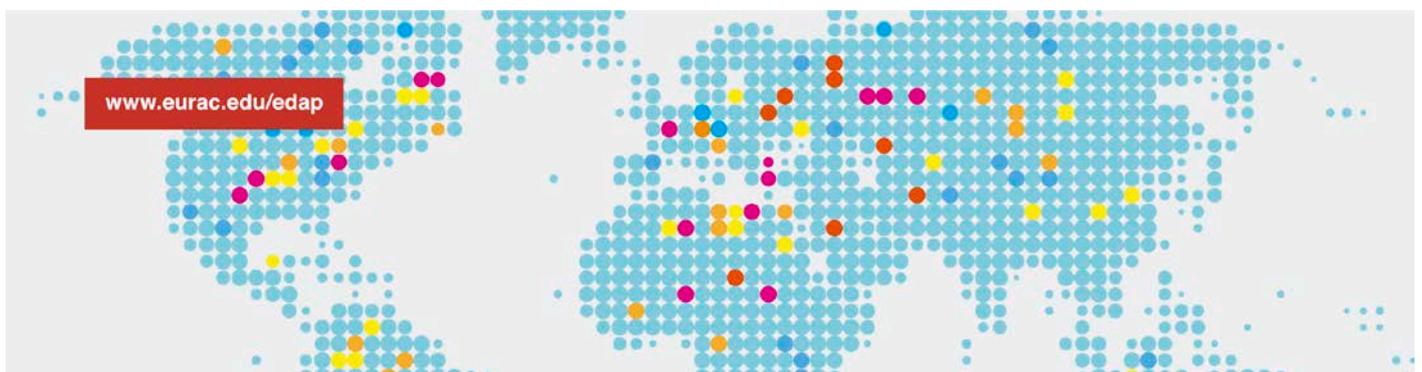


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Autonomía Indígena Originaria Campesina in Bolivia: Realizing the Indigenous Autonomy?

Alexandra Tomaselli



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Europäische Akademie Bozen

Drususallee, 1

39100 Bozen - Italien

Tel. +39 0471 055200

Fax +39 0471 055299

edap@eurac.edu

www.eurac.edu/edap

Accademia Europea Bolzano

Viale Druso, 1

39100 Bolzano - Italia

Tel. +39 0471 055200

Fax +39 0471 055299

edap@eurac.edu

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Abstract

In the last five years, Bolivia has been experiencing legal and institutional changes. A new legal scenario is dawning for indigenous peoples, at least in theory. The participation of indigenous people in the constituent assembly was extremely high. Because of this participation, as well as the lobbying of their organizations (e.g., CIDOB, CONAMAQ, CSUTCB), their agenda was (partially) included in the Magna Charta. In particular, a new complex system of autonomies, including the *Autonomía Indígena Originaria Campesina* (AIOC), has been introduced in the Bolivian constitutional order. Despite the initial enthusiasm after the creation of the first 11 municipality-based AIOCs in December 2009 and the enactment of the dense Autonomy Law in July 2010 (*Ley Marco de Autonomías y Descentralización*, Ley No. 031), there are still many pending issues, especially vis-à-vis formal requisites (e.g., the statutes). Hence, this article, after introducing some theoretical issues concerning the indigenous autonomies, analyses the development of the first municipality-based AIOCs, shedding some light on their complex legal framework.

Author

Alexandra Tomaselli is a human rights lawyer and a researcher at the European Academy Bolzano/Bozen-Institute for Minority Rights (EURAC). Since 2007 she has been working in international cooperation and research projects in Chile and Bolivia. Since 2009 she is a PhD candidate at the Goethe University Frankfurt a.M. (Germany) (research topic: "The right to political participation of indigenous peoples in Latin America").

The author can be reached at: e-mail atomaselli@eurac.edu

Key words

Bolivia - indigenous peoples - political participation - autonomy - self-government - *Autonomía Indígena Originaria Campesina*.

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Autonomía Indígena Originaria Campesina in Bolivia:

Realizing the Indigenous Autonomy?*

Alexandra Tomaselli

1. Introduction

In recent decades, indigenous peoples' (IPs) movements played an undeniable role in the institutional and social changes that occurred in Latin America. After what is known as the *emergencia indígena* of the 1990s,¹ in particular, the massive marches in Ecuador and Bolivia in 1990, IPs movements have (re)gained a higher level of participation and have a (stronger) say in the political arena of their respective states, claiming a proper and new role in their societies, at the collective rather than individual level. In the late 1980s and 1990s, the majority of the Latin-American countries experienced constitutional reforms that established new legal and political orders that granted ad hoc rights to the IPs living within their territories.² The reforms were of such a nature that some authors called them 'multicultural constitutionalism'.³ Notwithstanding this (formal) radical change, problems arose with the implementation of the normative framework.⁴ Bolivia faces these problems today. Despite the courage and the determination showed by the Bolivians, and especially by the IPs movements led by well-established IPs

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¹ José Bengoa, *La emergencia indígena en América Latina* (Mexico City, Fondo de Cultura Económica, 2nd ed. 2007), 35 and 43. However, it has to be mentioned that what we now call IPs were not a kind of 'sleeping beauty' who suddenly realized that it was the time to wake up. Rather it was their organizations, through their marches and mobilization, which gained more visibility.

² Laura Giraudo and Juan Martín Sánchez, "Neoindigenismo y movimientos indígenas en América latina", in Carlos Malamud, Paul Isbell and Concha Tejedor (eds.), *Anuario Iberoamericano 2008* (Ediciones Pirámide, Madrid, 2008), 63-76, at 65-66.

³ Donna Lee Van Cott, *The Friendly Liquidation of the Past: The Politics of Diversity in Latin America* (University of Pittsburgh Press, Pittsburgh, 2000); Rachel Sieder, *Multiculturalism in Latin America: Indigenous Rights, Diversity, and Democracy* (Palgrave Macmillan, Houndmills, Basingstoke, Hampshire, New York, 2002).

⁴ For instance, despite the relevant constitutional changes and jurisprudence on IPs rights in Colombia since 1991, some recent negative developments may be noted, especially with regard to land rights. Pardo Angie, "Colombia", in Martín Málaga Montoya (ed.), *Seminario Regional Andino. Pueblos indígenas y democracia intercultural: Un debate desde los países andinos; Bolivia, Ecuador, Colombia, Venezuela, Chile, Perú* (Centro de Estudios Regionales Bartolomé de las Casas, Cuzco, 2008), 92-98, at 95.

organizations (e.g., CIDOB, CONAMAQ, CSUTCB), the path for realizing a plurinational state still looks long and tortuous. As to the means of IPs political participation, conceptualized as both participation within the state institutional system and forms of self-government or autonomy (see the next session), the risk of being involved in legal formalities and requirements is regrettably high, as happened in the case of the Bolivian challenge to the new prototypes of the *Autonomía Indígena Originaria Campesina* (Peasant Farmer Native Indigenous Autonomies,⁵ also referred to as indigenous autonomy or AIOC).

The aim of this paper is, after a general introduction on indigenous autonomies, to explore the AIOC system (Art. 289 of the 2009 Bolivian Constitution/*Constitución Política del Estado* (CPE)) and if it responds to IPs' autonomy claims, as well as to assess the state-of-the-art of the first 11 - so far, solely municipality-based -AIOCs. Despite the fact that these municipalities have still to complete the whole procedure to be called as AIOCs, this term will be used in this article to indicate both the legal institution per se and these first indigenous autonomies. As to the methodology, beside assessing the legal framework in force, the relevant literature, media sources (mainly, newspapers) and field-based interviews conducted in Bolivia in November 2010 with non-governmental organizations (NGOs), politicians and journalists have been analysed and used.⁶

2. Conceptual Clarifications

It is not the aim of this paper to assess what 'political participation' for IPs means, but rather to analyse the indigenous municipality-based autonomy approach in Bolivia as one legal space for political participation within (or outside)the Bolivian state institutional system. However, some conceptual clarifications are needed. Thus, the concepts of political participation, with a focus on 'autonomy/self-government', and some of the working indigenous autonomies across the world are introduced in the following sections.

⁵ Translation provided by Leonardo Tamburini, "Bolivia", in *The Indigenous World 2010* (IWGIA, Copenhagen, 2010), 195-206, at 201.

⁶ For their invaluable help and availability, and the interviews held in La Paz and Santa Cruz during 21-30 November 2010, the autor is extremely grateful to (in alphabetical order): Edgar Arandia Quiroga (*Museo Nacional de Arte*), Justino Avendaño Redeno, Mauricio Díaz Vidaurre (*Centro de Estudios Jurídicos e Investigación Social -CEJIS*), Manuel Duni (*Capitán Pueblo Takana, Central Indígena de Pueblos Originarios de la Amazonía de Pando*), Cecilia Enrique Aliaga (*Centro de Promoción de la Mujer Gregoria Apaza*), Javier Fernandez Espejo (*Capitulo Boliviano de Derechos Humanos, Democracia y Desarrollo*), Ilya Fortún, Fabio Garbari, Andrea Lavagno, Walter Limache Orellana and his colleagues (*Unión Nacional de Instituciones para el trabajo de acción social - UNITAS*), José Maldonado (*Ministerio de Autonomías*), Ramiro Molina Rivero (*Museo Nacional de Etnografía y Folklore*), María Pérez Sánchez-Laulhé (*Embajada de España en Bolivia*), Patricia Ramos (*Agencia Española de Cooperación Internacional para el Desarrollo*), Catalina Rodríguez (*Colectivo Rebeldía*), Daniela Rodríguez Campadello, Esteban Sanjinés (*Fundación Tierra*), and Fredrik Svensson and Jorge Velásquez (*Diakonia*). The author is solely responsible for the content of this article, which does not represent by any means the position of the aforementioned persons or organizations.

2.1 Political Participation through Autonomy/Self-Government

In this paper, the term political participation has a twofold meaning, as far as IPs, minorities or other groups are concerned.⁷ First, it implies participation at all levels within the state, especially in the decision-making process. Second, it also includes means of self-governance or autonomy.⁸ The common denominators of both meanings are the recognition and the application of those standards that support a fair political participation, such as the right to vote and to stand as a candidate, the freedom of association and the freedom of expression.

Broadly speaking, means of participation within the state may include:

- a) means of 'representation' at all institutional levels (e.g., national parliament, courts, local bodies, etc.), including: those mechanisms that allow such representation (e.g., reserved seats or 'ethnic quotas'); fair electoral rights and processes (e.g., the right for groups to form their own political parties, the right to stand as a candidate, etc.);
- b) effective forms of consultation, including: mechanisms to facilitate co-decisions or joint decisions and/or binding consultations with IPs organizations, institutions and/or movements (e.g., the double entrenchment of acts; various degrees of veto powers; etc.); and, most importantly for IPs, spaces for direct dialogue and interaction with the state (e.g., negotiations).

The second aspect of political participation relates to forms of autonomy or self-government. It should be mentioned that some political science scholars envisage a substantial difference between the two concepts. As cited by Gnanapala,⁹ among others, Crawford affirms that "autonomy [is] a

⁷ For the following conceptual reconstruction, see Kristin Henrard, "'Participation', 'Representation' and 'Autonomy' in the Lund Recommendations and their Reflections in the Supervision of the FCNM and Several Human Rights Conventions", 12 *International Journal on Minority and Group Rights* (2005), 133-168, at 134, 141-2; Pedro Ibarra, "Comunidades Indígenas: Participación Política y conflicto de competencias", in Salvador Martí i Puig and Josep Maria Sanahuja (eds.), *Etnicidad, autonomía y gobernabilidad en América Latina* (Universidad de Salamanca, Salamanca, 2004), 53-78, at 58 and 60; Rainer Hofmann, "Political Participation of Minorities", in 6 *European Yearbook of Minority Issues* 2006/7, 5-17, at 6, 9 and 11; Joseph Marko, "Effective Participation of National Minorities: A Comment on Conceptual, Legal and Empirical Problems", Council of Europe Document DH-MIN(2006)014, at 3-5; Alexandra Tomaselli and Petra Granholm, "The Frustrations of the Right to Political Participation of Minorities: Practical Limitations in the Case of the Nordic Sámi and the Roma", 8 *European Yearbook of Minority Issues* 2009, 149-85, at 151-5; Marc Weller, "Article 15", in Marc Weller (ed.), *The Rights of Minorities: A Commentary on the European Framework Convention for the Protection of National Minorities* (Oxford University Press, Oxford, New York, 2005), 429-61, at 430-1, 434, 447-51 and 460. For a thorough analysis of the right to political participation of minorities, see Annelies Verstichel, *Participation, Representation and Identity* (Intersentia, Antwerp, Oxford, Portland, 2007).

⁸ This subdivision is the one also embraced by the 1999 OSCE HCNM Lund Recommendations on the Effective Participation of National Minorities in Public Life, adopted on 1 September 1999, at 6, at <http://www.osce.org/hcnm/32240>.

⁹ Welhengama Gnanapala, *Minorities' Claims: From Autonomy to Secession; International Law and State Practice* (Aldershot, Burlington 2000), 101.

preliminary stage of the development of self-government".¹⁰ Lapidoth, instead, recognizes similarities between the two concepts but argues that "self-government implies a considerable degree of self-rule, whereas autonomy is a flexible concept, its substance ranging from limited powers to very broad ones. In addition, self-government usually applies to a specific region, whereas autonomy can be personal".¹¹

Legally speaking, the concept of autonomy/self-government has no clear boundaries.¹² In particular, 'autonomy' was initially utilized by sociologists¹³ to indicate the personal right to govern one's own affairs, i.e., the "authority to govern, to administer, and to judge".¹⁴ Some authors have stated that the right to autonomy is a principle under international law "at least [for] territorial minorities".¹⁵ However, no right to autonomy is found in any binding international treaty¹⁶ Indeed, to date, autonomy arrangements have been provided only at the constitutional level.¹⁷ In other countries, is the interplay of international bilateral or multilateral treaties that came into force.¹⁸

If one assumes the correspondence, or at least the many similarities, between local autonomy and self-government, although distinct when applied to municipalities, entire regions, or in forms of quasi-federal arrangements,¹⁹ the Council of Europe's (CoE's) European Charter of Local Self-Government, which was adopted in 1985 and entered into force in 1988, should be mentioned. This charter, ratified by almost all CoE Member States, in Article 3, paragraph 1, states that: "Local self-government denotes the right and the ability of local authorities, within the limits of the law, to regulate and manage a substantial share of public affairs under their own responsibility and in the interests of the local population" (emphasis added).

Moreover, Article 4 of the recent 2007 UN Declaration on the Rights of Indigenous Peoples (UNDRIP) states that IPs, in exercise of their right to self-

¹⁰ James Crawford, *The Creation of States in International Law* (Clarendon Press, Oxford, 1979), 211-12.

¹¹ Ruth Lapidoth, *Autonomy: Flexible Solutions to Ethnic Conflicts* (United States Institute of Peace Press, Washington, 1997), 53-4.

¹² Frederick Harhoff, "Institutions of Autonomy", 55 *Nordic Journal of International Law* 1986, 31-40, at 31, as cited by Gnanapala, *Minorities' Claims ...*, 98.

¹³ Ibid.

¹⁴ Georg Jellinek, *Allgemeine Staatslehre* (H. Gentner, Bad Hamburg vor der Höhe, 3rd ed. 1960), as cited by Gnanapala, *Minorities' Claims ...*, 98.

¹⁵ Douglas Sanders, "Is Autonomy a Principle of International Law?", 55 *Nordic Journal of International Law* 1986, 17-21, at 17, as cited by Hans Joachim Heintze, "On the Legal Understanding of Autonomy", in Markku Suksi (ed.), *Autonomy: Applications and Implications* (Kluwer Law International, The Hague, Cambridge MA, Dordrecht, 1998), 7-32, at 13.

