Autonomies and self-government in a diverse America

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José Marimán, Pablo Ortiz-T., Ritsuko Funaki
Coordinators

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Introduction

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

The collection of articles in this volume has been made possible thanks to an invitation to a group of colleagues to reflect on the processes of struggle for the autonomy of indigenous peoples in the Americas, a decade after the publication of the book *La autonomía a debate. Autogobierno Indígena y Estado Plurinacio- nal en América Latina (*González, Burguete Cal y Mayor & Ortiz-T., 2010).[1] *Autono- mia a debate* was a collective work, which at the time sought to synthesize the growing interest in the autonomies of indigenous peoples in Latin America, after two decades of political, legal and socioeconomic changes that since 1990 have been fundamental for the relationship between States and indigenous peoples.

Unlike that publication, this book is not the result of a specialized 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 had no previous history of working together, but did share a common interest.

1 Autonomy is understood here as a form of self-determination. The substantive element of self-determination is not the creation or demand for a State, but is a universal human right that does not derive from international law between States. Secession or creation of a separate state as an *ultimate end* 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 or as groups, have equally the right to exercise control over their own destinies and to live in institutional orders of government that are designed in accordance with that right" (Anaya, 2010, p. 197). The chapters included in this volume deal with forms of autonomy being realized, or as processes of aspiration of peoples struggling for self-government within States, and therefore we consider them to be statements and practices of self-determination. These experiences are the subject of this book.

The book is based on the same theme: the exercise of autonomy and self-government as expressions of the right to self-determination of indigenous peoples in diverse America. Another noteworthy common feature of the contributors to this book is that most of them are women, with extensive experience in research committed to indigenous struggles. Also, that some chapters are the result of research by indigenous women scholars or activists in positions of leadership and influence within their respective communities, peoples and organizations; or are the result of long-standing and positioned collaborations between indigenous and non-indigenous colleagues who contribute to autonomy struggles in diverse America.

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In this region, the multicultural recognition policies adopted a decade ago were at their peak, but at the same time the criticisms of this paradigm, now more forcefully formulated (Hale, 2005; Kaltmeier et al., 2012), were already evident. Critical perspectives have come from different sectors and from a multiplicity of ontologies, but especially from indigenous peoples, who face 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 demanding recognition, participation and redistribution has occasionally been met with repressive institutional responses and overt acts of violence, multiculturalism suggests a policy of symbolic recognition with a limited exercise of restitution and redistribution (p.105).[2]

While recognition policies instigated the neutralization of the collective action expressed by indigenous peoples in their demands towards the State, they demanded (and continue to demand) mechanisms and policies of equitable re-distribution, and of respect and recognition of their sovereign ways of

2 In the original: "Although the emergence of new social movements claiming recognition, parti- cipation 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".

express 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 diverse America. Autonomy, that variety of practices, processes and mechanisms of self-governance through which the inherent rights and sovereign aspirations of indigenous peoples around the world to self-determination are expressed and given meaning, are a consubstantial part of contemporary socio-political life in the indigenous societies of our America. Early at the beginning of this century, some works attempted to capture the origins, dynamics and diversity of indigenous self-determination processes resulting from constitutional reform processes inspired in part by the multicultural paradigm (As- sies, 2000; Sieder, 2002; Van Cott, 2005; Postero & Zamosc, 2005; Yashar, 2007; Bengoa, 2009; González et al., 2010; Rice, 2012). At present, as reflected in the works published in this volume, the scenario of indigenous autonomies is much more complex and diverse, and is at the same time contradictory (González, 2016; Esteva, 2015). In a group of countries such as Bolivia, Ecuador, Colombia, Nicara- gua, Panama, Canada and more recently Mexico, autonomies have managed to achieve state recognition, constituting themselves as political-administrative regimes of self-government at different sub-national scales (González, 2015). In others, such as Chile, Brazil, Argentina, Guatemala, Honduras, El Salvador, the United States and Peru, there are still significant challenges to achieve the exercise of the rights of indigenous peoples to autonomy, especially for self-governments to be recognized, respected and strengthened by these States, favoring plurinational democratic coexistence and the political empowerment of those who participate in these processes on a daily basis (Cameron, 2013).

It should be recognized that some States in the Americas have transformed their legislation to accord autonomies, and that the region as a whole shows a remarkable normative development and public policies in relation to the rights of indigenous peoples (Aylwin & Policzer, 2020; ECLAC, 2020). As of today, the indigenous population in the world amounts to approximately 476 million inhabitants living in more than ninety countries (IWGIA, 2020, p. 7), of which our America represents about one tenth (ECLAC, 2014, p. 98). If we compare with the Asian region (China, South Asia and Southeast Asia), where the vast majority of indigenous peoples reside (Hall & Patrinos,

2012, p. 12), the American region stands out for its progress in the recognition of rights (Inguanzo, 2014). However, this recognition has often been undermined in practice by the dynamics of neoliberal economic globalization and the centralizing power of the bureaucratic state apparatus, particularly in terms of the dispossession of ancestral land by extractive economies. The State has not infrequently, if not perhaps most of the time, either colluded with economic power groups (in some cases illicit) in these processes or has been indulgent with them, rendering almost innocuous the scope of the rights recognized in national legislations and the international rights framework (McNeish, 2013; Ortiz-T., 2016; IWGIA, 2019). Moreover, in some countries this state of affairs has led to intransigence and hardening on the part of political elites towards autonomist claims and the consequent radicalization or de facto self-proclamation on the part of peoples to establish and protect their autonomies and political sovereignty vis-à-vis the States (Sieder, 2020b; Dest, 2020).

In their most general aspects, indigenous autonomies can be conceived as a specific and flexible modality of division of powers - a constructive agreement - through which States can advance in building more inclusive societies and citizenships (Lapidoth, 1997, pp. 174-5). But beyond this possibility, the exercise of autonomy promotes and encourages new social relations based on inclusion rather than integration, on self-affirmation rather than domination.

A large part of the experiences examined in this volume coincided temporally with the shift in several countries in the Latin American region towards governments elected under progressive political platforms, the so-called "pink tide," which seems to have faded away today (Larrabure, 2020). These governments had pledged to support indigenous and Afro-descendant agendas, deepen democratic spaces and orient their efforts towards the most dispossessed (Rice, 2020, p. 161). The governments of the "pink tide" adopted more inclusive policies regarding the distribution of wealth, and managed to reduce (albeit in variable ranges) inequality and poverty - in comparison to both countries under conservative governments during the same period (Huber & Ste- phens, 2012; Flores Macías, 2012; López Calva & Lustig 2010; Balam & Montam- beault, 2020). However, these policies were based on universal visions of social policies, and their implementation was accompanied by a more active role on the part of central state institutions. From this point of view, the policies

lost sight of a more integrated and differentiated perspective towards indigenous peoples and in practice tended to relegate - and often undermine - the mechanisms for participation and inclusion of indigenous peoples, their institutions, organizations and communities.

However, it is necessary to note that conservative governments of the same era did not perform any better in addressing indigenous peoples' demands for autonomy. The more conservative administrations often used social assistance programs to contain indigenous protests as a counterinsurgency tool, as documented in the study by Yörük et al. (2019), for the case of Mexico. On the other hand, the rise in commodity and mineral prices in global markets promoted an expansion of the extractive frontier and in some cases the "re-primarization" of 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 pointed out - this *momentum* of the growth model based on natural resources and primary goods intensified 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 of neoliberal capitalism, as well as a defense of their cultural survival; while for governments 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 leftist 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 build new meanings of those rights *from their exercise* (Santos, 2014, pp. 29-30).

At the international level, with regard to the protection of 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 states that: "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 for this supra-national body of law, not in all cases legally binding on States, to be concretized in a practical way so that indigenous peoples can effectively realize the exercise of autonomy. Sambo Dorough (in this volume) draws attention to the difficulties of UN member states "to assimilate that the right to self-determination is a total right, which has various forms, dimensions and contexts, including autonomy and self-government". James Anaya had made the same observation when he noted that the:

> Self-determination cannot be separated from other human rights norms, but rather, self-determination is a framework or informing principle that complements the human rights norms that, as a whole, govern the state institutional order. (2005, p. 141)

Despite all this, in those countries where agreements on autonomy and self-government have been established, rights are not fully respected, and in the best of cases their observance is atomized, 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 who demand certain formal mechanisms for dialogue with the State, indigenous autonomies are perceived as threats to their jurisdiction, emphasizing the defense of the precept of sole sovereignty as opposed to autonomy, and the apparent prerogatives over legal, administrative and territorial competencies that derive from this principle established by international law. This position not only ignores the progressive evolution of international norms on the human rights of indigenous peoples, but is also outdated and anachronistic today. Indigenous peoples, for their part, propose transforming the State through autonomy, which implies facing important implementation gaps and, above all, improving the quality of democracies, making them more inclusive of those who have been marginalized, in a conception of distribution of power-government on a global scale.

sub-national, i.e. through political and not only administrative decentralization mechanisms (Marimán, 2017, p. 32; IWGIA, 2019; Arteaga, this volume).

Autonomies also face the absence of an institutional and political environment conducive to the self-determination aspirations of indigenous peoples. An example of this is the right to free, prior and informed consultation, the adoption of which in the countries' regulatory frameworks is still uneven and in some cases has been accompanied by setbacks, since practices of simulation predominate. And, frequently, it translates into a consultative formality that allows States and domestic and global private agents to advance in their projects of dispossession of natural resources and ancestral territories of the peoples (Aylwin, 2013; McNeish, 2013; ECLAC, 2020, p. 49; Mendoza, 2019; Ortiz-T., this volume).

Because of their relevance as processes of social, cultural and, above all, political construction of indigenous peoples, indigenous autonomies have great significance today as a political and epistemic concept for their peoples and communities in their relationship with the States, which is why the exercises of indigenous self-government gain relevance, as they struggle for their recognition, or sometimes occur by self-proclamation in the face of State opposition. Autonomy can be uncomfortable and challenging to deep power structures that impose exclusive and totalizing regimes of law, and is therefore often perceived as a threat by States. However, it is in the strategic interest of States to identify best practices that can strengthen the defense and protection of the political rights of indigenous peoples as a differentiated ethno-national human collectivity, since with this the State gains in stability (peace and order), social justice and coexistence-tolerance-respect for the human rights of all its inhabitants; but also -beyond formal recognition and its inherent ambiguities- respect for the political rights of indigenous peoples can strengthen the exercise of democratic life in their national societies.

For indigenous peoples, consolidating autonomies means a social, cultural and political process that goes beyond fully exercising the rights recognized in contained or open territorial spaces. Above all, it can represent epistemological, sociocultural and political survival as differentiated peoples, as well as respect for their sovereignty to collectively recognize themselves (Melin et al., 2016, p. 120). This volume attempts to offer a glimpse into some of the experiences of autonomous self-governments in their processes

The report describes the progress, challenges and threats of the struggles for autonomy in diverse America.

Organization and contents of the book

The volume is organized in three sections, which bring together experiences from thirteen countries in the Americas. The first section, which we have entitled *"Constrictum* posmulticultural", brings together chapters that address the adversities that autonomies have faced from the States in an era of regressive rights. The second section, "Cracks: recovering what has been lost and rebuilding", includes contributions that express important processes of openings and opportunities, whether in national legal orders or in the practices of peoples and their organizations to continue advancing in building their autonomies and self-government, despite the obstacles. The third section, "Autonomies as emancipation: the search for our own paths", includes chapters highlighting a plurality of our own practices, cultural, political and institutional processes led by indigenous peoples at different scales, social orders, and with a varied level of complexity. These processes offer new emancipatory horizons and creative futures to 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.

Constrictum posmulticultural

Many of the contributions to this volume deal directly or indirectly with the inescapable question of the consequences of multiculturalism with respect to autonomous processes and, in particular, self-government:
What is the current scenario for indigenous peoples? A post-multicultural innovation, at the time novel, were the constitutional reforms in Bolivia and Ecuador when they incorporated in their respective political charters the plurinational character of their respective societies and the right of indigenous peoples to self-determination and autonomy (Aparicio, 2018; Schavelzon, 2015; Santos, 2010). However, in the years following these reforms, not only were the avenues for realizing these rights restricted, but States often became actively involved in circumscribing rights to self-governance or actively dismantling the fragile community consensuses necessary to forge viable agreements and build autonomies from the vision and practices of indigenous peoples.

peoples. Often this form of disabling autonomist aspirations is accompanied by racist ideologies and colonial discursive forms that attempt to delegitimize indigenous peoples' desires for self-determination, as highlighted in their contributions to this volume by the chapters on Bolivia, particularly the contributions of María Fernanda Herrera, John Came- ron and Wilfredo Plata; and that of José Marimán, on Chile.

What emerges from most of the contributions included in this section is that after adopting multicultural policies of recognition, the limits to its parameters and apparent hegemony were almost immediately evident (Harvey, 2016; Postero, 2009). In practice, the globalized neoliberal state in a post-multicultural era often behaves as a constricting machine: it restricts, contracts, compresses and frequently disinhabits processes of collective self-determination and self-governance through varied strategies and technologies, resorting to judicial actions, economic policies and political maneuvering. But the constrictor effect does not occur 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 regarding Indigenous land rights, economic development initiatives and self-governance arrangements, they do not fundamentally alter the structures and relations of domination upon which *settler-states* are built (Coulthard, 2014, p. 3). These structures do not constitute unique or immutable entities, but rather form relations of domination that *converge with state power*, alongside capitalism, patriarchy, racism, and colonialism and form a "constellation of power relations that underpin colonial patterns of behavior, structures, and relations" (Coulthard, 2014, p. 14). The metaphor of a post-multicultural moment and constrictor effect, rather than a category of analysis, is used in its heuristic and descriptive sense to investigate its tangible expressions (and its contradictory, non-hegemonic effects) on the conditions of states' ability to assume constructive agreements, which emerge from peoples' struggles for autonomy and self-determination.

Our colleague Ritsuko Funaki opens this first section with a rigorous comparative study to analyze the implementation gaps existing in ten countries in relation to recognized land and natural resource rights, necessary qualities for effective indigenous autonomy. From her work

it follows that the larger this gap is, the fewer possibilities exist "to realize other legally recognized rights such as the right to life, much less the right to self-determination". His reflection reminds us that the exercise of the right to self-determination is an indispensable condition for the exercise of other orders of human rights that concern indigenous peoples (Sambo Dorough, in this volume).

After this regional comparative look, the following chapters in this section provide insights into specific national cases and experiences, which reflect multiple dynamics of instrumental narrowing of autonomies. For example, the chapter by María Fernanda Herrera offers an analysis of the autonomous regulation of indigenous self-government in Bolivia and suggests that far from producing a fertility of native peasant autonomies and inclusive and plurinational political decentralization, this regulation has 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 of Autonomies and Decentralization constrains the Magna Carta, setting itself up as a minor autonomy supported by a State that imposes, more than its own territorial and political transformation, an accommodation of its native nations to State rationality.

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 at the outset, but highly restricted in practice in the years following its constitutional approval. The result has been that few indigenous organizations and peoples have been able to exercise their theoretical rights to autonomy or even express interest in exercising those rights. The authors explore the reasons for the institutional restrictions and find that "the political-economic imperatives of the MAS governments to control extractive resources and their rural political base took precedence over the implementation of indigenous rights". These conditions produced different types of responses from communities ranging from continuity and persistence in the struggle for autonomy despite existing restrictions and obstacles (such as the Guaraní experience discussed by Pere Morell i To- rra, in this volume), to "those that opted for pragmatic and hybrid strategies to govern themselves through existing institutions", which illustrates the capacity to act despite institutional adversities. The chapter

It also includes a careful analysis and updated data on the variety of community responses to the routes for building autonomous, indigenous and aboriginal peasant governments.

In this section, Miguel Gonzalez's chapter on the Caribbean Coast of Nicaragua documents, for example, how regional autonomy has gone from being a platform for inclusion and restitution of rights to defensive strategies for life, often in conditions of frank deterioration of the social fabric, regression of rights and violence against communities. The contribution describes the restrictive regime of autonomy and citizenship rights imposed in the country by the second Ortega administration and the tensions and contradictions that loom over indigenous peoples due to the authoritarian and extractive turn of this government.

Meanwhile, in Verónica Azpiroz's chapter, we can read how the way in which states are politically organized and their bureaucracies act can have an impact on the way in which the discourse of autonomy emerges and develops. It tells us that Argentina's non-ethnic federalism (a federalism tailored to the Spanish-European colonists that did not include indigenous nations and their territories), and a state bureaucracy that co-opts-captures-atrophies indigenous people seen as poor, with state subsidies or jobs, has caused Mapuche ideas of political empowerment to slowly unfold and bifurcate in at least two directions. First, towards the search for spaces of recognition and insertion by subsuming themselves in the Argentine nationalist state discourse (a kind of multicultural neo-colonialism in the field of ideas, which does not question the political-military incorporation into the Argentine state). And, secondly, to an autonomism that emulates the experience of the Mapuche on the Chilean side, insofar as it attempts to politically empower Mapuche society, but applying recipes in a mechanical way to an Argentine reality in which they do not adequately fit, since there is no clear-compact territory in which to carry out this utopia (the Mapuche communities are dispersed in seven provinces of enormous dimensions). The author recognizes that the discourse of au- tonomy reunites the Mapuche, particularly the young, but if it is not articulated with the country's politics or does not dialogue with it and only seeks to confront it, it will have little chance of progress.

The section closes with an essay by José Marimán, on the recent changes in Chile's political situation, especially due to the approval of a historic constituent process and, within it, the possibilities for the au

The Mapuche indigenous self-government can be constitutionally recognized. Marimán appreciates that the social protest of October 2019 has questioned "the nationalist-assimilationist narrative of the elites of the state and donor nation (Chileans), expressing an openness and welcome to ethno-national pluralism and -perhaps- to indigenous self-government". However, the author reflects that a more profound change will still be needed to dismantle the colonialist mentality of the elites that prevents the political empowerment of the Mapuche people under various political and legal ruses. A challenge of great significance is also to overcome an atomizing dynamic already installed in Mapuche activism and political action that prevents trans-community, multi-organizational and strategic consensus necessary for the exercise of the right to self-determination.

Cracks: recovering what has been lost and reconstituting

Despite the restriction of indigenous self-determination rights actively promoted by the State, as discussed in the chapters of the first section, indigenous peoples have found opportunities to advance their autonomous processes within a degraded multicultural framework and a fairly active, but not hegemonic, neoliberalism. However, this is a complex and contradictory scenario, both in the internal and external dimensions of these peoples' struggles and in their interactions with different actors. In these new socio-political landscapes, the agency of indigenous peoples to defend or assert rights to political autonomy in national judicial courts and in the Inter-American Human Rights System stands out - what observers have called the judicialization and juridification of indigenous political action (Sieder, 2020a) - but often combining such strategies with actions of open resistance and active mobilization. In her study on neoliberal multiculturalism in Bolivia, Nancy Postero had intuitively warned that "the subjects of neoliberalism find in the latter a certain number of resources and tools", since it "is not an all-encompassing hegemonic paradigm in its domination of society but rather a philosophy that expresses itself in various policies, practices and institutions to preserve and/or reject them" (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*, but also turn their gaze towards the diverse autonomic struggles within peoples.

Autonomy is also a political process internal to the movements that is constructed and constituted from the experience of mobilization of organized men and women (binary and complementary genders). The political subjectivity of the subjects/subjects as they mobilize and organize themselves to demand rights represents a sphere of socio-political reflection necessary to interpret, from the local, micro and experiential levels, the agencies and resistances to the impacts of state power, organized crime, social racism and market logics. This look at the social dynamics within the movements and the construction of social identities (binary and non-binary) places at the center the challenge of inclusion in indigenous political processes, as suggested by some of the chapters included in the volume, especially Figueroa and Hernandez, Azpiroz, Arteaga and Mora.

In the second section, the chapters by Consuelo Sanchez and Araceli Burguete on Mexico, and Bernal Castillo on Panama, recount the advances in autonomy rights in the constitutional principles of their countries, but also reflect on how insufficient such legislation can be when its content is filtered into secondary norms, significantly circumscribing the autonomy rights of indigenous peoples. Despite this, both Burguete's and Sanchez's contributions (and Aragon, 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 in the courts, making effective the enforceability of rights and the construction of political alliances. The chapter by Consuelo Sánchez in particular recounts how the constituent process of Mexico City, in which the author participated as a constituent deputy, allowed the construction of political agreements and community consensus to incorporate the recognition of collective and individual rights for the original peoples of the Valley of Mexico (the 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 constituent reform thus opened a path of possibility to creatively integrate functional autonomy rights -for example, the right to indigenous identity of resident but non-native populations of ancestral territories now urbanized- with territorial autonomies, which protect and guarantee the collective right to native lands and self-government, as a means of protecting and guaranteeing the rights of indigenous peoples.

The scale of jurisdiction is different (but complementary) to the scope of the city and its municipalities.

Araceli Burguete Cal y Mayor, on the other hand, recovers the experience of an election process by Indigenous Normative Systems (SNI) in the municipality of Oxchuc, in Chiapas. After a long battle in the streets and the courts, and in the context of an acute post-electoral conflict that began in 2015 and left violent balances, the Permanent Commission for Peace and Indigenous Justice of Oxchuc, obtained on June 28, 2017 a sentence of the Electoral Tribunal of the Judiciary of the Federation in its favor, which ordered the Institute of Elections and Citizen Participation of Chiapas to consult its population so that they could decide on their preference for one or another electoral regime: The chapter is concerned with documenting this process of autonomous municipal self-governance. The chapter is concerned with documenting this election experience (2016-2019), which is the first in Chiapas, and examines the challenges faced by the integration of the municipal authority that resulted from the election. It concludes with a reflection regarding the challenges of replicating this election model in other indigenous municipalities in the state.

The text by Bernal D. Castillo reviews the experience of autonomy of the Gunadule people of Panama. Its relevance lies in the fact that it is one of the oldest in Latin America, dating back to the second decade of the twentieth century, so it is relevant to know how it has developed in recent years. The Guaran- nas have articulated their own perspective on autonomy, in which the development of their institutions of self-government has been notorious. 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, of a spiritual and cultural nature), as the highest authorities of the Guna people of the Gunayala Comarca. It also reflects on the centrality of the figure of the Sagladummagan (General Chiefs) as the authorities of the region, reknown since 1953. This chapter provides a detailed record of the socio-political structure of the Guna people in Gunayala County, which is based on the norms of the Gunayar Igardummadwala (Gunayala Fundamental Law). It also seeks to document other strengths of the Guna autonomous experience, such as territorial and economic control. At the same time, it reflects on the challenges currently faced by the region's progressive insertion 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 National Coordinating Committee of Indigenous Women of Mexico (CONAMI) develop to advocate for their inclusion in community political life and, simultaneously, for gender justice that encompasses other dimensions of social life. These other spheres also constitute the terrain of autonomous struggles. Thus, the analysis focuses on understanding how the discourse and critical action of young women within the organization, the change in policies towards indigenous peoples, and the effect of public policies on gender equality and the prevention of feminicidal violence have been shaping the conditions within CONA- MI for a paradigm shift in its activism. Figueroa and Hernández suggest that this new type of activism is based on "a double perspective": on the one hand, it "implies a critical and reflexive intersectionality" that constantly challenges the mixed indigenous movement in the country; and on the other hand, it questions hegemonic feminism since it simultaneously articulates the struggle of its peoples with the demands for gender equality within their communities and organizations.

Magali Copa, Amy M. Kennemore and Elizabeth López share an analysis that identifies the state bureaucratic barriers to autonomy in the territory of the Jatun Ayllu Yura of the Qhara Qhara Nation, in the face of which the peoples develop creative strategies 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 of "reappropriation of the plurinational". This dynamic usually takes the form of pragmatic "rapprochement" actions both to build community consensus - and thus avoid conflicts - and for new relations with the State, as observed by Morell i Torra in the case of the Charagua Iyambae Guarani Autonomy, also in Bolivia. The novelty of the Jatun Ayllu Yura process lies in the fact that its autonomous process is both a territorial reconfiguration that involves strengthening its self-government, but illustrates an important challenge to the restrictions of the Bolivian territorial order, since its protagonists conceive it as the possibility of creating "a greater articulation of indigenous autonomies, such as the autonomy of the entire "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, matters related to their rights, including the exercise of indigenous jurisdiction (customary law), are torn between the dilemma of denial and its de facto enforcement. In this context, the article by Elsy Curihuinca and Rodrigo Lillo describes the Chilean legal framework, which recognizes the access of indigenous peoples to their own justice; while on the other hand it lives under tension under the dilemma of hierarchical orders of legality (Sieder, 2020b; Melin et al., 2016). Otherwise, it allows for degrees of legal pluralism, but reminds indigenous people at all times that state law is preeminent and that their own law is incontestably and arbitrarily subordinated to state law. In the authors' view, recognition of a special indigenous jurisdiction as an expression of indigenous law is a legitimate and necessary mechanism for peoples to exercise the right to self-determination. After all, and with this opinion we raise a strategic question to be addressed in future debates in relation to legal orders and autonomous processes: what is autonomy in its essence if not the capacity to dictate their own laws and govern themselves by them.[3] In a political reality in which the figure of the State dominates, a pluralist restructuring of the State without questioning its unity-sovereignty, but encouraging plurality of government (a government at the national level plus governments at the level of indigenous territories, and others), involves the capacity to have its own laws and to be respected at sub-State levels. Otherwise, autonomy-self-government does not exist but only administrative deconcentration (Máiz, 2008).

In Pablo Ortiz's contribution on Ecuador, it is quite clear how the institutional scaffolding and ethnocentric political practices neutralize the intention of the 2008 Constitution to facilitate the formation of special autonomous regimes as the only option for access to the control and administration of local governments. To support this idea, Ortiz studies in detail two experiences: the Kichwa Kayambi community government of Pukará Pesillo, in Cayambe in the Sierra Norte; and the self-government of the Pastaza Kikin Kichwa Runakuna-Pakkiru in the Central Amazon. These processes, each in its own

3 Boaventura de Sousa Santos makes an interesting note on this point. Indigenous justice is not "an alternative method of dispute resolution such as arbitration, conciliation, peace judges, community justice. We are dealing with an ancestral justice of native peoples anchored in a whole *system of territories, of self-government, of their own cosmovisions*" (Santos, 2014, p. 24, emphasis ours).

The results of these studies illustrate some of the paradoxes, deviations and challenges faced by 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 borders of the extractive industry, agribusiness and deterritorialization.

The overall perspective of this second section is that the 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, but also of intergenerational and gender changes within the organizations, which is of fundamental importance for autonomy.

Autonomies as emancipation: one's own paths

The last section includes chapters that reflect on indigenous autonomy beyond, against, or in rejection of official recognition in order to expand its quality as an emancipatory process and, in this way, to promote life. This section is dedicated to autonomy as emancipation, that is, as a sovereign process of political and cultural order capable of expressing the right of self-determination of indigenous peoples.

The multicultural era offered, in a number of countries, new rights and recognition to indigenous peoples, including the right to autonomy, but at the same time reinforced the capacity of the State to circumscribe these rights in practice. Therefore, the materialization of rights has been characterized by force fields that have opened cracks within indigenous peoples and in their relationship with States, as reflected in the chapters included in the second section of the book. Orlando Aragón (this volume), observes that in the case of Mexico, multiculturalism "reconstituted the field of dispute between the communities and the Mexican State through the appearance of a new discourse, new fields, actors and instruments of struggle". These new conditions offered opportunities, not without risks, for the innovation of forms of governance and indigenous self-government, judicial recognitions 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 acknowledge 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 in the process of building their own knowledge and powers (which are usually concentrated in interaction with politics with respect to state agents), also have a correlate in other aspects of social community life, for example, in social reproduction and the possibility of creating new social consensuses. Or that perhaps they are inseparable, one dimension of the other, where the politics of rejection of the state mobilizes in turn "a multidimensional politics of commitment, within the autonomous rebel project" as Mora reflects referring to Zapatista autonomy (2017, pp. 20-21). Ana Ce- cilia Arteaga, whose contribution opens this section, seems to corroborate this same observation by Mora. Arteaga provides an analysis of the struggles of Bolivia's Totora Marka Aymara women to promote changes in the gender hierarchies and oppression occurring in their communities. Women's critiques of these orders (and their possible dismantling) are transferred to the public sphere simultaneously with the struggles both to obtain internal consensus in favor of the autonomous statutes and to achieve external recognition by the State. Starting from women's proposals for local and national transformation, the author conducts broader analyses focused on the advances and challenges faced by indigenous peoples for their institutionalization within the framework of the plurinational State.

Mariana Mora, for her part, reflects on the transition in the meanings conferred by peoples to autonomy in Mexico, in an era marked by the regressive and repressive turn of extractivism and securitization policies. In his analysis it is especially evident that such conditions have circumscribed the struggles for autonomy and put on the defensive the organizations and territories that today articulate "life-existence policies" in the face of the eliminatory and incriminating actions that characterize the State and other agents that generate extreme violence. This same "turn towards self-protection" is described by Viviane Weitzner in her chapter on the Cañamomo Lomaprieta Colonial 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, such as

expressions of territorial self-government. Weitzner's text also provides an approach to the plural conceptions of autonomy, where he highlights its conception as an inherent right (although limited by external conditions and therefore in "question"), rooted in the community, the territory and the cosmovisions of indigenous and Afro-Colombian peoples.

With a similar purpose, to explore the plurality of conceptions of self-determination and to inquire into internal strategies of self-determination (in a context of less relative violence), Pere Morell i Torra offers in his contribution a look at the process of gestation, construction and deployment of the Autonomía Gua- raní Charagua Iyambae, the first indigenous autonomy officially recognized by the Bolivian State. The socially participatory design of new institutions of self-government, conceived from Guaraní political practices and traditions but in dialogue (and tension) with other institutional traditions that coexist with indigenous ones in inter-ethnic contexts such as the Bolivian lowlands, illustrate the great propositional capacity of indigenous autonomous projects, capable of incorporating into their midst (of "guaranizing", in the words of a Guarani intellectual quoted by Morell i Torra) even the traditionally hegemonic white-Creole population in the region, something fundamental for thinking of other hegemonies that provide the peoples with new spaces of power.

An autonomy that belongs to this emancipatory generation, albeit self-proclaimed, is presented in the chapter written by Shapiom Nonin- go and Frederica Barclay, on the Wampís nation in the Amazon 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 re-constitution - is a cultural survival strategy, a fragile but important line of defense of life, in the face of "a point of no return in terms of social and cultural integrity and the very capacity to imagine one's own future as a nation.

While the chapters by Mora, Morell, Weitzner, Shapiom, and Barclay do not discuss the important transformations of the state and its relations with peoples in the construction of autonomies and self-government, they focus on how the practices of organizations move 'inward', communities, territories, self-affirmed municipalities, and autonomous governments to create collective consciousness, build new meanings regarding autonomy, accumulation of power for self-defense, and *life-narratives* that give primacy to emancipation.

political and cultural expression (Burguete Cal y Mayor, 2018). As Coulthard observes, the character of these more radical forms of practicing and exercising rights belong to *ongoing* 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 by Roberta Rice on Bolivia, Ecuador, Nunavut and Yukon in Canada. Aragón documents the emergence of indigenous self-governments in Michoacán whose creation expresses a unique route to autonomy via the judicialization of indigenous struggles, and a type of "community 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 "usos y costumbres" of communities and in some cases, the result is to fuel a type of intra-communal fragmentation and animosity that can cancel the route to self-government.

Roberta Rice's chapter reminds us that autonomies, even under favorable institutional and political conditions, are not inevitable processes, but require strong indigenous movements and States willing to reach durable and comprehensive agreements. Comparing the processes of autonomous construction in Ecuador and Bolivia with the autonomous territories of 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 commitment" 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 also suggests that "the capacity for initiative for policy innovation lies in the realm of civil society, while the possibility of adopting such innovations lies with the state and its willingness to work with indigenous communities". Rice's conclusions echo one of the most important strands of this collection, about autonomy as a constructive agreement and a democratic mode of inclusion.

At the time of writing and publishing our book, we are in the midst of the COVID-19 pandemic that continues to affect the entire world, but especially with strong impacts on the most vulnerable communities, and a profound effect on indigenous peoples. This crisis has made evident the problems

and barriers that have always existed: poverty, lack of basic services, lack of health care, lack of territorial protection, among others (IWGIA-ILO, 2020, p. 7). As the first regional report of the Regional Indigenous Platform for COVID-19 (2020, p. 39) warns, the participation of indigenous peoples in any action taken by governments or cooperation institutions is vital, as well as respecting the decisions of indigenous peoples. This means respecting their autonomy and self-determination. In this way we will be able to overcome the critical situation as the same report states: "more than vulnerability, indigenous peoples have demonstrated resilience in several centuries of pandemics and this will not be the last time" (p. 4).[4]

Finally, our book seeks to understand the multiple political, cultural and legal dynamics through which indigenous self-government has been able to assert (or not) the right to self-determination in the light of both global norms and national legislation, or as an exercise of self-affirmation. In the exercises of peoples to affirm spaces, practices and relationships within their communities and in their interactions with state institutions, new meanings are given to the right to autonomy. In many of the experiences studied here, the right to autonomy is not a predefined right, and therefore the very content of this right is given *in its exercise*, which is re-adjusted in relation to changes in historical relations, political conditions and cultural transformations.

More importantly, we seek to identify and examine common challenges and discuss local specificities that speak to the complexities of implementing different orders of rights in different experiences in the Americas. Many of the texts included in this book suggest that the exercise of the right to autonomy is fundamental to the protection of other rights.

4 In relation to the resilience demonstrated in practice at this time, one example that stands out is the "small measures" that have been taken by the native Guatemalan authorities. As Gladys Tzul shared in a virtual conversation, the communal political structures or organizations are leading measures such as disseminating culturally relevant and useful information in their own languages on how to raise the body's defense system against the virus, decentralizing markets to the communal level to avoid price increases and shortages, and carrying out confinement (CLACSO TV, May 26, 2020). In turn, Yásnaya Elena Aguilar invites us to become aware that the individual good is not opposed to the collective good. In order to save ourselves from this pandemic, we need each other's responsible act as a collective, and in this way we will ensure the life of each individual (Aguilar, 2020).

rights, not only economic, social and collective rights, but also the 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 the autonomy perspectives of indigenous peoples around the world, as it is quite clear that current trends and agendas of international civil society organizations are shifting towards understanding and supporting indigenous struggles for self-determination and autonomy (ECLAC, 2020; IWGIA, 2019).

Our imagined audiences

The Coordination collective of this editorial work gladly delivered the articles that have shaped this book to an imagined audience as diverse as our America. We had in mind at each stage of the conformation of this book, the indigenous peoples, their leadership and their activists as diverse as the diverse America, in terms of culture, gender, generations and political experience. Among them we highlight the youth, new generations who seek and deserve a life of dignity, of political subjects who are masters of their own destiny, far from the subjugation to which their parents and, above all, grandparents and past generations were condemned. Young people who have generously embraced the ideas and the 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, seeking to better understand the processes of implementation of autonomy, indigenous rights and self-governance arrangements that exist in the countries and experiences investigated here. As for the specific usefulness that our collection may have for the indigenous peoples of diverse America, we must say that given that the more politically advanced segments of the indigenous movement have begun to raise the demand for peoples' self-determination in many states (they are no longer content to ask those who have subjugated them to solve their problems, but are demanding powers to participate in decision-making in all matters that affect them), our book is fundamental for indigenous peoples' leadership and activists. We say this because the publication addresses successful or failed experiences in the use and exercise of political power by indigenous peoples (by themselves or in shared spaces). In the same way

The publication examines the paths that some have taken to achieve this strategic objective, which are often very difficult, among other reasons because recognition policies have become a formality and are not accompanied by the will to materialize effective changes in the exercise of peoples' rights and power.

This is certainly not the only research that uses this perspective, but *Autonomía a debate* was certainly one of the necessary publications at the political moment when progressive governments were emerging in Latin America, such as Bolivia or Ecuador, moments of hope for the indigenous peoples of those countries and of the continent. In this book, the more political cadres of the movement will find inspiration to discuss their own strategies for advancing toward the goals they have set for their peoples and organizations. Or by reviewing what has been done in the exercise of self-government, bringing from an analytical and comparative reading, elements that will allow them to compare their own experience, in order to draw positive lessons from it to improve their political actions. We hope that our effort will encourage these sectors of the indigenous movement to approach the critical reading of the ideas contained in this book, to reflect on their own political experience, in the hope of overcoming the pragmatism that is present in some movements and that stagnates the possibilities of advancing towards the goal of self-determination of the peoples, in the form of autonomies.

This book is also intended for the "others", for those who, without belonging to the indigenous world, have a great deal to do with positive solutions to the 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 the protection of human rights. The positions of the political, religious, business and other elites of the dominant national-state groups in each State of diverse America are also relevant in this dialogue, and we hope that reading this book will motivate positions and actions in favor of the rights of self-determination of indigenous peoples. Likewise, this book shows them that their anachronistic and nineteenth-century nationalist conceptions of the state ("one nation one state" = nation-state),

make no sense in the present century. The demand for autonomy of indigenous peoples does not threaten the unity and stability of states with their imposed "nations" of design. It is possible, within the current state formations, national ethno-political plurality, doing positive honor to one of the most transcendent political values of our times: democracy. Autonomies, implying the decentralization of power, come to broaden the spectrum of de- mocracy, disaggregating power to create valid and operative regulations in specific territories within the territory claimed by the States, to those who were only marginal, inferior citizens or electoral clientele, in the political societies built after the break with the European colonial metropolises in the twentieth century (Marimán, 2017). Through the experiences narrated here- exposed we hope that this audience will reevaluate the principles and ideologies with which it has operated and act generously to repair the political perversions of past generations of state nationalists. Policies that 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 and diverse disciplines will find inspiration in these works, to develop criticism of our ideas and their own visions. Hopefully this book will motivate them to write on the subject, helping to remove the mountain of oblivion that operates on the political rights of indigenous peoples, and thus contribute from their classrooms or publications to advance a more fraternal future in tolerance, respect and national plurality, for future generations of both indigenous and non-indigenous people.

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The right to self-determination and indigenous peoples: the continuous search for equality

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Recent events

Long before coming into contact with colonizers, indigenous peoples lived according to their own traditional rules, protocols and laws to ensure social order and harmony in their communities (Borrows, 2017a; 2017b). These guidelines found their expression in and are the source of self-determination, representing pre-existing practices that predate the development of international law and legal instruments by hundreds of years.

Despite having the unfounded and misguided visions of colonial forces and organized religion as a backdrop, the highly sophisticated protocols of indigenous peoples have survived and thrived. Our strong economic, social, cultural, spiritual and political rules were subsumed by the notions of nomadic "savages" imposed by those ignorant of good governance and lacking in democratic capacity.

This brief essay provides an overview of the right to self-determination and autonomy for indigenous peoples and argues that this prerequisite for the exercise of all other human rights applies to indigenous peoples without qualification or limitation. However, many indigenous peoples are still engaged in a constant quest for equality. It is time and place for this quest to end, time for indigenous peoples to exercise and enjoy this right throughout their lands and territories to define and practice their own rules, protocols and laws as they did before contact.

