the Tren Maya? Finally, how can political proposals and initiatives among the different practices of autonomy be interwoven in order to incentivise a new set of conditions that would lead to the creation of protection and defence mechanisms, as well as social transformation? This last question prioritizes collective and interdependent care-work at the heart of new sets of relations to be established with Indigenous peoples, *mestizo* populations and Afro-Mexican communities so as to fissure the colonial structures that continue to sustain the Mexican State.

NOTES

1 Please see statement, "Declaración I del Congreso Nacional Indígena, Nunca más un México sin nosotros." ("Declaration I of the National Indigenous Congress, never again a Mexico without us.") https://bit.ly/34d9ZKQ

2 In a statement released in December 1994, the EZLN announced the creation of 38 autonomous Zapatista municipalities divided in five regions, at the time called Aguascalientes, within the territory under its influence.

3 Other important debates at the time were related to the level of autonomy, with some organizations (mostly in the state of Oaxaca) focusing on the communal sphere, while others such as ANIPA, on a regional level, or in the case of Zapatista communities in Chiapas, on a municipal level. There was also discussion on whether autonomy should be reduced to identity claims from Indigenous peoples, or a collectivity or network of collectivities that shared particular political concepts in regards to state institutions.

4 The reforms included constitutional reforms to Articles 21 and 73 which regulated coordination and networking of all of the institutions that intervene in preventing and combating crime; the creation of new police institutions such as the Federal Preventive Police (PFP) in 1999; and five theses published between 1996 and 2017 by the Supreme Court of Justice (SCJN) which allowed the participation of the military for policing tasks.

5 See: https://bit.ly/3jb94P3

6 See: https://bit.ly/2TarftL

7 Data from the National Institute of Statistics and Geography (INEGI), cited in the Crisis Group report (2020).

8 See: https://bit.ly/3dPcG8r

9 See: https://bit.ly/37BQwFR

10 See "Manifiesto de Ostula,", 17 June 2009: https://bit.ly/34bi5DE

11 Primary titles are documents written during the 17th and 18th centuries, mainly by the same Indigenous groups that describe the founding of these communities. The primary titles play a relevant part in arguing for the recognition of territorial rights of Indigenous peoples.

12 Audio recordings from the event, Xayakalan, 10 years building community resistance, can be found on: https://bit.ly/34g4fzT

13 By 2016, the forced disappearance and murder of more than 34 men, children and women were added to this growing violence. Refer to: (Redacción, 2019).

14 The National Electoral Institute's guidelines state that an independent candidate can be registered if they are able to collect signatures from 1% of the electorate in at least 17 states, which is equivalent to almost 900,000 signatures. Marichuy was able to collect almost 300,000 signatures.

15 Please see the statements released by members of the ejido: https://bit.ly/2T8bgwe

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17

Building Guaraní Charagua Iyambae Autonomy: New Autonomies and Hegemonies in the Plurinational State of Bolivia

Pere Morell i Torra

Introduction

The first Indigenous autonomy fully recognized as such by the Plurinational State of Bolivia was born on 8 January 2017, in a small town in the heart of the Bolivian Chaco called Charagua Pueblo (Cordillera Province, Department of Santa Cruz). Charagua Iyambae Guaraní Autonomy, the name its promoters gave to a new government system designed by local actors following the new Bolivian legal framework, was inspired both by Guaraní political and cultural practices and by the new lexicon put into circulation in Bolivia since its "re-founding" as a Plurinational State in 2009. Since early 2017, following a complex political construction and process of legal transition, this new Indigenous autonomous framework has replaced the municipality – the local governance form that spread across the country's rural areas following the decentralizing reforms of the mid-1990s that were promoted in the framework of what was called "neoliberal multiculturalism" (Kohl, 2002; Postero, 2009).

The extinction of the former municipality of Charagua and its "re-founding" as a brand-new Indigenous autonomy was staged via a crowded public event full of State authorities and Bolivian Indigenous movement leaders. At this event, the 46 authorities that make up the new (and complex) institutional fabric of the Charagua Iyambae Guaraní Autonomy were sworn in. Most but not all of the new authorities of the Charagua Iyambae Guaraní Autonomy are Guaraní, originally from several of the more than 100 rural communities within the autonomy's territorial jurisdiction. The territory comprises an immense but sparsely populated space (more than 74,400 km^2) with some 40,000 inhabitants[1] settled only in the northwestern parts of the territory, leaving deserted the vast eastern plains that make up the bulk of the territorial jurisdiction of the autonomy.

Previously elected through different mechanisms that put the pluralist and intercultural concept of democracy contained in the 2009 Constitution into practice, the new authorities of a Charagua that today proudly claims to be *iyambae*, "without owner," were sworn into office in January 2017. The swearing-in took place in an auditorium where the speakers' words – "historic milestone," "new era" "responsibility," "unity," "change," "development" – resonated with transcendence and political emotion among (pluri)national Bolivian flags and Guaraní symbols. In one of the speeches, a young Guaraní leader (captain or *mburuvicha*) declared that "the old discriminating and excluding municipal system has been buried." And in a veiled allusion to the traditional *criollo-mestizo* elites of the Bolivian Chaco, called "*karai*" by the Guaraní, he added: "The time when only a few families governed all of Charagua is over!"[2]

As if wanting to complement the words of the *mburuvicha* from the academic archives of knowledge, then-Vice President Álvaro García Linera, the highest authority of the Bolivian State present at the inaugural act of the new autonomous Charagua, brought to the coalition one of his favorite concepts: hegemony. This is a concept that occupied a good part of García Linera's speeches and writings during his time as Vice President and organic intellectual of the "process of change" (for example: García Linera, 2010, 2011). Linera took advantage of his speech to transmit to the newly elected Charagua authorities a sort of lesson in political theory coming directly from the "teachings of President Evo:"

> The Aymara and Quechua converted into State power to defend Aymara and Quechua interests, and those of non-Aymara and non-Quechua. That is the key to political hegemony, the teaching of President Evo: relying on the Indigenous-First Peoples nucleus to irradiate, conquer, articulate and bring on board the rest of the peoples, social classes and sectors.

At that time, Linera's words were rooted in a politically stable present (apparently) with a solid hegemony embodied by Morales who, always from the officialist narrative, was sustained by an "Indigenous-First Peoples nucleus" capable of "conquering" other non-Indigenous sectors. From this point of view, the lesson to replicate in the new autonomy would thus be to build a new Indigenous – in this case Guaraní – hegemony through the exercise of a (self-) government capable of questioning other non-Guaraní sectors. It is a lesson that takes on a particular meaning in a space like Charagua, with a Guaraní social majority, but ethnically heterogeneous and post-colonial, where the Guaraní have been coexisting with *criollo-mestizo* or *karai* sectors for almost two centuries from a subordinate position mediated by deep material and symbolic inequalities. These "few families" that "have always governed all of Charagua" to which the Guaraní *muburuvicha* alluded in the aforementioned speech.

In light of Bolivia's current deep crisis, however, Linera's words acquire a much more somber tone, far removed from the triumphalist epic of those who speak – or imagine they speak – from the pinnacle of a hegemony affirmed from State power. In view of the events of October and November 2019, and the alarming return to the public space of an anti-Indigenous racism that in recent years had withdrawn to the private sphere, the "teachings" of Morales and Linera, rather than showing us how to build "hegemony," understood as a certain consolidated political regime with closed contours, perhaps reveal the instability and fragility – but also the dynamism and richness – inherent in processes of social struggle. Whether for hegemony, autonomy or, as in the experience we will analyze in the following pages, when the boundaries between both concepts are blurred and the struggle for autonomy also becomes a search for building a new hegemony that shakes the foundations that sustain historical hegemonies.

This chapter proposes a journey through the construction of the Charagua Iyambae Guaraní Autonomy. It is a singular and significant autonomous

experience, not only because it is the first Indigenous autonomy that consolidated itself in the Plurinational State of Bolivia, acting as a vanguard for other Indigenous autonomous processes that are in different stages of development (cf. Exeni, 2018), but also because of the very characteristics of this particular Indigenous autonomy experience.

To start, it is important to point out that Charagua Iyambae Guaraní Autonomy is not located in the Andean region, where the majority of Bolivia's Indigenous population – Quechua and Aymara – is found, but in the Bolivian Chaco, located on the periphery of academic constructions and representations of Bolivianness – also of Bolivian Indigenousness – which continue to be predominantly Andean-centric. The case of Charagua thus places before us another type of indigeneity: that of Bolivia's Guaraní nation.

Second, unlike the high degrees of ethnic homogeneity of the rural Andean space, and of most municipalities in transition to Indigenous autonomy,[3] the Charagua Iyambae Guaraní Autonomy is, as we will insist several times, crossed by ethnic heterogeneity and social complexity, giving rise to different and overlapping ways of occupying and living in a space in turn crossed by disputes over the exploitation of its natural resources, including natural gas.

Last but not least, the Charagua Iyambae Guaraní Autonomy is, at last, a "success" case that contrasts with the difficulties and internal conflicts that have been unleashed in many Indigenous autonomy processes, in some cases blocking them *sine die* (cf. Cameron, 2012; Plata & Cameron, 2017, Exeni, 2018). Despite the elements of complexity of the Charagua experience, and all the problems and contradictions that have been experienced throughout the process and continue with the Indigenous autonomy already formally consolidated, the Guaraní leaders and their allies have managed to articulate a political project capable of convincing and mobilizing a large part of the Guaraní population of Charagua. This has prevented processes of disintegration and internal conflict among the Guaraní from threatening the continuity of the project. Thus, in addition to presenting a dense and rich overview of the Guaraní autonomy process in Charagua based on political ethnography (Auyero, 2012), one of the objectives of this text will be to try to explain the reasons for the Guaraní autonomy project's success (Auyero, 2012).

In terms of methodology, this chapter arises from a long process of meetings and dialogues that began in 2012 and continued until the end of 2015 through four stages of ethnographic fieldwork[4] that formed the basis of my

doctoral dissertation (Morell i Torra, 2018) and of this text.[5] Some of those meetings and dialogues were with those who have been involved in the construction of Charagua Iyambae Guaraní Autonomy from different intensities and positionings for more than eight years, although their roots and ramifications, as we will see, sink much deeper. After more than five years of following the process from a distance, albeit relativized by social networks, I had the opportunity in July 2019 to physically return to a now (formally) autonomous Charagua *iyambae*, "without owner." For three weeks I was able to verify, once again, how the complex, changing and fascinating Charagua reality – today perhaps even more changing, complex and fascinating – requires much more time to pose some kind of convincing analysis. Even so, despite the fact that this text focuses on the analysis of the autonomy-building process between 2009 and 2015, we will also refer to some contemporary dynamics of this recent Indigenous autonomy experience which, using a nice metaphor I heard in Charagua *Iyambae*, is still a *wawita* (baby) that is learning to walk.[6]

Problematizing the Notion of Indigenous Autonomy from Conceptions of "Proximate Experience"

The discussions of Indigenous autonomy are still removed from the daily life of rural Guaraní communities, where to a large extent it is still perceived as something played out in other arenas, e.g., in the world of the Guaraní leadership and intellectuals; in workshops organized by NGOs; in law firms and among representatives. Nonetheless, one of the phrases that can be heard most often in the communities when the issue is addressed is that the true expression of autonomy is to be found in the community: "we are already autonomous"; "we have always been autonomous in the communities, now we just need to put it on paper."

Through phrases of this type, recurrent and simple only in appearance, Guaraní community members appeal both to an ideal of self-sufficiency and to a differentiated organizational habitus rooted in time and space: expressed in the nuclear Guaraní organization, the community or *tëta*, through certain socioeconomic and cultural practices and territorial control (cf. Albó, 1990), as well as in instances of collective decision-making such as the assembly (ñemboati), political leadership (captains or *mburuvicha*) or other relevant social figures of community life. All this forms the core of what is known

as ñande *reko*, "our way of being," a Guaraní expression to refer to Guaraní identity and culture, and at the same time to claim them as their own.

From this perspective, rooted in the "long memory" (Rivera Cusicanqui, 2003) of the Guaraní communities of the Bolivian Chaco, but also in the "short memory" of the recent experience of cultural revitalization and political-territorial articulation through the Guaraní People's Assembly (APG), the parent organization that brings together all the Guaraní communities of Bolivia, Indigenous autonomy is something that already exists in fact, present in the practice of the ñande *reko* and within the Guaraní organization that, perhaps, only needs to be recognized at the legal level: "to be put on paper."

Within the communities themselves, however, this factual conception of autonomy coexists ambivalently with other views that emerge from a situation of economic dependence and relegation strongly self-perceived as such, expressing both the difficulties of daily life in the community and the deep yearnings for transformation. These yearnings and demands can be projected through the glittering –and in a certain way, empty – signifier "autonomy." Thus, in the many Guaraní meetings and assemblies I have been able to attend during the autonomy-building process, the Guaraní "grass roots" – i.e., those who do not hold managerial positions within the supra-communal structures of the "*capitanías*" (captaincies) – projected such yearnings for change and improvement associated with the notion of autonomy: "autonomy has to come with big projects, we do not want to manage poverty"; "autonomy is development, it is seeing improvement in our communities"; "autonomy is not living as we have always lived."

While the first view – "we have always been autonomous" – shows a positive self-awareness and a politicization of the Guaraní socioorganizational habitus, conceived as spaces of "autonomy" from which to organize collective life and exercise territorial sovereignty; the second – "autonomy is not living as we have always lived" – introduces important nuances. We could say that the community members are alerting us to the risks of mystifying poverty by qualifying as forms of "Indigenous autonomy" what are in fact social reproduction and self-organization strategies deployed in peripheral spaces riddled with all kinds of material shortages and the ongoing absence of the State. In a way, the community members seem to be warning that what existed up to now was not exactly "autonomy" but relegation and abandonment. Perhaps, then, it would be not so much, or not only, about "living as we have always

lived in our communities," but, living differently and, above all, *living better* through autonomy.

These introductory notes based on perspectives of "own experience" (Geertz, 1994) on Indigenous autonomy serve to point out the tensions and ambivalences that run through a concept often taken for granted in an excessively a priori manner both in legal instruments and in the specialized literature that reveals a certain tendency to (over)understand Indigenous autonomy exclusively as a synonym of territorial rootedness, cultural recovery and/or political resistance to others – the State, political parties, extractive companies, capitalism, modernity – conceived in terms of exteriority to contemporary Indigenous societies, represented as isolated from the surrounding society and global change processes. Without any intention of entering into conceptual debates that go beyond the scope of this text, it is worth noting that it is essential to incorporate both this dimension of valuing and defending "their own" in the face of different types of external attacks and also to take into account the longings for transformation that emerge from the communities in order to understand how the Guaraní people of Bolivia,[7] particularly those of Charagua, have approached Indigenous autonomy and filled it with particular meanings and demands.

In fact, as will be seen, one of the keys to the success of the Charagua Guaraní autonomy project, which contrasts with the failure of other Indigenous autonomy projects promoted simultaneously, lies precisely in the fact that its promoters have been able to link the construction of a new Indigenous autonomy to concrete and rather pragmatic demands linked to such horizons of change, access to development and the search for a new framework of relations, a rapprochement with the Plurinational State.

On the other hand, the promoters of Charagua's Guaraní autonomy project have also shown themselves to be skilled strategists: using available legal tools to their advantage, forging different types of alliances with different actors and moving into the mire of Bolivian politics. This is part of the well-known "Guaraní diplomacy," an expression often used to refer to the Guaraní logic of negotiation and alliance with political parties and other non-Guaraní actors: flexible, circumstantial and, at times, contradictory but, in the end, responding to a strategy of relationship with the non-Guaraní Other subordinated to the achievement of concrete objectives from a "common" framework. Although the territorial scale on which the common is defined

– a community or communal faction, a supra-communal "captaincy" or the Guaraní people as a whole – can be quite varied.

It is from this type of logic, which has been a substantial part of Guaraní collective action since their political-territorial reorganization in the late 1980s, that barely six months after the approval of the 2009 Constitution the Guaraní leadership of Charagua began to mobilize its diplomatic capacity to explore one of the options opened up by the Constitution: the "conversion" of the former municipalities into new Indigenous First Peoples Peasant Autonomies (AIOC), the name given to the new Indigenous autonomous regime according to the particular formula for identifying indigeneity in the Bolivian Constitution through the triad "Indigenous First Peoples peasant."[8]

On 31 July 2009, the four *captaincies* (Charagua Norte, Parapitiguasu, Alto Isoso and Bajo Isoso) in which the more than 100 Guaraní communities settled in the (former) municipality of Charagua[9] are politically and territorially articulated, met in a "great inter-zonal assembly." They forged an "alliance" among themselves and publicly announced a decision that, although at the time its concrete scope was unknown, would change the political history of Charagua: "the decision to exercise their right to self-determination via CONVERSION FROM MUNICIPALITY TO Indigenous FIRST PEOPLES AUTONOMY" (CIPCA, 2009, upper case letters in the original).

Thus Charagua, epicenter of the Guaraní renaissance of the 1980s, an example - constructed as "exemplary" (cf. Bazoberry, 2008; Faguet, 2016) - of Indigenous peoples' access to spaces of municipal power during the 1990s, once again positioned itself as the vanguard of the Guaraní world in Bolivia in the first decade of the 2000s. They took the reins of a political project that, using the new plurinational legal and conceptual framework, places the powerful notion of Indigenous autonomy at its core.

The new Bolivian Indigenous autonomy system: many limitations, some potential

Before delving into the complex Charagua universe, it is necessary to present some notes, albeit very briefly, on the configuration of the Indigenous autonomous regime of Bolivia's Plurinational State. The Bolivian Constitution of 2009, which declares the "refounding" of the Republic into a new Plurinational State,[10] and defines this new foundational horizon through a set of democratic institutional and conceptual innovations, is at the forefront of

paradigmatic innovation with respect to liberal and multicultural constitutionalism (Sousa-Santos, 2010; Clavero, 2010) and recognition of the collective rights of Indigenous peoples.

Despite the new foundational narrative permeating the constitutional text, however, the truth is that the "new" Plurinational State's territorial organization model – one of the main points of conflict between the Movement for Socialism (MAS) government and the conservative opposition of the eastern departments during the turbulent constituent process opened in 2006 (Schavelzon, 2012) – is quite similar to that of the "old" Republic. On the one hand, ignoring the "territorial reconstitution" projects of a regional scope advocated by various Indigenous organizations in the Constituent Assembly framework, among them the Guaraní People's Assembly, the final-approved Constitution retains the main republican territorial structures, i.e., the nine departments (formerly called prefectures) of regional scope and the municipalities at the local level, now endowed with political autonomy according to a new power distribution framework.

On the other hand, the new Indigenous autonomous regime, together with the "regions," one of the Plurinational State's two new levels of political and territorial autonomy, also poses a continuity, at most a deepening, with respect to the decentralizing and multicultural reforms of the 1990s that promoted two types of local governance forms in the rural and Indigenous space: the municipalities and the Community Lands of Origin (*Tierras Comunitarias de Origen*, abbreviated as TCO in Spanish). In the new constitutional framework, they are called Indigenous First Peoples Peasant Territories (TIOC). These two forms constitute the territorial base on which the new institutional systems of Indigenous autonomies must be built. Thus, from the perspective of the Indigenous movement's initial proposals and demands, one of the main limitations of the Plurinational State's new Indigenous autonomous regime is that it is fundamentally local in scope and, moreover, does not imply a re-territorialization with respect to the republican territorial organization, but rather a change in the institutional framework and political attributions of previously existing territorial entities.[11]

An important specificity of the level of Indigenous autonomy is that it is not based on a "classic" State decentralization process to lower territorial governance levels, but is conceptualized as a space for the exercise and operationalization of Indigenous collective rights, the main one being their right to self-determination, already recognized in Article 2 of the Constitution.

However, in clear conceptual contradiction, the exercise of this self-determination is "determined" by different constraints. The first, already mentioned, is of a territorial nature, since the Indigenous autonomous regime is not applied according to the territorialities practiced or claimed as "their own" by the Indigenous peoples, but is based on the municipalities and the TCOs, establishing two "access routes" (via municipality or via TCO) with slightly differentiated procedures towards the same Indigenous autonomy regime.

The second constraint is procedural: the Indigenous peoples living in the municipalities or TCOs and wishing to constitute an Indigenous autonomy must necessarily go through a process of "conversion" to Indigenous autonomy, i.e., comply with a series of prerequisites and surmount a set of successive procedures, some already defined in the Constitution itself, others through subsequent legislative development. In the case of the municipal conversion route, the one that concerns us in this text, we can summarize these procedures in four main steps, which were followed by the first 11 municipalities (among them, Charagua) that ventured onto the uncertain path of converting the old municipalities into new Indigenous autonomies in 2009. The four steps are cited below (with the chronology of the process for the case of Charagua in parentheses):

- The holding of a first referendum on "access" to autonomy to validate the beginning of the conversion process (held in Charagua and 11 other municipalities on December 6, 2009).
- The formation of an autonomous assembly representing the social reality of the municipality in conversion (in Charagua, the Guaraní Autonomous Assembly in Charagua, formed in May 2010).
- The drafting and approval by the Autonomous Assembly of an Indigenous autonomous statute outlining the basis of the new system of self-government (the Statute of the Charagua Iyambae Guaraní Autonomy was approved by the Autonomous Assembly on 16 and 17 June 2012).
- The implementation of the statute (previously declared constitutional by the Plurinational Constitutional Court) through a second referendum to validate the statute and make its deployment effective.[12] (The Guaraní Autonomy statute was declared fully

constitutional on 12 June 2014, the referendum for its approval was held on 20 September 2015, but the deployment of the autonomous system would not begin until 8 January 2017).

Although this procedural route, which involves all the public powers of the Plurinational State (legislative, executive, constitutional and electoral), has turned the exercise of the right to Indigenous autonomy into a veritable bureaucratic odyssey, the Indigenous autonomy system of the Plurinational State also has some transformative potential that should not be underestimated. In contrast to municipal institutions – homogeneous throughout the Bolivian territory and thus alien to the diversity of Indigenous forms of organization and institutional traditions – the new Indigenous autonomous regime opens up new spaces for democratic deliberation and horizons of political self-determination. Even with limitations, the inhabitants of the autonomies under construction can collectively discuss what their institutionality should be, based on their own local cultural realities and, finally, on their democratic will.

Building a new post-municipal institutional framework to regulate communal life and access to paid political office is not an easy task. In fact, by the end of 2020, only three of the 11 municipalities that began the autonomy process at the end of 2009 have managed to complete the process, forming their AIOC governments at different moments: Charagua (2017), Chipaya (2018) and Salinas de Garci Mendoza (2020) (cf. Cameron & Plata, 2021:147).[13]

In the rest of the municipalities, despite having a much more homogeneous ethnic composition than Charagua, the processes have been blocked at different stages of their development by various types of internal conflicts in which differences (generational, political, socioeconomic, religious) and divergent understandings of how to express indigeneity politically (Cameron, 2012) emerged among Indigenous peoples.

Although there were all kinds of internal conflicts in Charagua, they were largely attenuated by the existence of a major antagonism: the one between *karai* (non-Indigenous elites) and Guaraní, which is at the base of the historical creation of Charagua as a territorial space.

Karai Colonization and Guaraní Displacement: Sociospatial Basis of Contemporary Charagua

Unlike other rural Bolivian municipalities, created from the municipalization process that opened with the 1994 Popular Participation Law, the territorial space now occupied by the former municipality of Charagua, now Charagua Iyambae Guaraní Autonomy, was mapped out at the end of the 19th century. Specifically, in 1894, a legislative provision decreed the creation of a new administrative division (a "municipal section") in the province of Cordillera, subdividing this new municipal section into four "cantons" and establishing that one of them, Charagua, would be its "capital."

At that time, Cordillera was a remote part of the Republic of Bolivia, a frontier region "pacified" *manu militari* just two years earlier, in 1892, when the battle of Kuruyuki (cf. Combès, 2014) took place. This was a sad episode of war in which the Republican Army crushed what would become the last great armed rebellion of the warlike Guaraní, then known as "Chiriguanos," causing between 500 and 1,000 Indigenous casualties. Such was the historical denomination, that of "Chiriguano", received by the Guaraní-speaking society of the last foothills of the southeastern Andes, formed through a process of ethnogenesis between Chané-Arawak groups established in the region and Tupi-Guaraní groups that arrived later from present-day Brazil and Paraguay. A society that was originally "mixed" – Chané and Guaraní, Guaraní and Chané (cf. Combès and Saignes, 1995) – but which had decided to call itself (and organize itself) only as "Guaraní" since its political and territorial rearticulation process.[14]

Although the creation of a new "municipal section" from a governmental office would alter only slightly the territorial occupation processes on the ground, we can consider that the Charagua we know today was born at the end of the 19th century through the aforementioned legislative act. To begin with, a peripheral and "wild" space was formally incorporated into the republican State order of territorial and population administration. Thus, it formally sanctioned the de facto colonization undertaken on the ground through the cattle haciendas, the Franciscan missions and the founding of "towns" by criollo (karai) colonizers: the colonizing trilogy that from the last third of the 19th century well into the Republican stage would, with the invaluable help of the Republican army, definitively break a world that had managed to remain free of Spanish colonial tutelage thanks to its reputed warrior ethos,

combined with a centrifugal political logic based on a strong sense of group autonomy (Saignes, 2007).

On the other hand, following some of the existing forms of territorial ascription, the legislative provision of 1894 drew some external limits and internal territorial subdivisions ("cantons") that, although redefined with more precision, have not changed substantially since then, constituting the territorial basis of the "zones" in which the new Guaraní autonomous government is structured, as we will see.

Even more importantly, these cantonal subdivisions established a political center for this new administrative unit: the *karai*-majority Charagua Pueblo, founded in 1873 on an ancient Guaraní community, which became the "capital," together with some peripheral rural "cantons" with a majority Guaraní population distributed in dozens of communities juxtaposed to private cattle-raising properties. The progressive process of spoliation and territorial concentration unreversed until the end of the 1990s (and then only partially) would leave the Guaraní communities with almost no access to land and therefore dependent on the sale of their labor power (under extremely exploitative conditions) in either the *haciendas* or the sugar mills.

Even with precarious links, the municipality's rural cantons became administratively subordinated to Charagua's *karai* people, who accumulated not only political centrality as the seat of municipal institutions, but also practically all services and infrastructures. Contemporary Charagua was thus born from a racially hierarchical conception and practice of social space: with the *town* (*karai*/"modern") constructed in opposition to the *countryside* (Indigenous/"backward") displaced to the periphery of space and "*charagüeño*," a term that became synonymous with *karai* even though it was of Indigenous origin.

As in Bolivia as a whole, things have unquestionably changed a lot today. Charagua Pueblo, with more than 4,000 inhabitants, is a dynamic area with a growing population and social complexity: many Guaraní people have arrived from the communities or were born in the town, as well as Andean migrants of Quechua and Aymara origin who control almost all the commerce and transportation, many of whom settled in Estación Charagua, a new urban center of about 2,000 inhabitants located a few kilometers from Charagua Pueblo. On a daily basis, another type of "whiteness" is also flocking into the town: that of the Mennonites, an ultra-orthodox Anabaptist group of Central European descent who have settled in the rural areas near

Charagua Pueblo since the mid-1980s through the purchase of land from decaying *karai haciendas*.

Nonetheless, despite these profound transformations that threaten "Charagüeñity," understood as a marker of white-creole distinction against the Indigenous, the post- (and neo-) colonial configuration of Charagua is still in force: expressed in the material and symbolic relegation of the communities with respect to the urban nucleus or in daily interactions between *karai* and Guaraní permeated by racism. It is from this racially hierarchical configuration of social space, based on *karai* colonization and Guaraní displacement, that we can understand one of the deep meanings that run through the Guaraní autonomy project: the will to (re)Guaraníze Charagua, i.e., to place the Guaraní in the political center; questioning, including and "converting" the non-Guaraní from this new centrality. This is how Milton Chakay, Guaraní sociologist, puts it, drawing a sort of Guaraní theory of hegemony:

> That the brother who comes from Oruro, from Potosí, and lives in the Indigenous autonomy begins to be a Guaraní. This is what we want, and is why we say: let them be included, let them be included! That the traditional *karai*, the aggressor, who at times subdued the Guaraní, be converted. And that is why we say: "Guaranízation". Indigenous autonomy must allow Guaraníza-tion. (M. Chakay, personal communication, 6 June 2012)

Even without explicitly expressing itself in such terms elaborated by the Guaraní intellectual leadership within the framework of the autonomy project, the Guaranízation of Charagua in fact began at least two decades earlier. It would do so through two processes central to understanding the Guaraní autonomy project: the political and territorial re-articulation of the Guaraní communities into "captaincies" attached to the Guaraní People's Assembly, and the assault of the captaincies on municipal power.

The (Progressive) Guaranízation of Charagua: From the Popular Participation Law to the Autonomy Referendum

In a surprising "rebirth" process after almost a century of lethargy following the defeat of Kuruyuki in 1892, the formation of the Guaraní People's Assembly (APG) in 1987 would lead, in a matter of a few years, to hundreds of previously dispersed Chaco communities, and even Guaraní migrant communities from the outskirts of Santa Cruz, organizing themselves into supra-communal territorial and political structures called "captaincies." These structures were in turn flexibly attached to the APG with a high degree of internal decentralization. With their own network of authorities (*captains* or *mburuvicha*) and collective decision-making systems based on the assembly (ñemboati), the captaincies – currently a total of 29 in three departments (Santa Cruz, Tarija and Chuquisaca) that cover part of the Chaco ecoregion – form the territorial base of a new Guaraní movement. This movement, influenced by the continental Indigenous movements and the new languages of indigeneity, organized itself into a larger political structure that claims a shared identity above regional differentiations and the centrifugal logic of the historical Guaraní world itself for the first time in its history (Saignes, 2007).

In Charagua, the place where the APG was formed as a result of the sedimentation of a series of previous relationships between the Guaraní and non-Guaraní allies (especially institutions linked to the Catholic Church), the Guaraní initially organized themselves into three captaincies with their own paths. While two of them (Charagua Norte and Parapitiguasu) would be formed *ex novo* at the same time as the birth of the APG, the Isoso captaincy (divided into two independent captaincies since the beginning of 2000: Upper Isoso and Lower Isoso) had a very long history behind it. Sometimes united into a single captaincy, sometimes separated into "high" and "low", the Isoso captaincy did not disintegrate with the advance of the colonial front. It managed to maintain its political structure based on the hereditary transmission of the position *of mburuvicha guasu* or "Great Captain" between lineages often at odds with each other, forming a sort of Isoso "royal house" whose influence (and internal disputes) can be traced to the present day (Combès, 2005).

This sociohistorical configuration, together with the more clearly Chané heritage in the region's settlement, has given the people of Isoso a clearly

differentiated identity, sometimes even opposed to the rest of the Bolivian Guaraní world. Thus, within Charagua itself, a Guaraní "we" of variable perimeters is drawn that, depending on the context, encompasses the whole of the "Guaraní people" of Charagua, but can also contract into a more delimited "we" crossed by long-standing differentiations, such as that which separates the Isoso-Guaraní from the Ava-Guaraní (of the captaincies of Charagua Norte and Parapitiguasu): "brothers" today in shared struggles as "Guaraní people," but "brothers like Cain and Abel were," to quote an eloquent biblical metaphor used by an Isoso community member to explain the type of brotherhood that unites (and separates) them from their Ava neighbors (personal communication, 2 August 2014).

