State, territorial organization and plurinational constitutionalism in Ecuador and Bolivia: A decade won?

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State, territorial organization and plurinational constitutionalism in Ecuador and Bolivia. A winning decade?

ABSTRACT Ten years have passed since the Ecuadorian and Bolivian constituent processes, which formally concluded with the approval of two constitutional texts that could be described as the most ambitious proposals of the entire continent with regard to the reconfiguration of state power. The transforming horizon of such texts is condensed in the definition of the State as a Plurinational State and in the objective of achieving justice in three dimensions: social, ecological and cultural. Uis work addresses, first of all, the way in which, broadly speaking, the Ecuadorian and Bolivian Constitutions assume the proposal of cultural justice, as the recognition and purpose of equalization, formal and material, of indigenous cultures, peoples or nations and of the way in which such equalization must be carried out through the achievement of the plurinationality of the State. Further that, the text deals with one of the main achievements of plurinationality, which is the territorial reconfiguration of power based on recognition of the right of self-government of indigenous peoples. Finally, some conclusions are highlighted, also intended as proposals for a debate that should be kept alive.

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summary Ten years have passed since the Ecuadorian and Bolivian constituent processes, which formally concluded with the approval of two constitutional texts that could well be described as the most ambitious proposals of the entire continent in terms of the reconfiguration of state power. The transforming horizon of these texts is condensed in the definition of the State as a Plurinational State and in the objective of achieving justice in three dimensions: social, ecological and cultural. This paper first addresses the way in which, broadly speaking, the Ecuadorian and Bolivian Constitutions assume the proposal of cultural justice as a recognition and purpose of formal and material equalization of indigenous cultures, peoples or nations, and the way in which such equalization should be achieved through the attainment of the plurinationality of the State. After this, the text deals with one of the main achievements of plurinationality, which is the territorial reconfiguration of power based on the recognition of the right to self-government of the indigenous peoples and nations, and the way in which such equalization should be achieved through the attainment of the plurinationality of the State.

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1. Introduction

Ten years have passed since the Ecuadorian and Bolivian constituent processes, which formally concluded with the approval of two constitutional texts that could well be described as the most ambitious proposals of the entire continent in terms of the reconfiguration of state power. The transformative horizon of such texts could be condensed into three dimensions of justice: social, ecological and cultural.[1]

Indeed, in addition to deepening the redistributive commitment, the commitment to material equality is developed at the environmental and cultural levels. In the environmental sphere, both fundamental texts, although especially the Ecuadorian one, incorporate principles, rights and managements addressed to public authorities that seek to condition economic development to the demands of life cycle protection, based on a sort of biocentric shift.[2] Some of its most innovative products are to be found in the consecration of the principle of Good Living or in the recognition of nature as a subject of rights (in the Ecuadorian case, in the constitutional text itself).[3]

Undoubtedly, both the provisions aimed at social justice and those referring to environmental or ecological justice arouse enormous interest and, ten years after their entry into force, deserve an analysis capable of assessing their scope. However, this text chooses to focus on the third of the aforementioned dimensions, cultural justice and, within the spheres it includes, the territorial distribution of power as a basic aspect in the realization of the plurinational horizon of the State.

1. This idea is developed in Aparicio Wilhelmi, "Ciudadanías intensas", 461-479.
2. Gudynas, "The Political Ecology of the Biocentric Turn," 34-46.
3. See Aparicio Wilhelmi, "El constitucionalismo de la crisis ecológica".

In what follows, we will first address the way in which, broadly speaking, the Ecuadorian and Bolivian constitutions assume the proposal of cultural justice, as a recognition and purpose of formal and material equalization of indigenous cultures, peoples or nations. In doing so, we will see how this purpose is condensed in the incorporation into the form of the State of the attribute of plurinationality, to which is added, necessarily, that of interculturality. After this, we will refer to one of the main achievements of plurinationality, which is the territorial reconfiguration of power based on the recognition of the right to self-government of indigenous peoples (which in the Bolivian case is recognized in terms of self-determination as peoples). Finally, we will try to draw some conclusions, also understood as proposals for a debate that should be kept alive.

2. Cultural justice as a challenge for equality: the plurinational State

As Fraser points out, cultural or symbolic injustice

> is rooted in social models of representation, interpretation and communication. Examples include cultural domination (being subjected to models of interpretation and communication that are associated with a foreign culture and are foreign and/or hostile to one's own); lack of recognition (being exposed to invisibility by virtue of representation, communication and interpretation practices legitimized by one's own culture); and disrespect (being routinely defamed or disparaged through stereotyping in public cultural representations and/or everyday interactions)[Ł]

Undoubtedly, the formation of liberal states after the processes of decolonization in Latin America did not succeed, nor did it intend, in eliminating the conditions of economic and cultural domination of the dominant society, of Creole or mestizo origin, over the indigenous peoples (and their descendants). The new States were founded, and have developed until the present day, in order to

Ł. Fraser, "From redistribution to recognition?", 68-93.

our days, through colonial continuity5 or, in the words of the Mexican sociologist González Casanova, "internal colonialism".[6]

The constituent projects of Ecuador and, above all, Bolivia incorporate a horizon of decolonization understood in large part as the recognition of equality between cultures, understood in a broad sense.[7]

It should be noted that both processes burst into a context in which the indigenous peoples, their organizations and nearby political spaces clearly noticed the exhaustion, or innocuousness, that the Latin American multicultural constitutionalism of the 1990s had meant for the conditions of survival and development of such peoples.[8]

The formula of isolated recognition of indigenous rights, even if in some cases they were collective and even territorial rights, had proved incapable of altering the conditions for the exercise of state power, which was only just being reconfigured. Thus, the structure of the liberal state and representative democracy remained intact, and only granted the possibility of recognizing some rights, in most cases to *communities* or *collectivities*, that is, without addressing their political and legal subjectivity as peoples.[9]

Indeed, in these reforms, in addition to references to the multicultural or multiethnic nature of the "national society", and to more or less acknowledgements of the

5. Clavero, *Indigenous Law*, 35.

6. González Casanova, *Sociology of exploitation*.

7. The Committee on Economic, Social and Cultural Rights, in its General Comment n.21 on the right to take part in cultural life, considers that culture "includes, inter alia, ways of life, language, written and oral literature, music and song, non-verbal communication, systems of religion and belief, rites and ceremonies, sports and games, methods of production or technology, the natural and human-made environment, food, clothing and housing, as well as the arts, customs and traditions, by which individuals, groups and communities express their humanity and the meaning they give to their existence, and shape a worldview that represents their encounter with the external forces that affect their lives. Culture reflects and shapes the values of well-being and the economic, social and political life of individuals, groups and communities".

