

## A fruitless attempt towards plurinationality and decolonization? Perplexities in the creation of indigenous territorial autonomies in Bolivia

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**Abstract:** The new Andean constitutionalism centred around the concepts of plurinationality and decolonization tackles centuries of indigenous subordination and strives for the reevaluation of indigenous culture. Territorial autonomy is currently considered a pivotal aspect of materializing these concepts and constitutes one of the most pressing demands of indigenous peoples in Latin America. The revolutionary Bolivian Constitution of 2009 is among the first to offer ways of establishing indigenous territorial autonomies as a form of sub-state territorial authority. Given the legal framework and the fact that three indigenous territorial autonomies (AIOCs) were officially created, Bolivia can be seen as the country with the most advanced conceptualization of indigenous territorial autonomies in Latin America. A closer look at the legal, cultural and administrative realities in Bolivia, however, reveals a different picture. By analyzing national and international law, indigenous *cosmovisión* and policies for implementation, this article points out six multi-layered perplexities regarding indigenous territorial autonomy, namely (1) the AIOCs' inherent subordination to the State, (2) the irreconcilability of the AIOC-system with indigenous ancestral practices, (3) the hierarchization within demodiversity, (4) the sacrifice of indigenous interests for neo-extractivism, (5) the obstruction of the implementation process by the State and (6) the possible trade-off between *de jure* and *de facto* autonomy. We argue that the Bolivian States' self-imposed objective of overcoming colonialism and establishing plurinationality through AIOCs is not fulfilled. While some of the perplexities identified in Bolivia are clearly related to the MAS' political-party interests, others have a conceptual and more abstract nature rooted in the contradiction of overcoming colonialism through the State. These findings might also be of importance for decolonization processes in other countries, such as Ecuador.

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## A. Introduction

Territorial autonomy constitutes one of the most pressing demands of indigenous nations and peoples in Latin America. The Bolivian Constitution of 2009 (*Constitución Política del Estado* – CPE) is among the first to acknowledge this claim and to offer ways of establishing indigenous territorial autonomies as a form of sub-state territorial authority. Given the legal framework provided by the CPE and flanking sub-constitutional laws as well as the fact that the municipality of Charagua officially became the first *autonomía indígena originaria campesina* (AIOC) in January 2017, Bolivia can be seen as the country with the most advanced and comprehensive conceptualization of indigenous territorial autonomies in Latin America.<sup>1</sup> In contrast, Ecuador, having adopted a new constitution open to indigenous territorial autonomy in 2008, has not put them into practice yet.

The new Andean constitutionalism centered around the concepts of plurinationality and decolonization seems to offer a way of reevaluating indigenous culture and overcoming centuries of subordination. Decolonization is a complex of theories developed by Latin American activist-scholars since the 1990s which gained overwhelming influence not only among intellectuals but also among social movements and politicians in the Andean region.<sup>2</sup> In the course of the constitutional change of 2008, Ecuador was declared a plurinational and intercultural State.<sup>3</sup> Similarly, Bolivia was “re-founded” as a plurinational State in 2009.

As Bolivia has currently advanced its subsequent legal framework regarding autonomies further than Ecuador, we concentrate on the Bolivian case. In this article, we analyze national and international law, indigenous *cosmovisión* and policies for implementation in order to examine whether the indigenous territorial autonomy granted via AIOCs in Bolivia constitutes a fruitful attempt towards plurinationality and decolonization. The findings might also be of interest for discussing the chances and pitfalls of indigenous territorial autonomy in other countries in the process of decolonization such as Ecuador.

## B. Bolivia and the Re-Foundation of the country

### I. Evo Morales, the MAS and the “process of change”

When Evo Morales was elected president in 2006, this was considered a political landslide in Bolivia. The democratic election of a self-identifying indigenous former coca-grower as president with 54 % votes share – the largest electoral majority since Bolivia’s return to democracy in the 1980s – meant a partial change of elites and a general turn in the politics