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1 Original text in English, translated by Fernando Rouaux.

to. More importantly, the right to self-determination must be recognized and respected by those outside our nations and communities and must also be perfected or reconstituted within our communities.

This essay will not comprehensively trace the history of the Peace of West Africa, the Papal Bulls or the acts of domination, subjugation and exploitation of indigenous peoples. Instead, the focus will be on the product of those actions and the current United Nations legal order, including the human rights of indigenous peoples, the recent history and current status and conditions of indigenous peoples and their efforts to genuinely exercise the right to self-determination. The intention is to illustrate how these well-established standards are useful tools in the multi-pronged and multi-scale effort by indigenous peoples to achieve recognition of and respect for their right to self-determination and its various elements.

In the Charter of the United Nations, adopted in June 1945, Article 1 describes the Purposes and Principles of the United Nations on behalf of the world community:

> Maintaining international peace and security...
>
> To promote 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 cooperation in solving international problems of an economic, social, cultural or humanitarian character, and in developing and encouraging respect for human rights and fundamental freedoms for all, without distinction as to race, sex, language or religion; and
>
> Serve as a center that harmonizes...

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

For a given people, the prerequisite for self-determination and for securing the exercise and enjoyment of all other human rights revolves around "self". In the context of indigenous peoples, the "self" is determined by the distinctive status of the peoples concerned. Those who are different. Our history of being different was strictly and barbarically used to perpetuate racial discrimination, diminish rights and 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 from discrimination in all political and legal environments. It should be remembered that the scourge of racial superiority was formally denounced by the international community.

An important distinction of indigenous peoples' rights is that they are inherent or pre-existing rights. The pre-existence of indigenous peoples as sovereign peoples must be recognized. Indigenous peoples have 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 nations and indigenous peoples.

In addition, recognition of inherent or pre-existing rights to lands, territories and resources is fundamental. As in the case of self-determination, indigenous peoples have consistently promoted land tenure and use regimes for their lands and territories, as well as having extraordinary knowledge of the environment and the ecosystems that surround them. This knowledge has been and continues to be accumulated on the basis of their profound relationship with the environment and is integrated into 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 clarity on the issue of inherent or pre-existing rights, it is important to note that our individual and collective human rights were not created or "granted" by anyone and certainly not by any government, including those that still retain vestiges of 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 is interrelated with all the others are
interdependent - they depend on each other
are interconnected - mutually joined or connected between elements are
indivisible - cannot be divided

Therefore, the denial or violation of one human right will have an adverse impact on all other human rights and the ability of a community to exercise and enjoy all other human rights. As stated by the International Law Association (ILA, 2010, p. 43), "it would be inappropriate to treat these areas separately, for the reason that - given the holistic view of Indigenous peoples", all rights are "strictly interrelated...".[2]

It is important to consider the characteristics of human rights in the context of indigenous peoples, many of whom hold the same holistic perspective on their way of life and their relationship to everything within their territories - everything is interrelated, interdependent, interconnected and indivisible. We have an integral worldview of the world.

Human rights are universal; they apply equally to all human beings. Fortunately, the current human rights regime in the United Nations, the Organization of American States, the International Labor Organization and a growing number of other intergovernmental organizations has begun to shift away from the Western European conception of indigenous peoples' human rights to ensure the distinctive cultural context of indigenous peoples.

In terms of the unique cultural context of indigenous peoples, it is important to recognize that the right to self-determination is a collective right,

2 Interim Report, International Law Association, The Hague Conference [Interim Report, International Law Association, The Hague Conference] (2010), Committee on Rights of Indigenous Peoples, p. 43. (n.d.) https:// bit.ly/32YZklV

The preexisting legal status of indigenous peoples is added to the distinctive legal status of indigenous peoples. Another crucial example is the collective nature of indigenous peoples' rights to their lands, territories and resources, which has many dimensions that are not reflected in the notion of individual property rights of others. Other examples exist. However, the objective 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 variety of other communal dimensions of indigenous peoples' daily lives.

It is important to note that human rights cannot be destroyed -denying or violating human rights is another matter, but such rights cannot be destroyed or alienated. In this regard, the "extinction" policies of the past have been exhaustively denounced and the so-called full powers of governments have been challenged and continue to be challenged. And human rights are the rationale or compelling force to counter such challenges and outdated policies based on racial discrimination.

International agreements

Some twenty years after the adoption of the Charter of the United Nations, the International Convention on the Elimination of All Forms of Racial Discrimination came into being. In contrast to many international human rights instruments, this Convention has a unique feature - it defines its subject matter, which is spelled out in PART I, Article 1:

> In this Convention, the term 'racial discrimination' shall mean any distinction, exclusion, restriction or preference based on race, color, 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 indicated, this language is applicable to every field of public life and has extraordinary significance when one considers the collective nature of those of different race, color, descent, nationality or ethnic origin. The words chosen in "for the purpose or with the result of nullifying or impairing the recognition, enjoyment or exercise" of human rights are broad and capture the nature of the collective nature of those who are of different race, color, descent, nationality or ethnic origin.

policies that, although they may not appear to be so, could eventually prevent the exercise of a right.

Less than a year later, in order to further codify the rights enunciated in the 1948 Universal Declaration of Human Rights into a legally binding human rights instrument, the international community and specifically the representatives of the member states of the United Nations adopted the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Social and Cultural Rights (ICESCR) in 1966. Failing to adopt a single treaty, the civil and political rights preferred by the West were supposedly separated from the economic, social and cultural rights preferred in the East, in response to then entrenched views, which to a large extent still are, of communist regimes and democratic states such as the USA.

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

- All peoples have the right of self-determination. By virtue of this right they freely determine their political status and freely provide for their economic, social and cultural development.
- 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 on the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.
- 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 their language affirming the *equal* application of the *right* to self-determination of all peoples.

Significantly, Article 27 of the ICCPR refers to "minorities", and in this sense it should be understood that, for a majority of the indigenous peoples in the region, this means that they are "minorities".

across the globe, they may be numerically a "minority" but they are dramatically different 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 practice their own religion, or to use their own language.

Declaration on Friendship Relations, 1970

Early in 1961, a small number of UN Member States submitted a proposal in the context of the "progressive development and codification of the principles of international law" (A/C.6/L.492, 1961)[3] to focus on the elaboration of key principles to promote "friendly relations and cooperation" of States (GA 1686 (XVI), 1961).[4] This exercise was a careful analysis of the key principles relating to self-determination and was adopted on the 25th[o] Anniversary of the United Nations, resulting in the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations of 1970 (GA 2625 (XXXV), 1970).[5]

Central to the Declaration on Friendly Relations and Indigenous Peoples are the provisions that address the fact that each State is committed to the progressive development of international law, including within the legal order of human rights. The Declaration on Friendly Relations is significant to constitute:

> ... an important event in the *evolution of international law* and relations between States by promoting the rule of law among nations and, in particular, the *universal application of the principles embodied in the Charter*.

3 Sixth Committee of the General Assembly, Resolution on the review of the principles of international law relating to the peaceful coexistence of States (A/C.6/L.492, 13 December 1961).

4 General Assembly resolution 1686 (XVI) of 18 December 1961 (Future work on the codification and progressive development of international law).

5 General Assembly resolution 2625 (XXXV) of 24 October 1970 (Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations).

The Statement then emphasizes:

> ... the importance of maintaining and strengthening international peace based on *freedom, equality, justice and respect for fundamental human rights* and of fostering friendly relations among nations, irrespective of differences in their political, economic and social systems or levels of development.

The United Nations (and therefore its member states) claims that it is:

> Convinced that the subjection of peoples to foreign subjugation, domination and exploitation constitutes one of the greatest obstacles to the promotion of international peace and security,
>
> Convinced that the *principle of equal rights and self-determination of peoples* constitutes an important contribution to contemporary international law, and that its effective application is of the utmost importance for the promotion of friendly relations between States based on respect for the principle of sovereign equality.

Then he also states that:

> States have the duty to refrain from resorting to any measure of force which would deprive the peoples referred to in the formulation of the principle of equal rights and self-determination of *their right to self-determination* and to freedom and independence.

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

> By virtue of the principle of equal rights and self-determination of peoples, enshrined in the Charter, 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.

Moreover, "Every State has the duty to promote, by joint or individual action, the application of the principle of the sovereign equality of rights and self-determination of peoples" and "to put an early end to colonialism, with due regard to the freely expressed will of the peoples to the subjugation in question".

A key provision in this Declaration, which must be read in the context of the entire instrument, is the requirement or obligation of States to behave in a manner consistent with these principles if they themselves are to maintain their own "territorial integrity," including the fact that "compliance" includes that they "possess a government that represents all persons belonging to the territory. The full language in this key paragraph states that:

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

Indigenous peoples were not part of the dialogue, negotiation and adoption of the Declaration on Friendly Relations. However, it is certainly necessary to reaffirm that it involves us as distinct peoples, including the requirement of compliance with its many provisions to ensure the exercise of self-determination and to promote friendly relations.

International Labor Organization C169, 1989

Throughout the 1970s, indigenous peoples began their national and international political organizing around persistent violations of their rights, including treaty rights. It is interesting to note that, separately, the International Labor Organization (ILO) has a long history of policies, conventions and recommendations aimed at protecting indigenous peoples in the context of exploitation in the interest of low-cost labor by corporations and businesses. As early as the 1930s, the ILO worked to protect indigenous "employees" from forced labor and slavery, as well as from unsafe working conditions.

In 1953, the ILO adopted Convention No. 107 (ILO C107, 1957),[6] which became a binding human rights treaty for those member states that ratified the instrument. Given developments at the UN, including increasing attention to serious violations of the rights of workers and their families, the ILO adopted Convention No. 107 (ILO C107, 1957), which became a binding treaty for those member states that ratified the instrument.

6 Indigenous and Tribal Populations Convention, 1957 (No. 107), International Labour Organization, entered into force June 2, 1959, 328 U.N.T.S. 247.

resulted in the creation of a body that would begin to delineate indigenous peoples' inter-national human rights standards-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 began to review C107. This two-year revision process resulted in ILO Convention No. 169 on Indigenous and Tribal Peoples (ILO C169, 1989)[7] adopted by the ILO plenary in 1989.

Although some States have ratified Convention C169, it is important to note that the standards affirmed in the Convention are standards specific to indigenous human rights and are binding legal obligations of States under international law. Convention C169 is the only legally binding convention specifically dedicated to the individual and collective human rights of indigenous peoples.

Article 3(1) of Convention C169 affirms that indigenous and tribal peoples shall fully enjoy human rights and fundamental freedoms without hindrance or discrimination. This necessarily includes the right of indigenous peoples to self-determination. In addition, Article 35 of Convention C169 ensures that:

> The application of the provisions of this Convention shall not prejudice the rights and benefits guaranteed to the peoples concerned by virtue of other conventions and recommendations, international instruments, treaties, or national laws, awards, customs or agreements.

Most significantly, the ILO has reviewed the relationship between its 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 should be taken into account by all members in good faith. Although not binding in character, the Declaration has relevance.

7 Indigenous and Tribal Populations Convention, 1989 (No. 169), International Labour Organization, adopted at Geneva, ILO Session No. 76, June 27, 1989 (entered into force September 5, 1991).

> The UNDRIP is a declaration adopted by the General Assembly of the United Nations... For example, it may reflect the obligations of States under other sources of international law, such as customary law or general principles of law. Differences concerning the legal status of the UNDRIP and Convention No. 169 should have no bearing on the practical work of the ILO and other international bodies to promote the human rights of indigenous peoples through advocacy, capacity building, research or other means.

In addition, the ILO has stated that Convention C169 and the UN Declaration are "compatible and mutually reinforcing".

> It is crucial to the technical and promotional work of the United Nations system that governments aspiring to receive the benefits of this collaboration commit themselves to the promotion and protection of the rights of indigenous peoples.... The provisions of Convention No. 169 and the Declaration are compatible and mutually reinforcing.

American Declaration on the Rights of Indigenous Peoples, 2016.

Consistent with the trend of intergovernmental organizations to make appropriate efforts for the human rights of indigenous peoples, the Organization of American States as early as 1989 began the process of outlining a regional instrument to complement its diverse human rights system to be taken up by its Inter-American Institute of Human Rights, the Inter-American Commission on Human Rights and the Inter-American Court of 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 United Nations Declaration. Making clear the connection and also reinforcing the interrelated, interdependent and indivisible nature of human rights, the American Declaration actually evokes the UN Declaration in its preamble:

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

United Nations Declaration on the Rights of Indigenous Peoples, 2007

These extraordinary developments came about as a result of the persistence and active support of indigenous peoples around the world. It is clear that much progress has been made but that more needs to be done so that indigenous peoples can effectively exercise and enjoy the standards we have obtained. Implementation is lacking, and few "good practices" can be identified for indigenous peoples around the world. However, staying on this path is crucial to 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 the key preambular paragraphs and operative provisions of the UN Declaration are interconnected.

The Preamble to the U.N. Declaration recognizes that historical injustices have had a harmful and devastating effect on indigenous peoples and therefore human rights standards should guide the behavior of U.N. member States towards indigenous individuals and peoples collectively. Essential, contextual paragraphs give indications on the interpretation of the entire U.N. Declaration and in relation to self-determination. These provisions show the intentions of the member States of the United Nations:

> *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,
>
> Recognizing 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 of all peoples to self-determination*, 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 people its right of self-determination, exercised in accordance with international law....

Taken as a whole, the operative paragraphs make it clear that the U.N. 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.

The explicit recognition of the right to self-determination and its application to indigenous peoples resembles the language used in common Article 1 of both the ICCPR and ICESCR mentioned 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 indigenous peoples to self-determination in the context of their traditional forms of government and in relation to their rights and responsibilities of their distinct membership, collectively, the UN Declaration affirms that self-government and all its multiple and diverse forms of expression, 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 the means to finance their autonomous functions.

Some have argued that the conclusive provisions of the UN Declaration and the insistence of States to include a reference to territorial integrity within Article 46 somehow diminish the right to self-determination of indigenous peoples. It should be emphasized that the language found in Article 46(2) should be read to mean that the principle of territorial integrity already exists and is clearly articulated.

in international law. More importantly, there is no way that the UN Declaration can validly extend this understanding. Moreover, the other elements of this particular article provide some very well-founded doctrines that should guide the application of the entire U.N. Declaration, including the right to self-determination. Specifically, Article 46(3) states 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 the other elements that affirm the right to self-determination cannot mean that indigenous peoples' self-determination can only be exercised within the parameters of Article 4. It must be recognized that Article 3 is not synonymous with, nor limited to, autonomy or self-government.

Autonomy and self-government

Unfortunately, throughout the world, member states of the United Nations find it difficult to assimilate that the right to self-determination is a total right, which has various forms, dimensions and contexts, including autonomy and self-government. Although there are good examples of self-governance arrangements in Bolivia, Colombia, Nicaragua, Mexico, and Peru, this volume illustrates the fact that indigenous peoples continue to encounter obstacles. Efforts to exercise self-government as a central expression of the distinctive characteristics of indigenous peoples have encountered numerous obstacles. The right to autonomy and self-government is at the heart of indigenous peoples' survival. Most of the obstacles are set by the mentality of UN member states about the "piety" of indigenous peoples, treating them only as objects over which they have unilateral control. Such actions only serve to hollow out 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 on Article 4 of the United Nations 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 ability to exercise authority over their internal and local affairs as a dimension of the right to self-determination. Indeed, autonomy and self-government are essential to exercise the comprehensive framework of rights declared in the UN Declaration applicable to the internal and local affairs of a collective. Here, indigenous customs and decision-making practices are important and must be honored, respected and recognized. In this way, the unique characteristics of indigenous peoples can flourish in a way that cannot be replicated elsewhere and especially in their relations with external actors, from States to third parties and civil society.

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

To be more specific in terms of implementing Article 4 of the UN Declaration it must be given full effect to ensure representation of Indigenous peoples, on their own terms, within various government bodies and entities including the executive, legislative and constitutional frameworks of the country in question. For example, the Inuit-Crown Partnership Agreement (Inuit-Crown Partnership Agreement, 2017)[8] in Canada provides structure and procedures for Inuit to.

8 The Committee will advance common priorities between Inuit and the Government of Canada, including implementation of Inuit land claims agreements, social development and reconciliation between Inuit and the Government of Canada. The Committee will monitor and report on progress in advancing these priorities in the future. The Committee includes the Prime Minister and a select group of federal ministers, the Inuit Tapiriit Kanatami President, the President of the Inuvialuit Regional Corporation, the President of Nunavut Tunngavik Inc,

have an ongoing dialogue with the executive branch of the federal government. With respect to the recognition of rights within the constitutional framework, section 35 of the Constitution in Canada stipulates:

1. The indigenous and treaty rights of Canada's indigenous peoples are recognized and affirmed here.
2. In this Act, "indigenous 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 under land claims agreements or that could be acquired.
4. Notwithstanding any other provision of this Act, the indigenous and treaty rights referred to in subsection (1) are guaranteed equally to men and women (Constitution Act, 1983).[9]

In addition, specific standards 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 in other parts of the world, recognition of the inherent right of self-determination and the distinctive collective rights of indigenous peoples is a substantial feature of federal Indian law (US President Message on Indian Affairs, 1970).[10] It is also crucial for the federal or national government to recognize the validity of indigenous peoples' laws, customs, traditions, practices and institutions - which is the fundamental or essence of the right to autonomy and self-government for indigenous peoples.

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the Chairman of Makivik Corporation and the Chairman of the Nunatsiavut Government. https://bit. ly/3lRGWme

9 Part II, Rights of the Aboriginal Peoples of Canada, section 35, https://bit.ly/2UNSwTH.

10 President Nixon, Special Message on Indian Affairs, July 8, 1970, "It is time for the Indian policies of the federal government to begin to recognize and build upon the skills and knowledge of the Indian people. Both as a matter of justice and as a matter of carrying out an intelligent social policy, we must begin to act on the basis of what the Indians themselves have been telling us for a long time. The time has come to make a definitive break with the past and create the conditions for a new era in which the Indian future will be determined by Indian actions and Indian decisions. https://bit.ly/3lQy5kU

There are numerous examples where institutions and structures of autonomy and self-governance are needed to effect indigenous peoples' decision-making in their affairs, such as the ways and means of determining the membership (*U.N. Declaration*, art. 33)[11] of indigenous peoples-their self-identification, often based on successive generations' understanding of language, life within a particular environment, spiritual practices, families and kinship, even the name given to them. In addition, to identify the responsibilities (UN Declaration, art. 35)[12] of the members of an indigenous nation and indigenous peoples requires a form of social order and/or political institutions.

Again, many of these "institutions" are pre-existing and reflect inherent values, customs, practices, protocols, and yes, institutions as well. [13]The issue of traditional land tenure (UN Declaration, art. 26) within indigenous territories also requires methods to ensure that these systems are maintained, as well as the collective nature of the protection of this important knowledge, methods and practices. Essentially, autonomy and self-governance addresses all relevant issues of indigenous peoples' daily lives within the community. The areas of health and welfare, education, indigenous knowledge, hunting and food collection, traditional laws and many other individual and collective cultural practices must be considered through appropriate autonomy and self-governance according to custom.

A central feature of autonomy and self-governance 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

11 U.N. Declaration, Article 33(1), Indigenous peoples have the right to determine their own identity or membership in accordance with their customs and traditions. This does not prejudice 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 choose the membership in accordance with their own procedures.

12 United Nations Declaration, Article 35, Indigenous peoples have the right to determine the responsibilities of individuals towards their communities.

13 United Nations Declaration, Article 26(3), States shall ensure the legal recognition and protection of such lands, territories and resources. Such recognition shall have due respect for *the customs, traditions and land tenure systems* of the indigenous peoples concerned [author's emphasis].

economic, social, cultural, spiritual and political life through such attributes. The right to self-determination speaks to this dimension of self-government when it refers to indigenous peoples determining their political status and freely pursuing their economic, social and cultural development.

There are other crucial articles to highlight as evidence of the nature and understanding of autonomy and self-government. In particular, Article 5 (U.N. Declaration, art. 5) explicitly recognizes that "indigenous peoples have the right to maintain and strengthen their own political, legal, economic, social and cultural institutions" and, if they choose to do so, to participate fully in the political life of the State. Article 18 can only take full effect through forms and measures of authority and self-government so that it can 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 in accordance with their own procedures, as well as to maintain and develop their own decision-making institutions.

Here, the State must ensure both procedurally and substantively that the effective participation of indigenous peoples is ensured in matters affecting their rights. And, to achieve this, the indigenous peoples concerned, as well as their institutions, must have access to materials and information for the review and determination of their views, interests and concerns. It is significant that Article 19 invokes the important standard of free, prior and informed consent, which is a key feature of autonomy and self-government rooted in the right to self-determination:

> States shall consult and cooperate in good faith with the indigenous peoples concerned through their representative institutions before adopting and implementing legislative or administrative measures that may affect them, in order to obtain their free, prior and informed consent.

Articles 18 and 19, when read and understood together, remind us that human rights are interrelated, interdependent and indivisible. Article 18 affirms the right to participate in decision-making and further articulates by whom and how - issues entirely within the purview of the indigenous peoples concerned. Article 19 affirms the responsibility of the national government to consult and cooperate in good faith, recognizing the right to participate in decision-making and further articulates by whom and how.

indigenous peoples' autonomy and self-governance and their decision-making processes before taking actions that could affect them. Such actions could have positive or negative impacts, but this is for the indigenous peoples concerned to decide. These requirements alone require the need to exercise the right to autonomy and self-government in the collective political life of the indigenous peoples concerned to engage in consultation and cooperation with government on measures that may affect them as peoples. It should 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 indicated above, the need for States to adapt to the cultural context of indigenous peoples within the national legal system is imperative in relation to Article 27 of the United Nations Declaration. Indeed, the provision itself specifies that:

> States shall establish and implement, in conjunction with the relevant indigenous peoples, a fair, independent, impartial, open and transparent process, which gives 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 they have traditionally owned or otherwise occupied or used. Indigenous peoples shall have the right to participate in this process.

Another compelling example is Article 34 (United Nations Declaration)[14] in general, but specifically in the context of its reference to the judicial systems or customs of indigenous peoples in relation to their members. This right is often infused with important traditions and practices, embodied in the languages that are distinctive to the peoples concerned, as well as in their environment and ways of life. Many of these are very ancient measures to maintain balance, harmony and sustainability. At the same time, one must also recognize that there may be progressive development that alters traditions, especially where consistency with international standards may arise.

14 United Nations Declaration, Article 34, "Indigenous peoples have the right to promote, develop and maintain their institutional structures and their distinctive customs, spirituality, traditions, procedures, practices and, where they exist, juridical systems or customs, in accordance with international human rights law".

Finally, it is imperative that full effect and support be given by UN member states at the domestic or national level to language related to Article 4 explicitly recognizing that indigenous peoples have the right to the ways and "means to finance their autonomous functions". Too often economic resources are insufficient, thus stifling the exercise and full enjoyment of autonomy and self-government by indigenous peoples. Moreover, in those regions where indigenous peoples themselves have initiated or developed ways and means to economically sustain their own autonomy and self-government, States have discriminatorily challenged the ability of these peoples to do so, attempting to claim exclusive power to regulate this dimension of self-determination and self-government. Such actions must be stopped and eliminated.

International Law Association

From 2011 to 2014, the International Law Association (ILA) Committee on the Rights of Indigenous Peoples addressed and prepared an Expert Commentary on the UN Declaration where they confirmed a number of important features about its legal status and the effects of the comprehensive provisions. The ILA Committee concluded that the U.N. Declaration has diverse legal effects and, in particular, several of its provisions fall into the category of customary international law, thus generating significant legal effects and obligations for U.N. member States.

With respect to the Report of the ILA 2010 Committee in The Hague, the Committee stated that:

> The relevant areas of indigenous peoples' rights with respect to which the customary law discourse arises are self-determination, *autonomy or self-government,* cultural and identity rights, land rights, as well as reparations, compensation and redress (ILA 2010, 43, author's emphasis).

The right to self-determination has important foundational elements. As mentioned above, the right to self-determination is a prerequisite for the existence and enjoyment of all other individual and collective rights of indigenous nations, peoples and communities. Also

is all one right, including the important elements of self-government and autonomy, but also the important characteristics manifested in the expression of rights in relation to those outside the respective indigenous peoples and nations, including member states of the United Nations. Again, the right to self-determination is inherent, pre-existing.

And, when one considers the essential doctrine of equal application of the law to protect against racial discrimination - a peremptory norm of international law - a fundamental principle of international law that is accepted by the community of States as a norm from which no derogation is permitted,[15] it is clear that the right to self-determination of indigenous peoples is the same right that applies to all other peoples and is consistent with international law.

In the Report of the ILA Committee in Sofia, 2012, where members presented their final conclusions and recommendations, the Committee reaffirmed its collective mi- rada so that:

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

In addition, specifically with respect to autonomy and self-government, the Committee established that:

> States must also comply - in accordance with customary law and, where applicable, international treaty law - with the obligation to recognize and promote indigenous peoples' rights to autonomy and self-government, which translates into a number of prerogatives necessary to ensure the preservation and transmission to future generations of their cultural identity and distinctiveness; these prerogatives include, *inter alia*, the right to participate in decision-making at the national level with respect to decisions that could affect them, the right to be consulted with respect to any project, the right to be consulted with respect to any project, the right to be consulted with respect to any project, and the right to be consulted with respect to any project that could affect them.

15 Peremptory norms of international law include crimes against humanity; war crimes; piracy; racial discrimination; genocide; apartheid; slavery and torture.

> that could affect them and the associated right that projects that significantly impact their rights and ways of life are not carried out without their free, prior and informed consent, as well as the right to autonomously regulate their internal affairs according to their customary laws and to establish, sustain and develop their own legal and political institutions. (ILA, 2012, p. 35).

An additional right that is rooted in the right to self-determination is the right to free, prior and informed consent (FPIC). FPIC is the principle whereby a community has the right to give or withhold consent to proposed projects that might affect lands that it customarily owns or customarily occupies. 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 only used by regressive governments to generate 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 and non-coercive negotiations between investors, companies or governments and indigenous peoples prior to development or other undertakings on their lands, territories and involving their resources are an essential pathway consistent with the right to self-determination. Those wishing to advance their interests must enter into dialogue and negotiations with the indigenous peoples concerned, recognizing their interrelated and inherent rights. Again, the indigenous peoples concerned have the right to decide whether or not to agree to the project once they have a full and accurate understanding of the implications of the project on themselves and their lands, territories and resources.

Crucially, 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 to 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 *develop* the lands, territories and resources that they possess by reason of their ownership.

traditional or other traditional form of occupation or use, as well as those that have been acquired in another form.

3. States shall ensure the legal recognition and protection of these lands, territories and resources. Such recognition shall duly respect the customs, traditions and land tenure systems of the indigenous peoples concerned (emphasis by the author).

As noted above, there are few but increasingly positive examples where indigenous peoples have succeeded in exercising the right to self-determination that is strongly aligned with what they held prior to contact. In the comprehensive land claims agreements on behalf of the Inuit in Labrador, Canada affirms the Nunatsiavut's right to self-determination and administration over their lands, territories and resources, including "sea territory" (offshore) consistent with the definition under the United Nations Convention on the Law of the Sea. In addition, the Inuit of Greenland currently have extended autonomy over matters within and outside Greenland and have carefully researched and adopted a political agenda 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 peoples to self-determination, including indigenous p e o p l e s .

Conclusion

In conclusion, we have numerous heartbreaking 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 in conventional international law. Since the adoption of the U.S. government in 2010, we should celebrate the fact that the UN Declaration is a consensual instrument of international human rights. It is important to note that the UN Declaration has been reaffirmed by consensus of the General Assembly on numerous occasions. It is increasingly regarded as an authoritative source of guidance for the various institutions, including parliaments, governments, courts, institutions of higher education, the judiciary and the media.

and regional and international human rights treaties. However, the quest for equality continues.

Indigenous peoples, wherever they are in the world, have very extraordinary knowledge and a wealth of indigenous knowledge about who they are and how they relate to everything around them - their countries of origin and all living things - there is much we have to offer. Our strength lies in our identity as distinct peoples. The world community has recognized this through the adoption of the various international human rights instruments specific to indigenous peoples. Therefore, the intention 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 also how to use the tools of international human rights law at the local, national, regional and international levels. Again, the intention was to illustrate how these well-established international norms are useful tools to employ in a multi-scale, multi-pronged effort by indigenous peoples to obtain recognition and respect for their right to self-determination and its various elements. And this is just a glimpse of what is possible.

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

We should be doing all we can at the regional and inter- national levels, through greater use of the UN's partner treaty bodies, 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 far-reaching advances we have made against

all odds, and thus add to the force of reality to achieve the equality aspired to by our people as a central feature of our right to self-determination.

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I PART

Constrictum **posmulticultural**

The implementation gap of indigenous peoples' rights over lands and territories in Latin America (1991-2019)

Ritsuko Funaki

Introduction

During the last two decades of the twentieth century, Latin American countries experienced a dynamic of indigenous social movements and, consequently, a constitutional claim was born that opened the way for the recognition of the demands for rights embodied in political and territorial autonomy (Van Cott, 2001, pp. 30-31).

Within the new constitutions that have recognized the rights of indigenous peoples as a result of the vindicatory process, as well as the level of progress in their respective legislations, considerable variations have been demonstrated in their degree of vindication, thus drawing the attention of academic researchers and international organizations such as the Inter-American Development Bank (IDB) (Barié, 2003; Iturralde, 2011). At the same time, as the then Special Rapporteur on the human rights of indigenous peoples of the United Nations (UN) Stavenhagen (2006) warned in his report, we have noticed that there is a large "implementation gap" between the letter of constitutional texts and their practical application.

While coherent and sufficient legislation for the implementation of the rights established in the Constitution is an indispensable precondition, "the main problem" of this gap, according to the Special Rapporteur, is "administrative, legal and political practice" that violates the human rights of indigenous people contemplated at the formal level (Stavenhagen, 2006, para. 83).

Experts who observe this reality closely analyze these gaps in detail, focusing on the outstanding cases of Bolivia, Colombia and Peru,

Ecuador, Panama or Nicaragua, among others (Aylwin, 2012; Muñoz, 2016; Ortiz, 2010, 2015; Tockman & Cameron, 2014). Therefore, if we are aware that no country in Latin America is fully complying with what it promised,
What did it mean for these multi-ethnic countries to struggle to reform the magna carta magna as a result of the demands of their native peoples? It would seem that it made no sense to seek a legal guarantee for the autonomy of indigenous peoples in a modern state where formality, ironically, has no real impact on improving the situations in which these communities find themselves.

However, if we look at the problem from a constructivist point of view, it is only natural that no country has automatically transformed itself into what is defined in its reformed Constitution, as this would always require a large-scale social learning process. In this sense, the challenge is how to make the new rules of the game effective in order to improve the situation of coexistence between different indigenous and non-indigenous peoples and nations.

To contribute to that purpose, this essay will first ask the following question: how large are the implementation gaps in Latin American countries that have advanced in the legalization of indigenous peoples' rights? Answering this question is challenging, as stated by Inguanzo, the Spanish political scientist who did a comparative analysis on the legal recognition of indigenous peoples' rights in Southeast Asian countries. In- guanzo (2016), in her book, indicated that "such gaps are linked to particular local (and even personal) experiences, in such a way that a rigorous comparative analysis of such magnitude becomes incomprehensible and incommensurable" (p.16). Sharing this methodological point of view, the present study will propose a way of carrying out a comparative analysis of the gaps in Latin American cases that have already entered the implementation phase.

The methodological basis for the present study is fuzzy set logic, more specifically Fuzzy Set- Qualitative Comparative Analysis (Fs-QCA). However, Fs-QCA itself will not be performed within this work, but in the next phase of the study, due to the lack of available data on the dependent variable or, in QCA terms, results showing the degrees of the phenomenon under study: the implementation gap.

This methodology makes it possible to analyze the causal complexity of social phenomena involving *conjunctural causality* and *equifinality*. The first attribute is

refers to the fact that by influencing a certain group of factors a certain result is obtained; however, the same result would not be reached without the presence and interaction of that group of factors. In other words, it admits that the variables are not *independent* as assumed in statistical methodology.

The second attribute refers to *equifinality*, a presupposition that there are different ways and combinations of factors that can lead to the same result. Thus, the methodology, while admitting the complexity of social realities, makes it easier to find general rules by systematic comparison based on mathematics such as Boolean algebra or set theory (Ragin, 1987; Schneider & Wagenman, 2012).

The first phase of this research seeks to identify the conditions that hinder the effective functioning of the institutions for internal autonomy, which is why it is of great importance to first *measure* the gaps with full awareness of how complicated this phenomenon is.

Creating an index capable of comparing the different cases in the region has its advantages and disadvantages. The greatest advantage would be to be able to ask, for the first time, the following question: why does the implementation gap persist to a greater degree in some countries while in others not so much? In this way, we will be able to discover what conditions influence the implementation of the rights of indigenous peoples from a comparative approach. On the other hand, one of the major disadvantages would be a considerable loss of information on each of the cases subject to comparison, since, as explained in the following section, in order to facilitate the comparative analysis it is necessary to operationalize the concepts that make up the gap and inevitably simplify them, although without losing their core.

However, as mentioned above, in order to locate the countries and their different levels of implementation, it is essential to operationalize the qualities shown by different aspects of noncompliance according to objective references. For this purpose, the indications made by Bennagen at a meeting of experts organized by the UN in 1991 will serve as a guideline. The purpose of the event was to review the experiences of countries with internal autonomous governments of indigenous peoples in the world. The Philippine anthropologist then indicated that it was possible to identify general values crystallized throughout the process of these movements for self-determination of indigenous peoples and that this would serve as a standard for the purpose of evaluating concrete situations of indigenous autonomy.

na. The expert (Bennagen, 1992, p. 72) pointed out five operational items to take into account in this aspect:

- Control of territories and their natural resources.
- Legislative, executive and judicial entities where to include their respective indigenous institutions.
- Appropriate representation of indigenous cultural communities in the different power organizations; not only in the autonomous territorial units, but also in the national government.
- Fiscal autonomy, including the power to collect revenues; it may be a co-participation of national income or an independent tax administration.
- Respect, protection and development of indigenous cultures.

While the original plan for this study was to analyze these five items qualitatively in order to later elaborate a holistic index of implementation, upon reviewing the information available on them in the preparatory research, it was concluded that to examine each aspect indicated by Benaggen would require a large amount of qualitative data that would not be feasible to investigate within the period and space available for this chapter.

Therefore, in order to avoid this ending up being an unsuccessfully superficial evaluation, the study finally decided to focus on a single item. Because of its most essential and controversial meaning, this paper will analyze the first element that makes up indigenous autonomy, i.e., control of territories and natural resources.

Methodology

The procedure chosen to select the cases to be analyzed is as follows: first, we collected legal information (stipulated until the end of 2018) from the seventeen Latin American countries of the continent. Second, we reviewed their constitutions and laws relating to the rights of indigenous peoples.[1] In this initial phase, within the rights of indigenous peoples, we took into consideration not only rights to lands and territories, but also the rights to

1 The professional collaboration of my fellow lawyer Rubén Rodríguez, to whom I am deeply grateful for his help, was vital in carrying out this phase of the research.

autonomy and self-determination, i.e., items two and three proposed by Bennagen. In this way, we can ensure that the countries under analysis have a legal foundation for an autonomous regime, as well as access to land. However, in the next phase we focus specifically on the implementation gap on land rights.

Based on the legal research mentioned above (see Table 1), we selected ten countries: Bolivia, Colombia, Ecuador, Guatemala, Mexico, Nicaragua, Panama, Paraguay, Peru and Venezuela. These are the countries that have political-administrative entities or communities with legal personality to exercise indigenous autonomy, as well as the legal guarantee for collective property for indigenous peoples.

Table 1
Rights to collective property and autonomy recognized in constitutions and legislations

Country	Constitution (Updated)	Land law Community property	Entity to perform Autonomy	selection	ILO Ratification C169 (C107)
Argentina	1994	Guarantees respect for community possession and ownership of land (Article 75, paragraph 17).	does not appear		2000 (1960)
Bolivia	2009	arts. 30, II, 4°, 6°; 56; 388; 393; 394, III; 395; 403; 394, III; 395; 403	Original Indigenous Peasant Autonomy, arts. 269; 270; 271; 272; 273; 275; 276; 289; 290; 291; 292; 293; 394; 295; 296; 304	x	1991 (1965)
Brazil	1988 (2002)	arts.20, XI; XXV; 231, 1°, 4°,5°,6°, 7°; 174, 3°	does not appear, only indirectly in Art. 231.		2002 (1965)
Chile	1981 (1989)	does not appear	does not appear		2008 (no ratified)
Colombia	1991 (2016)	arts. 58; 63; 72; 79; 80; 95, 8°; 329	Resguardos, Indigenous Territorial Entities, arts. 286; 287; 329; 330; 357	x	1991 (1969)
Costa Rica	1949 (2015)	does not appear in Const, *Guarantees as indigenous reservations (Law No. 6172,1977)	not listed*Indigenous reserves are not state entities (art. 2, Law No. 6172).		1993 (1959)

Ecuador	2008	arts.57, 4°, 5°, 11°; 60	Indigenous and Pluricultural Territorial Districts (arts.57, 9°, 10°; 242; 257)	x	1998 (1969)
El Salvador	1983 (2014)	communal lands in general (art. 105)	does not appear		Not ratified (1958)
Guatemala	1986 (2002)	arts. 66; 67; 68	Respect for their way of life only (art.66) *Indigenous Mayors' Offices, Auxiliary Mayors' Offices (Decree No. 12-2002)	x	1996 (not ratified)
Honduras	1982	art. 346	does not appear		1995 (no ratified)
Mexico	1917 (2018)	arts. 2, A-V,VI;27; 27, VII	Municipalities and municipal sub-level art. 2; 2 A; 2 A VIII	x	1990 (1959)
Nicaragua	1987 (2014)	arts. 5, 6°, 7°; 89; 180	Autonomous Regions, (arts.2; 5; 89; 175; 177; 180; 181)	x	2010 (no ratified)
Panama	1972 (2004)	art. 127	In the Constitution, respect for the political participation of the indigenous communities (arts. 124; 147; 314) **Indigenous Regions	x	Not ratified (1971)
Paraguay	1992	arts. 63; 64; 66; 115, 11°.	arts. 63; 65 *Municipal sub-level, Indigenous Communities (Law No. 904, 1981)	x	1993 (1969)
Peru	1993 (2005)	arts. 60; 88; 89	Municipal sub-level, Champion Communities and Native Communities (arts. 89; 149)	x	1994 (1960)
Uruguay	1966 (2004)	does not appear	does not appear		Not ratifi- ed (not ratified)
Venezuela	1999 (2009)	art. 119	Only within the self-government of the municipality (arts. 119; 125; 169).	x	2002 (not ratified)

** The self-management rights of indigenous peoples are enshrined in the laws establishing the indigenous comarcas (Guna Yala: Law No. 16 of 1953; Emberá Wounaan de 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: Own elaboration based on constitutions and laws.