8. Van Cott, *Me Friendly Liquidation of the Past*.

9. In this regard, Aparicio Wilhelmi, *Los pueblos indígenas y el Estado*.

In the case of indigenous peoples, we find that the recognition of plurality does not entail a reform of the institutional organization and modes of legal production, leaving far to overcome the dissociation between the formal reality (national State based on a homogeneous society) and the factual reality (multicultural basis and existence of a factual legal pluralism).[10]

In response, the Constitutions of Bolivia and Ecuador seek to go further and, to begin with, incorporate the principle of plurinationality as part of the definition of the form of the State, according to the first article of both texts. Plurinationality would be the concept used to overcome the reference to pluriculturality, a common term in Latin American constitutional texts reformed throughout the 1990s. This is intended to establish the prescriptive dimension of the recognition of the existence of different cultures or cultural groups. As opposed to the descriptive understanding of the existence of different cultures, typical of multicultural constitutionalism, plurinationality would push for transformations in the institutional and legal structures of the State.

Thus, plurinationality does not remain anchored to a merely descriptive or desiderative dimension, but, in a more intense way in the Bolivian case and in a much more timid way in the Ecuadorian case, it is implanted in the institutional design. It is useful to point out that plurinationality is integrated into the configuration of the State through both the recognition of institutions specific to indigenous peoples or nations, and institutions shared by the different collectivities that make up the (plural) Nation.

The liberal multicultural paradigm, according to which indigenous institutions are considered as rights recognized by ordinary institutions, the State, is modified. In the plurinational paradigm, the indigenous peoples' own institutions are not recognized as *part of the* State, but rather as part of it, and are formed by institutions linked to a self-government with a

10. As Clavero points out with respect to the Constitution of Ecuador, one of the most celebrated for its broad recognition of indigenous rights, "not only is there no trace in the Constitution of Ecuador of indigenous autonomy as an institutional expression of the recognition of nationality, but there is also no sign of any revision of the institutional edifice itself, that of constitutional powers, in light of the right to identity and for the sake of pluriculturalism and interculturality", Clavero, "Antropologías normativas", 103-141.

territorial organization of state power. The common institutions are presented as shared, either through the presumption that the existence of self-government and their own institutions ensures the plurinationality of the set of state institutions, or, as the Bolivian text does, by ensuring the specific participation of indigenous peoples and nations as such in those institutions.

In effect, the Bolivian text organizes institutions that are intended to be shared on the basis of the organic guarantee of plurinationality. This is the case of the Plurinational Legislative Assembly,[11] the Plurinational Constitutional Tribunal[12] and the Plurinational Electoral Body.[13] In contrast, the Ecuadorian text chooses not to alter the composition of such bodies in a way that explicitly seeks a plurinational representation.

In the jurisdictional sphere, although in both cases there is recognition of the indigenous peoples' own jurisdictions, there are also significant differences. The Bolivian text regulates the Judiciary (Title III), including indigenous jurisdiction (indigenous native peasant jurisdiction, Chapter IV). On the other hand, in the Ecuadorian text, the chapter that regulates it (Chapter IV, Title IV) is called "Judicial Function and Indigenous Justice", so that it continues to show a separation between indigenous justice and state justice. On the other hand, in the Bolivian case, the equal hierarchy between jurisdictions is made explicit (art. 179 II), while in the case of the Ecuadorian text (art. 179 II), it is still shown that there is a separation between indigenous justice and state justice.

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11. The constitutional regulation of the Plurinational Legislative Assembly requires for the election of its members the existence of special indigenous constituencies (indigenous native peasants, according to the constitutional terminology), and derives its development to subsequent legislation, with the limit that it does not transcend departmental borders and that "they shall be established only in rural areas, and in those departments in which these indigenous native peasant peoples and nations constitute a population minority" (Article 146 VII).

12. Its members shall be "elected with criteria of plurinationality, with representation of the ordinary system and of the indigenous native peasant system" (Article 197 I), by universal suffrage (Article 198). It is also established that candidacies may be proposed "by organizations of civil society and indigenous and aboriginal peasant nations and peoples" (Article 199 II).

13. It shall be composed of seven members, six of parliamentary election and one of presidential election, respecting that "at least two of whom shall be of indigenous origin" (Article 206 II). Indigenous representation is also guaranteed for the departmental electoral tribunals (in accordance with the procedure established by Article 206 V).

It is not mentioned literally, although it is derived from the regulation, since it is established that the State will guarantee that the decisions of the indigenous jurisdiction "will be respected by the public institutions and authorities" and that its resolutions "will only be subject to the control of constitutionality" (art. 171). It so happens that, although it is ensured that the Judicial Function cannot review the decisions of indigenous justice, such role will correspond to a Constitutional Court whose configuration does not formally include pluri- nationality.[1Ł,15]

Undoubtedly, it would be necessary to address in greater detail the scope of the plurinational configuration of the institutions of the cases submitted for comment. We would see, in this case, how in the most decisive case, the Bolivian case, despite the commitment to ensure the right of indigenous peoples "to have their institutions be part of the general structure of the State" (Article 30.II.5), the Constitution itself, at times, and the development regulations have opted to restrict their transformative capacity, limiting the material scope of development.[16]

1Ł. In order to be appointed as a member of the Constitutional Court, it is required to "have a third level degree in law" and "to have exercised with notorious probity the profession of lawyer, the judiciary or university teaching in legal sciences for a minimum period of ten years" (art. 433). The appointment will be made by means of a qualifying commission composed of two members from each of the legislative, executive and transparency and social control functions. Only with respect to the latter could there be a certain degree of plurinationality (see the regulation of articles 204 and following).