¹⁶ Heintze, "On the Legal Understanding ...", 13; see also Zelin A. Skurbaty, "Introduction", in Zelin A. Skurbaty (ed.), *Beyond a One-Dimensional State: An Emerging Right to Autonomy?* (Martinus Nijhoff Publishers, Leiden, Boston, 2005), xxxi-lviii, at xxxvii.

¹⁷ Francesco Palermo, "When the Lund Recommendations are Ignored: Effective Participation of National Minorities through Territorial Arrangements", 16(4) *International Journal on Minority and Group Rights* 2009, 653-63, at 657.

¹⁸ See the examples provided by YoramDinstein, "Autonomy (International Guarantees of Autonomy)", in Skurbaty, *Beyond a One-Dimensional State...*, 243-54, at 248 *et seq.*

¹⁹ Palermo, "When the Lund Recommendations ...", note 6 at 654.

determination (Article 3), “have a specific right to autonomy or self-government in matters relating to their internal and local affairs” (see section 2.2 below).

Notably, the literature has shed considerable light especially in relation to the concept of autonomy. Hannum and Lillich asserted that “[a]utonomy is understood to refer to independence of action on the internal or domestic level, as foreign affairs and defence normally are in the hands of the central or national government”.²⁰ In particular, they argue that “autonomy is a relative term that describes the extent or degree of independence of a particular entity rather than defining a particular minimum level of independence that can be designated as the status of ‘autonomy’”.²¹ Moreover, equating autonomy and self-government, they state: “Autonomy and self-government are determined primarily by the degree of actual as well as formal independence enjoyed by the autonomous entity in its political decision-making process.”²² However, “[a]utonomy and self-government ...do not necessarily imply that a territory must be wholly independent and comparable to a sovereign state”.²³ Finally, “autonomy and self-government refer essentially to the internal government of a territory”. [emphasised in the original].²⁴

Lapidoth, exploring authors’ works from the early twentieth century to date, finds four main approaches vis-à-vis autonomy: “a right to act upon one’s own discretion in certain matters; ... synonymous for independence; ... synonymous with decentralization; ... [one entity] that has exclusive powers of legislation, administration, and adjudication in specific areas”. In particular, Lapidoth notes that in the literature on minorities autonomy signifies “limited self-rule”.²⁵ Moreover, Lapidoth suggests her own (self-defined) “eclectic” definition: “A territorial political autonomy is an arrangement aimed at granting to a group that differs from the majority of the population in the state, but that constitutes the majority in a specific region, a means by which it can express its distinct identity.”²⁶ Along the same lines, Hannum affirmed that autonomy is the balance between the state and the legitimate expressions of identity of smaller groups.²⁷ However, the case of Hong Kong illustrates that autonomy arrangements can be established even if not based on ethnic criteria.²⁸ In the same years, Héctor Díaz-Polanco proposed a

²⁰ Hurst Hannum and Richard B. Lillich, “The Concept of Autonomy in International Law”, in Yoram Dinstein (ed.), *Models of Autonomy* (Transaction Books, Rutgers, New Brunswick, 1981), 215-54, at 218.

²¹ Hurst Hannum and Richard B. Lillich, “The Concept of Autonomy in International Law”, 74(4) *The American Journal of International Law* 1980, 858-89, at 885.

²² Hannum and Lillich, “The Concept of Autonomy ...”, in Dinstein, *Models of...*, 218.

²³ Hannum and Lillich, “The Concept of Autonomy ...”, 74(4) *The American Journal of International Law* 1980, 886.

²⁴ *Ibid.*

²⁵ Lapidoth, *Autonomy: Flexible Solutions ...*, 29-33.

²⁶ *Ibid.*, 30. This conceptualization is very much focused on a territorial autonomy (see below).

²⁷ Hurst Hannum, *Sovereignty, and Self-Determination: The Accommodation of Conflicting Rights* (University of Pennsylvania Press, 1996), 475, as cited by Heintze, “On the Legal Understanding ...”, 17.

²⁸ Heintze, “On the Legal Understanding ...”, 16; Lapidoth, *Autonomy: Flexible Solutions ...*, 25.

definition of autonomy that took account of the concept's dichotomy between a general laissez-faire and a proper political-legal regime.²⁹ According to Díaz-Polanco, the latter could be seen as a special regime of self-government given to communities that, in this way, exercise their authority as well as some decentralized legal and administrative powers.³⁰ Díaz-Polanco is, however, very cautious in advancing a definition that could embrace the considerable amount of diversity present in autonomy arrangements worldwide. He instead proposes some "basic borders" (contornos elementales).³¹ To this end, Díaz-Polanco strongly suggests that due consideration of the historical and sociopolitical aspects of each community or group be taken into account because it is not possible to advance a priori a catch-all definition.

More specifically on minorities and IPs autonomy may be conceptualized as both non-territorial autonomies (NTAs) or territorial autonomies (TAs).³² The former constitutes supra-regional/national organizations for minorities or IPs communities over certain issues, e.g., cultural bodies in charge of bilingual education for those dispersed communities.³³ In the words of Heintze: "Cultural autonomy is the autonomous self-government of cultural affairs by the group or minority."³⁴ Atypical example of 'cultural autonomy' is the Estonian experience between the two World Wars. The Estonian 1925 Cultural Autonomy Law allowed minorities which counted more than 3,000 members (in this case, Germans, Russians and Swedes), to elect a body in charge of limited powers in the fields of education, culture, youth affairs, etc., whereas there was a substantial consensus within the group.³⁵ Nowadays, there is an established cultural autonomy in Hungary.³⁶ Hannum and Lillich also took into account the concept of cultural autonomy, but subdivided the means of autonomy for "social or ethnic groups" into personal and territorial autonomies. Cultural autonomy, instead, was transversal to both of them. In other words, according to these authors, cultural autonomy is applicable on a

²⁹ Héctor Díaz-Polanco, *Autonomía regional: La autodeterminación de los pueblos indios* (Siglo Veintiuno Editores, Mexico City, 1991), 151-53.

³⁰ Díaz-Polanco, *Autonomía regional...*, 151 and 168.

³¹ *Ibid.*

³² See note 7.

³³ Close to this definition is Heintze's "personal autonomy", i.e., based on the personality principle; Heintze, "On the Legal Understanding ...", 22. Among the NTAs, the author mentions also the category of 'functional autonomy', which occurs when selected state functions and rights are transferred to private minority organizations, Heintze, "On the Legal Understanding ...", 23.

³⁴ *Ibid.*, 21. For an in-depth analysis of cultural autonomy, see also Steven C. Roach, *Cultural Autonomy, Minority Rights, and Globalization* (Ashgate, Aldershot, Hampshire, Burlington VT, 2006).

³⁵ Heintze, "On the Legal Understanding ...", 21.

³⁶ See Hungarian Law No. 77 of 1993 on the Rights of National and Ethnic Minorities as amended by Law No. 114/2005, and, lately reformed by the most recent Law No. 179/2011. As to the last changes, see Hungarian News Agency, "Hungary Adopts New Law on Nationalities", 12 January 2012, at <http://www.culture.hu/main.php?folderID=1094&articleID=321349&ctag=&iid=11>. For a thorough analysis of the Hungarian case, see Niamh Walsh, "Minority Self-Government in Hungary: Legislation and Practice", 2 *Journal on Ethnopolitics and Minority Issues in Europe* 2000, at <http://www.ecmi.de/fileadmin/doc/JEMIE04Walsh30-07-01.pdf>. For a more recent analysis, see Emma Lantschner, Sergiu Constantin and Joseph Marko (eds.), *Practice of Minority Protection in Central Europe* (Nomos, Baden-Baden, 2012).

personal/individual base or within one territory.³⁷ Lapidoth has particularly underlined the advantages of the NTAs, although recognizing the added value of the more expanded powers normally enjoyed by TAs. The author argued that the former may be applied to all the persons belonging to a minority/group irrespective of their place of residence within the country. The latter, instead, involves the whole population of a territory, and its composition may change rapidly.³⁸ Also, Lijphart agrees on the functionality of the NTAs as a means of power-sharing for a divided society.³⁹ However, in the most recent debates on autonomies and minorities, some authors (Palermo, Suksi) have questioned whether this form of autonomy is just a 'lighter' or 'easier' form of autonomy, i.e., the solution to be adopted when a TA cannot be established due to the state's attitude or the given political or economic context, or for other reasons.⁴⁰

A TA, as an alternative means to protect a given group, may be found in a specific territory where the group represents the majority.⁴¹ In particular, the TA provides a group with self-ruling bodies and may also be granted independent executive powers, representative bodies elected by the residents in the territory, and, according to each case, a number of legislative competences although not decentralized powers only.⁴² However, the establishment of either a TA or a NTA does not exclude the other, since a group could in principle enjoy a TA in a specific territory and a NTA, e.g., outside that territory but within the state borders.⁴³

Continuing with TAs, in his recent work Suksi suggests that "[a]n arrangement with a territorial autonomy normally involves a singular entity in what otherwise would be a unitary state, introducing thereby an asymmetrical feature in the state through transfer of exclusive law-making powers on the basis of provisions that often are of special nature".⁴⁴ Weller and Nobbs,⁴⁵ analysing and summarizing other works, have identified the following characteristics, which are necessary for a TA: demographic distinctiveness; devolution, not decentralization, i.e., the exercise of the public power not on behalf of the state but as the result of a full devolution of public authority; legal entrenchment, i.e., the autonomy's legal anchorage to the state order

³⁷ Hannum and Lillich, "The Concept of Autonomy ...", 74(4) *The American Journal of International Law* 1980, 883-4.

³⁸ Lapidoth, *Autonomy: Flexible Solutions ...*, 40.

³⁹ Lijphart, "Constitutional Design for Divided Societies", 15(2) *Journal of Democracy* 2004, 96-109, at 105.

⁴⁰ Statements made during the EURAC-ECMI Expert Meeting "Territorial and Non-territorial Autonomy. Minorities and Territory", Bolzano/Bozen, 16-17 November 2011 by Francesco Palermo ("The Territorial Logic: Its Value and Limits"), and Markku Suksi ("Non-Territorial Autonomy: The Meaning of '(Non-)Territoriality'").

⁴¹ Heintze, "On the Legal Understanding ...", 18 and 21. Notably, this definition of autonomy is the same proposed by Lapidoth, see above note 25.

⁴² *Ibid.*

⁴³ Lapidoth, *Autonomy: Flexible Solutions ...*, 39.

⁴⁴ Markku Suksi, *Sub-State Governance through Territorial Autonomy* (Springer, Heidelberg, Dordrecht, 2011), at 139.

⁴⁵ Marc Weller and Katherine Nobbs (eds.), *Asymmetric Autonomy and the Settlement of Ethnic Conflicts* (University of Pennsylvania Press, Philadelphia, Oxford, 2010), 4-5.

(e.g., constitutional recognition); legal supremacy, but no secession unless if so provided; statute-making powers; significant competences; parallel action, meaning parallel exercise of powers with the state; limited external relations powers; legislative, adjudicative and executive institutions; and integrative mechanisms of the autonomous unit within the national system. Curiously, all these definitions do not take into account the economic complexities that may affect the creation (and the functionality) of autonomous units, especially during times of financial constraint like the present one. Indeed, the economic aspect is one of the problematic issues of the AIOCs in Bolivia as well (see section 8 below: Assessment - From Paper to Practice).

In conclusion, both NTAs and TAs, if adequately developed, may realize and meet minorities' and IPs' expectations of governing their own issues, at least to some extent. At the same time, the states' dominance (and anxiety) over territorial sovereignty may be mitigated. Moreover, autonomy arrangements may potentially avoid (new or the prolongation of) conflicts and/or secessions. As confirmed by Skurbaty, "[a]utonomy can effectively be used as a means to preserve and promote the identities of the groups, to foster economic development and to either prevent or mitigate the state-group or inter-group conflicts".⁴⁶

2.2 Indigenous Autonomies

In this section, only the recent legally established or recognized experiences of indigenous autonomy will be discussed. Thus, neither the participatory forms and types of self-government before and during colonial times (e.g., the Mapuche *Parlamentos* in Chile) nor the various *de facto* existing autonomies worldwide are analysed. The role of trade unions and, especially after the agrarian reforms in Latin America, the number of indigenous people that were extensively organized within them until this very day (e.g., as in the CSUTCB in Bolivia) are not addressed either.

The notion of what may be called 'indigenous autonomy' has quite a blurred conceptualization. In Latin America the claim for autonomy was on the indigenous organizations' agendas in the late 1980s, albeit much confusion surrounded this concept.⁴⁷ The indigenous right to autonomy was included in the proposals for a declaration of principles on IPs rights approved by a number of NGOs in Geneva on 26 July 1985 on.⁴⁸ In the Quito Declaration in 1990, at the first continental meeting of IPs, autonomy, in terms of self-

⁴⁶ Zelin A. Skurbaty, "Introduction", xliv.

⁴⁷ Díaz-Polanco, *Autonomía regional ...*, 150; Rosa de la Fuente, *La autonomía indígena en Chiapas: Un nuevo imaginario socio-espacial* (Catarata, Madrid, 2008), 70.

⁴⁸ Díaz-Polanco, *Autonomía regional ...*, 163.

government and control over territory, was also claimed as a way to realize the right to self-determination but within the frame of the nation state.⁴⁹

The international debate on indigenous autonomies was then (re)launched in 1991, when a group of experts met in Greenland under the auspices of the United Nations Human Rights Commission.⁵⁰ In particular, much emphasis in their report was given to the potential of autonomy and self-government for IPs as means of realizing their right to self-determination and also to foster national unity, thus securing, rather than threatening, the (much-dreaded) territorial integrity.⁵¹ In particular, in paragraph 2 of section V, Conclusions and Recommendations, it is clearly stated that: "Indigenous Peoples have the right to self-determination as provided for in the International Covenants on Human Rights and public international law and as a consequence of their continued existence as distinct peoples. ... An integral part of this [right] is the inherent and fundamental right to autonomy and self-government." A thorough analysis of the complex and debated concept of self-determination does not fall within the scope of this article.⁵² It, however, highlighted the trend vis-à-vis IPs rights for arguing for forms of self-government (Article 4 UNDRIP) rather than threatening states with the ghost of potential secession. As is well known, this scary phantom was the cause of the delay in the adoption of UNDRIP.⁵³ International Labour Organization (ILO) Convention 169 also clarifies in Article 1 that "[t]he use of the term peoples in this Convention shall not be construed as having any implications as regards the rights which may attach to the term under international law", like the right to self-determination, recognized to each "people" in Article 1 of both the International Covenant of Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). As asserted in literature, "[a] form of 'autonomy' or 'internal self-determination' seems closely the only way in which human rights law can accept the expression of the right of self-determination [for indigenous peoples]".⁵⁴ In line with the UN Declarations and the Quito Declaration, Díaz-Polanco has also extensively argued that "autonomy is one of the systems through which socio-cultural groups exercise their right to self-

⁴⁹ *Ibid.* See the Declaration of Quito (Ecuador) by the Indigenous Alliance of the Americas on 500 Years of Resistance, July 1990, at <http://www.nativeweb.org/papers/statements/quintcentennial/quito.php#declaration>

⁵⁰ Lapidoth, *Autonomy: Flexible Solutions ...*, 18. See the "Report of the Meeting of Experts to Review the Experience of Countries in the Operation of Schemes of Internal Self-Government for Indigenous Peoples", Nuuk (Greenland), 24-8 September 1991, UN Doc.E/CN.4/1992/42 of 25 November 1991.

⁵¹ "Report of the Meeting ...", paras. 16, 21, 24, 35, 52 and 54 and section V Conclusions and Recommendations.

⁵² On the complexities and implications of the right to self-determination, see, inter alia, Antonio Cassese, *Self-Determination of Peoples: A Legal Reappraisal* (Cambridge University Press, Cambridge, New York, 1995); Alexandra Xanthaki, *Indigenous rights and United Nations standards: self-determination, culture and land* (Cambridge University Press, Cambridge, 2007).