Since the formation of the APG, the actions of the captaincies, with their own nuances among them, focused mainly on solving the communities' material needs, forging links with different development NGOs and placing special emphasis on the pressing issue of access to land. The latter situation would be partially calmed through the land-titling process in a special agrarian regime of collective ownership managed by Indigenous organizations (*Tierras Comunitarias de Origen* or TCO) initiated in 1996 through the regularization of all agrarian properties in Bolivia (cf. Colque et al., 2016). Although this agrarian reform process did not succeed in reversing the unequal agrarian structure of Charagua and the Chaco region as a whole, and led to the legalization of private properties within the territories demanded by the Guaraní captaincies, the TCOs did consolidate their sense of territorial jurisdiction.

Without leaving aside the land issue, a transcendental change would take place with the entry into force of the 1994 Popular Participation Law (LPP). With the LPP in place, the captaincies became political (and electoral) actors, directing a very significant part of their organizational energy to the renewed spaces of municipal power: doing politics, which broke with the *karai* monopoly of politics, but at the same time doing it together with the *karai* and according to their rules of the game. One of the most graphic explanations I could gather about the multiple but also ambivalent effects of the LPP in Charagua's political life (in this regard, Bazoberry, 2008; Faguet, 2016; Albó, 2012) comes from Roberto Vargas of Charagua, who synthesized them through two concepts: "resources" and "Guaraní uprising" (see Bazoberry, 2008; Faguet, 2016; Albó, 2012).

The *karai* had deep roots in the town after several generations plus two administrations as mayor of Charagua – the first one before the LPP and the

second one with it already in force. Roberto Vargas experienced two types of transformations in Charagua, the first of which he judges as clearly positive: the exponential increase of economic resources transferred directly from the State's general budget. This consequently increased the municipality's capacity to "execute works and projects" – a leitmotif of the post-LPP municipal policy – in the whole of a territorial jurisdiction that was expanded beyond the town to incorporate in its radius of action the rural areas, now organized in "municipal districts" (the former "cantons") with advocacy capacity in budgetary distribution. Roberto assumes the second, albeit without enthusiasm, as irreversible: the "Guaraní uprising" or their emergence and consolidation as decisive actors in municipal political life. So decisive was that emergence that, in his own words, he would be the "last *karai* mayor in the history of Charagua."

Indeed, in 2004, after Roberto Vargas' second administration, one year ahead of the electoral victory of the "first Indigenous president of Bolivia," a Guaraní, Claudio López, became mayor of the municipality for the first time in Charagua's history. He would do so under the APG's acronym and with the organic support of the North Charagua and Parapitiguasu captaincies, while the Isoso ones, always "autonomous," chose to support their own candidate, in this case under the MAS acronym. After López's administration, in whose final stretch the long transition process from municipality to Indigenous autonomy would begin, the two "transitory" mayors who succeeded him – Domingo Mérida (2010–2015) and Belarmino Solano (2015–2017) – would also be Guaraní, as would most of the municipal council members.

From the Guaraní viewpoint, one of the most evident effects of the Guaranízation of the Charagua political field was the dissonance between the appeals to ethnic loyalty as "Guaraní" and the divergent party affiliations of both Guaraní leaders who entered the municipal political game and their voters, who did not always follow the slogans of the assemblies that pre-selected the candidates who would run in the elections, seeking to collectively guide the individual vote. Thus, for example, Charagua's first Guaraní mayor, Claudio López, is considered an "organic mayor" because, even without the participation of the Isoso captaincies, he was previously nominated by the Guaraní captaincies and pulled a massive vote in the Charagua Norte and Parapitiguasu communities ("organic vote"). In contrast, the second Guaraní mayor, Domingo Mérida, an Isoso-Guaraní, did not have the official support of the organic structure of any of the four captaincies but was elected because

he was able to weave his own strategy of alliances with *karai* sectors of the people and, above all, with different Isoso factions and lineages that opposed the official leadership of the two Isoso captaincies.

Thus, if the LPP can be qualified as an undoubted success in terms of Guaraní access to the spaces of municipal power, the Guaraní experience within – and in recent years at the head of – the municipal institutionality was pierced by numerous frustrations and deep ambivalences. This is evidenced by the Guaraní option to replace the municipal framework with a different (and better) institutional one, as it revealed those ambivalent dimensions, remaining strongly impregnated with the Guaraní experience in municipal politics.

As we saw above, the decision to convert the municipality into Indigenous autonomy arose from a "magna assembly" among the four captaincies. But the definitive starting signal for the conversion process was the celebration of the access referendum, held on 6 December 2009, coinciding with the general elections that, already in the new plurinational framework, would give the second consecutive victory to Evo Morales and the MAS. The close results of the referendum, where the "Yes" would prevail with 55.7%, as well as its unequal territorial distribution throughout the Charagua geography (a clear "No" in the town; a resounding "Yes" in the Ava captaincies; and a tie between "Yes" and "No" in the Isoso captaincies)[15] show how it expressed several of the differences that riddle Charagua's variegated society: ethnic (and class) differences between town and countryside, between *karai* and Guaraní, but also among the Guaraní themselves.

Moreover, the results of this first referendum, very similar to the one that would be held six years later for approval of the autonomy statute, anticipated one of the dynamics that would mark the whole autonomy construction process: the resistance of a good part of the non-Guaraní sectors, which mobilized a discourse of minoritization and denunciation of "exclusion" that reversed the historical direction of racism. Although these sectors did not stop the deployment of the process, a few months after the referendum they managed to gain access to municipal power (with the Isoso-Guaraní Domingo Mérida as mayor) in the April 2010 elections, which included the specification that, in the case of the 11 municipalities in conversion to Indigenous autonomy, their municipal authorities would have a "transitory" character until approval of the statute.

In this complicated context, the development of *another institutionality* would begin with the promoters of the autonomy project (the four captaincies) out of a municipality dominated by opponents of Indigenous autonomy, who would mobilize all municipal institutional resources to block its progress and exhaust their five years in office.

Recreating Another Institutionality: Not as the Municipality Nor as the Captaincy

"It has been a revolution we would never again have done so suddenly in our normal life," said Belarmino Solano after the first referendum in 2009. Like a revolution: in such terms he expressed his experience from within as vice president of the Guaraní Autonomous Assembly in Charagua, the deliberative body in charge of drafting and approving the statute with the institutional basis of the new Indigenous autonomy that followed the Bolivian legal framework.

Composed of some 50 Guaraní representatives elected by "their own rules and procedures" in different rural communities of the four captaincies, without the presence of any Charagua Pueblo representative since its neighborhood organizations refused to participate, the Assembly met periodically in Charagua Pueblo between 2010 and 2012 to imagine a new Charagua. Without its own premises, or a public financing system, its marathon meetings were held in the same place where APG was born 30 years earlier: in the headquarters of Arakuaarenda, an intercultural training institution linked to the Society of Jesus. It and the non-governmental Center for Research and Promotion of the Peasantry (CIPCA), with an office in Charagua since the 1970s, are two of the Guaraní people's main allies, and would play an important role in accompanying the autonomy process.

The statute resulting from the Autonomous Assembly meetings, approved by its plenary on 17 June 2012, with some changes due to observations by the Plurinational Constitutional Court, and declared fully constitutional on 12 June 2014,[16] is made up of 104 articles that combine declarative aspects ("values and principles," "vision of development") with other regulatory and technical ones (the organization of the autonomous government, the competence and fiscal regime), as well as elements much more linked to the Charaguan reality: from "access to and use of water" (art. 77), to "hunting and fishing" (art. 70), including coordination between "Traditional Medicine and Western

Medicine" (art. 96). It is a legal text, but of a heterodox legal nature, in which logics of the municipality's Liberal-Western legal culture and organizational schemes are juxtaposed with Guaraní categories, contributions of the new Bolivian constitutionalism, Guaraní organizational forms and a set of elements that imply an effort to incorporate local problematic issues, as well as the legal identification of cultural identity or ñande *reko guaraní*.

According to René Gómez, president of the Autonomous Assembly, "the Guaraní being is centralized in the statute." He is alluding to a set of symbols, principles and values in Guaraní that permeate the ñande *reko* statute while seeking to culturally orient the horizons of autonomy (R. Gómez, personal communication, 26 April 2014). Among the most repeated is the concept of *Yaiko Kavi Päve* ("To Live Well"), a linguistic Guaranízation created ad hoc from the famous *Vivir Bien* or Aymara *Sumaq Qamaña* incorporated into the Bolivian Constitution, something that, in turn, illustrates the important influence of Bolivian constitutionalism on the autonomy statute, in which this is translated into a vernacular language from Guaraní.

From Belarmino Solano's point of view, however, the "soul of the statute" is its governance structure. He was a member of the commission in charge of designing it, a task he describes as the "most complicated" since the core of the discussion was nothing more and nothing less than "who is going to have the power":

> Then we would say, 'Is [power] going to be held by one person? Or who else can hold it?' And another would say, 'No, it has to be the base, it has to be society as a whole!' 'And now how are we going to design this structure?' (...) What I was defending was that power should lie with the people. But that the organizations should not be part of the government, that is, the captaincies, because they cannot be judge and jury, they have to be like another separate coordinating body (...) Another comrade [defended that] those who assume this power should directly be the captaincies and that the *mburuvicha* be at the head. (B. Solano, personal communication, 11 September 2014)

Belarmino's retrospective account of the internal discussions of the commission that designed the "soul of the statute" illustrates the intrinsic complexities of any effort of instituting imagination by pointing out a central

dilemma at the time of hammering out a "Guaraní government." Officialize the existing Guaraní organizational structures (the four captaincies) with their *mburuvicha* or captains at the head? Or think up another institutionality, inspired by the Guaraní modes of organization, but with the Guaraní organic structure on the outside? In Charagua, this dilemma was resolved in favor of the second option, the one defended by Belarmino: to create another institutionality that was not like the municipality, but not like the captaincy either, revealing how the construction of Indigenous autonomies are not only processes of officializing "traditional" forms of government, but also of democratic innovations that seek, perhaps, to institute new institutional traditions affirmed from what is Indigenous.

In this decision, the division between "the organic" (the captaincies) and "the political" (the entities of State power), which orients Guaraní political action normatively, weighed heavily. It seeks to subordinate Guaraní political participation in State authorities to the organic decision-making channels. Aware that, in the new Indigenous autonomous framework, "organic" becomes "political," i.e., part of the State structure, the promoters of the Guaraní autonomous project sought to protect their organization from the regulations and rigidity of the State, keeping it formally "autonomous" from the Guaraní autonomous government itself.

The institutional design of this new autonomous government is considerably complex. It is characterized first by a profound decentralization (territorial, organizational and elective) between each of the six zones into which the government is territorially structured. And second, by the heterogeneity of political logics and democratic mechanisms put into practice within an institutional framework made up of three types of bodies: 1) Ñemboati *Reta*-Collective Decision-Making Body; 2) *Mborokuai Simbika Iyapoa Reta*-Legislative Body; and 3) *Tëtarembiokuai Reta*-Executive Body.

The fundamental basis of the autonomous government is the six zones:[17] Charagua Norte, Parapitiguasu, Alto Isoso, Bajo Isoso, Estación Charagua and Charagua Pueblo (see map below), based on forms of territorial ascription previously consolidated by different means (legal and de facto): through previous "cantons" or, with the Popular Participation Law, municipal "districts"; the territory titled under the TCO regime and claimed as "their own" by the four Guaraní captaincies; and the territorial spaces in which the two main urban centers of Charagua are located – Charagua Pueblo and its neighboring Estación Charagua.

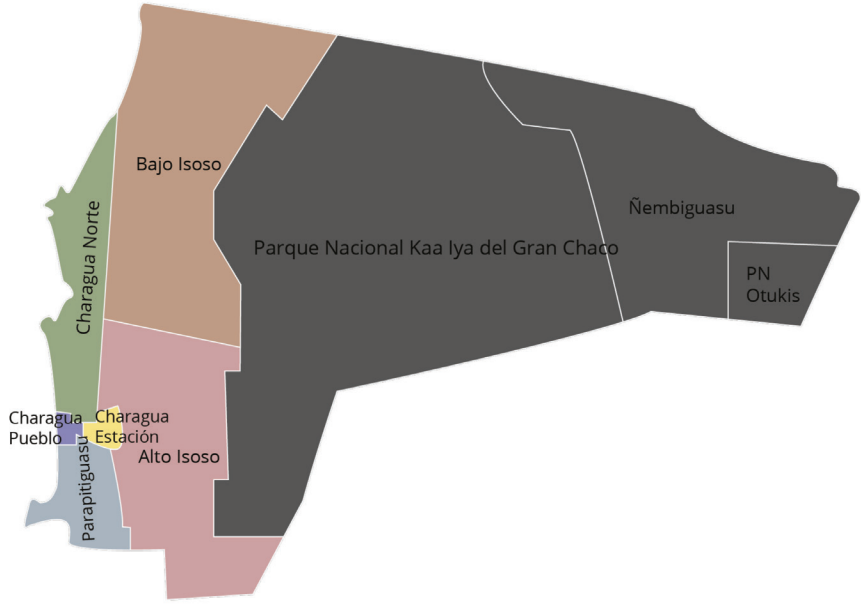

Figure 17.1. Map of the Territorial Organization by Zones of the Guaraní Charagu a Iyambae Autonomy. **Source:** Pere Morell i Torra, 2018.

All of the 46 representatives of the three bodies that make up the autonomous government are elected in a decentralized manner in each of the six Zones and, in addition, through the elective systems each Zone deems appropriate, whether or not they pass through the secret individual vote mediated by political parties. This option for the elective autonomy of the Zones, which implies the coexistence of different elective mechanisms and democratic legitimacy within the autonomy, seeks to establish a sort of new coexistence pact with the non-Guaraní Other, based on the non-imposition of the elective "uses and customs" of one Zone over the other. This did not prevent the sectors opposing autonomy from mobilizing as one of their main discourses the alarmist denunciation of the "end of democracy" and the "universal vote," supposedly threatened by some Indigenous "uses and customs" that would be imposed in the urban areas, conceived as antagonistic to democracy.

As regards the institutional design of the autonomous government (presented graphically in the following pages), it maintains, albeit with

Guaraní-ized names, the classic division between "legislative" and "executive" powers. The main novelty is thus the incorporation of a composite third body of "collective decision," the *Ñemboati Reta*, in which attributions of the executive and legislative control powers, election and revocation competences of these powers and quasi-legislative functions are intermingled. Qualified in the statute as the "highest decision-making body" (art. 19.I), this new entity embodies the idea of social redistribution of power launched by Bellarmine and repeated by many of the promoters of autonomy: "that power should be vested in the people." Without any parallel in the previous municipal institutionality, or in the Liberal tradition based on political representation through the secret individual vote, its most immediate institutional reference is the *ñemboati* or assembly, the main Guaraní decision-making body and one of the central elements of the *ñande reko* or Guaraní "way of being." It is a body that proposes decision-making through collective deliberation and direct participation of the different territorialized population centers (whether in rural communities or urban barrios) through an assembly system with three ascending territorial authorities that follow the logic of territorial organization by zones: 1*) Ñemboatimi* (Communal or Neighborhood Assembly); 2) *Ñemboati* (Zonal Assembly); and 3) *Ñemaboati Guasu* (Autonomous Assembly).

In the case of the first two assemblies, their incorporation into the new government structure implies a recognition and institutionalization of different socioorganizational spaces existing informally in the previous municipal framework, without full legal recognition within the municipal system. Examples are the communal and zonal assemblies of the four Guaraní captaincies and certain deliberative mechanisms existing in Charagua's two urban nuclei (such as the Neighborhood Boards or the Town Hall Forums). On the other hand, the *Ñemboati Guasu* (literally, "great assembly") is a newly created entity with the vocation of representing the autonomy's six Zones. While the communal/neighborhood assemblies and the zonal assemblies are based on the direct participation of the population, the *Ñemboati Guasu* works from a logic of political representation: via their respective zonal assemblies, each of the six Zones elect four representatives (two men and two women) for a three-year term.

If the main novelty of the legislative body, heir to the former Municipal Council, is the change from seven representatives to 12 (two per Zone) and the establishment of gender parity in the body's internal composition, the

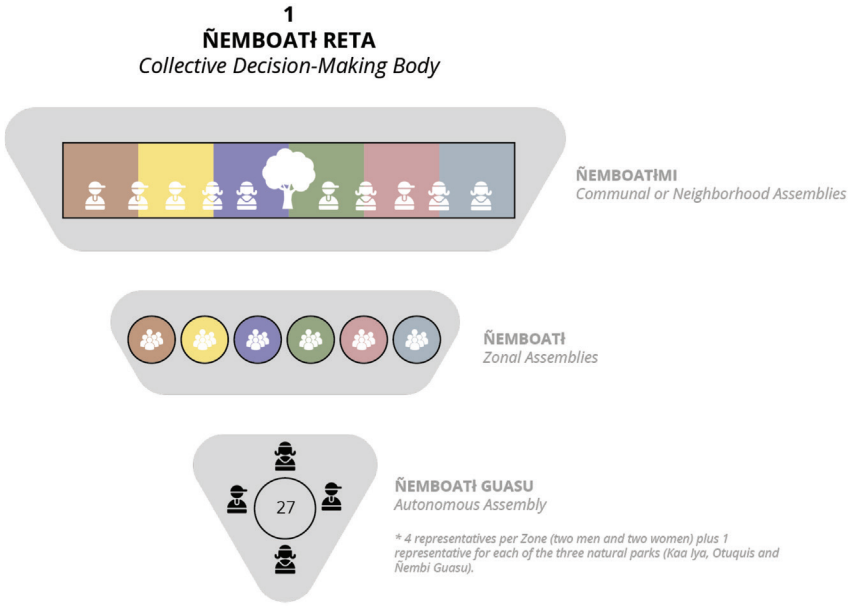

Figure 17.2. Internal organization of the *Ñemboati Reta*. **Source:** Author's elaboration (Morell i Torra, 2018) based on the Guaraní Charagua Iyambae Autonomy Statute.

new executive body represents a major break with respect to the municipality, especially at the symbolic level: the disappearance of the mayor, an omnipresent figure who brings the presidential liturgies of Bolivian republicanism to the local world. The new executive body is multi-personal in nature: composed of six "zonal executives" (one per Zone), elected every five years according to the rules of each Zone) and a new figure, the *Tëtarembiokuai Reta Imborika* ("coordinator") abbreviated as TRI, who, while not concentrating the previous municipal mayor's attributions, term of mandate (three years) or system of election (rotating by Zones), is similar in that it is an individual figure who deals with "executive power" (or, at least, part of it) and seeks to represent the whole of the municipality's autonomy.

Another of the significant contributions of the new autonomous design that merits highlighting is the establishment of gender equity criteria in the internal composition of the collegiate government bodies, i.e., the Ñemboati

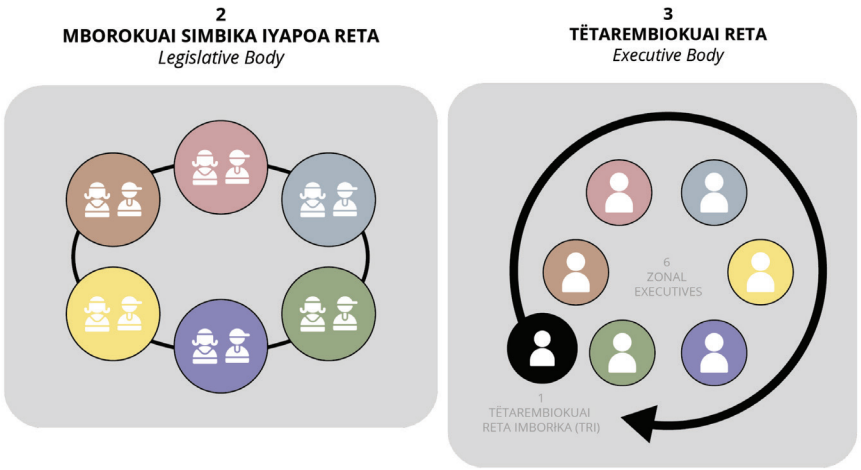

Figure 17.3. Organization of the legislative and executive bodies of the Guaraní Charagua Iyambae Autonomy. **Source:** Source: Author's elaboration (Morell i Torra, 2018) based on the Guaraní Charagua Iyambae Autonomy Statute.

Guasu and the Legislative body. This is an important advance with respect to the municipal framework, where there were no mechanisms to guarantee parity in the candidacies to the Municipal Council until the entry into force of the new Electoral Regime Law (2010), which introduced the obligatory nature of gender equity and alternation in all electoral processes of the Plurinational State, a measure that radically transformed the gender composition of both the Municipal Councils and the Plurinational Legislative Assembly itself, becoming one of the most equitable parliaments in the world (De Marchi & Gómez, 2017). In reality, the conception of gender equity in the collegiate bodies of the Guaraní Autonomy goes a little further than the Bolivian Electoral Law, since the equitable presence of women within such bodies does not depend either on the position they occupy on the candidate slates (in many cases, relegated to the second and fourth positions) or on the electoral results, but rather on a criterion, set by the statute itself prior to the electoral process, which directly affects the gender composition of the bodies: each Zone must necessarily elect one woman and one man for the Legislative Body, and four women and four men for the *Ñemboati Guasu*.[18]

Such advances should be understood as one of the fruits of the advocacy (and insistence) of female leaders within the Guaraní organic world, leaders who are still emerging but found opportunities to assert their voices with the opening of new arenas for collective deliberation that the autonomy construction process entailed (in this regard, Morell i Torra, 2018, pp. 360-363). As in all spaces of political responsibility (in Bolivia and beyond), however, the Guaraní organic and leadership world continues to have a clear male bias. Thus, albeit with some exceptions, the vast majority of positions within the organizational structure of the Guaraní captaincies continue to be held by men, relegating women to roles conceived as eminently "feminine" (such as secretary). Likewise, in Guaraní deliberative arenas, such as communal and inter-communal assemblies, it is usually men who have a greater presence and voice.

Finally, it should be noted that, despite the gender equity criteria in the conformation of the legislative body and the *Ñemboati Guasu*, the dynamics of gender inequality and male over-representation are still clearly reproduced in the executive body, which continues to be perceived as the main space of power in the autonomy. So far, the two TRIs (autonomy coordinators) that have succeeded each other in office between 2017 and 2021 have been men, and only one woman has acceded to the position of zonal executive; the other five being dominated by men. Besides reflecting the structural gender inequalities of a patriarchal society, all this also reveals the difficulties women, Karai as well as Guaraní, encounter in reconciling political participation (which requires constant travel and displacement, leaving family responsibilities, etc.) with a gender system that displaces women from political decision-making spaces, making them responsible for practically all reproductive and care work within a "domestic sphere" conceived as separate from the public arena and devoid of politicization (Segato, 2016, pp. 94-95).

The First Steps of Autonomy: Walking among Expectations, Realities and Inertias

Imagining a new institutional framework is a difficult task, as Belarmino Solano reminded us above. But not as difficult as deploying it, something he himself was able to experience. After his time in the Autonomous Assembly in charge of drafting the autonomy statute, a space where new and important Guaraní leaderships would be forged, Belarmino began a meteoric political

career that would lead him first to the municipality's (transitory) office of mayor, heading the MAS slate (allied with the four captaincies) in the municipal elections of March 2015. Then, in September 2016, he was elected to the coveted position of TRI or autonomy coordinator, moving directly from the mayor's office to occupy this new executive figure and, incidentally, reflecting in this leap the continuities between TRI and mayor, between the new autonomy system and the old municipal system. Belarmino thus became the first person to occupy a position he himself had helped devise, having to manage the formal extinguishing of the municipality and the transition to a post-municipal public management model, as well as the important expectations of change linked to the arrival of the Indigenous autonomy after a conversion process of more than six years.

Such expectations would become explicit political discourse and electoral strategy during the campaign for the second referendum to approve the statute which, after more than a year of waiting and bureaucratic delays, was finally held on 20 September 2015 (cf. Morell i Torra, 2017). Although other discourses also structured the Yes campaign, such as the defense of a new, more participatory democratic model or a redistribution of economic resources more favorable to rural communities, one of the central arguments linked the Yes to autonomy with the idea of rapprochement with the Plurinational State and its development resource distribution system ("works", "projects", "programs") in rural areas, closely linked to the staging of political loyalty with the MAS government. In the words of Belarmino himself in a speech given after the victory of the Yes vote in the referendum:

> The projects we have started here as a municipal government [of the MAS allied with the four captaincies] will not be cut; they have to continue and they will continue, even more with the autonomy because we will work directly with the central government and brother Evo Morales. (Belarmino Solano, recording by the author, September 20, 2015)

Rapprochement with the top level of the Plurinational State was not just a speech; it was backed with action the day before the referendum, when "brother" Evo Morales came to Charagua Pueblo to announce the fruition of a decades-old demand by all the actors of Charagua that, in itself, embodies the idea of rapprochement and development: an international highway

connecting Charagua with the city of Santa Cruz and Argentina, financed with Chinese capital. A few days before his arrival, (former) Vice President García Linera also visited Charagua, in his case to stage the beginning of an ambitious state natural gas extraction project in the Parapitiguasu Zone which, like the highway, generated important development expectations. Linera's visit to inaugurate a new hydrocarbon project gave support to another central discourse of the Yes campaign: the possibility that the benefits from the extraction of natural gas from the Charagua territory would go directly to the autonomous government, without the appropriation of royalties by the Santa Cruz departmental government.

Despite the deployment of this strategy of linking Indigenous autonomy to the idea of development, which is indeed an elaborate strategy but at the same time requires little effort as it is inscribed in the common sense of Charagua society as a whole, since everyone in Charagua wants/needs "more development," the fact is that the results of the 2015 referendum, in which the Yes won with 53%, were quite similar to those of the first referendum in 2009. As then, the No also won (even more convincingly) in urban areas in 2015 and the Yes won in rural Guaraní areas (convincingly in Charagua Norte and Parapitiguasu, and by a handful of votes in Isoso). This demonstrated that there are historical accumulation processes, socioeconomic structures and collective loyalties that are not easily altered through political discourses and strategies. But even without provoking movements in the underlying currents that structure Charaguan society, such as the differentiation between Karai and Guaraní, the discursive strategy of the Yes, close to the communities' concerns and languages, at least managed to maintain support among the majority of Guaraní communities.

Once the victory of the Yes vote definitively opened the way towards the consolidation of Indigenous autonomy, the new autonomous government installed as of January 2017 not only had to assure major works and projects of a spectacular nature but also manage the daily problems of Charaguan society, especially rural Guaraní communities, with many unmet needs and, consequently, with strong expectations of change that increased with the arrival of autonomy, and of the projects and works that were inaugurated almost simultaneously.

In July 2019, I visited Don Justino (pseudonym) in Aguaraigua, a Guaraní community in Bajo Isoso located about 100 kilometers from Charagua Pueblo. Despite the initial claim to decentralize the new autonomous administration

to rural areas, the offices of most of the autonomous government bodies are located in Charagua Pueblo, including the offices of the new zonal executive of Bajo Isoso, one of the areas farthest from the urban core. Don Justino was one of the community members who had been part of the Autonomous Assembly that drafted the statute and also supported the Yes campaign in the 2015 referendum. But in spite of his personal involvement in the autonomy project, Don Justino's assessment of its implementation was emphatically negative:

> There is no improvement, the projects are not reaching Isoso, the authorities spend all day in their office in Charagua and don't come to the communities. Before, with the municipality, at least something arrived, only a little, but something. But now ... nothing! The roof of our little school is falling down and the kids have been going hungry for months because the school breakfast has been cut off. I worked hard, you know, for autonomy. But the autonomy failed. You can write it down that clearly. (Personal communication, July 24, 2019)

In reality, Justino's disenchantment, shared, although not so emphatically, by many community members with whom I spoke, was not something new: it was just that it was previously directed against the municipal authorities and, now, against the new autonomous authorities, from whom a different behavior is expected (and demanded) as they are invested with a different type of democratic legitimacy that, in rural areas, no longer passes through the secret individual vote mediated by political parties, but through the zonal assembly.

In Justino's criticism, however, there was something new that I also perceived in the criticisms of other Charagua residents not directly involved in politics: a handling of information, data and very concrete figures on the management by their authorities, especially of budget items and expenditures in each Zone. In this sense, one of the elements that even those most critical of the new autonomous framework felt was working well was the mechanisms of social control over the management of the zonal executives, at least in rural Zones where, thanks to the socioorganizational experience of the Guaraní captaincies, there are consolidated inter-communal assemblies that have been working de facto for years.

In the current autonomous framework, these entities, called Ñemboati, do not just conduct periodic social monitoring of government representatives, as they already did in the municipal framework, although in an unregulated manner and depending, in the end, on the will of each municipal government. In addition, they now have the power to "recall" any zonal representative (be it the executive, the legislative or the Ñemboati Guasu). This power of revocation had already been put into practice to revoke the zonal executive in the North Charagua Zone, who had been unable to justify all the expenses and invoices in one of the quarterly "reports" that must be presented to the assembly.

While Justino's criticisms came from outside the autonomous government structure, there were also all kinds of critical views from within the structure's three types of bodies – each one traversed by different political logics, democratic legitimacy and territoriality. Each in its own way revealed the limitations and problems of these first years of autonomy. But if there was one thing that authorities, technicians and autonomy workers, who made up a considerably larger body than with the municipality, agreed on, it was, first, the constant bureaucratic obstacles of the central State when implementing basic administrative procedures to ensure the functioning of the autonomy; and second, the lack of state funding, which, contrary to what was conveyed during the campaign for the Yes, was still framed in the same system of municipal funding despite the fact that as an Indigenous autonomy a greater number of competences were assumed than as a municipality.

This is the extent of the coincidences between members of the autonomous government structure. Another of the most clearly visible dynamics is the existing tensions between different indigenous autonomy bodies (legislative, executive and Ñemboati), which can be summarized on two levels. A first level of tension has to do with the decentralized territorial structure, in both organizational and elective terms, as well as in budgetary terms, and the Charagua Iyambae Guaraní Autonomy can be understood as a sort of confederation between quasi-sovereign Zones. Although this ensures coexistence in a common framework that allows the multiple differences that cross the variegated Charagua society to be overcome, it also increases the dynamics of disintegration and competition between Zones, especially when the distribution of scarce economic resources to execute works and projects comes into play.

In this way, despite the existence of highly aggregated demands in the territory as a whole, such as the demand for its own financing system, differentiated from that of the municipalities, the dynamics of inter-zonal competition make it difficult to find spaces for shared struggle as Indigenous autonomy. Neither have the entities common to the whole of the autonomy (the TRI, the legislative body and the Ñemboati Guasu) managed to articulate these spaces, since the representatives in such entities, elected territorially in each of the six Zones, consider themselves, and are considered, representatives answerable mainly to their own Zone.

On the other hand, the second level of tension reveals, once again, the inertias and legacies with respect to the previous municipal system, something clearly evidenced in the ambivalent and uncomfortable position – perhaps precisely for that reason, full of potentialities still to be developed – of the Ñemboati Guasu, the representative and common authority for the whole Autonomy that is part of the new collective decision-making body, formed by 27 representatives of the six Zones. The Ñemboati Guasu is "the right arm of the bases, because we come from the base, we are one step away from the organic and one step away from the political." This is how Faviola Chavarría, one of its "assembly members" conceived it during the first management (2017–2019) of this new body (personal communication, 13 July 2019).[19]

The Ñemboati Guasu is conceived as an entity of social control of the legislative and executive powers, at the same time as it is a body that, in direct communication with the zonal assembly instances which that is why Chavarría conceptualized it as the "right arm of the bases" – defines the Autonomy's strategic plans and has the capacity to issue "mandates" of obligatory compliance to both the legislative and executive bodies. However, this new entity, the one "that most clearly breaks with municipalist institutionality" (Ledezma, 2017, p. 6), has not yet finished finding its place within the institutional framework of the Autonomy, as evidenced by the fact that, unlike the other two bodies, it does not have a regular funding line in the autonomous budget to ensure its functioning. For the time being, the Ñemboati Guasu is still struggling to win its place among the other autonomous bodies, which, according to several members of the Ñemboati, have not yet managed to get rid of the municipality "chip."