Source for testing

The data base for this study is the documents published by the different international organizations that monitor and promote the implementation of the rights of indigenous peoples.

The first of these is the comments of the Committee of Experts on the Application of Conventions and Recommendations (CEACR) of the International Labor Organization (ILO) (see Annex 1, Table 6 for CEACR citations hereafter). This committee drafts comments in two forms: *observations* and *direct requests*. *Observations* are generally used for the most serious cases of non-compliance with obligations. *Direct requests*, on the other hand, deal mainly with technical issues and serve to clarify certain points that the reports submitted by governments do not explain with sufficient detail and examples[2] . In addition, we also review reports of the tripartite committee established to examine *complaints*; these are issued when allegations of violations of the provisions of a convention are received.

Taking advantage of the characteristics of these documents, which allow us to identify cases of noncompliance with a filter of the international standard, this study also analyzes the comments and reports concerning the implementation of the Indigenous and Tribal Peoples Convention (No. 169). This agreement was adopted in 1989 and entered into force in 1991.

Twenty-three states have ratified it, including all the countries analyzed in this study except Panama. For this specific case, we consulted the documents on Convention No. 107, which is the predecessor of Convention No. 169, and which also serves to obtain information of a similar nature.

2 This committee periodically examines the reports submitted by governments that have ratified a convention of the organization. Governments are required to provide reports on the application of the ratified convention within one to five years, depending on the urgency of the matter. The commission is composed of twenty independent experts from all parts of the world and meets once a year to examine reports submitted by governments, as well as communications from employers' and workers' organizations. The latter, however, are not received on a regular basis like the former, but are only issued when emergencies are perceived and are intended to support the government's position or, in the opposite case, to reveal the State's non-compliance with the provisions of a convention. Based on information received well in advance of the annual meeting, the committee analyzes the situation of application of a convention and adopts a unanimous conclusion among members, although it is also possible to adopt decisions by majority vote (ILO, 2019, pp. 17-21).

Although these documents have the major advantage of being recognized as a reliable official source for studying different situations, caution must be taken in relation to their possible disadvantages, since when there is a serious problem with the rights of indigenous peoples in a country, that government tends not to provide required information or simply to omit the obligation to submit reports to the ILO, which makes it difficult to clearly identify what is happening in that country.

Therefore, and to complement this aspect, we use another source of information. This second source is the reports prepared by the Special Rapporteurs on the rights of indigenous peoples. The position was created in 2001 by the UN Commission on Human Rights and is responsible for submitting annual reports on the human rights situation of indigenous peoples, as well as conducting country visits, communicating information received on the human rights situation, submitting recommendations and carrying out follow-up activities. Up to the time of this analysis, three rapporteurs have been appointed: Rodolfo Stavenhagen (2001-2008), James Anaya (2008-2014) and Victoria Tauli Corpuz (2014-2020). Due to its characteristics, this source allows us to know in particular detail the critical situations of the human rights of indigenous peoples. The same rapporteurs, on many occasions, are responsible for visiting just those countries whose governments in the first source it is observed that they no longer respond to the ILO commission.

Finally, the third source consulted are the documents published by the Inter-American Commission on Human Rights (IACHR) and the Inter-American Court of Human Rights (IACHR Court); both institutions belong to the Organization of American States (OAS). While the first two texts provide us with relevant information in a summarized form in order to cover various problems, this one allows us to see in greater detail the concrete cases of non-compliance. Among the publications of these institutions, we used the following documents: from the IACHR, both admissibility reports and merits reports, as well as precautionary measures detailing the specific claims that were examined by the commission itself, and analysis reports on the member countries and thematic reports. From the IACHR Court, for its part, we consulted the judgments of the cases that dealt with an alleged violation of the human rights of indigenous peoples, especially those related to land in the subject countries; we reviewed the cases closed up to 2018 and their files (a summarized version of the case).

The above-mentioned sources, by their nature, allow us to keep abreast of relevant breaches of indigenous peoples' rights against the backdrop of the international standard. Although on several occasions governments claim that they are making efforts to comply with their international obligations by indicating legislation, particular programs, dialogues or workshops organized with indigenous peoples, the words of governments do not ensure their stated effect. In this sense, what can be verified with these sources is, substantially, situations that demonstrate *non-compliance* on the part of such governments. For this reason, the index elaborated in this study will be to qualitatively measure the gaps that exist between legalities and their practices.

Text analysis procedure

The procedure for analyzing the documents is carried out in the following four stages.[3] In the first stage, all the documents on each of the countries are examined.[4] The purpose of this stage is to explore the key points to distinguish a situation of severe non-compliance from a relatively minor one. It also serves to get an idea of what kind of land issues have been identified as problematic in the reality of the countries studied. For this purpose, notes are taken from each document and relevant texts are marked. At the same time, other sources are consulted, such as audios and videos of the hearings held at the IACHR on the issue of the human rights of indigenous peoples, and news published in the media or blogs of Non-Governmental Organizations (NGOs) that report on related cases are also reviewed. Although these additional sources of information are not used as a direct basis for examination, they are useful to learn about the cases referred to in the documents from multiple angles.

In the second stage, a guide for analyzing the texts is created based on the knowledge obtained in the first stage, together with the fundamental concepts expressed in the second part of Convention No. 169, which deals with land (arts. 13-19). In this way, four comparative approaches are established for re-examining the documents:

3 I would like to thank Xavier Basurto and Johanna Speers for sharing with the public their inspiring methodology for calibrating qualitative data (Basurto & Speers, 2012). To develop this study their work has been of essential help.

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

- Collective property titles for indigenous peoples (arts. 13, 14-1, 14-2).[5]
- Territorial security against invaders (arts. 14-2, 14-3, 18).[6]
- Territorial security in the face of evictions and displacements (arts. 14-2, 16).[7]
- Consultations on the natural resources existing in the lands occupied by indigenous peoples (art. 15).[8]

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

6 "(...) and ensure the effective protection of their rights of ownership and possession" (art. 14-2, second half). (3) "Appropriate procedures shall be instituted within the framework of the national legal system for the settlement of land claims made by the peoples concerned" (art. 14-3). "The law shall provide for appropriate penalties for unauthorized encroachment upon, or unauthorized use of, the lands of the peoples concerned, and governments shall take measures to prevent such infringements" (art. 18).

7 "Subject to the provisions of the following paragraphs of this Article, the peoples concerned shall not be removed from the lands which they occupy. Where, exceptionally, the relocation and removal of these peoples is considered necessary, it shall be carried out only with their free and informed consent. Where their consent cannot be obtained, such relocation shall take place only after appropriate procedures established by national laws and regulations, including public inquiries where appropriate, in which the peoples concerned have the opportunity to be effectively represented.

Whenever possible, these peoples shall have the right to return to their traditional lands as soon as the causes for their relocation and removal cease to exist. Where 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 a quality and legal status at least equal to that of the lands previously occupied by them, which will enable them to meet their needs and ensure their future development. Where the peoples concerned prefer to receive compensation in money or in kind, such compensation shall be granted to them, with appropriate guarantees. 5. Relocated and relocated persons shall be fully compensated for any loss or damage suffered as a result of their displacement" (art.16).

8 "The rights of the peoples concerned to the natural resources pertaining to their lands shall be specially protected. These rights include the right of these peoples to participate in the utilization, 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 the peoples concerned, with a view to ascertaining whether and to what extent their interests would be prejudiced, before undertaking or continuing to undertake any activities which would adversely affect the interests of these peoples.

Thus, for each approach, a provisional scoring rule is prepared to serve as a guide. However, this is necessarily adjusted through the review of the texts in the next stage.

In the third stage, lexical searches are applied for the approaches from the second to the fourth point, identifying all the texts that carry the most frequently used words or codes for each approach.[9] When the results of the searches are obtained, they are reviewed in the original documents to confirm whether they really match the approaches and, if so, codes are placed in the segments found and then analyzed in detail.

Also, the coded segments are organized by country and time in an Excel document and analyzed again to create summaries of both items (segments and countries). Regarding the first approach, due to the complexity of the information related to titration progress, a quantitative way to evaluate the situations is applied, which will be described in detail in the next section.

In the fourth and final stage, as mentioned above, the provisional scoring rule is adjusted based on the results of the re-examination of the texts. This new rule, in turn, serves as a criterion for qualitatively measuring the implementation gap.

Analysis

Collectively titled land

The first criterion concerns the implementation of the "right of ownership and possession of the lands which they traditionally occupy" (ILO Convention No. 169, Art. 14-1). Paragraph 2 of the same article refers to the obligation of governments to "determine the lands which the peoples concerned traditionally occupy". In order to assess the state of implementation of these as

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authorize any program of prospecting for or exploitation of the resources existing on their lands. The peoples concerned shall, wherever possible, participate in the benefits accruing from such activities, and shall receive fair compensation for any damage they may suffer as a result of such activities" (Art. 15).

9 The codes used for the lexical searches are: for approach 2) *invasion*, *invader*, *settler* and *invade*; for approach 3) *eviction*, *displacement*, *dispossession* and their derivatives; and for approach 4) *prior consultation* and *without consultation.*

The review of the documents was unable to provide a common criterion, as different expressions appear depending on the number of titles granted, the area titled or the number of beneficiaries in some countries and, in others, the number of communities.

Governments, on the other hand, tend to show the numbers that give the most successful results. However, special caution is required in interpreting such numbers when comparing countries of great geographic and population diversity. An imaginary example would be the following: it is not easy to discern which of two countries is in a more favorable situation for its indigenous peoples if we compare a country X with a national area of 120 000 000 ha of which 50% is titled for indigenous peoples occupying 30% of the national population of 40 000 000 inhabitants; with another country Y which has a national area of 40 000 000 ha of which 2.5% is titled for indigenous peoples representing 2% of the total population of 6 000 000 inhabitants.

Therefore, we decided to verify the area per person of land titled collectively and/or also individually for indigenous and peasant peoples, including Afro-descendant peoples in some cases.[10] Although it is rare to see the amount of land corresponding to each individual composing a collective holding a single land title, it works well for the purpose of comparing the various countries. In this way, the calculation helps us to know the relative magnitude in the implementation of land ownership and possession. In the case of the example, in country X the amount of titled land that corresponds to an indigenous person is 5 ha, while in country Y the same number is 8.3 ha.

At this point it is important to emphasize that the study has no intention of proposing a standard number of sufficient land area for indigenous peoples estimated per person, but rather to find a benchmark subject to the current situation in the Latin American region with the most recent data available.

In addition, we are aware of the cultural and historical diversity that exists among different indigenous groups. Intuitively speaking, there should be a larger territory for ethnic groups that live from hunting and gathering.

10 Afro-descendant peoples are included for Bolivia, Nicaragua and Peru as a whole; and for Ecuador, Guatemala, Mexico and Panama partially. The remaining countries are excluded: Colombia because it has a separate institutional framework for Afro-Colombians; and Paraguay and Venezuela because of the lack of an institutional framework for land titling for Afro-descendant peoples, who, in turn, cannot be included in their ethnic groups.

The same is true of other types of ethnic groups that live in voluntary isolation and move from place to place depending on what nature has to offer, as opposed to other types of ethnic groups that always live in a specific place and whose life depends on traditional agriculture on a family scale. In spite of this, it would not be so simple to apply criteria differentiated by characteristics apparently linked to land use if we consider the different meanings of land for each group, including spiritual and sacred use; just as there are originally hunting groups that were forced to become precarious workers, who would no longer occupy the area previously used because their habits had been modified.

After calculating the area of land titled as collective property for indigenous peoples and peasants per person, we look at the distribution of the ten countries that make up our universe. Bearing in mind that there is no generalized ideal number of land area for an indigenous person, we set an anchor in the data extracted from the countries analyzed. These, in fact, are the Latin American countries that compose a legally more advanced group to reach indigenous autonomy. The average area corresponding to an indigenous person in this universe is 6.0 ha, with a deviation of 4.1 ha, from which the Z-scores have been calculated, which serve to know where a country is situated within the distribution of the totality of the countries.

Based on these previously defined scores, we set Z ± 0.5 as our anchor and then decided on two concrete area numbers to differentiate the levels of implementation of the right to titling. To distinguish the most advanced group from the intermediate group we take the Paraguayan data, which is 8.2 ha/person, with Z-score 0.53. Since this is the Z-score closest to the anchor, the applicable number will be 8.0 ha/person. Similarly, to decide a number that separates the intermediate level from the low level we look at where the Z-score closest to -0.5 is located and this is the case for Venezuela, which indicates Z -0.48 with the estimated area of 4.1 ha/person. Thus, the applicable number in this case will be 4.0 ha/person. Finally, based on this process, we created the criteria and assigned them gap scores as follows.

Territory with collective property title: GAP SCORES

a. The indigenous land area with land titles calculated per person is greater than 8.0 hectares. ---------- 0

b. The estimated indigenous titled land area per person is between 4.0 and 8.0 hectares. ----------0,5
c. The indigenous land area with land titles calculated per person is less than 4.0 hectares. ---------- 1

Table 2 shows the data used and the final scores. Thus, we distinguish three groups with different levels of progress in the implementation of the right to lands and territories related to our first approach: collective property titles for indigenous peoples. The first group, whose implementation rate is lower, with a score of 0, is made up of: Colombia (14.9 ha), Bolivia (10.8 ha) and Paraguay (8.2 ha). Despite Colombia's outstanding figure, it should be considered that a considerable portion of its lands titled as resguardo are probably occupied, in reality, by non-indigenous agents.

Another important point to keep in mind to better understand these figures is about Paraguay. According to official reports from the country, it is estimated that 34.5 % of its titled land corresponds to a cleared area (Dirección General de Estadística, Encuestas y Censos [DGEEC], 2016, p. 32). This means that 333 023 ha of forest, the original habitat of indigenous peoples, have been lost. Therefore, the net figure for land titled and, in practice, habitable by the titled people themselves would be 5.7 ha, which would place the country in the intermediate group. However, the aspect we are evaluating here is strictly the amount of land that is already officially recognized as titled and not necessarily its use in practice. We will look at this situation more closely in the next section.

In the second group with a score of 0.5 we find: 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 high area number within this group reflects the progress achieved by the titling process of twenty-three territories in the North Caribbean Coast Autonomous Region (RACCN), the South Caribbean Coast Autonomous Region (RACCS) and the Alto Wangki-Bocay special zone (Ministry of Environment and Natural Resources [MARENA], 2017, p. 66). If, in addition, the territorial demands of the indigenous peoples residing in the Pacific, Central and Northern regions had been addressed (Procuraduría General de la República, Proyecto de Ordenamiento de la Propiedad [PRODEP], 2013, p.126), Nicaragua would very posi- tively have become part of the first group.

Table 2
Indigenous and peasant (and Afro-descendant) collectively titled lands.

Country	National territory (ha)	Titled land for indigenous peoples and farmers (%)	Land titled for indigenous peoples and peasants (ha)	Indigenous (and Afro-descendant) population (%)	Indigenous (and Afro-descendant) population	Titled land/ estimated person (ha)	Z-score	Score - Gap
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 Communal Property) of 21 700 000 ha together with Indigenous Original Peasant Territories (TIOC, initially referred to as Tierra Comunitaria 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. The titled land represents the sum of registered surface area for 773 indigenous reserves (DANE, 2016, p. 23). The indigenous population was calculated based on the Estimation of the total number of people of 48 258 494 that make up the people censused and omitted (DANE, n.d.). Since the indigenous population censused was 1 905 617, which is equivalent to 4.4% of the national population (DANE, 2019, pp. 8-9), we simply multipu- lidated the total estimated population by the percentage of the indigenous population censused. This figure does not include 2 982 224 of the Black, Afro-Colombian, Raizal or Palenquera (NARP) population, since another land system is applied, Collective Territories of Black Communities (TCCN) through which they legalized 181 territories with a total area of 5 322 982 ha (DANE, 2016, p. 23).

3. Ecuador. The total area of legalized land covers 858,634.79 ha in the Coastal region, which is the sum of 121,000 ha for the Awá nationality and 515,965.38 ha for the Manta-Huancavilca-Puná People, presented in (Ormaza and Bajaña, 2008, pp. 5-6, Table 1), 91 817.38 ha for Chachi nationalities, 347.01 ha for Eperaara Sepidaara and 129 504.65 ha for Afro-Smeraldeño People based on Property Registry of Eloy Alfaro, San Lorenzo cantons and field work conducted in 2012 elaborated 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, which are composed as follows: A'I Cofán nationality 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 is calculated from the total of the following three numbers. First, 194 394 ha of 331 communal and ancestral lands in the 9 provinces, except Tungurahua, according to the land survey conducted between 2012-2016 (SIGTIERRAS, 2017, p. 41). Second, 11 074.88 ha of land with communal tenure form in the province of Tun- gurahua estimated with the database of the Continuous Agricultural Surface and Production Survey (INEC-Ecuador,2019). Lately, 673 681.74 ha of the area with individual Tenure of less than 5 ha in the five provinces: Chimborazo with 170 214.27 ha, Imbabura with 91 120.04 ha, Cotopaxi 176 662.89 ha, Tungurahua 75 554.88 ha and Pichincha 160 129.66 ha (INEC-Ecuador,2019). These are five provinces most representative of the Sierra with the largest indigenous population (INEC-Ecuador, n.d., p. 53). The indigenous population in Ecuador for this study is the sum of 1 018 176 indigenous inhabitants (INEC-Ecuador, n.d., p.14) with 231 717 Afro-Ecuadorian inhabitants residing in parishes with more t h a n 20% Afro-Ecuadorian population, based on the 2010 Census, elaborated by Antón (2015, pp. 119-121).

4. Guatemala. The titled land is the sum of 1 577 124 ha (Elías et al.,2009,p.42) of communal lands and 200 000 ha that was added according to the Actualización del Diagnóstico de Tierras Comunales de Guatemala. Informe preliminar, Programa de Estudios Rurales y Territorriales, Facultad de Agronomía, Universidad de San Carlos de Guatemala, unpublished report, 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 Xinka (1.8%) and Garífuna (0.1%) according to the 2018 Census (INE-Guatemala, 2019, p.10).

5. Mexico. The titled land is estimated based on the sum of the Registered Communal Surface (SCR) at the national level of 17 437 951 ha (RAN,2019a), and the Registered Ejidal Surface (SER) of 31 182 683 ha (RAN, 2019b) of the sixteen states (Campeche, Coahuila, Colima, Chiapas, Guerrero, Hidalgo, Michoacán, Morelos, Nayarit, Oaxaca, Puebla, Quintana Roo, San Luis Potosí, Tabasco, Tlaxcala, Veracruz and Yucatán) that have the indigenous po- pulation greater than 20% at the state level and the state of Mexico that has the largest number of the 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) with the Afro-descendant population of 461 539 people. This figure was calculated from the total Afro-descendant population of 1 381 853 (1.2% of the national population) minus the Afro-descendant population with indigenous self-ascription of 896 823 (64.9% of the Afro-descendant population), subtracting also the foreign-born Afro-descendant population of 23 492 (INEGI, 2017, pp. 3, 24, 56).

6. Nicaragua. Titled land corresponds to the twenty-three indigenous and Afro-descendant territories titled as of 2016 (MARENA, 2017, p. 66). The indigenous population includes the Afro-descendant population, based on the estimate as of 2010 prepared by ECLAC (2014, p. 98).
7. Panama. The sum of the area of five comarcas (Gunayala, Emberá/Wounaan, Kuna de Madungandi, Ngäbe-Buglé, Kuna de Wargandi) of 1 689 022 ha and five titled territories (Caña Blanca, Puerto Lara, Arimae, Ipeti, Piriati) of 16 442 ha, data presented in the presentation "Situación de la Adjudicación de tierras indígenas en Panamá" (Situation of Indigenous Land Adjudication in Panama), by Indigenous Representatives of Panama, at an event organized by ANATI (National Land Administration Authority), FAO, the World Bank and the Inter-American Network of Cadastre and Registries, an initiative supported by the OAS, May 28-30, 2018. The indigenous population are the sum of the eight indigenous peoples along with the other and undeclared category. This figure includes 10 691 people who self-identified as both Afro-descendant and indigenous, and 3 092 524 Afro-descendant people are not included (INEC-Panama,2010, Table No.20; Rodríguez,C., Aquino, M. and Diéguez, J, 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). Indigenous population is the sum of the 19 indigenous peoples based on data from the III National Population and Housing Census for Indigenous Peoples, 2012, and National Population and Housing Census, 2012 (DGEEC, 2016, p. 18).
9. Peru. The titled land is composed as follows. 5141 titled peasant communities of 24 084 763 ha, 1365 titled native communities of 12 159 400 ha (Instituto del Bien Común, 2016, p. 25) and five indigenous reserves with the total area of 2 812 686 ha for indigenous peoples in voluntary isolation (Ministerio de Cultura, 2016, pp. 65-66). The indigenous population refers to the population with self-perceived ethnicity of the following groups: Quechua, Aimara, Native or indigenous of the Amazon, Part of another indigenous or original people and Afro-descendant. The number of people was estimated in bse to the census population aged 12 and over according to ethnic self-perception of the same groups that o c c u p i e s 29.32%, with which the total estimated population of 31 237 385 people was multiplied based on data from the 2017 Census (INEI, n.d.).
10. Venezuela. Titled land corresponds to the sum of titled land for 545 indigenous communities in the period 2005-2014 (De Zayas, 2018, p. 14). The indigenous population refers to its 52 indigenous peoples that were registered in the 2011 Census (INE-Venezuela, 2015, pp. 29-31), and the Afro-Venezuelan population (due to self-recognition as black and Afro-descendant) of 3.6% is not included (INE-Venezuela, 2014, p. 29).

In the last group, with score 1, is where the largest implementation gap exists and in this group we have: Guatemala (0.3 ha) and Mexico (1.9 ha). Guatemala has the lowest number, by a wide margin. Despite the fact that the country's Constitution establishes the right to collective ownership of indigenous peoples (arts. 67-68), to date no appropriate mechanism has been developed to resolve the land issue.

Territorial security against invaders

The second and third approaches deal with *territorial security*. The second half of Article 14(2) of Convention No. 169 indicates the obligation of governments to "ensure the effective protection of their rights of ownership and possession". Underpinning this primary aspect of land rights, here we use the term *territorial security* rather than *effective protection*; they signify the same condition, but with unequal perspectives. Because the vast majority of the situations documented are completely lacking in territorial protection by governments, it is more congruent to focus on the indigenous subject to describe this dimension.

In this way, we created two categories of possible threats to territorial security. The first is *invasion* and the second is *evictions* and/or *forced displacements*. Based on the review of the documents in the first stage of the analysis we have identified these as the main problems

The territorial factors that occur with high frequency in all the countries for which we have established the criteria.

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

We distinguish these two types of risk because their impact on territorial security is different. While an *invasion* hinders the traditional life of indigenous peoples in the long term, *evictions* and *forced displacements* immediately or in the fairly short term dis-appropriate the right to those lands. Therefore, it is more relevant to consider these incidences with a greater gap between land rights and their implementation and, therefore, whose score should be assigned a higher weight than other criteria.

To define the scores for territorial security in the face of invaders, we looked at the measures taken by the governments. In all cases, except Guatemala, the existence of invaders is observed. This is due to the fact that, in that country, indigenous peoples lack legal security regarding their land rights, which in turn affects this basic aspect. During the internal armed conflict that took place in Guatemala between 1960 and 1996, a majority of indigenous peoples were forcibly displaced; with the Peace Accords, some returned to their land of origin and others came to a new place to establish a life free of violence. However, once the area where they currently live was declared a protected natural area, the indigenous inhabitants are the ones who have been accused of being *invaders* (IACHR, 2017a, para. 217). Due to this context, although no *invaders* can be observed on lands belonging to indigenous peoples in Guatema- la, we consider it equivalent to a maximum gap score for this criterion.

In order to compare the rest of the countries that show in common the existence of invaders, a cut-off point that has been found is how governments reacted to those situations in which indigenous families or communities suffered *invasion* of their land. Since no government *effectively* protects land rights in advance of an *invasion*, it is persuasive to check their performance after the event. The criteria and their scores are shown below.

Likewise, to evaluate the efficiency of the measures taken by the governments, that is, to differentiate whether the measure was apparently *insufficient* (criterion b, score 0.5) or *insignificant* (criterion c, score 1), we checked both the characteristics of the measures themselves and the situations that arose after the measures were taken.

Territorial security in the face of invaders: gap scores

a. When situations of territorial invasion are observed, the government takes effective measures to solve the problem.----------0
b. When situations of territorial invasion are observed, the government takes apparently insufficient measures. ----------0,5
c. When situations of territorial encroachment are observed, the Governmentdoes not take measures ortake seemingly insignificant measures ----------1

Table 3
Breach of territorial security in the face of invaders

Country	Situation Summary	Government Measures/Responses	Ptj.
Bolivia	The most vulnerable groups, such as the Yuqui and Ayoreo living in the Amazon and Chaco, are under constant land pressure from colonizers, other indigenous communities and loggers (Sta- venhagen, 2009, pr. 46).	Despite various measures such as the creation of the Indigenous Forest Guard (CEACR, 1994s), provision of TCO lands, declaration of "intangible zones" etc. (Stavenhagen, 2009, prs. 46, 49), it cannot be confirmed whether territorial pressure has diminished.	0,5
Colombia	There are acute territorial conflicts between indigenous peoples and settlers or other non-indigenous people, even after legalizing the land as a resguardo, the invasion cannot be stopped (Stavenhagen, 2004a, prs. 59, 60, 64; 2007a, pr. 121; 2007b, pr. 192, pr. 192, pr. 191). 59, 60, 64; 2007a, pr. 121; 2007b, pr. 192, CEACR, 2009o; 2010; IACHR, 2013).	The government's position in this situation is that once the resguardo is titled, it is up to the communities to prevent the territory from being invaded (CEACR, 2009o).	1

Ecuador	The group in voluntary isolation Tagaeri-Taromenani suffer from Huaorani invaders and loggers, which has caused three massacres (IACHR, Nov. 6, 2014). The indigenous people of the northern border suffer invasions due to the internal conflict in Colombia (Tauli Corpuz, 2019, pr. 70).	The Government did not take effective measures for the Tagaeri-Taromenani group and finally rejected the responsibility to comply with the precautionary measure requested by the IACHR (IACHR, Nov. 6, 2014, pr. 11).	1

Guatemala	Indigenous people are considered "invaders" in the department of Petén, if once the area where they occupy is declared a protected natural area (IACHR, 2017a, pr. 217).	In the face of extreme territorial legal insecurity, indigenous peoples face considerable difficulty in making claims in the face of invasion (IACHR, 2017a, pr. 217).	1
Mexico	Especially in Guerrero, Chiapas and Chihuahua, several indigenous communities complained about invasions that have affected land they own (Stavenhagen, 2003b, pr. 18). The trend continues (Tauli- Corpuz, 2018a, pp. 26, 27, 32, 33).	Although the Government reports some progress in addressing territorial conflicts (CEACR, 2014s), its impact seems minimal, as the IACHR issued 9 Cauteral Measures between 2014-18 (MC60- 14; 77-55; 106-15; 388-12; 277-13; 60-14; 452-13; 685-16; 361-17).	1
Nicaragua	After the land titling process for the indigenous peoples of the Autonomous Regions, territorial conflicts arose between indigenous people and settlers (IACHR, Oct. 14, 2015).	The Government receives the request for precautionary measure (MC505-15) from the IACHR in 2015, 2016 and 2017 (Res.37/15; 2/2016; 44/2016; 16/2017), and the IACHR Court (1 Sep. 2016). The situation remains tense and the IACHR requested the extension of the precautionary measure in 2019 (IACHR, 6 Sep).	1
Panama	The Kuna de Madungandí comarca and the Emberá de Bayano people suffer from the invasion of settlers. Due to the lack of demar- cation and titling of new lands for them, thus allowing settlers to systematically invade and exploit the forest (IACHR, Nov. 13, 2012; Cor-teIDH, Oct. 14, 2014).	They legislated to create the Comar- ca Kuna de Madungandi (L.24, 1996), for the titling in favor of peoples outside their co- brand (L.72, 2008) and naming of corre-gional authority in the comarca Kuna de Madungandi (L.247, 2008) (IACHR, Nov. 13, 2012; Cor- teIDH, Oct. 14, 2014).	0,5
Paraguay	Since 1991, there has been an increase in "invasions by landless peasants" of indigenous lands (CEACR, 1997s). In the Chaco, the Ayoreo people are threatened by continuous invasions and deforestation of these lands caused by authorized cattle ranching activities (Anaya, 2010a, prs. 316-339).	There are no legal provisions that can solve the problem of "landlessness" nor an investigation of the situation, which has been going on for more than 15 years (CEACR, 2007s). The Government recognizes its inability to carry out the necessary expropriations in favor of indigenous peoples (Anaya, 2010a, pr. 338).	1

Peru	The indigenous peoples in voluntary isolation Mashco Piro, Yora and Amahuaca were threatened by illegal logging in their territory (IACHR, March 22, 2007). The native community Nueva Austria del Sira suffers from invasion (IACHR, November 6, 2019).	In both cases, given the lack of measures by government authorities to guarantee the integral life of indigenous peoples in the territory, the IACHR granted MC in favor of indigenous peoples (IACHR, March 22, 2007; Nov. 6, 2019).	1
Venezuela	The Yanomami tribe living in the neighboring area of Brazil suffers invasion by garimpeiros. The Pemón people in the state of Bolivar confront illegal miners and 5 members of the people were killed (CEACR,2019o).	With the Yanomani tribe, the government reached an amicable solution (IACHR, March 20, 2012). The Pemón people created their territorial guard thus demonstrating the lack of territorial protection by the Government. (CEACR, 2019o).	1

Source: Own elaboration based on data source (CEACR and Tripartite Committee[CT] of ILO, IACHR, UN published between 1991-2019). For CEACR references, the "o" after the year of publication stands for "observation" and "s" for "request". When the ILO is used as the author, it refers to reports produced by tripartite committees of the organization with respect to complaints. The references are part of the set of documents analyzed by each country. Although the number of texts examined varies by country depending on the availability of information, what is essential for the analysis is their qualitative nature.

Table 3 shows a summary of the situations regarding territorial security in the face of invaders and the measures and/or responses of the governments. As we can see, only Bolivia and Panama scored 0.5 for this criterion.

In relation to the Bolivian case, from our database we obtained six segments extracted from two documents: the Direct Request (CEACR) of the ILO adopted at the 1994 session of the International Labor Conference (para. 21) and the report of the Special Rapporteur on the Mission to Bolivia (Stavenhagen, 2009, paras. 33, 40, 46, 48, 49, 53). The first information allows us to perceive the existence of invaders and the measure taken by the government with Supreme Decree No. 23107 of April 9, 1992, which created the Indigenous Forest Guard, formed by the indigenous people themselves. This guard was responsible for monitoring and protecting their territories with sufficient powers to impose sanctions on violators of the law (CEACR, 1994, para. 21).

However, in the second source we observed that the threats to indigenous lands persisted. The Rapporteur, who visited Bolivia from November 25 to

December 7, 2007 reported that in the lowlands there was pressure and *invasion* of the Indigenous Indigenous Territories of Origin (TIOC, initially called Tierra Comunitaria de Origen, TCO) by settlers and indigenous peasants from other regions of the country, thus generating situations of high conflict (para. 33).

One factor that had contributed to the *invasion* and appropriation of indigenous lands in the Amazon and the Chaco was hydrocarbon extraction activities (para. 40). With regard to the most vulnerable peoples, the Rapporteur described the situation of the Yuqui people with particular attention. These people were first contacted in 1959 and in the 1980s were transferred to the Bia Recuaté community, where they were provided with a Yuqui TIOC. Despite this, this population of 200-230 people was under constant territorial pressure from colonizers, other indigenous communities and loggers (para. 46). Therefore, the measure taken by the government to safeguard the life of the Yuqui people with the provision of TIOC was not sufficient to stop the threat of *invasion* of their territory.

In this context, in April 2007, the Ministry of Rural Development, Agriculture, Livestock and Environment implemented a policy for the defense of vulnerable peoples, for which the Interministerial Commission on Highly Vulnerable Indigenous Peoples was established. The Commission drew up an emergency plan for the Yuqui people and the Vice-Ministry of Land gave priority to working with the Yuqui, Araona, Ayoreo and Uru Chipaya peoples (para. 48).

With the same intention of protecting the most vulnerable peoples, in 2006 the Government had approved the declaration of an "intangible and integral protection zone of absolute reserve" within the Madidi National Park, which coincided with the traditional territory of the Toromona people, who live in isolation (para. 49). With the same objective, in December 2007, the Government endowed the Guaraní people of Chuquisaca (communities of Huacareta, Ingle, Machareti and Muyupampa) with 180,000 hectares of land under the Agrarian Reform Community Reconstruction Act (para. 53). However, since it was not possible to confirm whether land pressure has actually decreased, the Bolivian case was rated 0.5.

The other case that was evaluated with a score of 0.5 is Panama. For this case, we obtained fourteen segments from seven documents: six Direct Applications (CEA), six Direct Applications (CEA), and one Direct Application (CEA).

CR) of ILO (CEACR, 1989, paras. 12, 13; 1992, para. 12; 1996, para. 8; 2003, para.
11; 2005, paras. 20, 21; 2010, arts. 11-14; 2016, art. 13) and a report by the Rapporteur.
Special (Anaya, 2014, paras. 8, 9, 30, 34-36) along with two entire documents from the IACHR (November 13, 2012) and the IACHR Court (October 14, 2014).

To summarize the case, in this country, the indigenous people of the Kuna de Madungandí comarca and the Emberá de Bayano people were suffering from the *invasion* of other colonists in the region. The origin of the problem was a dam construction project in the area. After relocating the inhabitants, the government did not fulfill its promise to demarcate and title the new land for them, allowing the settlers to systematically invade and exploit the forest. After more than three decades since the emergence of the problem and thanks to several complaints from the population, the case reached the IACHR Court in 2014. Although during these years the Government legislated decrees to create the Kuna de Madungandi Comarca (Law No. 24, 1996), for the titling in favor of the peoples outside their comarca (Law No. 72, 2008) and the appointment of co-regulatory authorities in the Kuna de Madungandi Comarca (Law No. 247, 2008), the report of the Special Rapporteur reports that there are persistent concerns of indigenous communities both inside and outside the comarcas due to the presence of third parties (Anaya, 2014, para. 30).

Based on this situation, the CEACR Direct Request indicates that, according to the Government, the corregidor comarcal carried out in 2012 the *eviction of* thirty peasants who occupied a territory in the area of the Botes River and Piragua River (CEACR, 2016, art. 13), the Panamanian case has been rated with score 0.5, since we can perceive that the government took concrete measures, although they were not sufficient.

For the cases that were evaluated with a score of 1, we cannot go into the results country by country, although it is worth reiterating the importance of the efficiency of the measures taken by governments in response to complaints. A symbolic form of government response can be seen in the case of Colombia; according to the observation of CEACR (2009), citing the communication from the Oil Industry Workers Union (USO) that the ILO office received in 2008, the Chidima reservation, created in 2001, was created in three plots without continuity between them, which made it easier for settlers to invade the third plot. They arrived with machinery to plough and burned the grass, threatening

the indigenous people with death. For this reason, the Katío have requested that the three plots be united into a single resguardo. The government promised them that this would be done, however,

was not done and finally responding with a letter that clearly demonstrates the government's position as denounced in the USO communication:

> Attached is a letter from the Colombian Institute for Rural Development (INCODER), indicating that "in 2006, there is no budget for sanitation. They claim that when the indigenous people requested protection against invasions, INCODER replied that once the resguardo was titled, it was up to the indigenous communities to prevent the territory from being invaded (CEACR, 2009, Tierras).

For other cases with a score of 1, such as Ecuador, Mexico, Nicaragua, Paraguay, Peru and Venezuela, the qualitative characteristics of the events observed have been examined. What these cases have in common is the lack of effective measures to resolve conflicts and threats caused by the existence of invaders in indigenous territory.

Territorial security in the face of evictions and forced displacements

We treat the practices of *eviction* and *forced displacement* in the same criterion. *Forced eviction*, according to the UN definition, is "the removal of individuals, families and/or communities from the homes and/or land they occupy" (Committee on Economic, Social and Cultural Rights, 1997, para. 3). The self-res of this action have clear objectives of *removing people* from those lands. As for *forced displacement*, the actions taken may be more complex: intimidation, robbery, kidnapping, murder, massacres or mass fumigation. However, both methods have almost identical effects on individuals and force individuals, families and/or communities to leave the land.

Here we are not questioning the status of the land title, but rather the fact that there are *evictions and/or forced displacements* documented in the data source. Therefore, there may be cases in which indigenous people have not had territorial rights to the land they *de facto* inhabit for years and, for the same reason, have been evicted for *the crime of usurpation*, as was the situation in Guatemala, or also as in the case of Ecuador, where even though they maintained their full land rights to continue living there, the indigenous people were *evicted* from concessioned areas within that territory. Both cases are considered within this same category.

In order to establish criteria and scores to evaluate situations related to territorial security in the face of *evictions* and *displacements*, this study uses the documented frequencies of cases in our database. Although the numbers documented are often partial, which does not allow us to fully understand their overall situation, a clear divergence in the magnitude of the incidences has been perceived.

Therefore, even considering the great diversity of the population and the different degrees of margin of error that the information will have, it is considered a useful support for comparison purposes. Thus, we define the criteria as follows and the specific numbers referred to in the criteria are those extracted from the database.

Territorial security in the face of evictions o displacements: gap scores

a. No cases of forced eviction/displacement observed ----------0
b. Fewer than ten cases of forced eviction/displacement are observed in the period between 1991 and 2019. ----------0,5
c. Between ten and forty cases of forced eviction/displacement are observed in the period between 1991 and 2019. ----------1
d. 41 or more cases of eviction/forced displacement are observed in the period between 1991 and 2019. ----------2

Before looking at the summaries, it is worth mentioning that some cases of *invasion* that we saw in the previous section intensify the degree of violence in the area, as was the case in Mexico, Nicaragua and Peru. Although not all invasions develop in the same way, when we observe exacerbated violence, which contributes to *forced displacement*, we consider it equally for this criterion. In this way, it will be possible to distinguish an *invasion* that does not cause *forced displacement* from one that certainly reaches that more violent level by being considered in both criteria.

Likewise, it is also necessary to clarify the exception that applies to Venezuela; considering that the country has been facing a serious economic, social and political crisis since the mid-2010s, there is a clear situation of *forced migration* in that country. Thus, and despite the fact that no evidence of *evictions* and/or *displacements* of indigenous peoples in the country has been observed in the documents and texts, the criterion that applies to Venezuela is as follows

the following: d) where *massive evictions* and/or *displacements* occur. We will see the summaries and their respective scores in the following table 4.