⁵³ Stefania Errico, "The UN Declaration on the Rights of Indigenous Peoples is Adopted: An Overview", 7(4) *Human Rights Law Review* 2007, 756-9, at 756-7.

⁵⁴ Joshua Castellino, "Conceptual Difficulties and the Right to Indigenous Self-Determination", in Nazila Ghanea-Hercock, Alexandra Xanthaki and Patrick Thornberry (eds.), *Minorities, Peoples, and Self-Determination: Essays in Honour of Patrick Thornberry* (Martinus Nijhoff Publishers, Leiden, 2005), 55-74, at 67-68.

determination".⁵⁵ This would be, in principle, far more acceptable for the states as well.

According to the aforementioned report, the core elements of an indigenous autonomy are: the political will (and openness) on the part of the governments to establish them (para. 25); a legal anchorage via constitutional reforms, treaties, statutory provisions or other legal arrangements (para. 27); a clear subdivision of powers given to the IPs' autonomies in order to avoid conflicts of competences with the state (para. 30); indigenous jurisdiction over lands, resources, economic matters, cultural and other affairs (para. 28); mechanisms for cross-border cooperation for those IPs living in bordering states (para. 29); fiscal autonomy, i.e., financial powers (e.g., to levy taxes, forms of revenue, secured funding; para. 40). Needless to say, rights over the land, as well as control over renewable and non-renewable resources are the prerequisite for indigenous autonomy (para. 35).⁵⁶ In this sense, much attention is paid to the more environmentally sustainable indigenous practices of land management (paras 35-39), which were also recognized one year later during the United Nations Conference on Environment and Development.⁵⁷ The use of 'personal autonomy', although mainly referring to cultural autonomy, is very briefly mentioned referring to the case of the Sami in Norway, whose parliament, at that time, had just started to work (para. 47).⁵⁸ Last, but not least, direct participation of IPs in (national) planning and development projects shall be fostered (para. 41).

At UN level, prior to this, in the Cobo study "respect and support [for IPs'] internal organizational structures" was called for, stating that "[g]overnments must abandon their policies of intervening in the organization and development of indigenous peoples and must grant them autonomy..." (emphasis added).⁵⁹ Following this, the preparation of the United Nations Draft Declaration on the Rights of Indigenous Peoples,⁶⁰ adopted in 1994 by the Sub-Commission on Prevention of Discrimination and Protection of Minorities (as a draft, without vote) after the World Conference on Human Rights held in Vienna in 1993, contributed significantly to the debate on

⁵⁵ The citation is translated from the original in Spanish which states: "*la autonomía es un sistema por medio del cual los grupos socioculturales ejercen el derecho a la autodeterminación*", Díaz-Polanco, *Autonomía regional...*, 157 et seq.

⁵⁶ All these elements are then also inserted in section V Conclusions and Recommendations of the report. In particular, in para. 3 of section V it states: "Self-government, self-administration and self-management of indigenous peoples constitute elements of political autonomy."

⁵⁷ Principle 22 in "Annex I - Rio Declaration on Environment and Development" of the "Report of the United Nations Conference on Environment and Development", Rio de Janeiro, 3-14 June 1992, UN Doc. A/CONF.151/26 (Vol. I); Chapter 26 titled "Recognizing and Strengthening the Role of Indigenous People and their Communities" of the "AGENDA 21".

⁵⁸ On the Sami parliaments, see Eva Josefsen, "The Saami and the National Parliaments - Channels for Political Influence", 2 *Gáldu Čáta - Journal of Indigenous Peoples Rights* 2007, 5-28, at http://www.galdud.org/govat/doc/national_parliaments.pdf; Alexandra Tomaselli and Petra Granholm, "The Frustrations of the Right to Political ...".

⁵⁹ "Study of the Problem of Discrimination against Indigenous Populations: Final Report Submitted by the Special Rapporteur Mr José R. Martínez Cobo", 30 September 1983, UN Doc.E/CN.4/Sub.2/1983/21/Add., para. 579, 74.

⁶⁰ UN Doc.E/CN.4/Sub.2/1994/56, 26 August 1994.

autonomy for IPs.⁶¹ Notably, Article 31 of the Draft Declaration recognized to IPs the right to autonomy or self-government as a form of the right to self-determination. In addition, the right to develop, maintain and determine IPs' institutional structures was inserted in Articles 32 and 33. As mentioned, Article 4 of 2007 UNDRIP clearly states IPs' right to autonomy or self-government in exercise of their right to self-determination. This emphasis on self-government by the two declarations, according to Rodríguez Piñero-Royo, derives also from the fact that "despite centuries of colonial rule and assimilation policies, most indigenous peoples have preserved some sort of self-governing structures in managing their own affairs ...".⁶²

Recently, Henriksen has classified IPs autonomies into four types: "(1) territorial autonomy, (2) institutional autonomy without clear territorial affiliation, implemented through traditional or modern indigenous peoples' institutions, (3) objectively limited autonomy, e.g. limited to language and culture, (4) autonomy relative to legislative regulations and the administration of justice, e.g., by virtue of accepting indigenous peoples' application of customary law in the regulation of certain matters in indigenous communities."⁶³ Thus, apart from the first, they may be grouped under the concept of NTA (and, mainly, cultural autonomy) mentioned above. Loukacheva, in her work on IPs' autonomies -focused on territorial autonomies-⁶⁴ has identified the following characteristics:

- strong voluntary will of the population to achieve autonomy
- existence of particular geographical, demographic, or historical factors
- cultural, linguistic, and ethnic distinctiveness
- creation of a legislative body elected by local residents in a democratic way and capable of enacting its own legislation, as well as the establishment of an executive body
- provision of conditions for economic sustainability and a financial base versus fiscal dependency on central/federal authorities, and pragmatic expectations of future financial independence and liability for managing its own affairs
- the desire and ability of all residents of the autonomous entity to be a part of existing, or developing, structures and institutions, making them more amenable to peoples' aspirations and needs.⁶⁵

⁶¹ Heintze, "On the Legal Understanding ...", 14; Lapidoth, *Autonomy: Flexible Solutions ...*, 17-18.

⁶² Luis Rodríguez Piñero-Royo, "Political Participation Systems Applicable to Indigenous Peoples", in Marc Weller and Katharine Nobbs (eds.), *Political Participation of Minorities: A Commentary on International Standards and Practice* (Oxford University Press, Oxford, 2010), 308-42, at 328.

⁶³ John B. Henriksen, "Sami Self-Determination. Autonomy and Self-Government: Education, Research and Culture", 2 *Gáldu Čála - Journal of Indigenous Peoples Rights* 2009, 7-40, at 14.

⁶⁴ Natalia Loukacheva, "On Autonomy and Law", *Globalization and Autonomy Online Compendium Research Articles*, 19 July 2005, at http://globalautonomy.ca/global1/article.jsp?index=RA_Loukacheva_AutonomyLaw.xml, Introduction.

⁶⁵ *Ibid.*, Concluding Remarks.

As to formally recognized indigenous autonomies in Latin America, besides Bolivia, forms of 'ethnic autonomies' have been established in five countries, i.e., Colombia, Ecuador, Nicaragua, Panamá and Venezuela.⁶⁶ In the Central American countries, the autonomy arrangements resulted from post-conflict negotiations, although in very different contexts and timeframes.⁶⁷ In particular, the well-known Comarca Kuna Yala, the indigenous territorial autonomy established on the Panama coast, was firstly (legally) recognized by the 1928 constitutional reform (Article 4)⁶⁸ and by Law No. 59 enacted in 1930, after the 1925 Tule Revolution. Following this, Law No.2, enacted in 1938, recognized the comarca (known as San Blas until the adoption in 1998 of Law No.99), and Law No.16, enacted in 1953, regulated and recognized the general Kuna Congress and its local congresses. However, in Panama there are in total five comarcas. Pursuant to Article 5 of the 1972 Panama Constitution and subsequent amendments, special territorial arrangements may be created by law. Thus the Kuna Yala and the other comarcas have been established by domestic legislation, as follows: Comarca EmberaWounaan by Law No. 22/1983; Comarca Madugandi by Law No. 24/1996; Comarca Ngobe-Bugle by Law No. 10/1997; Comarca Wargandi by Law No. 34/2000.⁶⁹

In Nicaragua, the 1987 Constitution (Article 5, para. 3) recognized the autonomy arrangements for the indigenous communities of the Atlantic Coast. The Autonomy Statute was adopted by Law No. 28 adopted the same year.⁷⁰ The autonomy discourse followed the Nicaraguan Revolution (Revolución Popular Sandinista), which reached its peak in 1979. An Autonomy National Commission was formed on 6 December 1985 and worked on the aforementioned statute.⁷¹ Nevertheless, the Nicaraguan arrangements that divide the coast into two autonomous units (North and South) cannot be described as an indigenous autonomy as such. Indeed, a proportional system rules the election of the autonomous bodies, which govern a territory where the non-indigenous population (Afro-descendants, and mainly Mestizos) represent the majority.⁷²

As to the other countries, the Colombian constitutional reforms in 1991 also included forms of indigenous autonomy, drawing upon the Hispanic institution

⁶⁶ Giraudo and Sánchez, "Neoindigenismo y movimientos indígenas...", 66.

⁶⁷ *Ibid.*

⁶⁸ Panama Constitution of 1894 and subsequent amendments in 1925 and 1928.

⁶⁹ For an overview of the *comarca* system, see Artinello Hernandez, Atilio Martínez, Bernal Castillo and Irik Limnio, "Informe Nacional de Panamá", LATAUTONOMY project report (2003); see also James Howe, "The Kuna of Panama: Continuing Threats to Land and Autonomy", in David Maybury-Lewis (ed.), *The Politics of Ethnicity: Indigenous Peoples in Latin American States* (Harvard University Press, Cambridge MA, 2002).

⁷⁰ Josefina Hidalgo Blandón et al., "Informe Nacional: Regiones Autónomas del Atlántico de Nicaragua", LATAUTONOMY Project report (2004), 7.

⁷¹ Manuel Ortega Hegg, "La Autonomía Regional en Nicaragua", LATAUTONOMY project report (2003), 17-20; for in-depth analyses on the Nicaraguan case, see Luciano Baracco (ed.), *National Integration and Contested Autonomy: The Caribbean Coast of Nicaragua* (Algora Publications, New York, 2011).

⁷² Rodríguez Piñero-Royo, "Political Participation Systems Applicable ...", 322 and 332. The only guarantee for IPs is the at-least-one 'indigenous seat' pursuant to Art. 19 of the Nicaraguan Autonomy Statute.

of the resguardos system recognized by Law No. 89 in 1890.⁷³ Articles 286 and 287 of the reformed constitution respectively define the territorial units (departments, districts, municipalities and the indigenous territories) that are autonomous (also according to Article 1), thus introducing the notion of Indigenous Territorial Unit (Entidad Territorial Indígena), known as resguardos indígenas (Article 329), and subsequently regulated by Law No. 160 enacted in 1994.⁷⁴ In the case of Ecuador, the 1998 Constitution recognized, inter alia, the (collective) right to develop and conserve IPs' traditional forms to create and exercise authority (Article 84.7), as well as IPs' territories (circunscripciones) (Article 224), which were to be ruled by autonomous bodies (Articles 228 and 241).⁷⁵ The existing and new IPs territories (circunscripciones) are recognized in the new constitution adopted in 2008 (Article 60). They may become 'special arrangements' (Article 242) and, after a referendum, autonomous units (Article 257; see also Article 238). In Venezuela, the 1999 Constitution also mentions the indigenous municipalities (Article 169), but refers primarily to the Indigenous Law enacted in late 2005 (Ley Orgánica de Pueblos y Comunidades Indígenas, Gaceta Oficial No. 38.344/2005). In Mexico, the 2001 constitutional reform explicitly recognized IPs' rights to self-determination and, "as a consequence", to autonomy (Article 2, para. 5.A).⁷⁶ However, the implementation of this right is left to each federal unit (Article 2, para. 5). Chiapas is well known for the implementation of indigenous autonomies. In particular, in the late 1980s, the formation of the Tojolabal indigenous autonomy through the establishment of a Permanent Assembly composed of approximately 300 indigenous leaders was a pioneering experience in Chiapas. This experience, inspired by the developments in Nicaragua, was promoted to re-establish the traditional indigenous authorities that have stepped back, especially with the introduction of the state and church institutions. After 1994, however, the Zapatista Movement also played an undeniable role in the "autonomic" discourse.⁷⁷

Analysing the Latin-American experiences, Rodríguez Piñero-Royo has advanced a subdivision of the existing indigenous autonomies in the subcontinent into three categories, namely: the "multi-ethnic" regional system, i.e., autonomy arrangements for a given territory with a 'mixed'

⁷³ Rodríguez Piñero-Royo, "Political Participation Systems Applicable ...", 329-30.

⁷⁴ See Law No. 160/1994 at <http://www.incora.gov.co/ley160.htm>, and chapter XIV on the *resguardos indígenas* at <http://www.incora.gov.co/capitulo14.htm>. On the Colombian case, see Astrid Ulloa, "Colombia: Autonomías indígenas en ejercicio. Los retos de su consolidación", in Miguel González, Araceli Burguete Cal y Mayor and Pablo Ortiz-T. (eds.), *La autonomía a debate: Autogobierno indígena y Estado plurinacional en América Latina* (FLACSO, GTZ, Ministerio Federal de Cooperación Económica y Desarrollo, IWGIA, CIESAS, Universidad Intercultural de Chiapas, Quito, 2010), 149-76, at http://www.IWGIA.org/IWGIA_files_publications_files/0468_Libro_autonomia_a_debate_eb.pdf.

⁷⁵ On the Ecuadorian case, see Pablo Ospina Peralta, "Estado plurinacional y autogobierno territorial: Demandas indígenas en Ecuador", in González, Burguete Cal y Mayor and Ortiz-T. (eds.), *La autonomía a debate ...*, 201-18, at http://www.IWGIA.org/IWGIA_files_publications_files/0468_Libro_autonomia_a_debate_eb.pdf.

⁷⁶ Giraud and Sánchez, "Neoindigenismo y movimientos indígenas...", 66.

⁷⁷ De la Fuente, *La Autonomía Indígena en Chiapas ...*, 67-9. On Chiapas and the complex Mexican case, see, *inter alia*, de la Fuente, *La Autonomía Indígena en Chiapas ...*; Araceli Burguete Cal y Mayor (ed.), *Indigenous Autonomy in Mexico*, IWGIA Document No. 94 (IWGIA, Copenhagen, 2000).

(indigenous and non-indigenous) population (e.g., Nicaragua and Mexico);⁷⁸ demarked indigenous territories with formal recognition (e.g., Colombia and Panama); and, finally, the 'communitarian autonomy' at village level through the "indigenization of the municipal space", as in, according to the author, the cases of Mexico, Ecuador and Bolivia.⁷⁹ However, Bolivia is probably a variant of the second and third categories, as the TCOs-TIOCs, despite the demarcation problems, are recognized in principle as indigenous territories (see footnote 152).

Other IPs' territorial arrangements established to settle a conflict are the Chittagong Hill Tracts (CHT) in Bangladesh and the special autonomy regimes in Indonesia. As to the former, the Chittagong Hill Tracts Peace Accord was signed on 2 December 1997 between the indigenous rebel forces and the government. It contained, inter alia, many amendments of the Hill District Local Government Council Acts enacted in 1989,⁸⁰ thus devolving powers to the Hill District Councils, now to be elected and not appointed (Article B.6), over land, "tribal law" and social justice, and education (Article B.34). In addition, a regional council, with 22 members of which two-thirds are to be indigenous (Article C.3), with administrative and consultation powers within the CHT was created (section C). Despite this quite advanced accord, it has remained basically unimplemented due to the on-going militarization, immigration and land-taking in the area.⁸¹ As to Indonesia, special arrangements for autonomy in Papua and Aceh were established in 2001 and 2005, respectively.⁸² Indigenous local authorities and self-government and legislature over, inter alia, land management, social services and local development were recognized in both laws.⁸³ However, human rights violations vis-à-vis IPs in Papua persist nowadays, and in Aceh, where the prior conflict was more intense, the lowering of the expectations in the peace accord is fuelling new violent actions.⁸⁴

The reservations system in US should also be mentioned. As is well known, this system was born as a form of subjugation of Native Americans, but according to the Indian Reorganization Act (or 'Indian New Deal') adopted on

⁷⁸ This could also be the case of Greenland, except for the fact that the indigenous population is more than 85% of the total (see below).