- 1 Cf. *Miguel González*, Indigenous Territorial Autonomy in Latin America: An Overview, *Latin American and Caribbean Ethnic Studies* 10 (2015), p. 17.
- 2 *Pablo Quintero*, Notas sobre la teoría de la colonialidad del poder y la estructuración de la sociedad en América Latina, *Centro de Estudios Interdisciplinarios en Etnolingüística y Antropología Socio-Cultural Papeles de Trabajo* 19 (2010), p.1.
- 3 See Art. 1 (1) Constitución de la República del Ecuador; *Philipp Altmann*, Die Indigenenbewegung in Ecuador. Diskurs und Dekolonialität, Bielefeld 2013, p. 209.

of the country.<sup>4</sup> Morales assumed the presidency after a period of conflict: Since the beginning of the millennium, heterogeneous indigenous organizations, peasants and the urban poor had started to exert pressure against neoliberal governments through frequent protest and social uprising.<sup>5</sup> Focal points of this insurrectional period were the so-called “water war” in 2000 and “gas war” in 2003.

Morales himself and his party Movement towards Socialism (*Movimiento al Socialismo* – MAS) had emerged from a social movement and the trade union of coca leaf growers. Morales had started his political career in the trade union and initially fought for the legalization of the coca leaf as part of the Andean culture. To compete in elections and defend their demands, the MAS was founded in 1999 as a party that unites the different ideological tendencies of nationalism, socialism and indigenism.<sup>6</sup> Morales proclaimed the so-called *proceso de cambio* (process of change), a political project that combined key demands of indigenism with radical democratization, proposed alternative forms of State decentralization and public participation and the rejection of neoliberal capitalism.<sup>7</sup> Within this process, Morales aimed at a “Re-Foundation” of Bolivia which would overcome the legacy of colonial oppression that the indigenous people had suffered.<sup>8</sup> The convocation of a constituent assembly and a revolutionary constitution should be the key instruments to achieve this goal.<sup>9</sup> The indigenous population had been demanding the rewriting of the Constitution for a long time and this claim gained new impetus during the violent protest in the early 2000s.<sup>10</sup>

## II. *Indigenist demands: decolonization and plurinationality*

Bolivia is the country with the highest share of indigenous population in Latin America; somewhere between 62 and 41.7 % of the population auto-identifies as member of an in-

4 Nancy Postero, *The Indigenous State. Race, Politics, and Performance in Plurinational Bolivia*, Oakland 2017, p. 1.

5 Almut Schilling-Vacaflor, *Bolivia's New Constitution: Towards Participatory Democracy and Political Pluralism?* *European Review of Latin American and Caribbean Studies* 90 (2011), p. 7.

6 Susanne Käss, *Sieben Jahre Evo Morales in Bolivien. Bilanz eines selbsternannten Hoffnungsträgers der Indigenen*, *KAS Auslandsinformationen* 12 (2012), pp. 47 et seqq.

7 Fernando Mayorga, *El gobierno de Evo Morales: entre nacionalismo e indigenismo*, *Nueva Sociedad* 206 (2006), p.5; Tom Perreault, *Barbara Green*, *Reworking the spaces of indigeneity: the Bolivian ayllu and lowland autonomy movements compared*, *Environment and Planning D: Society and Space* 31 (2013), p. 54.

8 Klaus Meschkat, *Verfassungsprozesse und soziale Konflikte in den Andenländern: neue Entwicklungen in Bolivien und Ecuador*, [https://www.boell.de/sites/default/files/assets/boell.de/images/download\\_de/demokratie/Verfassungsprozesse\\_Bolivien\\_Ecuador\\_Meschkat.pdf](https://www.boell.de/sites/default/files/assets/boell.de/images/download_de/demokratie/Verfassungsprozesse_Bolivien_Ecuador_Meschkat.pdf) (last accessed on 1 November 2018), p. 2.