Table 4
Gap in territorial security in the face of evictions and displacements

Country	Situation Summary	Documented frequency	Ptj.
Bolivia	Forced evictions by landowners and also by INRA resolutions in the saneamiento process have been observed (IACHR, 2007, pr.238). There are reports of an increase in evictions in favor of mining and logging concessions in the Chaco, although the information available is minimal (IACHR, 2009a, pr. 164).	The available data do not allow counting the frequency of events.	0,5
Colombia	The magnitude of forced displacement is unparalleled. Of utmost concern to the IACHR is the information received during its visit, according to which in 2012 there was an alarming increase in indigenous forced displacement, caused mainly by constant armed clashes in indigenous territories. (IACHR, 2013, pr. 798).	There were 41 events in 2012 alone, the most affected towns were. the Embera (4860), Nasa (4674), Awá (1725), Wounaan (237) and Jiw (100) (IACHR, 2013, pr. 798).	2
Ecuador	In the Cordillera del Cóndor, territory of the Shuar people, three mining megaprojects have been granted concessions. The inhabitants of the Kupiamai, Cascomi, Tundayme, and Nankints communities were evicted and the last confrontation generated displacements in San Pedro de Punyus, Kutukus and Tsuntsuimi (Tauli Corpuz, 2019, prs. 27-29). On the northern border the Awá of Gua- dalito was forced to abandon their territories when 180 military personnel settled in their community for two months in 2018 (Tauli Corpuz, 2019, pr. 70).	At least 4 forced evictions are observed (two in 2015, two in 2016), and 3 displacements in 2016 in the Shuar communities, and one displacement in the Awá community in 2018 (Tauli Corpuz, 2019, prs. 27-29).	0,5
Guatemala	There is a dynamic of evictions by judicial orders (CEACR, 2019o). In many cases, evictions are ordered by the Public Prosecutor's Office for the crime of aggravated usurpation, a legal figure adopted in 1996 that does not give communities the opportunity to prove their rights over occupied lands (Tauli Corpuz, 2018b, pr. 46).	In 2018, there were 45 evictions executed, despite the Government's commitment to apply international standards (Tauli Corpuz, 2018b, pr. 49).	2
Mexico	The main agents of eviction and displacement are landowners, companies, indigenous communities fighting for territory and organized crime groups. Cases are observed in the states of Chiapas, Chihuahua, Guerrero, Campeche, Oaxaca, Sonora, Sinaloa and Veracruz (Stavenhagen, 2003a, pr. 26; CT, 2004, pr. 113); Anaya, 2009a, prs. 247-248; Anaya, 2010, prs. 277-281, Tauli-Corpuz, 2018b, pp. 21, 23, 24, 26, 29, 30).	At least 10 specific documented cases of evictions and forced displacements have been observed.	1

Nicaragua	In the territorial conflict between indigenous communities and settlers in the Northern Caribbean Coast area, there have been multiple acts of violence, including the displacement of members of at least 12 communities. Out of a population of 10800 people in the indigenous territories, at least 4159 people have been forced to leave their homes (IACHR, August 8, 2016, pr. 8-B-iv).	Violence was observed that caused the forced displacement of at least 4159 people living in 12 communities in the Zone (IACHR, Aug. 8, 2016, pr. 8-B-iv).	1
Panama	The Naso inhabitants of the San San and San San Druy communities suffered forced evictions that occurred on March 30, April 1, 4 and November 20, 2009. The government supports the position of the third largest cattle ranching company in the area, ignoring the communities' demand to create a comarca (Anaya, 2009a, prs. 342-346; 2010, prs. 304, 305).	At least 4 evictions are observed for the same communities of the Naso people in 2009 (Anaya, 2009a, prs. 342-346; 2010, prs. 304, 305).	0,5
Paraguay	Indigenous communities whose lands are in the process of official recognition, as in the case of the Avá Guaraní of Y'apo, are the most threatened by the current landowners. The community suffered an attempted eviction in May 2014, followed by an attack by some 50 armed civilians, who invaded the community and injured, robbed and shot its inhabitants (Tauli Corpuz, 2015, pr. 27).	The fact that INDI promoted more than ten legal actions on precautionary measures in the face of evictions or displacements by landowners, ranchers and soybean farmers confirms its magnitude (CEACR, 2010s).	1
Peru	The native community Nueva Austria del Sira is suffering from invasion. The "invaders" carry out permanent acts of harassment against the Community, which has led to the forced displacement of almost half of the families. Of the 23 families that make up the Community, only 14 currently remain (IACHR, Nov. 6, 2019, prs. 9, 30).	No forced evictions are observed. Displacement is confirmed in the same case of invaders in the Nueva Austria del Sira Community (IACHR, Nov. 6, 2019, MC, prs. 9, 30).	0,5
Venezuela	The UN Refugee Agency notes that there was an 8828% increase in asylum applications from Venezuelans. An investigation conducted by the Brazilian National Immigration Council revealed that there was migration of indigenous people of the Warao ethnic group due to hunger and the absence of public services (IACHR, 2017b, pr. 466).	Due to the socio-economic and political crisis in recent years, forced migration has been observed, which demonstrates a situation as serious as massive internal displacement.	2

Source: Own elaboration based on data source (CEACR and Tripartite Committee[CT] of ILO, IACHR, UN published between 1991-2019). For CEACR references, the "o" after the year of publication stands for "observation" and "s" for "request". When the ILO is used as the author, it refers to reports produced by tripartite committees of the organization with respect to complaints. The references are part of the set of documents analyzed by each country. Although the number of texts examined varies by country depending on the availability of information, what is essential for the analysis is their qualitative nature.

Table 4 shows the summarized results regarding the territorial security gap in the face of *evictions* and *displacements*. In the group with the smallest gap (with a score of 0.5) are Bolivia, Ecuador, Panama and Peru. In all these countries the existence of *evictions* and/or *forced displacements* has been observed, although the magnitude documented is less severe compared to the other two groups.

Bolivia, for its part, presents cases of *evictions* by both land owners and government authorities, which occurred in the context of land titling, although their frequency cannot be specified (IACHR, 2007, para. 238). Similarly, although the information is minimal, it is reported that there was an increase in *evictions* in favor of mining and logging concessions in the Chaco (IACHR, 2009, paras. 164-165). For this case, since we cannot ascertain the magnitude of such events from the documents, we assessed it with the score 0.5, which implies that there were fewer than ten events in question. Obviously, in reality, there could have been more than ten occurrences, however, what is essential for this analysis is the fact that we can observe specific and recorded cases in the documents, so when the frequency cannot be identified in detail, we choose to reserve ourselves with a minimum possibility.

Let us look at the other cases within this group. In Ecuador, four *evictions* and three *displacements* caused by mining megaprojects (Tauli-Cor- puz, 2019, paras. 27-29) and one *displacement* due to military settlement on the northern border (Tauli Corpuz, 2019, para. 70) are observed. With respect to Panama, four *evictions* affecting Naso villagers from the communities of San San and San San Druy are reported in 2009. In this case, the Government supported the position of the third party, a cattle ranching company in the area, ignoring the claim of the communities to create a comarca (Anaya, 2009a, paras. 342-346; 2010, paras. 304-305).

Within this group, Peru is the only country where it was not possible to ascertain the existence of *evictions* in the sense of *evicting* indigenous people *from* the homes or lands they occupy.[11] In addition, in this country we found only one case of

11 We identified five documents that use the words *displacement*, *eviction*, *abandonment* and/or *dispossession*, including their lexical derivatives or lemmas in this context. The first four documents refer to the risk of displacement and not directly to the fact: 1) the report of the committee in charge of examining the claim indicates concern on the part of the Confederation of Peruvian Workers (CGTP) about the Law on the titling of lands of coastal communities (Comité Tripartito-OIT [CT-OIT], 1998). 2) CEACR's observation reports on

the CGTP's comments questioning "the existence of a

forced displacement in the context of the exacerbated invasion by non-indigenous settlers and their continuous acts of harassment against the native community Nueva Austria del Sira. Of the twenty-three families that made up the community, at the time the request for precautionary measures reached the IACHR in 2019, only fourteen families remained in the area (IACHR, November 6, 2019, para. 9).

In the group evaluated with an intermediate score (1) we have Mexico, Nicaragua and Paraguay. With respect to Mexico, the main agents of *eviction* and *displacement* are landowners, companies, other indigenous communities fighting for the same territory, and also organized crime groups. These acts are observed in the states of Chiapas, Chihuahua, Guerrero, Campeche, Oaxaca, Sonora, Sinaloa and Veracruz (Stavenhagen, 2003a, para. 26; Tripartite Committee-ILO [TC-ILO], 2004, para. 113; Anaya, 2009a, paras 247-248; Anaya, 2010, paras 277-
281; Tauli-Corpuz, 2018a, pp. 21, 23, 24, 26, 29, 30).

In the case of Nicaragua, *forced displacements* have been observed as a result of the territorial conflict between indigenous communities and settlers in the area of the Northern Caribbean Coast. As a consequence of this problem, there have been multiple acts of violence, including the *displacement* of the members of at least twelve communities[12] in the area. Out of a population of 10 800 people in the indigenous territories, at least 4159 people have been forced to leave their homes (IACHR, August 8, 2016, 8-B-iv)[13] .

The commission also asks the government that "Article 12 of Legislative Decree No. 994 of 2008, which provides for the possibility of evicting uncultivated lands in the event of invasion or usurpation, should not be applied to indigenous peoples who traditionally occupy the land, even if they lack formal title to it" (CEACR, 2011, art. 14). 3) In the claim document regarding a concession that has been made without adequate consultation with the Ashaninka communities, it alleges that the construction of a hydroelectric power plant would directly affect the communities, thus implying "the eventual displacement of population" (CT-ILO, 2012, para. 29). 4) Finally, in the direct request of CEACR, regarding the "protection of peoples in isolation", the commission refers to "the risk of epidemics, displacement and conflicts over living space" (CEACR, 2014).

12 Refers to the communities that have been beneficiaries of Precautionary Measure [MC] No. 505-15 by the IACHR: 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 Resolution 29/2016, MC No. 271-05, Extension of beneficiaries, Case Comunidad de la Oroya with respect to Peru. IACHR. Available at: https://bit.ly/2IILoVZ

In relation to Paraguay, the CEACR request reports that according to the mem- ory sent by the government:

> The cases of *eviction* or *forced displacement* of indigenous communities by landowners, ranchers and soybean farmers often remain for years before the Judiciary and in 2008 and 2009 the Paraguayan Indigenous Institute (INDI) has promoted more than ten legal actions on precautionary measures before the latter. (CEACR, 2010, arts. 16, 17 and 18).

Although we do not know the details of every *eviction* or *displacement* that has occurred, we can confirm that its magnitude has been at least greater than the criterion set.

In the last group, with the highest score (2), we have Colombia, Guatemala and Venezuela, which is an exception due to the phenomenon of *forced migration*. In Colombia, the severity of *forced displacement* is unparalleled and is mainly caused by constant armed confrontations in indigenous territories. According to the IACHR report, 41 events were recorded in 2012 alone and the most affected peoples were the Embera (4860), the Nasa (4674), the Awá (1725), the Wounaan (237) and the Jiw (100) (IACHR, 2013, para.798).

In Guatemala, in turn, according to CEACR observations, "there is a dynamic of *evictions* by judicial orders" (CEACR, 2019, art. 14, para. 4). The UN Special Rapporteur who visited Guatemala reports that, on many occasions, *evictions* are ordered by the Public Prosecutor's Office for the crime of aggravated usurpation; a legal figure adopted in 1996. This, moreover, does not give an opportunity to the com- munities to prove their rights over the occupied lands (Tauli-Corpuz, 2018b, para. 46). In 2018, 45 *evictions* were recorded, despite the Government's commitment to apply international standards (Tauli Corpuz, 2018b, para. 49).

The right to be consulted on the natural resources that exist on the land they traditionally occupy.

With regard to the right to be consulted on the natural resources existing on the lands occupied by indigenous peoples, Article 15 of Convention No. 169 stipulates, inter alia, the obligation of governments to establish appropriate procedures for consulting indigenous peoples "before undertaking or authorizing any program for the exploration or exploitation of resources existing on their lands" (Art. 15-2). This is one of the most controversial points in terms

of territorial autonomy.

In this analysis we have chosen to focus on the de facto implementation aspects and their consequences, instead of focusing on the processes of legislation and regulations. While it is true that there is a variation in the progress of legislation in the region, it can be seen that there are cases that, even though they have significant laws, they do not put them into practice and, therefore, do not have significant effects.

For this reason, and after an initial review of the texts, we defined the following criteria. Bearing in mind that all the countries under study show problematic features in terms of consultation rights, the most important thing is where to draw a line separating severely deficient countries from less deficient ones. For this reason, we decided to define criterion b) as shown below.

Right to be consulted on natural resources: gap scores

a. It is observed that they carry out consultations and there are no reports of inadequate practices. ---------- 0
b. At least one consultation was successful in reaching an agreement. -----0,5
c. Only cases of omission and/or inadequate consultation processes are observed. ---------- 1

The ideal and correct for point b), however, would be: *at least one consultation carried out through an adequate procedure is observed*. This implies a consultation that satisfies the qualities declared by the IACHR Court in the case of Sarayaku vs. Ecuador in 2012, that is, it must be "prior" in "good faith", it must have "the purpose of reaching an agreement", it must be "culturally appropriate and accessible", have an "environmental impact study" and inform of the possible risks of the proposed project (June 27, 2012, pp. 55-66). However, it is impossible to ascertain whether a consultation was conducted in compliance with all these requirements only with the documents examined in this study. Therefore, we looked for an alternative and scrutinized which of the aspects of an *adequate* process could be ascertained from the texts, finding, thus, two of them: *prior* and *reaching an agreement*.

The first aspect was immediately dismissed, given that in the only project where, according to the government, *prior* consultation was carried out (and where no prior consultation was carried out), the government

have noted complaints in the database), it has been corroborated with an external source that was not *prior*. Since the document (the Direct Request) allows confirmation of the specific name of the case - the Las Cruces hydroelectric project in the State of Nayarit, Mexico (CEACR, 2014) - it is easy to find out more information through the internet and, in this way, several complaints were found. One of them is the letter written by the lawyer representing the Interamerican Association for Environmental Defense and 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*. Thus, *reaching an agreement* has become the only option as a viable criterion.

Table 5
Gap in the implementation of natural resource consultation

Country	Relevant cases	Existence of an agreed consultation	Ptj.
Bolivia	There is a contradiction in the construction of the road in TIPNIS. Although the Central Obrera Boliviana (COB) denounced the absence of prior consultation and the criminalization of protest (CEACR, 2013o), the Government indicates that they carried out prior consultation (CEACR, 2014o).	Before the TIPNIS case, there were only omissions of consultation, 27 logging concessions affecting 6 indigenous territories (CT, 1999), activities of an oil company in the territory of the Guarani communities of Tentayapi (CEACR, 2005) etc.	1
Colombia	In Antioquia, the lack of consultation is noted. On the other hand, progress is reported in consultation processes in the Sierra Ne- vada, Guajira and Nariño (Stavenhagen, 2005, pr.55). In the Mandé Nor- te project, they carried out the consultation in 2013 and as a consequence changed the route of the road to be built (CEACR, 2016s).	The Government indicates that, during the period from 2003 to 2015, a total of 4891 consultation processes have been carried out with ethnic communities, of which 4198 ended with agreements (CEACR, 2016o, art. 15).	0,5
Ecuador	It is denounced that they did not carry out an adequate consultation process with the Independent Federation of the Shuar People of Ecuador (FISPE) regarding a hydrocarbon exploitation project in Block 24, where 70 percent of the FISPE territory is located (CT, 2001).	Despite the judgments in the IACHR Court in the case of the Ki- chwa Indigenous People of Sarayaku vs. Ecuador, the government continues to omit its obligation to carry out prior consultation and carries out tenders that affect the same territory (Tauli Corpuz, 2019, pr. 32).	1

Guatemala	Despite the Commission's comments in 2005, 2006 and 2007 regarding the Montana Company's mining operations, the government has not complied, and has continued to grant mining licenses without consultation (CEACR, 2009o).	Communities do not get information about the implementation of a project on their lands until the moment when the material construction works begin (IACHR, 2015b, pr. 500).	1
Mexico	Sometimes consultations are held, but only after the fact. In the municipality of Muna, Yucatan, the ejido and environmental authorities authorized a solar park that would involve the construction of more than one million solar panels on indigenous lands, without prior consultation with the affected Mayan communities. (Tauli Corpuz, 2018a, pr. 40).	Most megaprojects have resulted in aggressions against land and environmental rights defenders. More than two-thirds of the recorded aggressions had been perpetrated in the states of Mexico, Sonora, Oaxaca, Puebla, Colima and Campeche (Forst, Kaye and Lanza, 2018, pr. 64).	1
Nicaragua	At the IACHR hearing (154th period), the complainants denounced the total lack of consultation with the indigenous and Afro-descendant peoples affected by the transoceanic canal construction project (IACHR, 2015a, pp. 42-43).	There is a case of a megaproject that the government granted a concession without any type of consultation with the peoples involved (IACHR, 2015a, pp. 42-43).	1
Panama	The Chan 75 project, the government did not carry out adequate consultations with the Charco la Pava community (Anaya, 2009b, pr.28). The Barro Blanco project, whose reservoir would flood lands in an annexed area of the Ngäbe Buglé comarca, also failed to carry out adequate consultations (Anaya, 2014, pr. 42).	Only inadequate consultation processes and cases of absence of consultation are observed. The Government reported that it would not ratify Convention No. 169 for "constitutional, economic, political, administrative and social, legal, and environmental reasons" (Anaya, 2014, pr. 26).	1
Paraguay	There is "widespread non-compliance with the State's duty to consult prior to the adoption of legislative, political and administrative measures that directly affect indigenous peoples and their lands, territories and natural resources" (Tauli Corpuz, 2015, pr. 39).	Most of the institutional programs and projects for indigenous peoples on which the Special Rapporteur received information had not been consulted (Tauli-Corpuz, 2015, pr. 40).	1
Peru	The Government detailed on the 22 processes carried out since the entry into force of Law No. 29785 (2011),which referred, among others, to exploration and exploitation contracts, of which in 20 processes agreements have been reached (CEACR, 2018o, art. 6).	Although Law 29785 has limitations that contribute to the omission of prior consultation with peasant communities, at least 20 processes of agreed consultation were observed, although not all were related to land and natural resources (CEACR, 2018, art. 6).	0,5

Venezuela	Despite the fact that the Government indicates that they carried out consultations with indigenous communities prior to the creation of the Orinoco Oil Belt through multiple assemblies (CEACR, 2019o, art. 15). They are not considered adequate due to allegations of political discrimination exercised by the authority (IACHR, 2017b, pr. 429).	In the state of Bolivar in 2017 as part of the Arco Minero del Orinoco project, operations were carried out through the Mining Company, without prior consultation with the affected indigenous communities (CEACR, 2019o, art. 15).	1

Source: Own elaboration based on data source (CEACR and Tripartite Committee[CT] of ILO, IACHR, UN published between 1991-2019). For CEACR references, the "o" after the year of publication stands for "observation" and "s" for "request". When the ILO is used as the author, it refers to reports produced by tripartite committees of the organization with respect to complaints. The references are part of the set of documents analyzed by each country. Although the number of texts examined varies by country depending on the availability of information, what is essential for the analysis is their qualitative nature.

Table 5 shows the summaries. As we can confirm in it, Colombia and Peru are the only two countries that correspond to the score 0.5 for the documented existence of consultations that managed to *reach agreements*. All the other countries share exclusively complaints for the *omission of consultations* or *inadequate consultations* that lack some or all of the qualities indicated on the previous page.

Although the first two countries have also received numerous complaints of the same nature, in this group there are also references to *progress in consultation processes*. This is particularly relevant in the case of Colombia, since only for this country can we confirm a positive comment made by an external expert and not only by its own government. Of the eighteen documents we examined on consultations in Colombia, a commentary by Rapporteur Stavenhagen (2005) who visited the country indicates:

> The communities allege that the mechanism is not functioning equally throughout the national territory. In the indigenous territories of Antioquia, the Special Rapporteur was informed about mining activities and other projects that are being carried out, even though they have not had the prior consultation and approval of the indigenous communities. On the other hand, *progress* is reported *on consultation processes* by the indigenous peoples of the Sierra Nevada, the Wayúu people in Guajira and the Awás in Nariño. (para. 55)

In addition to this reference, there are two segments that demonstrate the relevant circumstances for this country. First, the CEA-CR's direct request informs that with respect to the Mandé Norte mining project, a mega-project

on a national scale that took place in the departments of Antioquia and Chocó, the Colombian Government indicated that the inhabitants of the Chidima resguardo were consulted in 2013 and, as a result, it was decided to change the route of the road to be built as part of that project (CEACR, 2016, art. 15).

From this report alone, we cannot ascertain whether or not all of the inhabitants concerned agreed with this change; surely some of them would completely reject the construction of the road or the project itself. However, what we can affirm with this information is the following: for such consultations to exist in 2013, which took into consideration the demands of the inhabitants, it was crucial the sentence No. T-769 of 2009 by the Constitutional Court, which had confirmed the lack of *prior* consultations and the existence of attempts to impose the project by the mining company. This ruling would have ordered the suspension of exploration and exploitation activities within the framework of the project and called for the reestablishment of *prior* consultation with free, prior and informed consent in all communities that could be affected by the project, signifying a transcendental advance in the country's jurisprudence.

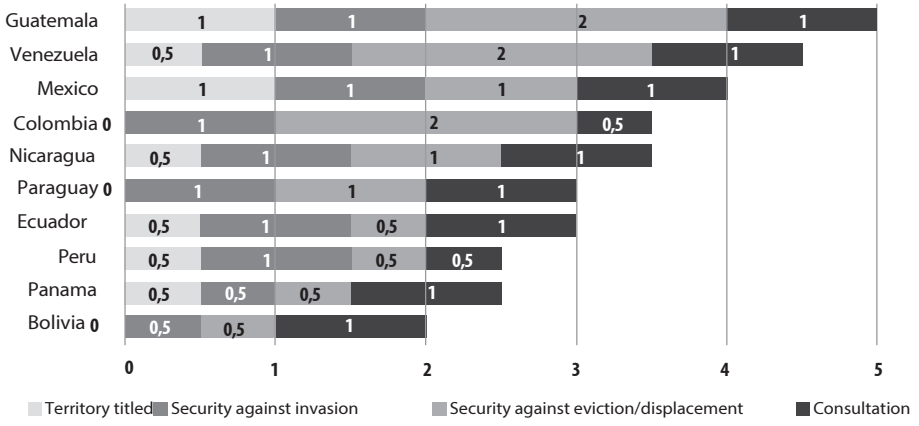
In addition, CEACR's observation allows us to confirm that the government reported that during the period from 2003 to 2015 a total of 4891 *consultation processes* were carried out with ethnic communities, of which 4198 ended with *agreements* (CEACR, 2016, art. 15). If we compare this scenario with the other case, which contains information on agreed consultations in Peru, with twenty out of twenty-two processes carried out between 2011 and 2017 (CEACR, 2018, art. 6, para. 2), the amount and a possible degree of commitment on the part of the Colombian authorities is noticeable.

Results

With the four criteria examined in the previous section, we obtain the results that show the gaps in the implementation of land and territorial rights in the ten countries analyzed (see figure 1).

In first place, Guatemala stands out for its larger gaps in all areas, with 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 land rights, also affecting other more fundamental rights such as the right to life.

Figure 1
Results land rights implementation gap



Source: Own elaboration based on ILO-CEACR, IACHR, and UN data published from 1991 to 2019.

Mexico comes next (4.0), followed by Colombia and Nicaragua, with the same score of 3.5. If we look at these three countries as a group, they all share the problems of *eviction* and *forced displacement*. In Mexico and Colombia the violence generated by armed and criminal groups exceeds the capacity of their governments to maintain citizen security, and in Nicaragua the government ignores its responsibility to stop the aggressive acts caused by settlers in indigenous territories.

Paraguay and Ecuador come next with a score of 3.0. The difference between these two countries lies in the progress of land titling and in the magnitude of *evictions* and *forced displacements*. Although Paraguay has made greater progress in land titling for indigenous peoples, it has the same gap as Ecuador due to its inability to guarantee security in the face of invaders, *evictions* and *forced displacement*.

This is followed by Peru and Panama with a gap of 2.5. The distinction between them lies in the aspect of security from invaders and the handling of consultations. While Panama has made several attempts, albeit with setbacks, to stop *encroachment* by settlers on indigenous territories, the authority in Peru has been able to stop the *invasion of* indigenous territories.

The Peruvian government did not attend to the native inhabitants who needed territorial protection. However, they have arrived at the same score because, on the other hand, in Peru, the government's intention to move forward with *consultation processes* is evident, while the Panamanian government has a reticent policy in this area.

Finally, Bolivia concludes the analysis with the smallest gap (2.0). This country has made progress in land titling and has managed to distribute land to indigenous peoples over a relatively larger area than the other countries analyzed here. However, the lack of citizen consultation persists, as in the vast majority of the countries studied.

Conclusion

As we have seen, all the countries examined contain implementation gaps; no country is perfect. However, it is possible to perceive a variety in the magnitude of these gaps, as we show in this study. The larger the gap, the less possibility remains to safeguard other legally recognized rights such as the right to life or the right to self-determination.

Now that the gap situation regarding the implementation of land rights is clearer, the next steps are: 1) to investigate the sufficient and necessary conditions that have influenced the results obtained in this study and 2) to investigate the other four operational items proposed by Bennagen to evaluate concrete situations of indigenous autonomy (Bennagen, 1992, p. 72).

In relation to the first step, it is essential to distinguish between two categories of factors in order to perform the Fs-QCA analysis in two phases: which are the *remote factors* and which are the *proximate* factors (Schneider & Wagemann, 2006). *Remote factors* are those that are relatively stable over time; their origins are remote in time and space from the results. As a consequence, they are outside the conscious influence of the actors. They can therefore be considered as historical and/or structural contexts.

For the cases analyzed in this study, this category of factors could be: 1) the existence of territorial institutions for indigenous peoples prior to the 1990s (for example, *resguardos* in Colombia, *comarcas* in Panama and we could also identify *autonomous regions* in Nicaragua); and 2) the absence of internal armed conflicts (the opposite cases would be Colombia, Guatemala and Guatemala).

Nicaragua). While the existence of some territorial institution historically recognized by indigenous peoples would favor the process of implementing the right to lands and territories, legacies or the perpetuation of internal conflicts could hinder the process.

With respect to *proximate factors*, they are those that change over time and are subject to change introduced by actors; thus, they are closer to the results in terms of time and space. For our Latin American unit, these factors could be: 1) high degree of democracy; 2) absence of organized crime groups; 3) high level of political representation in the national congress (Stavenhagen, 2006, para. 84); and 4) existence of political will interpreted in financial resources destined to the regularization of indigenous lands and territories (Aylwin, 2002, p.74).

We will not include, for example, the neo-extractivist development policy that would certainly have influenced the implementation of land policies with respect to the indigenous population (Tockman & Cameron, 2014), since all the cases discussed show such a trend and it would be difficult to find variation within the group. Considering that each of these factors requires an in-depth and extensive analysis, we will examine them in more detail in the next stage of the research.

The author hopes that this attempt to take stock of the situation will serve as a starting point to advance in the search for efficient strategies that can reduce the implementation gaps.

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Annex 1

Table 6
Reports on ILO Convention No. 169 (No. 107 for Panama)

Country	Ratification	N. documents	Year of publication		
			Observation (CEACR)	Direct application (CEACR)	Claim (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: Own elaboration. The comments of the Committee of Experts (CEACR) are available on "NORMLEX" on the ILO website, https://bit.ly/3ayC1TX. To access the reports of the tripartite committees submitted in the framework of the complaints https://bit. ly/3k4tcVa.

Annex 2

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Autonomy and Decentralization Framework Law for AIOC: autonomic regulations or institutional restriction?

María Fernanda Herrera Acuña

Introduction

The year 2006 marks an important milestone in Bolivian history, the coming to power of Evo Morales, as a representative of the social movements - with a strong Indianist vision and influences from international indigenous visions - and his promise of a new Constitution, established a series of expectations regarding the recognition of the diversity of nations and the improvement of the deficiencies that existed in terms of the regulation of their cultural and identity polysemy. The Republican, monist, homogenizing and segregationist State was questioned and, through the Constituent Assembly, the constitutional (multicultural and communitarian) and territorial bases of a new concept of citizenship and Plurinational State (Lazarte, 2009), directly legitimized by the totality and diversity of the people, were shaped (Lazarte, 2009). However, in practice, indigenous inclusion -exalted in its territorial and political self- nomy- is, in a certain way, tied and adequate normatively more than to the own requirements and needs of the diverse native nations, to the objectives and opportunities of the same government that proclaimed and pseudo-delineated them as a space of conquest and self-determination.

The purpose of this paper is to review the normative contradictions and the obstacles that limit the conformation and execution of the indigenous native peasant autonomies (AIOC), through a study of the institutional normativity that, first, will review the fundamental concepts on the composition of AIOC present in the Political Constitution of the State (CPE). This will be followed by a presentation of the determinations made by the Framework Law on AIOC.

"Andrés Ibáñez" of Autonomy and Decentralization (LMAD) that, by monitoring and strongly delimiting the CPE, exposes a pigeonholing within the classic liberal and pro-extractivist political framework towards its native peoples.

Political constitution and inclusion of indigenous peoples

Autonomous declaration

Article I of the CPE declares that "Bolivia is constituted as a free, independent, sovereign, sovereign, democratic, intercultural, decentralized, decentralized and autonomous Unitarian Social State under the Plurinational Community Law". Such pluri-nationality is related to the decolonizing axis as a deconstructive route of the republican, colonial and liberal State, which recognizes, as a population matrix, the pre-colonial pre-existence of the original indigenous nations (CPE, art. 2). Plu- rinationality that sheds light on the refoundation of the State (CPE, Preamble), not eliminating the contributions of the Republic, but rather, recognizing in it capacities and mechanisms of social engineering (De Sousa, 2010) for the recons- titution and integration of its original peoples, in the classic institutions of the State (Landívar, 2015). Recognition that establishes a democratic pluralism - transversal throughout the constitution and structuring the whole of the state organization, based on the extension of the concept of nation that articulates, by accepting the collective identities and political communitarianism of the cultural institutions, changes in state structures and institutions, expanding, economic behaviors and conducts (CPE, art. 30, 14, IV), legal (CPE, art. 190, 1, IV) and linguistic (CPE, art. I) for all indigenous peoples, native peasants and intercultural population of the countryside and the city (Pinto, 2012).

An opening towards original inclusion that upholds the principle of universal equality of citizens before the law, without this being an obstacle to the recognition of other specific proclaimed rights only applicable to certain groups of the population, such as those belonging to indigenous or Afro-Bolivian nations and peoples (CPE, art. 14, II). So that "indigenous and non-indigenous people may enjoy rights on an equal footing and may consequently have equal access to the guarantee and exercise of institutionalized powers" (CPE, art. 14, II).[1]

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".

(Clavero, 2010, p. 199), framed in a territoriality with expressly autonomous recognition.

The autonomous regime - set forth in the third part of the Constitution (Structure and territorial organization of the State):

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

Such territorial organization is based on the principle of voluntariness, understood not as an obligation but as a right. "The creation, modification and delimitation of territorial units shall be done by the democratic will of their inhabitants, in accordance with the conditions established in the Constitution and the law" (CPE, art. 269, 2). The direct election of authorities is the primary process of concentration of power initially dispersed in the sovereign people[2] (CPE, art. 7) and materialized in multiple institutionalized government units scattered throughout the territory.

The constitution regulates four types of autonomy "not... subordinate to each other and (with) equal constitutional rank" (CPE, art. 276): departmental (CPE, arts. 278-280), regional (CPE, arts. 281-283), municipal (CPE, arts. 284-285) and indigenous native peasant (CPE, arts. 290-297). However, in practice, their scope and nature are not the same. Although the territories that so wish may become autonomous by means of a statute or organic charter (municipality) -which does not contradict the Constitution and which contains the regulation of the institutions and competences they assume as autonomous entities- their differentiation lies in the particular articulation of their territorial, territorial and facultative spheres[3] . Articulation that distinguishes and classifies four levels of decision making

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as part of the block of constitutionality, so that such international instruments have a normative character and are of direct application".

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

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

with legislative power: the central level of the State, the departmental autonomous government, the municipal autonomous government and the indigenous and aboriginal peasant autonomies (according to their own institutions); differentiating regional autonomy, without legislative power, with only deliberative, normative-administrative and administrative character (CPE, art. 281).

AIOC: territorial, facultative and population criteria

The New Constitution defines the indigenous native peasant nation and people as "the entire human collectivity that shares cultural identity, language, historical tradition, institutions, territoriality and cosmovision, whose existence predates the Spanish colonial invasion" (CPE, art. 30, 1, IV). And it explicitly recognizes
-under the integrated concept of indigenous native peasant nations and peoples - the Rights of the indigenous native peasant nations and peoples (CPE, arts. 30-32), their indigenous native peasant jurisdiction (CPE, arts. 190, 191 and 192) and their indigenous native peasant autonomy (CPE, arts. 289-296).

Territorially, the conformation of an AIOC is based "on the ancestral territories, currently inhabited by... peoples and nations, and on the will of its population, expressed in consultation" (CPE, art. 290, I). Ancestral territory is understood as the Community Lands of Origin (TCO) or those geographic spaces that constitute the habitat of the indigenous and native 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 commonwealths, 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 original indigenous peasant territory, the original intercultural communities and... peasant communities" (art. 394, III), at the same time, the integrality of the Original Indigenous Peasant Territories (TIOC) is established, which includes the:

4 Supreme Decree No. 0727: The seventh transitory provision of the Political Constitution of the State establishes that for the purposes of the application of paragraph I of Article 293 of the Constitutional text, the indigenous territory shall have as a basis for its delimitation the original community lands. Within one (1) year from the election of the executive and

legislative body, the category of original community land shall be subject to an administrative process of conversion to original indigenous peasant territory, within the framework established in the constitution.

> The right to land, to the exclusive use and exploitation of renewable natural resources under the conditions determined by law; to prior and informed consultation and participation in the benefits from the exploitation of non-renewable natural resources found in their territories; the power to apply their own rules, administered by their representative structures and the definition of their development according to their cultural criteria and principles of harmonious coexistence with nature. The indigenous native peasant territories may be composed of communities (CPE, art. 403).

Thus, the CPE, by recognizing the TIOCs as part of the territorial structure of the State, grants them the power to become an entity capable of self-legislation, management of fiscal resources and direct election of their authorities according to "their rules, institutions, authorities and procedures, in accordance with their powers and competencies" (CPE, art. 290, II). Territorial entity that, under Art. 276, possesses, even if it is located within another territoriality -partially or totally- its own territorial and jurisdictional limits (Égido, 2010).

Likewise, the CPE recognizes the municipalities and eventual regions as the territorial basis for the conformation of the AIOC (CPE, art. 291, I). In municipalities where there are peasant communities "with their own organizational structures that articulate them and with geographic continuity, a new municipality may be formed, following the procedure before the Plurinational Legislative Assembly for its approval" (CPE, art. 294, III). The constitutional text places no restrictions on the territorial scope, even proclaiming the possibility of a single municipality. In the case whose territories are located in one or more municipalities, the law will indicate the mechanisms of articulation, coordination and cooperation for the exercise of its government (CPE, art. 293, II). The region may be constituted as a regional autonomous region, at the initiative of the municipalities that comprise it (CPE, art. 280, III).

To form an AIOC based on indigenous territory, the norms and procedures of the indigenous peoples are applied (CPE, art. 294, I) and to form an AIOC based on the municipality, the referendum is adopted as a procedure to establish the voluntariness of its inhabitants (CPE, art. 294, II). To form an indigenous native peasant region, through the aggregation of municipalities, municipal districts and/or AIOC, it will be decided by referendum and/or according to its norms and consultation procedures (CPE, art. 295, II).

Although the CPE declares that the AIOC spatiality is "the ancestral territories currently inhabited" -supported by articles 2 and 30- it seems, implicitly, that the AIOC spatiality is "the ancestral territories currently

inhabited".

However, Art. 291 concretizes the previous provision, establishing that "the indigenous native peasant territories, and the municipalities and regions that adopt such status, are indigenous native peasant autonomies" (Art. 291, 2012, p. 145). It subjects the AIOC to two republican territorial units: "the municipality and the communal land of origin" (Neri, 2012, p. 145).

Regarding the population criterion, the CPE is clear in determining the minimum number for the formation of an AIOC: the "Law shall establish minimum population requirements and other differentiated requirements for the constitution of an indigenous ori- ginal peasant autonomy" (CPE, art. 293, 3). However, it does not prevent an indigenous population that does not comply with this number from joining with other communities to form an AIOC: "two or more indigenous native peasant peoples may form a single AIOC" (CPE, art. 291, II); without delimiting, in any case, the indigenous autonomous commonwealth by geographic proximity.

Under these considerations, the formation of indigenous autonomies, constitutionally speaking, is an open process that does not indicate a time limit for its configuration, but only appeals to the will of the affected population (CPE, arts. 290 and 293). Likewise, there is no limit to the number of AIOCs -as opposed to the de- partmental ones, which are nine- as many as the voluntary and sovereign transformation desires (CPE, arts. 291-293): according to municipal (CPE, art. 291, I), indigenous territory[5] or regional (CPE, art. 291, I). Only their ancestral origin and their institutionalized enunciation as such is decreed and required (CPE, arts. 289-291).

AIOC Competencies

By virtue of the constitutional block and the Rights of Indigenous Nations (CPE, art. 30, II), the CPE divides the competences[6] of the governments

5 Indigenous territory refers mainly to the current TCO, regulated by agrarian legislation and formalized as a form of collective land ownership (CPE, art. 293).

6 In the Constitution, privative powers are those whose legislation, regulation and execution are neither transferred nor delegated, and are reserved for the central level of government (CPE, art. 297, 1). Exclusive powers are those in which one level of government has legislative, regulatory and executive powers over a given matter, with the possibility of transferring and delegating the latter two (CPE, art. 297, 2). Concurrent powers are those in which legislation corresponds to the central level of government and the other levels simultaneously exercise the regulatory and executive powers (CPE, art. 297, 2).

AIOC in: exclusive, shared and concurrent (CPE, art. 304, I, II, III and IV). In addition, the competencies of the municipalities in conversion are assigned to them, in accordance with a process of institutional development and with their own cultural characteristics (CPE, art. 303, I). This guarantees that the AIOCs enjoy full autonomy and equal hierarchy with the municipality.