⁷⁹ Rodríguez Piñero-Royo, "Political Participation Systems Applicable ...", 333-4.

⁸⁰ Rangamati Hill District Local Government Council Act, 1989; Bandarban Hill District, Local Government Council Act, 1989; and Khagrachari Hill District Local Government Council Act, 1989.

⁸¹ Rodríguez Piñero-Royo, "Political Participation Systems Applicable ...", 336. On the Bangladeshi case, see Asian Indigenous and Tribal Peoples Network (AITPN), "Implementation of CHT Peace Accord: Will they, Won't they?", 4(1-2) *Indigenous Rights Quarterly* 2009, at http://www.aitpn.org/IRQ/Vol-IV/issue_1-2/story04.html.

⁸² Special Autonomy Law for the Papua province, Law No. 21/2001 of 23 October 2001; and Law No. 11/2006 on the Governing of Aceh of 11 June 2005, both cited by Rodríguez Piñero-Royo, "Political Participation Systems Applicable ...", 337, notes 144 and 146, respectively.

⁸³ See Arts 1.d, f, I and p; 19; 43; 49; 51; 56-66 of the Special Autonomy Law for the Papua province; and Arts 1.7; 1.10; 1.16; 16-17; 96 and 98 of the Law on the Governing of Aceh as cited by Rodríguez Piñero-Royo, "Political Participation Systems Applicable ...", 337, notes 146-51.

⁸⁴ Rodríguez Piñero-Royo, "Political Participation Systems Applicable ...", 337-8. On the Indonesian cases, see Esther Heidbüchel, *The West Papua Conflict in Indonesia: Actors, Issues and Approaches* (Johannes Herrmann J&J-Verlag, Wettenberg, 2007).

18 June 1934, they became quasi forms of self-government with internal-affairs powers and formalized judicial systems. In the late 1980s, the adoption on 22 December 1987 of the Tribal Self-Governance Demonstration Project by the US Congress led to bilateral negotiations and the signature of the Self-Governance Compacts and Annual Funding Agreements, which formally allowed access to the management and the planning of programmes of the tribal governments.⁸⁵ However, the real and effective functionality of the reservations in general, and the Tribal Councils, in particular, apparently just “toy parliaments”,⁸⁶ is highly contested,⁸⁷ and the overall system is “much discredited”.⁸⁸

Canada and Greenland also have forms of, or potential, indigenous autonomies.⁸⁹ In the former, the Nunavut territory and self-government were established by the 1993 Nunavut Land Claims Agreement. However, recent research highlighted that this is still far from being called a success, as many of the socio-economic challenges have not yet been resolved.⁹⁰ In Greenland, the Act on Greenland Self-Government entered into force on 21 June 2009, after the successful referendum held the previous November, replacing the home rule granted in 1979.⁹¹ Denmark retained foreign affairs and defence powers, while Greenland finally obtained powers of self-rule over, inter alia, judicial affairs and natural resources. In a territory where over 85 per cent of the population is Inuit,⁹² it is suggested that IPs have, in principle, a great potential to rule Greenland’s self-government.⁹³

Finally, on the specific case of Bolivia, a proposal was elaborated by a number of large indigenous organizations in 2006 and concentrated on a territorial form of autonomy.⁹⁴ According to those organizations, the (general)

⁸⁵ Rodríguez Piñero-Royo, “Political Participation Systems Applicable ...”, 330.

⁸⁶ Ronald West, “The American Companion Report”, in Mark D. Dole and Ronald West, *The Right of Self-Determination of Peoples and its Application to Indigenous Peoples in the USA* (Nomos, Baden-Baden, 2000), 67-111, at 79.

⁸⁷ For a recent and complete analysis of the complex US case, see Bruce Duthu, *American Indians and the Law* (Viking, New York, 2008).

⁸⁸ Rodríguez Piñero-Royo, “Political Participation Systems Applicable ...”, 330.

⁸⁹ On both cases, see Natalia Loukacheva, *The Arctic Promise: Legal and Political Autonomy of Greenland and Nunavut* (University of Toronto Press, Toronto, Buffalo, London, 2007).

⁹⁰ See André Légaré, “Canada’s Experiment with Aboriginal Self-Determination in Nunavut: From Vision to Illusion”, in 15(2-3) *International Journal on Minority and Group Rights* 2008, 335-67.

⁹¹ On Greenland home rule, see Lise Lyck, “Greenland: Ten Years of Home Rule”, in 25(155) *Polar Record* 1989, 343-6.

⁹² Sara Olsvig, “Greenland”, in *International Work Group for Indigenous Affairs, The Indigenous World 2011* (Copenhagen, 2011), 22-8, at 22, at http://www.IWGIA.org/IWGIA_files_publications_files/0454_THE_INDIGENOUS_ORLD-2011_eb.pdf.

⁹³ On these recent developments, see Mark Nuttall, “Self-Rule in Greenland: Towards the World’s First Independent Inuit State?”, 3-4 *Indigenous Affairs* 2008, at http://www.IWGIA.org/IWGIA_files_publications_files/IA_3-08_Greenland.pdf.

⁹⁴ Confederación Sindical Única de Trabajadores Campesinos de Bolivia - CSUTCB; Confederación de Pueblos Indígenas de Bolivia - CIDOB; Confederación Sindical de Colonizadores de Bolivia - CSCB; Federación Nacional de Mujeres Campesinas de Bolivia, ‘Bartolina Sisa’- FNMCB-BS; Consejo Nacional de Ayllus y Markas del Qullasuyu - CONAMAQ; Coordinadora de Pueblos Étnicos de Santa Cruz - CPESC; Movimiento Sin Tierra de Bolivia - MST; Asamblea del Pueblo Guaraní - APG; Confederación de Pueblos Étnicos Moxeños de Beni - CPEMB. Asamblea Nacional de Organizaciones Indígenas, Originarias, Campesinas y de Colonizadores de Bolivia, “Propuesta para la Nueva Constitución Política del Estado: Por un Estado plurinacional y la autodeterminación de los pueblos y

indigenous autonomy is the (pre)condition for IPs' freedom, decolonization and self-determination. The main features of the (territorial) indigenous autonomy are the following: a territory; a culturally diverse population; indigenous (as well as peasant and native) customary self-government; customary rules; customary law and justice; and, control and collective management over the territory, the land and the natural resources. Among the powers of the proposed indigenous autonomy, much emphasis is given to the natural resources' management and exploitation (e.g., via consultation; possibility of IPs' veto; shared benefits; etc.).

To conclude, from this (briefly) examined theory and practice, some common features of indigenous autonomies may be suggested as follows:⁹⁵

Territory: Given the (general) IPs' strong connection with the land, a TA seems preferable to NTA arrangements. Nevertheless, NTAs (e.g., an indigenous education board) shall not be a priori excluded, especially for those territories inhabited by both indigenous and non-indigenous populations, or where the indigenous population is dispersed within the country. As mentioned in the case of minorities, both TA and NTA arrangements may coexist and work.⁹⁶

Rights over the land and over renewable and non-renewable natural resources: The respect and full application of these rights are strictly connected with the previous element (territory). States shall avoid land relocation, as this would imply a loss of livelihoods and culture and, ultimately, would pose a threat to IPs' survival. If IPs (legitimately) agreed to the transferral,⁹⁷ land restoration, the distribution of benefits derived from natural resources' exploitation, and land's fair environmental policies shall be taken into due consideration.

Customary law and own institutions: The respect for and the application of traditional IPs' political organizations, own institutions and justice systems, within or outside the state system (e.g., as a form of municipality as in Bolivia, or their own institutions recognized by law as in Panama's comarcas) are other key elements. In some cases, this may almost be a *condicio sine qua non* to preserve IP culture. However, one of the most problematic aspects linked to the application of IPs' customary law is where their law is contrary to human rights standards, which is something to which I have no clear answer. In addition, other problems arise with regard to their laws' interaction and coordination with the state justice system. As in the case of Bolivia, the limit to the respect of human rights standards and a law defining what falls under the courts' or the IPs' justice systems' competences may be

naciones indígenas, originarias y campesinas", 5 August 2006, at <http://www.aguasustentable.org/constituyente/constituyente/docs/propuestas%20constitucionales/pacto%20de%20unidad.pdf>, at 11-13.

⁹⁵ It goes without saying that what follows is not an exhaustive list, rather, to the contrary: the aim is to launch further reflection and debate.

⁹⁶ The NTA arrangements were present, e.g., in the Mexican debate with regard to solely migrant and/or urbanized IPs, or those living abroad. De la Fuente, *La Autonomía en Chiapas ...*, 79.

⁹⁷ The term 'legitimately' in this and the following paragraphs is used in the sense of obtaining their free, prior and informed consent via a fair consultation.

a solution.⁹⁸ However, each case should be seriously analysed before advancing any legal arrangement.

Participation and representativeness within the state: The argument to avoid IPs' isolation, unless (legitimately) requested by them, is twofold. First, IPs would be excluded by national provisions that may affect them in any case (e.g., environmental policy or hazardous materials' storage or disposal close to IPs' territories). Second, urbanized or other IPs living outside a specific territorial unit should also be represented at national level.

Financial aspects: As underlined by the examined theories, the financial burden of IPs' autonomies shall be guaranteed, also via special powers (e.g., to levy taxes) as suggested by the 1991 Nuuk experts meeting.

Education and culture: It goes without saying that these aspects are of the uttermost importance to preserve IPs' language, religion, customs and other cultural features, and thus should be part of an indigenous autonomy's powers.

However, the precondition for the indigenous autonomy, as stated by the 1991 Nuuk experts meeting, is the political will and openness on the part of governments to create and to fully and transparently implement an autonomy arrangement for the IPs living within their countries.

3. Looking for a Bolivian History of Autonomy?

A few weeks before the adoption of the Autonomy Law, the Bolivian Ministry of Autonomies declared in its periodical bulletin, *Bolivia Autnómica* No. 11, that the autonomy process was not new to the country, having started more than a hundred years before.⁹⁹ The Autonomy Law is, in fact, entitled to Andrés Ibáñez, who claimed "equality for all" during the national election campaign in 1874 in Santa Cruz, and was the founder of Santa Cruz' first autonomous/federal experience.¹⁰⁰

Similar to the entire autonomy process, the AIOC's historical trajectory is also outlined in the bulletin, declaring that the indigenous autonomy is "millenary".¹⁰¹ For example, one of the autonomy milestones was the insurrection in 1921 of the population of the actual AIOC Jesús de Machaca demanding the recognition of their own authorities and organizational

⁹⁸ The Bolivian Constitution states clearly the supremacy of human rights standards over the constitutional provisions and the need to interpret the latter according to the former (see Arts 13, para. IV; 14, para. III; 256; and 410, para. II). The Jurisdictional Law (Law No.073/2010) Ley de Deslinde Jurisdiccional, enacted on 29 December 2010, contains the respect for the fundamental rights (Art. 5) and, in particular, the absolute prohibition of lynching and the death penalty.

⁹⁹ Ministerio de Autonomía, "Bolivia Autnómica No. 11" (La Paz, 2010), 3.

¹⁰⁰ This self-government lasted five months - from Christmas 1876 until 1 May 1877 - before being repressed by the central government, and before the shooting of Ibáñez. Emilio Durán Ribera and Guillermo Pinckert Justiniano, *La revolución igualitariade Andrés Ibáñez* (Editorial Universitaria, Santa Cruz de la Sierra, 1988), at 8-9 and 36-37. A province within the Santa Cruz department has also been dedicated to his memory. The decision to name this law as this 'hero' of the Bolivian half-moon may have been probably taken to please the *Oriente*.

¹⁰¹ Ministerio de Autonomía, "Bolivia Autnómica No. 11", 3.

structure. Another landmark event was the 1973 Tiahuanacuaymara manifesto, in which self-determination and autonomy were claimed by aymara intellectuals.¹⁰² More recently, surely the 1990 march for Territory and Dignity, and the laws adopted subsequently, marked an institutional change vis-à-vis IPs.¹⁰³

For the purposes of this article, it may be said that it is certainly true that members of and/or the peoples' (whom nowadays we call indigenous) communities experienced forms of political participation throughout history, and this should be neither forgotten nor exploited, as happened in the past and, probably, also nowadays.¹⁰⁴ The role of aymara IPs in the auxiliary armies of the rebel forces in the Bolivian civil wars in 1870 and 1899 may be elucidatory. The involvement of the indigenous population in the first war, according to the same rebels, could have generated at least two positive developments for the - at that time (still) called -indios:¹⁰⁵ first, their land's recuperation; second, their "public reincorporation ... [into the] national [Bolivian] people".¹⁰⁶ During the First Independence War and the following decades after the creation of the republic in 1825, the indios had been, in fact, recognized as vecinos or citizens.¹⁰⁷ However, in the 1870s they were renamed la indiada.¹⁰⁸ The more la indiada was considered a threat for the Bolivian state, especially regarding their territorial control and their own political and justice systems, the more frequently its members were found guilty of attempting to harm the national unity.¹⁰⁹ Thus, their participation in the rebels' forces would have meant their 'final liberation' from what was impeding them from enjoying the full status of "members of Bolivia".¹¹⁰ In this way, acting as "patriots", the indigenous population regained a presence in the public sphere.¹¹¹ Notwithstanding their participation in the forces, a couple of decades later the Mohoza massacre in Pando in 1899 during the Federal War marked an opposite tendency, i.e., the 'criminalization' of la

¹⁰² Edward L. Cleary, *Mobilizing for Human Rights in Latin America* (Kumarian Press, Sterling VA, 2007), 59-60.

¹⁰³ As Postero affirmed: "this march has changed the face of Bolivia forever", Nancy Grey Postero, *Now We Are Citizens* (Stanford University Press, Stanford, 2007), 49.

¹⁰⁴ On the attempts to *re-write* the history between colonizers and colonized, with a focus on the Andean countries, see Laura Giraudo, "Entre rupturas y retornos: La nueva cuestión indígena en América Latina", in Laura Giraudo (ed.), *Ciudadanía y derechos indígenas en América Latina: Poblaciones, estados y orden internacional* (Centro de Estudios Políticos y Constitucionales, Madrid, 2007), 7-57, at 48-55. On the peculiar context of Bolivia and the "convergence of state and movements tactics", see Bret Gustafson, "When States Act like Movements: Dismantling Local Power and Seating Sovereignty in Post-Neoliberal Bolivia", 37(4) *Latin American Perspectives* 2010, 37-48.

¹⁰⁵ Marta Irurozqui Victoriano, "Conversos a la patria boliviana: Identidad y participación política indígenas en las revoluciones de 1870 y 1899", in VV.AA., *Relaciones sociales e identidades en América: IX Encuentro-Debate América latina ayer y hoy* (Barcelona, 2004), 385-400, at 392. Marta Irurozqui Victoriano is a leading expert on Bolivian nineteenth-century history, which explains why only her works have been cited.

¹⁰⁶ *Ibid.*

¹⁰⁷ *Ibid.*

¹⁰⁸ *Ibid.*

¹⁰⁹ *Ibid.*, 392-93.

¹¹⁰ *Ibid.*, 393.