15. An important judgment of the Constitutional Court is the one in the "La Cocha" case (Judgment No. 113-14-SEP-CC, 2014). This is a judgment that addresses the constitutional recognition of indigenous legal systems. In it, the Ecuadorian Court establishes that the indigenous justice system cannot hear crimes against life even when they have occurred between members of the same community and within its territorial scope. The Court considers that "[...] the indigenous justice of the Kichwa Panzaleo People does not judge or punish the violation of life, as a protected legal right and subjective right of the individual, but rather assumes, judges and punishes it insofar as it generates a multiple conflict between families and in the community, which must be resolved in order to restore the harmony of the community; in this sense, the attack against life considered individually is not judged. Therefore, this Court finds that indigenous justice, when hearing cases of death, does not resolve with respect to the affectation of the legal right to life, as an end in itself, but in function of the affectations that this fact causes in the life of the community". Therefore, the Court decides that the ordinary criminal justice system will be competent.

16. A good example of this can be found in the delimitation law (Law 073 of January 11, 2011). According to its Article 10.II, criminal matters such as corruption offenses or any other crime whose victim is the State, human trafficking and smuggling, arms trafficking and drug trafficking offenses, among others, would be excluded. Crimes committed against the integrity

However, as has already been noted, this paper focuses on the regulation and development of indigenous territorial self-government and its implications, which we refer to below.

3. Plurinational State, territorial organization of the State and indigenous autonomies

Plurinationality, beyond its possible realization within the framework of shared institutions at the state level, is based on the recognition of its own institutions. While it is true that it is possible to accommodate indigenous institutions without a territorial dimension (especially in increasingly culturally hybrid urban contexts), it is true that it is in the territorial distribution of state power that it takes place most intensely, and with the greatest capacity for transformation. Thus, both the Ecuadorian and Bolivian Constitutions configure territorially complex States, with specific recognition of the formation of indigenous autonomies.

Again, at least as far as the general proclamations are concerned, the Bolivian text is more ambitious, and does so on the basis of the recognition of self-determination as a regulatory principle and as a right. As a principle, it appears in Article 2: "Given the pre-colonial existence of the native indigenous peasant nations and peoples and their ancestral dominion over their territories, their self-determination is guaranteed within the framework of the unity of the State, which consists of their right to autonomy, self-government, their culture, the recognition of their institutions and the consolidation of their territorial entities, in accordance with this Constitution and the law". The chapter on rights includes recognition of the right of indigenous peoples "to self-determination and territoriality" (art. 30 IV).

In civil matters, any process in which the State is a party or interested third party, through its central, decentralized, deconcentrated or autonomous administration, and all matters related to property law; in civil matters, any process in which the State is a party or interested third party, through its central, decentralized, deconcentrated and autonomous administration, and all matters relating to labor law, social security law, tax law, administrative law, mining law, hydrocarbons law, forestry law, computer law, public and private international law, and agrarian law, except for the internal distribution of land in communities that have legal possession or collective ownership rights over the same.

Far removed from such proclamations is the Ecuadorian Constitution, which prefers to recognize territorial rights without literally mentioning their nature as rights: "the ancestral, indigenous, aßoecuato- rian and montubio peoples may constitute territorial circumscriptions for the preservation of their culture. The Law shall regulate their conformation" (art. 60).

3.1. Recognition and development of indigenous territorial constituencies in Ecuador

In Ecuador, the constituent process erupted at a time of strong de-legitimization of the party system and the neoliberal policy cycle. However, this propitious context for transformation (context *of destitution*) coincides with a moment of weakening of the political capacity of what had been one of the main indigenous movements of the continent, represented by CONAIE (Confederation of Indigenous Nationalities of Ecuador). This explains why, beyond the definition of the plurinational and intercultural nature of the State, the scope of the recognition of indigenous self-government is limited or, at least, does not represent an excessive advance with respect to the 1998 Constitution.

The Ecuadorian Constitution of 2008 establishes in its Title V a territorial organization that distinguishes between regions, provinces, cantons and rural parishes as "decentralized autonomous governments", as well as the possibility of commonwealth among the different levels of government. It also provides for the creation of other types of distinct territorial realities, "special regimes" for territories with "environmental, ethno-cultural or population characteristics," including, in addition to metropolitan districts and the province of Galapagos, *indigenous territorial districts* (CTIs).[17]

Article 257 provides for the possibility of creating such indigenous districts, "which shall exercise the powers of the corresponding autonomous territorial government, and shall be governed by principles of interculturality, plurinationality

17. The existence of another special territorial circumscription made up of the Amazonian provinces is not explicitly found in the constitutional text, but rather in the Organic Code of Territorial Organization, Autonomy and Decentralization, which must be regulated by special law (art. 11 of the aforementioned Code).

and in accordance with collective rights". This "special administration regime", continues the same precept, can be developed in territorial entities below the region, that is, in parishes, cantons and provinces, which are "made up of a majority of indigenous, Aßoecuadorian, Montubio or ancestral communities, peoples or nationalities". In order to achieve this, it will be necessary to be approved in a consultation in which at least two thirds of the valid votes are agreed upon. Although the regions are left out, two or more districts administered by indigenous or pluricultural territorial governments may form a new district, in accordance with the determinations established by a development law (the Organic Code of Territorial Organization, Autonomy and Decentralization, to which we will refer shortly).

Despite the fact that the ECIs are qualified as "special administration regimes", in reality the constitutionally established distribution of powers does not include any specific provision for them, but chooses to establish a list of powers for each of the generic territorial spheres (central State, regional, provincial, municipal and rural parish governments). The specificities of this special regime are found not in the constitutional text but in the general development law, the Organic Code of Territorial Organization, Autonomy and Decentralization (COOTAD), approved by law on October 19, 2010.

According to this Code, the CTIs "are special regimes of decentralized self-government established by self-determination of the indigenous, Aßoecuadorian and Montubio peoples, nationalities and communities, within the framework of their ancestral territories, respecting the political-administrative organization of the State, which shall exercise the powers of the corresponding level of self-government. They shall be governed by the Constitution, international instruments and their constitutive statutes" (art. 93 COOTAD). The Code also provides that those communities that are territorially separated from the ECIs of the nationalities to which they belong "shall be integrated into the system of government of the corresponding nationality or people for the exercise of collective rights over the totality of their communities" (art. 97, second paragraph).

The same precept, in its first paragraph, provides for the case of peoples, nationalities, communities or communes that cannot be constituted as ECIs, which may also exercise their constitutional collective rights, "in particular, the rights of the indigenous peoples, nationalities, communities or communes, which may also exercise their constitutional collective rights, "in particular,

the rights of the indigenous peoples, nationalities, communities or communes that cannot be constituted as ECIs.