	Art 304.	Competencies Autonomy of Indigenous and Native Peasant Autonomy
Exclusive	I	1. To elaborate its Statute for the exercise of its 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 vision of each people. 3. Management and administration of renewable natural resources, in accordance with the Constitution. 4. Elaboration of land use and land management plans, in coordination with central, departmental and municipal plans. 5. Electrification in isolated systems within its jurisdiction. 6. Maintenance and administration of local and community roads. 7. Administration and preservation of protected areas in its jurisdiction, within the framework of State policy. 8. Exercise of the 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 its cultures, art, identity, archeological sites, religious and cultural sites, and museums. 11. Tourism Policies. 12. Create and administer taxes, patents and special contributions within the scope of its jurisdiction in accordance with the law. 13. To administer the taxes under its jurisdiction within the scope of its jurisdiction. 14. To prepare, approve and execute 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. Promote and sign cooperation agreements with other nations and public and private entities. 18. Maintenance and administration of your micro irrigation systems. 19. Promotion and development of its productive vocation. 20. Construction, maintenance and administration of the infrastructure necessary for development in its jurisdiction. 21. Participate in, develop and implement mechanisms for free, prior and informed consultation regarding the application of legislative, executive and administrative measures that affect them. 22. Preservation of the habitat and landscape, in accordance with its cultural, technological, spatial and historical principles, norms and practices. 23. Development and exercise of its democratic institutions in accordance with its own rules and procedures.

and executive (CPE, art. 297, 3). And the shared ones are those subject to a basic legislation of the Plurinational Legislative Assembly whose development legislation corresponds to the autonomous territorial entities, according to their characteristics and nature. The regulation and

execution will correspond to the autonomous territorial entities (CPE, art. 297, 4).

Shared	II	1. International exchanges within the framework of the State's foreign policy. 2. Participation and control in the use of aggregates. 3. Safeguard and registration of collective intellectual rights, referring to knowledge of genetic resources, traditional medicine and germplasm, in accordance with the law. 4. Control and regulation of external institutions and organizations that develop activities in its jurisdiction, inherent to the development of its institutions, culture, environment and natural heritage.
Concurrent	III	1. Organization, planning and execution of health policies in its jurisdiction. 2. Organization, planning and execution 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 its 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 carried out in its jurisdiction. 10. Fiscal control systems and administration of goods and services
	IV	The resources necessary for the fulfillment of its competencies will be transferred automatically by the Plurinational State in accordance with the law.

Within the framework of the powers constitutionally attributed to the AIOCs and their relationship with the right to self-determination and self-government, there is, however, a certain incongruence with the idea of an autonomous indigenous government based on the norms and procedures of each people. For, if the creation of these autonomous entities implies changes both in the institutional and territorial structure of the State and in the structures of each native nation, the assignment of competences with a strong Western character may be somewhat imposing (Sarmiento et al., 2013). This is reinforced by art. 303 of the CPE: "the indigenous native peasant autonomy, in addition to its competences, will assume those of the municipalities", which exposes more the transformation of a modern power structure, the State, than the aspirations of the native peoples.

At the same time, the self-determinist horizon of the AIOCs is further removed by establishing that the resources necessary for the fulfillment of their competencies -in addition to the self-managed ones (CPE, art. 30, II, 6)- "will be automatically transferred by the Plurinational State according to law" (CPE, art. 304, IV); who, at the same time, will supervise them. Indigenous autonomy would become, like other autonomous entities or any other autonomous regime, more than a sort of indigenous claim and emancipation, a level of territorial decentralization subject to State resources (Neri, 2012).

Of the competences attributed to the AIOC, there are three, proclaimed in the constitutional text, which do not appear in the other autonomous competences. Two of them are found in the exclusive competences: the exercise of the original indigenous peasant jurisdiction (CPE, art. 304, 8) and prior consultation (CPE, art. 304, 21). The third competence refers to international exchanges within the framework of the State's foreign policy (CPE, art. 255).

The indigenous jurisdiction (JIOC), derived from a full recognition of the indigenous institutionality, makes visible the legal pluralism of the plurinationality that grants it the same hierarchy as the ordinary justice system (CPE, art. 179, II). Pluri- nationality that 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 worldview (art. 30,14); with the impossibility for ordinary justice to review their rulings within the corresponding jurisdiction (Morell i Torra, 2015).

The CPE, in order to prevent conflicts of competence between the JIOC and the ordinary and agro-environmental jurisdictions,[7] foresees the existence of a Law of Jurisdictional Demarcation, which determines the coordination and cooperation mechanisms between the JIOC and the ordinary jurisdiction, the agro-environmental jurisdiction and all the constitutionally recognized jurisdictions (art. 192, III). This law should delimit with much less ambiguity than in the constitutional text the material, personal and territorial competences of each of the jurisdictions, as well as the application and scope of the principles derived from the international treaties and agreements on indigenous peoples signed by the Bolivian State (Núñez, 2009). However, in a clear and precise manner, the CPE obliges the consultation of the indigenous native peasant authorities -on the application of its legal norms to a specific case- to the Plurinational Constitutional Court (CPE, art. 202, 8, 11).

Based on the Rights of Indigenous Nations and Peoples (CPE, art. 30) (ILO Convention 169[8] and several precepts of the United Nations declaration on the rights of indigenous peoples); the following are established

7 Article 186: Regarding the agro-environmental jurisdiction, the constitution establishes that the Agro-environmental Court is the highest specialized entity of such jurisdiction.

8 ILO Convention 169 art. 6, 1a consult 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.

mechanisms for prior, free and informed consultation - to the affected indigenous population (CPE, art. 352) - regarding the exploitation of natural resources (CPE, art. 304, 21). Even when the State proclaims, constitutionally, ownership of the same and its administration (CPE, art. 298, II, 4).

On this point, what remains to be delimited is whether the consultation to be carried out by the State, which is understood to be mandatory, is merely consultative or, on the contrary, binding (Yáñez, 2009). In this regard, if reference is made to the provisions of international treaties and conventions, any government action contrary to the decisions of the affected community would be impossible. With the exception of the mandate of the Plurinational Constitutional Court, based on the principle of the social function of property and the interests of the State (CPE, arts. 56, 57, 393 and 401); making other types of compensation possible (CPE, art. 30, II, 16).

Within the framework of the State's foreign policy, with respect to the negotiation, signing and ratification of international treaties, it shall be governed by the "respect for the rights of the indigenous native peasant peoples" (CPE, art. 255, II, 4) and is complemented by the State's intention to strengthen "the integration of its nations and indigenous native peasant peoples with the indigenous peoples of the world" (CPE, art. 265, II). It does not directly contemplate the right to cross-border identity-ethnic reconstitution between States. These measures are valid as long as they do not transgress the state reservation in this regard, and do not derive from the same international obligations and commitments of the State (Benavides, 2007).

Framework law "Andrés Ibáñez": specifications and criticisms

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

territorial entities" (CPE, art. 271).

However, the LMAD, in its development and execution, not only regulated the exclusive competencies of the autonomous governments to the point of breaking down the subject matter over which they had jurisdiction and simulatively imposing limits on their actions, but also to the extent that they were not only the exclusive competencies of the autonomous governments, but also of the autonomous governments themselves.

also, in the concurrent competencies, came to denaturalize and modify the constitutionally admitted definition so that the central level can, by a law in a formal sense, assume regulatory and executive powers jointly with the autonomous territorial entities creating a parallelism and duplicity of functions (Ortuste de Olmos, 2016).

Steps for access to the AIOC

The LMAD specifies and details the access to the AIOC by municipal conversion and by TIOC. By municipal conversion, the LMAD produces a bureaucracy that embroils both the state level and the will of the converting community itself; since it demands (in addition to the three basic constitutional requirements of ancestry, referendum and leadership according to rules and customs) the reliable proof of its ancestry before the Ministry of Autonomies through the issuance of an *ad hoc* certificate. "The municipalities or regions that adopt the status of AIOC may modify their status as territorial units to the category of TIOC in the event of consolidating their ancestral territoriality" (LMAD, art. 16). This is ratified by the same Law, art. 56, which establishes the Ministry of Autonomy as the one in charge of "certifying expressly in each case the condition of ancestral territory, currently inhabited by those peoples and nations"; superimposing its competence with the authority responsible for Land and Territory (National Service of Agrarian Reform[9]). The fact that it is a ministry that certifies whether an indigenous territory is ancestral is a requirement that subordinates the will of those who wish to become autonomous to the state authority. Subordination that, clearly, is detrimental to art. 30; 4, 6, 17 of the CPE, which states that "the indigenous native 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"; violating the fundamental rights of the indigenous nations and peoples.

Subsequent to ancestrality, the LMAD incorporates the requirement of territorial continuity which demands, in the area where the AIOC will be constituted, the existence of a territorial unit within the official territorial organization (LMAD, art. 56),

9 The organizational structure of the National Agrarian Reform Service (S.N.R.A.) is composed of: 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.

III). This hinders the constitutional claim of articulation, coordination and cooperation for the exercise of government without geographic continuity (CPE, art. 293).

The third requirement for municipal conversion, particularized by the LMAD, is that of viability in terms of governance (LMAD, art. 57), through the certification, by the Ministry of Autonomies, of the evidence of existence, representation and effective implementation of an organizational structure and a territorial plan that also includes institutional and financial strategies (Tomaselli, 2015). A requirement that frames and directs, since before its own construction, the presence and basic framework of a strongly liberal and republican organization.

In relation to the conversion from TIOC, the LMAD further complicates its development. The CPE indicates that "The Law (LMAD) will establish minimum population requirements and other differentiated requirements for the constitution of an indigenous native peasant autonomy" (CPE, art. 293). The Framework Law indicates the need for certification of ancestral territory by the Ministry of Autonomies and also the requirement of governmental viability and population base (LMAD, art. 57). Governmental viability is accredited with another certification issued by the Ministry of Autonomies, which contemplates the technical evaluation and verification of an organization and territorial plan (LMAD, art. 57, 1, 2). The organization attests to the "existence, representativeness, and effective functioning of an organizational structure of the indigenous native peasant nation(s) and people(s), which includes all organizations of the same nature constituted in the territory, with independence with respect to other actors and external interests" and the Territorial Plan requires to have:

> With a comprehensive development plan for the original indigenous and aboriginal farming nation(s) or people(s) living in the territory, according to their identity and way of being, and instruments for territorial management. The plan must include institutional and financial strategies for the territorial entity, in order to guarantee 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 should contemplate the demographic structure of the population, detailing a population base equal to or greater than ten thousand inhabitants in the highlands and equal to or greater than one thousand inhabitants in the lowlands (LMAD, art. 58).

However, while

TIOCs have a specific territorial base and their own organizational structure, they do not have the experience in management and public administration required by the LMAD and, therefore, their conversion would require not only time, but also greater expenditure of resources and investment in public spending (Landívar, 2015, p. 497).

LMAD and territorial unity

Regarding the constitution of a TIOC as a territorial unit, there are discrepancies or excessive particularizations between the Framework Law and the CPE. The LMAD states that a TIOC becomes a territorial unit "once it accesses the autonomy of the indigenous native peasant"[10] (LMAD, art. 6 Definitions); conditioning its character as a territorial entity and, therefore, contravening art. 269 of the CPE on the inclusion of the TIOC as part of the territorial organization. Lowering them in comparison with the other territorial orders. At the same time, such a requirement contradicts the constitutional principle, which serves as a guiding principle in the LMAD (art. 5, 7), which recognizes the pre-colonial existence of indigenous peoples, on the basis of which their territories could be recognized as territorial units (Égido, 2010).

These dissonances, in the normative space, are produced by the spirit of the LMAD, which attempts to adjust the indigenous territoriality to the territorial organization designed for the Plurinational Autonomous State, which surpasses or interrupts the territories and factual and social organizations, 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), on the contrary, there is a persistence of colonial territorial divisions and republican institutionality (Neri, 2012). The conversion is, more than anything else, a change of decentralizing denomination based on the same territoriality and with the same attributions (CPE, art. 303) and not a territorial reparation for the original peoples.

Regarding the AIOC and the importance of departmental boundaries, although the CPE does not explicitly establish their impossibility, the LMAD does:

10 Regarding territorial organization: "It is a geographic space delimited for the organization of the State's territory, which may be a department, province, municipality or indigenous original

peasant territory. The original indigenous peasant territory is constituted as a territorial unit once it gains access to the original indigenous peasant autonomy" (LMAD, art. 6, I).

"In no case may those macro regions that transcend departmental boundaries be constituted as regional autonomous regions" (art. 22, III). The TIOC "that transcend departmental boundaries may constitute AIOC within the boundaries of each of the departments, establishing commonwealths among themselves, in order to preserve their unity of management" (LMAD, art. 29, III). On the contrary, the CPE declares both that "collective property is declared indivisible" (CPE, art. 394, II) and the integral recognition "of the original indigenous peasant territory, which includes... the power to apply its own norms, administered by its representative structures and the definition of its development according to its criteria" (CPE, art. 403).

Regarding the commonwealths, such as the IOC Region, the LMAD does not specify them in a clear and particularized manner. On the contrary, Articles 46, II and 74, II[11] (LMAD) have certain discordances when affirming the existence of an "indigenous original peasant autonomy constituted as an indigenous original peasant region", since the creation of an IOC Region as a planning and management space that functions with transferred or delegated competences, in no case, allows it to assume the denomination of AIOC as a full constitutionally constituted entity.

LMAD and bylaws

In reference to the normativity of the AIOC, the CPE states (arts. 292 and 296) that the indigenous autonomies must elaborate their autonomous statute according to their own norms and procedures; on the contrary, the LMAD specifies that "the normative order of the central level of the State will be, in any case, supplementary to that of the autonomous territorial entities. In the absence of an autonomous regulation, the regulation of the central level of the State will be applied" (art. 11); safeguarding the centralization of the autonomous territorial entities (art. 11).

11 "The conformation of the indigenous native peasant autonomy established 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 those competences of the AIOC that are conferred by the original owners that conform it. The decision to dissolve the territorial entities that make up the region shall be established through a process of consultation or referendum in accordance with the law, as appropriate, and a single autonomous IOC government may be formed for the entire region (LMAD, art. 46, II).

"The AIOC constituted as an indigenous native peasant region will assume the competencies

conferred by the autonomous territorial entities that comprise it with the optional scope established in the Political Constitution of the State for regional autonomy" (LMAD, art. 74, II).

The state power's power in the face of any structural silence in the construction of the territorial units. From which, it follows that the AIOC, by virtue of the LMAD, may be restricted to the general parameters of political modernity; by establishing that:

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

The determination "in the framework" reflects the limit or constraint of the politics of the native peoples; who, in substance, must transit according to the organization of the State (Neri, 2012).

Under the logic of modernity, the LMAD exhorts the indigenous communities to demonstrate their capacity to exercise their autonomous government with a modern and rational territorial approach to the State, stating that they must be able to count on:

> With an integral development plan for the indigenous ori- ginary peasant nation(s) or people(s) living in the territory, according to their identity and way of being, and instruments for territorial management. The plan shall include institutional and financial strategies... in order to guarantee 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. The plan shall contemplate the demographic structure of the population (LMAD, art.57, II).

This obscures and postpones, to a certain extent, the ancestral management that native peoples have always maintained over their territories (Neri, 2012).

The Framework Law makes access to the AIOCs disproportionately complicated, so much so that it is easier for an indigenous people to become a municipality[12] than an autonomous one.

12 "At the initiative of the indigenous native peasant nations and peoples, the municipalities shall create indigenous native peasant municipal districts, based or not in indigenous native peasant territories, or in indigenous native peasant communities that are a population minority in the municipality and that have not been constituted in indigenous native peasant autonomies in coordination with the existing peoples and nations in their jurisdiction, i n

accordance with the regulations in force and respecting the principle of pre-existence of indigenous native peasant nations and peoples" (LMAD, art. 28, I).

mine (Landívar, 2015). In the first case, the requirements are basic and, in the second, there is talk of governmental feasibility and other additional certifications. In other words:

> In the case that an indigenous people wants to become a Municipality, it is presumed that it has the necessary conditions; but if that same group opts for the AIOC, its incapacity is presumed, so it has to demonstrate the effective functioning of its organization and planning. (Égido, 2010, p. 279).

These should include institutional and financial planning:

> For the territorial entity, in order to guarantee 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 (LMAD, art. 57, 2).

Something similar occurs with the requirement of statutory structuring, demanded by the CPE (arts. 30 and 292) as an instrument or means to assemble the co-munitary to the modern State, but which respects and develops in accordance with its traditions and ancestral organic forms. In the Framework Law, however, the statute is determined as a condition of possibility "prior to the exercise of self-government" (LMAD, art. 61) and, therefore, once again ignores the history and ancestral customs of self-government historically held by the original peoples and which should sustain the institutionalization of autonomy.

LMAD and concurrent competences

Regarding concurrent competences, the Framework Law determines that:

> For the exercise of regulatory and executive powers with respect to concurrent competencies, which correspond to the territorial entities simultaneously with the central level of the State, the law of the Plurinational Legislative Assembly shall distribute the responsibilities that correspond to each level according to their nature, characteristics and scale of intervention. (LMAD, art. 65).

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

13 The Constitutional Court by Constitutional Ruling No. 2055/2012 (October 16, 2012),

strangely declared such article constitutional by creating a series of forced legal arguments that allow its applicability under certain circumstances.

However, the autonomous statute is:

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

The LMAD itself details, regarding the competencies of the AIOC, only some of those contained in the CPE, without determining the criteria for discrimination. Thus, for example, in the area of natural resources, the Framework Law establishes only two concurrent powers for the governments of the original peoples:

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

This ignores the exclusive constitutional competencies of the AIOC (CPE, art. 304), such as participation and development of the necessary mechanisms for prior consultation on the exploitation of natural resources, management and administration of renewable natural resources, administration and preservation of protected areas in its jurisdiction, and some concurrent competencies such as socio-environmental control and monitoring of hydrocarbon and mining activities carried out in its jurisdiction. Along with some rights, whose procedures, the LMAD must establish (art. 403, II).

The competencies segregated by the LMAD are those that involve the most important potential for the generation of their own economic resources and which, by the very nature of the TIOC, could not be left out of the competencies of an eventual original self-government without delegitimizing it.

LMAD and regional financing

The Framework Law (art. 106) establishes that they are understood to mean:

> Taxes, fees, patents, special contributions, the taxes assigned to its administration... transfers from departmental royalties for

> exploitation of natural resources ... [and] resources from tax sharing transfers and Direct Tax on Hydrocarbons (IDH), according to the distribution factors established in the legal provisions in force.

This shows, once again, the normative tie that the normative prefigures on the indigenous. On the one hand, the allocation of taxes to the jurisdiction of the AIOCs is done with a Western view of taxation. This goes against the constitutional assertion on the State's recognition, respect, protection and promotion of community organization, "which includes the systems of production and reproduction of social life, based on the principles and vision of the native indigenous and peasant nations and peoples" (CPE, art. 307). And, on the other hand, the transfer of resources via the departmental level, although it is typical of horizontal transfer, generates not only an unbalanced relationship of dependence and disproportion between both entities, but also of uncertainty, contrary to the territorial equality asserted in the constitution.

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

> For the financing of their competencies... the municipal autonomous territorial entities and the autonomous indigenous and aboriginal peasant territorial entities shall receive transfers from the central level of the State for tax co-participation, equivalent to twenty percent (20%) of the cash collection of the following taxes: Value Added Tax, the Complementary Regime to the Value Added Tax, the Tax on Company Profits, the Tax on Transactions, the Tax on Specific Consumption, the Customs Levy, the Tax on the Free Transmission of Goods and the Tax on Exits Abroad.. [distributed] according to the number of inhabitants of the jurisdiction of the autonomous territorial entity, based on data from the last National Population and Housing Census. (p. 130).

Bypassing management criteria according to relative fiscal efforts, fulfillment of goals or institutional performance, among others (Ameller, 2010, p. 130).

Conclusion

The restructurations assumed by the Bolivian State in the search for a democratic deepening, greater citizen participation and inclusion of its identity plurality, have been formalized in its determination of the plurinational with autonomies. This is an attempt to territorially not only make viable

the juxtaposition of two civilizational matrices, the original and the liberal, but more than anything else, to realize a State vindictive of its own ancestral conformation that overcomes the subalternity imposed on its original peoples in balance and respect for its variegated structure.

In this context, the normative framework of the Political Constitution of the State and the Framework Law on Autonomy and Decentralization should be presented as those instances that delineate the type of legal figure that sustains the decolonizing project in the indigenous key of the new State.

However, a critical look at the complementarity of the Constitution and the Framework Law reveals, rather than an opening to the original, an enclave of centralization and delimitation of indigenous incorporation and their communitarian forms and visions. Although the Constitution includes the rights of the indigenous native peasant nations and peoples, comprising a very broad spectrum of guarantees, it outlines a dominant role of the State -in some aspects, e.g., natural resources, exclusive and privative attributions- that shows certain structural and limiting complications for indigenous community development. This is deepened by the determinations of the LMAD, whose provisions, rather than establishing the differentiated inclusion of the various indigenous nations through territorial transformation and the normative opening towards native self-government, oppresses the Constitution and closures of indigenous self-government, with centralizing, state and conditioned criteria that undermine native autonomy and superimpose a liberal and modern view. On the contrary, what is expected of an autonomous territorial structuring is not a hierarchical situation of power, but a sort of normative coordination that gives clear accounts of a coordination between subnational governments and with the different fractions of the central level.

Such preponderance of the State guidelines is developed by the LMAD with an excessive bureaucratization of the autonomous conversion, via municipalities and via TIOC, which does not facilitate its execution, but rather complicates and entangles. In the same way, the indications of the Framework Law regarding AIOC territoriality, according to geography and demography, configure the permanence of the colonial boundaries and their administrative configuration based on unclear and unsubstantiated population criteria. The same occurs in the area of the statutes whose legal structure must be developed within the frameworks of state regulations and approval. In the area of concurrent competences, the same happens when the LMAD

superimposes simultaneity between the territorial entities and the central power (e.g., prior consultation and natural resources), distorting the territorial distribution of powers according to the Magna Carta. Similarly, the financing of the AIOCs is constrained by the liberal state perspective and rejects other forms of community economic management promoted by the CPE.

Thus, it is important to note that the concept of autonomy present in the normative, holds in its guidelines, more than the historical libertarian view of the original peoples and plurinationality, a form of political-administrative decentralization of a Unitary State that insists on imposing its centrality.

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Indigenous autonomy in Bolivia: from great hopes to dreams blurred

John Cameron
Wilfredo Plata

Introduction

The recent history of indigenous autonomy in Bolivia has followed a path from high hopes to faded dreams. Indigenous autonomy and territorial control were central demands of indigenous movements in Bolivia since the 1990s. Hopes were high when Evo Morales was elected as Bolivia's first indigenous president in 2005 and particularly when Bolivia implemented a new constitution in 2009. However, although the three governments of Evo Morales and the Movement Towards Socialism (MAS) celebrated indigenous autonomy as a central pillar of plurinationalism and provided symbolic support to indigenous peoples, in practice, they circumscribed the rights to self-government through secondary laws and bureaucratic processes.

In this chapter, we analyze the evolution of the political-legal framework for indigenous autonomy in Bolivia, the political and economic forces that influenced indigenous peoples' responses. We argue that the political-economic imperatives of the MAS governments to control extractive natural resources and their rural political base took precedence over the implementation of indigenous rights. In this context, some indigenous communities continued to struggle for indigenous autonomy, but others opted for pragmatic and hybrid strategies to govern themselves through existing institutions.

We develop this argument in four sections. In the first, we explain our research methods and our position in relation to the indigenous communities we have worked with. In the second section we describe very

briefly the historical background for indigenous autonomy in Bolivia. The third section analyzes changes in the legal framework and public policies for indigenous autonomy during the three MAS governments between 2006 and 2019. In the fourth section we explore the diverse responses of indigenous actors to the legal framework for indigenous autonomy. Finally, in the conclusion, we speculate on the possible futures of indigenous autonomy in Bolivia in the context of the political crisis of 2019-2020 and the return of MAS to government after winning the elections in October 2020.

Research methods and positionality

Like many other researchers, we were excited when the opportunity to exercise indigenous autonomy officially opened up in 2009. Initially, we focused our attention on the communities where the struggles for autonomy appeared to be most advanced, in particular, on six of the eleven predominantly indigenous municipalities that voted to convert their governance systems to indigenous autonomy in the referendums organized by the State in 2009 (see Table 1): Jesús de Machaca and Charazani in La Paz, San Pedro de Totora in Oruro, Tarabuco and Mojocoya in Chuquisaca, and Charagua in Santa Cruz. Our research methods included participant observation, semi-structured interviews and focus groups with indigenous authorities. We observed hundreds of hours of community meetings where community delegates in the six municipalities debated the institutional design of the future indigenous autonomies, which also created many opportunities for informal conversations with local leaders. In addition, through Fundación TIERRA, Wilfredo Plata participated in meetings of the 'Plataforma Interinsti- tucional de Apoyo a la Autonomía Indígena' - a group of NGOs and the Vice-Ministry of Indigenous Autonomies and Territorial Organization of the Ministry of Autonomies.

It gradually became clear to us that the six municipalities where we focused our attention did not represent the heterogeneity of indigenous perspectives toward indigenous autonomy in Bolivia. In fact, several indigenous leaders rejected the conversion of their municipal governments into indigenous autonomies. We found several reasons for this disinterest, including political manipulation by MAS militants and lack of information to political pragmatism and a desire to avoid complicated, costly and conflictual changes. Others

indigenous leaders committed to MAS's "process of change" to strengthen the rights and welfare of indigenous peoples through central state control rather than local-level autonomy. In addition, we found perspectives that represented an internalization of racist ideologies that re-categorized indigenous norms as backward.

Recognizing the diversity of indigenous perspectives on indigenous autonomy, we broadened the focus of our research to include ten municipalities with predominantly indigenous populations that chose not to exercise indigenous autonomy. A first group of six municipalities is located in the Ingavi province in the department of La Paz: Desaguadero, Guaqui, San Andrés de Machaca, Taraco, Tiwanaku and Viacha. The second group of four municipalities are located in the department of Chuquisaca: Tarvita, Tomina, Yamparaez and Zudá- ñez. We chose these ten municipalities because in all of them there were public debates on the conversion to indigenous autonomy and also because one or more neighboring municipalities were directly involved in the conversion to indigenous autonomy. In sum, the decision of these ten municipalities not to convert to indigenous autonomy was not for lack of debate and information.

We are very aware that, as outsiders to the communities in which we have worked, we did not hear or understand all perspectives on indigenous autonomy. Most of our observations focused on indigenous authorities and we had few conversations with people who were not in leadership positions. We also grappled seriously with ethical questions and in particular the question of who should tell the stories about internal debates within indigenous communities. After much discussion, we decided that it was important to write about the diversity of perspectives to help other external actors understand them.

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 this same state since the beginning of colonial times (Rivera Cusicanqui, 1984). Here we highlight two elements of the historical context of the last three decades to understand the trajectory of indigenous autonomy after 2005. First, in 1994 the Bolivian State implemented the Law of Popular Participation (LPP),

which established more than 300 new municipal governments, decentralized state resources to municipalities and introduced a new legal framework for municipal governance (Molina-Saucedo, 1996). The LPP was initially conceived as part of the second wave of neoliberal reforms in Bolivia. However, in the decade following the enactment of the LPP, indigenous and peasant organizations appropriated the new political opportunities and in hundreds of municipalities gained control of municipal governments (Cameron, 2009; Postero, 2009). As a result, a large number of indigenous leaders acquired important administrative and political experience in municipal management and, in many rural municipalities, indigenous organizations were able to wrest local political power from the old white mestizo elites (Cameron, 2009). In some municipalities, such as Jesús de Machaca in the department of La Paz, indigenous organizations also launched projects to create "indigenous municipalities" with the aim of merging indigenous norms with municipal administration (Colque & Cameron, 2010; Galindo Soza, 2009). As we explained in more detail above, in certain municipalities these experiences of hybrid governance became the basis for subsequent struggles for indigenous autonomy, while in other municipalities, the experience of administering municipal governments led indigenous leaders to conclude that indigenous autonomy was not necessary; they were able to control local power through already existing municipal institutions.

Second, over the course of 1995 to 2005, the indigenous movement in Bolivia became more powerful at the national level, challenging the neoliberal economic policies of the State controlled by white-mestizo elites with national protests and the election of hundreds of representatives at all levels of the State. When the national government resorted to violence to repress opponents of the proposed water privatization in the city of Cochabamba (2000) and in the tragic events in the city of El Alto of the so-called Gas War (2003) over the cheap export of Bolivian gas through Chilean ports, the legitimacy of the elite-dominated State finally collapsed. In 2005, with the support of indigenous movements, Evo Morales was elected Bolivia's first indigenous president and his party, Movimiento Al Socialismo (MAS), gained control of the national congress.[1]

1 The MAS party won the 2005 elections with 53.73% of the popular vote (OEP OPEP, n.d.).

Restriction of the legal and political framework for indigenous autonomies

The election of Morales and MAS in 2005 led to great expectations for the recognition of indigenous rights and the economic, political and social inclusion of the millions of Bolivians who had been excluded from development processes. However, the indigenous and popular movement that brought MAS to state power represented two political projects that became contradictory and resulted in the serious restriction of the right to autonomy. The first project was the construction of a plurinational and decolonized state through indigenous autonomy, based on the reconstitution of pre-colonial indigenous territories and governance systems. As Andrew Canessa (2012) points out, this project represented the struggle of indigenous peoples to defend themselves from the state. The second project was the MAS party's so-called "process of change" to appropriate state power to respond to the needs of the majority and excluded population. In the course of the three periods of the MAS government, the contradictions between these two political projects became clearer and the possibilities for exercising indigenous autonomy were circumscribed to these two projects.

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

In response to the demands of indigenous and popular organizations, the new Morales government called for a constituent assembly, which came together between 2006 and 2007 to elaborate a new 'plurinational' constitution with a strong emphasis on indigenous rights. In order to negotiate more forcefully, the parent indigenous and peasant organizations established the 'Pacto de Uni-didad' in support of the government and presented a collective proposal for the new constitution (Garcés, 2010). This proposal included as key elements the re- cognizance of the right of indigenous peoples to autonomy based on the reconstruction of pre-colonial territories administered by the norms and procedures of each people, including the power to administer their own justice systems and to participate in decision-making on the management of non-renewable natural resources through consultation processes that are prior, obligatory, informed and binding (Garcés, 2010, p. 80).

However, through negotiation processes and the determining power of the MAS government, the final text of the new Political Constitution of the State (CPE) that was promulgated in 2009 recognized only a restricted version of indigenous autonomy (Garcés, 2010). Article 2 of the CPE establishes the right of indigenous peoples to autonomy:

> Given the pre-colonial existence of the native indigenous nations and peoples and their ancestral dominion over their territories, their free determination is guaranteed within the framework of the unity of the State, which consists of their right to self-government, self-governance, their culture, the recognition of their institutions and the consolidation of their territorial entities, in accordance with this Constitution and the law.

To implement this right, the CPE created the legal category of Autonomía Indígena Originaria Campesina (AIOC).[2] Chapter Seven of the CPE (Arts. 290-296) describes the basic process for establishing new AIOC governments to be established in a secondary law. However, the CPE also imposed important restrictions on the rights linked to indigenous autonomy. At the most basic level the CPE establishes a constitutional hierarchy in which AIOCs would be subordinate to the central state (Tapia, 2011). Furthermore, although the CPE recognizes the right to autonomy based on "ancestral territories" (Art. 290), the mechanisms for the creation of AIOC governments were limited to the conversion of municipal governments and Community Lands of Origin (TCO), renamed as Indigenous Indigenous Territories of Origin (Territorios Indígena Originaria Campesinas, TIOC). With the articulation of these two paths to the AIOC in the CPE, the dream of many indigenous organizations to reconstitute their self-government systems based on pre-colonial territories, which are much larger than municipalities and TIOCs, became impossible.

Also, the CPE limits the indigenous peoples' decision-making power over natural resources within their territories. Article 349 reserves to the central State the control of non-renewable natural resources, including those found in indigenous territories legally recognized by the State. Article 359 further specifies state control over hydrocarbons. The CPE recognizes the

2 The term "indígena originaria campesina" was a construct of the 2006-2008 Constituent Assembly, which sought a single term to refer to all pre-colonial peoples of Bolivia (see Albó & Romero, 2009, pp. 3-4). Although national leaders agreed on the term, many local organizations rejected it and identified with one, but not all three terms combined. For example, in the highlands region, the preferred form of self-identification is originario, in the Amazon region it is indígena, and in the valleys region it is campesino.

right of indigenous peoples to "prior consultation... with respect to the exploitation of non-renewable natural resources in the territory they inhabit" (CPE, art. 30, para. II, num. 15). Notably absent from the recognition of this right, however, is the condition that the results of the consultations be binding (Gar- cés, 2010, p. 80). The constitutional affirmation of state control over natural resources and the limitation of the right to consultation presented a serious challenge to the indigenous concept of "territory," which involves not only land but also subway resources, as well as air and spiritual connections with ancestors and non-human life within the territory (Salgado, 2011). The first version of the constituent proposal of the Unity Pact emphasized that "of special importance is our right to land and natural resources" (Garcés, 2010, p. 146). However, as Garcés (2010) and Tapia (2011) argue in detail, these crucial elements of the Unity Pact proposal were excluded from the final text of the CPE. As a result, the concept of plurinationalism articulated in the constitution was "tamed and controlled" (Garcés, 2010, p. 30).

Indigenous autonomy in the second MAS government (2009-2014)

The contradictions between the concept of plurinationalism and government policies became clearer during the second period of MAS government[3] when secondary laws and public policies to implement the rights to indigenous autonomy recognized in the CPE were enacted. In addition, relations between the government and the main indigenous organizations seriously deteriorated when the government revealed its determination to promote a neo-extractivist agenda during the conflict over the construction of a road through the Isiboro Sécure Indigenous Territory and National Park (TIPNIS) in 2011 and 2012. At the same time, the launch of the new legal framework for exercising indigenous autonomy opened the door to a series of important-yet complicated and contentious-experiments in the construction of new systems of indigenous self-government.

A few months after the promulgation of the CPE, the MAS government introduced secondary laws and supreme decrees to establish the new framework.

3 The Morales and MAS government was reelected in 2009 with 63.91% of the national vote (Órgano Electoral Plurinacional, 2009b).

The legal framework for plurinationality, including several laws directly linked to the AIOC. In August 2009, President Morales promulgated Supreme Decree 231 that established the bureaucratic steps for municipalities that wanted to become indigenous autonomies (Plata, 2010; Federación de Asociaciones Munici- pales de Bolivia, FAM, 2010). It is important to note that at that time there was still no regulation to define the legal framework for the AIOC. Therefore, indigenous peoples and municipal governments had to make the decision to initiate a process of conversion to the AIOC without knowing the legal framework for its future existence. The DS 231 opened a very short window of opportunity to comply with the various requirements to call a referendum on the conversion of the municipality to the AIOC in December 2009. Of the 19 municipalities that began this process, only 12 were able to meet the requirements (Plata, 2010, pp. 251-254; FAM, 2010, pp. 13-14). Of the 12 municipalities, 11 voted in favor of conversion (see Table 1). In the following years, these 11 municipalities experienced firsthand that the road to AIOC was much more complex and restricted than they would have imagined when the process was launched.

In July 2010, the government enacted the Framework Law on Autonomies and De-centralization (LMAD), which outlines the specific requirements for the creation of AIOCs. The drafting of the LMAD was highly contentious. Parent indigenous organizations such as CONAMAQ (Consejo Nacional de Ayllus y Markas del Qullasuyu) and CIDOB (Confederación de Pueblos Indígenas del Oriente Bolivia- no) lobbied the government to eliminate a number of complex requirements for accessing the AIOC and produced alternative law proposals (CIDOB, 2010; En- lared, 2010; IWGIA, 2011, pp. 174-176). However, the government ignored their demands. Consequently, in June 2010, CIDOB initiated the VII 'Great Indigenous March for Territory, Autonomies and the Rights of Indigenous Peoples' from the city of Trinidad to La Paz to pressure the government to lift the restrictions in the LMAD bill (Wasylyk-Fedyszak, 2010). Government representatives met with CIDOB to negotiate, but the final text of the law still did not meet their objections.

The LMAD foresees three routes to indigenous autonomy: 1) the conversion of existing municipalities; 2) the conversion of collectively titled lands (the Territorios Indígena Originaria Campesinas-TIOC); and 3) the creation of autonomous regions composed of two or more TIOC or AIOC. The municipal route to indigenous autonomy was and continues to be more relevant in the highlands, where

indigenous peoples represent the majority of the population in a large number of municipalities. In contrast, the TIOC pathway was and continues to be more relevant in the lowlands, where indigenous peoples are generally minorities within the municipalities and, therefore, have sought to establish TIOCs as mechanisms for self-governance and territorial management (Salgado, 2011). The main innovations of the LMAD and the differences between the legal structure for AIOCs and municipal governments are that AIOCs have jurisdiction over indigenous justice (still limited by the Jurisdictional Boundary Law) and can determine the design of their governing institutions according to the indigenous people's own rules and procedures, also with restrictions.

Despite these new opportunities, the LMAD did not respond to the main demands of the parent indigenous organizations. The first problem was that the law restricts the administrative jurisdiction of the AIOC to that of municipal governments, and in fact reproduces much of the municipal system established by the LPP in 1994 (see López Flores, 2017, p. 56). The 'municipalization' of indigenous autonomy radically undermined the hopes of many indigenous peoples to regain control of pre-colonial territories, which were much larger than municipal boundaries. As researcher Giorgina Jiménez observed, "Despite the fact that the Constitution recognizes the existence of ancestral territories, indigenous peoples must first subject themselves to municipal direction" (cited in Rousseau & Manrique, 2019, p. 9). Reacting to the narrowing of the concept of indigenous autonomy, several ana- lists disqualified as "municipalities with ponchos".

The second problem with the LMAD according to the indigenous organizations was the multiple bureaucratic requirements to access the AIOC that did not respect their own norms and procedures - as stated in the CPE (art. 290). First, in order to call a referendum to initiate the conversion to AIOC, municipal governments have to present a request for a Certificate of Territorial Ancestry with evidence that the territory was occupied by the indigenous people before the colony and with the signatures of 30% of the inhabitants registered in the electoral roll of the municipality (Ministry of the Presidency (s.f b). In addition, the TIOCs have to present a request for a Certificate of Governmental Viability and Population Base to show their management capacity -according to State criteria- and that they have a population of more than 1000 inhabitants (Ministry of the Presidency n.d.b).

50% of the votes, the municipalities and TIOC have to form a deliberative body to elaborate an 'autonomy statute' that describes the institutionality of indigenous self-government. The next step is the review and approval of the statute by the Plurinational Constitutional Court (TCP), a slow process that in practice has resulted in demands for significant changes in the texts of the statutes (see Tockman et al., 2015). Until 2019, the final step was a second state-supervised referendum to approve the autonomy statute (LMAD, art. 52); however, this final requirement was eliminated under pressure from indigenous organizations and replaced with a consultation by their own rules and procedures (Ley de Modificación a la Ley Marco de Autonomías y Descentralización 2019, art. 2).