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We close this chapter by returning to the initial reflections on Guaraní autonomy as a hegemonic project, which we have brought up from the voice of Álvaro García Linera, someone who has recently experienced the disintegration of a hegemonic project that he himself helped forge. Something that can be understood as a lesson not so much about "hegemony" as a synonym of strength and solidity, but about the fragility, reversibility and, if you will, delicacy of sociopolitical transformation processes, such as the one documented in these pages, leaving many open edges, since the *wawita* of autonomy is still growing and, as we have seen, the first steps are always hesitant, zigzagging.

What is certain is that the next steps of the Charagua Iyambae Guaraní Autonomy will take place in a radically different context, surely much more complicated than the one in which it was conceived. Nevertheless, despite the fact that the Charagua Guaraní have strategically used the approach to the Plurinational State – and above all, to their former government – to build their autonomy and improve the situation of their communities, autonomy also opens new spaces from which to organize and defend collective interests with respect to and, if necessary, against the State. It is still too early to see how this "new" Guaranízed Charagua – but where very old dynamics are still in force – will respond to the challenges ahead. In any case, assuming its fragility and delicacy, the Charagua Iyambae Guaraní Autonomy continues to move forward, because after all, autonomous processes are always under construction.

NOTES

1 According to the population projections of the Instituto Nacional de Estadística for 2020. Available at: https://bit.ly/2H6thIX

2 For the transcription of the speeches of the 7 January 2017, event, I rely on the live webcast by Radio Santa Cruz-Charagua, a bilingual radio station belonging to the IRFA Foundation's radio network that broadcasts from Charagua Pueblo and has a significant following in rural Guaraní communities.

3 One of the most up-to-date analyses of the degree of progress of the different processes of constructing Indigenous autonomy can be found in Exeni (2018).

4 The first fieldwork period lasted between late March and early August 2012; the second between early April and late October 2014; the third between early February and early May 2015; and the fourth between September and November 2015. During these fieldwork periods, I conducted multiple unstructured interviews, held informal conversations in multiple contexts and, in addition to being part of different spaces of Charagua's sociability – in the ambivalent quality of "participant observer" – I have

tried to attend every event more or less linked to the autonomy process. Although I always try to cite the origin of the sources that support the statements and information, in some cases they do not come from a particular identifiable source but from the observation deployed over time and from the information that flows during the encounters and interactions of ethnography itself.

5 The dissertation is available at: https://bit.ly/3j1wo1D

6 I would like to thank the Guaraní people of Charagua for opening the doors of their process to me. I would also like to thank Marcelo Alberto Quelca, Magaly Gutiérrez and José Ledezma for always being willing to talk and share with me after so long.

7 In addition to the experience of Charagua, among the total of 17 municipalities that cover the territory claimed as "ancestral" by the Guaraní people, up to four municipalities have a majority Guaraní population that is currently in different stages of conversion to Indigenous autonomy: Gutiérrez and Lagunillas (both in the department of Santa Cruz), and Huacaya and Macharetí (in the department of Chuquisaca).

8 The term "*Autonomía Originario Campesina*" (First Peoples Peasant Autonomy), like the constitutional category of "*naciones y pueblos indígena originario campesino*" (Indigenous First Peoples peasant nations and peoples), is hardly used by the Guaraní, who, like other Indigenous peoples of the Bolivian lowlands, identify themselves as "Indigenous peoples" (now also as "nation") and, above all, are wary of the practical implications (especially at the territorial rights level) of the incorporation of the term "peasant"(*campesino*) associated with the Andean Quechua and Aymara migrants settled in Guaraní territory. In this text we will mostly choose to use the term "Indigenous autonomy" when referring to the legal figure AIOC.

9 There are notable differences both in the number of people in these communities (some have fewer than 10 families while others may have more than 1,000 people), and in their territorial distribution among *captaincies*, which also vary in size. According to data from the Community Territorial Management Plan prepared by the new Guaraní autonomous government (complemented by fieldwork data), the distribution of communities by captaincy is as follows: Charagua Norte, 31 communities; Parapitiguasu, 11 communities; Alto Isoso, 27 communities and Bajo Isoso, 41 communities.

10 Regarding the Bolivian Indigenous autonomous regime and its deployment in practice, we highlight the following analyses: Albó & Romero, 2009; Cameron, 2012; Tockman & Cameron, 2014, Tomaselli, 2015; Morell i Torra, 2015; Exeni, 2015, 2018; Plata & Cameron, 2017; Alderman, 2017.

11 Although there is the potential for "Indigenous First Peoples peasant regions," formed from the aggregation of previously constituted local Indigenous autonomies, their creation is very complex – no attempt yet exists – and, in addition, the Constitution explicitly states that the regions (Indigenous or non-Indigenous) that are formed cannot cross departmental boundaries (art. 280.I). Likewise, it establishes a series of obstacles – the need for a specific law to support it – for those autonomies (via municipality or TCO) that cross municipal administrative boundaries.

12 It should be noted that in June 2019, as a result of pressure from Indigenous organizations involved in autonomy conversion processes, the requirement for a second referendum was eliminated (through an amendment to the Framework Law on Autonomies and Decentralization), a problematic requirement in that it implied submitting to an individual secret vote a document (the statute) previously approved by the Autonomous Assembly through community democracy mechanisms.

13 In addition to the first eleven municipalities that in 2009 opened the municipal pathway of the AIOC with dissimilar fates, ten new municipalities started AIOC processes between 2014 and 2020 (Cameron and Plata, íbid.)

14 Although the term "*Chiriguano*", with popular pejorative etymological connotations, has disappeared as a category of social self-identification, and all (ex)*Chiriguanos* self-identify as "Guaranís" – compared to the 96,842 people who self-identified as Guaranís in the 2012 Census, only 327 did so as "*Chiriguanos*" [data available at https://bit. ly/3kb0IbK]-; the term "*Chiriguano*" continues to be used and claimed from historiography from another non-pejorative etymological genealogy (as a synonym for "*mestizos*") considering that it better reflects the specificity of the Bolivian Guaraní world rather than the generic category "Guaraní". (For a detailed analysis of the controversy regarding the denomination of the Bolivian Guaranís, see Morell i Torra, 2018, Chapter 4.)

15 For a more detailed analysis of the 2009 referendum's electoral results and their distribution logics according to the complex sociopolitical geography of Charagua, see Morell i Torra (2018, pp. 330-332).

16 The Autonomy Statute of Guaraní Charagua Iyambae is available at: https://bit. ly/35b0UkV

17 Apart from the six zones, the populated areas of Charagua, the formal jurisdiction of the Charagua Iyambae Guaraní Autonomy, extends further east to encompass areas that are almost entirely barren, but of great ecological value: two natural parks (Kaa Iya and Otuquis) and an Ecological Conservation Area (Ñembi Guasu). In a strategy to try to establish jurisdiction over this space, these three areas are also incorporated into the structure of the autonomous government and each has its own representative in the Ñemboati Guasu.

18 A small nuance should be introduced here with respect to gender parity in the Ñemboati Guasu. It is that, as noted in the previous footnote, there are three uninhabited areas of the autonomous territory (the Kaa Iya Natural Park, Otukis and the Ñembiguasu Ecological Conservation Area) that have a representative assigned to them. Equity is only guaranteed for the representatives of the Ñemboati Guasu from the six inhabited areas.

19 For a knowledgeable look at the first steps of the Ñemboati Guasu by someone involved in its technical support from the beginning, you can consult the text by José Ledezma (2017) on the website of the Arakuaarenda Foundation: https://arakuaarenda.org/panel/wp-content/uploads/2018/02/Articulo-Web-J.-Ledezma-3.pdf

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18

The Path to Autonomy for the Wampís Nation

Shapiom Noningo and Frederica Barclay

The lives and territories of those peoples who bravely defend their territories will endure

Pedro García Hierro, travelling companion (2015).

Background

Peru is not the only Latin American country in which Indigenous Peoples have suffered repeated attacks from the State since 2007, when the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) was approved. This systematic onslaught has sought to curtail the constitutional guarantees provided to Indigenous peoples' territories. Such rights had already been eroded by the 1993 constitutional reform in Peru, which eliminated the collective territories' guarantees of inalienability and unseizability, and even went so far as to eliminate the communal system itself in order to facilitate and promote extractivism and *neolatifundismo* [concentration of the land in large-scale, private farms].

Former President Alan García Pérez (2007) offered a clear illustration of this at the time by labelling Indigenous Peoples as "second-class citizens" and calling them "dogs in the manger" for demanding respect for their territorial rights. It is now common knowledge that this historically accumulated burden of racism, together with a systematic program of unconsulted legal

reforms, finally culminated in the so-called *Baguazo* or Bagua massacre of June 2009 (Lombardi, 2010; Manacés & Gómez Calleja, 2013).

This dramatic confrontation, in which the Wampís people played an active part, precipitated a collective analysis of the conditions required for Indigenous peoples' survival in the face of the constitutional changes of the 1990s. This analysis was promoted by several peoples of northeastern Peru, grouped together in the Coordinating Body of Indigenous Peoples-San Lorenzo (*Coordinadora de Pueblos Indígenas-San Lorenzo* / CORPI-SL). As Noningo notes (2017, pp. 10-11), in 1995, the Wampís of Kankaim sector "were debating a new territorial set-up [which] was to include the territories of ancestral use and occupation, thus remembering and consolidating the memory of the sociohistorical and cultural occupation." In the mid-1990s, alerted by the Peruvian government's increasingly evident desire to put the Peruvian Amazon up for auction, and together with the eight other peoples that made up the regional organization, the Wampís decided to self-demarcate their respective territories and establish the points of contiguity between them.[1] Despite all the adverse political signals, they found encouragement in the International Labour Organization's Convention No. 169 on Indigenous and Tribal Peoples, adopted in 1989, which came into force in Peru in 1995, and in the UN Declaration (UNDRIP).[2] From the perspective of resisting and promoting their medium-term rights in the face of this obvious roll-back, Indigenous peoples began to prepare files documenting their history and territorial occupation in order to support their rights and territorial claims. In this process, with the advantage that their territory had not undergone any massive fragmentation, the Wampís adopted a perspective that was aimed at recovering the exercise of their territorial governance through the constructing of tools with which to exercise autonomy.

The Wampís Nation's territory covers 1,327,000 hectares and extends over two of Peru's Amazonian regions. In the Amazonas region, it covers the Kanus or Santiago River basin (Río Santiago district, Condorcanqui province, Amazonas region), which runs from the border with Ecuador to the Marañón River. In the Loreto region, it covers the middle and upper reaches of the Kankaim or Morona River, the source of which also lies in Ecuador. Linking the two basins, and criss-crossed by ancestral routes, is the Kampankias mountain range, rising to 1,435 metres, which is where many of the tributaries that feed both basins originate. The Wampís population of just over 15,000 inhabitants is spread across 85 settlements that make up

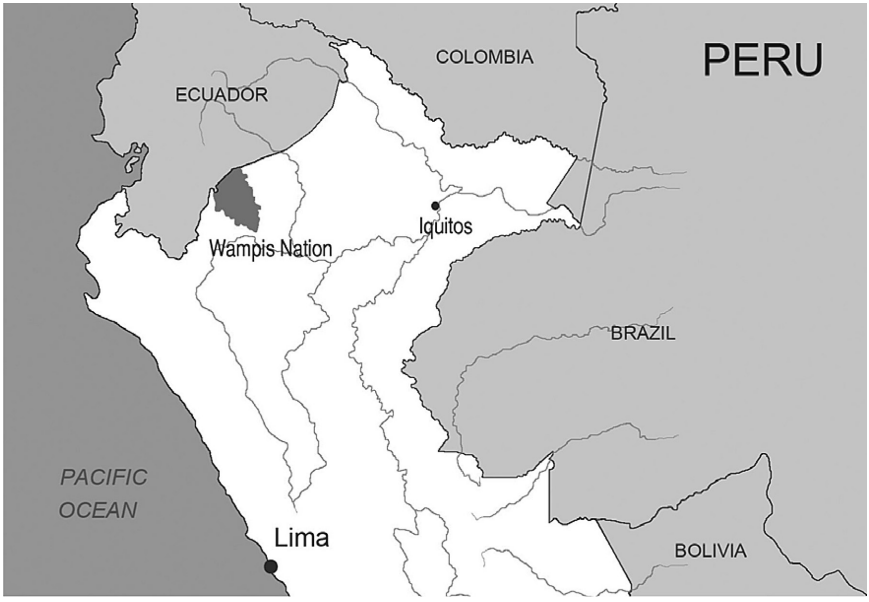

Figure 18.1. Location of the Wampís territory. **Source:** IWGIA, 2019, p.11, https://www.iwgia.org/images/documents/Books/IndigenousPeoplesRightstoAutonomyandSelfgovernment_UK.pdf

22 communities and annexes. The area currently enjoying communal titles comprises little more than 33% of the territory under the jurisdiction of the Autonomous Territorial Government of the Wampís Nation.

Active and Creative Resistance

Just as they resisted the attempted conquests of the Mochica kingdom of the northern coast around 600 AD and, later, that of the Inca Empire (late 15th century), the Wampís exerted active armed resistance when the Spanish entered their territory, also attracted by the gold deposits. Colonial tradition and archives have documented how, from the 16th century onwards, every Spanish attempt to advance was followed by local rebellions and, more often, rebellions coordinated with other peoples such as the Awajún, located to the west, or the Yakinia Shuar to the north. These rebellions were designated general uprisings because of their scope and force (Velasco, 1981; Juank, 1984). The reputation of a warrior people thus became firmly established.

This reputation, and their demonstrable resistance to colonial subordination, did not prevent foreign *shiringa* (hevea brasiliensis – rubber tree) extractors from later establishing commercial relations with a few local leaders at a time when the entire Amazon region was experiencing the rubber boom (1880-1914).[3] Up to the start of the 20th century, there were many reported attacks on rubber settlements in the Marañón, Kanus and around the mouth of the Kankaim (Morona) on the part of Wampís warriors, some of whose leaders are well remembered (Clark, 1954, pp. 226–227; Up de Graff, 1996).

The Wampís territory is located in an area that has been disputed by Peru and Ecuador since both republics were formed at the start of the 19th century. This location, but above all the fact that the Santiago River (or Kanus River as the State should also call it) was considered the most strategic route in the event of a potential conflict and was later to become the focal point of the territorial dispute, discouraged State-sponsored settlement in the area.[4] When, in the early 1980s, Fernando Belaunde's government established a "living borders" program to promote occupation of the region, opposition from the Indigenous organizations and a lack of support from the army deprived it of the necessary support in this area (AIDESEP, 1981). In contrast, hundreds of settlers from other regions have gradually been settling in the border area, along the axis of the Marañón River and a projected highway from the west, in Awajún territory, which is why the Wampís have always rejected and continue to reject proposals to extend the road parallel to the Kanus River.

Given this set of circumstances, the Wampís territory remained somewhat removed from the integration efforts that were taking place through colonization. Instead, with a view to cultural assimilation, following the 1941 armed conflict between the two countries,[5] Peru opted to invite missionaries from the Jesuit order and evangelical missionaries from the Summer Institute of Linguistics[6] into the border region to establish schools. The entry of missionaries into Wampís territory — for the very first time — laid the foundations for a process of change that was to have profound long-term consequences. Beginning in the 1960s, the missionaries established primary schools, and families gradually began to accept these because they offered an opportunity to acquire new tools with which to defend themselves from the abuses that were resulting from increased trading along the Marañón River, and around the population center and later provincial capital, Santa María de Nieva. As in other parts of the Peruvian Amazon, these schools in turn gave rise to a gradual re-grouping of the population into nuclear settlements, even

though the traditional pattern of the clans was to live spread out along the secondary tributaries of each river basin.

In the decade that followed, the Wampís organized to obtain land titles under the so-called 1974 Law on Native Communities, the first of its kind.[7] In addition, together with the Awajún, they formed the Aguaruna Huambisa Council (CAH), a pioneer among Indigenous organizations in the Peruvian Amazon, which, with the few legal tools at its disposal, made significant gains in terms of land rights and dialogue with the Peruvian State. These gains included several agreements with the Peruvian government regarding education and health, as well as significant progress in the titling of communities in order to prevent colonization.

The Wampís and the Awajún that formed part of the new organization realized from the start that the Law on Native Communities was designed to fragment the Indigenous territories, thus making vast stretches of land available for the State to allocate to third parties. With this understanding of the policies, and through the system of delimited and titled communities, the Awajún and Wampís peoples thus tried as far as possible to rebuild their territorial integrity, subsequently calling on the Peruvian State to delimit "reserves" in order to guarantee future titled access to areas less accessible to possible colonization. As time went by, it became increasingly difficult to obtain new communal titles, but they still managed to expand their territories with the aim, as far as possible, of re-assembling them from the areas protected by communal titles. Guided by the principle of the need for dignity, which is deeply rooted in the Wampís culture, Indigenous peoples continued to demand what the law established and what they knew, quite apart from this, was their right.[8]

Although the Wampís left the CAH in the 1990s and formed independent organizations, especially in the Kanus basin, they retained their ability to influence up until the point when a number of processes converged. On the one hand, there was an increasingly evident intention on the part of the Peruvian State to implement reforms aimed at creating a market for land, liberalizing access to land in the Amazon and destroying the communal regime, thus threatening Indigenous rights.[9] On the other, the process that began with the so-called "Cenepa War" (January-March 1995) between Ecuador and Peru and which concluded with a Final Peace Agreement signed by both countries in October 1998 came to modify the Peruvian geopolitical paradigm around the northern border, changing the nature of the relationship between the

Peruvian State and the Wampís and Awajún peoples. Indigenous peoples thus lost the strategic influence that derived from their location on the contentious border, and which had resulted in a tacit or *de facto* (but nevertheless consistently confirmed) agreement (Barclay, 2019). Through this agreement, both Indigenous Peoples had achieved a high degree of dialogue with the Peruvian State unique in the national context.

This betrayal of the agreement was revealed immediately after the signing of the new 1998 Peace Accord. Thus, even before the so-called *Baguazo*, the Peruvian State had taken measures that seriously and directly affected the interests of the Wampís and Awajún, and which were perceived as affronts to the people and attacks on their dignity. In 2006, the State ignored an agreement by which, with the consent of the people, a national park was to be established on their ancestral territories in the Cóndor Mountains to protect the area from mining interests, withdrawing part of the agreed area precisely in order to grant mining concessions. In fact, this happened on the very same day that the area of the Ichigkat Muja National Park was also reduced. That same year, the State also superimposed an oil plot (plot 116) on a territory shared with the Awajún and destined for the conservation of the Tuntanain mountain range, making oil activity an explicit priority in the law creating it. In addition, a large part of the ancestral territory of the people was converted into a "reserved zone yet to be categorized," including the Kampankias mountain range in the heart of Wampís territory. For the Wampís, it became evident that the right to decide their own future as a people or a nation was being severely curtailed. Many Indigenous families felt that the Peruvian State's intended aim was in fact to eliminate them (Santos Granero & Barclay, 2010).

Planning for Autonomy

The recovery of autonomy and dignity has been an underlying theme for Wampís thinkers for many decades, both before and after they collectively decided to lay down their weapons of armed resistance and instead demand enjoyment and exercise of their rights. An awareness of ILO Convention No. 169 (of constitutional standing) and of the UNDRIP has enabled the Wampís to understand that the international framework is supportive of their desire to exercise autonomy and Indigenous governance over their territories.

Strictly speaking, the 1974 Law on Native Communities did not prevent the people from piecing together their ancestral spaces via the legalization of their communal territories and thus exercising the autonomy granted to the communities. However, developments in the legal system and policies of Amazonian settlement made this path unfeasible for the Wampís. In their current legal version, the communal titles fragment the titled area of the territory into areas demarcated for and owned by the Indigenous community, and areas registered as merely ceded for their use by the State. Moreover, communal territories may have numerous other systems superimposed on them that involve or prioritize third parties and which result in restrictions on the exercise of their rights.[10]

As already mentioned, various peoples within CORPI-San Lorenzo's jurisdiction had begun a process of self-delimitation and reflection on the relationship between the State and the Indigenous Peoples in the 1990s. As a result of this process, and through their participation in the Datem del Marañón provincial government, they managed to get the government to legalize a procedure by which the Indigenous Peoples could gain their autonomy, framing the law within the land-use planning procedure that the Peruvian State was then beginning to employ.[11] Within this same framework, and with the legal advice of the Peruvian-Spanish lawyer, Pedro García Hierro, a format was agreed upon for the preparation of files that could be used to support claims for the legalization of "integral territories." As a result of this work, several "dossiers" were produced, some of which were submitted to Congress, which were then referred to the Ministry of Justice. Ultimately, however, the national authorities failed to take a decision on these claims based on the procedure established in the 2009 Municipal Ordinance, which nevertheless remains in legal force.

Given this experience, the Wampís decided to embark on a new path, one which — responding to their own historical moment — would allow them to make progress in exercising their autonomy. In essence, they decided to start creating their own instruments by which to govern their territory and interact with the Peruvian State, from their status as the Wampís Nation. Wampís leaders from both basins were involved in this task and spent more than two years debating the preamble and 94 articles of the Statute of the Autonomous Territorial Government of the Wampís Nation (GTANW). This was enacted in November 2015, "in memory of our ancestors and for our right to

self-determination as a people and nation" at a self-proclamation event held at the GTANW headquarters.

After establishing the territory as indivisible, and proclaiming the language and self-designation of the Wampís Nation, the Statute declares that, in matters of citizenship:

> The men and women of the Wampís Nation are, in turn, Peruvian citizens and enjoy equal rights and duties with other citizens. Respect for the Peruvian State and its representatives, and mutual correspondence with our authorities, is recognized as the basis for a peaceful and productive coexistence with Peruvian society. The Constitution of Peru and the International Human Rights Treaties that complement it constitute a framework which, together with this Statute, are recognized and respected by our people. (Art. 10)

The Autonomous Statute of the Wampís Nation is a technical and political instrument of government and socioterritorial governance that sets out the following basic structure: the *Uun Iruntramu* (a type of Congress), composed of 96 *Iirunin* or community representatives, and which forms the supreme body of the GTANW; the Central Executive Government of the Basin (*Takatan Chichamrin*), the basin government with its highest authority, the *Matsatkamu Iruntramu*, and the Communal Government. An adaptation of the communal statutes has since commenced in order to reconcile and harmonize these with the structure, roles and powers of the GTANW and its basin governments.

Alongside the drafting of the Statute, a document was compiled that provides historical anthropological justification of the continued existence of the Wampís Nation and its territorial occupation, based on a previous document (Surrallés et al., 2013), as well as a legal justification of the right to territory, following the guidelines of the dossiers agreed with CORPI-San Lorenzo. The document also includes a map of the Wampís territory accompanied by a memoir, the minutes of the meeting at which the communities came together to form the GTANW, border agreements with neighboring Indigenous Peoples, a sociohistorical and cultural map and the agreed upon sociopolitical pact. The proclamation of the GTANW Statute was followed a few months later by the submission of the aforementioned documentation to all branches

of government: legislative, judicial and executive, including the main ministries and the regional governments of Loreto and Amazonas, in April 2016.

This submission was formal in nature and had the purpose of *notifying* the Peruvian State of the Wampís Nation's desire and self-proclaimed decision to rebuild its autonomy and exercise it, understanding and impressing upon them that it was the will of a people who were not prepared to wait for the Peruvian State to adapt its legal system in order to exercise rights that were inherently theirs. As anomalous as it may seem, Peru has never adapted its legislation to international norms and standards to ensure that Indigenous peoples can be considered subjects of rights, and it remains the case that only communities are recognized as having legal status, and only they can be the owners of territories. For the Peruvian State, Indigenous Peoples are an abstract concept resulting from the sum of the communities (who do not necessarily manage to obtain registration or get their lands titled). They exist in the "names" of the communities, they exist in the title and text of numerous laws, and even as a designation of State departments, but the peoples themselves are denied the possibility of becoming subjects of law and, as such, exercising those political rights that Peru made their own by ratifying ILO Convention No. 169.[12]

By acting in this way, it is not the Wampís Nation's intention to challenge the Peruvian State, of which the Wampís form a part as citizens, but to begin to implement a practice based on their rights, in the expectation that the conditions will be created for a structural change in the relationship between the State and the Indigenous Peoples. Likewise, the submission of the documentation in 2016 to the United Nations Special Rapporteur on the rights of Indigenous Peoples, appointed by the UN Commission on Human Rights, did not represent an act of secession.

From the perspective of the Wampís Nation, the path to self-construction of their autonomy has very solid technical and legal foundations: international legal instruments such as ILO Convention No. 169, the UN Declaration on the Rights of Indigenous Peoples and the jurisprudence of the Inter-American Human Rights System, all of which broadly develop the right to free determination or self-determination of Indigenous Peoples. The Wampís Nation and its territorial government are using these internationally enshrined instruments, which also form a part of the body of domestic constitutional texts. Indeed, the Peruvian State itself refers to them, in conjunction with its approval of the 2011 Law on Prior Consultation, albeit shrouded

in a clear and characteristic lack of transparency with regard to its treatment of Indigenous Peoples and their rights.[13] The Peruvian State cannot disavow a practice implemented by the Wampís Nation with clear national and international support, but neither is it currently willing to implement a regulatory framework by which to channel an approach that several Amazonian Indigenous Peoples, such as the Kandozi, Shawi, Achuar and others, are already using. The main cost for now is the inability to legally register the Autonomous Territorial Government of the Wampís Nation as a public institution, but there is nothing preventing it from operating as a representative institution of the Wampís Nation.

Challenges

Contrary to popular belief, however, the greatest challenges facing the Wampís do not stem from the lack of a legal framework that recognizes Indigenous Peoples as subjects of law or of a system by which to recognize their territories. It is true that the lack of an adequate administrative framework has thus far prevented the Superintendent of Public Registries from creating a register in which to record the Autonomous Territorial Government as a legal entity. It is also true that the Ministry of Culture has blindly and arbitrarily opposed the recognition of Indigenous Peoples as legal subjects, claiming that a Regional Ordinance negotiated by CORPI-SL at the request of the GTANW for that purpose is unconstitutional.[14] When the Autonomous Territorial Government of the Wampís Nation proclaimed itself, it still seemed possible (given the bicentennial of independence) that Peruvian society would agree to their system for autonomy as an expression of their right to self-determination.[15]

From the GTANW's perspective, however, until the political conditions for the above arise, it is still possible and necessary to strengthen their own capacities in order to make progress in political dialogue with the State, at different levels, and build protocols for positive and respectful relations. In fact, there are already different agreements, some more formal than others, with sectors of the Peruvian State whereby there is *de facto* cooperation and recognition of the institutional framework of and dialogue with the GTANW. At the same time, however, there are conflicts, with irreconcilable positions on issues such as an oil plot (plot 64) superimposed on the Wampís territory without any consultation.[16]

The GTANW understands that it will take time and political will, as well as active support from civil society, for Peru to develop an institutional framework that provides better conditions for the exercise of autonomy by the peoples who choose this path. For the moment, it has looked at other autonomous models existing in the region as a result of constitutional reforms (Colombia, Bolivia, Ecuador) and whereby territorial jurisdiction is recognized, thus enabling them to access public funding, but does not currently feel they correspond to the model to which they aspire, since these systems subsume the autonomies within the State structure and require them to adapt to State procedures.

For the Wampís Nation, the external challenge is mainly one of constructing a "creative and positive" framework and mechanism for their political relations with the State and civil society in general, including the capacity to influence different sectors and levels of government. This model involves an active relationship, dialogue, assertiveness and respect, with the goal of achieving "a system of consultation" on everything that concerns and affects the life, integrity and dignity of the Wampís Nation.

In the meantime, the GTANW has also sought and gained sympathy for its process from various international forums and bodies, such as the United Nations Permanent Forum on Indigenous Issues, an advisory body to the Economic and Social Council (ECOSOC), the Inter-American Commission and the United Nations Special Rapporteur on the Rights of Indigenous peoples. The GTANW has called on these bodies to document existing experiences of self-government, autonomy and self-determination so that lessons can be learned from them and so that it can be demonstrated to nation-states that they do not represent a risk to national integrity, and that, in fact, they could contribute to equitable and sustainable development objectives. Significantly, the United Nations has published an online summary and translation of the Wampís Territorial Government Statute as well as the *Socio-political pact, agreements and commitments. Preservation and conservation of living resources; nature, lands, territories, forests and biodiversity*, signed in November 2016.[17] Both the Forum and the Special Rapporteur have explicitly mentioned the Wampís Nation's autonomy process in recent reports (Tauli Corpuz, 2020; IWGIA, 2019).

Nationally, the Wampís Nation has gained the support of successive Andean, Amazonian and Afro-Peruvian Peoples and Environment and Ecology committees of the Congress of the Republic, which has twice

conferred its recognition on it, gaining the interest and respect of academics and human rights activists. There are several other peoples who are watching the steps being taken by the GTANW with interest, in particular (but not only) the peoples of the CORPI-San Lorenzo area.

The chosen path of proclaiming themselves a Wampís Nation without waiting for *de jure* recognition is certainly a great challenge. The Autonomous Territorial Government nevertheless considers that it is the internal challenges that are currently the most insurmountable. They are also the most urgent because, if not addressed, a point of no return could be reached in which there is no longer the ability to imagine a different future.

This is not a debate between traditionalists and non-traditionalists in Wampís society. No one is proposing a return to an older way of life in economic or cultural terms. It is neither desirable nor feasible. Schools and other means of coordination with the outside world have left their mark. The aim is to recover values and knowledge, develop mechanisms by which to effectively govern the territory and build proposals for a common future, something which, it must be said, Peruvian society lacks. The objective is further to recover social viability and conditions in the territory that are compatible with nature, dignity and thrifty well-being.

In recent decades, aspects of the Wampís' organizational and cultural base have been seriously eroded and transformed, resulting in situations that make governance difficult. To give some examples: the occupation of land promoted by the model of settlements anchored around the existence of a school is drastically different from the traditional model, meaning there is now greater pressure on the forests along the main riverbanks, with consequent impacts on quality of life, nutrition and health, and a loss of biodiversity; the communal model that originally sought to guarantee rights has been transforming into a way of privatizing forests that occasionally generates conflicts and often results in inappropriate management of the common heritage; the use of money is no longer occasional but forms part of family strategies, making them more vulnerable; and with a third generation in school, now including men and women equally, there is widespread loss of forest knowledge, including on the variety of traditional food crops, and oral and/or medicinal traditions, in addition to a clear loss of respect for the Elders. Under these conditions, parents begin to conceive of a more desirable future for their children outside the territory, as do their sons and daughters themselves. Both the loss of the internal conditions for well-being in the territory and the racist

and foreign devaluation of Indigenous ways of life play in favor of this. This is why Wampís governance includes creating the conditions to improve the local economy based on the use of biodiversity.

At the same time, patterns of behavior from outside have begun to be normalized in the communities, including violence against women and a decline in solidarity, given that internal control mechanisms are weaker now. Diagnosis of and reflection on the various pressing issues requires the inclusion of intergenerational and gender perspectives in order to make collective responses sustainable, as well as the economic and social investments they aim to achieve.

