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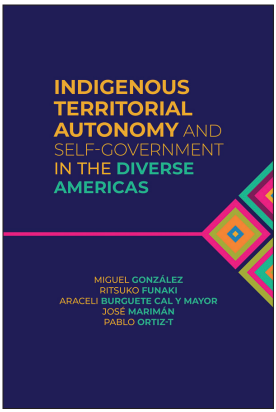

INDIGENOUS TERRITORIAL AUTONOMY AND SELF-GOVERNMENT IN THE DIVERSE AMERICAS

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

María Fernanda Herrera Acuña

Introduction

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

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

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

Political Constitution and Inclusion of Indigenous Peoples

Declaration of Autonomy

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

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

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

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

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

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

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

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

AIOCs: territorial, elective and demographic criteria

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

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

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

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

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

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

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

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

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

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

Powers of the AIOCs

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

Table 3.1. Powers of AIOC Governments

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

Table 3.1. (*continued*)

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

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

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

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

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

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

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

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

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

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

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

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

"Andrés Ibáñez" Framework Law: Clarifications and Criticisms

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

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

Steps to accessing AIOCs

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

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

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

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

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

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

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

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

LMAD and territorial unity

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

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

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

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

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

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

LMAD and statutes

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

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

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

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

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

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

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

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

The plan should include institutional and financial planning:

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

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

LMAD and concurrent powers

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

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

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

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

However, the autonomous statutes are:

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

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

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

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

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

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

LMAD and autonomous financing

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

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

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

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

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

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

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

Conclusion

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

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

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

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

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

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

NOTES

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

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

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

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

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

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

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

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

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

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

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

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

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

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