For indigenous peoples in the lowlands, legal requirements pose particularly high barriers to accessing the AIOC. First, the municipal route to AIOC is not viable for the vast majority of indigenous peoples in the lowlands because they are minorities within their municipalities (Salgado, 2011). To access AIOC via TIOC, indigenous peoples have to satisfy four legal conditions that exclude the vast majority of them. The first condition is a population base of no less than 1,000 inhabitants (LMAD, art. 58). The second condition is the approval by the State of the "governmental viability" of the indigenous people and the delivery of a 'Certificate of Governmental Viability and Population' (LMAD, art. 58). The third condition is that the territories of AIOC governments may not exceed the geographic boundaries of departments; the only option provided by law is that an indigenous people with a territory that exceeds two or more departments could be divided into separate AIOCs that could then establish a commonwealth (LMAD, art. 29, III). The fourth condition is that the territories of AIOC governments have to be geographically continuous (Law of Territorial Units, art. 6), which excludes more than half of the TIOC in the lowlands (Salgado, 2011, pp. 223-223). Taking these four conditions together, Salgado concluded on the basis of careful analysis that only five municipalities and fifteen of the 60 TIOCs in the lowlands could access the AIOC (Salgado, 2011, p. 223).

For municipalities and TIOCs that wanted to become AIOCs, the bureaucratic requirements appeared as intentional obstacles to slow down their access to autonomy. Leaders of CONAMAQ and CIDOB indicated in 2011 that they felt cheated by the government by the imposition of "so many obstacles....

so many requirements" to access the AIOC (ERBOL, 2011). Reflecting on the LMAD, José Isategua of CIDOB's Autonomies Secretariat explained:

> We consider that we are deceived, and they are always going to want to make us dizzy. We are very upset, it is time for us to decide to see the destiny of each people... [However] in the environment of President Evo Morales there is a group that does not want indigenous autonomies. (ERBOL, 2011).

For their part, other researchers described the bureaucratic steps as "a labyrinth of autonomies" (Tomaseli, 2015, p. 79), a "bureaucratic odyssey" (Morell i Torra, 2015, p. 127) and "the long march" (Exeni, 2015).

The Jurisdictional Demarcation Law, enacted in 2010, seriously restricts the right of Indigenous peoples to administer their own justice systems (IWGIA, 2009). The Ley de Deslinde establishes the legal boundaries of Bolivia's "ordinary" and "indigenous" justice systems, relegating the latter to adjudication of minor criminal offenses within indigenous communities, such as cattle rustling. Gualberto Cusi, one of the first indigenous magistrates elected to the Plurinational Constitutional Tribunal, insisted that the law was "a step backwards" away from decolonization (La Razón, 2012a), while Leonardo Tamburini, former director of an indigenous rights NGO described the law as "unconstitutional" (2012).

The rights of indigenous peoples to be consulted prior to the exploitation of non-renewable natural resources within their territories were further circumscribed by the Electoral Regime Law (2010), the Mining and Metallurgy Law (2014) and a series of supreme decrees. The Electoral Regime Law specified that the results of consultations are not binding and only "shall be considered" in state decision-making (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 Mining and Metallurgy Law eliminates the right to consultation in the prospecting and exploration phases for natural resources (Art. 207, para. II), facilitates the expropriation of water resources (Arts. 111-112) and effectively criminalizes social opposition to extractive activity (Arts. 99-101) (see Schilling Vacaflor, 2017). Concerned about these limitations on their rights, indigenous organizations such as CIDOB and CONAMAQ openly protested for the government to rescind these laws. Raúl Prada, a

prominent intellectual and former MAS advisor, described the legal framework for prior consultation as a tool of "ethnocide" (Prada, 2013).

Beyond the legal framework, the implementation of public policies and the functioning of the state machinery simultaneously supported and undermined opportunities to exercise the right to autonomy. On the one hand, the State created the Vice-Ministry of Indigenous and Campesino Autonomies and Territorial Organization within the Ministry of Autonomy with the responsibility of supporting the AIOC process. Although the vice-ministry's officials were committed to indigenous autonomy, they lacked the human and financial resources to respond to the demands for technical assistance from municipalities and TIOCs that wanted to become AIOCs and were unable to disseminate information about the AIOC outside of a small group of municipalities and TIOCs. As a con- sequence, technical support for conversion to AIOC was weak and often totally absent. Several municipal authorities in the departments of La Paz and Chuquisaca explained to us that the lack of state resources to pay for conversion costs was one of the reasons they decided not to pursue the conversion of their municipalities to AIOC. In addition, in many municipalities there was inadequate information about AIOC to discuss it seriously - a situation that opponents of AIOC exploited with false rumors that further weakened the demand for autonomy.

During the second MAS government (2009-2014), relations with the parent indigenous organizations seriously deteriorated and it became clear that indigenous autonomy was not a priority of the State. The breaking point was the violent police repression in 2011 of the indigenous march against the government's plans to build a road to Brazil crossing the Territo- rio Indígena y Parque Nacional Isiboro Sécure TIPNIS without respecting the right to prior consent (see Fundación TIERRA, 2012). As a result of state repression, CONAMAQ and CIDOB withdrew from the Unity Pact in support of the government. MAS militants responded - with the support of the police - with the takeover and forced installation of leaders loyal to the government in CIDOB in 2012 and CONAMAQ in 2013 effectively fracturing and weakening the indigenous movement. Only with the political crisis and collapse of the MAS government in 2019 were there attempts to reunite the two organizations (Página Siete, 2019).

At the local level, MAS militants' opposition to indigenous autonomy was clear since 2009. In several municipalities, such as Jesús de Machaca, MAS leaders competed in local elections in direct opposition to indigenous organizations fighting for the conversion of their municipalities to the AIOC. In the municipality of Charagua, local MAS leaders also initially opposed the political struggles for indigenous autonomy of the Asamblea del Pueblo Guaraní (Albó, 2012) and only very gradually agreed to an alliance with the APG (Morell i Torra, 2015, 2018; Postero, 2017, pp. 168-171). Although there was no evidence that direct opposition to the AIOC by local militants was official MAS policy at the national level, it was clear that senior party leaders did little to soften that opposition. In the 2010 and 2015 subnational elections, MAS became the hegemonic party at the municipal level, winning more than 67% of mayoral seats and more than 50% of council seats in both elections (Órgano Electoral Plurinacional, n.d.). With control of more than 200 municipal governments, MAS mayors and councilors were able to undermine incipient local movements for indigenous autonomy, controlling the dissemination of information and often reaffirming municipal status without any debate about the possibility of conversion to the AIOC.

Indigenous autonomy in the third MAS government (2014-2019)

During its third term the MAS government[4] further centralized its power with positive changes in living standards and reduced poverty levels, but a continued weakening in public policies for indigenous autonomy. However, after attempting to win a fourth term in the October 2019 national elections, the MAS government collapsed in an electoral and political crisis when the Organization of American States (OAS) declared that there were irregularities in the vote count (Kurmanaev & Trigo, 2020; Molina, 2020). In response to pressure from the police, military, and various social groups, President Morales resigned and fled the country, and conservative senator Jeanine Áñez assumed the presidency. Although the new president declared that her only role was to call for new elections, with the COVID-19 crisis her mandate was extended until November 2020. During her eleven

4 The MAS party won the 2014 elections with 61.01% of the popular vote (OPEP, n.d.).

months in office, Añez acted swiftly to undo the MAS government's policies and to repress and intimidate its leaders.

Prior to the 2019 political crisis, the government decision that had the most impact on indigenous autonomy was the reduction of the Ministry of Autonomies to a vice-ministry within the Ministry of the Presidency. With this change, the directorate responsible for promoting AIOC "suffered a drastic reduction in personnel and resources" (Espinoza, 2017) further weakening its capacity to support AIOC conversion processes (Postero & Tockman, 2020, p. 5). As noted by Luz María Calvo, director of an NGO: "Although in the current Di- rection [of Indigenous Autonomies] there is still willingness to do so [work], its institutional capacity is much lower, to the point that in Cochabamba there is no office or technicians to coordinate" (Opinion, 2017).

Despite weak technical support, between 2014 and 2019 ten new municipalities and 18 TIOCs initiated the process of conversion to the AIOC (see Table 1). However, as we point out below, according to the same Vice-Ministry of Autonomies, the autonomy processes had already stalled in six of these ten new municipalities due to internal conflicts, while in most of the TIOCs the conversion processes have been very slow due to lack of technical assistance to comply with bureaucratic requirements and internal conflicts. To date, only four municipalities and one TIOC had completed all the steps to establish new AIOC governments.

In the face of the weakening of the right to indigenous autonomy, it is important to recognize the positive changes in the living conditions of thousands of indigenous Bolivians due to the developmentalist and neo-extractivist policies of the MAS government. According to data from the Bolivian National Institute of Statistics (INE), between 2005 and 2018, extreme poverty decreased from 38.2% to 15.2%, while moderate poverty decreased from 60.6% to 34.6% (INE, 2019). Furthermore, through the symbolic recognition of indigenous cultures, thousands and thousands of historically excluded Bolivians felt included as citizens for the first time (Postero, 2017). Only by understanding these impressive changes due to the national government's po- litics is it possible to understand the relative absence of strong criticism about the weakening of the AIOC project. The problem for indigenous peoples lies in the fact that the extractivist national policies that made poverty alleviation possible came into direct conflict with the rights to self-management of their territories.

Table 1
Current status of AIOC processes in Bolivia

Municipality and Department	Via AIOC (Municipality / TIOC)	Population	Indigenous population	Results of the first referendum on conversion to the AIOC (with date)		Results of the final referendum to approve the Autonomous Statute (with date)		Current status of the AIOC process
				Yes	No	Yes	No	
AIOC governments already established (4)								
Charagua (Santa Cruz)	Municipality	24 427	67.02%	55.66% (2009)	44.34%	53.25% (2015)	46.75%	AIOC governance was established in 2017.
Chipaya (Oruro)	Municipality	1814	97.08%	91.69% (2009)	8.31%	77.39% (2016)	22.61%	AIOC governance was established in 2018.
Raqaypampa (Mizque-Cochabamba)	TIOC	7344	–			91.78% (2016)	8.22%	AIOC governance was established in 2017.
Salinas de Garci Mendoza (Oruro)	Municipality	8723	95.59%	75.09% (2009)	24.91%	51.80% (2019)	48.20%	The AIOC government was established in 2020.
Municipalities and TIOCs with autonomous statutes approved by the Plurinational Constitutional Court (6)								
Pampa Aullagas (Oruro)	Municipality	2975	98.39%	83.67% (2009)	16.33%			Autonomous Statute approved by the TCP in 2016. It lacks approval by its own rules and procedures.
Lomerío (Santa Cruz)	TIOC	6481	89%					Autonomous Statute approved by the TCP in 2018. The law creating the Autonomous Territorial Entity has yet to be enacted.
Corque Marka (Oruro)	TIOC	8412	–					Autonomous Statute approved by the TCP in 2018. The law creating the Autonomous Territorial Entity has yet to be enacted.
Multiethnic Indigenous Territory - TIM I (San Ignacio de Moxos, San Borja and Santa Ana-Beni)	TIOC	3265	–					Autonomous Statute approved by the TCP in 2017. The law creating the Autonomous Territorial Entity has yet to be enacted.
Kereimba Iyaambae (Gutiérrez-Santa Cruz)	Municipality	11 393	–	63.11% (2016)	36.89%			Autonomous Statute approved by the TCP in 2019. The law creating the Autonomous Territorial Entity has yet to be enacted.
Jatun Ayllu Yura (Tomave-Potosí)	TIOC	6 451	–					Autonomous Statute approved by the TCP in 2019. The law creating the Autonomous Territorial Entity has yet to be enacted.

Municipalities and TIOC with complete Autonomous Statutes, but not submitted to the Plurinational Constitutional Court for constitutionality review (1)								
Cavineño (Riberalta and Reyes-Beni)	TIOC	2954	–					The Autonomous Statute has yet to be submitted to the TCP for the control of constitutionality.
Municipalities and TIOC in the process of drafting their Autonomous Community Statutes (2)								
Yuracaré Indigenous Council (Villa Tunari-Cochabamba and Chimoré-Beni)	TIOC	2358	–					In the process of drafting its Autonomous Statute.
Maracheti (Chuquisaca)	Municipality	7418	–	51.25% (2017)	48.75%			In the process of drafting its Autonomous Statute.
Municipalities and TIOCs that met all the requirements to call for a referendum for conversion to AIOC (2)								
Lagunillas (Santa Cruz)	Municipality	5283	–					The referendum for access to the AIOC is in process before the Plurinational Electoral Body (OEP).
Uribicha (Santa Cruz)	Municipality	7026	–					The referendum for access to the AIOC is in process before the Plurinational Electoral Body (OEP).
Municipalities and TIOC preparing documents to satisfy the requirements to call a referendum on conversion to AIOC (6)								
Jatun Ayllu Toropalca (Potosí)	TIOC	5031	–					It has a Certificate of Ancestral Territory. Lack of Government Viability Certificate and Population Base.
Ch'alla (Cochabamba)	TIOC	–	–					It has a Certificate of Ancestral Territory. It is in the process of preparing the Territorial Plan to obtain the Government Viability Certificate.
Monte Verde (Santa Cruz)	TIOC	13 679	–					It has a Certificate of Ancestral Territory. Lack of Government Viability Certificate and Population Base.
Pilcol Lecos (La Paz)	TIOC	3159	–					With request of Certificate of Ancestral Territory.
Nueva Llallagua (Oruro)	TIOC	–	–					With request of Certificate of Ancestral Territory.
Multiethnic Indigenous Territory II (Pando)	TIOC	3594	–					It is in the process of preparing the documentation to apply for the Certificate of Ancestry.
TIOC that applied for conversion to AIOC that do not meet the population requirement (1,000 in lowlands / 4,000 in uplands) (3).								
Araona Post (La Paz)	TIOC	116	–					It has a Certificate of Ancestral Territory. Does not meet population requirement.
Marka Camata (La Paz)	TIOC	1195	–					It has a Certificate of Ancestral Territory. Does not meet population requirement.

Copacabana Antaquilla (La Paz)	TIOC	1111	–					It has a Certificate of Ancestral Territory. Does not meet population requirement.
AIOC conversion processes paralyzed by internal conflicts (11)								
Tarabuco (Chuquisaca)	Municipality	19 554	93.40%	90.80% (2009)	9.20%			The AIOC process has been terminated (unofficially) due to conflicts between peasant unions and ayllus.
Charazani (La Paz)	Municipality	9161	96.62%	86.62% (2009)	13.38%			Stalled since 2015 due to internal conflicts over the location of the autonomous government headquarters.
Chayanta (Potosí)	Municipality	14 165	97.85%	59.60% (2009)	40.10%			Paralyzed since 2012 due to conflicts between the inhabitants of the town center and the native ayllus.
Curva (La Paz)	Municipality	2213	98.5%					Paralyzed since 2014 due to internal conflicts.
Turkish (Oruro)	Municipality	4160	97.4%					Paralyzed since 2009 due to internal conflicts.
Huari (Oruro)	Municipality	10 221	91.1%					Paralyzed since 2009 due to internal conflicts.
Santiago de Andamarca (Oruro)	Municipality	4588	96.2%					Paralyzed since 2009 due to internal conflicts.
Inquisivi (La Paz)	Municipality	16 143	96.4%					Paralyzed since 2009 due to internal conflicts.
San Miguel de Velasco (Santa Cruz)	Municipality	10 273	–					Paralyzed since 2016 due to internal conflicts.
Jesús de Machaca (La Paz)	Municipality	13 247	95.73%	56.09% (2009)	43.91%			Paralyzed by internal conflicts.
Jatun Ayllu Kirkiawi (Bolívar-Cochabamba)	TIOC	8635	–					Paralyzed by internal conflicts.
AIOC processes that ended with the formal rejection of the Autonomous Statute in a referendum (4)								
Mojocoya (Chuquisaca)	Municipality	7962	94.58%	88.31% (2009)	11.69%	40.645 (2016)	59.36%	The AIOC process was completed in 2016
San Pedro de Totora (Oruro)	Municipality	4941	97.15%	74.50% (2009)	25.5%	29.96% (2015)	70.04%	The AIOC process was completed in 2015.
Huacaya (Chuquisaca)	Municipality	2345	63.77%	53.66% (2009)	46.34%	41.4% (2017)	58.6%	The AIOC process was completed in 2017.
Curuhuara de Carangas (Oruro)	Municipality	5278	92.73%	45.08% (2009)	54.92%			The AIOC process was completed in 2009.

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

How can we understand the policies of MAS governments regarding indigenous autonomy?

MAS government policies to implement indigenous autonomy appear contradictory. On the one hand, government representatives emphasized that indigenous autonomy was one of the central pillars of the plurinational state.[5] On the other hand, the government established a legal framework that restricted the right and never invested sufficient resources to promote it. Two main factors explain this contradictory position. The first factor is the MAS government's neo-extractivist development strategy, which depended on the social redistribution of rents from mineral and hydrocarbon resources. The second factor is the MAS political strategy of controlling its political support base in the rural municipalities.

Neoextractivism: since the beginning of the colonial period, the Bolivian economy and state have depended on the extraction of non-renewable resources (Dun- kerley, 2017). The MAS governments could not escape that dependence. According to World Bank data (2018), hydrocarbons represent 34.6% of total exports, while minerals and metals accounted for 26.4% and 4.1% respectively. The MAS innovation consisted of increasing taxes on extractive activities and redistributing rents into social policies and public infrastructure (Kohl & Farthing, 2012; López-Flores, 2016). Labeled as 'neo-extractivism' (Gudynas, 2010), this national development strategy resulted in a significant increase in state revenues, increased social investment, significant reductions in poverty, and significant popular support for the MAS government (Kohl & Farthing, 2012).

It is in this political-economic context that state resistance to indigenous autonomy must be understood. Serious implementation of the right to indigenous self-government could have massive implications for territorial organization and on the fiscal capacity of the State. In the highlands there are 73 municipalities where more than 90% of the population self-identifies as indigenous, which in theory could easily become AIOCs (Albó & Romero, 2009, p. 22; Colque, 2009, p. 48). In the lowlands, indigenous peoples have obtained state recognition of 60 indigenous territories, many of which have expressed interest in becoming AIOCs (Salgado, 2010). Throughout the country, the

5 For example, over the course of 2011 and 2012, Gregorio Aro, Vice-Minister of Indigenous and Native Peasant Autonomies and Territorial Organization repeatedly emphasized in his

public speeches that "without indigenous autonomy, there is no plurinational State".

190 TIOC that had been legally recognized in 2011 represent 19% of the national territory. If the long list of TIOC claims not yet legally recognized is added, the proportion of national territory increases to more than 35% (Fundación TIERRA, 2011, p. 46). It is precisely in these territories where the country's most important hydrocarbon, mineral and metal reserves are found (Fundación TIERRA 2011, pp. 127-137).

State control of non-renewable natural resources does not undermine the aspirations of self-government of all indigenous groups, since many of them occupy territories that lack strategic natural resources. However, in the context of a single legal framework for the whole country, it is very difficult to reconcile the neo-extractivist development model with the serious implementation of the right to indigenous autonomy. The only way to resolve the contradictions between neo-extractivism and indigenous autonomy is to remove the right to control non-renewable natural resources from the right to autonomy. The leaders of the Guaraní people in the greater Chaco region have already accepted this limitation. As Schilling Vacaflor (2017, p. 1067) explains, they want to exercise their right to autonomy, but they do not expect to achieve the power to refuse hydrocarbon extraction from their territory-they only seek to minimize negative impacts and maximize benefits.

Rural political control: The constriction of indigenous autonomy in Bolivia must also be understood in the context of MAS efforts to control its support base in rural municipalities (Cameron, 2009; Postero, 2009, 2017). In contrast, one of the central objectives of indigenous autonomy movements has been to exclude political parties from the system of local political authorities. All indigenous autonomy statutes elaborated to date include systems for the selection of authorities that block the participation of political parties, which are widely criticized for distorting local poli- tics (see Postero, 2017, p. 168). In this context, any large-scale conversion of municipal governments to indigenous autonomy would seriously undermine MAS's rural political networks.

Responses of indigenous organizations to the bureaucratic-legal framework for AIOC

For many of the municipalities and TIOCs converting to AIOC, the experience has been slow, frustrating and often conflictive. According to data from the

Vice-Ministry of Autonomies (2019), of the total of 22 municipalities that initiated conversion to AIOC, three have succeeded in becoming AIOC governments[6] and five are in various stages of progress towards AIOC while four have rejected AIOC in referendums and ten entered into internal conflicts so strong that the processes have stalled. On the TIOC side, one (Raqay- pampa) has legally become an AIOC government, while five are close to satisfying all the requirements for conversion, one is preparing its autonomous statute, seven are preparing the paperwork to apply for conversion, one is paralyzed by internal conflicts and three have initiated the conversion process, but do not have the minimum population (see Table 1).

It is important to analyze these data in the context of the country's total number of municipalities and TIOCs. In 2020 Bolivia had 342 municipalities. When the AIOC process was initiated in 2009, two teams of researchers identified the municipalities that had sufficient indigenous populations to theoretically become AIOCs. Albó and Romero (2009) identified 215 of the 252 municipalities in the highlands where indigenous peoples represented more than 50% of the population and 73 municipalities where they represented more than 90% of the population, while Colque identified 173 municipalities where 80% or more of the population identified themselves as indigenous (2009, p. 48). In sum, of all the municipalities that could theoretically become AIOC governments, relatively few have initiated the process and even fewer have completed all the requirements or are close to doing so. In the lowlands the situation is different. Indigenous peoples express much more interest in converting their territories into AIOC governments, but legal requirements restrict the possibility to a small group. In addition to the two municipalities that initiated the conversion process in 2009 (Charagua and Huacaya), Salgado identified five municipalities (out of a total of over one hundred) and fifteen TIOCs (out of a total of sixty) that could meet the requirements to become AIOCs (2011, p. 223). Almost ten years later, all five municipalities had initiated the conversion process and six TIOCs have done so.

These data underscore the diversity of indigenous peoples' responses to the political opportunity to build AIOC governments. Some indigenous peoples

6 The new AIOC governments of Charagua, Chipaya and Raqaypampa already have web pages that describe the history of the processes and the first events of the new governments: Charagua: https://bit.ly/3kZpuLr; Raqaypampa: https://bit.ly/2KCALFb; Uru Chipaya: https://bit.ly/396O3Ui.

-The first is that some - especially in the lowlands - want to establish AIOC governments, but do not meet the minimum requirements, while others - especially in the highlands - could theoretically convert, but have not done so. Beyond the legal restrictions and political impediments imposed by MAS governments, we argue that four factors internal to indigenous municipalities and territories help explain the relative disinterest in indigenous autonomy, especially in the highlands. We have explored these ideas in greater detail elsewhere (Plata & Cameron, 2017, 2020), so here we only briefly examine these factors.

MAS's "Process of Change" and its hegemony in rural municipalities

As discussed above, the election of the MAS government in 2005 opened the door to two major contradictory political projects. The first project and the central objective of the MAS governments was the "process of change", which attempted to improve the welfare of excluded social groups through the control of the central State. The second project was the construction of a plurinational state through indigenous autonomy, which represented a strategy of indigenous peoples to protect themselves from the central state (Canessa, 2012). Faced with the two projects, many indigenous citizens and organizations selected the first, a decision reflected in the impressive triumphs of the MAS party in elections at all levels of the State (see Órgano Electoral Plurinacional, n.d.). In addition, MAS militants in rural municipalities ac- tively worked to break indigenous autonomy projects, with the exception of some municipalities such as Charagua where they made alliances with the autonomy movements. The return of MAS to the government - led by Luis Arce as president and David Choquehuanca as vice-president - after the electoral victory in the October 2020 elections, also means the triumph of the first political project, while the second project of building a Plurinational State through indigenous autonomy is relegated.

Political pragmatism and hybrid governments

The emphasis on the formal conversion of municipal governments to indigenous self-governance has diverted attention from the ways in which indigenous organizations had appropriated and adapted municipal institutions to in- crease the number of municipalities in the region.

The indigenous peoples' organizations have been able to incorporate local norms and procedures into hybrid systems of local governance. While parent indigenous organizations such as CONAMAQ and CI-DOB have fought for the reconstitution of pre-colonial territories with governments designed according to the norms and procedures of each people, in many municipalities of the altiplano indigenous authorities have pursued a more pragmatic strategy. After the implementation of the LPP in 1994, hundreds of indigenous and peasant organizations gradually attained municipal power through municipal elections (see Postero, 2009). When the legal framework for the AIOC was enacted in 2010, many indigenous organizations and authorities already had more than ten years of experience with municipal governance and had appropriated municipal institutionality, blending it with their own norms in a hybrid and informal way (Cameron, 2015; Colque & Cameron, 2009; Thede, 2011). In about 17 municipalities indigenous organizations formalized that hybridity in the creation of 'indigenous municipalities' and 'indigenous districts,' legal categories established by the Law of Dialogue in 2001 (Galindo, 2008, pp. 7-8).

To understand the relative disinterest of indigenous organizations in the municipalities of the highlands and valleys in indigenous autonomy, it is crucial to take these hybrid forms of governance seriously. Although hybrid municipalities lack the formal characteristics of AIOC, they possess some advantages. Most importantly, they do not have to go through complex, time-consuming, costly and potentially conflictual conversion processes to design new local government institutions. In this context, the decision to continue to govern through the municipal system should be understood as an attractive alternative to conversion to AIOC status.

Internal conflicts over indigenous autonomy within indigenous communities.

Another pragmatic consideration for many indigenous authorities had to do with the high level of conflict in a significant number of municipalities converting to AIOC. In ten municipalities internal conflicts were so strong that the AIOC processes came to a complete standstill, while in three municipalities the AIOC was rejected in local referendums (see Table 1). At the heart of these conflicts were struggles over the interpretation and application of local governance rules and procedures and struggles for control over practical elements of local political power (Cameron, 2013). For example, in

the municipality of Charazani, in the department of La Paz, internal conflicts over the location of the AIOC government offices were so strong that they blocked the conversion process after more than five years of work (Alderman, 2015; Espinoza, 2017).

News of these conflicts, coupled with pragmatic considerations on the part of indigenous authorities, influenced the decision not to convert municipal governments into new institutions of indigenous autonomy, for fear of becoming entangled in internal conflicts. For example, indigenous authorities in the six municipalities of the Ingavi province surrounding Jesús de Machaca saw how the conflicts over the AIOC were developing in that municipality and made decisions in communal assemblies not to seek the conversion of their municipal governments into AIOC governments (Plata & Cameron, 2017).

Internalized racism and the quest for modernity

Beyond pragmatism, disinterest in indigenous autonomy also reflects the internalization of the racist idea that indigenous norms are backward and that only Western institutions (such as the municipality) could lead rural communities toward modernity. For example, the indigenous mayor of the municipality of Taraco in the department of La Paz argued that indigenous autonomy would be a "regression" because it meant "going back to the past" at a time when Taraco needed to "look to the future and be more modern" (Interview, 7/11/2012). We spoke with other indigenous leaders who compared indigenous autonomy to giving up cell phones and other modern technologies. As one Tiwanaku leader said, "We don't want to go backwards. We want to progress. We want to be modern" (Interview, 10/15/2012). The rejection of their own norms might seem contradictory, especially after more than three decades of struggles for indigenous rights. However, as anthropologist Andrew Canessa argues, the devaluation of indigenous norms must be understood in the context of Bolivia's deeply rooted racism and the ways in which indigenous people "live, resist, absorb and even reproduce it" (Canessa, 2012, p. 7). In this context, Canessa suggests, aspirations for progress and hopes for the future point toward what is perceived as urban, modern and Western. In this panorama of internalized racism, indigenous autonomy is not always seen as a positive option.

Conclusion: the future of indigenous autonomy in Bolivia?

The triumph of MAS in the general elections of October 18, 2020 could mean the return of plurinationalism and indigenous autonomy. However, the future of plurinationalism, indigenous autonomy and the 'process of change' of the MAS governments remains very uncertain. It is clear that the efforts of the indigenous movements and the MAS governments to re-found the Bolivian State during the last fifteen years are seriously weakened by the political crisis of 2019-2020. In that context, it is highly unlikely that any government will seriously promote indigenous autonomy rights. Recognizing the dangers of predicting the future, we anticipate that the bureaucratic-legal framework for indigenous autonomy in Bolivia will survive, albeit in a manner marginalized from central state policies. Looking at the responses of indigenous organizations to the future political context, we see two possible scenarios. The first is for indigenous authorities and organizations in rural communities to pursue pragmatic strategies to consolidate their local power in municipal governments and TIOCs and take advantage of opportunities to informally hybridize local governance institutions. The second scenario is for indigenous organizations, both local and parent, to renew demands for indigenous autonomy as a strategy to defend themselves against a central state that is no longer willing or able to protect their rights.

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The tragedy of *Alal:* regression (not restitution) of rights in the Autonomy Regime in Nicaragua

Miguel Gonzalez

Introduction

Nothing was unusual in the Sumu-Mayangna indigenous community of *Alal* on that warm Wednesday afternoon, January 29, 2020, the least humid time of the year in Nicaragua's Northern Caribbean. As has been a daily practice, some of the men were fishing, others working in agricultural areas near the community, on the collectively owned lands of the *Mayangna Sauni As* territory, 'in the heart' of the *Bosawás* Biosphere Reserve, in an area that was officially recognized by the Nicaraguan State in 2001 (Na- ción Mayangna, 2014, p. 9). An important and unprecedented recognition, after a decade of sustained efforts in which multiple actors, including local and regional indigenous authorities and non-governmental organizations joined forces to identify, demarcate and finally demand from the State the ownership of ancestral lands of the Sumu-Mayangna people.

And yet, that January afternoon would be part of a tragic day for the people of *Alal*. Sudden gunshots shattered the peaceful evening and alerted the entire community. In a series of coordinated attacks, a gang of armed criminals killed four men, wounded three, including women, and kidnapped eight people, all members of the community. They also burned their homes and stole their livestock. The villagers of *Alal* - which in Mayangna language means 'strong man' - were unable to repel the attack, partly because of the surprise of the action, but also because of the larger number of armed attackers, under the command of "Chabelo" Meneses Padilla, the apparent leader of

the grouping.[1] An action by the so-called mestizo settlers, illegal occupants of indigenous lands. The following day, in a real-time transmission to a national newscast, the authorities and leaders of the territory denounced the facts and made four main demands: the right to communal property, to prevent its usurpation by settlers, to respect the life of the community members and to stop 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 previous years, the attack changed the daily scenario to a qualitatively different environment of violence. *Alal*, along 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 8330 people (see map). These communities share a history of struggle, resistance and dignity. The country's nine Sumu-Mayangna territories also share a historical struggle for self-government and self-determination centered on community and territory: an autonomy built and defended despite the weaknesses of the regional autonomy regime established in 1987 for the Caribbean regions of Nicaragua.

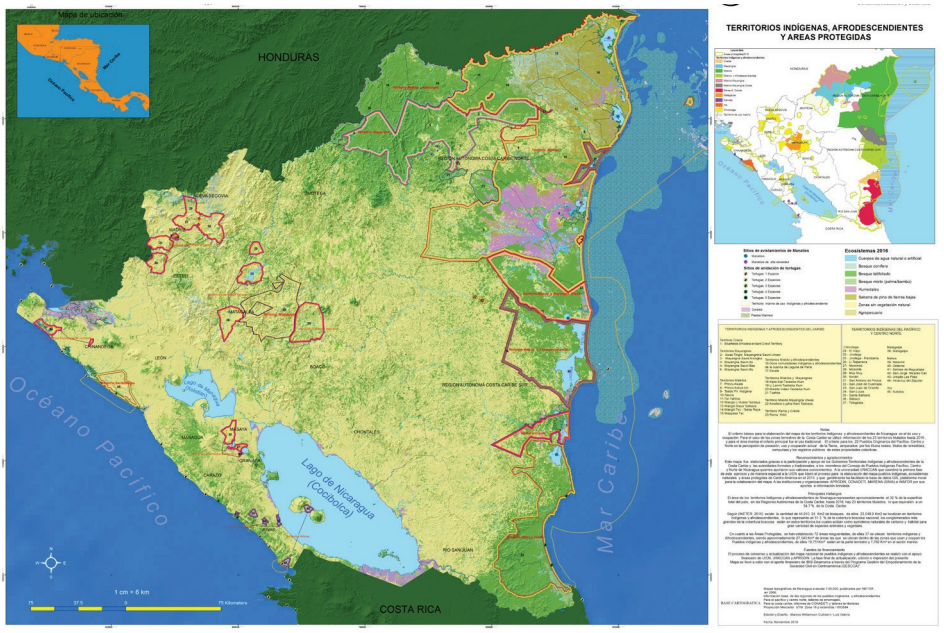
This chapter attempts to demonstrate that the tragedy of *Alal* allows us to understand the dilemmas and the process of regression of rights in the autonomous regime of the Nicaraguan Caribbean, after a decade of fundamental economic and political changes in the country: On the one hand, the limited exercise of the autonomy rights recognized to indigenous and Afro-descendant peoples living in the autonomous regions, especially in relation to political and ethnic representation in the regional governing bodies and effective control over the demarcated territories; and on the other, to dimension 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 a certain way, *Alal* expresses

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

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

The chapter brutally reveals a cumulative process of indigenous-territorial 'disempowerment', dispossession and collective coastal frustration with respect to the autonomous regime officially recognized by the Nicaraguan state. The chapter is based on the inter- pretation of secondary documentary sources, interviews with indigenous leaders, and review of official statistics and reports produced by civil human rights organizations.

Indigenous and Afro-descendant territories



Source: URACCAN (2017). Pueblos Originarios y Afro-descendientes de Nicaragua. Ethnography, Natural Ecosystems and Protected Areas. Managua: IBIS-Aprodin

The chapter is organized as follows: first, I present the antecedents of the autonomy process, an issue I have dealt with in other works and therefore summarize the key elements for understanding its origin, development and historical evolution. Second, I attempt to document the process of rights regression of coastal autonomy, an initiative conceived as a multiculturally inspired 'state solution' to the challenges of ethno-national integration in Nicaragua. The critique outlined here focuses on autonomy understood as a mechanism of real mediation through which limited rights are conferred on the inhabitants of the region.

of the Coast to exercise certain levels of relative autonomy. In this section I argue that regional autonomy in Nicaragua has been constrained by hierarchical, state-centered governance modalities, which have prevented its full realization. The third section of the chapter is devoted to identifying the scenarios of violence that have transformed social relations in the Caribbean regions and add a new analytical dimension to understanding their real impact. Finally, I present the conclusions, where I develop a critique of the multicultural autonomist model in Nicaragua, and suggest, on the one hand, to distinguish autonomy as an *official* process - subjected to the state and mestizo-centric logic and rationality that exerts relations of domination and control over the subjects of self-determination 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 an era of profound changes in the country's contemporary history. From the beginning, the changes promoted by the Sandinista Revolution provoked friction on the coast that resulted in animosity. The FSLN nationalized natural resources, initiated an agrarian reform plan, and created mechanisms of 'mass' social representation 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 empathy and euphoria, the Coast was shocked into its own revolution and social rebellion, but to reject the changes introduced by the Revolution. The agrarian reform created animosity because of the risk it carried with respect to indigenous claims to ancestral communal property; while the 'mass organizations' were not in tune with a multi-ethnic associative organization, the Alliance for the Progress of Miskitu and Sumo (ALPROMISU), which had been born in the light of the socio-economic and cultural changes of the Coast in the mid-1970s, and which had high levels of popular support and legitimacy, especially because of the very close relationship between Moravian religious leaders and indigenous activism (García, 1996, p. 100). 100).

Faced with the growing coastal mobilization demanding respect and participation, the FSLN decided to respond with intimidation and force, imprisoning the principal

political leaders on the coast, which hastily led to a military conflict. In 1984, after almost four years of armed conflict on the coast and in the country, the social, economic and human wear and tear demanded that the warring parties seek a peaceful and negotiated solution. Thus autonomy was born, in the midst of war and the search for peace.

The roots of the conflict in the Caribbean Coast and the social and political conditions that led to the creation of the regional autonomy regime in Nicaragua have been extensively discussed, especially during the years preceding the approval of the Autonomy Statute in September 1987 (Hale, 1994; Jenkins, 1986). During the following decade a series of papers were published that provided insights into the complex challenges of building autonomy in adverse political and economic circumstances, especially when the FSLN was ousted from power in 1990 (Frühling et al., 2007). After all, the FSLN had consulted, negotiated and approved the Statute with sectors of the 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 the autonomous rights of the inhabitants of the Coast, which are expressed in the right to their forms of social and political organization, respect for communal property, political representation in regional government bodies, education in their mother tongue, benefits from the exploitation of natural resources and guarantees of participation in decisions on matters of regional interest. The Statute created two popularly elected representative bodies, the Autonomous Regional Councils, one in each region - North and South- elected every five years, where the indigenous peoples and ethnic communities that inhabit the regions are represented.[5] Through a model

3 MISURASATA (Unity of Miskitu, Sumu, Rama and Sandinistas), founded in November 1979, is the heir organization of ALPROMISU. According to Garcia (1996, p. 103) this new organization was created in the context of the revolutionary changes in the country and its demands were ethnocultural "from the beginning". A treatment of the political complexities of this transition can be 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. At the time, this organization 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 that period to five years (National Assembly of Nicaragua, 2016).

heterogeneous institutional design of ethnic representation, autonomy was conferred on the regions of the Caribbean Coast. As of 2020, eight regional councils have been elected in a succession of regional elections that began in 1990, with varying results in terms of ethnic, political and gender representation. In addition to the Regional Councils, the Statute established the creation of regional executive bodies, called Coordinaciones, whose representation is vested in an elected councilor. The problems that the Statute attempted to solve were related to the exclusion of the coastal peoples, the mechanisms of discrimination in the regions, the relative isolation and economic development, as well as the lack of integration with the rest of the country. The Statute was also an instrument of pacification and political astuteness, that is, to demobilize the armed front, a war scenario in the Caribbean that the FSLN leadership had concluded was unwinnable.

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

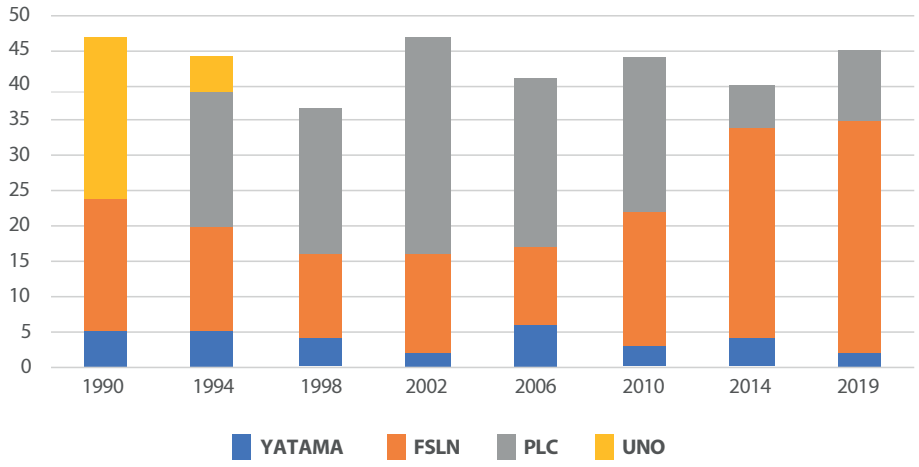
The initial character of coastal autonomy was of a political-administrative type, vested in a regional jurisdiction - the former Department of Zelaya, later called Special Zones I and II - subdivided into municipalities. This type of autonomy was not the vision proposed by MISURASATA, centered on the ethnic character of the indigenous "nations" and inscribed in the territory, self-government and communal authority (MISURASATA, 1985). In other words, autonomies 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, sought to avoid hegemonies "of one ethnic group over another," especially to contain the Miskitu leadership, but ended up imposing a mestizo hegemonic model of political representation and, in good faith, a model of political representation.

controlled by the national political parties (as can be seen in graphs 1 and 2 with respect to regional political representation). Community autonomy was thus subordinated and secondary to official administrative autonomy at the regional level. Juan Carlos Zamora - former Miskitu communal trustee - defines this subordination as follows:

> The autonomy law has a defect by definition, it depends on a democratic majority system defined by popular suffrage. That is to say, as non-indigenous people become the majority, the project of political and institutional autonomy with cultural relevance loses strength. (Bilwi personal communication, February 27, 2020).