¹¹¹ *Ibid.*, 394.

indiada.¹¹² A proper justification to (re)classify these people(s) as an enemy and an uncivilized people in need of education was hence found in the massacre.¹¹³ This implied negation of the legitimacy of their political and social claims.¹¹⁴ However, most probably, their role in the revolution was diminished because of the menace represented by them, i.e., the possibility of them changing the political scenario.¹¹⁵

Having said this, the author is conscious and convinced that it is more than arduous to trace back in history, through five long and dense centuries, a continuum of what has briefly been introduced above as political participation of IPs. Moreover, since the Conquista, IPs have been labelled (by themselves as well as others), considered and treated in many different ways, which created movable and changing categories according to the different contexts.¹¹⁶ Hence, as mentioned, the role played by whom we know or call today indigenous peoples throughout Bolivian history is undeniable, and this should be neither forgotten, nor, most importantly, exploited for other purposes.

The food security concept has been developed since the inception of the Food and Agriculture Organization of United Nations, but the need for some form of multilateral world food security arrangement had already been recognized by the League of Nation before the Second World War.¹¹⁷ Despite the fact that its content was changing over the six decades of FAO existence, the idea which laid behind its development was still the same. The food security concept was not about the food per se but it expressed the concern for the fulfillment of the basic human need which was food.

4. The 1990s Reforms and the (Final?) Road to Autonomy

The 1990 march for 'Territory and Dignity' in Bolivia inaugurated what is one of the main instruments in the hands of IPs to enter into real and proper negotiations with the government.¹¹⁸ The march represented a milestone

¹¹² Between 28 February and 1 March 1899, 120 people were killed in Pando by the indigenous auxiliary forces. They, however, had simply obeyed a military order. Marta Irurozqui Victoriano, "Los hombre Chacales en armas: Militarización y criminalización indígenas en la revolución federal boliviana de 1899", in Marta Irurozqui Victoriano (ed.), *La mirada esquiva: Reflexiones históricas sobre la interacción del Estado y la ciudadanía en los Andes, (Bolivia, Ecuador y Perú), siglo XIX* (Consejo Superior de Investigaciones Científicas, Madrid, 2005), 285-320, at 310.

¹¹³ Irurozqui Victoriano, "Conversos a la patria boliviana ...", 398-9.

¹¹⁴ *Ibid.*, 399.

¹¹⁵ *Ibid.*

¹¹⁶ For instance, how to assess or evaluate the almost unavoidable *mestizaje* since the Conquista along family lines? Or how to know whether the protagonists of the 1952 Agrarian Reform were all indigenous or non-indigenous, or to what degree they belonged to one group or the other? In the 1950 census in Bolivia, e.g., 67% of the population appeared as 'indigenous' (Giraud and Sánchez, "Neoindigenismo y movimientos indígenas...", 70). This means, e.g., that surely many of them were called then '*campesinos*' during the reform.

¹¹⁷ Shaw, *World Food Security...*, 5.

¹¹⁸ Nieves Zúñiga García-Falces, "Emergencia del Movimiento indígena en América Latina: De 'objeto' a 'sujeto'", in Salvador Martí i Puiga and Josep Maria Sanahuja (eds.), *Etnicidad, autonomía y gobernabilidad en América Latina* (Universidad de Salamanca, Salamanca, 2004), 35-52, at 35.

in(re)affirming the existence of IPs as another social player within the Bolivian state, something particularly relevant for the numerically smaller IPs of the Lowlands.¹¹⁹

Another six marches followed between 1994 and 2009. The seventh march took place in June 2010. Its core claim was to revise the draft Autonomy Law.¹²⁰ As a result, thanks also to a second wave of reforms promoted by the aymara vice-president Victor Hugo Cardenas in the cabinet of Sanchez de Lozada in 1993-1997, many legislative measures were adopted.¹²¹ These included (in chronological order): the Environmental Law (Law No. 1333/1992),¹²² the constitutional reform in 1994,¹²³ the Popular Participation Law (Law No. 1551/1994), the Forest Law (Law No. 1700/1996), the Instituto Nacional de Reforma Agraria (INRA) Law (Law No. 1715/1996)¹²⁴ and the Municipalities Law (Law No. 2028/1999).

In particular, the Popular Participation Law increased the number of municipalities to more than 300.¹²⁵ Prior to this law, barely 20 municipalities effectively existed.¹²⁶ The municipalities were given 20 per cent of the government's yearly revenues, and a wider range of responsibilities (see Articles 14 and 20). Most importantly, however, was the creation of the Organizaciones Territoriales de Base (OTB), defined as a "social player for popular participation" (Article 3). They are composed of indigenous communities and peoples (or neighbouring committees) according to their rules and procedures, and represented by their authorities (Articles 3). Notwithstanding the limit of one OTB for one territorial unit (Article 6), more than 15,000 OTBs were registered in three years (1994-1997).¹²⁷ The OTBs were recognized legal personalities (Article 4) as well as having a number of rights and obligations that allowed an effective improvement in the

¹¹⁹ Kitula Libermann and Armando Godínez (eds.), *Territorio y dignidad: Pueblos indígenas y medio ambiente en Bolivia* (Nueva Sociedad, Caracas, 1992), 59.

¹²⁰ Leonardo Tamburini, "Bolivia", in IWGIA, *El mundo indígena 2011* (IWGIA, Copenhagen, 2011), 174-82, at 177. As to the recent eighth march for the protection of the indigenous territory Territorio Indígena y Parque Nacional Isiboro-Secure (TIPNIS), see the in-depth coverage of the facts on the ground provided by Fundación Tierra, VIII Marcha Indígena Cobertura Especial, at <http://marcha.ftierra.org>.

¹²¹ Willem Assies, "Pueblos Indígenas y Reforma del Estado en América Latina", in Willem Assies, Gemma van der Haar and André Hoekema (eds.), *El reto de la diversidad: Pueblos indígenas y reforma del Estado en América Latina* (El Colegio de Michoacán, Zamora-Michoacán, 1999), 21-55, at 35. Prior to this, on 11 December 1991, Bolivia also ratified ILO Convention 169.

¹²² In particular, as Postero has pointed out, "[t]he[se] reforms ... were the result of strategic articulations between the ruling Movimiento Nacional Revolucionario (MNR) party and indigenous groups", Postero, *Now We Are Citizens...*, 124-25.

¹²³ Two main achievements are to be mentioned vis-à-vis IPs claims: the constitutional definition of Bolivia as a multi-ethnic and pluricultural state (Art.1); and the introduction of forms of collective properties, Territorio Comunitario de Origen(TCO), Art. 171. See note 152.

¹²⁴ In particular, the INRA Law finally regulated access to the recognition and the establishment of the aforementioned TCOs (Arts 3 and 41) under the supervision of the Agrarian Reform National Institute (Instituto Nacional de Reforma Agraria(INRA), Arts 13-18). See note 152.

¹²⁵ At the time of writing there are 339.

¹²⁶ Assies, "Pueblos Indígenas y Reforma del Estado ...", 35.

¹²⁷ Benjamin Kohl, "Democratizing Decentralization in Bolivia: The Law of Popular Participation", 23 *Journal of Planning Education and Research* 2003, 153-64, at 156.

indigenous participation within the municipalities.¹²⁸ In addition, Article 17 para. III of the Popular Participation Law allowed the creation of a Distrito Municipal in those territories characterized by a geographic, sociocultural, productive or economic continuity in order to provide common public services (Article 18). On this legal basis, IPs started to create their own Distritos Municipales Indígenas (DMI). The first DMI was Isoso, located in the Santa Cruz department.¹²⁹ The number of DMIs increased quickly. According to Galindo Soza, cited by Colque, in 2008 there were at least 73 DMIs.¹³⁰ In 2004 the news agency Enlared had already declared the existence of 140 DMIs.¹³¹

In 1999, the Municipalities Law and the Supreme Decree No. 26142/2001 went further. The former formally recognized the DMIs (Articles 166-167) and established the possibility of forming a grouping of municipalities (mancomunidad) to return to IPs their ethnic or cultural unity (Article 158, para. III). The latter gave priority to the creation of mancomunidades of DMIs to avoid the fragmentation of sociocultural units across the municipalities' borders (Articles 23). Notwithstanding this favourable legal framework, in practice many problems regarding inefficient financial management and widespread corruption arose within the municipalities and gave room for further discontent.¹³²

The neoliberal crisis, the well-renowned 2000 Cochabamba Water Wars and the 2003 Gas War contributed to the institutional revolution of Bolivia after the 2005 Morales elections and the constitutional reform.¹³³ It must be specified that a constituent assembly had already been claimed by IPs in their fourth March in 2002.¹³⁴ Moreover, in 2006, nine major IPs organizations, both of the Highlands and the Lowlands,¹³⁵ elaborated a joint work called Pacto de Unidad to propose and conceptualize what the indigenous autonomy should be.¹³⁶ This shows, in particular, why the autonomy flag did not belong solely to the Bolivian Amazonian half-moon. Prior to and during the Constituent Assembly, IPs have been strong in claiming their autonomy.¹³⁷

¹²⁸ See Arts 7-8, and also Art. 10 on the Comité de Vigilancia (a kind of Security Committee) composed by one OTB representative with the aim of supervising the good administration of the municipality.

¹²⁹ Gonzalo Colque, "Rediseño de gobiernos locales indígenas en Bolivia", Fundación Tierra 2010, at <http://justgovernancegroup.org/es/Assets/PDFs/Gobiernos%20Locales%20Indigenas%20Bolivia%20COLOQUE%20Abril%202010.pdf>, at 1.

¹³⁰ *Ibid.*, 1.

¹³¹ Enlared Municipal, "Bolivia tiene 140 distritos municipales indígenas", Agencia de Noticias Enlared, 22 November 2005, at <http://www.enlared.org.bo/portal/default.asp?cq2=5874>. Official data were not found.

¹³² Kohl, "Democratizing Decentralization ...", 161.

¹³³ Xavier Albó, "Bolivia: Avances y tropezones hacia un nuevo país plurinacional e Intercultural", in Salvador Martí i Puig (ed.), *Pueblos Indígenas y Política en América Latina: El reconocimiento de sus derechos y el impacto de sus demandas a inicios del siglo XXI* (Fundació CIDOB, Barcelona, 2007), 335-59, at 344-9.

¹³⁴ *Ibid.*, 353. For more detail on the fourth march, see Carlos Romero Bonifaz, *El Proceso constituyente boliviano: el hito de la cuarta marcha de tierras bajas* (Centro de Estudios Jurídicos e Investigación Social-CEJIS, Santa Cruz de la Sierra, 2005).

¹³⁵ See note 94.

¹³⁶ See above, section 2.2 Indigenous Autonomies.

¹³⁷ Chuvirú, Marcela, "Bolivia", in Málaga Montoya (ed.), *Seminario Regional Andino. Pueblos indígenas y democracia intercultural: un debate desde los países andinos; Bolivia, Ecuador, Colombia,*

During the same year (2006), however, as instructed by Morales, in the autonomy referendum 57.5 per cent of the national electorate voted against the decentralization process.¹³⁸ Nevertheless, in the four Amazonian departments (Beni, Pando, Santa Cruz and Tarija) of the rich Bolivian Oriente (the Lowlands) the majority of the votes were in favour.¹³⁹ Subsequently, the text approved by the Constituent Assembly at the end of 2007 was denied legitimacy by the Oriente political forces, especially by the civic movements, which prepared self-made autonomy statutes and self-organized elections in July 2008.¹⁴⁰ One month after, on 10 August, a national referendum was therefore called to reconfirm or to revoke the presidency mandate. Morales obtained more than 67 per cent of votes in favour.¹⁴¹ Fights and roadblocks took place in the Oriente between August and September, until the sad happenings in Pando, where 20 indigenous persons were killed and more than 100 were wounded. Another march into Santa Cruz of approximately 20,000 indigenous persons, who were also unhappy with parts of the text of the constitution, catalysed the beginning of the negotiations between the eastern departments and the central level. Finally, after debates in Cochabamba and at the Congress of the Republic, as well as another march, this time headed by Morales himself, negotiations ended on 21 October 2008. The changes in the text of the constitution also affected the AIOC, which acquired a clearer shape thanks to the amendments.¹⁴² The final text of the constitution was at last approved via another national referendum on 25 January 2009, with 61.43 per cent of votes in favour.¹⁴³

5. The Bolivian Autonomies' Labyrinth

The decentralization process and the construction of the autonomies' system is now a central issue in Bolivia. The normative anchorage of the autonomy reform is to be found both in the 2009 CPE and in the dense 2010 Ley Marco de Autonomías y Descentralización, Law No. 031/2010 enacted in July 2010

Venezuela, Chile, Perú (Centro de Estudios Regionales Bartolomé de las Casas, Cuzco 2008), 51-54 and 71-72, at 53; Marxa Nadia Chávez León, "'Autonomías indígenas' y 'Estado Plurinacional'. Proyectos políticos de los movimientos indígenas y campesinos en Bolivia", 24 *Revista OSAL* 2008, 51-71, at 59; El Diario, "Autonomías indígenas y departamentales inician un amplio debate en la Asamblea", *El Diario*, 1 July 2007, at http://www.eldiario.net/noticias/2007/2007_07/nt070701/2_04plt.php.

¹³⁸ Leonardo Tamburini, "Bolivia", in *IWGIA, The Indigenous World 2010* (IWGIA, Copenhagen, 2010), 195-206, at 200.

¹³⁹ Fernando Mayorga, "Referéndum y Asamblea Constituyente: Autonomías Departamentales en Bolivia", 37 *Reforma y Democracia-Revista del CLAD* 2007, at 1-2, at <http://www.clad.org/portal/publicaciones-del-clad/revista-clad-reforma-democracia/articulos/037-febrero-2007/0055707>

¹⁴⁰ Leonardo Tamburini, "Bolivia", in *IWGIA, The Indigenous World 2009* (IWGIA, Copenhagen, 2009), 174-83, at 175.

¹⁴¹ *Ibid.*, 178-79.

¹⁴² *Ibid.*, 181.

¹⁴³ Bolpress, "Evo promulga el sábado la primera Constitución aprobada en referéndum popular", 2 February 2009, at <http://www.bolpress.com/art.php?Cod=2009020206>.

(hereinafter, Autonomy Law), the product of approximately 40 unofficial previous drafts.¹⁴⁴

The very first Article of the CPE addresses the delicate issue of which form of state Bolivia should be. Bolivia chose to be a unitary but decentralized state based on autonomous units (Article 1). The definition of what the autonomy should be in Bolivia is found in the later Autonomy Law (Article 6, para. II, no. 3). The hierarchical equality, the direct election of the members of the governing bodies, the administration of their own economic resources, and the exercise of its legislative (including, the regulatory norms/decrees), fiscal, and executive powers are the core elements of the Bolivian type of autonomy.

From a legal perspective, what strikes one most is the four-layer system of autonomies. According to CPE (Article 269), Bolivia is subdivided into four types of territorial units, i.e., the departments, the provinces, the municipalities and the TIOCs.¹⁴⁵ The administrative organization of the autonomies, however, is different. Autonomy is not only granted to the nine departments of Bolivia (Article 277), but also to regions (Article 280), to (all) the municipalities (Articles 283) and to the AIOCs (Articles 289). In other words, the provinces, despite their recognition as a "territorial unit", cannot be autonomous. This nature is given, instead, to the regions (Article 280). A region is not a pre-defined territory, but may be formed by a number of municipalities and provinces that decide to do so, provided that they share some cultural and historical continuity. A region may be thus constituted beyond municipalities' and/or provinces' borders, but not further than the departments' ones. According to the Constitution, the regions shall also have some administrative-normative powers (Article 281), but the Autonomy Law denies it, stating that the regions have no legislative power (sic!) (Article 6, para. II, no. 3). In sum, the territorial subdivision of Bolivia does not match the administrative autonomous one. Moreover, as far as the regional autonomy layer is concerned, the Autonomy Law manifestly contradicts the Constitution.