Other challenges are equally great, such as the fact that State intervention at the territorial level is increasing, albeit within the parameters of a unilateral vision of development. The expansion of State service provision (health, education) has meant that these services are increasingly decisive factors in a family's life, reducing its margin for decision-making. At the same time, families tend to naturally assume that the care they receive derives not from their status as citizens but from that of being poor, because of their limited access to monetary resources (Campanario Baqué, 2019).[18] As a result, their attitude toward the State has become increasingly passive, less critical and thus more pre-determined. All of this can be seen in the collective assessments promoted by the GTANW in order to define policies and lines of action.

While this is occurring at the level of families, there has also been an increasing tendency among the community's authorities to demand services from the State without requiring that they respond to their own perceptions of need, resulting in a vision of development or well-being that ends up aligned with supply. Recovering its own vision of development, creating internal capacities, generating attitudes of vigilance and transparency, generating well-being without compromising the intergenerational resources of nature, are all highly important internal challenges that the Wampís Nation and its Autonomous Territorial Government have already identified as fundamental to achieving *tarimat pujut*, the collective well-being.

All of these manifestations are, in some sense, an expression of what Gruzinski (1991) has called the *colonization of the imaginary*. Faced with this, the Wampís Nation is seeking to diminish its destructive influence, generate internal capacities and channel the energies of generations that want a better life while ensuring that the conservation of biodiversity, water, life and values of solidarity are more fully expressed.

Faced with this colonization of the imaginary, which alienates culturally rooted creativity, the GTANW has set out to awaken the dreams of its members and include these in plans for the future, energizing a common vision and debates through its radio station, Tuntui, which broadcasts ten hours a day from the Kanus River. It has also made significant efforts to raise the profile of its new commitment to autonomy, including slogans such as "time is water" to give renewed value to the nature on which society depends. Part of these autonomy efforts is focused on renaming sites such as rivers, mountain ranges and communities, names that centuries of State presence have expropriated, hence the emphasis on and recovery of the proper place names, etc. This includes calling the Santiago River the "Kanus," the Morona the "Kankaim," and the Campankis mountain range the "Kampankias," for example, and using expressions such as "nature's bounty" to replace natural resources, signifying their own vision of their dependence on nature, with which a social and balanced relationship must be maintained. The Tuntui radio station and the *Nakumak*[19] newspaper are priority instruments through which to socialize the collective agreements and commitments that are discussed and built on in the regular meetings of the *Uun Iruntramu*.

What Direction for the Wampís Nation and its Territorial Self-Government?

In the current globalized context, the Wampís Nation's great dream is heading in various directions and on different levels. Internally, first of all, the aim is to achieve greater strength and consolidation as a life system, a self-affirmation that implies a collective awareness of sociohistorical and cultural origin, as well as the perpetual continuation of historical cultural identity, in order to exercise effective governance of the territory.

Secondly, the intention is to consolidate the system of territorial, forest and biodiversity conservation both as a system and as a human/nature binomial, especially for future generations. Thirdly, they want to gradually build self-reliance and the capacity to effectively and adequately lead, attend to and resolve the major problems currently affecting their life and the achievement of *tarimat pujut*. This implies a collective capacity to maintain knowledge, practices and sociocultural elements and, consequently, to reinstate to the maximum the value of the human/nature binomial as a form of coexistence and mutual dependence, reflected in respect for and a valuing

of the person and nature. They want to achieve their own educational system in which intercultural and sociocultural values such as reciprocity, solidarity, honesty and integrity are fundamental.

This dream of the Wampís Nation, which is beginning to take shape through the formation of the Autonomous Territorial Government of the Wampís Nation, the production of internal agreements, policies and capacity building, does not yet meet the conditions for an institutionalization of autonomy within the national framework. From the Wampís perspective, however, this does not mean they have to wait for the Peruvian State and society to initiate a formal reform in this sense. Exercising autonomy through the GTANW now means tracing one's own path, one that is open to other peoples moving in the same direction. For the time being, it means beginning to establish the different conditions for relations with the State at different sectors and levels, through political dialogue, something that entails *de facto* recognition, as well as recognition in the agreements and accords that are being signed with the different sectors and levels of the State. Opportunities should open up along this path until the institutional conditions exist for *de jure* recognition and respect for autonomies in Peru.

Through its interaction with other Indigenous Peoples' autonomies in other parts of the world, GTANW has been promoting the establishment of a caucus of autonomies within the United Nations aimed at promoting the agenda for Indigenous autonomy and, from within this international forum, making efforts to raise the profile of the autonomies' contribution to land governance.

More specifically, the Wampís Nation is seeking to address and resolve, autonomously, from its own vision, the needs of its members, families and collective, and is seeking to maintain a positive and creative relationship with the State and Peruvian society from a rights-based vision. The Wampís Nation has collectively adopted an agreement and commitment to maintain its sociocultural identity in perpetuity as a basis and condition of self-worth as a human group. The path chosen by the Wampís Nation by which to exercise autonomy and regain governance of their territory is *sui generis*, albeit not unique.

NOTES

1 References to this process can be found in García Hierro and Surrallés (2009); Garra and Riol (2014).

2 Paradoxically, ILO Convention 169 entered into force in Peru the same year that Alberto Fujimori's regime enacted the Law on private investment to promote economic activities on national, peasant and Indigenous community lands (Law No. 26505), which eliminated the collective guarantees enshrined in the Constitution once and for all, thus violating and weakening Indigenous collective and territorial rights.

3 The so-called rubber boom resulted from increased demand for the different types of latex obtained from various species of tree, particularly rubber (*castilloa elástica*) and *shiringa*, for industrial purposes. It took place in the Amazonian areas of the different countries of South America. European and North American demand led to extraction crews, financed by a chain of enablers and traders, setting up in remote areas inhabited by Indigenous Peoples. To gain access to Indigenous labour, these extractors, known as *caucheros* and *siringueros*, used different forms of violence and coercion, but also established alliances with local leaders (Santos Granero & Barclay, 2015).

4 After the Peace and Friendship Protocol was signed between Ecuador and Peru (1942), it was established that the border had been drawn due to ignorance of geography by referring to a *divortium aquarum* [division of waters] between the Santiago and the Zamora rivers that did not exist. This led to a large stretch of the border remaining in dispute for another 40 years and the Protocol being ignored by Ecuador.

5 The conflict stemmed from claims made by both countries since becoming independent republics. The 1941 armed conflict between Peru and Ecuador (5 July 1941—29 January 1942) was the first since 1859 and took place on several fronts, including the Santiago River, in Wampís territory. This flare-up was attributed to discoveries of oil that had been made in the Ecuadorian Amazon in the context of an undemarcated border.

6 The Summer Institute of Linguistics, widely known as SIL, was a subsidiary of a North American evangelical institution that had set out to translate the Bible into all Indigenous languages. To this end, and through literacy programs, it signed agreements with dozens of Latin American countries, beginning with Mexico (Stoll, 1985).

7 Law on Native Communities and Agricultural Promotion of the Rainforest and Cloud Forest Regions (Decree Law No. 20653). In 1978, this law was weakened by the introduction of an article whereby those lands of the Indigenous communities that the State classified as "suitable for major forest use" or for protection would in future not be open to titling but could only be ceded for use, subject to supervision of their forest resource use by the State administration. This was expropriation by any other name. Later, within the context of tropical agrofuel initiatives, these areas came within the sights of the government of García Pérez (2006-2011), who also tried to convert the forests into "empty" lands that could be used for agriculture under a business initiative.

8 The term dignity is expressed in the Wampís language as *ni inmari*.

9 Several of the new laws superimposed third-party rights on top of Indigenous rights, restricting Indigenous Peoples' control of the territories and contributing to a territorial "ungovernance" (García Hierro & Barclay, 2014). Other strategies are aimed at destroying collective spaces. The agencies responsible for ensuring services such as water, sanitation or electricity thus make the provision of these services conditional upon the fragmentation of these communities.

10 To name but a few: surface easements, protected areas, production forests, mining and oil concessions, etc. "The law creates a fiction of multiplicity and attributes different rights to different subjects over the same thing depending on certain economic functions. We can thus have a different kind of treatment and a different legal status for each of the possible elements of nature: water, forest resources, soil, air, fauna, subsoil, etc." (García Hierro & Barclay, 2014)

11 Municipal Ordinance 012-2008-MPDM published on 15 April 2009 *establishing an autonomous land-use and zoning procedure for the Indigenous Peoples of Datem del Marañon Province*. https://bit.ly/35nNcLw. In 2004, the regulations governing the 2001 Law establishing Ecological Economic Zoning at national level were published by means of Supreme Decree No. 087-2004-PCM. https://racimosdeungurahui.com/index.php/proyectos/territorios/territorio-integral/propuesta-de-territorial-integral-gtru/establecen-procedimiento-autonomo-de-ordenamiento-y-zonificacion-territorial

12 There is also a list or "database" of Indigenous Peoples, which the Ministry of Culture administers with jealousy without the intervention of the interested parties and for its own purposes (see https://bit.ly/2Thck0W).

13 This lack of transparency manifests itself in an apparent adherence to the norms and jurisprudence of the international system while limiting their implementation with fanciful glosses, lower-ranking norms and repeated practices (Barclay, 2020, p. 11).

14 The first article of Ordinance No. 014-2017-GRL-CR agrees to "RECOGNIZE that native and indigenous peoples inhabit the Loreto Region, people who use denominations such as: 'indigenous peoples', 'native peoples', 'peasant communities', 'native communities', 'peasant patrols', 'ancestral peoples', among others, in line with the criteria established in Article 1 of ILO Convention No. 169." Its Second Article agrees to "RECOGNIZE the legal personality of those 'original peoples' or 'indigenous peoples' who, in the exercise of their self-determination, wish to be recognized as such." The Ordinance was published on 15 December 2017 and regulated by Regional Decree No. 0001-2018-GR-Loreto. The Ministry of Culture claimed the Ordinance was unconstitutional through the Constitutional Court on 2 February 2018, and the latter issued a ruling on 14 September 2019 in the Ministry's favor. CORPI-SL has taken the case to the Inter-American Commission on Human Rights.

15 The constant political crisis, aggravated by the Odebrecht affair, which has penetrated the political parties and created a crisis of legitimacy, also makes it very difficult to envisage the possibility of constitutional reform in the desired direction.

16 Several statements on this conflict can be found on the GTANW website: https://nacionwampis.com/

17 Available at: https://bit.ly/3jjGNGb; https://bit.ly/37vXsUB. The text of the Socio-Political Pact can be found at https://bit.ly/34maiTz.

18 See Resolution No. 227-2014-MIDIS *Providing for the granting of the socio-economic classification of extreme poverty to people who are a part of the Indigenous Peoples located in the Peruvian Amazon, included in the official Database of Indigenous Peoples listed in RM No. 321-2014-MC or any that may replace or update it*, published on 28 September 2014.

19 Available at: https://bit.ly/3manCAv; https://bit.ly/3klPMI5; https://bit.ly/2Hs3OJX

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19

"¡Guardia, Guardia!": Autonomies and Territorial Defense in the Context of Colombia's Post Peace-Accord

Viviane Weitzner

Opening: Finding Breath

November 4, 2019: *"Ya no aguantamos tanto dolor"* (we can no longer deal with so much pain)

It's hard to think past the blood-letting taking place in Black and Indigenous communities in Colombia, especially just prior to and around the October 2019 regional elections. My WhatsApp group with my Colombian Indigenous and Afro-Descendant collaborators overflows with stories of bloody murder. And targeted bloody murder: murder of the Indigenous guards that defend Indigenous territories; murder of women mayoral candidates, and Indigenous governors; murder of social leaders daring to try to assert their rights and their autonomy in post-Accord Colombia; and death threats against those who have managed to survive until now. As I sit down to write this chapter on Indigenous and Afro-Descendant autonomy in the context of post-Peace Accord Colombia—and to consider particularly the role of Indigenous and

Afro-Descendant autonomous guards as a key mechanism for territorial defense—pain and a sense of powerlessness wash over me as I figure out how to open up space in my mind and heart to begin to make sense out of this chaos, and to write about it. *"Ya no aguantamos tanto dolor,"* we can no longer deal with so much pain, one of my closest Indigenous collaborators, Héctor Jaime Vinasco, former governor of the Resguardo Indígena Cañamomo Lomaprieta, wrote after the news of yet another assassination. How to carve out an analytic route to speak about autonomy in the midst of the hunting that the peoples I work with in Colombia are experiencing? How to find the analytical breadth—and breath—to write and speak about the *desangre*, the blood-letting, taking place? And while I struggle to find breath to lend testimony and theoretical reflexivity to the onslaught that my Indigenous and Afro-Descendant partners are experiencing day-to-day, the ultimate key challenge *we all* face is: How to hold on to—and how to hold up—autonomy in the midst of extreme, violent internal armed conflict?

This chapter places front and centre the deadly challenge of exercising autonomy in the context of post-Peace Accord Colombia.[1] A country that, in 2019—and since then—has garnered international recognition for being *the most dangerous place in the world* for environmental and human rights defenders (Frontline Defenders, 2020, 2022; Human Rights Watch, 2021; Global Witness, 2021).[2] The chapter lends testimony to the extraordinary efforts of Colombia's Indigenous and Afro-Descendant peoples to counter the onslaught of violence that affects their day-to-day lives and their ancestral territories. Specifically, it examines the ever more important role of Indigenous and Afro-Descendant guards in defending ancestral territories and exercising autonomy; and the difficult co-ordination and encounters they experience with State agencies and representatives, and with other legal and outlawed armed actors seeking to exert control over their resource-rich lands. Driven by the ever-sharper violent realities and territorial disputes taking place in their territories, I propose that Indigenous and Afro-Descendant Peoples' thinking and praxis towards strengthening their self-protection mechanisms can be seen as "a turn": a turn towards self-protection that also implies closer inter-ethnic collaborations in an effort to maintain autonomy.[3]

I draw particularly on key ethnographic moments, workshops and interviews[4] from a decade of engaged research (Kirsch, 2018) with the 32 Embera Chamí Indigenous communities that comprise the Resguardo Colonial Cañamomo Lomaprieta located in the municipalities of Riosucio and Supía,

Caldas; and with Black Communities of the Palenke Alto Cauca, a regional governance body that is part of the national organization, Proceso de Comunidades Negras, and that provides support and accompaniment to 43 Consejos Comunitarios located in 11 municipalities of northern Cauca (see map).[5] These communities came together in 2009 to join forces and weave strategies around territorial defense in light of large-scale extractive interests in their gold-rich ancestral territories. They have also been forced to address the actions of outlaw armed actors interested both in their gold and in the strategic placement of these ancestral territories along corridors for narco-trafficking.

This joining of forces and weaving of strategies has resulted in a wide spectrum of autonomous and joint actions, ranging from developing internal laws and protocols on free, prior and informed consent; to engaging in legal actions that have led to cutting-edge constitutional court decisions; to taking to the streets in protest when these are not implemented, or when State obligations upholding Indigenous and Afro-Descendant rights are not respected (Herrera & García, 2012; Machado et al., 2017; Weitzner, 2017a, 2019). But in recent years—and in light of growing pressures threatening territorial integrity and renewed violence and threats to Indigenous and Afro-Descendant leaders speaking up for their rights—a key strategy that the Resguardo and Palenke peoples have engaged in is a concerted effort to strengthen their autonomous, unarmed Indigenous and Cimarrona guards.

I begin this article with a brief discussion of the concept of autonomy and its importance from the perspectives of Embera Chami and Afro-Descendant leaders from the Resguardo Cañamomo and the Palenke, drawing also on community documents. Next, I introduce the institutions of the Guardia Indígena and the Guardia Cimarrona, their history and articulation with the exercise of autonomy. I examine how they operate in practice, drawing on key ethnographic moments that highlight inter-ethnic collaborations, with a focus on intergenerational and gender aspects, as well as challenges in encountering and coordinating with the State. And I show how this challenge is exacerbated by the discriminatory State treatment of the Guardia Cimarrona, which does not have the same constitutional guarantees upholding the Indigenous Guard. In dialogue with theoretical literature at the crossroads of autonomies, racisms, fragmented sovereignties and legal pluralities, my analysis advances grounded thinking from the very particular, complex reality of the Colombian armed conflict.

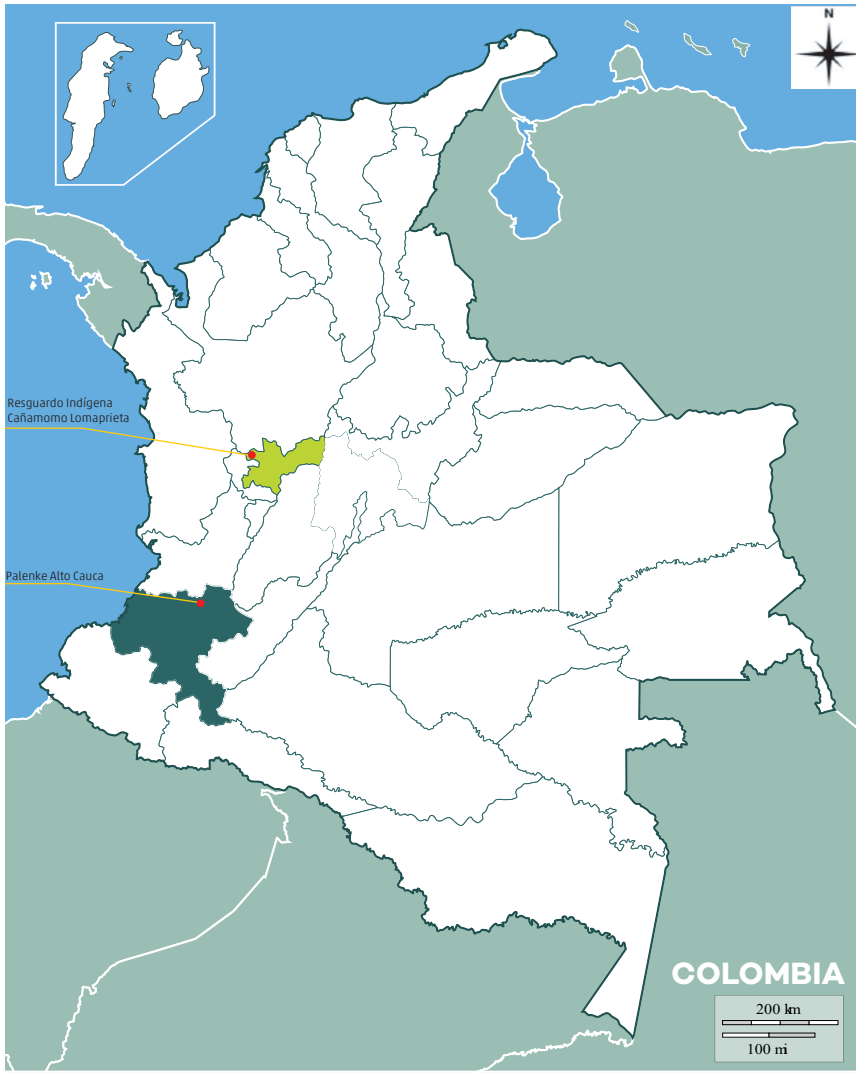

Figure 19.1. Location of the Resguardo Indígena Colonial Cañamomo Lomaprieta (Municipality of Supía and Riosucio, Caldas) and the Palenke Alto Cauca (Municipality of Santander de Quilichao, Suárez, Buenos Aires, Puerto Tejada, Caloto, Guachené, Villarrica, Corinto, Miranda, Padilla and Cali). **Source:** Weitzner 2017b, p.15.

Ultimately, this chapter contributes unique perspectives on notions of autonomy, providing concrete and distinct examples to the growing literature on community protection efforts in the face of State 'abandonment' (e.g., Comaroffs, 2016; Sierra, 2018; Goldstein, 2012). It also breaks new analytical ground by examining Afro-Descendant and Indigenous institutions alongside each other, making visible Black autonomies that are more often than not invisible in theoretical debates (Restrepo & Rojas, 2004; Hooker, 2005, 2020; Rodriguez-Garavito & Baquero, 2015; Wade, 2017).[6] It also contributes to the growing anthropology on fragmented sovereignties and i/legalities (Sieder, 2019), showing exercises of territorial defense grounded, legitimized and legalized by self-government and ancestral law, albeit in liminal spaces between legality and illegality from a State law perspective.

Weaving the Concept of Autonomy

As the *Plan de Vida* (Plan of Life) of the Resguardo Cañamomo Lomaprieta notes, the term "autonomy" is controversial and takes on different meanings in different contexts (RICL 2009, pp. 158-59). In this section I present a synthesis of perspectives on the meaning and importance of autonomy from members of the Palenke and the Resguardo, and as put forward by their representative national level organizations – Proceso de Comunidades Negras (Black Communities' Process–PCN) and the National Indigenous Organization of Colombia (ONIC), respectively. This conceptual grounding is a necessary first step in examining how these perspectives fit with, or diverge from, the perspectives and approaches espoused by the Colombian State. And it is also fundamental for analysing the challenges in exercising autonomy day-to-day.

My intent is not to provide an exhaustive analysis, but instead to underscore the complexities and particularities in perspectives on autonomy – or, better said, autonomies, in the plural – within the current Colombian context. I focus here on two specific cases, acknowledging the importance of opening analytical space for discussing both Black and Indigenous autonomies, and importantly, joint efforts towards exercising autonomies in practice.[7] But also, I am cognizant that the perspectives I share are shaped by distinct, complicated and multifaceted experiences of history – and rooted in relations with specific territories that have been documented elsewhere[8], and that I will only be able to scratch the surface of here.

A Brief Historical Sketch

Very briefly, in the case of the Palenke, Afro-Descendant peoples were brought to northern Cauca in the 1600s to work gold mines for the Spaniards, bringing their ancestral mining know-how from Africa. Over time, they bought their freedom, and many bought gold mines from the Spaniards, living from these as a key livelihood activity along with agriculture and fishing. Yet, many of these ancestral mines and the fertile lands along the Cauca River have been flooded to make way for hydroelectric schemes and monoculture agriculture, namely sugar cane and oil palm, that has pushed out most traditional farms.[9] Meanwhile, large-scale gold mining – and more recently, mining by criminal armed actors[10] – has also led to land grabs. The levels of contamination from monoculture, criminal mining using cyanide and mercury, combined with a lack of collective land titling, are just some among a myriad of factors that have led to a situation where subsistence livelihoods are severely threatened. These factors combined with lack of access to viable economic alternatives – and the violences and confinement generated from armed conflict – are fueling poverty in the region.

Yet even if Colombia has made important advances in the recognition of the fundamental and territorial rights of Afro-Descendant peoples on paper – and especially with the incorporation of *artículo transitorio* (transitory article) 55 of the Colombian Constitution that recognized Black communities as rights holders, with further details fleshed out when Law 70 was passed in 1993 – there is still a long way to go. Indeed, Law 70 remains largely unregulated, and there is a bias towards Black Communities in the Pacific without specific provisions for areas beyond. This has resulted in the current situation, in which 11 of 38 requests for collective titling of community councils in municipalities within the Department of Cauca that are outside the Pacific basin have been recognized. Of these 11, 10 are in northern Cauca and one in southern Cauca (Hernández Palomino, pers. comm., 2023).

In the case of Cañamomo, this Resguardo was established in the 1500s by the Spanish Crown, following an invasion by Spanish colonizers who took over the rich ancestral gold mines that date back to the Quimbaya people from which the Embera Chamí descend.[11] The Indigenous peoples were used as slave labour and decimated through inhumane labour conditions. Enslaved Africans were brought to the Resguardo to continue the gold mining for the Spaniards, many settling in the community of Guamal. Today, the Resguardo

continues its ancestral gold mining, and its rich gold deposits are coveted by multinational and national mining companies – as well as by criminal armed actors. Community members also engage in agricultural livelihood activities, with *panela* (cane sugar) and coffee production being mainstays. Like in the Palenke, the Resguardos' rivers are also of interest to energy producers, although to date the Resguardo has staved off these projects.

Yet, day-to-day life is increasingly difficult for the almost 25,000 people living on a small land base of only 4,827 hectares, where there is very little land to engage in subsistence activities, and where, despite progress in securing recognition of the colonial origin of the Resguardos' legal title through the Constitutional Court's Decision T530 issued September 2016 that orders its delimitation and demarcation,[12] implementation of these orders remains elusive and fraught. This is due primarily to the powerful interests of landowners who hold private property rights within the Resguardos' land base, and who have been supported by conservative *uribista* (followers of President Alvaro Uribe) politicians.[13] The effects of the armed conflict run deep also in the Resguardo, where several massacres have taken place (CRIDEC & MOVICE, 2020). Its leaders are among the 40 Embera Chamí leaders that are beneficiaries of precautionary measures issued by the Inter-American Commission on Human Rights in 2002 (CIDH, 2002).

In short, what these histories witness is a story of "racialized geographies" (Hernández Castillo, 2019), where centuries of "plunder" (Mattei & Nader, 2008) and "accumulation by dispossession" (Harvey, 2003) have pillaged the homelands of ancestral peoples, resulting in "racial discounts" (Mbembe, 2012) where peoples have been rendered disposable or waste as they stand in the way of "development". But these territories have also been ravaged by the underbelly of mainstream development; namely, the actors involved in the shadow or "raw economy" (Mbembe, 2012) of illicit activities. Cauca is a well-known hot spot for all the various armed actors of Colombia's conflict, and the illicit activities that finance them, earning the moniker of "the murder epicenter" in a recent analysis (Navarette & Alonso, 2020). The Resguardo has lost hundreds of community members to the violent war, with early warning reports currently in place by Colombia's Ombudsperson (2020) alerting to ongoing risks from armed outlawed actors. These brief historical sketches provide some background to help frame the following synthesis of perspectives on autonomies.

Perspectives from the Palenke: "Autonomía en entredicho"; "Autonomía en peligro de extinción" ("*Autonomy in Question*"; "*Autonomy in Danger of Extinction*")

Perspectives from the Palenke reveal the multidimensional aspects of what comprises autonomy. Autonomy is often defined in terms of what constrains it, and it spans ontological, political, economic and ecological aspects and their interrelations. Because it is so illustrative, I quote at some length an excerpt from an interview with Lisifrey Ararat, one of the Palenke's most respected *mayores*, or Elders:

> Autonomy, we had it maybe some fifteen, twenty years ago ... *Today our autonomy is in question ["entredicho"]*. Because there are many factors that have shattered our autonomy. One definitely has to do with the conflict. I believe that, *living under threat, one does not have autonomy*. Two, that autonomy, or those things that one did ... one did what one wanted, and one moved around. *That territorial control that they are doing to us today, is doing us a lot of harm*. And the other thing too, how they have been impoverishing us. So, what we believed to be our strength, what we believed to be our father and our mother, such as the river, today is now in question. Because when you see your father so sick, almost in agony, as we see the river at this moment, there is no autonomy here, it is in question. *And for me, autonomy is ... to have one's own economic movement, to have control of the territory, to have where we work, where we plant, what we eat. And we had that before. I used to say, on a Saturday, 'I'm going to eat a bocachico'. I would take my fishing line, and I would go to La Ovejas. For me that was autonomy*. But today, here in La Toma, the situation is very, very difficult. (Ararat, 2015, emphasis added)

Elder Lisifrey's comments underscore how loss of autonomy is associated with loss of freedom of movement and with the sickness of the Ovejas River, which is humanized here as father and mother – this particular world's creators, its life force and also the source of this world's richness or wealth. This sickness, and subsequent loss of being able to take food and feed oneself, is compounded by the confinement due to the "control" that others are asserting on

this land. Lisifrey states clearly that autonomy is simply not possible if one is at risk of losing one's life; it is a deeply questionable proposition. Autonomy is constrained further through structural discrimination and racism, as poverty takes hold *("they have been impoverishing us")* in a place where with a destroyed land there is little recourse for day-to-day survival. Exercising autonomy is "entredicho", in question, because it is constrained by its relationality with structures of domination.

This relationship to territory and ability to decide what takes place within it were key elements that ran throughout conversations on autonomy in the Palenke. One leader of the Association of Community Councils of Northern Cauca (ACONC) braided the concept of autonomy with self-determination and natural law. Yet this "ancestral" natural law, that by its very nature is autonomous and pre-exists any State normative framework, is not something that underpins only individuals, it is a concept that is tied to the communal, and inextricably related to stewarding the territory guided by worldview:

> This natural law should not only be reflected in the rights of the individual as a person, but also in all that has been developing and forming and preserving the community in its territory without being regulated. All those things that are part of the community ... that the community has done by instinct, on its own, following its own cosmovision, by its own action ... to sustain itself in time in its territory, for me that is the ancestral natural law. (Anonymous, 2015)

At its heart then, autonomy is not simply a political proposition, it goes hand in hand with a cosmovision, a lifeworld, where autonomous stewardship of the territory enables survival over time in a homeland. But the leader insisted that this in turn requires economic and food autonomy in order to be self-sufficient and feed not only the people, but also, to feed and strengthen the political and organizational processes, whether this be funding street protests, community radio stations, educational studies by Palenke members or, importantly, the work of the Guardia Cimarrona. There is a plan here for "autonomous design" as Escobar (2018) calls it, that weaves in self-sufficiency, sustainability and political engagement towards collective sustenance over time.

But an interesting twist to the discussions was the theme and tension between 'ours' and 'the other' and protecting autonomy from outside

interference at all levels. As articulated by one young woman member of the Palenke who emphasized the importance of collectivity in autonomy, this means having the power to make decisions, organizing and undertaking what the collective wants to undertake "without the other, without the government, without outside, governmental entities, influencing the forms of organization, the culture." She noted also that the government is trying by all means possible to extirpate autonomy, so much so that in her view "the autonomy of peoples and ethnic groups is at stake and, it could be said, in danger of extinction." She added that today's struggle is very much to strengthen the "little autonomy that's left" (Lucumi Paz, 2015). This idea of freedom to exercise self-governance in ancestral territories where "we have the possibility to do what we want because it is our way of recreating ourselves" was another cross-cutting theme, with the end goal, as one woman from the Palenke stated, being "the preservation of life in the territory" (Mina, 2015). Autonomy towards recreation, towards sustaining life in the territory – and a territory that is living. This recalls Mora's (2017, p.23) analysis of Zapatista autonomy, and the aspects which she argues infuse the concept of autonomy held by Afro-Descendant and Indigenous peoples across the continent, where "the very act of living as part of a dignified commitment to the reproduction of social life directly confronts the dehumanizing conditions of racialized colonial states of being."

These conceptual offerings from members of the Palenke dovetail the key principles that underpin the PCN's nationally articulated framework for action, which are rooted in affirming and enabling "being" Black Communities with distinct cultural identities and ties to ancestral territory. All of these principles are geared towards autonomy in its multifaceted aspects, including autonomous participation in decisions that affect Black Communities; defending options of development aligned with the cultural aspirations of Black Communities and in tune with cultural and environmental sustainability; and linking in solidarity with other sectors towards "a more just world." In short, while defending the right to political-organizational autonomy of the Black, Afro-Colombian, Raizal and Palenquero people of Colombia, the PCN's key principles point to a far more integral and holistic sense of autonomy.

Perspectives from the Resguardo: "*With interference from no-one in decision-making*," "*Small states*"

Conceptions around autonomy in the Resguardo Cañamomo Lomaprieta go straight to the idea of self-government. Yet beyond this, they embrace the concept of statehood, of sovereignty. Former Chief Héctor Jaime Vinasco described autonomy as the *Cabildo* (local council) having the power "to define its own laws, to exercise its own rights, to make decisions, to exercise an autonomous landscape, without interruption from anyone else saying 'it's this way, it's that way'." Indigenous communities are autonomous because "there is interference from no-one in decision-making" (Vinasco, 2015). In fact, he added, "people have thought they are like small states, because they have their own autonomy." This vision of autonomy where Resguardos are "small states" sustains Sieder's (2019) argument that in Latin America it is most useful to examine legal pluralities – and perhaps by extension autonomies – through the lens of fragmented sovereignties, a concept I will come back to later.