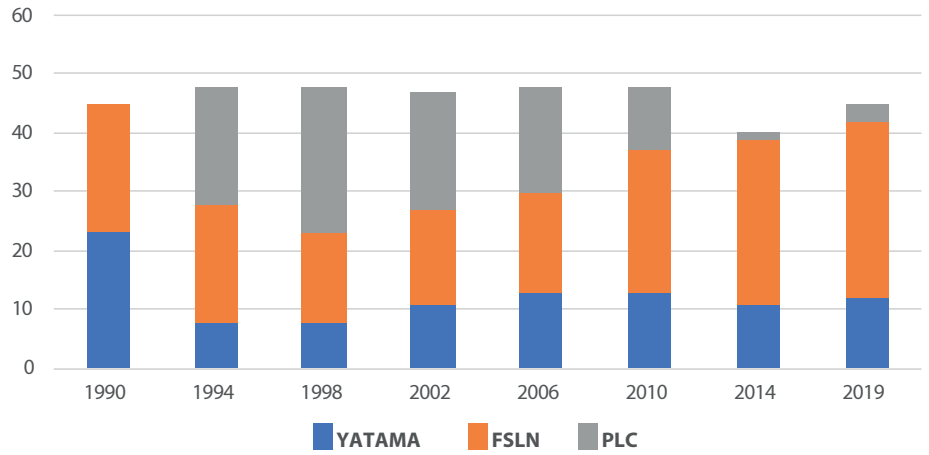
Thus, policy was transferred to the regional level, which acquired an excess of administrative power within a centralist system controlled by the national executive power.

Graph 1
Autonomous Regional Council of the Southern Caribbean:
Political Representation, 1990-2019



Source: Own elaboration based on data from the Supreme Electoral Council (CSE, https://bit.ly/2Ksao4s). Note: Other regional minority political organizations only managed to obtain 16 seats between 1990 and 2019, while the national non-hegemonic ones obtained 13 during the same period. The acronym PLC corresponds to Partido Liberal Constitucionalista and UNO to Unión Nacional Opositora.

Graph 2
Autonomous Regional Council of the Northern Caribbean:
Political Representation 1990-2019



Source: Own elaboration based on data from the Supreme Electoral Council (CSE, https://bit.ly/2Ksao4s).
Note: PAMUC, a regional political party obtained 1 regional councilor in 2002; while two national organizations the Independent Liberal Party and UNO obtained 5 and 3 respectively, during the period between 1990 and 2019.

A decade after the Regional Councils were inaugurated, the Law of Territorial Demarcation -Law 445- was approved (in 2002), which gave local self-government, in the form of territorial authorities, recognition and thus established a new level of government in the autonomic system. Although the Law created a procedure for demarcating and titling communal lands, its actual implementation only began during the second FSLN administration, starting in 2007. Through a series of campaign commitments and regional alliances in his race to return to power, Daniel Ortega made a commitment to title the lands of indigenous and Afro-descendant peoples of the Coast (González, 2016). A commitment that his government achieved once elected president. By 2018, 23 territories had been titled, covering almost the totality of the autonomous regions and 32% of the country's surface (APIAN, 2017, p. 5). However, the fourth and final phase of the titling process consists of 'sanitizing' the territory, and determining the legal circumstances of the non-indigenous occupants.

indigenous peoples in the titled territories. The Ortega administration never showed any real interest or progress in concrete actions to clean up the titled territories. Paradoxically, the titling process unleashed massive illegal occupations of mestizo squatters in most of the new territories, while it accelerated the tendency to establish illegal settlements that had begun in the previous decade. The Ortega administration took care to dissuade fears of expulsions or relocation of settlers occupying indigenous lands by promoting a narrative of 'cohabitation' and 'coexistence' that indigenous peoples rejected as a direct form of state omission and complacency with the *de facto* usurpation of indigenous land (APIAN, 2017, p. 20).

It is in this context that one can understand the attack by armed settlers on *Alal*, and the systematic intimidation exercised by groups of squatters on indigenous land to violently displace their ancestral owners. Since 2012, the coastal organization CEJUDHCAN (Centro para la Justicia y los Dere- chos Humanos de la Costa Atlántica) has denounced the siege, intimidation and assassinations of indigenous leaders in Miskitu communities in different territories, also subjected to forms of violent occupation. 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 from the State of Nicaragua (CEJIL-CEJUDHCAN, 2019).

For all its importance, the Territorial Demarcation Law arrived late and with little real capacity to give indigenous peoples effective security and greater control over their collective lands. Moreover, in attempting to solve one problem of property definition, Law 445 exacerbated others, such as encouraging the desire of squatters driven out by the agro-export model and the monopolization of rural property in the center of the country to occupy indigenous lands. This renewed expansion of 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 nature reserve areas in the Northern Caribbean - such as the Bosawás Reserve - and in the South, the Indio-Maíz reserve.

Land conflicts in the Caribbean regions confront not only poor and displaced peasant squatters with poor indigenous peoples, but also between other forms of large-scale land occupation and property grabbing such as the plantation economy, gold mining, agribusiness, and

large-scale infrastructure works that also threaten to reduce indigenous peoples' piety to a formal act of recognition, erode territorial autonomy and displace their communities. Unfortunately, the representation of the conflicts - with good reason - has focused on interpreting the problem as an "invasion of land-grabbing settlers" that often fails to make visible the diverse and systematic institutional and socio-economic mechanisms that legitimize and promote this expansion (Becky Mcrea, personal communication, February 22, 2020).

Although communal land is legally protected to prevent its commercialization and privatization, there are various "buying and selling" mechanisms and extra-legal agreements through which previous and new appropriations by squatters are *de facto* legitimized. In some cases, indigenous authorities and settlers extend "use and exploitation" permits for communal lands to individuals; in other cases, regional and municipal officials - in exchange for political favors or simply to enrich themselves illegally - extend "endorsements" for the use of communal property to individuals, families or groups of settlers without consulting the 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 the community of *Alal* - which require a level of organization that is difficult to achieve without a certain level of per- misibility on the part of the regional and/or state authorities.[6] The communities perceive that some of the violent actions are related to an "advance" by 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 a more or less common practice in the territories and precedes the titling process. However, once titles were acquired, these practices increased significantly, encouraged in part by an increased demand for land by squatter peasants for subsistence farming activities and the extension of areas for cattle ranching (Cedeño et al., 2018). It is important to note that the territorial authorities have the power to extend "authori-

6 Since 2012, a military unit of the Nicaraguan Army - the Ecological Battalion - has been operating in the Bosawás reserve, commissioned to protect the natural area against environmental crimes, including deforestation and illegal occupations of indigenous lands. Community complaints about the inaction of this military unit have accumulated over the past five years.

The "permits for the use of communal lands and natural resources in favor of third parties", but such authorities must receive the mandate of the communal assembly (according to Article 10 of Law 445). In other words, the exploitation permits do not transfer the dominion over the property privately, but rather its usufruct. However, under these mechanisms, indigenous property has been *de facto* alienated in favor of settlers in a good number of territories through leases and other mechanisms (Mayangna Nation, 2014, p. 17).

> The invasion of the Mayangna Sauni As territory - mentioned Arisio Genaro in 2014 - has been facilitated by Miskitu leaders who have sold land in the upper part of the Wawa River; by the slow start of operations of the Ecological Battalion in the Bosawás reserve and by the message of the President of the Republic who said that he should not carry out evictions. (quoted 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 partisan "operators" of different organizations and hierarchies. A journalistic investigation prepared by Wilfredo Miranda in 2016 identified as "land trafficking" a series of illegal practices in the issuance of "lifetime" permits in favor of "third parties" by regional councilors and authorities linked to the FSLN and YATAMA. "Although no one can give endorsements in indigenous territories," Miranda relates, "Müller and Collins [both FSLN regional councilors] delivered the most recent endorsement on September 6, 2015 in favor of a su- ject identified as Justo Linares Obando. Linares Obando is granted, under the figure of "usufruct for life" (i.e. for life), the possession of 300 manzanas of land in the Pinares Tunga Tasba Pri sector, in the Northern Caribbean Autonomous Region" (Miranda, 2016). Miranda documents other cases of illegal operations with indigenous lands by leaders and municipal authorities linked to YATAMA.

> In 2005, García Becker [former government coordinator] gave an endorsement in which he states that "collective number 5" of Miranda Urbina [buyer] owns 7150 manzanas of land, located near the Wawa River in Waspam. This 'collective' is formed by 143 members of the ex-resistance of YATAMA.(Miranda, 2016).

Operations such as these have been documented in recent reports and studies, in addition to allegations reported in national news media (Bryan, 2019, p. 60; The Oakland Institute, 2020). However, to date no

there are no legal proceedings underway to determine responsibility for the accusations.

And finally there are large-scale operations that also dispossess indigenous and Afro-descendant peoples of their property rights. Particularly the plantation economy and agribusiness, gold mining and infrastructure works such as the interoceanic canal project (The Okland Institute, 2020), initiatives that have not observed the application of the right to free, prior and informed consultation. African palm extensions in the Caribbean regions grew from 7000 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 exploitation agreements with territorial authorities. In 2017, the areas under gold mining concessions grew from 1.2 million to 2.6 million hectares, of which about 32% were located in the buffer zone of the Bosawás reserve and other indigenous territories (The Okland Institute, 2020, p. 26). For its part, the Interoceanic Canal project, which was concessioned by the Ortega administration to a Chinese consortium in 2013 without consulting indigenous and Afro-descendant communities in good faith, threatens to dispossess hundreds of peasant families and relocate Rama indigenous communities along 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 works (González, 2018).

In the second decade of the autonomy regime, which began in 2000, new scenarios emerged that marked the power dynamics and the sub-ordination of the Coast to the economic model of agro-export and accumulation adopted by the country's elites. At the political level, a 'pact' between the Constitutionalist 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 exclusionary electoral reform, bi-partisan control was extended to the country's municipal governments by eliminating local constituency associations, a mechanism that allowed citizen participation independent of political parties. On the Coast, the new electoral participation rules forced the coastal political organizations to register as political parties, in clear violation of the political participation principles of the Autonomy Statute. In the elections

The Regional Councils and their coordinating bodies became spaces of control of 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, was to increase with the arrival to power of the second Ortega administration.

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

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

However, the expansion of cattle ranching, agribusiness, the plantation economy and forestry operations at a time of rising inter- national prices (Rubio, 2017), created inequalities in the country's property structure, with a singular effect on the Caribbean regions. On the one hand, several interconnected processes of agrarian transformation took place: land concentration increased, favoring middle and large landowners, and rural unemployment and underemployment grew in urban areas in the Pacific region of the country. All this led to what Marti i Puig and Baumeister describe as a process of 'recampesinization' due to the start of agricultural activities in areas of the Pacific.

7 In April 2018, social protests took place led by youth, women's organizations and the elderly opposing changes to the pension system. The protests were violently repressed by police and paramilitary groups. The Inter-American Commission on Human Rights (IACHR) estimates that 212 people died and 1337 were injured. 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

agricultural frontier a decade earlier 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 of internal demographic reconfigurations in the regions, to where it expanded with singular force -from the Center and Pacific, but also from other peasant areas of the Caribbean- towards the recently titled indigenous territories. The "recampesinization" of the mestizo rural population is both a form of indirect displacement and of economic exclusion, by reconcentrating land in the historical agricultural frontier in favor of medium and large producers, and thus displacing poor landless peasants to the sub-regions of community colonization in the Caribbean territories.

In other words, a double process is taking place on the coast: on the one hand, the exodus of the poor peasant population to frontier areas, both because they have been displaced by the reconfiguration of property, but also because of the incentive provided by the rising prices of agricultural products in the country and in international markets. However, for indigenous and Afro-descendant peoples, this pressure became a struggle for territory, rights and living spaces. These structural conditions have made communication between settlers and indigenous people difficult and one can understand why the latter have rejected the narrative of "coexistence" promoted by the State.

Regression of rights

The day after the attack against the *Alal* community, Sebastián Lino, president of the *Sauni As* Territory expressed his frustration to an independent national media: "we have done advocacy, there have been decrees, but they only remain on paper. There has been no accompaniment or action, only papers and decrees from Mother Earth" (100 Noticias Nicaragua, 2020). Lino was referring to *Decree 15-2013 Defense of Mother Earth* issued seven years ago by the Government of Nicaragua to accompany communities in their defense of the territory through the support of different state institutions (Government of Nicaragua, 2013). In reality, the Decree never had any real life and remained a dead letter.

Arisio Genaro Celso, former president and current secretary of the Mayangna Nation - a supra-communal representation entity 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 au-

We are at the side of the communities. We are at the side of the communities. Our authorities know, but we ask them to act" (100 Noticias Nicaragua 2020). That same day in the country's capital, Eloy Frank, president of the Mayangna Nation, tried to minimize the events in *Alal* and reaffirmed his confidence in the support of the State and in the administration of President Ortega:

> The Mayagnas indigenous organizations, through the territorial governments and the Mayangna Nation, have been working in close coordination with the National Police on the whole issue of territorial security, the patrols that have been developed, the accompaniment to ensure the 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), representing 72 Mayangna communities belonging to 9 territories in the Northern and Southern Caribbean.[8] SUKAWALA was the historical organization of the Sumu people founded in 1974 and dissolved to create a supra-munitary government capable of representing the newly created territories in their relations with the central government. Since its founding, the Mayangna Nation expressed tensions over its party control, in a context of rapid political reconfiguration in the country and the autonomous regions. For the FSLN it was important to consolidate the political support of the Mayangna communities. For the territorial authorities, SUKAWALA no longer had the necessary capacity for representation as multiple territories were formed with their respective communal and territorial governments. In the Regional Councils, Mayangna representation has usually been minimal and fragmented since the election of councilors must be done through political parties. In the Northern Caribbean, Mayangna representation during five terms of the Regional Councils (1990-2014), only reached 4.5%, despite constituting 6% of the regional population. Thus, the Mayangna Nation was born as a space for interlocution 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 Relations.

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

res for Indigenous Affairs at the head of which he appointed prominent Mayangna leaders, who also actively intervened in the decisions of the Mayangna Nation (Sirias, 2013). Although symbolically important, the Vice Ministry never became a decision-making entity and was eventually dissolved amid allegations of corruption.

The second Ortega administration was neither the first nor the only one to design and promote mechanisms of intermediation and power parallel to regional and community authorities. In fact, these mechanisms have been implemented to a greater or lesser extent in the autonomous regime since its creation. For example, the Statute of Autonomy establishes the figure of the "representative of the Presidency" in the Autonomous Regions, a position which is "compatible" with the function of Regional Coordinator. Since their creation, the Regional Councils and their Coordinating Councils have had to deal with the figure of the "Presidential representative," a position that successive national administrations have used -with varying degrees of effectiveness and opportunism- to undermine the functions of the regional authorities.

In 1990, Violeta Chamorro's administration established the Atlantic Coast Development Institute (INDERA) and channeled through it the resources and political support it denied to the newly formed Regional Councils. His successor, Arnoldo Alemán, created the Secretariat of Atlantic Coast Affairs in 1997, which coordinated the relationship between the Executive and the Regional Councils and Coordinating Councils. These Secretariats -whose offices were located in the country's capital- also operated as political coordination units of the PLC, at a time of high partisan polarization in the life of the Councils. The following administration, presided by Enrique Bolaños (2002-2007), did not fundamentally change this method 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 Autonomy Statute. In its eagerness to centralize political and public decisions regarding the Coast, the Ortega administration created a Development Council for the Caribbean Coast, while maintaining the Secretariat, changing its name, but not its mandate or operational functions. However, the Secretariat began to play a more active role as a political-partisan body in the regions, micromanaging the activities of municipal mayors' offices, Autonomous Regional Councils and Regional Coordinating Bodies. This intermediation defined a

The FSLN has a pattern of political control at the different levels of authority in the autonomous system, from the indigenous and Afro-descendant communal governments, territorial authorities, municipalities, 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 levels. 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 favor or block those authorities who do not align with the governing party (Dolene Miller, personal communication, February 20, 2020). In these circumstances, official self-government-that web 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 rights regression.

To express their grievances about state complicity, *Alal'*s territorial authorities had to make an effort to step outside the official narrative about the Mayangna Nation's autonomy and party control, which in itself was an act of defiance and resistance: "our lands, our communities, our lives," cried Sebastián Lino, "have been violated, threatened and we have been stripped of our crops" (*100 Noticias Nicaragua*, 2020). The note of *19 Digital*, the official media of the Ortega administration, responded to *Alal'*s lament mentioning that "the leaders of the Mayangna Nation [referring to members of its Board of Directors] highlighted the achievements and advances in terms of restitution of rights in their communities by the Government of Reconciliation and National Unity". And to endorse the state's commitment, he quoted words from Taymond Robins, also a Mayangna Nation authority:

> We have faith, we are sure that our government will continue to apply the laws, 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 perpetrated the attack]. (Umaña 2020).

Despite the confidence of indigenous authorities, impunity has been the norm in relation to crimes against indigenous property, aggression and intimidation against communities and selective assassinations of their leaders and inhabitants. In such a scenario, the official narrative of 'restitution of rights' has remained an empty discourse, which contrasts with the frequency with which the following are reported

in national media different forms of abuse, new occupations and the forced displacement of entire communities (Miranda, 2020).

Sub-national violence, new realities

Central America is among the most violent regions on the planet. With the usual exception of Costa Rica, most countries in the region are burdened by decades of a violent past and structures of inequality that continue to be the norm in daily life in cities and rural areas. In El Sal- vador during 2017 the homicide rate (the number of murders per hundred thousand 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 the Americas (17.2) (UNOC 2019a, p. 13). Part of this violence is rooted in historical social inequalities that have been reconfigured into a matrix of enduring structural inequity, to which the dynamics and contradictions of capitalist accumulation, the power of elites to prevent structural change, and the ability of criminal networks to take over state institutions, including sub-national governments, have contributed (Torres Rivas, 2007; Martí i Puig & Sánchez-Ancochea, 2014).

Since the end of the armed conflict at the end of the 1980s, Nicaragua and Costa Rica were notable exceptions with low levels of violence compared to Honduras, Guatemala and El Salvador. However, in Nicaragua the "safest country" re- putation began to change drastically during the last decade, with a particularly pernicious expression in the Caribbean regions. In 2017, the homicide rate in the South Caribbean was 28, while in the North Ca- ribe it was 15. During the same year the rate in the country was 8.3 (UNOC, 2019b, p. 46). Except for the state repression that occurred in the context of the country's political crisis in 2018, a more complex and decentralized violence was already clearly noticeable on the Coast in preceding years - an issue that, despite its intensity and endurance, so far remains marginal to other conflict scenarios that exist in the country.[9]

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

Scenarios involving violent actions are an everyday part of the lives of the inhabitants of the autonomous regions and impact their social fabric. Their spatial dynamics generally correspond to the pattern described by Hilgers and Macdonald who argue that "contemporary violence is a moving target, characterized by historical legacies, economic structures, institutions, and actors that are embedded in sub-national 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 the issue of violence on the coast has not been treated systematically and in depth, a first approximation allows us to identify at least four sub-national conflict scenarios that usually involve individual and collective actions by agents and dynamics that generate violence: (i) conflicts over the occupation of communal land and associated natural resources owned by indigenous peoples; (ii) punitive actions by the army and police to eliminate "common criminals" and intimidate indigenous and Afro-descendant communities under mechanisms of a problematic security and legality policy; (iii) illicit activities by 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 confront 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 during the last five years. Until 2010, the type of conflict tended to be localized in a limited number of indigenous and Afro-descendant territories in both regions, but as the titling process has advanced, confrontations between settlers and indigenous peoples have paradoxically become more widespread. According to human rights agencies, 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

10 Post-electoral conflicts, although important because of their transcendence and collective action, tend to be less systemic and of short duration. The discussion therefore focuses on durable violence.

11 Available data on killings in property conflicts on the coast should be treated with caution. In general, local and national human rights organizations tend to report murders committed against indigenous people, but do not provide

and property theft," death threats, rape, kidnappings, killings and disappearances (CEJUDHCAN-CEJIL, 2019, p. 4). However, the atmosphere of intimidation, selective homicides, and threats in relation to property conflicts began to incubate a decade earlier, around 2005-ticized by the expansion of agricultural activities, infrastructure works, and the narrative of "integration" of the Coast promoted by liberal administrations.[12]

The army and the national police constitute another type of agent generating punitive violence in the Caribbean regions and these forms are usually backed by legitimacy in the use of means of coercion. Under the narrative of pursuing organized crime in rural peasant areas, the army, in joint operations with the police, has been involved in acts of violence and human rights violations, usually operating without warrants and contravening basic precepts of the 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 ope- rations. Under the argument of pursuing "criminal elements," the army eliminated a group of rearmed people 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 crisis

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The same level of attention is given to murders or crimes committed against non-indigenous persons in situations of armed confrontation. Nor does the National Police record homicides disaggregated by ethnic identity.

12 Between 2005 and 2006, murders and threats in property disputes - particularly in the Northern Caribbean - began to capture 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 Wasakín community members were ambushed in San José de Banacruz when they were about to clean the community's lane. That day the community member Warner Lockwood Benlys, 32 years old, was wounded in the left leg by a 22 caliber bullet" (citing a report in *El Nuevo Diario*, September 13, 2006, by Moisés Centeno). On March 27, 2011, in Wasakin, municipality of Rosita, Denny Penn, 19, and Webster MacKensy, 12, were killed as they were on their way in a boat to the Moravian church (*El Nuevo Diario*, April 15, 2011, report by Edgard Barberena). In the Mayangna Sauni Bu territory, in the Bosawás Biosphere Reserve, department of Jinotega, 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 hooded men with military weapons (*El Nuevo Diario*, September 10, 2011, report by Francisco Mendoza).

These operations have been more clearly politically motivated, persecuting and intimidating opponents in rural areas and leaders of the anti-canal peasant movement (Bow, 2020).

Police, military and naval activity in the coastal regions of the Caribbean - under the premise of combating drug trafficking - has also been characterized by an approach of security, militarization and control that daily transgresses the human rights and integrity of indigenous and Afro-descendant communities, 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 located south of Bluefields, Goett found 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 by mestizo soldiers stationed in the area. More generally, Goett concludes that this is a form of control to establish Métis state sovereignty in a "minority security zone" (Goett, 2015, p. 475). What Goett reports is not an isolated act or exclusive to coastal or rural areas of the Southern Caribbean. Similar acts of intimidation, illegal contro- les, and abuses of police and naval authority are common in both community and urban areas in both Caribbean regions (APIAN, 2017, p. 109). Overall, they reproduce a pattern of security that militarizes everyday life, surveils 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 in the Caribbean Coast that makes 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 with their gender, racial and cultural identities, and their socioeconomic and generational condition; and also, as Goett explains, because they are developed 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.

The new occupants -former residents and new occupants- in the historical agricultural frontier territories and in the recently demarcated ones.

Two forms of gender-based violence and exclusion are important to highlight: the different forms of exclusion of women with respect to access to land and the means of access to land, and the different forms of exclusion of women with respect to access to land.

and physical violence against women and girls, including femicide, as well as the absence of effective justice mechanisms.

The modalities of land use and exploitation of natural resources among indigenous, Afro-descendant and mestizo peoples in the Caribbean Coast are diverse because they are mediated by cultural norms, the sexual division of labor and the conditions imposed by the ecological environments on the 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 of the modalities that have influenced and restricted 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 of intensity. In this regard, it is important to highlight the specific conditions of women in territories subject to forms of illegal occupation that have led to situations of armed confrontation and conflict, such as the case of the Miskitu *Wanki Twi Tasba Raya* territory in the Northern Caribbean, which has also been the subject of precautionary measures by the IACHR. In this territory, confrontations 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 disruptions 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 of communities in their land rights. (Cedeño et al., 2018, p. 12)

Similar reports have been recorded in the Southern Caribbean, both in Afro-indigenous areas such as the Rama-Kriol territory, which has been subject to multiple forms of dispossession, both by companies and by squatters and medium-sized cattle producers, and in the areas of the mestizo peasant population in communal border areas, threatened by the construction of the Interoceanic Canal. In these communities - both Afro-indigenous and peasant - women have taken an important role in mobilizations and activism, in defense of their collective and individual rights.

The complex socio-economic conditions of the Caribbean regions, with their high political volatility and social conflict, have created a particularly violent environment for women and girls. Despite the fact that judicial institutions tend to under-record femicides by restrictively applying their definition, in the last five years this type of extreme gender-based violence has increased in the country, especially in rural areas of the Caribbean.[13] In 2016, the civil organization *Catholics for the Right to Decide* counted 49 cases, which in the following year increased to 51 (2017), 58 (2018), and 63 (in 2019). In 2016, data from the National Police indicated 16 homicides of women in both autonomous regions, ten of which were registered in the "mining triangle" region composed 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 *Voices Against Violence* (https://voces.org.ni) documents the stories of 18 women victims of femicide "or lethal violence" occurred between 2014 and 2016 in the Southern Caribbean. Most of the victims, whose ages ranged from 18 to 80 years old:

> Died at the hands of their ex-husbands, current partners and close relatives. Others at the hands of strangers or neighbors who aspired to possess their goods or properties [...] most of them were mothers at a very young age. (*Vivas Nos Queremos,* 2019, p. 4).

The judicial system is also ineffective and tardy in procuring justice for victims of gender-based violence and cases accumulate that are not investigated, or that the resolution mechanism shifts to customary forms of community justice, which often have limited effect in redressing victims of abuse (Figueroa & Barbeyto, 2014, p. 3; Asociación Red de Mujeres Afrolatinoamericanas, Afrocaribeñas y de la Diáspora, 2014, p. 22).

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

Conclusions

It is highly unlikely that the people of *Alal* could have anticipated the attack on their community, especially given their level of organization, the furtive nature of the attack and the speed with which it was carried out. However, the confusion that followed the massacre was permeated with a sense of anticipation of violence that had been building up for more than a decade on the borders of the territory, and in its heart, the core zone of Bosawás. After all, the territorial authorities were aware that the population of settlers illegally settled in their territories continued to grow uncontainably. They knew, for example, that in a span of only five years, between 2010 and 2015, that population increased by almost 32% (Mayangna Sauni As Territorial Government, 2015, p. 22); that their constant complaints and requests for institutional support to deal with those occu- pations and acts of intimidation had been ignored by the authorities; and furthermore, it was not yet three months since the territorial government house of Mayangna *Amasau* -a sister territory- had been reduced to ashes by a fire in circumstances not yet clarified by the authorities. Although not all Mayangna territories occupy the area of the Bosawás reserve, their organization, the Mayangna Nation and its leaders, understood (and understand) very well that without state support, not only would the attacks against their communities increase, but the viability of the reserve itself would be at risk and with it, their own cultural survival, their autonomy and their living spaces.

Thus one can understand, all at the same time and with the obvious counter- dictions, both the optimism of Eloy Frank 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. All felt differently about the willingness and responsibility of the State of Nicara- gua to protect the human rights of the Mayangna people. However, these leaders shared a common aspiration and determination that autonomy could represent a process of emancipation to achieve their historical rights to land and self-government.

In this chapter the tragedy of *Alal*, in all its severity, is a metaphor for interpreting 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 model of multicultural recognition that delineated the current institutional design of coastal autonomy: the creation of

multiethnic or heterogeneous governance spaces with the aim of promoting the inclusion of different groups under cultural criteria, regardless of their demographic weight and social organization. Some alternative visions in the theories of multiculturalism, as summarized by Hooker:

> They tend to argue that indigenous peoples and other minority nations are entitled 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 evaluate the effect of Law 445, which created spaces of exclusive self-government for indigenous and Afro-descendant peoples and thus established in practice two modalities in the institutional design of autonomy: regional multiethnic governance and indigenous and Afro-descendant territorial self-governments. However, after almost two decades since its approval, it is possible to identify some trends in the degree of effectiveness of this recognition in protecting the rights to self-government and territory of indigenous and Afro-descendant peoples in the Caribbean regions.

First, the titled territories and their authorities alone 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 given the magnitude of demographic change and the mestizo migratory displacement to the frontier areas of agricultural/community colonization, unless the indigenous and Afro-descendant peoples have the decisive support of the Nicaraguan State and its institutions in the implementation of the autonomous 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.

Secondly, the Regional Councils ceased to be spaces for multiethnic communication and effective representation of the minority coastal peoples (Sumu-Mayangnas and Ramas) as they were captured by the national political parties and thus reproduced forms of structural domination that the Autonomy Statute wished to overcome. The Regional Councils and their Coordinating Councils are today perceived by the coastal peoples as spaces of power of the State (historically centralist and dominant) and not as the representation of their autonomy.

Third, community governments and their inter-communal representative bodies, the territorial authorities, have also been transformed (to a greater or lesser extent) by the partisan effect of the hierarchical governance model, into terrains of unequal conflict in which the struggle for autonomy is disputed. This tendency of the State to try to usurp the space of 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 purposes of promoting development or the "restitution of rights" as the current Ortega administration has argued. One lesson that emerges from the Nicaraguan experience is that autonomy is linked to national change processes, which clearly include: the definition of the economic model, the political orientation of the country and the nature of the political regime.

The socio-economic changes, with a tenacious orientation towards neoliberal capitalist integration, which a second FSLN administration has continued, has imposed a model of accumulation that gradually and inescapably transgresses the rights of autonomy. This model promotes an economically subordinated integration of the Coast and imposes the normalization of a formal political autonomy model, controlled by the State. That is, fundamental decisions about coastal issues, such as concessions to exploit its resources or state 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 forms of violence that fracture the social fabric of the coast, especially through crimes that have a clear gender orientation, do not seem to be unrelated to sub-national dynamics that bring with them an oppressive historical legacy, and that reproduce perpetrating agents -individuals, groups or institutions- or that are embodied in the socio-economic and socio-cultural dynamics that generate inequalities.

As a whole, the evolution of the autonomy regime has reached a limit point of fracturing the field of collective rights and the exercise of autonomy, configuring a scenario of threats to cultural survival, particularly in the areas of extractive colonization. In spite of all this, the experience of the

The Nicaraguan autonomy strategy was and continues to be an important reference for other autonomy processes in Latin America, especially for its early inauguration (on the eve of the multicultural paradigm) and more recently for its institutional innovation, as a simultaneously regional-multiethnic and autonomous-territorial regime. With respect to its territorial configuration, many questions remain open, for example, 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 bodies 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 a politically virtuous environment with the State and the capacity for coastal action to drive and promote these changes.

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Mapuche autonomy in the pwelmapu[1] confrontation and/or political construction?

Verónica Azpiroz Cleñan

Introduction

Before the existence of nation states in the Americas, the Mapuche were one of the great pre-existing societies. Their territory stretched from the Pacific to the Atlantic Ocean in the south of the continent, an extension that covers a large part of what are today the states of Argentina and Chile. The two great territorial identities: the land to the west and east of the Andes Mountains, functioned as a single territory called *wallmapu*, with two large divisions called *fütal mapu: gulumapu and pwelmapu (*Naguil, 2010).

The invasion of the Argentine Army into Mapuche territory (1876-1878) after the independence of the Spanish colony, parallel to the one developed by Chile (1860-1881) on the western side of the Andes, had as its first consequence geocide (Lenton, 1999). For the survivors of the war of conquest and involuntary incorporation into the national state without collective rights as a political society, it changed the way of life (Azpiroz Cleñan, 2013) and endangered the material and cultural reproduction in each territorial partiality (Bustos, 2012).

For the purposes of this paper,[2] this disruption in Mapuche society in the 19th century meant the loss of the political community, in the sense of political self-determination and territorial sovereignty of the Mapuche national society. It also brought as a consequence the political alienation of the citizens.

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1 Historic Mapuche territory east of the Andes Mountains, today Argentina.

2 In Argentina, the inclusive language of sex-gender identities in Spanish is in the process of installation. My position in this regard is to join the political proposal of trans-feminism. However, in this paper, in order to be read in the global north where the challenge of writing in Spanish under the tensions of feminism is not installed, I accept to use the generic "los" to include the feminine and non-binary.

Mapuche, both from their politically destroyed society and from the national Argentine society, which treated them and has treated them as second-class citizens.

The years have passed and the old generations of Mapuche who have been hit-deprived by those events, are beginning to take steps, hand in hand with the new generations, to talk and reinterpret history, with its due consequences: the re-flourishing of the Mapuche national identity. In this context, the purpose of this paper is to analyze contemporary Mapuche micro-experiences, which discursively assume the narrative of Mapuche autonomy, and which are macro-politically uncoordinated, in terms of Mapuche ethnonationalism in the *pwelmapu.*

The question that guides the analysis is: Is there in the Mapuche narrative a desire to expand the boundaries of procedural democracy,[3] that pushes towards the reform of the (neo-)-colonial State to a Plurinational State? It is also of interest, in this paper, to find out whether Mapuche autonomy: could it be given in the federal, but not ethno-federal, Argentine State, a recognition of the political rights of the Mapuche nation in the form of self-government?

My presumption regarding these questions is that the autonomy narrative has a symbiotic connotation with the Mapuche experiences in *gulumapu* (part of Chile). And there the Mapuche have been demanding autonomy in the form of self-government for three decades now. In the course of the presentation we will see whether the relevant information I mention here validates my intuition or shows that we are building the road to autonomy in a totally different and unconnected way between these experiences.

The text is structured as follows: first, I will analyze discourses on the perception that Argentines have of the Mapuche and their ideas of autonomy issued by Mapuche organizations in three provinces: Chubut, Río Negro, Neuquén. Next, I will analyze how the Mapuche see themselves, reethnify themselves and create-adopt new ethnonationalist ideas. Then, how the national government under the Macri administration reacts to the politicized Mapuche otherness and finally, I will include a personal reflection on the most viable political project to build autonomy for the *Pwelche.*[4]

3 Procedural democracy is a type of formal, non-substantive democracy, which recognizes the regime of access to government, but not the exercise of democratic political practice in the electoral interface. Bobbio (1985) calls the normative principles pertaining to the procedures for accessing a form of government "procedural universals" of democracy.

4 Pwelche is the cultural identity of the Mapuche people born in the *pwelmapu*: eastern side of

the historical Mapuche territory.

The "other" perceived by Argentines: reaction to Mapuche autonomist discourses

In the *pwelmapu,* the re-ethnification of the Mapuche, after decades of concealment of pre-existing cultural identities, took place in 1992, in the continental context in which the Catholic Church together with colonial spokesmen,[5] tried to construct the discourse of the "encounter of two cultures", referring to the 500th anniversary of the Spanish conquest, erasing with euphemism the Mapuche genocide. The new Mapuche leadership in Neuquén and Río Negro coordinated a tour of seven Argentine provinces with Mapuche population and communities, in order to unify an idea of a Mapuche political flag. This tour, conceived by Miguel Leuman,[6] was carried out under the idea of a political symbol of unity of the people throughout the *wallmapu. In* this way there was political volume to challenge the King of Spain, who came to visit Argentina to celebrate the Cons- quista. The *wenu foye* became the political banner of the entire *wallmapu*. We can call this process the symbolic reterritorialization of the Mapuche in political terms.

Since the previous event, a process of Mapuche identity has been developing, which has timidly advanced to the demand for autonomy and political rights, because -in the first instance- it took the form of cultural revival. To the extent that this revival crossed the margins of culture understood as different from politics or apolitical, to assume that without political empowerment cultural rights continue to be at risk, autonomist ideas are beginning to make their way. Only, differing from the developing experiences of the *gulumapu*.

There are several elements that differentiate the autonomy discourse in the *pwelmapu* with respect to the *gulumapu.* First, the development of the Welfare State, centered on Peronism. Second, the presence of the Catholic Church, with emphasis on the Salesians. Third, the configuration of the internal enemy within neoliberal multiculturalism. Fourth, the access to free and free university, and the rising social mobilization since the mid-twentieth century, as well as the alliances with the Catholic Church, with emphasis on the Salesians.

5 I use the ironic concept "spokesmen of the Colony" to refer to those politicians who justify the Castilianization, the evangelization and the construction of Argentina as a melting pot to hide the genocide that founded the Argentine State.

6 Walking Mapuche, of *Guluche (western Mapuche)* origin, who triggered Mapuche reethnification processes in the *pwelmapu.*

of the Mapuche movement with human rights organizations. Fifth, the territorial extension of the *pwelmapu*, with presence in seven federal states (provinces). And, sixthly, the media, which configures a Mapuche stereotype that goes from the folkloric to the terrorist/kurdish/Iranian Mapuche.

But the Mapuche autonomist political ideas in the *pwelmapu* are also affected by the different political reality between the two States and their political societies (as already shown in the previous paragraph, and to which we can add that the system of representation in Argentina is federal, with three superimposed levels of State: National, Provincial and Municipal).[7] A quick radiography of the situation of the Mapuche in the *pwelmapu* informs us that, in socio-economic terms, the Mapuche population suffers from economic impoverishment and salary dependence (especially at the level of the provincial States), which indicates that 45% of state employees are of Mapuche origin in Neuquén and 33% in Río Negro (Census, 2010 - own elaboration). This indicates a dependence or a system of political capture by the network of state social policies that affects autonomous political action and the low political mobilization of Mapuche organizations (in the provinces of Chubut, Mendoza, Buenos Aires and La Pampa this phenomenon is even more pronounced). Moreover, even recognizing that they are part of a bi-national population community (expressions of population in Argentina as well as in Chile), macro-political coordination and transfer of political experiences between both sides is still weak.