As to the organization between the central level and the peripheries, according to the Autonomy Law three bodies shall coordinate all the autonomies across the country. These bodies are: the National Autonomy Council (Consejo Nacional de Autonomías), the State Autonomy Office (Servicio Estatal de Autonomías, hereinafter, SEA), and the State Integral Planning System (Sistema de Planificación Integral del Estado) (Article 121). In short, the first body shall have a mere political function, be chaired by the President and be composed of three ministers (Presidency, Development Planning and Autonomy), the nine departments' governors, and a number of different stakeholders' representatives: five from the Federation of Municipalities' Associations, five from AIOCs, and one from the regional

¹⁴⁴ Leonardo Tamburini, "Bolivia", in IWGIA, *El mundo indígena 2011* (IWGIA, Copenhagen, 2011), 174-82, at 176.

¹⁴⁵ See note 152.

autonomies (Article 123). Second, the SEA shall be a supporting and logistics office serving the autonomous administrations (Article 126), and be composed of an executive director and operative units (Article 127). In particular, the SEA shall be the conciliator where there are potential competing roles among the autonomies (Article 129, para. I, no. 1). Following this, the State Integral Planning System shall be a sort of forum of all the territorial units' public administration in order to build participatory and bottom-up strategies (Article 130, para. I). Further legislation to be enacted by the Plurinational Assembly shall direct this body (Art. 130, para. II). Finally, in addition to these three bodies, there shall be a number of Sector Coordination Councils (Consejos de Coordinación Sectorial), led by the competent Minister *ratione materiae*, and in charge of the coordination among the central and the peripheral governments (Article 132). Approximately 20 councils are to be appointed by law or decree.¹⁴⁶

Thus, along with the four autonomy layers, the coordination bodies system appears complex too. The key body shall be the SEA, since it is the main operative office and would address power conflicts among the autonomies. Indeed, "If the SEA will work, the autonomy process will work out in an organized way" ("Si el Servicio funcionará, funcionará el proceso autonómico de forma ordenada"), affirmed Avendaño Redeno in late 2010.¹⁴⁷ This will be actually seen in the next months or years. The SEA is ruled by the Decreto Supremo (Supreme Decree) No. 802 adopted on 23 February 2011. According to Article 8 of the decree, the executive director of the SEA was finally appointed last 8 September 2011, the date on which the work of this body was formally launched.¹⁴⁸

6. The Indigenous Autonomy on Paper¹⁴⁹

Within this complex system of autonomies, the AIOC represents the fourth level, the last but not least step in the Bolivian autonomy stairway. The grundnorm of the AIOC lies in Article 2 of the CPE, which guarantees that the IPs' rights to self-determination consist of the right to autonomy and self-government, since, in the words of the CPE, the IPs' ancestors dominated the whole territory and existed before the colonization. In addition to this, IPs institutions are to be recognized, and their territorial entities/collective bodies are to be consolidated, insofar as the CPE and the law are respected. Again, in the carte of IPs rights listed in CPE Article 30, the IPs' rights to self-determination and to territoriality are repeated (Article 30, para. 4). Some

¹⁴⁶ Justino Avendaño Redeno, one of the consultants and draftsmen of the Autonomy Law, interview with the author, 2010, personal record.

¹⁴⁷ *Ibid.*

¹⁴⁸ See SEA, "Presentación oficial del Servicio Estatal de Autonomías", 8 September 2011, at http://www.sea-autonomias.gob.bo/index.php?option=com_content&view=article&id=18:noticia2&catid=17:noticias-del-home.

¹⁴⁹ In this paragraph, the legal framework of the AIOCs will be presented as such. For an assessment and criticism, see section 8, Assessment - From Paper to Practice.

200 Articles later, in the seventh chapter, the AIOCs are given their constitutional shape (Articles 289-296, and 303-304). The legal ground of indigenous autonomy is once more the right to self-determination to be exercised via the right to self-government, i.e., the AIOC (Article 289). The main requirements to establish an AIOC are the following (Article 290):

- a territory that the IPs call ancestral and that claims to be an AIOC;
- the willingness shown (via consultation) by the community to create it; and
- the application of the customary norms and institutions.

As for each territorial entity, the CPE establishes that each AIOC shall adopt its own statute, which then has to pass through a constitutional check and a referendum within the municipality before entering into force (Article 275). The statute shall be drafted according to the IPs' own rules and procedures (Article 292), which will also rule the functioning of the AIOC governing body (Article 296). Other vital aspects stated by the CPE, and specified in the Autonomy Law, are the formal territorial limits, which might change when constituting an AIOC both at municipal (Article 293, para.II) and regional levels(Article 295, para.I).¹⁵⁰ The prior consultation and the referendum are, as mentioned, compulsory for any AIOC formation or conversion process (Articles 293, para. I, 294, 295, para. II). Needless to say, the AIOC shall be constituted, formed, and ruled in a way consistent with the CPE and the Autonomy Law.

Last, but not least, the CPE also establishes the division of powers between the state and the AIOC. There are a number of exclusive powers left to the AIOC (Article 304), which shall also absorb the powers of the municipality or the region that chooses to convert into an AIOC (Article 303).¹⁵¹ Moreover, the AIOC have further powers shared with the state. For some, it may apply or execute state acts (*competencias concurrentes*), and, for others, it may enact further regulation to implement a state framework law (*competencias compartidas*) (see also Article 297 of the CPE). For the purpose of this article, it is pointless to list all the AIOC's powers. Two aspects, however, should be underlined. On the one hand, the number of powers given to the AIOC, e.g., the control over the definition and management of their own development projects according to their own culture (Article 304, para. II) may be considered appropriate measures. Nevertheless, on the other hand, the key powers are left to the central level, e.g., health, education, environmental and (non-renewable) natural resources policies, which are matters for which the AIOC have only implementation powers.¹⁵²

¹⁵⁰ In this latter case, the AIOC at regional level may be formed after the constitution of a region by grouping more municipalities and/or provinces (Art. 280 CPE) and the conversion of it into an AIOC (Arts 46, para. II; 47, para. II; 50, paras. I, III and V of the Autonomy Law). See also note 152 and section 5, *The Bolivian Autonomies' Labyrinth*.

¹⁵¹ In this latter case, the AIOC would be entitled to solely those regional powers that would be expressly transferred upon it (Art. 303, para. II).

¹⁵² See further in section 8, *Assessment - From Paper to Practice*.

The Autonomy Law further details the AIOC legislative framework (unless specified, the Articles numbers cited hereinafter refer to the Autonomy Law).

A (new) AIOC shall be formed in three ways (Article 44):

- for a territory formerly known as TCO (Tierra Comunitaria de Origen), the new constitution will convert it into a TIOC (Territorio Indígena Campesino Originario);¹⁵³
- for a municipality, converting it from a standard municipality as recognized in the 1994 Popular Participation Law into an indigenous one;
- for a region, grouping a number of municipalities or provinces (CPE Article 280), that convert themselves into a regional AIOC (Articles 46, para. II, 47, para. II, 50, paras I, III and V).¹⁵⁴

An AIOC, like the other autonomies, is established in a one-plus-four-steps procedure. The prerequisite, as mentioned, is a converting referendum or - in the case of the TIOC - a consultation among the population of a territorial entity which is to be organized (Article 50). If in favour, (1) a deliberative council shall be constituted (Article 53), which is in charge of (2) drafting and voting for the AIOC statute via a qualifying majority of two-thirds; (3) once adopted, the statute shall be subject a constitutional check, and, if approved, (4) to (another) referendum (Article 275 CPE). If consistent with the CPE, the AIOC shall start working after the establishment of their governing bodies (Article 55). Nevertheless, some requirements have to be fulfilled prior to commencing any conversion process, such as the governmental trusteeship (Viabilidad Gubernativa), which has to be granted by the Ministry of Autonomy on the base of the two following prerequisites (Article 57). First, evidence of the 'existence, representation and effective implementation of an organizational structure' of all IPs concerned shall be provided. Second, a territorial plan, including institutional and financial strategies, shall be submitted. Moreover, a numerical quota of population (Base Poblacional) is to

¹⁵³ The TCO (*Tierra Comunitaria de Origen*) was one of the achievements of the Lowlands IPs' claims introduced by the constitutional reform in 1994 (1994 CPE, Art. 171). TCOs, in short, are a form of collective property in which, in principle, IPs could manage the land according to communal cultural, social and economic means. Art. 41, para. 1 of the INRA Law states that TCOs are a form of agrarian property. For a recent and thorough analysis, see Gonzalo Colque and Juan Pablo Chumacero, *Informe 2010: Territorios Indígena Originario Campesinos en Bolivia Entre la Loma Santa y la Pachamama* (Fundación Tierra, La Paz, 2011); for a map of the TCOs, see CIDOB, "Mapas de Bolivia con las TCO's", at <http://www.cidob-bo.org/cpti/mapa.htm>. The new constitution will convert the TCO into TIOC (2009 CPE, Transitory Disposition 7; see also Arts 269, para.I; 394). The *Decreto Supremo* (Supreme Decree) No. 727, adopted on 6 December 2010, ruled the conversion process from TCO to TIOC, of which is in charge the Agrarian Reform National Institute (Art. 1). Nevertheless, this switch process is long and controversial because of some administrative requirements of the Agrarian Reform National Institute (INRA) that need to be complied with, Erbol, "El cambio de nombre de TCO a TIOC significará otro trámite" Erbol Comunicaciones Periódico Digital, 12 April 2011, at <http://erbol.com.bo/noticia.php?identificador=2147483943178>.

¹⁵⁴ The foundation of such regions appears a bit blurred both in the Constitution and in the Autonomy Law. In principle, a region is the only autonomous level which does not have legislative competences, unless, in theory, as according to Art.46, para.II of the Autonomy Law, some competencies were conferred upon it. In any case, no indigenous region has been established so far, and, given the normative confusion, I personally see its possible creation as difficult.

be fulfilled (Article 58). These quotas are 10,000 people for the Highlands - reducible to 4,000 in exceptional cases - and 1,000 for the Lowlands.

This is in sum the normative framework for establishing a new AIOC. However, this article is about the existing 11 AIOCs that already started their venture with the converting referendum in December 2009 (see section 7, below). They have complied with partly different pre-requisites than the ones required for the new AIOCs, and they are currently dealing with the four above-mentioned steps, i.e., (1) establishment of the deliberative council, (2) discussion and adoption of the statute via two-thirds of votes in favour, (3) constitutional check, and (4) second referendum within the community .

Finally, it should be mentioned that DMIs, created and ruled initially by the Popular Participation Law and the Municipalities Law, may also be established. DMIs shall be based on a TIOC, or formed by an IPs community that is a numerical minority in a municipality if there is no plan to convert it into an AIOC municipality. If the DMI relies on the 'necessary management capacities' and an integral plan of development, it may receive financial resources by the state for its implementation (Article 28).

7. The Indigenous Autonomy on the Ground: The First (and so far, solely) 11 AIOC at Work

At the dawn of 7 December 2009, Bolivia 'woke up' with a newborn creature, the AIOC. Prior to this, once it had adopted Transitory Electoral Law No. 4021/2009 in April, the present AIOC Jesús de Machaca (La Paz) had already proclaimed its Peasant Farmer Native Indigenous Autonomic Council (Consejo Autonomo Indígena Originario) during a visit of the Ministry of Autonomy.¹⁵⁵ This catalysed debate in other rural municipalities, especially in the Highlands. Following this, on 2 August 2009, the day of the signature of the Decreto Supremo (Supreme Decree) No. 0231/2009 which provided also for the December AIOC referendum, an information event, chaired by President Morales, was organized in the town of Camiri by the Ministry of Autonomy and some indigenous organizations. The 2nd of August was proclaimed Indigenous Autonomy Day, relabelling what was known as Indio Day, and had before that and from 1953 been known as Agrarian Reform Day.¹⁵⁶ Finally, on 6 December, in concomitance with the general elections, and the autonomy referendum for those departments that had voted against in 2006 (Chiquisaca, Cochabamba, La Paz, Oruro, Potosí), the first 11 AIOCs were born.

Notwithstanding all the enthusiasm, the four seminars and the workshop held by the Ministry of Autonomy and other NGOs between October and

¹⁵⁵ Wilfredo Plata, "De Municipio a Autonomía Indígena: Los once municipios que transitan a la Autonomía Indígena Originaria Campesina" in VV.AA, *Bolivia Post-Constituyente: Tierra, territorio y autonomías indígenas. Memoria del Seminario Internacional 2009* (Fundación Tierra, La Paz, 2009), 247-72, at 254.

¹⁵⁶ *Ibid.*, 255.

November,¹⁵⁷ only 12 of the 19 municipalities that requested access to the prioritized procedure consistent with Transitory Disposition 3 of Law No. 4021 and the Supreme Decree No. 231 survived. These were the municipalities that fulfilled all the compulsory prerequisites for access to the vote.¹⁵⁸ According to Article 6 of Supreme Decree No. 231, prior to organizing the AIOC referendum the municipalities required: (1) a certificate granted by the Autonomy Ministry (via a ministerial resolution), and (2) a municipality's decree adopted by its council with two-thirds of votes in favour. The Ministry's certificate, moreover, contained three further requirements, as follows: First, (1a) the territory had to correspond to the ancestral land inhabited by the IPs currently living in it. Second, (1b) the claiming IPs had to exist prior to Bolivia's colonization. Finally, (1c) the claiming IPs had to share specific common features, i.e., the same cultural identity, language, historical tradition, territoriality, worldview (cosmovisión), and their juridical, political, social and economic organization or institutions had to be demonstrated (Article 6, para. 1 of Supreme Decree No. 231). These three prerequisites were all extremely difficult to prove, especially the correspondence between the ancestral land and the one currently inhabited by an indigenous community. In addition, the territoriality aspect was very delicate as only 25 out of 339 municipalities in Bolivia (7 per cent) enjoy settled territorial boundaries.¹⁵⁹ The AIOC referendum in those municipalities with firm delineation had thus a clear political advantage,¹⁶⁰ or one fewer problem to worry about.

The National Electoral Court (Corte Nacional Electoral), finally, did not admit seven municipalities' requests (Corque, Santiago de Andamarca Santiago de Huari and Turco in the department of Oruro; Gutiérrez and Lagunillas in Santa Cruz; and Inquisivi in La Paz) due to unfilled requirements (i.e., the municipality's decree adopted with less than two-thirds of 'yes' votes; delays in submitting the full documentation needed).¹⁶¹

At the 2009 AIOC converting referendum in the municipalities admitted to the prioritized procedure aforementioned, the 'no' vote won in one of them: Carahuara de Carangas (Oruro). The reasons behind this failure lie most probably in the fear of changing a (rather successful) participatory system under the former Popular Participation Law, which had already taken (too) much time before its realization.¹⁶² Three other AIOCs were unlikely to get the

¹⁵⁷ *Ibid.*, 255-57.

¹⁵⁸ *Ibid.*, 250; Ministerio de Autonomía, "Bolivia Autónoma No. 7" (2009), 4-5, at <http://www.autonomia.gob.bo/portal3/sites/default/files/ministeriodeautonoma/persep.pdf>.

¹⁵⁹ La Razón, "15 municipios no cuentan con límites definidos", La Razón, 12 January 2011, at <http://www.la-razon.com/version.php?ArticleId=123820&EditionId=2405>.

¹⁶⁰ Leonardo Tamburini, "Bolivia", in *IWGIA, The Indigenous World 2010* (IWGIA, Copenhagen, 2010), 195-206, at 201.

¹⁶¹ Ministerio de Autonomía, "Bolivia Autónoma No. 7...", 4-5; Plata, "De Municipio a Autonomía Indígena ...", 250.