The Resguardos' *Plan de Vida* (Plan of Life) sets out the Embera Chami's "law on the books" or official perspective on autonomy as:

> The basis for our political-organizational structure is also the historical claim to return to our practices and customs. Autonomy is the essence of our *Derecho Mayor* [Higher Law] developed by our ancestors, who created their own ways of regulating social, economic, cultural and spiritual life in pre-Hispanic times. *Reconquering autonomy* is a challenge for the Cañamomo Lomaprieta Indigenous Reservation, it is a historical struggle. (RICL, 2009, pp.158-59, emphasis added)

What comes through in this definition are the ancestrality or prehispanic roots of the practice of autonomy, and its linkages across regulating all aspects of life, including the spiritual.[14] Yet the challenge that the *Plan de Vida* sets out to "reconquer autonomy" is a tall order in the context of armed conflict and multiple overlapping interests over the Resguardos' lands. In this context, exercising *gobierno propio (*self-government) [15] and customary decision-making is undermined by meetings cut short as darkness approaches; community members feeling afraid to join the political organization or even to attend assemblies for fear of reprisals and threats from outlawed

armed actors; and conventional politics intruding on, and pulling apart, the Resguardos' social fabric, delegitimizing its institutions and creating even more insecurity for c*omuneros* and *comuneras* (community members) who are part of the Resguardos' political organization.

Indeed, the Resguardo suffers what the Palenke and all other ancestral territories rich with natural resources suffer in Colombia: the dispute over access to the riches by powerful outlawed armed actors on the one hand; and by the state on the other, leading to a situation of "social minefields" (Rodriguez-Garavito, 2011).[16] This dispute between overlapping fragmented sovereignties and legalities – including what I call the "raw law" of outlawed armed actors acting in connivance with state actors (Weitzner, 2017a, 2018, 2019) – is at the heart of the violences that the Resguardo leaders experience today, as I discuss further below.

But perhaps the most powerful force intruding on the possibility to "reconquer autonomy" is the "ontological intrusion" of Western ideas of capitalism that are undermining Indigenous ways of being and worldviews. This comes to the fore most in examining shifting ideas around gold mining, a practice that pre-exists the formation of the Colombian State. Over time, the spiritual and ceremonial use of gold has shifted towards economic sustenance; for some today, the profit motive and accumulation – individual autonomy perhaps – is by far the primary interest. Some have put this profit-motive first even at the expense of carving up collective territorial rights and renouncing indigeneity. There is, in short, a rising "ontological territorial occupation" that puts at stake the possibility of "ontological autonomy" (Escobar, 2018, p.167).

Looking to the national level, autonomy is a central principle upheld by the national Indigenous movement in Colombia, alongside the principles of unity, territory and culture. These four principles are inextricably interrelated, with autonomy defined as:

> … an exercise of power based on Indigenous peoples' and their authorities' own, legitimate and legal *indigenous law*. From their own governments that impart justice, generate wellbeing, and administer and exercise authority over territories and resources. To solve our problems and assume our own visions of the future. *To relate with the state and individuals, without breaking our unity of struggle***.** From the collective conscience to value our cultural identity and ethnic belonging. As a guiding principle

> of our political mandates for the defense of life and the rights of ndigenous peoples. Organizational, to establish and administer our own instances of power. (ONIC, 2020, emphasis added)

This is a far-reaching, all-encompassing definition of autonomy that is a starting point for relations with the State and other outsiders. In other words, importantly, while there is an explicit mandate to exercise territorial authority over all aspects of ancestral lands in defense of life and Indigenous peoples' rights, this does not exclude relations with the State or other outsiders.

In other words, there is an explicit recognition that Indigenous territories exist in what Moore (1973) calls semi-autonomy, in that these exist within and maintain relations with other political spheres, jurisdictions and sovereignties. Perhaps semi-autonomy is another way to think about "the small states" referred to by the Indigenous leader quoted above in speaking about Resguardos and their autonomy.

This reality of a semi-autonomous sphere is evident in the importance that the Resguardo, and also the Palenke, place in ensuring members of their own communities accede to positions within the municipal, regional and national governments. Much energy is placed to get candidates into positions of power so they can use their influence favorably, including towards making territorial autonomy more of a reality. A reality that took on new possibilities in the 2022 presidential elections, as highlighted further in the postscript.

Colombian State Conceptions of Autonomy: "Ni si quiera se asemeja" ("*Not even close*")

So how do conceptions of autonomy espoused by the Colombian State fit with those held up by Indigenous and Afro-Descendant peoples? As Linares (2016. p. 23) puts it for the case of Indigenous peoples,"*ni si quiera se asemeja,"* it doesn't even come close.

Indeed, it was only after several mobilizations by Indigenous peoples – and more than 20 years after the 1991 Colombian Constitution embraced the establishment of Indigenous Territorial Entities in its article 329[17] – that in 2014 Decree 1953 was issued to regulate Indigenous peoples' autonomy (Mininterior, 2014).[18] This Decree delegated a series of powers, ranging from management of health services to potable water, and strengthened the Special Indigenous Jurisdiction enjoyed by Indigenous Peoples, managed now directly by Indigenous authorities themselves rather than through mayors.

These are all important steps forward in *administrative* autonomy for Indigenous peoples. But they fall very far short of Indigenous conceptions of autonomy, leaving out fundamental aspects related to spirituality, identity and culture, and instead are more similar to what former UN Special Rapporteur on Indigenous Peoples Rights Victoria Tauli Corpuz has called "fragmented autonomy" (2019, par. 20). There is, in short, only partial delegation of autonomy as defined by the State, through a top-down process.[19] Importantly, whatever advances this Decree might represent on the books, from the get-go there was push back from powerful political actors with territorial interests in Indigenous territories, raising questions of political will to implement the Decree at all (Rodriguez Garavito & Baquero, 2014).

With regards to Black Communities, Law 70 of 1993 is one of the key domestic legal tools for upholding Black communities' rights. As a result of transitory article 55 of Colombia's Political Constitution, which recognized Afro-Colombian communities as rights holders after a long struggle of the Afro-Colombian movement, its normativity is developed with Law 70 (Katerí, 2019). While the law does not establish any definition of autonomy *per se*, it does hold up this concept in Chapter II (Article 3.3), which outlines as one of the key principles underpinning the law: "The participation of Black communities and their organizations *without detriment to their autonomy*, in decisions that affect them and those of the entire nation on an equal footing, in accordance with the law." Yet, Law 70 has a reduced scope covering the Pacific Basin only, and not the Black Communities in the Inter-Andean Valley, where the Palenke is located. In addition, regulations to enact Law 70 have a long way to go, stalled by lack of political will and resources (Rodriguez Garavito & Baquero, 2014). This has sparked a cycle of ongoing protests and negotiations towards implementation, with progress to date only on 29 of its 67 articles, according to official accounts,[20] with current efforts focussing on negotiating Chapter 4 (land use and protection of natural resources and the environment) and Chapter 5 (mining resources).

Putting aside the shortcomings in the substance and reach of domestic policies and law, however, autonomy is a key concept enshrined in international human rights conventions and instruments that Colombia has ratified or approved, including, ILO Convention 169 on the Rights of Indigenous and Tribal Peoples (1989); the United Nations Declaration on the Rights of Indigenous Peoples (2007); the Convention for the Elimination of Racial Discrimination (1969), and the Inter-American Convention (1969), among

others. Indigenous and Black Communities increasingly appeal to these instruments and related mechanisms in their efforts to make autonomy, as they define it, a reality in their homelands. This includes through actions that have made it to Colombia's Constitutional Court, to the inter-American system, and beyond, and that have yielded precedent-setting decisions.

In the case of the Palenke and the Resguardo, both have obtained precedent-setting Constitutional Court decisions suspending mining activities from taking place on their territories without their consultation leading to consent and recognizing their ancestral territories. Importantly, in the case of the Resguardo, Decision T-530/16 recognizes the *cabildo*'s (local council's) jurisdiction over managing gold mining in its territory in accordance with its own laws and in coordination with the State; and also the *cabildo*'s protocol and law over free, prior and informed consent. These decisions set precedent towards greater recognition of autonomy, as conceived by the Resguardo and the Palenke, and more in line with international standards.

Yet, as pointed out above, "law on the books," constitutional court orders and even pressure from international instruments such as CERD's concluding observations, rarely translates into implementation in Colombia, a reality echoed in the rest of Latin America as well (Sieder et al., 2019). If it does, it is partial implementation at best, filtered through the lens of the politics of the day and constrained by the perspectives of 'implementing' State representatives, who are often ignorant of international rights frameworks. This is evidence of what Garcia Villegas (2019) calls "a culture of disobeying the law" that runs deep in Colombia, where the State is a prime culprit in disobedience, de facto operating in a "purely symbolic reality" (2019, p. 74).

As one Afro-Descendant leader emphasized, the upshot of these realities and culture of disobedience is a perception of State abandonment and neglect of its obligations. This neglect leaves communities in extremely precarious positions to defend their territories, especially from the onslaught of criminal armed actors interested in gold mining. In his words:

> The community should not have to reach these circumstances. The community should not have to be the one to confront those who are undertaking development activities**,** body-to-body, assuming all the risks … to defend its territory and exercise autonomy and self-determination when there is a State that has the legal tools to prevent this from happening, yet fails to do that.

In this context where territorial defense means literally coming face-to-face or body-to-body with dangerous intruders who disrespect Indigenous and Afro-Descendant authority and autonomy, the Guardia Cimarrona and the Guardia Indígena play critical roles for implementing territorial defense towards autonomy. In the next section, I examine these institutions and how they work in practice, through ethnographic vignettes.

Autonomy in Action, Autonomy in Practice: Indigenous and Cimarrona Guards in the Context of Neoliberal Extractivism

In the context of territories caught in the crossfire of warring factions over their strategic use and gold riches – and where there is ample evidence not only of "State abandonment" but of a State entangled in corruption and linked to the shadow economy – day-to-day survival is a difficult proposition, let alone achieving autonomy in the broad sense aspired to by the Resguardo and the Palenke. Yet it is this very condition that ignites creativity, that fuels potential solutions, where Indigenous and Afro-Descendant authorities mobilize all resources available, including revitalizing and strengthening their ancestral institutions. In the words of former Chief Governor of Cañamomo Lomaprieta, Héctor Jaime Vinasco: "In order to exercise autonomy, it's necessary to strengthen the Guardia – it's fundamental" (Vinasco, 2019).

Indeed, as the wave of violence post-Peace Accord continues washing over Indigenous and Afro-Descendent lands – as a result, among other things, of lack of implementation and new criminal actors filling the vacuum left behind by demobilized FARC – turning to self-protection mechanisms is fundamental to defending ancestral territory against invasion by outsiders intent on plundering resources. But it is also fundamental in light of the deficient official protection schemes offered by the National Protection Unit for at-risk leaders that paradoxically often place leaders at even more risk.

In this section I sketch out briefly the roots of the Resguardo Cañamomo's Guardia Indígena and the Palenke's Guardia Cimarrona. I show how they function in practice, focussing specifically on joint actions around mining, and teasing out gender-specific analysis related to the growing and central role of women in these institutions. I examine differing notions of 'protection' held by Indigenous and Afro-Descendant peoples compared to those

espoused by the State. I also consider some key challenges that these institutions face in the context of armed conflict, and in coordination with the State.

Who are the Guardias (Guards)?

As outlined in a jointly written document:

> The Guardias at both sites are in fact *voluntary custodians, guardians and defenders of the ancestral territories*, who monitor the ancestral territories on behalf of their traditional authorities, ensuring that ancestral law is implemented, and alerting the traditional authorities of foreign incursions – all without resorting to violence and without carrying weapons. (PAC, RICL, FPP, 2018, emphasis added)

According to the Resguardos' *Plan de Vida* (RICL, 2009), the Resguardos' Guardia has been in place since 2001, and is considered a critical component of the Resguardos' Indigenous justice system, recognized in the Colombian Constitution (Articles 70, 246 and 330). With its guiding motto *"ojos abiertos y oídos despiertos" (*eyes open and ears awake), the Guardia monitors the Resguardos' territory to detect any situation that could put at risk the community and its leaders. It has a *"Guardia Estudiantil"* (Student Guard), to ensure early education about the Guardia's importance, and to enable inter-generational relay. It is part of the regional Guardia and represented nationally by a "*mando nacional*" (national coordinator). Importantly, it is inspired by older and more organizationally advanced Guardias established by other Indigenous peoples, such as the Nasa in Cauca. While the numbers shift fairly regularly, currently there are some 150 members of the Indigenous Guardia in Cañamomo, which has a population of some 24,000 Embera Chami people (PAC, RICL, FPP, 2018).

The Palenke's Guardia Cimarrona was established in 2000 according to official versions of their story recounted by political leaders. It functioned first as a Committee for Human Rights, expanding its scope of action in the mid 2000s when it began functioning as the Guardia Cimarrona. Currently, there are some 229 members of the Guardia Cimarrona caring for the Community Councils of northern Cauca. The Palenke's Guardia draws inspiration from the millenary institution of the Guardia Cimarrona established in the 1600s

by the Palenke San Basilio, Colombia's oldest, self-governing community of escaped slaves or cimarrones.

Yet, obtaining official State legal recognition of the Guardia Cimarrona has been an uphill battle – the subject of ongoing discrimination – and was finally achieved through the Inter-Ethnic Chapter of the 2016 FARC-EP-Santos Government Peace Accords. However, this legal backing does not have the same weight as the Constitutional recognition that the Indigenous Guardia enjoy. Indeed, while the Indigenous Guardia is integral to the Special Indigenous Jurisdiction and is constitutionally recognized, the law-making ability of Afro-Descendant peoples is still the subject of ongoing debate as regulations for Law 70 are negotiated.

In recounting this historical snapshot, I am purposely making a distinction between official versions and others, because community workshops reveal different timeframes and scopes for analysis that find both the Resguardo Cañamomo and the Palenke's Guardia's roots go back to far earlier times. Times when they may not have been called 'Guardias' or have the current organizational structure, but when very specific territorial defense mechanisms were in place that have been re-signified today.

Yet, the timing of the emergence of these protection mechanisms more formally as "Guardias" in the 2000s has everything to do with political context, and the spike of violence that Colombia was experiencing. The Resguardo Cañamomo's leaders fell victim to bloody massacres and selective assassinations, giving rise to precautionary measures issued by the Inter-American Commission in 2002 (CRIDEC & MOVICE, 2020). The Palenke and its neighboring Indigenous communities experienced similar atrocities, with the *Masacre de la Naya*, the Naya Massacre in 2001, reaching new levels of horror.[21]

But it was in response to an onslaught of new threats from actors wanting to extract ancestral gold in the mid to late 2000s – when gold skyrocketed in price due to the global financial downturn (OECD, 2017; Weitzner, 2018) – that the Guardias in both places began an important phase in the further strengthening of their organizations and actions towards territorial defense and autonomy. I describe next some pivotal moments and key actions undertaken by the Palenke's Guardia Cimarrona and Cañamomo's Indigenous Guardia to defend their ancestral territories from unwanted mining, emphasizing their important role in upholding ancestral law towards self-government, self-determination and, ultimately, autonomy.

Guardias in Action – Emblematic moments

Guardia Cimarrona*: Women on the Frontlines*

The Palenke's women and youth have a lot to do with the consolidation of the Guardia Cimarrona as it stands today, and the essence of its modus operandi. Indeed, Armando Caracas, the Palenke's Guardia's current Coordinator, recounts with pride the moments he considers the Guardia first began its process of formal establishment. Because the spirit and intent of these first moments infuses the logic of protection underpinning the Guardia's subsequent actions, I retell his story using excerpts in Armando's voice, just as he told it in a Guardia workshop held in Quinamayó in June 2019.

Moment 1: Quibdó, 2013. To set the stage, the year is 2013, when Black, Afro-Colombian, Palenquero and Raizal community members travelled from across Colombia to Quibdó, Chocó, from the 23 to the 27 of August to celebrate their First National Autonomous Congress. The broad objective was to consolidate the Afro-Colombian movement, establishing a very clear political vision and action plan, spurred by the fact that 20 years after Law 70 had been issued, there was still no regulation in place to enable implementation (ANAFRO, 2014). Much work had been done to prepare for this national gathering at the territorial level, and the Afro-Colombian movement had managed to convene some high-level discussion tables with the government. Yet, for some actors – and especially companies enriching themselves from natural resources and ancestral territories of the Afro People—this historic gathering towards organizational consolidation represented a threat. Some had the intention to sabotage the Congress.

> There were going to be 7,000 people convened, and we knew we had to put in place our own mechanisms for self-protection, because there were forces trying to dismantle our Congress. What we did, and it was women and youth for the most part, was that symbolically – without weapons, but with courage – we gathered hand-in-hand, and we made a big circle around the gathering. We knew we needed to make sure that the thoughts of Black Peoples could flow. (Caracas, 2019)

But on the first day of proceedings, a break-off group had formed in a side room where people were trying to figure out how to sabotage the Congress. When Armando entered the room and tried to take the microphone to object to this conversation, a rush of people came towards him. One of the youngest women leaders of the Palenke put herself between the Coordinator and those trying to grab him, and managed to stave them off: "I held her up from behind," said Armando, "and she kicked with her feet, and we managed to make clear that this conversation was over!" he said. "And we succeeded. And it was the Guardia – that slender and slight woman with great intellectual and physical power – and she succeeded." Now he refers to "our Guardia Leidy" as one of the first Guardia Cimarronas. After this incident, the side gathering – that had included a woman from a mining company and six of her bodyguards carrying weapons – was asked to leave and escorted out of the building.

The retelling of these moments is important, because they reveal the essence of the type of protection to which the Guardia aspires: non-violent, forging unity and community, and enabling courageous and symbolic actions. But they also show the key leadership that women play in actions towards collective self-protection. Which takes us to a second emblematic moment for the Guardia Cimarrona, to confront criminal mining.

Moment 2: *"Marcha de mujeres Afrodescendientes por el cuidado de la vida y los territorios ancestrales," (Afro-Descendant women's march for the care of life and ancestral territories).* In 2014, the Black women of northern Cauca made international headlines when some 60 women marched from the Black Community Council of La Toma to Bogota to protest the invasion of their ancestral territory by criminal armed actors operating bulldozers and using harmful substances to extract gold.

The Community Council's lands were protected by Constitutional Court Decision T-1045A of 2010. This Decision stopped the forced relocation of the La Toma community by a third party which had obtained a mining title on the ancestral territory of La Toma without due process of free, prior and informed consultation and consent. Further, it ordered the government to suspend all mining activities by third parties in this ancestral homeland until consultation leading to consent had been undertaken. Yet, these orders were not being upheld, and instead an invasion of bulldozers had taken place.

The women's march eventually led to the occupation of the Ministry of the Interior in Bogota and spurred important negotiations. The women became

national and international environmental and human rights defender heroes for these actions, with one of the leads – Francia Márquez – garnering the prestigious Goldman Environmental Award in 2018.

But *what remains less told* is the important role of the Guardia Cimarrona in accompanying these actions. Indeed, this march was pivotal for consolidating the Guardia Cimarrona, who marched 60-strong side-by-side the women. The motto of the march – *"La tierra no se vende, se ama y se defiende" (*the land is not for sale, it is for loving and defending) – has now become the motto that is used by the Palenke's Guardia Cimarrona. Importantly, then, we see women taking the frontlines of territorial defense in the Palenke with this march, side-by-side with the Guardia Cimarrona who were offering them protection.

Moment 3: *Joint actions to confront criminal mining.* During the invasion of heavy machinery from criminal mining that peaked in 2014 and 2015, the Guardia Cimarrona worked arduously together with neighboring Indigenous Guards on joint actions to detain criminal mining. A series of steps and protocols were outlined for these actions, including obtaining the consent of the authorities of the affected Indigenous and Afro-Descendant communities where the joint actions would take place.

These autonomous actions were deemed critical in light of the failure of State actions to detain criminal mining, with many community members suspecting that corrupt State representatives alerted criminal miners to State plans to detain and destroy their machinery. As Afro-Descendant lawyer Gabino Hernández-Palomino declared at a November 2019 Resguardo-Palenke workshop, today the criminal mining invasion has largely been detained in the Palenke Alto Cauca on account of the successes of the actions of the Guardia Cimarrona, working often hand-in-hand with the Indigenous Guardia of neighboring Resguardos (Hernández, 2019).

Indigenous Guardia Resguardo Cañamomo – *Upholding Indigenous Law and Government*

In the Resguardo Cañamomo, the Indigenous Guardia are a critical part of upholding self-government and Indigenous Justice, and of ensuring that there are no 'uninvited guests' (Weitzner, 2019) trespassing on Resguardo territory. But the types of threats the Resguardo has experienced with regard to mining are slightly different to Cauca. While both territories are of great interest to

multinational mining companies and the State, as well as outlawed armed actors, the Resguardo has not experienced an invasion of heavy machinery and criminal armed actors using mercury and cyanide to extract gold. Instead, the threats are potential infiltration of foreign investors wanting to make profits from the ancestral mines, including outlawed armed actors.[22] But also, a handful of Indigenous miners have rebelled against Resguardo authority – with one even renouncing his indigeneity to shuck Resguardo law – with the hope of attracting, or maintaining, outside investments despite prohibitions by the Cabildo.

In short, in this context rife with conflict, one of the Indigenous Guardia's key roles is to monitor the mines and verify implementation of Resguardo law. This can be a risky business. Simply monitoring the mines led to one Indigenous leader, Fernando Salazar Calvo, being assassinated in 2015 for his role. But attempting to enforce Resguardo law, particularly around mine closures, has also led to violent situations, with miners taking out guns or even machetes.

Importantly, the Constitutional Court's T530/16 ordered that all mines in the Resguardo that neither comply with Resguardo law nor State law be closed. Some 18 in total have been identified. Yet to date the attempts by the police to close the 'State' mines have been unsuccessful, with miners continuing operations. While fear of violent reprisals permeates the failure to close the mines, there is speculation also that the non-action by the police may have to do with the "grey zones" and "clandestine connections" (Auyero, 2010) that may exist between State representatives and mine owners. In other words, the territorial dispute over regulating resources is so heightened that it seems impossible to even implement an order from the Constitutional Court. The evidence shows a State that not only lacks political will to implement the orders of the land's highest court, but that is permeated by corruption and infiltrated by other interests. And it is in this context that an innovative proposal is now being considered.

Moment 4: Joint Indigenous-Cimarrona Guardia action towards mine closures. During the celebration of 10 years of inter-ethnic alliance between the Resguardo Cañamomo and the Palenke in November 2019, an innovative cross-regional action was proposed for the Guardia Cimarrona and the Indigenous Guardia to collaborate in the Resguardo's mine closures. This would have to be very well prepared, and it would involve careful coordination also with the Sate to avoid criminalization and judicialization. This is

still only a plan but shows the innovations that can be forged across regions and ethnicities towards autonomy.

Autonomous protection mechanisms: Mismatches in concepts of protection

While the Indigenous Guardia and Guardia Cimarrona are key institutions for upholding Indigenous and Afro-Descendant law and justice, they also play a fundamental role in territorial protection and security. If State policies and actions have left exposed ancestral territories to dispossession, violence and the global COVID-19 pandemic that we face today – including through non-action to uphold constitutionally guaranteed rights and court orders – current State protection schemes have also arguably further exposed at-risk leaders. Indeed, there is a fundamental mismatch when comparing State protection schemes with autonomous protection mechanisms offered through the Guardias, in that the concepts of protection underpinning them are almost diametrically opposed.

When a leader is at risk of death following threats, the State considers offering an individual protection scheme, which could include a cell phone, a bulletproof vest, bodyguards and a car – either bulletproof or not. Measures which often put leaders even more at risk, when the cars issued are substandard and get stuck in the mud on community roads; when the cell phones run out of their plan or break; when the bodyguards contracted by the UNP (National Protection Unit) turn out to be operators for outlawed armed actors; or when State-issued bullet-proof cars become easily identified targets, among other things.[23]

Further, this band-aid solution to individual protection counters the collective nature of protection that the Guardia offers, and its fundamental spiritual aspects. In the Resguardo, traditional healers work with both the Guardia and the communal authorities to offer protection, including through the *bastones*, the sticks they carry. *"La protección no solamente es una esquema"* ("Protection isn't only a scheme"), said Oscar Aníbal Largo Calvo, former Governor and traditional healer of the Resguardo, adding: "It must be more focussed on the spiritual aspects. The *bastón* is fundamental at all times. If you put spiritual strength in that bastón, it's a protector." Spirits are fed and ceremonies undertaken regularly in the Resguardo at key sacred sites, prior to community gatherings as a means of providing protection.

In the Palenke, conceptions about the role of the Guardia also refer to the spiritual and cultural aspects of protection and survival, and beyond this to an historical memory of resistance. As Félix Banguero, a Palenke Elder, stressed, being a Guardia today is:

> a re-encountering with an historic exercise undertaken by our ancestors to respond 200-300 years back to the vicissitudes that enabled them to exist, recreate, and hold on – in the sense of re-sisting. It's a re-encountering with an historical cultural heritage from their arrival until now. (Banguero, 2019)

The current Guardia Coordinator stressed that the word "Guardia" itself orients the institution:

> What are we guarding? Our culture, our practice, knowledge and day-to-day life. The Guardia is maintaining the ancestral, the cultural … it's completing our being and the space in which to be" (Caracas, 2019). Guardia Javier Peña echoed this, adding: "Who better than us, who knows our culture, our people, how we speak, how we appropriate our lives, to protect us? (Peña, 2019).

Indeed, there is a push now for Guardias to be fully recognized as the appropriate protection mechanisms for ancestral territories where they have been organized and are exercising control. The Regional Indigenous Council of Cauca has negotiated far-reaching agreements with the National Protection Unit, whereby the Council administers UNP funds and provides their own autonomous protection. This is an example that others across Colombia are considering, particularly as aspects of the Peace Accords around security (article 3.4) are negotiated regionally. International pressure is also mounting in this regard, with the Committee for the Elimination of Racial Discrimination (CERD) pointing to strengthening the Indigenous Guardia and the Guardia Cimarrona as fundamental.[24]

A Messy Reality

While I have described the spirit and intent of the Indigenous and Cimarrona Guardias in their own words and through their actions, I do not want to

essentialize or romanticize these institutions (Kennemore & Postero, 2020). Indeed, these autonomous protection mechanisms are riddled with enormous challenges, particularly in the context of armed conflict. Difficulties arise from not having sufficient resources for adequate communications systems and radios, but also, for ensuring security for those communications systems that do exist. As well, some newer members are confused by why the Guardias in both places prohibit the use of weapons in the face of armed conflict, emphasizing the importance of prioritizing ongoing capacity-strengthening around values. Additionally, given the swell in the number of women and men joining the Guardias in both places, developing protocols for action that take into consideration the different vulnerabilities of women compared to men, in the face of violence, as well as psychosocial support for those who witness violence, has become key.

Ultimately, just like with any institution in the context of armed conflict, there is the potential of infiltration by dissidents and outlawed actors wanting to gain control of the Guardia. There have also been accounts of troubling incidents of 'simulacra', where Guardia outfits have been donned by outlawed armed actors to block roads and engage in extortion. Armed conflict is, in short, a very messy reality with which to contend in making Indigenous and Afro-Descendant autonomy a reality.

This is particularly true in post-Accord Colombia, where there is a jostling of new armed actors hoping to take over the regulatory space left behind by those FARC who have demobilized. Now community leaders do not know who the armed actors are that are roaming their territories. This is a much more volatile situation, leading to new levels of fear, and new constraints on autonomy.

Indeed, in thinking through semi-autonomous spheres, the intrusion of transnational criminal economies and its actors has degrees of effects on Indigenous and Afro-Descendant autonomies: from the possibility of a 'co-existence' – however uncomfortable – in which armed actors and ancestral peoples live side-by-side and open up a certain degree of dialogue and negotiation of autonomous space,[25] to situations where there is open conflict, uncertainty and ongoing violences and no negotiated space for autonomy, as in the current context of lethality in both the Palenke and the Resguardo.[26] Not losing sight of the connivances that exist between State law and armed actors, or what I call 'raw law', I would argue that the autonomies that Indigenous and Afro-Descendant peoples are carving out in the context of

lethal armed conflict counter not only State conceptions of autonomy and the legacy of nefarious policies and neoliberal frameworks over time as Mora (2017) argues is the case with Zapatista conceptions, but are constructed, practiced and sometimes negotiated as a result of encounters with outlawed armed actors. They are dynamic autonomies that are in movement, even if *"en entredicho"* (in question).

Conclusions: "*Guardia, Guardia!*"

I close this article with an ethnographic note that summarizes the lethality experienced in 2019 that carries through to today, before drawing out some key conclusions and offering a postscript.

November 25, 2019: Community Assembly, Portachuelo, Resguardo Cañamomo

Just days after Colombia rose up on November 21, 2019 in the largest national strike in 50 years to protest the lack of implementation of the Peace Accords and a range of social injustices,[27] I sat under a large tent, protected from the baking sun at the General Community Assembly of the Resguardo Cañamomo, in the community of Portachuelo. I watched as Former Chief Governor Carlos Eduardo Gómez Restrepo came on stage to address the community, sweat making a line down the back of his white shirt:

"Guardia, Guardia!" he belted out. *"Fuerza, Fuerza"* ("Strength, Strength") came the resounding response from the crowd. Again: *"Guardia, Guardia!"* Again: *"Fuerza, Fuerza."* And again. The Former Chief Governor was paying homage to the Indigenous Guardia, acknowledging its importance, its hymn, before delivering his discourse: "Eighteen years ago today, with the complicity of the State, the *paras* (paramilitaries) marked our territory with blood and pain, with the *Masacre de la Rueda*. And it seems that we are back to the same thing." And then he offered a succinct analysis of the crisis that Colombia and its ancestral peoples are facing post-Peace Accord:

> The problem in this country was not the FARC ... but social injustice. The constitutional mandate is not obeyed, but rather the order of capitalism. It is allied with the mafias, with the narco, with outlawed actors. They want to silence our voices with bullets. We cannot remain silent, nor can we remain indifferent ...

> We cannot rest a single day without demanding our collective rights, our life plan. We are not going to give an inch. We are actors for peace, we have to honour life.

He punctuated his discourse with a chilling line: "As our Guardia's hymn says, we know we have the strength to stand up for our rights, even if it means dying." A chilling line, because it rings so true: *everyone's life at this Assembly is at risk*.

Carlos Eduardo's speech summarizes why prospects for autonomy are so deadly in Colombia. It underscores why, as I have argued in this article, there has been a "turn" towards self-protection mechanisms and revitalization of both the Guardia Cimarrona and the Indigenous Guardia in this new era of violence. He highlights the entanglements of the State with outlawed armed actors that have spawned a landscape of warring fragmented sovereignties, where ancestral peoples are caught in the middle. And he places at the centre of this lethal mix a key element that cuts against ancestral peoples' thirst for life and autonomy: capitalism by accumulation, dispossession, violence and ultimately death.