The decentralized autonomous governments "shall establish a joint planning process and may delegate competencies to the legitimate and legally established authorities of the indigenous peoples, nationalities, communities or communes". To guarantee this, the decentralized autonomous governments "shall establish a joint planning process and may delegate powers to the legitimate and legally established authorities of the indigenous peoples, nationalities, communities or communes".

Special provisions are established for recently-contacted peoples who have "special socioeconomic characteristics that derive from their dependence on the ecosystems present in their territory," in which case "they shall have the right to organize and administer their territory, in the manner that best serves to maintain their culture and their way of subsistence, in accordance with the Constitution and the law", while for the territories of peoples in voluntary isolation it is established that "they are of irreducible and intangible ancestral possession, and any type of extractive activity shall be prohibited" (art. 101 COOTAD). 101 COOTAD).

Finally, in accordance with respect for the right to free, prior and informed consultation,[18] the Code obliges all autonomous territorial governments that have indigenous peoples in their territory to guarantee a consultation procedure prior to the approval of norms "that directly and objectively could affect the collective rights of communes, communities, indigenous, Aßoecuadorian and Montubio peoples and nationalities in their respective territorial circumscriptions" (art. 325 COOTAD).

As we have pointed out, the jurisdictional regime does not seem to have any particularity with respect to the ECIs. However, since the Constitution contains a list of collective rights of indigenous peoples (Title II, Chapter IV, "Rights of communities, peoples and nationalities"), the nature of the rights included, which incorporate the very protection of the rights of indigenous peoples (Title II, Chapter IV, "Rights of the communities, peoples and nationalities"), is not so different from that of the ECIs.

18. Free, prior and informed consultation is the right of indigenous peoples to be consulted prior to any legislative or administrative decision that may affect them, its main scope of application being in relation to mining, oil or infrastructure concessions in general. This right is recognized by ILO Convention No 169 of 1989, ratified by Ecuador, and is also included in the United Nations Declaration on the Rights of Indigenous Peoples (2007). It is also a constitutionally recognized right in Ecuador, specifically in art. 57.7.

of self-government, territorial and jurisdictional rights,[19] means that, in reality, such provisions recognize, at the same time, subjective collective rights and also, for those peoples or nationalities that have an ECI, powers to be exercised by their territorial government bodies (exclusively or in a shared manner, depending on the case, based o n a systematic interpretation with the established system of distribution of powers).

Regarding the process of conformation, there has been a discussion about the interpretation of the constitutional framework. Although Article 257 clearly establishes in its second paragraph that a popular consultation will be necessary, which must obtain two thirds of the valid votes, the census being that of the inhabitants of the constituency, various indigenous organizations have pointed out that by virtue of Articles 56 and following, that is, those that reflect the collective rights of indigenous peoples, and specifically Article 60, the subject that must decide on the formation of the ECI should be none other than the peoples themselves. This last interpretation would also be in accordance with the provisions of international law, specifically the Convention on the Rights of Indigenous Peoples.
No. 169 of the ILO and the 2007 United Nations Declaration on the Rights of Indigenous Peoples.

So far, the interpretation that privileges the specific provision contained in art. 257 has prevailed, which, to a large extent, has led to the fact that initiatives have been formulated at the most basic territorial level, that of the

19. Article 57 establishes a broad list of rights, many of which can be understood as functions or competencies to be developed, exclusively or in a shared manner, by their autonomous governments. Thus, point 1: "To freely maintain, develop and strengthen their identity, sense of belonging, ancestral traditions and forms of social organization"; point 6: "To participate in the use, exploitation, administration and conservation of the renewable natural resources found on their lands"; point 8: "Conserve and promote their biodiversity and natural environment management practices; 9: Conserve and develop their own forms of coexistence and social organization, and of generation and exercise of authority, in their legally recognized territories and community lands of ancestral possession. 10: Create, develop, apply and practice their own or customary law [...]; 12. Maintain, protect and develop collective knowledge; their ancestral sciences, technologies and knowledge; genetic resources containing biological diversity and agrobiodiversity; their medicines and traditional medicine practices, including the right to recover, promote and protect ritual and sacred places, as well as plants, animals, minerals and ecosystems within their territories; and the knowledge of the resources and properties of fauna and flora"; 14: "Develop, strengthen and enhance the bilingual intercultural education system [...]".

parishes, regardless of the fact that, to a large extent, the population of the parish is the one that best adapts to the characteristics of the indigenous territories that actually exist. In fact, several indigenous communities have begun the process of first constituting themselves as parishes to later follow with the process of being recognized as CTIs.[20]

As regards the guarantee of the configuration of their own forms of government, it is surprising that the Constitution does not devote any attention to it in all of Title V ("Territorial Organization of the State"). The same happens in the COOTAD, which only refers to the matter in relation to the communes, communities and precincts (understood as basic units of participation, according to art. 248 of the Constitution) where there is collective ownership of land, in which case "the forms of community organization are recognized within the framework of this Code and the Law of Communes" (art. 308 COOTAD).

The reiterated omission of indigenous specificities both in terms of powers and in the procedure for the formation and configuration of the institutional framework itself opens up two interpretative options. The first would be along the lines already mentioned of understanding the specific regulatory framework as the privileged regulatory framework, that is, the one referring to territorial organization (Title V of the Constitution and COOTAD), where the ECIs are placed on an equal footing with the rest of the territorial circumscriptions. The second would seek to bring to the forefront the set of provisions guaranteeing the collective rights of indigenous peoples, among which is the right "to conserve and develop their own forms of coexistence and social organization, and the generation and exercise of authority, in their legally recognized territories and community lands of ancestral possession" (art. 57.9 of the Constitution).

Although the second line of interpretation may seem more solid, since it is complemented by the provision of art. 417 of the Constitution, which guarantees the direct applicability of international human rights treaties, the fact is that up to now the definition of the normative framework that should regulate the development of the ECIs has meant that their momentum, and also the ßenos, has depended on governmental action.