¹⁶² Leonardo Tamburini, "Bolivia", in *IWGIA, The Indigenous World 2010* (IWGIA, Copenhagen, 2010), 195-206, at 201.

green light, i.e., Huacaya and Charagua in Chaco and Jesús de Machaca in La Paz, where the 'yes' votes were slightly over the 50 per cent mark.¹⁶³

After the converting referendum, these first municipalities started the procedure to become full AIOCs. These are: Jesús de Machaca and Charazani (La Paz); Mojocoya, Huacaya and Tarabuco (Chiquisaca); Salinas Garci de Mendoza, Chipaya, Pampa Aullagas and Totora(Oruro); Chayanta (Potosí); and Charagua (Santa Cruz). Seven AIOCs are thus located in the Highlands, and only two in the Lowlands.¹⁶⁴

An initial fervour was shared among all the AIOCs. Nevertheless, all that glitters is not gold, and, for the AIOCs, the difficulties and the potential legal traps arose later once the AIOCs were functioning.

Much of the AIOC procedure remained pending until the adoption of the Autonomy Law in July 2010. The adoption of this law was not as quick and untroubled as hoped. The core aim of the aforementioned seventh indigenous march was to amend the draft law, especially the numerical quota of population (Base Poblacional), applicable to the new/future AIOCs.¹⁶⁵ As mentioned, four further steps after the first converting referendum are to be taken by the AIOC prior to commencing its activities: (1) the constitution of the deliberative council in charge of the second step; (2) drafting and voting for the AIOC statute via a qualified majority of two-thirds; (3) the statute's constitutional check; and, finally, (4) another referendum to approve the statute. If the one step forward were the municipality elections held all over Bolivia in April 2010,¹⁶⁶ the statutes' adoption procedures were (regrettably) two steps back. If we could measure the success so far of the first 11 municipality-based AIOCs on a scale of between 1 and 5 symbolizing the intermediate stages of the four steps aforementioned,¹⁶⁷ level 2 (the statute's adoption) is reached by only three of the current AIOCs, and one process is currently blocked, as shown in figure 1 below.

¹⁶³ *Ibid.*

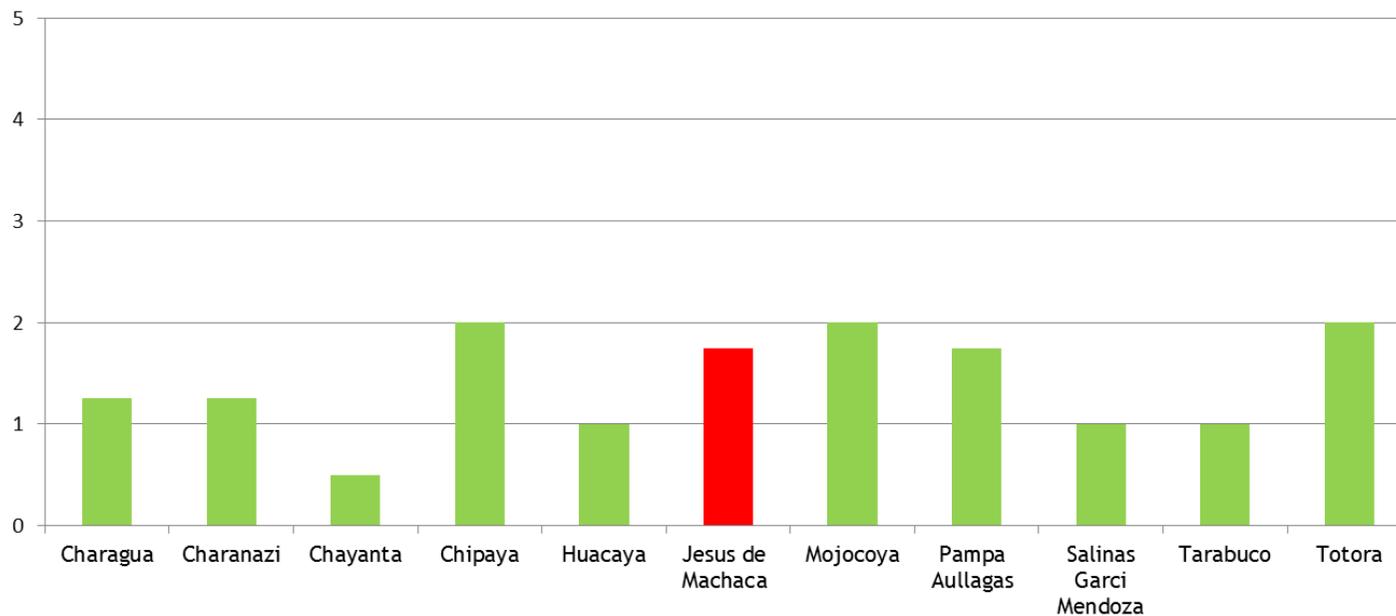
¹⁶⁴ Plata, "De Municipio a Autonomía Indígena ...", 254.

¹⁶⁵ Leonardo Tamburini, "Bolivia", in IWGIA, *El mundo indígena 2011* (IWGIA, Copenhagen, 2011), 174-82, at 177. For the problems regarding this aspect, see section 8, Assessment - From Theory to Practice.

¹⁶⁶ For these first 11 AIOCs, the government elected in April 2010 is to be considered provisional since new elections should be organized according to the IPs' own rules and procedures once the AIOC concludes its start-up (Art. 55, para. II, Autonomy Law).

¹⁶⁷ Stage 1 is the establishment of the deliberative council; (full) stage 2 is the adoption of the statute by two-thirds of the deliberative council; stage 3 is the statute's constitutional check by the Plurinational Constitutional Court; stage 4 is the second referendum for statute approval within the community; finally, stage 5 is when the AIOC is fully established and starts working properly as such. See also the legend to Figure 1 below.

Figure 1: Current status of AIOCs conversion process*



Source: Own elaboration of data

* Legend: Figure 1: Current status of AIOCs conversion process

1	Establishment of deliberative council
2a (1.25)	Statute 1st draft
2b (1.75)	Statute final draft
2c (2)	Statute's adoption by deliberative
3	Statute's constitutional check
4	2nd referendum for statute approval
5	AIOC starts working

These evaluations are based on the following facts. As of today,¹⁶⁸ only three AIOCs have approved and voted for their statutes despite the (quite short) timeframe within which the AIOCs were supposed to adopt them (360 days since the provisional elections in April 2010 and a potential extension of a further 360 days according to Transitory Disposition 14 of the Autonomy Law, i.e., until approximately March 2012).¹⁶⁹

As to the most advanced AIOCs, Chipaya and Totora in Oruro and Mojocoya in Chiquisaca, they have adopted their statutes.¹⁷⁰In particular, Mojocoya received a good evaluation by the Ministry of Autonomy in September 2011.¹⁷¹ Regrettably, in Jesús de Machaca (La Paz) the process is now completely blocked,¹⁷² despite the work of the deliberative council on the statute's third draft, which continued until September 2011.¹⁷³ Indeed, the paceña municipality was not exempt to lively debates. The main issue was the legitimacy of the councillors. Some of those who were elected in April 2010 had left and the mayor declared in June 2011 that he was thinking of renewing the council and electing or 'choosing' new members. Moreover, there were tensions among IPs, migrants and other non-indigenous residents.¹⁷⁴

Pampa Aullagas (Oruro) endorsed the statute's third draft.¹⁷⁵ Charagua in Santa Cruz and Charazani in La Paz approved and is about to approve their first statute, respectively.¹⁷⁶ In Charagua, however, the urban IPs population apparently does not participate in the council's sessions.¹⁷⁷ This is undermining the legitimacy of its works, especially in view of the statute's endorsement via a referendum of the entire population.

The other two AIOCs in Chiquisaca (Huacaya and Tarabuco) are still working on their statute's first draft. In Tarabuco, starting the statute's draft is taking

¹⁶⁸ 29 March 2012.

¹⁶⁹ This requirement raised much confusion and concern among the IPs. Erbol, "Ministro Romero asegura que no hay plazos para implementar las autonomías indígenas", Agencia de Noticias Indígenas Erbol, 25 February 2011, at <http://www.indigena.erbol.com.bo/noticia.php?identificador=2147483941289>. Some IPs were convinced that this deadline was applicable even to the formation of new AIOCs, as some IPs leaders told me during the 2010 Gran Asamblea de Pueblos Indígenas (GANPI).

¹⁷⁰ Susana Mejillones and Paulino Guarachi, "Avances de la Autonomía Indígena Originario Campesina", Fundación Tierra, 29 February 2012, at http://ftierra.org/ft/index.php?option=com_content&view=article&id=8861:rair&catid=98:noticias&Itemid=243. See also Correo Del Sur, "Proceso para construir la autonomía indígena originaria campesina del país está en la segunda fase", Correo Del Sur, 14 September 2011, at <http://www.correodelsur.com/2011/0914/40.php>, and Ministerio de Autonomías, "Charagua culmina primer borrador de su Estatuto", 27 December 2011, at <http://www.autonomia.gob.bo/portal3/content/charagua-culmina-primer-borrador-de-su-estatuto>.

¹⁷¹ Del Sur, "Proceso para construir ...".

¹⁷² Fundación Tierra, "Paralizan la autonomía indígena en Jesús de Machaca", 8 November 2011, at http://ftierra.org/ft/index.php?option=com_content&view=article&id=7736:rair&catid=98:noticias&Itemid=175.

¹⁷³ Del Sur, "Proceso para construir ...".

¹⁷⁴ Iván Bustillos Zamorano, "Cuesta arriba para las autonomías indígenas", La Razón, 12 June 2011, at http://www.la-razon.com/version_temp.php?ArticleId=1744&EditionId=2674&idp=42&ids=342.

¹⁷⁵ Mejillones and Guarachi, "Avances de la Autonomía Indígena ...".

¹⁷⁶ *Ibid.*

¹⁷⁷ Bustillos Zamorano, "Cuesta arriba para las ...".

a long time. In April 2011 it was agreed to set up the deliberative council.¹⁷⁸ In May, however, this consensus was lost.¹⁷⁹ After further debate, the council was finally set up in June, and, subsequently, the work on the first draft sped up.¹⁸⁰ However, currently, the members are still in disagreement on the statute's drafts.¹⁸¹

In Salinas Garci de Mendoza in Oruro the deliberative council has been constituted, but is inoperative. The five ayllus¹⁸² cannot reach an agreement because of representative issues. They claim that some ayllus should have more representatives than others. Apparently, even though the representatives have been assigned proportionally to the number of inhabitants of each ayllu, the smaller ones demand greater representation.¹⁸³

Lastly, Chayanta (Potosí) is the least advanced AIOC and the constitution of the council seems still very far off.¹⁸⁴ In May 2010, a conversion process into a TCO/TIOC - and no longer as an AIOC - was announced.¹⁸⁵ Moreover, there were some tensions between the non-indigenous and the IPs residents.¹⁸⁶

An analysis by the journalist Bustillo Zamorano has underlined that - to some extent - the destiny of the AIOC was already decided at the December 2009 AIOC referendum.¹⁸⁷ The yes vote was, indeed, very high (between 75 and 90 per cent of votes) in seven municipalities (Charazani, Chipaya, Mojocoya, Pampa Aullagas, Salinas de Garci Mendoza, Tarabuco and Totorá). In the other four (Charagua, Chayanta, Huacaya and Jesús de Machaca) the threshold was lower, around 53 and 60 per cent. Indeed, in the AIOCs with a higher number of votes in favour, apart from Salinas de Garci Mendoza, the consensus shown at the 2009 vote is probably supporting the current AIOCs' development. In the other AIOCs, the current problems in Chayanta and Jesús de Machaca may be due to the scepticism and/or fear already revealed at the time of the 2009 referendum, especially by the non-indigenous population.

¹⁷⁸ Carmen Gonzales and Eusebio Cordero, "Tarabuco está a un paso de conformar su consejo Autonomico", Fundación Tierra, 26 April 2011, at http://www.ftierra.org/ft/index.php?option=com_content&view=article&id=5801:rair&catid=98:noticias&Itemid=175.

¹⁷⁹ Erbol, "Indígenas y campesinos se disputan mayor representatividad en Órgano Deliberativo de Tarabuco", Erbol Comunicaciones Periódico Digital, 16 May 2011, at <http://www.erbol.com.bo/noticia.php?identificador=2147483944619>.

¹⁸⁰ Carmen Gonzales and Eusebio Cordero, "Después del consenso, Tarabuco conformó el órgano deliberativo autonómico", Fundación Tierra, 21 June 2011, at http://www.ftierra.org/ft/index.php?option=com_content&view=article&id=6484:rair&catid=98:noticias&Itemid=175; Del Sur, "Proceso para construir ...".

¹⁸¹ Mejillones and Guarachi, "Avances de la Autonomía Indígena ...".

¹⁸² Broadly speaking, an *ayllu* is an Andean (nowadays, mainly *aymara* and *quechua*) complex social hierarchical and territorial structure and organization, which implies more levels of *ayllus* interlinked by symbolism and internal self-management. Luis Jesús Jilamita Murillo and Veimar Gastón Soto Quiroz, *Los ayllus en el actual departamento de Potosí: Una aproximación a la comprensión de su historia y situación contemporánea* (Soluciones Prácticas, Potosí, 2005), 17-19.

¹⁸³ Bustillos Zamorano, "Cuesta arriba para las ...".

¹⁸⁴ Mejillones and Guarachi, "Avances de la Autonomía Indígena ...".

¹⁸⁵ Erbol, "Indígenas de Chayanta quieren ser autónomos como una TCO", Agencia de Noticias Indígenas Erbol, 12 May 2011, at <http://www.indigena.erbol.com.bo/noticia.php?identificador=2147483944455>.

¹⁸⁶ Bustillos Zamorano, "Cuesta arriba para las ...".

¹⁸⁷ *Ibid.*

However, Huacayahas apparently overcome the first hurdle since the council at least keeps on working on the statute's first draft.

To conclude, even if the analyses of indigenous autonomy in the form of TCOs/TIOCs do not fall within the scope of this article, it should be mentioned that of the TCOs/TIOCs, Raqaypampa approved the statute,¹⁸⁸ and Lomerio the first draft.¹⁸⁹

8. Assessment - From Paper to Practice

As seen in this article, the indigenous autonomies in Bolivia still have a long way to go. From the legal perspective, which is the main 'microscope lens' used to observe this new IPs tool in the present article, much concern regards the complexity and the potential arbitrariness of the requirements to be fulfilled by the present and, especially, the future AIOCs.

First and foremost, all three of the present AIOCs have completed and adopted their statutes. Only if approved by a referendum in each AIOC will the statutes be checked by the new Plurinational Constitutional Court. However, the judges were only elected on 16 October 2011, in a tense political atmosphere.¹⁹⁰ In addition, the Court has a backlog of at least three years of work to complete before checking the constitutionality of the AIOC statutes.¹⁹¹

As to the formation of new AIOCs, it is quite worrying that so far no other municipality has organized a conversion referendum.¹⁹² As aforementioned, the necessary prerequisites to obtain the required governmental trusteeship by the Ministry of Autonomy (Viabilidad Gubernativa, Autonomy Law Article 57) may be, first, difficult to prove, and, second, subject to arbitrary judgement. How can thorough evidence of the 'effective existence, representation and implementation of an organizational structure of all IPs concerned' (Autonomy Law Article 58) in one municipality be provided? How can IPs own rules and procedures, which, as seen, are given high recognition in the CPE, be combined with the required "municipality territorial, institutional and financial plan"? In addition to the trusteeship, how can the

¹⁸⁸ Los Tiempos, "Raqaypampa aprobó su estatuto autonómico", Los Tiempos, 29 May 2011, at http://www.lostiempos.com/diario/actualidad/local/20110529/raqaypampa-aprobo-su-estatuto-autonomico_127731_257445.html.

¹⁸⁹ Erbol/AINI, "Pueblo Monkox concluye elaboración de su Estatuto Autonómico", Agencia de Noticias Indígenas Erbol & Agencia Intercultural de Noticias Indígenas de Bolivia, 9 June 2011, at <http://www.indigena.erbol.com.bo/noticia.php?identificador=2147483945768>.