Indeed, the capitalist economy – both licit and illicit – and its intrusions on ancestral lands shapes and constrains the possibilities of autonomy as defined by the Palenke and the Resguardo. It creates the violent conditions that lead to autonomy being *entredicho* (in question), to take up Elder Lisifrey's analysis. Yet just how *entredicho* depends on the very particular contexts and possibilities of negotiating space, which in the current context of uncertainty regarding which actors are intervening, is almost non-existent.

Returning to the question I asked in the introduction: How can autonomy – as defined by the Resguardo and the Palenke, with its territorial, spiritual, cultural and lifeworld aspirations – even be held up in this lethal context? The answer the ethnographic moments and analysis in this article leads to is with renewed creativity, with alliances once never thought possible, fuelled by undying conviction, hope and strength that draws on "the re-encountering of an historical exercise of our ancestors," to use Elder Banguero's words. As Escobar (2018, 167) underscores, paradoxically, it is precisely in conditions of ontological occupation, repression and violence that the idea of autonomy is flourishing towards sustaining lifeworlds where "honouring life" is central.

In this article I have emphasized autonomy in action, rather than on the books, and placed front and centre the perspectives and analysis of my

partners in the Palenke and the Resguardo. This is only a preliminary attempt at weaving together analysis from different lifeworlds and lifeprojects around autonomies in Colombia that merits more dialogue with critical race literature, among others. For example, in unpacking the discrimination the Guardia Cimarrona has encountered from the State compared to the Indigenous Guardia. Or examining in more detail the philosophical underpinnings of the lifeworlds that inform the Cimarrona and Indigenous Guardias and their spheres of action. How are they revitalizing these institutions? Beyond providing autonomous protection, what are their links to their autonomous justice systems? These are some questions that will guide future research and ethnography, while supporting the strengthening of these institutions.

Postscript – Prospects for autonomy in 2023

Prospects for autonomy in Colombia have taken a pivotal turn following the 2022 presidential elections ushering-in the country's first ever left-leaning government. The Palenke's very own Francia Márquez took the country by storm to become Colombia's first Black vice-president, making history alongside President Gustavo Petro. Powered forward with slogans such as *soy porque somos* (I am because we are), *vivir sabroso* (living tastily), and *el Pueblo no se rinde carajo—de la resistencia al poder*, (the people don't give-up – from resistance to power), the Petro/Márquez ticket deeply challenged the conservative status quo and its extractive model of development. Social leaders across the country – including those in the Resguardo and the Palenke – fervently campaigned for a Petro/Márquez win. It would open-up prospects of autonomy from within the State system, and the possibility of furthering collective life projects, life with dignity, and peace. Yet just as in the 2019 regional elections that provided the analytical backdrop for this chapter, the machinery of fear and death was in full swing in the lead-up to the 2022 presidential elections to stamp out this potential radical change. Just like in 2019, during the lead-up my WhatsApp group brimmed with bloody news daily as we witnessed a new wave of violent murders, threatening pamphlets and hate speech, spurring in turn almost non-stop public declarations, letter-writing and further strategizing to try to keep leaders alive. Both Francia Márquez and Gustavo Petro were forced to speak to supporters in public from behind bulletproof shields, having received multiple violent threats. And on

the frontlines of territorial protection, the Guardia were prime targets – the number of their killings surged. Yet even in the midst of these killing fields, the hope in the air was palpable. Today, following the historic win, announcements and concrete moves to transform Colombia's economy towards the potential of degrowth, to implement a vision of 'total peace' and to make real changes towards an inclusive and equitable society, continue to be met with pushbacks and violent reprisals, including attempts to assassinate Francia Márquez. With all this complexity, prospects for autonomy will remain *entredicho* for some time.

NOTES

1 *Acknowledgments*: I am especially grateful for the active participation of all the leaders I mention in this chapter. I feel very privileged for the trust gifted me by members of the Palenke Alto Cauca and the Resguardo Indígena Colonial Cañamomo Lomaprieta to share so closely in their day-to-day lives, and to be able to make visible and write about these moments. Although this chapter is based on shared perspectives, I take sole responsibility for the final writing and any errors it may contain. I am also grateful for the close readings and valuable observations provided by the editors of this book. This chapter was made possible by grants from the Social Sciences and Humanities Research Council of Canada; and Fonds de Recherche du Québec - Société et Cultur.

2 This chapter was originally written at the end of 2019 and beginning of 2020, and was published in Spanish in 2021. This lightly revised version includes a postscript highlighting the current historic moment and prospects for autonomy.

3 I am purposely equating this shift with what academics have labelled "turns" (e.g., Poblete, 2017), because it is the outcome of nuanced action-oriented analysis by Indigenous and Afro-Descendant thinkers.

4 Throughout the chapter I identify people I cite by name only when they have given their explicit free, prior and informed consent. Others remain anonymous.

5 As a Senior Researcher with The North-South Institute (Canada), and then Policy Advisor with the Forest Peoples Programme (United Kingdom; the Netherlands), I have helped garner direct support for the Resguardo and Palenke towards organizational strengthening and territorial defense, with additional support through my academic anthropological research with the Centro de Investigación y Estudios Superiores en Antropología Social (Mexico) and McGill University (Canada). Wearing these two 'hats', I have situated myself as an activist researcher (Hernández Castillo, 2016; Hernández Castillo & Tervern Salinas, 2017; Mora, 2008, 2017; Hale, 2008; Stephen, 2008; Speed, 2006; Escobar, 2017) both accompanying and lending testimony to the processes lived in both the Palenke and the Resguardo.

6 There are several texts examining the autonomy of Black people both in Colombia (e.g., Machado Mosquera et al., 2018) and in other Latin American and Caribbean countries (e.g., Goett, 2016), but examining Black and Indigenous autonomies side-by-side is less usual.

7 I want to acknowledge the aspirations towards autonomy of the Roma or gypsy people in Colombia (see for example, https://bit.ly/34BYWtl), as well as the *campesinos* (see for example, https://bit. ly/2HXfKU3), experiences that were not part of the ethnography and fieldwork grounding this article.

8 For the Resguardo Indígena Cañamomo Lomaprieta, see for example Herrera & Garcia (2012); Appelbaum (2007); Lopera (2010); Caicedo (2018, 2020). For the Palenke Alto Cauca, see for example Mina (2008); Ararat et al. (2013); Duarte (2015).

9 For community analysis of the impacts of sugar cane on their "buen vivir-ubuntu," their collective well-being, see Aguilar-Ararat et al. (2021).

10 Among them, the Revolutionary Armed Forces of Colombia (FARC); several paramilitary groups and criminal gangs (OECD, 2017).

11 The official boundaries were re-established in 1627, following the resolution of a boundary dispute. Yet since its establishment the Resguardos' land base has been subject to ongoing modifications and erosion over time (Caicedo, 2020).

12 See: https://bit.ly/30Kbr53

13 See Noticias Uno video: https://bit.ly/33G8OmA

14 The *Plan de Vida* also references international definitions and agreements such as those made at the "II Conference of the International Alliance of Indigenous and Tribal Peoples of Tropical Forests" that took place in London in 1993, where the Americas working group agreed that: "Autonomy is the way indigenous peoples do politics; Autonomy provides the means, it is the open door to self-determination; Autonomy is the decision of a people seeking its own economic, political and social development." And that: "In order to be autonomous a people must have its own territory, develop its own indigenous economy, education, health and rights; also be respected for its way of thinking and living in freedom. In order to be autonomous, a people must be recognized for its culture, language, history and biodiversity" (RICL, 2009, p.159).

15 Which the *Plan de Vida* defines as integral to exercising autonomy: "For us, self-government means the right to legislate and make decisions within the territory, which we, the indigenous people, lead *without the participation or intervention of other actors, as a product of the exercise of autonomy.*" (emphasis added, RICL, 2009, p.159).

16 Social minefields refer to minerals-rich ancestral territories that are in the crossfire of armed conflict: "They are minefields in both the sociological and the economic sense. In sociological terms, they are true social *fields,* characterized by the features of enclaves, extractive economies, which include grossly unequal power relations between companies and communities, and limited state presence. They are *mine*fields because they are highly risky; within this terrain, social relations are fraught with violence, suspicion dominates and any false step can bring lethal consequences" (Rodríguez Garavito, 2011, p. 5).

17 "Article 329. The conformation of the Indigenous territorial entities shall be made subject to the provisions of the Organic Law of Territorial Ordering, and their delimitation shall be made by the National Government, with the participation of the representatives of the Indigenous communities, with the prior opinion of the Commission of Territorial Ordering. The reserves are collective property and are not

alienable. The law shall define the relations and coordination of these entities with those of which they form part." (Political Constitution of Colombia 1991).

18 The Decree was the product of an agreement between the Santos government and Indigenous organizations following the 2013 *Minga Social Indígena y Popular Por la Vida, el Territorio, la Autonomía y la Soberanía*, the Social Indigenous and Popular Minga for Life, Territory, Autonomy and Sovereignty (Mininterior, 2013).

19 Importantly, the Constitutional Court has issued decisions interpreting the limits and reach of Indigenous autonomy and special jurisdiction. Valero (2019) notes that in its Decision T-601/11 "established that the autonomy of indigenous communities may only be restricted if the decision to be implemented is aimed at safeguarding a higher interest and there is no alternative with a lesser impact on their autonomy" (2011, footnotes 67 to 70). Yet, a key issue is what is understood by "a higher interest" and how this is determined.

20 CERD/C/COL/17-19, para 50.

21 The Naya Massacre, perpetrated by the paramilitary group Autodefensas Unidas de Colombia (United Self-Defense Forces of Colombia–AUC) during Easter Week 2001, caused the death of more than 41 people and the displacement of more than 600. The strong impacts and damages of this massacre are reported in Cabildo Indígena Nasa Kitek Kiwe; Jimeno, Güetio, Castillo and Varela; Universidad Nacional de Colombia (2011).

22 According to the Ombudsman's Office (2020), there are several outlawed armed groups with diverse presence and interests in the Resguardo, including paramilitaries, former FARC-EP combatants, and the armed structure "La Cordillera" that disputes drug trafficking markets. The pressures are occurring due to the reorganization process of illegal armed groups after the demobilization of the United Self-Defense Forces of Colombia (AUC); due to regional elections where there is an attempt to inhibit the political participation of Indigenous inhabitants; due to territorial claims and territorial control exercised; or due to the transformation of illegal groups after the signing of the Peace Agreement in 2016.

23 It is worth highlighting the observations of the Inter-American Commission on Human Rights in its 2019 report on Colombia (IACHR 2019), which underscores that "the State should also ensure an ethnic-based approach" (Par. 222) and that: "In protection schemes for communities of African descent and Indigenous peoples, the State should consider the geographical location, the specific needs, and the special situation these communities have confronted in the context of the armed conflict. For remote communities with no access to electricity or a satellite signal, it is important to recognize that measures such as panic buttons or cell phones are not useful, and that a simple visit by a State representative to the area or the installation of electric lighting may be more effective in dissuading violence. In addition, comprehensive measures should be designed to implement collective measures of protection" (Par.222).

24 In paragraph 29c of its December 2019 concluding observations, CERD urges that the State: "Strengthen, though the allocation of adequate resources and the granting of express legal recognition, pre-existing collective protection mechanisms in the communities concerned, including the Indigenous Guard and the Cimarrona Guard." (CERD/C/COL/CO/17-19)

25 Coming close to what Arjona (2016) calls "rebelocracy".

26 In 2021 and 2022, the Palenke has worked hard in advancing what they call "Acuerdo Humanitario Ya" – the Humanitarian Accord Now – an initiative to negotiate degrees of autonomy directly with armed actors.

27 See Forest Peoples Programme (2021) for in-depth analysis.

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20

Indigenous Self-government Landscapes in Michoacán: Activism, Experiences, Paradoxes and Challenges

Orlando Aragón Andrade

Introduction

There was a time when speaking of Indigenous autonomy in Mexico was reduced to Zapatista experiences in Chiapas. For better or worse, the Zapatista Army of National Liberation provided the concept of Indigenous autonomy with substance and a particular practice: rejection of the Mexican State and its institutions. However, this common sense does not apply to the wide range of autonomous practices and experiences built by Indigenous peoples and communities based in the Mexican State throughout history and into the present (Burguete, 1999; López, 2019).

Now more than ever, the concept of autonomy, according to Araceli Burguete's (2018a) caveat, contains several meanings. These caveats are key for this chapter, as I focus on experiences that must be framed within a concept that has even more constraints than Indigenous autonomy, which is that of Indigenous self-government. While these two concepts are used interchangeably, there is one distinction, accepted both by anthropology and the law, which I am recovering.

Based on this, Indigenous autonomy refers to communities' control and practices within a variety of areas of life such as social, cultural, religious, economic and political. On the other hand, Indigenous self-government implies only the political and legal dimensions in terms of the functions of government (Sánchez, 2010; Figueroa & Ariza, 2015; TEPJF, 2014).

This first delimitation is insufficient on its own. It is important to also address the myriad of expressions of Indigenous self-government. For this, I draw upon Burguete's recent approach (2018b) to address this. From this perspective, Indigenous government can be understood as a set of institutions and authorities that have been "negotiated", appropriated or inhabited by Indigenous peoples, throughout their relationship with the colonial State, but also with the independent State and its subsequent avatars. In this way, the concept of Indigenous government is simultaneously historic and contemporary.

It is important to start from this idea of Indigenous government as it allows us to see its dynamism and flexibility. However, it is also necessary to dissect the concept in order to make qualitative distinctions between the many forms of Indigenous government that are currently in existence. This way, the breaking points that have defined Indigenous "negotiations" and appropriations at different moments in time, become fundamental to understanding context, singularities, nuances and new meanings of the different forms of Indigenous government.

Under this order of ideas, a key point in understanding the current struggles of Indigenous communities in Michoacán is that which came about through the multicultural project that was carried out in Mexico, mainly at the end of the 1990's and the start of the 21st century. I am not interested in characterizing the policies of recognition based on multiculturalism, as these have already been broadly studied (Hernández, 2004; Hale, 2004; Díaz Polanco, 2006). It should be noted that, despite disappointing results, multiculturalism was able to change State rhetoric of denying Indigenous peoples and communities in Mexico and reconstituted the playing field between communities and the Mexican State through the appearance of new narratives, new sectors, actors and instruments of struggle. It is within this breaking point when Indigenous peoples' human rights were acknowledged by the State, at least in a rhetorical manner.

For example, in Michoacán, multicultural policies led to institutions and bureaucracy such as community courts, bilingual public prosecutors, the

now-defunct Ministry of Indigenous Peoples, the Intercultural Indigenous University of Michoacán, among others. All of these had brief periods of upsurge before eventually declining and with some becoming defunct.

It is within the context of the end of the multicultural stage and the emergence of a new post-multicultural turning point, where the framework for this particular study into Indigenous self-government processes exists. Considering the previous points, I find it useful to classify three different expressions of Indigenous self-government for our analytical purposes: pre-multicultural, multicultural and post-multicultural. As any classification is a simplification of a more complex reality, it should be noted that these three expressions do not imply their passing. Within Michoacán, a region within the state, or even within an Indigenous community, we can find all three of these expressions coexisting together, and on several occasions in conflict with one another. However, I find this analytical proposal helpful when presenting the singularities, innovations and potential (within their context and conditions that have yet to be studied) of Purépecha community processes of self-government which have been growing in Michoacán and, to this day, have influenced the current activism of other communities from different provinces in Mexico such as Guerrero, Chiapas, Jalisco, Puebla, Mexico City and Oaxaca.[1]

The ensuing data and conclusions are committed to the militant insertion I built with the majority of activist processes I have studied (Aragón, 2019). Much of the content included here comes from my critical collaboration as an attorney and anthropologist[2] with the Emancipation Collective, which has closely followed the fight for self-government in Purépecha communities since 2011.

I am proposing a particular itinerary for the development of my arguments. In the first two sections I will focus on the study of the previously mentioned post-multicultural context. I will specifically study the social and political conditions in which these new processes of Indigenous self-government emerged in Michoacán. I will then analyze the legal context which made it possible for the acknowledgement of the right to Indigenous self-government. Thirdly, I will study both scales of Indigenous self-government which have resulted from the Purépecha experience, particularly in the different communities that have attained the acknowledgement of this right and have practiced it for several years. Lastly, I will focus on the limitations and

challenges faced by the Purépecha community processes after nine years of Indigenous self-government.

Post-multicultural Conditions within the Sociopolitical Sphere in the Fight for Indigenous Self-government in Michoacán: Between the Old and the Mexican State

The political and social conditions of the post-multicultural stage in which these experiences of Indigenous self-government arose are due to a combination of both relatively new issues as well as older ones.

Purépecha "Aprils" against Insecurity and the Credibility Crisis of Government and Electoral Institutions

The most defining events that marked the end of the first decade of the 21st century and the start of the second decade in Mexico were, on the one hand, the unprecedented increase in violence and insecurity (Turati, 2011; Olmos, 2015), and on the other, the profound crisis of legitimacy of electoral institutions only a few years after the hegemonic party's defeat in the presidential election and the beginning of the stage known as partisan alternation. In 2007, in the midst of a deep questioning of the close results of the presidential election, the government of Felipe Calderón took a dramatic turn in the strategy against organized crime. From that moment on, the country's militarization increased on the basis of defeating drug trafficking and other criminal groups. This, which began with *Operación Conjunta Michoacán* (Joint Operation Michoacán), resulted in an exponential increase in violence in practically every region of the country.

Organized crime had increased its power considerably, compared to previous decades, in most of the territory. Illicit activities such as kidnapping, extortion, homicide, human trafficking, among others, were added to the ones that had been carried out for several years, such as the trafficking of drugs and arms. However, the most significant change was the incursion of raw materials, mainly mineral and forest products into the fray. Organized crime became a central actor in the wave of dispossessions related to neo-extractivist activities that was experienced by several Mexican communities, both Indigenous and *mestizo*.

However, in order to understand the change in organized crime activities we need to mention the collusion with State authorities of different levels who facilitated and benefited from the profits (Gledhill, 2017; Maldonado, 2018). Two distinctive examples which highlight this collusion were the arrests of several Michoacán mayors in 2009 due to alleged ties to organized crime (Ferreyra, 2015), as well as the arrests of the state's former secretary of government, the son of Michoacán's former governor-elect, and the consequent resignation of the former governor-elect due to these scandals.

The arrest of State officials, whether because of collusion or incompetence, contributed to the discrediting of electoral institutions and political parties, as well as local and national governments. For many Mexicans, this came with the realization that they would need to face crime on their own. Adding to the discrediting of electoral institutions following the disputed results of the 2006 presidential election, the governments of the country's three main political parties further reduced their already low credibility in the eyes of the public when their performance on organized crime amounted to the same. Within this context is where the struggles of the communities of Cherán and Arantepacua begin. While these events took place during the month of April in different years, they have both found their path towards Indigenous self-government.

Purépecha communities are the main ethnic group in Michoacán. As shown on the following map, they are traditionally located in four regions: Meseta Purépecha, Ciénega Zacapu, Cañada de los Once Pueblos, and Cuenca del Lago de Patzcuaro (West, 2013). Both Cherán and Arantepacua are located in Purépecha Meseta (the plateau) region.

In the case of Cherán, factors related to insecurity and electoral institution's lack of credibility took the shape of the looting of forests by organized crime; increases in violence and insecurity; criminal co-optation of municipal authorities; and the political crisis regarding the legitimacy of the last mayoral election. All of these led to the beginning of the movement for "peace, justice, and reconstruction of the region."

On 15 April 2011, the Cherán community began an organizing process, initially defensive in nature, against organized crime and the abandonment by municipal, state and federal governments, which at that moment were occupied by the country's three main parties. Cherán reactivated and adapted several community practices to respond to the emergency and enacted a new political pact based on two key principles of self-government in Michoacán:

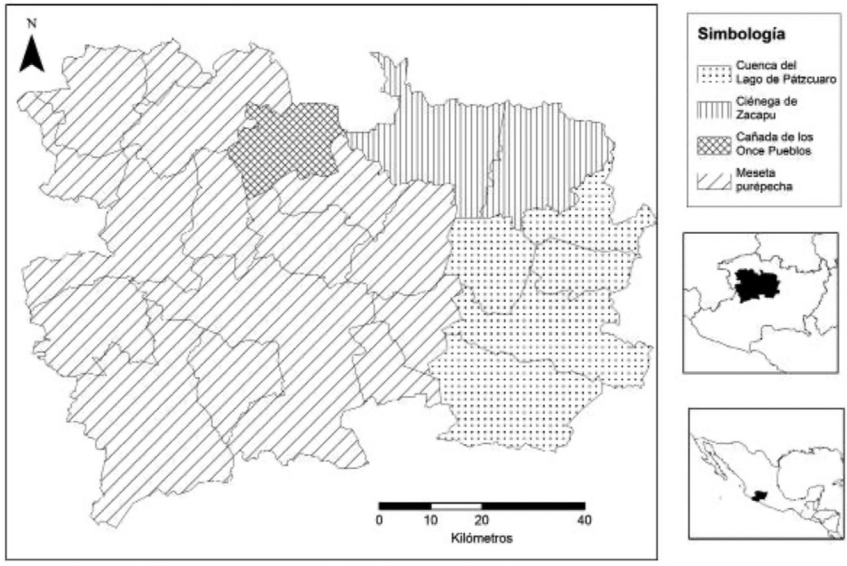

Figure 20.1. Michoacán's four Purépecha regions. **Source:** Elaborated by the author.

community organizing instead of political parties; communal security instead of the police.

This pact should not be understood as any other agreement, but as a community-level constitution. In a previous paper, I have argued about the importance of decolonizing the modern and Eurocentric idea of a constitution, in order to understand the judicial-political logic that communities have put forth in these processes (Aragón, 2019). Although community constitutions, in political pacts such as these, do not have the same level of formality, nor do they have a written version of their articles, they carry out many of the functions of constitutions for national and multinational States (Aragón, 2019). However, the broadening of the term cannot lead us to consider that any political pact of a people, community, collective, etc., can be considered a constitution. As explained, it requires the existence of at least two fundamental elements: recovery, adaptation or invention of institutions which bring about this pact, or the rehabilitation of its own political and judicial proceedings which allow for its defence (Aragón, 2019).

This is evident in the case of Cherán. From April 2011 until 5 February 2012, when the new *Usos y Costumbres* (customary law) system of municipal government was officially installed, the Cherán Purépecha community rejected the instituted municipal government and opposed it by instating an Indigenous popular government based on the traditional division of the community in the four *barrios* (neighborhoods). Several commissions were formed in order to meet the needs of the community. Among the 16 commissions that were formed, aside from a general one, were Honor and Justice, Education, Forests, Press and Propaganda, Food, etc. The logic that led to the forming of these commissions was that their integration depended on the assemblies of each of the four *barrios* of Cherán. Because of this, the commissions equally represented these four groups. The members who formed these commissions did these tasks in an honorary fashion (unpaid community service).

Aside from the development of this neo-institutionality based on the reconfiguration of traditional forms, the new Cherán community pact established the general assembly as the main space for decisión-making, and as such, as a mechanism to defend, modify or suppress the political pact that had risen from the movement.

Almost five years after the uprising in Cherán, on 5 April 2017, the community of Arantepacua (belonging to Nahuatzen municipality) endured a police incursion. The development led to the murder of four community members, as well as several arrests, at the hands of police forces, and a social trauma that has yet to be overcome. This situation led the Arantepacua community to create through their general assembly a new political pact based on: demanding justice for the murdered members; expelling political parties that were only taking advantage and polarizing the community; not allowing State security forces entry into the community; and seeking judicial recognition of Indigenous self-government that would allow the community to govern itself through its own *Usos y Costumbres*, as well as independence from the municipal government.

In parallel to this legal route, a process of institutional redesign began in the community. After a period of submission to the Nahuatzen municipal government, the general assembly reaffirmed itself as the main authority and chose to reject the municipality's *jefes de tenencia* (auxiliary government authority) while also forming a new authority body of representation, called the Indigenous Communal Council of Arantepacua. Its members were elected for

a two-year period during the general assembly led by both men and women. This new council integrated one single authority for farming leaders (representatives of communal land) and civil leaders who grew in numbers due to the different functions they needed to cover following their recognition of their right to Indigenous self-government.

While this new context has been key, there are other, older political processes that have intersected with these conditions and have contributed to the emergence of the Purépecha community's challenges.

Political Exclusion of Indigenous Communities within the Mexican State Apparatus and Avatars of Challenges in the Fight for Indigenous Self-government at the Sub-municipal Level

Since the time of New Spain's colonial rule, Indigenous communities have struggled to maintain their own separate political status through the so-called Republic of Indians. With the birth of the Mexican State in the 19th century, these communities continued their fight, this time seeking a place at the municipal head of government. In fact, the historiography of Indigenous peoples during the 19th century documented how certain Indigenous communities in Michoacán, through the provisions of the Cádiz Constitution, were able to briefly acquire the status of municipal governments (Cortés, 2012).

Despite these efforts, the majority of communities were subjected and integrated, both at an administrative and political level, to municipalities controlled by a population that was mostly made up of *mestizos* or *mestizo* communities, as was the case of Nahuatzen and Charapan (West, 2013). Within this general rule, Cherán is a notable exception for the case of the Purépecha communities. This is one of the few Indigenous communities in Michoacán that were able to conquer the local head of government's political status.

In this way, municipal government in Michoacán was integrated according to organic municipal laws, within a political hierarchy made up by a capital population that was denominated as the head of municipal government, by subordinated populations that were mostly smaller than the head (which were referred to as auxiliary authorities) and by populations even smaller than the head and auxiliary authorities (known as peace entrusts)

The representative authorities of these last two jurisdictions of municipal government suggested the same logic for political subordination. In this way, their judicial nature was limited to being an auxiliary authority for the mayor, as shown on Figure 20.2.

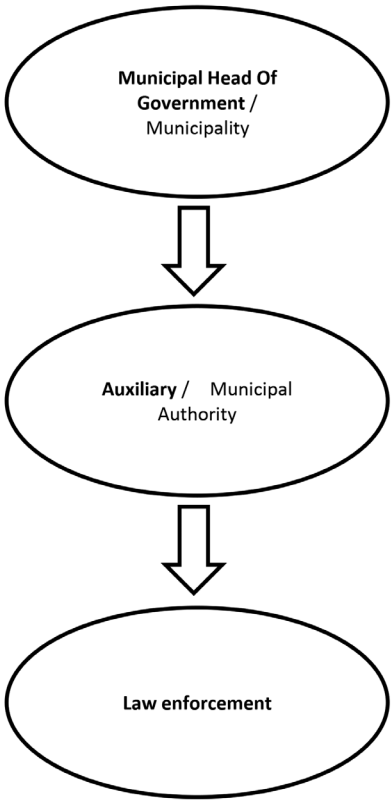

Figure 20.2. Political structure of municipal government in Michoacán. **Source:** Elaborated by the author.

This legal order does not prevent both of these authorities from having a more complex relationship in practice; at times in open resistance, at times disputing electoral differences, and at times in total subordination (Castilleja, 2003; Dietz, 1999; Aragón, 2020). For this reason, the establishment of a State regulation did not imply that communities' autonomous aspirations would be cast aside during the 20th century. In fact, there are several episodes where communities switched municipalities due to conflicts with heads of government. Some examples that highlight these issues are those of Cherán Atzicurín and Santa Cruz Tanaco.

At the end of the 20th century and the beginning of the 21st, some Indigenous organizations of Michoacán requested a process of re-municipalization so that Indigenous communities would be able to acquire autonomy within the context of the municipality (Ventura, 2010). This request was due to political and economic strengthening that municipal governments in Mexico gained during the 1980's (Ziccardi & Assad, 1988).

Within this new wave of activism, some communities, under the framework of auxiliary authority, mobilized and were able to acquire better living conditions by marginalizing the municipal government. For example, following a complex electoral process in the municipality of Paracho in 2004, the Nurio and Quinceo communities were able to require that the municipal government hand over the public budget allocated to them through a political agreement that allowed the communities to exercise control directly (Ventura, 2010). To this day, the Nurio case continues to be a reference point of community organizing for other Indigenous communities in Michoacán.

However, not all Indigenous communities were able to acquire the same conditions that led to that moment between Nurio and Paracho, which is why a long period passed before another community was able to reach a political victory of this magnitude against their municipal government. This situation led other communities with similar claims to diversify their strategies to organize and incorporate other tools, such as the counter-hegemonic use of State law, as was the case of Cherán in 2011 (Aragón, 2019).

As advised, the conditions presented in this work, both long-term and short-term, are not exclusive, as these interconnect with one another. However, this classification is useful as in some cases, one particular process might have had a greater or smaller impact in the underlying circumstances that resulted in mobilization towards Indigenous self-government. The case of the Purépecha community of Pichátaro represents the best example of the combination of long-lasting tensions and issues with the municipal government of Tingambato and new challenges, such as forest looting and the community's increase in insecurity.

The main reasons that resulted in the discontent of the Pichátaro community were the extremely poor public services provided by the municipal government, mayoral corruption in terms of the construction of infrastructure, but mostly the controversial uneven allocation of the budget. Even before obtaining judicial recognition for Indigenous self-government, the municipal government allocated between 5 and 6% of the total budget

to the community, despite Pichátaro representing 36% of the municipality's entire population. The amount of political exclusion carried out by the municipal government had been such that no mayor since 1877, the year when the municipality of Tingambato was created, had been from Pichátaro, despite the population at the seat of the municipal government having practically the same population percentage, 39%, of the municipality's inhabitants.

This discontent towards the municipal government was accompanied by the same conclusion reached by Cherán, that political parties were the key element for the system to continue to marginalize the community. In the case of Pichátaro, the broad discontent on behalf of the community was focused on the ways in which local party leaders would reach agreements and deals with Tingambato elites for their own benefit rather than the community's.

The previous community diagnostic reached by the seven *barrios* that make up Pichátaro and its traditional authorities (auxiliary authority, communal lands representative and *barrio* heads) also resulted in a new political pact for the community, ratified by the general assembly agreement in 2015, which banned the installation of electoral polling booths in the community on election day, as well as disregard for political parties and their leaders, the resuming of community organizing, as well as requesting the municipal government to grant the community with direct administration and execution of the allocated amount of public budget.

Around the same time that this took place in Pichátaro, the Purépecha community of San Felipe de los Herreros also began a mobilization in regard to the public budget of the municipality of Charapan. In this case, the defining moment came as a result of the corruption of the mayor at the time in terms of the execution of public works in the community. As was the case in Cherán and Pichátaro, community action began with the banning of political parties within the community, as well as prohibiting of electoral polling booths to be installed during the elections of 2015. At the same time, the general assembly decided to strengthen community organizing, along with fighting for the budget and forming the Communal Council as the new community authority, that would work to reach the goal set forth against the municipal government.

While the previously set conditions help us understand the surge in community organizing, they do not show the judicial elements which allowed for the recognition and consequent exercise in the right of self-government. Because of this, I believe it is important to focus on the sociojudicial

conditions that made it possible for these actions to result in new forms of Indigenous self-government.

Legal Schizophrenia and Transformative Community Constitutionalism: Post-multicultural Sociojudicial Conditions in the Fight for Self-government in Michoacán

I have stated in other works that several transformations in the field of State law came together during this second decade to boost the fight for Indigenous rights to judicial lands (Aragón, 2019), thus breaking the inertia of multicultural policies in the production of reforms and new laws. These transformations were a by-product of a series of legal and political changes separate from the sphere of policies of multicultural recognition that the Mexican State and law has endured in the last few decades. Said changes have resulted in an increase in chances for Indigenous communities to reclaim their rights in court, with relative effectiveness or at least with a greater chance at success compared to other periods. Yet, this new area of opportunity has an ambiguous tendency, as it has not come about through the systematic and coherent transformation of Mexican State law, but through heterogenization, fragmentation and consequent increase in its uncertainty.