20. This is reported in Chirif, "La normativa sobre territorios indígenas".

Thus, the first impulse of the process took place between mid-2009 and the beginning of 2010, months in which a process of dialogue was opened with most of the Amazonian indigenous organizations. This dialogue concluded with the signing of an agreement between the State and 26 indigenous organizations that defined a road map for establishing the CTIs. A total of 34 parishes were identified, of which the government itself considered only 8 to be the most viable.[21]

Ortiz points out that the difficulty of the process was due to the ßagility of the indigenous communities and organizations in their relationship with the State, "derived from their high organizational performance and internal disputes, as well as the gradual loss of legitimacy and control over their territories". Even so, in some processes the basic contents of what should be the autonomous Statute were defined, which included general principles such as the nature, headquarters, denomination and conformation of the ECI; a structure of autonomous government, administrative system, and provisions in the fields of justice, electoral and control, as well as budget and financing, land and natural resources (where criteria for territorial planning and management are indicated, including forms of community or collective, private, state property, etc.).[22]

To a large extent, the processes initiated for the formation of the CTI would exemplify the resistance of the State, through the technical and procedural difficulties imposed especially by the National Electoral Council, in charge of organizing the popular consultation, and the Constitutional Court, which must validate both the conditions of the consultation and the Autonomy Statute. Nor does the executive appear to have been willing to push forward with de-

21. Ortiz, "The labyrinth of indigenous autonomy".

22. Specifically, this would be the case of the CTI and Pluricultural Wami of the Loreto canton, in the province of Orellana, and that of the CTI of the Arajuno canton, in the province of Pastaza. In the latter case, there is even a fully elaborated Statute. Apart from these two cases, there are other cases with the potential to become ECIs: in the highlands, in the province of Chimborazo, in the cantons of Colta and Guamote; in the province of Cañar, in Suscal. In the Amazon, in the province of Napo, the canton of Archidona; in Pastaza, Arajuno; in the province of Orellana, Aguarico; in the province of Morona Santiago, the cantons of Huamboya, Tiwintza and Taisha; and in Zamora Chinchipe, the canton of Yacuambi. A development of this issue can be found in the work of Giannina Elizabeth Zamora Acosta, in her master's thesis in socio-environmental studies: "Territorial management in a plurinational state: challenges of the implementation of indigenous territorial districts as special regimes in Ecuador".

termination of the formation of CTI. Despite the implementation of some governmental programs, it has taken decisions such as the Executive Decree No. 1168, dated June 4, 2012, which develops the requirements for the creation of rural parishes. Well, in such Decree, in an undifferentiated manner, the Government establishes that in order to constitute new rural parishes there must be an initial resident population of not less than ten thousand inhabitants, of which at least two thousand must be domiciled in the new parish (art. 26.a). In this way, the possibility of constituting rural parishes, which could be the previous step for a later conformation as CTI, of numerous indigenous communities that do not usually reach such population, is vetoed.

Another blockage or difficulty is the lack of correspondence between ancestral territorial boundaries and the political-administrative structure of the state. This situation is especially notorious in Amazonian regions: in the case of the Huaorani, their presence is spread over a total of three provinces, eight cantons and a multitude of parishes. "Such a *de iure*, *de facto*, so-breposition ignores the ancestral limits and also empowers the mestizo population - consequently uninformed and distant with respect t o the reality and political-territorial demands of the indigenous peoples - to decide, in an eventual referendum, on the destiny of territories and peoples that are foreign and unknown to them".[23]

While it is true that this circumstance is especially visible in the Amazon regions, where the population is more dispersed and disaggregated, in the highlands the stagnation of the STIs is due to factors such as

23. Ortiz, "El laberinto de la autonomía indígena", who adds: "The persistence of these difficulties, beyond the existing political situation in Ecuador during this reform process, includes other factors such as the profound disagreement between the ancestral territoriality of the peoples and nationalities and the national territorial political organization of the State. It must be considered that parish, cantonal and provincial boundaries have historically ßagmented and divided the ancestral territorial units from their character as continuous spatial units. Additionally, the political-administrative system of the State in a peripheral and ßonterized region such as the Amazon, has ignored and overlooked both the natural configurations (hydrographic basins, ecological formations, etc.), as well as the processes of identity construction of the territories by the different nationalities. To this political-administrative system is added - as a variable and factor of deterritorialization - the National System of Protected Areas (SNAP) established in a vertical and unconsulted manner and in accordance with the perspective of conservationists of western roots, not indigenous or Amazonian".

In addition, it would be visible the reciprocal distrust between the State and the indigenous organizations and the perception of the latter that moving towards CTI, far from guaranteeing them greater autonomy, could actually generate greater dependence on the State.[2Ł]

It should be noted, however, that the difficulties for the creation of territorial entities are not only due to the ECIs. In this regard, the latest reform of COOTAD (by Law of July 18, 2016) comes to lengthen the period for the conclusion of the regionalization process from the eight years initially foreseen to a total of twenty (third transitory provision, COOTAD). It could well be concluded that the process of construction not only of the plurinational State but as a whole of a true entrenchment of a territorially complex structure would have succumbed to something that COOTAD itself already warns of in the first of the principles contained in its art. 3, that of unity: "(a) Unity. The different levels of government have the obligation to observe the unity of the legal system, territorial unity, economic unity and unity in equality of treatment, as an expression of the sovereignty of the Ecuadorian people". In the final section we will have the opportunity to make some additional reflections.

3.2. Plurinational community state and indigenous self-government in Bolivia

The Political Constitution of the State (CPE), approved by referendum in January 2009, establishes that "Bolivia is constituted as a Unitary Social State of Plurinational Community Law, free, independent, sovereign, democratic, intercultural, decentralized and with autonomies" (art. 1). Plurinationality, therefore, is based on its communitarian basis, that is, on "the pre-colonial existence of the indigenous native peasant nations and peoples and their ancestral dominion over their territories", to whom "their self-determination is guaranteed within the framework of the unity of the State, which consists of their right to autonomy, self-government and self-determination" (art. 2).

2Ł. Chirif, "The regulation of indigenous territories".

to their culture, to the recognition of their institutions and to the consolidation of their territorial entities, in accordance with this Constitution and the law" (art. 2). The CPE also contains a specific chapter on indigenous rights ("of the indigenous native peasant nations and peoples", according to the Constitution), where the rights that underpin their existence and development as such are included, in line with the contents of the United Nations Declaration on the Rights of Indigenous Peoples (2007).

The decentralized nature of the State is based on the recognition of different levels of territorial autonomy, with equal constitutional rank and without subordination to one another. We have departmental autonomy, regional autonomy, municipal autonomy and indigenous and aboriginal peasant autonomy (AIOC), as the CPE itself develops in its third part, title I, chapter seven (articles 289 and following). In Article 289, the CPE defines the AIOC as "the self-government of the indigenous native peasant nations and peoples, whose population shares territory, culture, history, languages, and their own legal, political, social and economic organization or institutions".