¹⁹⁰ According to Art.20 of the Plurinational Constitutional Court Law No.027/2010, the judges are elected by the whole population. About the tensions, see Página Siete, "Una elección que se convirtió en plebiscito", Página Siete, 14 October 2011, at <http://www.paginasiete.bo/2011-10-15/Opinion/NoticiaPrincipal/16Opi00115-10-11-P720111015SAB.aspx>.

¹⁹¹ Leonardo Tamburini, "Bolivia", in *IWGIA, The Indigenous World 2010* (IWGIA, Copenhagen, 2010), 195-206, at 202.

¹⁹² Anf-Agencia, "De los 337 municipios, sólo 11 asumieron autonomía indígena originario campesina", Los Tiempos, 30 June 2011, at http://www.lostiempos.com/diario/actualidad/nacional/20110630/de-los-337-municipios-solo-11-asumieron-autonomia-indigena-originario_131924_267282.html.

numerical population quota (Base Poblacional) (Autonomy Law Article 58), especially in the Lowlands-but also in the Highlands, where many communities are formed by few hundred persons only - be fulfilled? For instance, the araona people (La Paz) were considering forming an indigenous region with other IPs since they have only 200 members dispersed in six communities.¹⁹³ In sum, the Autonomy Law has apparently complicated the already blurred AIOC constitutional shape even more.¹⁹⁴ In addition, among the pre-requisites required by Article 291 of the Constitution itself, a territory to be called ancestral by the IPs claiming an AIOC may be also extremely difficult (and arbitrary) to prove. Thus, the risk of being stuck in these legal traps is very high. Bolivia has gone far vis-à-vis indigenous policies, but general disappointment may soon cause much frustration leading to potential conflict, as shown in the case of the eighth march for the TIPNIS.¹⁹⁵ In the word of an indigenous leader, IPs are not going to step back.¹⁹⁶ As a matter of fact, they didn't throughout history - why should they do so now? They have just gained an unquestioned (and fair) place in the Bolivian political arena. The eighth (and the upcoming ninth)¹⁹⁷ TIPNIS march is a glaring example of this attitude of continued resistance.

Further than the legal (dangerous) uncertainties, other social, economic and political challenges need to be faced. First, much fear and confusion is shared among IPs due to the aforementioned requirements, especially in the Lowlands.¹⁹⁸ Indeed, only three municipalities' requests out of the 19 admitted for the December 2009 AIOC referendum came from the Amazonian half-moon, in particular, from the department of Santa Cruz only. No formal request was fulfilled by any municipality in Beni or Pando for that referendum.¹⁹⁹ In these departments many IPs communities are dispersed in large territorial areas and/or are in numerical inferiority,²⁰⁰ which would explain the probable lack of information on the AIOCs and its procedure. In addition, in the Oriente, further obstacles are caused by the land disputes between IPs and non-indigenous colonizers, the competing economic interests in non-renewable natural resources,²⁰¹ the demarcation issues of municipalities and departments,²⁰² as well as the territorial discontinuity

¹⁹³ Erbol, "Los araonas quieren unirse a otro pueblo para alcanzar la autonomía Indígena", Erbol Comunicaciones Periódico Digital, 10 April 2011, at <http://www.erbol.com.bo/noticia.php?identificador=2147483943099>.

¹⁹⁴ Carmela Delgado, "La autonomía todavía es vista en etapa de transición", El Deber, 3 April 2011, at <http://www.eldeber.com.bo/2011/2011-04-03/vernotasantacruz.php?id=110402210808>.

¹⁹⁵ See note 119.

¹⁹⁶ See, e.g., the declaration of one indigenous leader: 'No vamos a dar un paso atrás'. Marcela Chuvirú, "Bolivia ...", 71.

¹⁹⁷ The ninth march, to protest against the law that should protect the TIPNIS park, will start in late April 2012. El Día, "Novena marcha en defensa del TIPNIS partirá de Chaparina", 26 March 2012, at http://www.eldia.com.bo/index.php?c=&articulo=Novena-marcha-en-defensa-del-TIPNIS-partira-de-Chaparina&cat=148&pla=3&id_articulo=87894.

¹⁹⁸ See note 169.

¹⁹⁹ Plata, "De Municipio a Autonomía Indígena ...", 252.

²⁰⁰ *Ibid.*, 253.

²⁰¹ Iván Bustillos Zamorano, "Autonomías territoriales bajo 'fuego cruzado'", La Razón, 12 June 2011, at http://www.la-razon.com/version_temp.php?ArticleId=1745&EditionId=850&idp=42&ids=342.

²⁰² La Razón, "15 municipios no cuentan ...".

issues that affect 58.2 per cent of the TCOs/TIOCs in the Amazonian region.²⁰³ In sum, only 4 out of the 36 constitutionally recognized IPs (Article 5 CPE) are actually pioneering the indigenous autonomies. Among these, only the Guaranies are from the Lowlands. In fact, out of the 11 AIOCs, 5 have self-identified as Aymara (Jesús de Machaca, Carangas, Salinas de Garci Mendoza, Pampa Aullagas and Totora); four as Quechua (Charazani, Mojocoya, Tarabuco and Chayanta); two as Guaraní (Charagua and Huacaya); and, finally, one as Uru-chipaya (Chipaya).²⁰⁴

In addition, 17 territorial borders are contested both in the Highlands and the Lowlands.²⁰⁵ In particular, between Coroma (Potosí) and Quillacas (Oruro) the situation is very tense.²⁰⁶ The Orureños even asked the government to militarize and secure the border.²⁰⁷ A draft law on the territorial units (Proyecto de Ley de Unidades Territoriales), which will also rule the settlement and the alteration of the actual borders, was approved by the competent senate commission in April 2011.²⁰⁸ The indigenous organizations, however, have contested it. Notably, the draft neither follows the principle of equal hierarchy among the autonomous territorial units (Article 276 CPE; Article 6, para. II, no.3 Autonomy Law) nor were IPs consulted on this law, albeit affects them (Article 30, para. II, no. 15 CPE).²⁰⁹ As of today, however, the draft law is still under discussion,²¹⁰ notwithstanding the ongoing protests.²¹¹

Another relevant aspect concerns the finances of the municipalities and of the other public and territorial entities. Apparently, due to the global financial crisis, the government has recently announced a lower maximum

²⁰³ Colque and Chumacero, *Informe 2010: Territorios Indígena Originario Campesinos ...*, 108.

²⁰⁴ Plata, "De Municipio a Autonomía Indígena ...", 254.

²⁰⁵ Luis Mealla, "17 conflictos por límites no se resuelven por falta de una ley", *Página Siete*, 21 August 2011, at <http://www.paginasiete.bo/2011-08-22/Nacional/Destacados/19Nac00121.aspx#>.

²⁰⁶ Juan Carlos Treviño, "Gobierno llama a los dirigentes de Oruro tras contundente paro", *El Deber*, 30 August 2011, at <http://www.eldeber.com.bo/2011/2011-08-30/vernotanacional.php?id=110829231029>; La Patria, "Urge una Ley de Unidades Territoriales para delimitación entre Oruro y Potosí", 24 March 2012, at <http://lapatriaenlinea.com/?nota=101825>.

²⁰⁷ Los Tiempos, "Orureños piden militarizar zona de conflicto con Potosí", *Los Tiempos*, 23 August 2011, at <http://www.lostiempos.com/diario/actualidad/nacional/20110823/orurenos-piden-militarizar-zona-de-conflicto-con-138819-284264.html>.

²⁰⁸ Erbol, "Comisión del Senado aprueba proyecto de Ley de Unidades Territoriales", *Erbol Comunicaciones Periódico Digital*, 15 April 2011, at <http://www.erbol.com.bo/noticia.php?identificador=2147483943344>.

²⁰⁹ AINI, "CIDOB rechaza el anteproyecto de Ley de Unidades Territoriales", *Agencia Intercultural de Noticias Indígenas de Bolivia*, 27 April 2011, at <http://www.aininoticias.org/2011/04/cidob-rechaza-el-anteproyecto-de-ley-de-unidades-territoriales>.

²¹⁰ La Prensa, "Senado retrasa trabajo de Autonomías", *La Prensa*, 17 June 2011, at http://www.laprensa.com.bo/noticias/17-6-2011/noticias/17-06-2011_18531.php; *Página Siete*, "Tratarán ley para resolver los conflictos limítrofes", *Página Siete*, 16 August 2011, at <http://www.paginasiete.bo/Generales/Imprimir.aspx?id=265668>. See the recent declarations by Senator Choque at *Noticias de Bolivia*, 2 March 2012, at <http://www.noticias.com.bo/2012/03/02/proyecto-de-ley-unidades-territoriales>.

²¹¹ *El Diario*, "Declaran paro de 24 horas en Cochabamba exigiendo aprobación de Ley de Unidades Territoriales", 22 March 2012, at http://www.eldiario.net/noticias/2012/2012_03/nt120322/nacional.php?n=69&-declaran-paro-de-24-horas-en-cochabamba-exigiendo-aprobacion-de-ley-d.

threshold for the 2012 budgets (between 10 and 13 per cent less than 2011).²¹² Moreover, many mayors have complained about the new Taxes Law No. 154/2011. This law (Article 6) reduces the municipalities' powers to establish new taxes, notwithstanding the increasing demand for public services by the population.²¹³

9. Concluding Remarks

The AIOC's Bolivian odyssey seems still far from being concluded. The evaluation of the AIOC's preliminary achievements and failures in this concluding paragraph is twofold. On the one hand, it has to be assessed whether the AIOC arrangement fulfils some of the (basic) features that might represent an indigenous autonomy. On the other hand, assuming that the AIOC system could work as it stands now on paper, many Herculean labours have still to be performed on the ground, as seen in the previous paragraphs.

As to the former aspect, the AIOC system may formally match many of the aspects identified above to realize an indigenous autonomy. The AIOC is territorially based; it has many exclusive powers, including those of self-definition and management of economic, social, political and cultural development plans (Article 304, para. I, no. 2 CPE); it respects and applies traditional/own rules, even in the formation of the statutes (Article 304, para. I, nos. 1 and 8 CPE); gives space for traditional/own authorities and institutions (Article 304, para. I, no. 23 CPE); has, in principle, fiscal powers (Article 304, para. I, nos. 12, 13 and 14 CPE), and a budget provided by the state (Article 304, para. IV CPE). However, when it comes to indigenous education, health and the exploitation of non-renewable natural resources, in which Bolivia is very rich, the AIOC, as mentioned, enjoys executive powers only (*competencias concurrentes*; Article 303, para. III CPE). In addition, the autonomies' coordination bodies (see section 6, Bolivian Autonomies' Labyrinth) have just started working and the necessary interconnection with the central state administration and political power, is at risk. Moreover, the legal procedure to fully establish an AIOC is extremely complex. On the one hand, it aims to safeguard wide participation and to guarantee the AIOC's legitimacy thanks to a number of democratic mechanisms, e.g., the double referenda and the statute adoption via two-thirds majority by the deliberative council. On the other hand, however, it was probably designed to work assuming a homogenous sociocultural environment, and did not consider

²¹² M. Lazcano and I. Condori, "Debido a la crisis, el Gobierno recorta los techos presupuestarios de municipios y gobernaciones", *La Razón*, 23 August 2011, at <http://www.la-razon.com/version.php?ArticleId=136179&EditionId=2630>; Willy Chipana, "Municipios advierten que recorte presupuestario afectará a obras", *La Razón*, 24 August 2011, at <http://www.la-razon.com/version.php?ArticleId=136245&EditionId=2631>; Aideé Rojas, "Gobierno posterga pacto fiscal en acuerdo con los opositores", *El Deber*, 6 September 2011, at <http://www.eldeber.com.bo/2011/2011-09-06/vernotanacional.php?id=110905233744>.

²¹³ Iván Bustillos Zamorano, "Ley de Clasificación de Impuestos, jaque a las autonomías Municipales: La Asamblea Legislativa debate otra polémica norma", *La Razón*, 19 June 2011, at http://www.la-razon.com/version_temp.php?ArticleId=1773&EditionId=2673&idp=42&ids=347.

mechanisms to overcome potential internal conflicts. This is particularly evident in the current 11 working AIOCs. Perhaps what reins or had reined in the statutes' preparation in those mixed territories such as Charaguain Santa Cruz is also the scepticism about or the fear of the indigenous (peasant native) component. As recently argued in literature with regard to minorities in Europe, adopting a rather pragmatic approach, the autonomy could work better when "ethnically neutral",²¹⁴ "de-ethnicised" and "de-politicised",²¹⁵ i.e., aimed at the development and management of the territory as a whole, prioritizing good governance guarantees.²¹⁶ This concept could probably also help in the case of Bolivia. However, when dealing with a deeply divided society like Bolivia, in which large groups that suffered and still suffer marginalization and heavy discrimination²¹⁷ have recently gained a stronger say within the society, it is arduous to decline IPs' aspiration to (finally) hold the balance of power. Moreover, it is extremely difficult to set aside political implications (and ambitions), especially during times of profound change as in Bolivia. In any case, it is undeniable that the AIOC conversion process, and, in particular, the statutes' adoption, have been overly delayed. In order to speed up matters, a time limit was initially provided (up to two years, i.e., by March 2012; Transitory Disposition 14 of the Autonomy Law), which scared rather than helped indigenous communities to opt for this solution. Instead of a deadline, some (neutral) legal advice could have been provided in order to avoid or sort out the statutes' preparation traps. Obviously, as aforementioned, some a priori problems lie in the municipalities' demarcations or funding.

As to the creation of new AIOCs, the prerequisites required (Viabilidad Gubernativa and Base Poblacional, Articles 57 and 58 of the Autonomy Law, respectively) are definitely too demanding (e.g., the quantity of documentation required from communities without any administrative support), unrealistic (e.g., in the case of the numerically very small peoples, such as the araona mentioned above) and subject to arbitrariness with regard to the evaluation of the governmental trusteeship, as already mentioned. This is instead generating fear among IPs and suggests a general lack of political will to enhance the indigenous autonomy.

In conclusion, Bolivia is running the risk of leaving the indigenous autonomy on paper only, unless some fundamental steps are soon taken to realize it properly. The Bolivian dynamic scenario may, indeed, take us by surprise in the coming years as it did in the past. The institutional reform experienced by

²¹⁴ See Francesco Palermo, "Autonomia territoriale e tutela delle minoranze: Una riflessione critica", in Antonio Reposo, Lucio Pegoraro, Roberto Scarciglia, Maurillo Gobbo, Sergio Gerotto (eds.), *5-6 // diritto della regione, special edition on Federalismo, decentramento e revisione costituzionale negli ordinamenti policentrici* 2009, 181-96, at 196.

²¹⁵ Palermo, "When the Lund Recommendations ...", 662.

²¹⁶ *Ibid.*, 660-61.

²¹⁷ See the case of slavery of *Guaraní* communities in the department of Chaco reported by the Inter-American Commission of Human Rights, "Comunidades Cautivas: Situación del Pueblo Indígena Guaraní y Formas Contemporáneas de Esclavitud en el Chaco de Bolivia", Organization of America States document OEA/Ser.L/V/II, Doc. 58, 24 December 2009, at <http://www.cidh.org/countryrep/ComunidadesCautivas/cautivasindice.sp.htm>.

the Andean state is recent, and necessarily still in progress. The AIOC arrangement may thus potentially fulfil the indigenous aspiration (and right) to autonomy in so far as the following pre-conditions (and most probably, not only these) are met in the short and long term. First, all IPs across the country need to be provided with thorough information and assistance. Second, fair and impartial procedures should be established to guide the competent authorities when checking the prerequisites required by the existing AIOCs and any new ones. Following these, the division of powers between the central level and the peripheries should be clarified and modified, and particular attention should be paid to non-renewable natural resources' exploitation. In addition, as stated in the CPE (Article 305), proper financial resources should be guaranteed to the autonomous units. Last, but not least, conflicting demarcation among municipalities and other territorial units should be promptly resolved.

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