This is why I have stated that Mexican State law is currently undergoing a schizophrenic period (Aragón, 2019). Said legal schizophrenia is manifested in the ever more frequent and intense superimposition of different judicial regulations and interpretation criteria regarding a particular legal situation as a consequence of the impact of neoliberal globalization of the rule of law and the ever-increasing diversification of regulatory sources that come about. In this way, we see several legal dispositions from different times and political projects co-existing within particular fields of State law, or in the case of courts, the continuation of interpretation criteria openly differentiated within the same court. Of course, this schizophrenia is not arbitrary in character, but responds or is conditioned by an inertia of power that occasionally opens the door for its questioning, that generally tends to favor the status quo.

An example of this legal schizophrenia can be found in different State regulations that apply to Indigenous territories. Aside from the Agrarian Law, we have several new neoliberal legislations regarding the energy sector, human rights of Indigenous peoples in regard to land and the right to free,

prior and informed consent; this can also be found in some cases of civil law. Each of these regulations responds to a different political project and are from incredibly dissimilar moments in history.

Another element that contributed to the emergence of the State's legal schizophrenia was the change in the balance of power of the branches of the Mexican government over the last three decades. After a very long period of hegemony of the executive branch over the legislative and judicial, the last decade of the previous century saw its progressive weakening amid the increasing advancement of opposition parties. Where the executive branch was once the referee in terms of political conflicts, institutional reforms led by the judicial branch were set in place. This development, which the sociojudicial literature has denominated as the judicialization of politics (Sieder et al., 2011), positioned Mexico's Supreme Court of Justice (SJCN) and the judicial branch's Electoral Tribunal (TEPJF) as the new official referees for disputes between the State's political branches (Ríos, 2007).

Despite the importance of this development for the governmental branches, the greatest change for courts to become spaces for disputes, which provided more opportunities for the fight of Indigenous struggles in Mexico, was the human rights reform of 2011 in terms of the first article of the Federal Constitution. This reform implied the direct application of international treaties related to human rights within the Mexican government's jurisdiction.

In the case of the rights of Mexico's Indigenous peoples and communities, this reform led to the end of the refusal of Mexican courts to apply ILO Convention 169 on Indigenous and Tribal Peoples over and above internal legislation; as well the other statutes of international human rights law that favored this sector. This change made a qualitative difference, as international regulations regarding the rights of Indigenous peoples supposes a much broader and favorable framework than what is established in domestic law.

However, this new legal scenario does not transform anything on its own. Communities needed to activate these spaces in order to protect their community constitutions from the harassment of the State and organized crime. For this reason, Indigenous communities pushed for judicial processes which allowed for the recognition of their right to self-government and to pierce the State apparatus. This political force which surges from the bottom up, from Purépecha communities and not from the courts or external actors, is what I have termed transformative community constitutionalism (Aragón, 2019).

The community and legal processes of Cherán and Pichátaro illustrate this dynamic. While the Cherán community's struggle began as a reaction to the danger that came with the return of organized crime, and to bring a stop to the destruction of the forest, the path to its mobilization was altered by the beginning of the electoral process to renew the Michoacán state and municipal governments.

This coincidence brought with it pressure from local and regional leaders of political parties for community organizing to allow electoral campaigns to take place. Faced with this situation, members of Cherán community began to look for alternatives to avoid this from happening and to maintain one of the pillars of the political pact made in April 2011 (no more political parties). Aside from resisting the pressures placed on community organizing, it was decided that a document would be presented before Michoacán's Electoral Institute (IEM) to request that the election of their municipal authority take place within the framework which Oaxaca state recognized as an election by *usos y costumbres* or customary law (Anaya, 2006).

At the time, Michoacán was one of the states with the worst judicial framework in terms of the rights of Indigenous peoples and communities, and said procedure was not included in the local constitution or in Michoacán electoral code. This made it easy for the IEM to state that it had no power to grant a favorable response to the request.

In order to protect its political pact, Cherán decided to include an external element, the counter-hegemonic use of State law. This was how a trial for the protection of political electoral citizen rights was brought to the TEPJF (Electoral Tribunal) as a means to counteract the IEM's ruling.

The legal argument on which the case was based was the use of the reform of Constitutional Article 1 to request the direct application of international treaties regarding human rights of Indigenous peoples; as well as Constitutional Article 2. Unlike the IEM request, in this case the community not only requested for the organization of an election adhering to *usos y costumbres*, but also the recognition of a municipal government that was not set up under the concept of a municipality, but under a communal government. These last two proposals are the reason behind the TEPJF finally ruling in favor of recognition in a historical judicial ruling on 2 November 2011.

Under the same argument of the counter-hegemonic use of State law, Pichátaro community put forth a new case to the TEPJF to protect its own

community's constitution, given the danger that political party leaders colluding with the municipal government would attempt to step over it.

Once the decision was made, a legal argument was worked out that would allow the community to present a matter that was apparently about finances (related to the budget), and therefore become related to administrative law, a political-electoral jurisdiction. For the first time, the political rights of Indigenous communities were brought before the TEPJF, beyond the right to choose an authority or government system; beyond even the request for communities to participate in a State decision that could affect them through a consultation process. The proposal included in the case document focused on bringing about a broad interpretation of Indigenous communities' right to self-determination and autonomy, in terms of intrinsic political rights, by demonstrating its multiple and independent dimensions while claiming that all of these were susceptible to being processed in the political electoral jurisdiction.

The central argument focused on how political rights relating to Indigenous self-determination and autonomy included other dimensions such as the right to independent development and effective participation in the State's political sphere. Based on this, the TEPJF would need to create a systematic and comprehensive interpretation of ILO Convention 169, the United Nations Declaration on the Rights of Indigenous Peoples, and Article 2 of the Mexican Constitution with what is established by Article 115. (While the latter, which regulates Mexican municipal governments, does not include the possibility of a municipality transferring public budget to an Indigenous community for its direct management and execution, it does not explicitly prohibit it either.)

After a year of litigation, on 16 May 2016 the TEPJF ruled in favor of the Pichátaro community. However, the execution of the decision was protracted until the end of November of that year due to the mayor's reticence to carry it out.

The Two Levels of Indigenous Self-government in Michoacán

Transformative community constitutionalism for Purépecha communities resulted in two levels of Indigenous self-government: municipal and sub-municipal. Both dispute the political-administrative logic of the Mexican State's

municipal government structure. Both focus on logic, institutions and mechanisms intended for different kinds of political participation. However, each level also has its particular characteristics and challenges. We will start with the municipal level.

Cherán K'eri: Self-government at the Municipal Level

The new municipal government of Cherán, elected by the community's four *barrio* assemblies, was installed on 5 February 2012, with its representative authority being the Head Council of Communal Government (CMGC). This new structure for municipal government was based on commission-based community organizing which prevailed through most of 2011. The municipal government was no longer the main authority for the municipality or the community, but instead a general assembly, first represented by the CMGC (composed of 12 community members, three from each of Cherán's barrios).

The CMGC was joined by six operational councils which were put in place to assist carrying out government functions in the municipality. Among the different councils which were part of this first administration were: Communal Lands; Local Administration; Civil Affairs; Honor and Justice; Social and Economic Programs; and the *Barrio* Coordination Council. The Youth Council and the Women's Council were added during the second administration, all of which make up Cherán's community government structure to date. The integrations of these operational councils are made through barrio assembly elections and they have a membership integration system similar to the CMGC.

With this new integration, Cherán has exerted functions which the Federal Constitution grants municipal governments. Functions such as security correspond to the Council of Honor and Justice in coordination with the Community Watch group. Public works and infrastructure are overseen by the Local Administration Council in coordination with CMGC. But perhaps the most important part is the link between all of these councils with *barrio* assemblies and the general assembly. Each week, the *Barrio* Coordination Council calls for an assembly to report on the communal government's development and to consult with the assembly on community matters, such as how and for what purposes should the municipality's allocated budget be used. The CMGC's members must be present at said assemblies in order to report back to the state government.

It can be said that Cherán's experience is different from other fights for autonomy in Mexico in the sense that it disputes the State from its base: the municipal government. Unlike Zapatista examples which build their own institutions in parallel with those of the Mexican State's, Cherán does this through the adaptation and colonization of the municipal government, as well as political participation, even through State law. Unlike municipalities in Oaxaca that elect their authorities through *usos y costumbres*, Cherán goes beyond the procedure which implies an electoral system and questions the colonial monopoly that existed in Mexico until then (where the municipal government was the only recognized option) through the use of the State's law.

Pichátaro, San Felipe de los Herreros, and Arantepacua: The Emergence of the Fourth Level of Government

As previously stated, over the last several years, the Nurio community has developed a form of Indigenous self-government for Purépecha communities. Despite its political brilliance, this form has more limited implications for the State and its law. While some government functions are exerted with a budget which is directly allocated for the municipal government of Paracho, this does not generate any major legal or political consequences that would lead to transformations of municipal government and the State, as it remains judicially contained as an internal measure of the local government.

The cases of Tanaco, Comachuen and Pomacuaran communities also fit into this category of internal political agreements. While these three cases have very different actors and experiences, they mostly share the same legal implications. The main one being that they remain within the legal framework and State-building which has historically excluded them, and they are contained within internal political affairs of their municipal governments. It should also be noted that, while these cases claim to have agreements with their municipal governments, many of these do not exist physically. This is why their temporary and material reach is entirely discretionary. Also, as with any agreement, it is based on the will of both parties involved, which implies that it can be ended with no legal consequence once one of the parties is no longer interested in keeping it. This is what happened years ago in Quinceo.

The cases of the communities of Pichátaro, San Felipe de los Herreros and Arantepacua exist in a different category. These cases came about after a series of judicial recognitions that go beyond the will of mayors and political

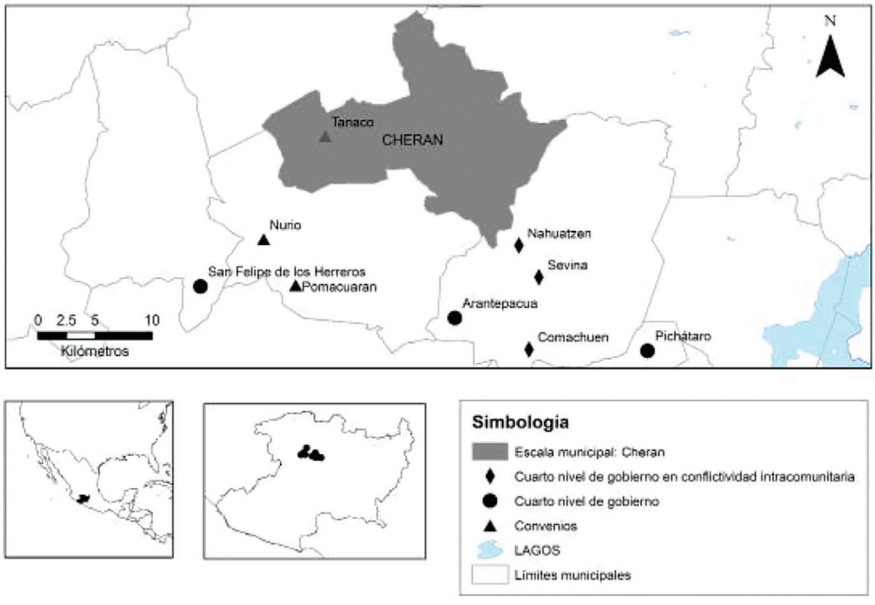

Figure 20.3. Indigenous self-government processes in Michoacán. **Source:** Elaborated by the author.

agreements with municipal governments. In fact, they are a product of the unlikelihood of reaching these agreements. The legal and political implications of judicial recognition that these cases are based on surpass the municipal government's internal political sphere and connect them to various government levels and State agencies. Practically the same ones which correspond to a municipal government.

Because of this, it is important to make a qualitative distinction between this last set of cases and the first set that was mentioned in this section, as it appears that what the TEPJF and Michoacán State Electoral Court (TEEM) created through the corresponding judicial resolutions was a new level of government within the Mexican State, which existed on a community or sub-municipal level: a fourth level of government.

Pichátaro was the first community to achieve judicial recognition. Just like the case in Cherán, it carried out a series of institutional transformations in order to exert self-government. In May 2016, a few days before the TEPJF ruled on the matter, the community decided, through a vote in the

general assembly, to eliminate the post of auxiliary authority and to name the authority figure that would be charged with completing the process and eventually administrate the budget. This intended to eliminate any kind of dependence with Tingambato's municipal government, while creating an institution in agreement with the new political pact, and the eventual recognition of Indigenous self-government. This was how each of the assemblies of the seven *barrios* which make up the Pichátaro community elected the members of what has since been known as the Communal Council (*Chatarhu Anapu)*. Each of the members of the Communal Council was elected for a two-year term, though they could be removed from their post whenever the *barrio* assembly chooses to do so.

The creation of the Communal Council supposed a reengineering of community authorities and an important change in its Indigenous government. From then on, the general assembly became the main authority in the community. Three authorities were placed under it: Representation of Communal Lands, *Barrio* Leaders and the Communal Council. The last one is organized through seven different departments which are managed by each of its members: finance, public works, security, maintenance and services, education and culture, health and sports and environment.

After the ruling in November 2017, the Communal Council began to manage and exert 36% of the total budget which the municipal government of Tingambato previously received. Despite several legal and administrative conditions for government practices and the execution of economic resources, the Communal Council has made an effort to carry this out in a community-based manner. This is done through working closely with *barrio* leaders and each of the assemblies to determine how the resource will be used.

A few weeks after Pichátaro's victory, the community of San Felipe de los Herreros began its judicial process to gain this same recognition. Unlike Pichátaro, San Felipe's case was processed through the TEEM and resolved in under three months. Shortly after, under the violent events that were previously mentioned, the community of Arantepacua did the same, and, in a timeframe similar to that of San Felipe, also received the same recognition.

Although San Felipe and Arantepacua were also granted the same judicial conditions as Pichátaro, both of these cases had significant differences in terms of self-government and the corresponding adaptation for Indigenous government. An example of this, which was a result of the process for self-government, was that two new authority figures were created in San Felipe which

were added to the traditional ones. The Head Council and the Administrative Council would now join the auxiliary authorities and the Representation of Communal Lands.

The community did not discard the auxiliary authority post, mostly because the municipal government did not wield any power over it. Also, it was deemed important for the post to continue in order to carry out functions related to both government and religion, as it had done previously.

In the case of San Felipe, the Administrative Council (which was constituted by some members of the Head Council which had been previously elected by the community's four *barrios*) was placed in charge of the budget. Aside from participating in the fight for Indigenous self-government, the Head Council continued to carry out these tasks after the goal was reached. Since then, it carries out the roles of comptroller, consulting body and *barrio* coordinator in relation to the Administrative Council's functions. The members of the Head Council have two sessions a week and carry out these tasks in an honorary fashion (unpaid community service), unlike members of the Administrative Council.

Members of the Administrative Council have departmental assignments to carry out government functions. In this case, one of the members functions as president, another as treasurer, another is tasked with public works, another with justice and security, another with education and sports, another with environment, and finally another is tasked with duties related to the System for Integral Family Development (DIF). The Administrative Council of San Felipe also employs a couple of dozen community workers in order to be able to carry out these tasks.

In the case of Arantepacua, an Indigenous Communal Council was also formed. However, in this case, the post of auxiliary authority was eliminated, and all authorities were integrated into one. The Representation of Communal Lands was merged into the Indigenous Communal Council. In broad terms, the functioning of Arantepacua's new and single authority follows a logic similar to that of the other two communities. That is, each of the Council's members heads a particular department such as communal lands, social programs, public works, DIF, treasury, justice and security, among others. During the second administration, through an agreement within the general assembly, a Commision of Honor and Justice was created to supervise the work of the Communal Council, with functions resembling that of a local comptroller's and formed by community members who carried out these

tasks in an honorary fashion (unpaid community service). Something that should be mentioned, which exists across all cases of Indigenous self-government in Purépecha communities, whether at a municipal or sub-municipal level, is that those who are part of the relevant authorities tasked with managing the budget have very low salaries. To be tasked with this responsibility is not seen as a career choice but as a service to the community.

Something else that is worth highlighting is that, in these cases and that of Cherán, political participation of women has seen an increase. Several of these communities had not elected women to authority positions prior to these legal processes being carried out. After the self-government processes, both due to equality laws as well as internal pressure, women have been gaining traction in the public sphere. However, this does not prevent some communities and administrations from having more or less representation.

Another relevant matter is that communities that exert self-government in both levels have developed their own mechanisms for transparency and auditing that are independent from external entities, whether through the appearance of Council members at *barrio* assemblies, through the review made by an authority tasked with comptroller responsibilities or through periodical reports presented at the assemblies. In the case of the Councils, these mechanisms tend to be more demanding and effective for the correct management of the allocated resources than those that they are expected to send to the State's Superior Audit Office in the same way as any other municipal government.

All these cases have both similarities and distinctions. One that is worth mentioning in the case of Arantepacua is the way in which security and justice tasks are carried out compared to Pichátaro and San Felipe. Unlike the last two, where cooperation between state police and community police is possible and usual, security and justice in Arantepacua is an exclusively communal matter. The *Kuaris* or *Kurichas* (communal authorities) carry out all of the town's security services as well as those relating to justice, while state police are banned from entering due to the events of 5 April 2016.

Since acquiring legal recognition, the Communal Councils of Pichátaro, San Felipe de los Herreros and Arantepacua have had the same legal standing as a municipal government, though on a sub-municipal level. They have similar rights and obligations following the transference of municipal government functions to the community. They now share obligations which range from being subject to auditing from the Superior Auditing Office of the State

of Michoacán, to being considered as responsible authorities for trials. They are also imbued with attributions from defining and managing their allocated budget, to the legal personality to litigate. These are the reasons behind the statement regarding the emergence of a fourth level of government.[3]

While all three communities have already carried out changes within the members of the Communal Councils (two in the case of Pichátaro, while San Felipe de los Herreros and Arantepacua have had one each) through a peaceful and orderly process, their management has not been devoid of crises. However, these do not compare to the most recent proceedings related to the judicial recognition of the communities of Nahuatzen, Sevina and Comachuen where community polarization and violence has been a constant in the short time that they have been in place.

Final words: The Challenges of Indigenous Self-government in Michoacán

Although several cases of Indigenous self-government have taken place in Michoacán over the last nine years, it would be a mistake to think that these have been devoid of problems, particularly over the last two years. The challenges can be classified into two kinds. The first is of a more legal nature and demonstrates the reversal of the legal schizophrenia that made it possible for the granting of the right to Indigenous self-government, while also conditioning and limiting it. The second refers to some communities' inner conflicts which have been brought about due to the fight for self-government.

While judicial triumphs led by transformative community constitutionalism of Purépecha communities have allowed the succinct pathways for Indigenous self-government at a municipal level and fourth level of government, these have not been enough to force legislation to bring about legal coordination that would establish a new framework for Indigenous self-government (whether in its most basic version, as well as in municipal public administration law) so that different Councils can function within a legal regime that is adequate and in accordance with their reality. For example, reform is necessary in article 115 of the federal constitution, in the local constitution, in the municipal organic law of Michoacán, in the law of mechanisms for citizen participation of Michoacán, in the electoral code of Michoacán, in the law of superior audit and accountability of Michoacán, among many others.

On the other hand, and partly due to fear of political parties, Congress has opted to ignore these legal advancements, and not make changes to legislation as if these acknowledgments have not happened. Because of this, self-government processes in Michoacán have dealt with hostile legislation from a local public administration that is made for municipal governments, which creates a highly complex situation for communal operations.

However, communities have not remained idle toward this situation. Since 2017, Cherán, Pichátaro, San Felipe de los Herreros and Santa Fe de la Laguna communities have joined efforts and coordinated towards an eventual reform to the framework of local public administration at the municipal level. This Indigenous self-government alliance was formalized in 2019 by Pichátaro, San Felipe de los Herreros, Arantepacua and Santa Fe de la Laguna communities. From then on, joint actions have been carried out to seek the necessary reforms which to this day have not yet been created.

Another key challenge regarding self-government processes in Michoacán is related to internal divisions and conflicts within communities, which have emerged in certain communities in the region. As expected, the Cherán and Pichátaro cases did not just impact communities that had previously reached consensus regarding the demand for sovereignty and Indigenous self-government. These also had a ripple effect on a very diverse set of actors and power groups (such as local leaders of political parties, civil society organisations, etc.) who intended to seek self-government outside the framework of a community. This development has resulted in recent mobilizations being stalled and leading to internal conflicts within communities, where the previous framework of dependence on the municipal government remains in place, while the revindication of self-government is not entirely set in place.

This internal violence and conflict have also led to a new phenomenon, which had previously appeared in the Cherán, Pichátaro and Arantepacua cases but in a marginal aspect. I am referring to the judicialization of *usos y costumbres* and communities' internal political polarization, as in the case of the community of Sevina and Nahuatzen head authority, which have resulted in a never-ending series of trials.

A negative result of this situation in the case of Nahuatzen communities is that the concept of Indigenous self-government is increasingly perceived as problematic and violent. This is evident in the fact that state agencies that had paved the way for this new concept are now considering shutting down these proceedings. One of the clearest examples of this development is TEEM,

which declared in 2019, for the first time since 2017, that it was unable to rule on issues related to Indigenous self-government.

In this post-multicultural moment, Michoacán does not possess one particular landscape in terms of Indigenous self-government, but several. That is why the title of this work uses the plural, to highlight the diversity of expressions that co-exist within Purépecha communities. However, this apparently irreducible diversity is not what I intended to focus on in this contribution. My intent was to highlight what stands out from these landscapes, which I believe are cases built from grassroots efforts, from Purépecha communities which emerged during this post-multicultural period. While these communities are fighting against the State based on the oldest cases of Indigenous self-government, they are using new forms of community organizing, rhetoric, tools, expanding in other fields and consequently creating a potential for decolonization. One result that would need to come out of this is the recognition of a new legal precedent for municipalities and Indigenous communities in the states of Guerrero, Chiapas, Oaxaca, Mexico City, Morelos, Puebla and Jalisco to also reach recognition and the ability to exercise self-government over the past five years (despite the lack in Indigenous reforms or secondary laws regarding sovereignty and Indigenous self-government). Therefore, its limits and its scope are still in dispute.

NOTES

1 The legal precedent that was built by Purépecha communities in Michoacán in their fight for self-government has been resumed by municipalities and communities in these states. From a municipal front, we have the examples of Ayutla de los Libres in Guerrero, Oxchuc in Chiapas and Hueyapan in Morelos. In terms of sub-municipal examples, there is the case of the Wixárikas communities in San Sebastián and Tuxpan de Bolaños in the state of Jalisco; the Otomí community of San Pablito in Puebla, the neighborhoods and Indigenous communities of Xochimilco (now known as San Andrés Totoltepec community) in Mexico City and the community of Dolores in Oaxaca.

2 The Emancipation Collective is a militant academic organization which has collaborated in a pro bono manner with Indigenous communities in Michoacán and Mexico in the fight for sovereign and self-government rights. We mostly include professors and researchers specializing in critical and interdisciplinary law studies from a wide range of public universities and research centers in Mexico. It is from within this space where I have worked with Purépecha communities such as Cherán, Pichátaro, San Felipe de los Herreros, Arantepacua, Santa Fe de la Laguna, Teremendo and La Cantera, who are currently practicing or fighting for their right of Indigenous self-government.

3 It should be worth mentioning that the concept of a fourth level of government has already been used, though in the sense and reference of different kinds of local governments compared to the ones that reached recognition in these proceedings where the right to Indigenous self-government was directly recognized. For example, Héctor Díaz Polanco (2003) referred to autonomous regions as a fourth level of government, while Raúl Olmedo (1999) speaks of a fourth level of government on the same sub-municipal level based on the case of a municipal government in the state of Tlaxcala during the 1980s.

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21

Indigenous Governance Innovation in Canada and Latin America: Emerging Practices and Practical Challenges

Roberta Rice

Indigenous peoples' exclusion under settler states looms large, not only for democratic legitimacy, but also for the performance and effectiveness of democratic institutions and processes (Eversole, 2010; Papillon, 2008). Democracies in the Americas that operate without Indigenous participation are deficient (CEPAL, 2014). The ongoing attempts to link this long-excluded sector of society to the polity in Canada and Latin America raise important questions about the role of political parties and the nature of political representation in intercultural settings. What are the successes, failures and lessons learned from the innovative experiments in decolonization that are currently underway in Canada and Latin America? This question forms the basis of the present chapter. Based on case study examples from Bolivia, Ecuador, Nunavut and Yukon[1], the chapter develops the argument that the capacity for political innovation lies within the realm of civil society, while the possibility for uptake of such innovations is found within the State and its willingness to work with Indigenous communities. Strong and well-organized Indigenous movements which have pursued a strategy of institutional engagement have

taken the lead in decolonizing efforts in these four cases. Individually, the cases highlight different models and approaches to Indigenous autonomy and self-government that have been achieved in Canada and Latin America. Together, they demonstrate that alternatives to the status quo exist for national as well as sub-national governments.

Indigenous movements in the cases under consideration in this study see institutional change as key to self-determination. In northern Canada and the central Andes, liberal-inspired democratic orders co-exist and compete with traditional and adapted Indigenous governance structures. In between the extremes of Western and Indigenous forms of governing, however, there exists ample space for political experimentation to link formal with non-formal types of institutions to improve overall democratic governability (Retolaza Eguren, 2008; Postero & Tockman, 2020). To be effective, the process should not formalize all institutions (which would only tilt the political arena to the further advantage of the politically powerful), but instead promote the productive interplay between both types of institutions. To do so would be to construct a democratic system with the ability to produce the results that civil society demands and to consolidate political institutions which guarantee the fundamental rights of Indigenous peoples.

The study employs a "most different systems" comparative research design which involves the study of similarities across structurally different cases. The inclusion of four relatively successful cases of Indigenous autonomy in practice, two from the Global North and two from the Global South, serves to bring together highly distinct cases and bodies of literature into the same theoretical and conceptual space. The approach of the study is institutionalist in nature, emphasizing how institutional arrangements shape political outcomes through the way in which they structure the rules of the game (Rothstein, 1996). The study aims to demonstrate how institutions, in theory and practice, are designed or constructed to achieve a measure of autonomy for Indigenous communities in Bolivia, Ecuador, Yukon and Nunavut. In all of these cases, Indigenous leaders and politicians are seeking ways of doing democracy differently.

The chapter opens with an overview of the concept of decolonization as it applies to the institutional experiments that are taking place in Canada and Latin America. The process of democratic decolonization is suggested to be facilitated by an emphasis on governance, as opposed to government, the meaningful incorporation of non-formal institutions into the polity and

the role of citizenship as agency in pushing the boundaries of representative democracy. Special attention is paid in the chapter to how Indigenous institutional participation promotes the growth of new forms of society-centered governance, including in the natural resource sector. The chapter also addresses how formal, informal and non-formal institutions are implicated in current efforts to re-design governing institutions in more culturally grounded and relevant ways. Finally, the chapter examines the relationship between civil society engagement and inclusive democratic governance. The chapter then explores how these dynamics play out on the ground through the use of case study examples. Indigenous movements have played a decisive role in determining the extent and nature of democratic inclusion in Bolivia, Ecuador, Nunavut and Yukon. The case study examples are presented not with the intention of using them as yardsticks with which to measure one against the other, but rather in the spirit of advancing the project of decolonization in all of them and in providing instructive lessons for Indigenous movements elsewhere which are struggling against colonial-minded governments.

Decolonizing Democracy

The governments of Bolivia, Ecuador, Nunavut and Yukon have embarked on ambitious projects of decolonization, albeit to varying degrees. Although Nunavut and Yukon are sub-national governments within Canada (as opposed to nation-states), they are struggling with many of the same issues faced by the governments of Bolivia and Ecuador, especially in terms of how to incorporate relatively large and unassimilated Indigenous populations into their respective political systems. Despite dramatic differences in economic development, geography and political history, powerful and well-organized Indigenous movements have emerged to press for change in Bolivia, Canada and Ecuador (see Table 1). In this study, decolonization refers to the revalorization, recognition and re-establishment of Indigenous cultures, traditions and values within the institutions, rules and arrangements that govern society (Vice Ministerio de Descolonización, 2013). According to Bolivia's Vice Minister of Decolonization, Félix Cárdenas, the Bolivian State has not only historically excluded Indigenous peoples; it was founded in opposition to or against them.[2] The same can, and should, be said of all settler States. The project of decolonization entails re-imagining the nation-state as Indigenous. This means not only infusing the State with Indigenous principles, but making

an attempt to create a national Indigenous culture with new political subjects and forms of citizenship (Canessa, 2012; García Linera, 2014). Previous attempts at linking Indigenous peoples to the State, whether it was State-sponsored corporatism or multiculturalism, sought to reshape society along the lines desired by governing elites (Hale, 2002). Such approaches tended to target Indigenous peoples as the problem in need of change. Decolonization, in contrast, allows for the meaningful incorporation of Indigenous peoples into democratic nation-states by focusing on transforming the State to better serve and reflect the needs and interests of society.

Decolonization places new demands on democracy. Liberal or representative democracy — with its reliance on elections and parties as the only available channels of communication between representatives and citizens — does not require citizen deliberation on policy matters or collective action. According to Cameron (2014, p. 5), "[w]ithout a voice in deliberations over the decisions that may affect them directly, many citizens become disengaged. This malaise may be especially acute in Indigenous communities with strong traditions of collective decision-making." Institutional innovation is crucial to making democracy work for all sectors of society. Democratic innovations are institutional arrangements that open up the policy-making process to citizen participation, deliberation and decision-making (Smith, 2009; Talpin, 2015). Comprehensive land claims with self-government agreements in the North and the introduction of elements of communitarian democracy and Indigenous governing principles in the constitutions of the South are key democratic innovations that have provided important measures of self-determination for Indigenous peoples. Self-determination challenges an institutional context that shapes and constrains Indigenous participation (Eversole, 2010). As Montúfar (2006) points out, agents of representative democracy are reluctant to innovate, given their commitment to the principle of political responsibility and the performance-based evaluation criteria that guide their actions. Unlike political parties, civil society organizations have greater liberty to propose and act on new initiatives as their legitimacy is derived from internal consensus rather than external approval. Decolonizing democracy thus requires that civil society actors drive change and that institutions are grounded in, or at least made compatible with, the traditions and values of the peoples they serve (Eversole, 2010).

Based on the comparative case study examples presented in this chapter, the critical components of a decolonized democratic system are suggested to

Table 21.1. Selected Social and Economic Indicators (most recent year available)

Item	Bolivia	Ecuador	Nunavut	Yukon
Total Population Size	11,153,785	16,773,473	38,243	33,897
Total Land Area (km2)	1,098,581	283,560	2,093,190	482,443
Indigenous Population (%)	62	25	84	23
Per capita GDP (USD)	3,105	5,969	46,981	56,931
Infant Mortality Rate (/1000)	35.3	16.4	21.4	5.0
Human Development Index	0.674	0.739	0.821	0.889

Sources: Nunavut Bureau of Statistics (https://bit.ly/3kJddem); Statistics Canada (https://bit.ly/368XqBt); United Nations Development Programme (https://bit.ly/363UDti); World Atlas (https://bit.ly/2HreUPb); World Bank (https://bit.ly/2G6NSw0).

include: 1) an actively engaged civil society that pressures for institutional change; 2) non-formal institutions as the site of political innovation; and 3) the dispersal of governing authority beyond the traditional centers of power. Decolonizing democracy means that representation and participation may occur beyond, and at times, outside the traditional channels of representation. Nevertheless, while the shift to a decolonized democratic system may change the character of representative democracy, it need not be seen as undermining it (Cameron, Hershberg & Sharpe, 2012; Exeni Rodríguez, 2012). New mechanisms for Indigenous inclusion have the potential to strengthen representative democracy by enhancing or stretching liberal democratic conceptions and expectations (Anria, 2016).