Autonomies of a political nature (political decentralization) and not merely administrative (administrative deconcentration) and, therefore, with legislative power (capacity for innovation in the legal system), the CPE limits them to departments, municipalities and indigenous and aboriginal farming nations and peoples, either through AIOC or municipalities and regions with such status (art. 291-I specifies that "indigenous and aboriginal farming territories and the municipalities and regions that adopt such status" have the same rank). The provinces and municipal districts are left out, as well as the regions - formed by a group of municipalities or province(s) - which remain "as a space for planning and management" (art. 280), without art. 301 defining any competency of regional autonomy, except for those "transferred or delegated".

The way foreseen by the CPE for the conformation of indigenous autonomies passes fundamentally through pre-existing realities to the new constitutional framework. On the one hand, through the municipalities, and on the other, through the transformation of the "Original Community Lands" (TCO). To these two realities is added that of the regions (art. 291). Morell explains: "the municipality as a space with effective political decision-making capacity in the Bolivian rural area was promoted in 1994 by the Law of Popular Participation (LPP), which came to

to develop the constitutional reform of the same year [...]". The local administration of the State was decentralized in 311 municipalities "taking as a territorial basis previous inoperative state divisions (the 'canton', the 'section of province'), and providing them with autonomy through the direct transfer of economic resources (up to 20% of the general budget of the State) and their own competences". Likewise, the LPP "instituted specific mechanisms for political participation and recognition of the indigenous peoples as subjects of law through the Oversight Committees or the Territorial Base Organizations".[25]

Secondly, the TCOs, which give recognition to indigenous collective property and its community management (as an expression of a certain self-government), were recognized in 1994 in Article 171 of the Constitution and developed by "the INRA Law" (National Institute of Agrarian Reform) of 1996, "as a response of the State to the growing territorial demands of the indigenous peoples of the east of the country where [...] the latifundist territorial structure had hardly been altered after the agrarian reform of 1953".[26]

The CPE distinguishes the cases in which the AIOC arises from the TCO, in which case a consultation will be necessary "in accordance with its norms and procedures" (art. 293.I), although in the case of affecting municipal boundaries it will be necessary to follow a procedure before the Plurinational Legislative Assembly (art. 293.II). With respect to the municipalities, the way is through the celebration of a referendum (art. 294.II); to form an original indigenous peasant region, by aggregation of municipalities, municipal districts or AIOC, it must be decided by referendum and/or agreement according to their own norms (art. 295.II).

Morell clarifies that the municipal and TCO routes "were designed to respond to differentiated indigenous realities within the country: territorially concentrated and majority in the Andean region, dispersed and minority in the east or lowlands. Thus, the municipal route to indigenous autonomy, which requires majority victory in a municipal referendum, would be designed for the municipalities of the valleys and highlands, where indigenous peoples represent more than 50% of the population in 215 of the country's municipalities.

25. Morell, "The (Difficult) Construction of Indigenous Autonomies," 110.

26. *Ibid*.

the 252 municipalities, while the territorial route would be the most viable option for the indigenous peoples of the east, who, with exceptions [...], constitute minorities within the municipal boundaries".[27] Finally, the regional route "seems to attempt to respond - timidly - to the demands for the reconstitution of indigenous territories beyond local spaces".[28]

However it is formed, each AIOC will have a structure whose governance will be exercised "through its own rules and forms of organization, with the denomination corresponding to each people, nation or community, established in its statutes and subject to the Constitution and the Law" (art. 296 CPE).

We see how, unlike what we saw in the Ecuadorian case, the Bolivian CPE does specify both its own form of government and a series of specific competencies, in addition to those corresponding to the municipality, as the case may be. Thus, the exclusive competencies of the AIOCs are, among others: "1. To elaborate their Statute for the exercise of their autonomy in accordance with the Constitution and the law; 2. Management and administration of renewable natural resources, in accordance with the Constitution; 4. Elaboration of Land Use and Territorial Management Plans, in coordination with the plans of the central, departmental, and municipal levels of the State; [...] 7. Administration and preservation of protected areas in their jurisdiction within the framework of State policy; 8. Exercise of indigenous native peasant jurisdiction for the application of justice and conflict resolution through their own norms and procedures in accordance with the Constitution and the law; [...] 15. Participate in, develop and implement mechanisms for prior, free and informed consultation regarding the implementation of legislative, executive and administrative measures that affect them; 22. Preservation of the habitat and landscape, in accordance with their own principles; 23.

27. *Ibidem*, 113. The same conclusion is reached in a detailed study by Albó and Romero, *Indigenous Autonomies in the Bolivian Reality*, 57.

28. Although, as the author himself points out, "the constitutional clauses that establish that the regions may not alter departmental boundaries (art. 280.I), or that the AIOC via TIOC that affect municipal boundaries must initiate a procedure before the Plurinational Legislative Assembly (art. 293.II), complicate or directly close off indigenous autonomy". *Ibidem*, 113.

cultural, technological, spatial and historical norms, standards and practices; 23. Development and exercise of its democratic institutions in accordance with its own rules and procedures" (art. 304.I CPE).

As shared competences (basic State legislation and legislation for the development and execution of the AIOC), the one referring to international exchanges within the framework of the State's foreign policy or "the safeguarding and registration of collective intellectual rights referring to knowledge of genetic resources, traditional medicine and germplasm" (art. 304.II), and as concurrent (State legislation as a whole), the conservation of forest resources, biodiversity and the environment, or the promotion and encouragement of agriculture and livestock (art. 304.III), stand out as shared competences.

Without having to resort to the normative development of the constitutional provisions, carried out by the Framework Law on Autonomies and Decentralization Andrés Ibáñez (approved in July 2010), the differences between the Ecuadorian and Bolivian cases regarding the recognition and normative impulse of indigenous autonomies are evident.

However, if we move on to the results, that is, to the way in which such forecasts have actually materialized, we will see that, in reality, the differences are minor. Indeed, although by 2015 there had been five consultations for the approval of departmental autonomous statutes, three consultations on municipal organic charters and two consultations on indigenous and aboriginal peasant autonomous statutes, nine years after the entry into force of the CPE only one municipality, that of Charagua, has managed to go through the entire procedure to become an AIOC.