The construction of the Mapuche "other" as another subject of Argentine citizenship (Azpiroz Cleñan, 2017) and as a political subject of collective rights takes the following course in Argentina. The media, concen- trated monopolistically at the national level,[8] have an important impact on the provinces given that it depends on the newsprint supplier, particularly in

7 Argentina has 23 provinces and the Autonomous City of Buenos Aires.

8 Newsprint used to print newspapers in the provinces of Río Negro and Neuquén, for example, depends on a single supplier, which is 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 line, the provincial newspapers are not provided with the basic raw material for their print run. This is a naturalized pressure practice. Here I share the court case for the purchase of the company during the military dictatorship and the investigation carried out during the Kirchnerist governments. https://bit.ly/35fb2KB; https://bit.ly/32tt5L9; https://bit.ly/3pafYbA; https://bit.ly/38vhC1F

Río Negro.[9] The media configuration of the Mapuche until 2017 had to do with the folkloric or with the "allowed Indian" and from that year on, the "insurrectionist in- dio" is marked. Authors such as Richards (2009) and Cusicanqui, (2004) define this category in this way:

> The "permitted Indian" then is the subject who is approved and validated by the government, who accepts without questioning the policies of the State that promotes them and who does not demand more, he accepts it. (Richards, 2009, n/d).

> ...With the permitted Indian comes, inevitably, the construction of his undeserved, dysfunctional Other, two very different ways of being Indian. The permitted Indian passed the test of modernity, replaced "protest" with "proposal" and learned to be authentic and fully familiar with the dominant milieu. 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 Indian Others would portend. (Hale, 2007 n.p.)

There is a break in this media configuration in the process of the disappearance followed by the death of Santiago Maldonado in 2017. The national government of Mauricio Macri (2015-2019) intensifies a xenophobic discourse against the Mapuche,[10] migrants and Afro-descendants. At that time, the media, agglutinated in Clarín,[11] preformed the Mapuche as violent, combative and encouraged the stigmatization linked to the Kurdish, Iranian or Colombian Farc.

The world of politics picks up this discourse or allows itself to be influenced by it and recreates it in its own way. Here is an excerpt from the construction of the Mapuche and their demands by the political party called Juntos Somos Río Negro:

9 Available at: https://bit.ly/2Ier2nF

10 This discourse already exists in the substratum of Argentine society, but the president exacerbates it. Mauricio Macri belongs to a family of the Argentine oligarchy, beneficiary of the land dispossession of the Mapuche. Part of his government team are relatives of those who led the "Campaign to the Desert", as military personnel or financiers. The Bullrich family, for example, with two ministers in Macri's cabinet (Patricia Bullrich, Minister of Security and Esteban Bullrich, Minister of Education), are directly involved in the appropriation of large tracts of Mapuche land. Esteban Bullrich, recently vindicated during the electoral campaign in 2016 the "Campaign to the Desert" in the city of Choele Choel, in the province of Río Negro, a place marked by the great slaughter of the Mapuche (https://bit.ly/2UglxqE).

11 Clarín is the monopoly that manages the media in Argentina, comprised of more than 250 companies linked to the economic group. They control newsprint.

> The problem that arises with the recognition of collective rights is that it stimulates the political attempts of groups that, for various reasons, question our current political and social organization. Every group that aspires to a new identity resorts to the use of historical or mythical narratives to legitimize its political aspirations. There 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 gain a foothold, sometimes violent methodologies are used or the ground is prepared for the emergence of more radical groups.[12]

As can be seen, they react to the Mapuche and their demands in this way: 1) as if they were a "problem" or perhaps a threat to the democratic system; 2) as demands without real support and unknown intentions, perhaps sinister, nefarious, frightening; 3) as sowers of the Argentine nationalist (chauvinist) division and; 4) as potential for racial ethnic violence or 1970s-style Argentine political violence in Latin America in the context of the Cold War.[13]

Another, more ethno-paternalistic, aspect constructs the Mapuche subject and their rights in a softer way, as can be seen in these lines of the provincial newspaper called "Río Negro", which expresses the voice of the Provincial State:

> The State of Río Negro has incorporated the issue of indigenous peoples as a 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 incorporated in the school of Chacay Huarruca, in the provincial foothills near the former Route 40.[14]

This story shows the concessions granted by the province to a political subject differentiated from the "Argentinians" who came off the boats.[15] But there is no mention in it of the action claiming political or territorial rights, which can be observed in the land disputes in that province. Something similar happens with

12 Available at: https://bit.ly/36iBGBG

13 Ideologically, there was a polarity between communism and liberalism.

14 Available at: https://bit.ly/2IesuGD

15 The expression "descended from the ships" refers to the European immigrants who arrived descending from ships to the Río de la Plata in Argentina's first massive migratory wave. The Mapuche world uses this phrase as an identity marker to differentiate themselves from the *Wigka*. The Patagonian provinces use the category "first settlers" to recognize the indigenous presence in their territory.

Mapuche groups in the city of Bariloche, which position themselves before the provincial State as Argentine citizens with specific and collective rights, although not of a political but of a cultural nature. See the following opinion, for example:

> In Neuquén they managed to insert Mapuche mechanisms for the administration of Justice, on an equal footing with the Judicial Power of the province in certain cases. The organization to which I belong (Espacio de Articulación Mapuche) succeeded in having the municipality of Bariloche recognized as intercultural, but we are still struggling for the intercultural public policies implied in the recognition to become a reality. To end the conflict we need formulas that allow the Mapuche to recover their autonomy and exercise their self-determination. (Moyano, 2017)[16]

This Mapuche organization makes a discursive approach towards autonomy and self-determination, choosing as the path of its political practice to interact with the provincial State, under the concept of "interculturality" (Walsh, 2008), without considering that interculturality is a concept built and validated in the Washington Consensus and operationalized by multilateral credit organizations (WB, IDB, IBRD, etc.). In Argentina it has certainly been successful because it hides the asymmetry of economic and political power that native peoples have with respect to the majority society. The concept is useful and functional to the State's mechanisms for sustaining private property and land concentration. State plans and programs use the intercultural concept to disguise assimilationist policies in most cases.

Ordinance No. 2641-CM-15 proposed by the Espacio de Arti- culación Política Mapuche collective in 2017, with the purpose of seeing intercultural policies flourish, expresses that vision. It moved in limbo for a while as it lacked regulation, being assigned only a minimal budget item in 2016, which did not reach 10 000 USD per year, to be applied around the city of Bariloche in twelve rural communities. They had to be satisfied with the implementation of training workshops for officials and municipal employees, as occurred in the months prior to its approval in the Deliberative Council of the City of San Carlos de Bariloche. After the approval of the Ordinance and the declaration of Bariloche as an intercultural municipality, no progress has been made other than the declaration. No programs, policies or plans have emerged that show

16 Available at: https://bit.ly/2UfjNOI

progress in the realization of the municipality as an intercultural Argentine institution.[17] In addition, during the Macrista administration, Bariloche was the scene of the murder of Rafael Nahuel, a young Mapuche during a territorial recovery.

Summarizing all of the above, in the three media narratives shown so far, the Mapuche subject is configured in a temporally different way: violent, institutionalized and intercultural. This last category -interculturality- is used in an urban scenario surrounded by monuments that depict the defeat of the Mapuche people. The monument to Roca in the Civic Center of the city is the icon of the triumph of genocide (Pérez, 2011) founding Argentina and do not seem to be very intercultural.

The diverse Mapuche "we in the autonomist discourse-demand

There is Mapuche diversity and heterogeneity in the *pwelmapu.* In the province of Neuquén, where there were organizational processes linked to alliances with trade union sectors and part of the Catholic Church, there is a different experience in terms of their autonomous political demands. The Mapuche Confederation of Neuquén, which emerged in the 1970s developing a methodology of alliances with trade union sectors from the 1980s onwards,[18] especially with the State Workers Association (ATE), together with the salary claims of the National Parks Administration -and in particular of the Lanín National Park- plus human rights organizations, injected strength and self-esteem to the communities of the province in their mobilizations and demands to the State.[19] In the public sphere, the mobilized unions are a volume that is

17 Later I will show how the scenario of the city of Bariloche is a territorial space marked by monuments that highlight the military figures of Roca and others, in the same way that during the last military dictatorship it was a refuge for German Nazis persecuted by international justice (Erick Priebke, for example). Roca was the general of the Argentine army who led the military campaign against the Mapuche people called "Campaña al Desierto" (Campaign to the Desert).

18 The Catholic bishop, De Nevares, linked the "logko" of the oldest rural communities to make joint land titling claims before the incipient provincial government.

19 The organized labor movement in Argentina has a long tradition of political struggle, especially during Perón's first presidency. Since then, the unions have been a very important political actor in the political life of Argentine democracy, as have the human rights organizations after the last military dictatorship. Many state workers were and are of Mapuche origin, and have received union and political training in teachers' and educators'

unions, state unions and recently in oil and mining unions.

interesting group of people who form a whole for confrontation scenarios with the security forces, sometimes planned, sometimes improvised. In key moments of political dispute, whether symbolic or legal, the alliance: unions, human rights organizations and the "Confe" (a diminutive that people use to name the Confederation) act as a socio-cultural-union front.

The result of the above is that Neuquén, in terms of political institutionality, has historically responded to the demands of the Mapuche people with social policies, generating clientelistic relationships and co-optation strategies, undervaluing their demands as a political subject different from the Argentinean population (Falaschi et al., 2005). That is, it takes the claims of the Mapuche people as a "poor" part of the Argentine population and does not recognize the demands related to cultural, environmental and political rights as a pre-existing nation. Although it evolved in 2006 in its reform of the Provincial Constitution of 2006 by recognizing the Mapuche identity in the terms that the Mapuche people themselves understand it, by assigning a name and surname to those born alive. This institutional policy was called *Meli folil kvpan,* the four origins of the person, which is recorded in the Civil Registry of the Province.

As from 2010 there was a break and atomization in "la Confe" which led to a dispersion of both the political leadership and the cohesion of a common strategy before the National State and the oil companies. In the Confluencia area, that is to say, that which surrounds the capital city of Neuquén, where the building base of what has been the Confe resides, Jorge Nahuel (spokesman), who used to have an anti Argentine State discourse, distanced himself from his historical position during the Macrista period. He stated in public declarations that:

> There has never been such an important loss of Argentine national sovereignty, and I refer to this aspect, because our [Mapuche] flag of self-determination as a pre-existing people is tied [in consonance with] being able to carry out a process of negotiation with a free and autonomous government with respect to the subjugation of the great empires.[20]

There are several observations of a conceptual nature in Nahuel's account which should be pointed out. On the one hand, he uses 'self-determination', a concept not used by Mapuche leaders in the *pwelmapu.* In Argentina they speak of self-determination to differentiate it from the claim of the Kelpers in the Malvinas Islands, who are asking for self-determination.

20 Available at: https://bit.ly/3lIPifS

He then mentions another concept strictly linked to the recognition of the power of the State, which is sovereignty, and refers to the Argentine national sense. The con- tradiction in Nahuel is that he assumes himself to be a non-Argentine Mapuche, and shows in his account an alignment with Argentine national autonomy. A Mapuche autonomist would see in the weakness of his main oppressor (the Argentine state) an opportunity to break away from the "republic" and form an autonomous Mapuche territory. This is the territorialist vision of autonomy "in the Mapuche way" according to Nagüil (2020).

Reading the public documents issued by the Confederation (2017), which is not what it once was in the 1970s but a group of leaders of the Con- fluence zone, it is possible to corroborate a disruption in the use of some concepts. This organization has publicly sustained a precise language to oppose an invasive, imperative otherness such as the Argentine institutionality. This means that, in spite of the intention to install the discourse of autonomy (Millaman, 2001) in various governmental situations (at times of great regressions in terms of social, political and cultural rights), a language symbiotic with Argentine nationalism appears. It is important to differentiate between Argentine citizenship and nationhood. Argentine citizens belonging to the Mapuche nation is a combination in the Argentine legal status that is correct and desirable to sustain. However, it is not clear in the Confederation's account nor in the account of the organizations of Río Negro (Parliament of Río Negro).

This observation is important for an intra-Mapuche political strategy. Since the Mapuche nation is a political minority among Argentine citizens, alliances with party politics are necessary to advance proposals that include Argentine sectors that suffer from the same or similar problems as the Mapuche nation and not leave Argentine "nationals" outside the *pwelmapu.* If the equation of autonomy and plurinationality is political, political volume is needed to move forward the Mapuche political demands -and of other types- being a minority.

But in order to confront these alliances in a good way or from the sovereign perspective of the subjugated nation-peoples and not end up blurred in them, it is necessary to be clear about the distinction between citizenship and nation. One is a citizen with respect to a State, but a State does not embody a nation. The Argentine State does not have a language born *in situ* but appropriated from Spain, a spirituality brought from the Catholic Church, nor its own phenotypical and genotypical traits. It has a colonial language which is Spanish, a Judeo-Christian religion or philosophy and a Creole mixture which has not yet acquired a certain genetic conformation.

The state is not a biologicist state, which is why it does not constitute a nation. What it constitutes is a State as a political community that has a republican format in terms of distribution of State functions and a democratic regime for access to the exercise of State power. In the terms of José Marimán (2012) we can affirm that there are differential ethnic conditions to sustain that the Mapuche nation exists, but not the Argentine nation. What exists is an Argentine State with multiple pre-existing nations not recognized as a modern State.

Other moments of the Confe's discourse regarding Mapuche political participation in party politics are the following:

> In Neuquén they are attentive to certain siren songs that began to sound in Argentina, including in Río Negro. There is a myth that says that the way in which the Mapuche people have to 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 argument because where it has been applied, whether in Colombia or Ecuador, it was not at all a recognition of rights, rather it has become a new mechanism to divide or confront the indigenous peoples, behind a candidacy or an electoral space. This is not the way to recognize plurinationality.

This quotation seems to contradict what has been said before about the Mapuche being "tied" to the Argentine national. Nahuel dissociates himself from citizenship obligations via neoliberal multiculturalism. So, according to the leader, what would be the path towards plurinationality? Should we take the statements in the Macrista stage or take the other statements mentioned above on the Argentine-Mapuche gearing? In the stories of the apocado Confe there is a discursive confusion. They like Russian saltiness. They propose plurinationality as a value, but do not say which is the way to achieve it. And once plurinationality is achieved as a quality of the State, would plurinationality be a transition towards Mapuche autonomy? The majority of the Mapuche leadership is built on the basis of the opposition of the Argentine majority society, but there is no internal debate in the Mapuche movement in political terms to clarify whether it will resort to the communitarian or territorialist path for the reconstruction of the *pwelmapu* and the *gulumapu.* It is healthy to assume this.

The two ways for the reconstruction of the *wallmapu* are explained by Nagüil (2020) in several virtual public appearances in the pre plebiscite process in Chile to approve or not a New Constitution (October 25, 2020), but that

clearly fits the analysis to the *pwelmapu.* As a brief summary and for the reader's knowledge, they are synthesized as follows: a) territorialist autonomy conceives the *wallmapu* as a delimited space (Araucanía Region) in which the Mapuche nation is a demographic and political minority and has a Mapuche country project (for Mapuche and non-Mapuche) for that delimited territory that in Chile requires the decentralization of the State. b) Communitarian autonomy conceives the political rights of the Mapuche nation in a Plurinational State (Chile and Argentina) with diverse and dispersed territorial rights and therefore without possibilities of self-government.

An emerging young Mapuche in the province of Chubut, Facundo Jones Hualas[21] (who has acquired his greatest media prominence in the process of the disappearance of Santiago Maldonado), has said regarding the association of Mapuche organizations and trade unionism (surely bearing in mind the experience of the Confe):

> Here there has been a lot of state interventionism, a lot of co-optation and bureaucracy, very similar to the process of many unions. Especially with 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 a deep political projection around the idea of autonomy, territory and national liberation.[22] (El Desconcierto, 2016)

Other organizations, from the surroundings of the city of Bariloche in the province of Río Negro, based in rural and peri-urban communities, usually articulate together some actions in critical moments of confrontation with the State security forces,[23] in moments of climatic crisis,[24] as well as in the face of natural episodes that threaten their survival or in contexts of racist violence[25] . These communities are, for the reader's knowledge: Millalonko, Xipay Ahtü, Maliqueo, Wiritray, Tacul, Wenu nirihau, Wala, Tambo Baez, Lafkenche, Calfunao, Buenuleo, Quijada, Rankewe.

21 It is interesting to look at the trajectories of Nahuel and Huala differentiated by age, by *tuwün, by the* territory of origin, by the organization from which they emerged, by the path in their process of formation or remapuchization.

22 Available at: https://bit.ly/35ENjE4

23 Available at: https://bit.ly/38XfTTb

24 Available at: https://bit.ly/3f9UnLV

25 Available at: https://bit.ly/32Vg3Gy

In Río Negro, the recognition of the existence of the Mapuche people, as such, occurred during the two presidencies of Perón (1950-1955) with several decrees/laws of land cession. This process of provincialization occurred, according to Ruffini (2005), because the national territories were very dependent on the central power (Buenos Aires), and the authorities of the national territories in Northern Patagonia did not have functional and budgetary autonomy. There were restricted political rights that were not in line with the Argentine republican and federal system. Within this larger political framework, the Perón government gave special treatment 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 in which eleven indigenous reservations were recognized in the province of Río Negro. Until that moment, the tutelary republicanism (transition from 1966 to 1973 the armed forces "tutored" democracy during the government of Onganía and Lanusse) gave rise to the existence of different citizenships between Mapuche and non-Mapuche, 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, which, together with the Bishopric of Viedma, headed by Monsignor Hesayne, initiated an organizational process that demanded assistance from the State after a snowfall in which almost all the sheep herds, the only means of support for rural families, were lost. The "A sheep for my brother" campaign carried out by the bishopric generated great social awareness of the needs of the Mapuche communities with respect to their economy but also to their right to reproduce life in their rural habitat.

This awareness provided the conditions for a large mobilization around Mapuche claims to take place during 1986/87, which resulted in the approval of a Comprehensive Indigenous Law (No. 2287). But ten years passed without regulation and application of this law, which proposed the co-management of the Government and Indigenous Communities in matters within their competence. During those years -despite the fact that the law was not regulated- the communities met around the Indigenous Advisory Council (CAI), with headquarters in Jacobacci. Mapuche Centers were forged in the big cities of the province, such is the case of Bariloche, Viedma and Fiske Menuko (Gral. Roca).

Given that many communities did not feel called or represented by the CAI, such as the communities that defined themselves as autonomous (Cañumil, Anecon Grande), meetings were held to enable the voice and recognition of all the diversities that the Mapuche people have within themselves (Papazian & Nagy, 2015). The category "rural settlers", typical of the area of Río Negro, refers to Mapuche people or families who were expelled from their communities of origin during the military campaign, so that they are recognized as members of the Mapuche people without belonging to a *lof che* (traditional Mapuche territorial community) but who live in rural areas in small par- cels in the Patagonian steppe. The three actors, dispersed settlers, communities and Mapuche centers in the cities formed a political organization called Coordinadora del Parlamento Mapuche de Río Negro, which was formalized in 1997 in a legal format under the Argentine institutional regime, after ten years of actual existence.

In 1994, Argentina underwent a constitutional reform, during which the pre-existence of the native peoples (thirty-six native peoples with fourteen living languages and the Mapuche people is one of the thirty-six peoples) and the right to IBE and cultural rights were recognized. This climate of openness to indigenous demands, linked to the counter-festivity movement that took place in 1992, or remapuchización, collaborated with a process of political organization (Ojeda, 2016) that in 1997 led to the regulation of provincial law 2287 and the recognition of CoDeCi (Council for the Development of Indigenous Communities) as a co-management body. Until then, the operational phase of the CoDeCi was non-existent, and it started working with a Land Plan to prevent the eviction of communities. Three Mapuche representatives participate in the CoDeCi for each of the zones: Atlantic, Andean/Cordillera and High Valley. The land plan includes a community land survey in order to obtain title to the land.

There are currently seventy urban communities grouped in the Mapuche Parliament of Río Negro, out of a total of one hundred and fifty communities in the province, half of the communities have women occupying the role of "*logko*" head of the community, which has an autonomous and self-managing character.[26] The Mapuche Parliament of Río Negro could be an example of self-government of the communities, but since it is defined according to provincial jurisdiction, it is not a self-governing body.

26 Available at: https://bit.ly/3lF1Mp5

cial, marks how official Argentine history and state imposition define a mode of political construction and the meanings of political organization for interethnic relations outside the Mapuche worldview.

The emergence -or the emergence- of women in charge of communities in this area of the *pwelmapu* is a striking fact for two reasons: a) because the way of electing community authorities is not traditional Mapuche, but follows the Argentine institutional rules of procedural democracy; and b) because, thanks to these democratic practices, women in Argentina have a high level of political participation in the public sphere since the incorporation of women's right to vote in 1947. This is a great difference with the *gulumapu* in which women have a great delay in gender parity in the nomination to elective positions in the political parties and in unions in the state structures and everything seems to indicate that they will also have it in the Mapuche community instances.

Collision Argentine nationalism and Mapuche autonomist demand/practice

The practice of Mapuche medicine continues on both sides of the border. However, in the *pwelmapu* the figure of *machi* (Mapuche ancestral physician) had disappeared for forty years (Azpiroz Cleñan, 2013). Approximately towards the end of the 1970s, the role of *machi* disappeared with the death of the last machi in the central zone of the province of Neuquén. In Bariloche, a Mapuche girl was called[27] as a *machi* in 2009 and began her training process from the age of twelve with the accompaniment of another *machi* living in Chile.

Since the young woman had no territorial space in which to develop her work as a *machi,* the family began a process of communalization (Sabatella, 2011) with the objective of recovering territory. In order to complete the machi training process, it is necessary to build a *rewe. It* cannot be installed in a city according to intramapuche cultural protocols, it must be installed in a territory with natural strength to exercise the function of healing/healing, care.

27 Called machi, it refers that to practice medicine to heal people do not attend a university where anyone can study the career, but it is a talent with w h i c h one is born and that by (*kepalme*) lineage or territory (*tuwün*) can develop her spirit of healing if her family and community so decides to respond to a responsibility of the culture that manifests itself in the body / spiritual belief.

The community was called *Lafken Wigkul Mapu* and recovered in 2017 a small territorial space that is under the administration of the National State called Lake Mascardi National Park, which is part of the historic Mapuche territory that was titled as fiscal lands of the National State. This land is in dispute with another Mapuche community called *Wiritray*. At the beginning of November 2017, a court order was issued to evict the community (Correa, 2011) by a judge (Villanueva) who had already shown signs of confrontation with some Mapuche communities in another nearby province, Chubut.

The eviction order is not complied with by the members of the *Lafken Wigkul Mapu* community. There is an attempt to evict them. There is a two-day process of resistance. The Federal Police take several women and children to the police station and detain them for more than twelve hours. On the third day there was an advance of a special State security commando called Al-Batros and they murdered the cousin of the young Mapuche girl who was to be a *machi*. Rafael Nahuel had gone to the recovered land on November 25 to bring food and to accompany his Mapuche cousin, who was among those resisting the eviction. "Rafita" was his nickname. A Mapuche from the poor neighborhoods of Bariloche who was beginning his identity process. His name was Rafael Nahuel, 22 years old.

The tension between the government and the Mapuche communities reached the point of pursuing any Mapuche person suspected of participating in the recovery in the areas near Lake Mascardi, even inside the health posts and hospital. As a result of this event, some political actors came together to intervene in the confrontation between Mapuche and security forces who refused to hand over the body of the deceased Rafael Nahuel and to allow the biomedics to climb the hill to attend to the wounded from the shooting that took place during the attempted eviction.

During the repression of the *Lafken Wigkul Mapu* community, a Mapuche dialogue table was formed, promoted by two Mapuche women, Patricia Pichunleo (*wariache*[28]) and Lorena Cañuqueo (Lof Anecón Chico), who invited the leaders of the Coordinating Committee of the Mapuche Parliament of Rio Negro to join this initiative. The Catholic Bishop of Bariloche is invited and offers to act as a mediator with the provincial government and CODECI is invited to become a political instance for conflict resolution.

28 A person living in the city, dispossessed of his or her territory.

Civil society organizations linked to human rights, 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 (a provincial union of state workers), the National Institute of Indigenous Affairs (INAI), the Ombudsman's Office of Río Negro, the National Institute of Indigenous Affairs (INAI), the National Institute of Indigenous Affairs (INAI), and the National Institute of Human Rights (INAI) joined the table, the Unión de Trabajadores Estatales de Río Negro-UNTER (which is a provincial union of provincial state workers), the Instituto Na- cional de Asuntos Indígenas (INAI), the Defensoría del Pueblo de Bariloche, the 17 de junio (an organization against police repression), members of the Consejo Deliberante de la ciudad de Bariloche (Bariloche City Council). However, even though it was directly involved, the National Parks Administration did not participate.

The political dialogue table is the most important political event that took place during the great repression of the Mapuche people by the Argentine State during Macri's administration in the province of Río Negro, since it managed to bring together all the Mapuche communities near the city of Bariloche, the human rights organizations, the trade unions and the entire opposition to the national government. This political instrument managed to stop the escalation of violence against the survivors who had remained on the hill, to set up an emergency health service for the wounded, to coordinate the search for the missing persons between the police stations and the international airport and the delivery of the body of the murdered person. The media tried to establish that there had been an armed confrontation since the Mapuche youths were carrying weapons, a fact that was refuted by the ballistic expertise in the judicial case.

The political dialogue was not exclusively linked to the right to health, but there was an interdependence in the demands for collective rights. Autonomy" in health becomes a political project that seeks to overcome inequalities and violence of various kinds. Finally, after a long process, in 2019, the *machiluwün,*[29] of the young Mapuche woman, took place in the recovered territory of the *Lafken Wigkul Mapu* community.

In the events of 2017, the state apparatus had a clear definition of a public enemy towards the Mapuche people, which was crystallized in several events. During that year, two ministers of Security of Chile and Argentina -Mahmud Aleuy and Patricia Bullrich- met in Buenos Aires to exchange information

29 Ritual ceremony of consecration of a person in machi, traditional Mapuche doctor.

on the Mapuche organizations. Of these meetings,[30] only some journalistic notes are available,[31] that give account of the construction of a story of Mapuche bellicosity, and of the supposed transfer of weapons to both sides of the mountain range to deepen Mapuche inter-border control.

The bilateral policy in the Macrista period defined as the main objective of its indigenous policy, the implementation of a special security directed towards Mapuche organizations, which define themselves as autonomous. Among these, the most prominent in Argentina is the Mapuche Ancestral Resistance (RAM), which is inspired by and follows the postulates of the Coordinadora Arauco Malleco (CAM) of Chile, which has been building a discourse on Mapuche autonomy since the 1990s, influencing and influencing the *pwelmapu.*

CAM moves on the edge of armed violence, with a discourse that promotes self-defense and de facto land recovery actions. This discourse has been publicly announced. Its actions are focused on the estates-properties occupied by forestry companies and also by sabotaging trucks and machinery used by that industry. According to statements made to the press by one of their spokespersons, Héctor Llaitul, their organization has two characteristics: one is the use of force and the other is the use of force:

> ...a conception that is above all anti-capitalist. 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 it makes us anti-oligarchic, anti-colonialist and anti-imperialist. Based on the reality and the fate of our people, we burst forth as an autonomous, Mapuche and revolutionary movement. This made us the object of the attention of the State and of the detractors of the Mapuche cause, of the historical oligarchy and of national and international capital. Then we became the internal enemy of the Chilean State (Ñuke mapu, 2010).[32]

After several acts of force by the CAM in the 2000s, Chilean carabineros and the intelligence services burst into the daily life of the communities, drastically modifying the way of life. According to Almeida Filho (2000), the concept of way of life evokes the daily social practices that are conditioned by geography, historical traditions, values, norms, and

30 There is no information on the treatment of the agenda between the two countries. In Argentina, there is a guarantee under the right to information that public officials must report on the topics and persons they receive in their hearings.

31 Available at: https://bit.ly/36N7HCb

32 Source: Centro de Documentación Mapuche, Ñuke Mapu. https://bit.ly/32VYZR0

the means of production and relations of production for subsistence, which contribute to the social reproduction of life. Almeida Filho relies on Heller's (1977) definition in characterizing this way of life as the quality of continuity. What happens always, every day, the everyday, that is to say, it involves the dimension of temporality and repetition.

The change in the Mapuche way of life resulted in more than ten Mapuche being assassinated in territorial recovery processes during the period of Chilean democracy[33] . And the Chilean armed forces had an intensification of controls where CAM leaders lived. All this preventive, repressive action ended up becoming a real new occupation of Araucanía.

In Argentina, the leader Facundo Jones Huala, belonging to the community called *Pu Lof en Resistencia del Departamento Cushamen* located in the Province of Chubut (Sabatella, 2017), has ended up being the counterpart of Llaitúl of the CAM, in this sense the Mapuche discourse with the greatest media echo heard- developed during 2017. Huala was born in the suburbs of Bariloche. He came into contact with CAM leaders in his process of identity strengthening. The traces of Huala's autonomist discourse[34] originate in *gulumapu*. He is currently a political prisoner in Chile (he was extradited by Argentina to Chile).

Huala has publicly maintained his dissent with historical leaders of the Confe and the Mapuche Coordinating Committee of Río Negro. Huala does not come from a traditional Mapuche *lof che* in *pwelmapu, he did* not speak *Mapuzugun* as a first language, he learned it as a second language and did not spend his childhood in rural areas. The RAM, Resistencia Ancestral Mapuche (Mapuche Ancestral Resistance) never claimed responsibility for any violent act, it only carried out street actions, which is why it never showed its real composition. Huala sometimes made references to the RAM, but he did not involve his community in it, so its true composition was never known.

33 A concept developed by O'Donnell, in the *Theory of the transition from Latin American military dictatorships to democracy*, where the case of Chile is configured as a hard democracy to denominate the union of a democratic regime that uses elections for the renewal of political authorities but that in its government mechanics has authoritarian enclaves, for example, the senators for life that Pinochet installed for a whole decade in the Chilean parliament.

34 The relationship built between Huala and the most mediatic leader of the CAM, Héctor Llaitul, had its lights and shadows. However, after being extradited to Chile, he visited him in prison.

For the rural Mapuche community of Río Negro, the story of Huala and *Pu Lof Cusha- men*[35] has something dissonant, from the cadence to the way of expressing Mapuche senti- pensar (sentipensar is a concept that comes from the tradition of R. Kush, which proposes thinking situated in the territory). Huala was chosen by the media monopoly of the Clarín company as the Mapuche spokesman. The right wing in Argentina, through its opinion makers, ridiculed the Mapuche aesthetics, statements and positions. The multimedia managed to interview Huala at the height of the process of disappearance of Santiago Maldonado inside the Esquel prison. In the Mapuche sentipensar (Kush, 1967), the Huala story did not nest in Chubut or in Río Negro. It nested in the City of Buenos Aires and Greater Buenos Aires in the anarcho-punk and philo-Trostkyist groups.

In one of his public statements to the Telesur channel, Huala mentioned that the conflict with the State is the result of the State's ignorance of "the ancestral possession of the lands and of the international principle of self-determination of the peoples".[36] According to his discourse, self-determination would come not so much from the traditional form of decision-making of the Mapuche people themselves, but from international public law. In the same interview he affirms that Mapuche resistance in Argentina was organized "from poverty, discrimination and State violence, from where a generation of young militants emerges and begins to organize the Mapuche struggle, a resistance that responds to the historical violence of the Argentine State". The terms in which he understands the Mapuche struggle rule out dialogue with the State.

Huala raised the figure of the *weichafe* (warrior) in his story, as the figure that creates the conditions for autonomy in the territories for reterri-torialization. However, in the territory recovered by his community from Be-netton[37] there were no material conditions for the reproduction of the way of life given that they constantly resorted to the solidarity of other communities and other Argentine national collectives to sustain themselves in the recovery while he was imprisoned in Argentina.

35 A new community that recovered a small territory from the landowner Benetton, near the northern area of Chubut, called Cushamen.

36 Available at: https://bit.ly/3kEtQaO

37 Italian businessman who owns a million hectares bought from Compañías del Sud, the company that appropriated Mapuche territory after Roca's military campaign. One of the shareholding families of Compañías del Sud was the Bullrich family.

A gender perspective on the Mapuche organizations in this case is that, in the moments of repression, very cruel moments, it was the Mapuche women and their children who occupied the public scene of violence against the Mapuche. They were not the *weichafe*. The women were sealed with their very young children, whose houses were set on fire in their presence, along with their toys, etc. The *weichafe* fled at times of repression to avoid being imprisoned, shot or tortured. That was the constant, during 2017.

In the Mapuche narrative, the appearance of the concept of *weichafe* referred to the masculine, so there was no room for the feminine in this narrative, which resulted in a naturalization of the intra-Mapuche gender imbalance and also a masculinization of the practices of feminine care of the territory. After this process, Mapuche women leaders proclaimed themselves *weichafe* in public appearances in the mass media, as a response to the preformatted image that generated an impact on the audience. Although in the Mapuche narrative of women appears the principles of complementarity and reciprocity, patriarchy has crossed the Mapuche way of life and during 2017 it was more evident the exaltation of masculine values for self-defense than the complementarity of a way to take care of the recovered territory.

At the level of discourse, the story of autonomy was indecipherable for the media, which did not understand the scope of this autonomy, fearing that this discourse would become a separatist request from the Argentine State. Argentine society, linked to social movements, Peronism and human rights organizations, was inclined towards or in solidarity with the Mapuche claim for territorial recovery, for the recovery of land from a landowner of Italian origin, Benetton. However, it remained on shaky ground when the demand for autonomy was discussed in depth, given that the leadership of *Pu Lof Cushamen* did not distinguish the link between citizenship, autonomy and the specific rights of a Mapuche people-nation political subject. The concept of Mapuche nation could not be differentiated from the Argentine nation. In several interviews with the leaders of *Pu Lof Cushamen, Lafken Wigkul Mapu,* the leaders of the Mapuche Confederation of Neuquén, the leaders of the Coordinating Committee of the Mapuche Parliament of Río Negro, it was not clear. The concept of nation could not be described in its components differentiated from Argentina. The differential ethnic conditions that marked the non-belonging to the "Argentine nation" were not made explicit or could not be described.

There were three successes in the construction of the Mapuche narrative from their own organizations on territorial rights: a) opposing political sovereignty (Argentine) versus land foreignization (Benetton); b) linking Macri's interests and his cabinet (Bullrich) to the same interests of the financiers of the "Roca's Campaign" called "Campaign to the Desert" as a thread of historical continuity; and c) opposing the sacredness of private property to the notion of territory as sacred.

This last point deserves special attention given that the naturalization of private property as a structuring element of the modern and liberal State function was publicly debated in sessions of the Congress of the Argentine Nation in the same year 2017. During the parliamentary debate for the extension of National Law No. 26160[38] the conflict over private property was triggered. Law 26160 is the gear prior to the approval of an Indigenous Communal Property Law in Argentina that is enabled from the Reform of the Civil and Commercial Code in its Article 18 in 2012.

Senator Pichetto, national senator for the province of Río Negro, stated this 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. That is not tolerable from the point of view of constitutional logic: "I am sure that there is an immense majority of the Mapuche community that does not share at all the violence of the RAM (Resistencia Ancestral Mapuche) group".

This senator was later candidate for vice-president in 2019 in the Macri-Pichetto presidential ticket, which lost to the Frente de Todos Fernández-Fernández ticket, which won by 48% of the votes of the elected candidate. In the new presidency the issue of the Mapuche autonomist demands and actions have momentarily evaporated. The COVID-19 pandemic situation crosses the public agenda on private property.

The national government of Alberto Fernández has advanced and regressed with respect to the property regime in force in Argentina. I will cite five cases in the ten months of the current administration: 1) attempted expropriation of the Vicentín company (agri-food exports) to convert it into a mixed public-private/private company; 2) the expropriation of the Vicentín company (agri-food exports) to convert it into a mixed public-private/private company.

38 Law 28160 suspended the evictions of indigenous communities and the Territorial Survey Program of historical, current and sufficient occupied lands.

cooperative; 2) statements on the modification of private property laws for the 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; 5) silence on the appropriation of bodies of water and Lago Escondido by a foreign North American businessman. The strong media pressure of the Clarín group and the concentrated powers of the Argentine economy linked to the financial power do not allow the advancement of a broad social and political debate to reconfigure the economy and politics during the pandemic. So far, there are several national bills submitted to the National Congress that would provide a political solution and legal certainty to guarantee the indigenous community ownership of the indigenous territories currently occupied.

Conclusions

The autonomist discourse and Mapuche self-government has no basis in the frontier of possibilities in the *Pwelmapu*, because the conditions for the exercise of autonomy are not given by:

- Lack of a delimited territorial space in which to exercise total political-economic control and where the Mapuche people can feed themselves. The delimitation of a territory in the *pwelmapu* to exercise the territorialist path of autonomy does not exist. The extension of the *pwelmapu* is three times larger than the size of the *gulumapu*, and with less Mapuche population, which makes interpersonal encounters difficult. Therefore, a communitarian path to autonomy, as suggested by Naguil (2010), is not consensual among Mapuche organizations. Perhaps it is necessary to start from below or in a more modest way, recovering *Mapuzungun* as a condition to build a symbolic territoriality of a Mapuche political community.
- The salary-clientel dependence of members of the Mapuche people in some provincial states (Neuquén 43%, Río Negro, 37% in terms of state employment);[39] reduces or affects the political participation in different areas of the Mapuche in a more autonomist movement.

39 The data on the EAP (Economically Active Population) of the two provinces mentioned were constructed based on 2010 census microdata, and were prepared by the authors.

- There is no clarity in the political ideas about the autonomy project and the forms of financing of the autonomy movement, nor are there relevant political dialogues between the present leaders and the former *logko* about what would be the path to autonomy. And from a gender perspective, there is a high level of competition between the "machos" who act as leaders, which overshadows the political fabric of Mapuche women. This is another condition that makes it impossible to reach agreements to build a path to autonomy in the *Pwelche.* We are macro-socially uncoordinated micro-experiences in the *pwelmapu.*

Moreover, the path of political autonomy of the Mapuche nation in the *pwelmapu* can be a resource of alliances between organizations in a space of negotiation of local leaderships that are not yet articulated at the *fütal mapu* level. And also, of temporary alliances with the sectors of the Argentine solidarity. Everything seems to indicate that the electoral route, as in Chile, is a way to re-found the colonial State into a plurinational State as a floor for political autonomy in the *pwelmapu.*

The ideas of autonomy are found in the *pwelmapu* as a production of collective political identity that generates an "I-us" without the permission of the State, in the face of the otherness agglutinated in the Argentinian identity, but it is not proposed to build power, neither economically nor by electoral means, and even less by the already failed armed means in *gulumapu.* There are some achievements in terms of installing autonomy as a discourse on the public agenda, in a mostly whitewashed society that justifies the monocultural and monolingual State despite the fact that more than fourteen indigenous languages are spoken in Argentina.

Autonomy with *pwelche* specificity should be through alliances between micro-experiences that strategically recover the sense of politics. Politics are agreements, alliances, strategies in pursuit of an idea. Ours: the reconstruction of the *pwelmapu* as a territorial space for life, for the *küme felen* (Good Living) with all the internal diversities and heterogeneities within. In the *pwelmapu* we are a demographic minority, therefore, politically, sense of reality is to recognize it and also to generate alliances with sectors of the Argentineity that suffer similar problems. With the *reche* (pure people) is not enough, with the *weichafe* either. With all the colors and rounded shapes of the Mapuche women who continue to re-exist in the *pwelmapu.*

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