Governance and the State

Decolonization is closely intertwined with the concept of governance. Governance can be understood as "…the structures and processes that enable governmental and non-governmental actors to coordinate their interdependent needs and interests through the making and implementation of policies in the absence of a unifying political authority" (Krahmann, 2003, p. 331). In other words, whereas government centralizes power in the State, governance disperses political authority amongst governmental and non-governmental actors, as well as Indigenous communities, in potentially democratizing ways (Swyngedouw, 2005). It is the process through which governments,

civil society organizations and private sector associations interact and make decisions on matters of public concern (Graham, Amos & Plumptre, 2003; Levi-Faur, 2012). To promote the growth of society-centered governance, governments must be willing to work in partnership with civil society at each stage of the policy design and implementation process. The practice of public dialogue and deliberation is both a means and an opportunity to bridge the gap that exists between formal democratic institutions and excluded Indigenous communities and their public authorities (Retolaza Eguren, 2008). New institutional arrangements to promote Indigenous participation and representation in northern Canada and the central Andes are challenging conventional State-centric forms of policy-making and generating new forms of society-centered governance, such as natural resource co-management boards and Indigenous-centered public policies (Clarke, 2017).

Indigenous autonomy is the articulating claim of Indigenous movements in Canada, Latin America and around the world. The demand for autonomy centers on the call for self-determination and self-government within Indigenous territories. However, autonomy is more than just another demand; it is "the demand that allows for the realization of all other demands" (Díaz Polanco, 1998, 218). Securing political and economic rights is the key to advancing Indigenous autonomy. New institutions of participatory governance must include sectors of the economy that impact Indigenous peoples' lands and livelihoods. The economies of Bolivia, Ecuador, Nunavut and Yukon are heavily dependent on subsurface mineral, oil and gas resources. Given the strong overlap between the location of Indigenous communities and the presence of mineral, oil and gas deposits, natural resource extraction projects in or near Indigenous territories pose a serious threat to the practice of Indigenous autonomy (Anaya, 2011). Society-centered governance in the natural resource sector serves to promote sustainable and inclusive development.

The right to free, prior and informed consent (FPIC), which is established in international conventions, notably the 1989 International Labour Organization's (ILO) Convention 169 on Indigenous and Tribal Peoples, and in non-binding or soft law, such as the 2007 United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), is an important institutional innovation in resource governance (Kirsh, 2014; O'Faircheallaigh, 2012). It is a global standard against which governments can be measured in their interactions with Indigenous peoples. FPIC is free in that consent is given without coercion, intimidation or manipulation. It is prior in that consent is sought

before every significant stage of project development. It is informed in that all parties share information, have access to that information in a form that is readily understood and have enough information to make informed choices. And it is consent, meaning that it comes with the option of supporting or rejecting developments that significantly impact Indigenous lands or cultures (Bustamente & Martin, 2014). There is a broad family of FPIC and FPIC-like governance regimes. According to Szablowski's (2010) framework of analysis, a consultation regime is marked by the two-way exchange of information between a project proponent and Indigenous community members. Despite the presence of dialogue, the option of supporting or rejecting the proposed development is negated under a consultation regime. In other words, consent is sought but not required. A consent regime is characterized by the possibility of offering or withholding consent. A genuine FPIC process involves the sharing or transfer of authority between proponents and Indigenous communities in nation-to-nation type negotiations.[3] Based on the above descriptors, Nunavut and Yukon may be classified as classic consent regimes, whereas Bolivia and Ecuador are hybrid regimes that fall between a consultation and a consent regime, combining important features of both.

Formal and Non-Formal Institutions

In Canada and Latin America, formal institutions of representative democracy (e.g., political parties, elections, legislatures, courts) co-exist and compete with vibrant yet marginalized traditional and adapted Indigenous governance structures and institutions (e.g., customary law and communal justice; leaders and authorities; land use and tenure practices). According to Retolaza Eguren (2008, p. 313): "at one extreme, we have Western-minded formal institutions with strong public funding as well as funding from international donors and lenders; at the other extreme, self-sustained or underfunded non-formal institutions which sternly condition indigenous and peasant social and political life and hence its interaction with the wider context." In much of Latin America, the uneven reach of the State and formal democracy has excluded Indigenous and rural peoples while providing them with a de facto form of autonomy (Lucero, 2012). A similar dynamic is witnessed in northern Canada, where Indigenous groups are remote from the seat of power and have experienced a much less intensive and protracted process of citizenship than their southern counterparts due to the logistical and

technical challenges involved (Henderson, 2008; Milen, 1991). The governance gap that exists between these historically excluded Indigenous communities and formal public authorities and institutions has produced democratically dysfunctional States.

Institutions are the underlying "rules of the game" that organize social, political and economic relations within a polity (North, 1990). Indigenous governance institutions are distinct from formal and informal institutions. *Formal institutions* are the written rules and regulations, such as constitutions, laws and policies, which are enforced by officially recognized authorities. Much of the literature on democracy and development focuses on how formal institutions shape political actions and outcomes (Mainwaring & Scully, 1995; March & Olsen, 1989; Rothstein, 1996). This body of literature fails to note the important influence that informal and non-formal institutions have on actor expectations and behaviors in practice. *Informal institutions* are socially shared rules and regulations, usually unwritten, which are created, communicated and enforced outside officially sanctioned channels (Levitsky, 2012; O'Donnell, 1996). *Non-formal institutions* are neither informal institutions nor institutions formally recognized by the State. They include customary laws and practices and traditional authority and governance structures (Eversole, 2010; Retolaza Eguren, 2008). Whereas the emerging literature on informal institutions is divided over whether or not informal practices, such as clientelism and patrimonialism, compete with or complement the performance of formal institutions, the role of non-formal institutions in making formal democratic institutions work has yet to be addressed (Levitsky, 2012).

Institutions imposed by Westerners on Indigenous communities have not historically served the interests of Indigenous peoples (Eversole, 2010). The cultural foundation of Indigenous governance institutions, however, is also not without controversy. Recent scholarship on multiculturalism and Indigenous rights has focused on the perceived tension between collective and individual rights. On the one hand, the recognition of the collective Indigenous right to autonomy is suggested to serve as an important corrective to the assimilationist and integrationist policies and practices of the past. On the other hand, it is argued that local autonomous spaces may come at the expense of community members' constitutionally protected individual rights, especially women's rights (Danielson & Eisenstadt, 2009). According to Lucero (2013, p. 33), "[w]hile one should avoid any romantic notions about

Indigenous spaces, it is also important to avoid the opposite mistake of seeing them as the static containers of 'tradition' and take a closer look to see how Indigenous men and women continue to transform what it means to be 'Indigenous,' 'men' and 'women.'" Broadly speaking, Indigenous peoples cannot enjoy their individual rights without first enjoying their collective rights (Regino Montes & Torres Cisneros, 2009). Coates and Morrison (2008) have suggested that even though self-government that is rooted in traditional philosophies and practices may not be democratic in the liberal sense, it seems to serve the needs of the communities well by helping to educate Indigenous youth in the traditional ways, broadening community debates and providing for greater potential inclusion in governance processes. Official acknowledgement of the important role played by non-formal institutions within Indigenous communities is essential to promoting Indigenous peoples' engagement with the broader, formal political environment.

Citizenship and Agency

Indigenous governance innovation demands an active citizenry. Political will and inclusive democratic institutions, while necessary, are not sufficient to decolonize democracy. Citizens must take on the role of protagonists by demanding and defending their rights, seeking greater social control of their governments, working with the institutions of democracy and leading political innovation (Beatriz Ruiz, 2007; Montúfar, 2007). In the words of Guillermo O'Donnell (2010, p. 197), "[t]his construction entails, and legally demands, the effectuation of a system of respectful mutual recognition as such citizens/agents in our legitimate diversity." Citizenship and agency are at the core of democracy. Given that citizens bring with them dense networks of social relations, collective affiliations, cultures and identities, there cannot be a single, superior model of democracy but many variations and pathways to further democratization (O'Donnell, 2010). Democratic innovations, such as self-government, popular assemblies or participatory budget councils, open an important space so that citizen initiatives can influence formal institutions and processes, which in turn, allows for the development of a more active citizenry (Lupien, 2016; Oxhorn, 2016). Mechanisms of Indigenous collaboration with formal authorities on key policy matters do not imply the erosion of representation or the substitution of the roles and responsibilities of political parties, but rather the development of a synergistic relationship between Indigenous communities and the State.

Struggles over citizenship have profound consequences for State-society relations. Oxhorn (2011) has identified three broad models of citizenship: citizenship as co-optation; citizenship as consumption; and citizenship as agency. *Citizenship as co-optation* refers to the historical tendency of Latin American elites to grant citizenship rights selectively so as to control and contain popular sector demands for socioeconomic equality and political inclusion. For Indigenous peoples, this meant national incorporation as peasants in the 1960s and 1970s as a means to access land, credit and services from the State (Yashar, 2005). The shift to neoliberal economic policies in the 1980s and 1990s resulted in the weakening of State corporatist institutions and the move to more atomized or individuated State-society relations. *Citizenship as consumption* understands citizens as consumers who spend their votes and resources to access minimal rights of democratic citizenship in a market-oriented environment (Oxhorn, 2011, p. 32). Both citizenship as co-optation and citizenship as consumption heavily circumscribe the role of civil society in democratic governance. In contrast, *citizenship as agency* involves the active participation of civil society actors in public policy deliberation, design and implementation. Active citizenship entails a process of democratic learning, for civil society actors as well as for political authorities, that has the potential to generate new understandings of social reality and ways of doing democracy (Montúfar, 2007). According to Oxhorn (2011, p. 30), "… citizenship as agency ideally reflects the active role that multiple actors, particularly those representing disadvantaged groups, must play in the social construction of citizenship so that democratic governance can realize its full potential." Only citizenship as agency has the capacity to bring about inclusive democratic governance.

Collective action has been the principal historical motor for the expansion and universalization of civil, political and economic rights. In Latin America, Indigenous movements have organized nation-wide strikes and protests, blocked unpopular economic reforms, toppled corrupt leaders and in some instances formed political parties and even captured presidencies (Albó, 2002; Bengoa, 2000; Lucero, 2008; Van Cott, 2005; Yashar, 2005). In Canada, Indigenous peoples have participated in constitutional reforms, negotiated land claims, won policy concessions and secured a measure of self-determination (Abele & Prince, 2003; Cairns, 2000; Cameron & White, 1995; Henderson, 2007; Ladner & Orsini, 2003). Scholtz (2006) has suggested that a combination of activism alongside landmark court rulings shifted Canada's

policy terrain toward negotiation on issues of territorial control and self-government. A central dilemma faced by Indigenous movements in Canada and Latin America is whether to retain an oppositional stance to their respective political systems or to try to bring about change by way of the democratic mechanisms already in place. An institutional participatory strategy is conventionally assumed to risk the loss of movement legitimacy and autonomy as Indigenous groups submit themselves to the rules and regulations of the largely alien political system that had long served as an instrument of their domination and oppression (Ladner, 2003; Massal & Bonilla, 2000). As the cases under consideration in this study indicate, autonomy and participation do not have to be mutually exclusive. Civil society can play a critical role in facilitating democratic governance innovation by working with the State on policy matters, setting new public agendas and advocating for institutional change in the corridors of power (Oxhorn, 2011).

The Practice of Indigenous Autonomy

Bolivia and Nunavut are the first large-scale tests of Indigenous governance in the Americas. In both cases, Indigenous peoples are marginalized majorities who have assumed power by way of democratic mechanisms. In Bolivia, the inclusion of direct, participatory and communitarian elements into the democratic system under the administration of Evo Morales (2006-2019), the country's first Indigenous President, dramatically improved representation for Indigenous peoples (Anria, 2016; Madrid, 2012; Rice 2012). In Nunavut, Indigenous peoples have also opted to pursue self-determination through a public government system rather than through an Inuit-specific self-governing arrangement. In a broadly similar dynamic to Bolivia, the Nunavut government seeks to incorporate Indigenous values, perspectives and experiences into a liberal democratic order (Henderson, 2009; Timpson, 2006; White, 2006). The conditions for success are far from ideal in either case. Significant social, economic and institutional problems continue to plague the new governments of Bolivia and Nunavut. Nevertheless, important democratic gains have been made.

In Ecuador and the Yukon, Indigenous peoples constitute approximately one-quarter of the total population (see Table 1 above). Despite similar proportional Indigenous population sizes, the geographic and socioeconomic differences between the two polities are stunning. The Yukon may be

Canada's smallest territory, yet its total land area (482,443 km^2) nearly doubles that of Ecuador's (283,560 km^2). Ecuador's gross domestic product per capita (USD 5,969) is only a fraction of that of the average Yukoner (USD 56,931). Nevertheless, both polities are struggling with the question of how to reconcile Indigenous rights with extractive industry operations while trying to rebuild Indigenous-State relations on a more just footing (Rice, 2019). In the Yukon, the settlement of a comprehensive land claim with sub-surface mineral rights has provided the institutional basis for the implementation of nation-to-nation type partnerships in the management of land and resources. In Ecuador, sustained social pressure on the government has prompted efforts to incorporate Indigenous peoples' priorities into national political agendas.

Bolivia

The 2005 presidential win by Evo Morales and his Movement Toward Socialism (MAS) party marked a fundamental shift in Indigenous-State relations in Bolivia and in the composition and political orientation of the State. President Morales made Indigenous rights the cornerstone of his administration in his bid to promote a more inclusive polity. The 2009 Constitution is central to the advancement of this agenda. According to the constitution's preamble, Bolivia has left behind the colonial, republican and neoliberal State of the past.[4] In its place is a Plurinational State that rests on Indigenous autonomy. The new constitution goes further than any previous legislation in the country, and perhaps the world, in securing representation and participation for the nation's Indigenous peoples including, for example, the recognition of all 36 Indigenous languages of Bolivia as official languages of the State (art. 5) and the guaranteed right to proportional representation of Indigenous peoples in the national legislature (art. 147). It also redefined Bolivian democracy as "intercultural." Intercultural democracy is a hybrid form of democracy that is at once direct and participatory, representative and communitarian (Exeni Rodríguez, 2012). Communitarian democracy is based on Indigenous customs, traditions and decision-making processes. It is exercised within Indigenous communities through the election or selection of governing authorities. The constitutional recognition of communitarian democracy institutionalized Indigenous forms of governance as part of the State (Zegada et al., 2011). These, and other such democratic innovations, have made Bolivia's democracy more inclusionary, though decidedly less liberal (Anria, 2016).

The Morales administration committed itself to deepening the decentralization process that began in the mid-1990s. The 1994 Law of Popular Participation (LPP) created more than 300 municipal governments with widespread administrative powers, direct citizen oversight and dedicated resources as a means to bring government closer to increasingly mobilized rural and Indigenous communities (Arce & Rice, 2009; Postero, 2007). The reforms opened the door to the electoral participation of a new generation of Indigenous leaders, including Morales. Once the MAS captured national-level power, it instituted additional reforms to grant a substantial degree of autonomy to departmental, regional, municipal and Indigenous governments (Centellas, 2010; Faguet, 2013). The 2010 Framework Law of Autonomy and Decentralization regulates the new territorial organization of the State as defined in the 2009 Constitution. In addition to the recognition of the three hierarchical levels of government in Bolivia (e.g., departmental, regional and municipal), the new constitution also identified Indigenous First Peoples Peasant Autonomies (*autonomía indígena originario campesina* or AIOC) as a separate and distinct order of government, one that is not directly subordinate to the other levels (CIPCA, 2009). Under current provisions, existing Indigenous territories as well as municipalities and regions with a substantial Indigenous presence may convert themselves into self-governing entities based on cultural norms, customs, institutions and authorities in keeping with the rights and guarantees in the new constitution (Faguet, 2013, p. 6).[5] Bolivia's experiment with Indigenous autonomies aims to improve citizen engagement and government responsiveness, and ultimately to make democracy more meaningful for Indigenous citizens.

The governance innovations of the MAS have brought about important changes to the structure of the State and the practice of democracy in Bolivia. Yet, tensions and contradictions within the new constitution itself have limited the construction of the Plurinational State in practice. According to constitutional scholar Roberto Gargarella (2013), a highly centralized organization of power tends to work against the application of Indigenous rights. Bolivia's new constitution concentrates State power while expanding Indigenous rights. Stated differently, it pits governance against government. For instance, the Morales government's commitment to Indigenous autonomy was at odds with its resource-dependent, State-led model of development. The constitutional provision that all non-renewable resources remain under State control places firm limits on the right to self-government and self-determination

(Tockman & Cameron, 2014). Bolivia's Constitution (article 30.15) establishes the right of Indigenous peoples to free, prior and informed consultation, not consent, concerning planned measures affecting them, such as mining and oil or gas exploration. The constitution does stipulate that the prior consultation process by the State must be conducted in good faith and in a concerted fashion, and that it should respect local Indigenous norms and procedures. Nevertheless, Indigenous groups cannot veto State-sponsored development and resource extraction projects in their territories (Schilling-Vacaflor & Kuppe, 2012; Wolff, 2012). Veto power is a characteristic of the classic consent regime. As it stands, the new constitution does not fully change power relations between the State and Indigenous peoples.

Nunavut

The 1993 Nunavut Land Claims Agreement (NLCA), the largest in Canadian history, between the Inuit Tungavik Federation of Nunavut, the federal government of Canada and the territorial government of the Northwest Territories, brought about substantive change in the governance of the eastern Arctic. In addition to a whole host of land and resource rights, the NLCA resulted in the creation of a new territory called Nunavut ("our land" in Inuktitut) in 1999. The Inuit of Canada's Eastern Arctic had long dreamed of their own homeland and felt increasingly alienated from the culturally and geographically distant Government of the Northwest Territories (Henderson, 2009; Hicks & White, 2015). The comprehensive land claims agreement and accompanying political accord marked the accomplishment of this dream by establishing a political regime in which the Inuit could control their own affairs. The NLCA provided the Inuit with title to more than 350,000 km^2 of land (equivalent to 18% of Nunavut), sub-surface mineral rights to approximately 36,000 km^2 of that land and over $1 billion CAD in federal compensation money (Henderson, 2009). Inuit beneficiaries of the claim are also entitled to a share of the royalties from oil and gas extraction on public lands, additional hunting and fishing rights, and the guaranteed right to participate in decisions over land and resource management. Given the disproportionate size and relative homogeneity of their population, the Inuit decided on a public government system (one that serves Indigenous and non-Indigenous peoples) instead of a more direct form of Inuit self-government (White, 2006).

The Inuit-led Nunavut Implementation Commission (NIC) was tasked with the design and structure of the new government. The Government of

Nunavut is modeled largely after the Euro-Canadian parliamentary form of government with a few key innovations. For instance, the Nunavut Legislative Assembly operates by consensus decision-making. There are no political parties in the territory. Instead, candidates run in elections as independents. Most members of the assembly are Inuit and much of the debate is carried out in Inuktitut. Members tend to wear traditional clothing and are seated in a circle, rather than in opposing rows of benches as they are in the rest of Canada (White, 2006). From the outset, the implementation commission sought to emphasize the distinctiveness of Nunavut. Early goals included incorporating Inuit values and perspectives into the political system, achieving 85% Inuit employment in the new bureaucracy and having Inuktitut as the working language of the government by the year 2020 (NIC, 1995; Timpson, 2009). Nunavut's co-management boards dealing with land, wildlife and environmental issues represent the most significant governance innovation to date. The boards ensure Indigenous participation in policy decisions that are central to their culture and livelihoods while maintaining federal government control over the use and management of public lands (Nadasdy, 2005; Stevenson, 2006; White, 2008). Nunavut's institutional experiment highlights the centrality of both economic and political rights for advancing Indigenous agendas.

The guiding principle of the Government of Nunavut is Inuit *Qaujimajatuqangit* (or "that which is long known by the Inuit"). "IQ" (as it is commonly referred to in the shorthand) is the key mechanism for incorporating Inuit cultural values into a Canadian system of government. The implementation commission recommended the creation of departments that would translate IQ into public policy. Two departments of particular note were the Department of Sustainable Development (DSD) and the Department of Culture, Language, Elders and Youth (CLEY). Although both departments were central to the creation of Inuit-sensitive institutions of governance, they have since been dismantled. In 2004, the Department of Sustainable Development was split to form the Department of the Environment and the Department of Economic Development and Transportation (Timpson, 2009, p. 202). In 2012, the Department of Culture, Language, Elders and Youth was restructured into the more conventional Department of Culture and Heritage (Hicks & White, 2015, p. 245). According to Nunavut's Director of IQ, Shuvinai Mike, the restructuring process essentially left her office solely responsible for "Inuitizing" government policy and programs.[6] As White

(2001, p. 93) cautions, "how governments do things can be as important as what they do." In many ways, IQ can be seen as a benchmark against which to judge the success and failure of the new territory in doing government differently.

Ecuador

Ecuador's 2008 Constitution was the first in the region to institutionalize Andean Indigenous governing principles as part of the State. Under the direction of the Confederation of Indigenous Nationalities of Ecuador (CONAIE), Ecuador's Indigenous movement was once widely regarded as Latin America's strongest social movement (Van Cott, 2005; Yashar, 2005). Indigenous mobilization around the enactment of the new constitution resulted in one of the most progressive constitutional texts in the world, both in terms of recognizing the collective rights of Indigenous peoples and in attributing rights to Nature (Caria & Domínguez, 2016; Gudynas, 2011; Lalander, 2014).[7] The new constitution officially proclaimed Ecuador to be a plurinational State, the historic objective of the nation's Indigenous peoples. It also made an explicit commitment to the Indigenous principle of "living well" (*buen vivir* in Spanish and *sumak kawsay* in Quichua) as an alternative model of development around which the State and its policies are now organized (Bretón, Cortez & García, 2014; Ugalde, 2014). The living well principle is derived from the Andean Indigenous values of harmony, consensus and respect, the redistribution of wealth and the elimination of discrimination, all within a framework that values diversity, community and the environment (Fischer & Fasol, 2013). According to Delfín Tenesaca, former president of Ecuador's main highland Indigenous confederation ECUARUNARI: "In the past, the Church would tell us that we would have sumak kawsay in the next life. Then we asked ourselves, why is it that everyone but us has the good life now? We want the good life too."[8] While the principle of *sumak kawsay* presents an opportunity to bring about an alternative to development, it is being used by the Ecuadorian government to justify resource extractivism in the name of progressive social welfare programs (Lalander, 2014; Peña & Echeverría, 2012). Indigenous movements appear to be losing patience with official rhetoric and are increasingly mobilizing against government-sponsored development initiatives.

Indigenous activism in the streets and in the electoral arena paved the way for an alternative political project in Ecuador, though under the leadership of left-leaning president Rafael Correa (2007-2017). The Correa administration introduced several important policy measures to address Indigenous demands in the country, albeit without meaningfully including Indigenous peoples in the policy deliberations. Correa's "citizen's revolution" managed to institutionalize the Indigenous movement's political vision while marginalizing the movement itself (Becker, 2013; Rice, 2012). The 2008 constitutional recognition of plurinationality marked a watershed moment in Indigenous-State relations in Latin America. Nevertheless, Ecuador's model of plurinational constitutionalism is quite limited in comparison to Bolivia's. For instance, Spanish remains Ecuador's official language (art. 2), with Indigenous languages recognized only in the realm of intercultural relations (Schilling-Vacaflor & Kuppe 2012, p. 360). In addition, while both countries recognize Indigenous or customary law, Bolivia's new constitution places ordinary and customary legal systems on an equal footing (art. 179), whereas the Ecuadorian constitution does not (Wolff, 2012, p. 192). Martínez Novo (2013) has suggested that the Ecuadorian government's emphasis on interculturality is at odds with its commitment to plurinationality. Whereas plurinationality acknowledges distinct legal and political orders within the State, interculturality privileges the individual rights of disadvantaged groups to inclusion and equity in diversity. Under the presidency of Lenín Moreno (2017-2021), the Indigenous movement has re-assumed social leadership in defense of their constitutionally acquired rights and in holding the national government to account. This was the case in October 2019, when massive austerity protests ceased only after Indigenous groups and President Moreno reached an agreement to reverse austerity measures and to collaborate on combating overspending and growing public debt (*Los Angeles Times*, 2019).

Yukon

The Yukon is a global leader in modern-day self-government. More than half of Canada's formally recognized self-governing First Nations are found in the Yukon. In 1990, the Government of Canada, the Yukon Government and what is now the Council of Yukon First Nations (CYFN) signed an Umbrella Final Agreement to establish an innovative model for Indigenous self-government in the territory (Alcantara, 2007; Cameron & White, 1995). Since then,

11 of the Yukon's 14 First Nations have successfully negotiated comprehensive land claims and self-government agreements that provide them with an impressive array of formal powers, the scope of which are unprecedented in the Americas. The agreements transformed the former *Indian Act* bands into self-governing First Nations. In terms of territorial rights, self-governing First Nations in the Yukon enjoy surface as well as sub-surface rights to much of their settlement lands, including mineral, oil and gas rights (CYFN & YTG, 1997, p. 11). Self-governing First Nations also have the jurisdictional authority to pass their own constitutions and laws, including the right to determine citizenship, and to assume full legislative and delivery responsibilities for their own programs and services if and when they so desire. In matters of general application, First Nation law takes precedence over Yukon law (Cameron & White, 1995). In short, the governing power of Yukon First Nations is very much comparable to that of provincial and territorial governments in Canada. They are a new order of government. The comprehensive land claims and self-government agreements are constitutionally protected documents, meaning that they cannot be changed without the consent of the parties involved. According to Ruth Massie, former Grand Chief of the CYFN, "Yukon First Nations eat, sleep and breathe these documents."[9]

Yukon First Nations achieved such substantial self-governing powers by adopting an institutional participatory strategy. In 1973, Chief Elijah Smith of Kwanlin Dün First Nation called for increased First Nation control over their territories and affairs with the publication of the visionary document, *Together Today for our Children Tomorrow: A Statement of Grievances and an Approach to Settlement.* Chief Smith was the founding president of the Yukon Native Brotherhood (YNB), an organization that represented status Indians (CYFN, 2010; Johnston, 2011; Joseph-Rear, 2011). A delegation of Yukon Chiefs traveled to Ottawa to present the document to Prime Minister Pierre Elliott Trudeau and his Minister of Indian Affairs. In a speech to the Prime Minister, Chief Smith stated,

> This is the first time the leaders of the Yukon Indian people have come to the capital of Canada. We are here to talk about the future. The only way we feel we can have a future is to settle our land claim. This be a future, that will return to us, our lost pride, self-respect and economic independence. We are not here for a handout. We are here with a plan. (CYFN, 2005, p. ii)

Together, the Chiefs were able to convince the federal government to negotiate a land claim agreement with the Yukon First Nations. In 1975, the Council for Yukon Indians (CYI) became formally incorporated as a non-governmental organization with an official mandate to negotiate and complete a Yukon land claim on behalf of the 14 First Nations with the Government of Canada (Jensen, 2005). The CYI provided the political front and powerful voice that the Yukon First Nations would need to succeed. This sea change in Indigenous-State relations in Canada did not come about from above, but from below through citizenship as agency.

Conclusion

This chapter has analyzed different models and approaches to Indigenous autonomy and self-government in Canada and Latin America with an eye to highlighting best practices and practical challenges. Strong and well-organized Indigenous movements pushing for institutional change were found to be the engine of political innovation in Bolivia, Ecuador, Nunavut and Yukon. Mutual respect and recognition between the State and Indigenous actors appears to be a critical ingredient in strengthening autonomy and self-determination. The chapter's findings suggest that Indigenous governance innovation plays an important role in improving the performance and effectiveness of formal institutions, which, in turn, can contribute to democratic governance and advance Indigenous rights agendas. Decolonizing democracy requires new institutions that provide the space for an active partnership between Indigenous actors and the State in the pursuit of common goals (Oxhorn, 2011). In Bolivia, Ecuador, Nunavut and Yukon, an unparalleled space and political push for democratic innovation has resulted in efforts to incorporate Indigenous or non-formal institutions into formal democratic arrangements. This has broadened the inclusive qualities of their respective democracies. The shallow reach of representative democracy in Indigenous communities in Canada and Latin America has created a fluid democratic landscape that is ripe for experimentation (Roberts, 2016).

The case study examples presented in this chapter also reveal several challenges to the implementation of Indigenous autonomy and self-government in practice. First, while the cases highlight the gains for Indigenous peoples of working within the system to push for positive change, as opposed to relying solely on extra-systemic tactics, they also demonstrate the need for political will by governing elites to address Indigenous rights demands,

a feature that is in short supply throughout much of the Americas. Second, the case study examples reveal the importance of establishing a secure land base, ideally with sub-surface mineral rights, for self-determination and autonomy to be realized in practice. Finally, the cases demonstrate that there are serious tensions between Indigenous political and territorial autonomy and the resource-dependent, extractivist models of development pursued by the governments of Bolivia, Canada and Ecuador. Reconciling natural resource development with Indigenous sovereignty is a critical challenge for the Americas. Repairing and rebuilding Indigenous-State relations on a more just and equal footing requires recognition of and respect for Indigenous peoples' rights to autonomy and self-government. Indigenous governance arrangements of the variety explored here hold great potential to foster inclusive democratic processes in Canada, Latin America and beyond. There is much to celebrate in the four cases, just as there is much work left to do to make their visions of a more just society a reality.

NOTES

1 Research for this chapter was undertaken by the author in Iqaluit (Nunavut), La Paz (Bolivia), Quito (Ecuador) and Whitehorse (Yukon) in 2012, 2013 and 2014 under the auspices of a Social Sciences and Humanities Research Council of Canada (SSHRC) standard research grant.

2 Author interview, La Paz, Bolivia, 22 August 2014.

3 Nation-to-nation relations between Indigenous peoples and the State refers to a bilateral relationship based on mutual respect and consideration.

4 The 2009 Bolivian Constitution is available for download at: https://bit.ly/3j6NXNM

5 Currently, two municipalities (Charagua Iyambae and Uru Chipaya) and one territory (Raqaypampa) have completed the requirements to become AIOCs. For more information, see: https://bit.ly/341rUUx

6 Author interview, Iqaluit, Nunavut, 11 June 2013.

7 The 2008 Ecuadorian Constitution is available for download at: https://bit.ly/344N7NC

8 Author interview, Quito, Ecuador, 29 August 2012.

9 Author interview, Whitehorse, Yukon, 5 June 2012.

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Available for the first time in English, *Indigenous Territorial Autonomy and Self-Government in the Diverse Americas* explores current and historical struggles for autonomy within ancestral territories and experiences of self-governance in operation. It presents an overview of achievements, challenges, and threats spanning three decades. Case studies across Bolivia, Chile, Nicaragua, Peru, Colombia, Mexico, Panama, Ecuador, and Canada provide a detailed discussion of autonomy and self-governance in development and in practice.

Paying special attention to the role of Indigenous Peoples' organizations and activism in pursuing sociopolitical transformation, securing rights, and confronting multiple dynamics of dispossession, this book engages with current debates on Indigenous politics, relationships with national governments and economies, and the multicultural and plurinational state. This book will spark critical reflection on political experience and further exploration of the possibilities of the self-determination of peoples through territorial autonomies.

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