Once again, there are obstacles related to the absence of governmental will, together with the excessively formalized, slow and bureaucratic (*Western*, in short) nature of the set of steps that must be taken. Likewise, the lack of internal cohesion of the indigenous organizations and peoples, together with partisan interests, which have often viewed the autonomous processes from the fear of losing political influence, would be behind such an occurrence.

However, it should be noted that, despite the scarcity of concluded autonomous processes, in the Bolivian case we have a political and jurisprudential path that has already produced some relevant results. Thus, the

The Plurinational Constitutional Tribunal has had occasion to pronounce on the full review of six statutes (Totora Marka, Charagua, Mojocoya, Huacaya, Uru Chipaya and Raqaypampa). In Exeni's opinion, the following aspects can be derived from this jurisprudence: a) The jurisprudential construction of the notion of a composite State, with different levels of asymmetrical autonomies, which assumes the convergence of two (cosmo)visions recognized in terms of complementarity: Western (republican) and communitarian (pre-colonial); b) the recognition of autonomy at three levels: the direct election of self-rulers, the administration of economic resources and the exercise of self-government functions (legislative, executive, regulatory and oversight); c) the administration of justice, under their own legal systems and authorities.[29]

It is also possible to draw conclusions on the diversity of the autonomic proposals, in the sense of pointing out how some of the statutory texts would opt for a more communitarian form of self-government, while others lean towards a more liberal-municipal form ("liberal" in the classic sense of prioritizing individual rights, including secret ballot and the separation of executive, legislative and judicial powers, as well as the preeminence of political parties).[30]

In the example of Jesús de Machaca, one of the first autonomous processes to get underway (so far unsuccessfully), in addition to provisions that clearly arise from the ancestral forms of self-government, the Statute oßects elements that would more clearly reflect the Western imprint. In some cases, these are requirements set forth by the CPE itself or the Framework Law on Autonomies and Decentralization, but in other cases this is not the case. It could therefore be understood as the result of either

29. Exeni, "Bolivia: Indigenous autonomies".

30. So notes Tockman, "The Construction of Indigenous Autonomy". The author notes that "while all AIOC governance systems involve the hybridization of liberal-municipal and community norms, some of the emerging indigenous autonomies are clearly discernible as more liberal or municipal (Mojocoya, Tarabuco, Charazani and the indigenous territory of Raqaypampa), while others are more community-based (Totora, Charagua, Chipaya and Pampa Aullagas). One pattern observed is that the dominant Quechua communities in the central valleys have produced more liberal-municipal statutes than those elaborated by the Aymara and Uru peoples in the western highlands or by the Guarani communities in the lowlands - which have written statutes with more communitarian characteristics".

of a certain mimetic inertia, or a tactical decision, if you will, to consolidate the autonomous space in the face of possible recentralizing tendencies that the State (at the central or departmental level) may take on.[31]

In any case, such organic or organizational diversity would exemplify the principle of *demodiversity*,[32] that is, the constitutional commitment to the coexistence of three forms of democracy: direct and participatory, representative and communitarian (art. 11 CPE). Indeed, this demodiversity is also shown in the comparison between different statutory projects. Thus, in the case of the Original Autonomy of Totora Marka, its Statute assumes the traditional model of *ayllu* (communities or groups of communities, mode of social and productive organization of the Andean peoples),[33] and identifies itself as a "dual, direct, participatory, native community democracy, *muyu* (rotation of positions) and *sarathaqui* (to travel the road, to pass positions)"; On the other hand, for the Original Indigenous Peasant Statute of Mojocoya, the system of government is based on the organizational basis of the peasant union, as a grouping of the agrarian unions of the communities. This makes it an AIOC whose governance structure is more similar to that of non-indigenous municipalities, through forms that include representation.[3Ł]

Although it is necessary to highlight Bolivia's major advances on the road to plurinationality through the creation of indigenous autonomies, it is important to point out that

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31. Thus, a government structure is established that, beyond the Magno Cabildo (assembly of community authorities), includes the classic division among organs (legislative, executive and judicial, in addition to social control), which is not required by the CPE for the AIOC. Article 296 establishes that "The government of the indigenous and aboriginal peasant autonomies will be exercised through their own norms and forms of organization, with the denomination that corresponds to each people, nation or community, established in their statutes and subject to the Constitution and the Law". Further development can be found in Aparicio Wilhelmi, "La (re)construcción de la autonomía indígena", 133-146.

32. Santos, *The Refounding of the State in Latin America.*

33. The aforementioned draft autonomous statute of Jesús de Machaca contains a definition: "The Ayllus are well-defined territorial spaces composed of several native communities and have their own authorities according to their own norms and procedures, and the highest authority is the Jilïr Mallku Awki and Jilïr Mallku Tayka" (Article 12 III).

3Ł. Exeni, "Bolivia: indigenous autonomies".

The truth is that so far the ßenos have shown greater strengths than the impulses. For Exeni, this is due to the sum of several factors.[35]

There would be a tension between indigenous autonomies as the essence of the plurinational State and the (neo)extractivist and (neo)developmentalist base of that State;[36] on the other hand, the AIOC would also imply a dispute in the (re)distribution of power within the autonomy itself (correlation of internal forces in which different *ayllus*, zones, population centers, communities, residents -migrants-, sectors -transporters, for example-, non-indigenous minorities... intervene); a hostile or distrustful State inertia appears, with bureaucratic and very formalistic procedures, far removed from indigenous practices.); a hostile or distrustful state inertia appears, with bureaucratic and very formalistic procedures, far removed from indigenous practices; we should add the rejection of political parties and certain state-level social organizations, which see the AIOCs as a loss of power spaces; another tension would be the challenge of interculturality within the AIOCs themselves, that is, the difficulty of assuming the inclusion of the "non-indigenous other".[37]

For his part, Tockman points specifically to the responsibility of the MAS government (Movimiento Al Socialismo, the party of President Evo Morales). He believes that "it has often failed to support the elaboration of autonomy statutes in various ways. This lack of support is a result of the growing ambivalence in MAS leadership towards the implementation of indigenous autonomy, which can be seen in the legal obstacles that have limited the conversion of AIOCs, in the few resources available to support these processes, and in the open opposition to conversion by the Masistas at the local level. "[38]

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35. Exeni, "Autogobierno indígena", 102-103.

36. In this regard, see Cameron, "Conflicted Identities.

37. A clear example of these difficulties can be seen in the case of the Guaraní autonomy of Charagua Iyambae, which, as we have seen, is the only one that has so far achieved recognition as an AIOC. Morell refers to this in his study, already cited, "La (difícil) construcción de autonomías indígenas" (The (difficult) construction of indigenous autonomies).

38. There are two reasons for this: "(1) the electoral pressures of no longer being an opposition social organization, but an elected government that wants to retain power in a diverse and conflictive terrain; and (2) the party's development program, which seeks to respond to the broad demands for economic growth and poverty reduction through the extraction of natural resources. MAS has sought the next phase of development through a popular form of capitalism - framed by Andean words and symbols. In this context, the

party's development agenda and electoral pressures sometimes

Finally, and even once a greater number of AIOCs have been formed, it should not be forgotten that "the challenge of establishing indigenous governments will remain, with all the difficulties and challenges that this implies in terms of the imperative of intercultural public management that is different and better than t h e current municipal management.

4. Final thoughts

In 2010, a year after the approval and entry into force of the Bolivian Constitution, one of the then members of the Government (and today one of its main critics) wondered whether it was possible to affirm the death of the nation-state, replaced by the plurinational, communitarian and autonomous State. And he affirmed: "What are the conditions, characteristics, structure, contents and institutional forms of this State? Its plurinational condition, not in the sense of liberal multiculturalism, but in the sense of decolonization, in the sense of the emancipation of the original indigenous nations and peoples [...], based on the creation of a new institutional map, aimed at incorporating indigenous institutions into the form of the State".Ł0

Almost a decade later, it does not seem so clear that we can affirm that we are facing a "won decade "Ł1 on the road to the plurinational (re)construction of the State in the Ecuadorian and Bolivian cases. The preceding analysis tells us about the obstacles, many of them not overcome, that the construction of indigenous autonomies, understood as key pieces of the plurinational project, has had to overcome.

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clash with the indigenous autonomy project, since indigenous communities want to have control over their own development and over the resources in their territories". Tockman, "The construction of autonomy".

39. Exeni, "Indigenous Self-Government," 103.

Ł0. Prada, "Thresholds and Horizons of Decolonization," 43-96.

Ł1. The reference to the "won decade" has become widespread in certain political and academic debates as a counterpoint to the previous "lost decade" that neoliberal policies in the continent would have brought about. It would be understood as "won" in view of the data on economic growth and poverty reduction, certainly remarkable in the first decade of this century in the countries participating in the so-called "progressive cycle" (especially in them, although not only in them, as it is partly the result of a period of rising commodity prices).

We could draw a series of conclusions in this regard. In the first place, the slowness and the jolts of the processes of effective recognition of indigenous self-government should be understood as a direct consequence of its transformative potential. Indeed, the challenge consists in overcoming the liberal paradigm based on the recognition of rights and, together with them, addressing the effective recognition of subjects, which would point to the end of the nation state and its obsession with overcoming (or at least concealing) the heterogeneity of the spheres and subjects in which popular sovereignty takes shape. As Clavero points out, it is a matter of the need to overcome the mere "constitutionalism of rights" to guarantee a "constitutionalism of powers".Ł2

In this sense, the difficulties with which the statutory processes have had to be faced would tell us that they can come to imply, by themselves, a constituent continuity, a reality that is always difficult to be accepted by the constituted powers derived from a (for- maly) concluded constituent process.

A contradiction emerges that can be glimpsed in one of the objectives established by COOTAD. The Ecuadorian Decentralizing Code states as an objective (art. 2): "(c) The strengthening of the role of the State through the consolidation of each of its levels of government, in the administration of its territorial circumscriptions, in order to promote national development and guarantee the full exercise of rights without any discri- mination, as well as the adequate provision of public services".

The contradiction would be that the promotion of national development and the provision of public services would be understood, in the cases of Ecuador and Bolivia, as requiring a strong, administratively effective State, and this strength would be at odds with the construction of autonomies whose raison d'être may even be opposed to the very idea of (national) *development.* There would thus be a tension in the simultaneous and unordered realization of the three dimensions of justice mentioned at the beginning of this paper: social, cultural and environmental justice.

Ł2. Clavero, "Plurinational or Bolivarian State".

Bolivian Vice President Álvaro García Linera clearly expresses the factors in tension: "the issue becomes complicated when the peasant-indigenous people, previously excluded from citizenship and economic power, become a leading and leading block of the State, and the communities become part of the State [...] on the one hand, this logic of dialoguing relationship with nature is taken to the State sphere; but at the same time, as a State, you need resources and surpluses that grow to meet the basic needs of all Bolivians, and of the most deprived, such as the indigenous and popular urban-rural communities". Therefore, "you have to walk with both feet: expand as State policy the protection of the environment, the sustainable use of nature, but at the same time you need to produce on a large scale, implement expansive industrialization processes that enable social surplus for redistribution and to support other processes of peasant, community and artisanal modernization".[Ł3]

Nevertheless, and in the spirit of keeping alive a debate that allows us to propose scenarios for overcoming the obstacles that have been noted, it is worth emphasizing that this decade of validity of the Ecuadorian and Bolivian constitutional texts offers interesting lessons to be learned. In short, the difficulties that the Plurinational State is facing would speak to us of the resistance to a project that, in effect, pursues decolonizing horizons. Such horizons would challenge the incapacity shown by the nation state to conjugate the different justices and make equality between individual and collective subjects effective.

As Bauman indicates, the political operators and cultural spokesmen of the current "liquid phase" of modernity have "abandoned the model of social justice as the ultimate horizon of a sequence of trial and error, replacing it with a norm/standard/measure of 'human rights' conceived to guide the endless experimentation with satisfactory, or at least acceptable, forms of cohabitation. Such political operators, continues the same author, "have not been able to abandon, on the other hand, the model of cultural justice for the simple reason that they have never incorporated it, not even in a discursive manner". In fact, with respect to the secular exclusion and inequality of indigenous peoples, the response has been formulated only very recently and in a manner

Ł3. García Linera, "Interview," 159.

exclusively linked to the recognition of human rights, which, at most, would be linked to trying to achieve "at least acceptable forms of cohabitation".[ŁŁ]

In the face of the ßagility of this proposal, the (apparent) cohabitation between subjects who relate to each other on the basis of inequality and who are protected by unequal rights, the plurinational State stands out, even more as a project than as a reality, and the effective deployment of a territorial decentralization of power based on the realization of the self-determination of indigenous peoples.

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ŁŁ. Bauman, *Community*, 89.

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