9 Postero, note 4, p. 1.

10 Postero, note 4, pp. 1, 44.

indigenous nation.<sup>11</sup> The indigenous population in Bolivia is not a monolithic group but consists of at least 36 different nations recognized by the Bolivian Constitution. Generally speaking, one can differentiate between the indigenous population originating from the Bolivian highlands – the *altiplano* – and the lowlands or so-called *media luna* (i.e. half moon, due to the shape of the lowland departments Pando, Beni, Santa Cruz and Tarija). The majority of indigenous nations origin from the *altiplano*, the Quechua (31 % share) and Aymara (25 % share) being the biggest of them, while the numerous indigenous nations of the *media luna* are significantly smaller and more diverse, with the biggest group Chiquitanos only making up 2.4 % and Guaranís roughly 1.6 % of the indigenous population.<sup>12</sup>

Ever since the Colonization, Bolivia's indigenous population had suffered marginalization, exploitation and oppression. After the country gained independence in 1825, white-mestizo elites dominated political affairs and the indigenous population was virtually absent from the political arena. Thus, the MAS' indigenist agenda was revolutionary. The indigenist elements of the process of change are centered around the concepts of plurinationality and decolonization. Both notions were introduced by Quechua and Aymara intellectual and political leaders and express criticism towards the liberal republic established by a Spanish-criolla elite in the 19<sup>th</sup> century.<sup>13</sup> One key concept within the discussion is *colonialidad del poder* (coloniality of power) postulated by Peruvian sociologist Aníbal Quijano. He argues that the new Latin American States that became independent from the colonial powers continued to be colonial States as they retained colonial characteristic in the power structures within the society. It was the white minority that took over power in the new founded States and thus the indigenous and black majorities still lived under the same conditions of coloniality.<sup>14</sup> A process of decolonization means overcoming these legacies of coloniality of power and revalorizing, recognizing and re-establishing indigenous traditions and culture within the institutions and principles that govern the society. Thus, decolonization essentially is the attempt of re-imagining the nation as indigenous.<sup>15</sup> Strongly intertwined is the notion of plurinationality which proposes a new concept of nation composed of various nationalities within one State. Indigenous people demand to be recognized as

11 While in 2001, 62 % of the population auto-identified as indigenous, this number dropped significantly to only 41.7 % in the following census in 2012. There are various explications for this phenomenon. It is assumed that a change in the question, which in 2012 contained the word "peasant", may have contributed as well as a new sense of empowerment and new self-understanding especially among Aymara and Quechua, cf. *Postero*, note 4, pp. 182 et seqq.; *Mario Antonio Haibara Aguilera*, Etnicidad en los censos de Bolivia, Instituto Nacional de Estadística, <https://www.inei.gov.pe/media/dme/3.MarioHaibara.pdf> (last accessed on 1 November 2018).

12 *Perreault*, Green, note 7, p. 46.

13 *Salvador Schavelzon*, Plurinacionalidad y Vivir Bien/Buen Vivir. Dos conceptos leídos desde Bolivia y Ecuador post-costituyentes, Quito 2015, p. 72 et seqq.

14 *Aníbal Quijano*, El "Movimiento Indígena" y las cuestiones pendientes en América Latina, Review (Fernand Braudel Center) 29 (2006), pp. 194 et seqq.

15 *Roberta Rice*, How to Decolonize Democracy: Indigenous Governance Innovation in Bolivia and Nunavut, Canada, *Bolivian Studies Journal* 22 (2016), p. 223.

original nations and nationalities and thus as political subjects with collectives' rights, especially political-territorial rights. Consequently, plurinationality is the acknowledgment of the multi-ethnic and multi-societal character of States with indigenous population, enabling the co-existence of various nations within one State.<sup>16</sup>

### III. Resource sovereignty and nationalization of hydrocarbons

The second major pillar of the MAS' political project rests on nationalist ideas, especially centered around the topic of natural resources. Today, Bolivia accounts for Latin America's second biggest reserve of natural gas<sup>17</sup> and the world's largest lithium reserve, a metal that will gain overwhelming importance since ultra-light lithium batteries are needed to power cell phones and hybrid and electric mobility.<sup>18</sup>

The sovereignty over natural resources is a powerful master narrative in Bolivia. Throughout history, sectors of the Bolivian society have felt that the country was being looted by colonists, foreign investors and neighboring countries.<sup>19</sup> Two Bolivian presidents preceding Morales were expelled from the government by social movements and violent protest over the demand of nationalizing natural resources in the already mentioned gas and water wars.<sup>20</sup> Within this context, Morales made the promise of nationalizing hydrocarbons a central component of his electoral campaign,<sup>21</sup> a factor that helped him to consolidate the support of wide sectors of the society,<sup>22</sup> also outside of indigenous circles. Morales inter-linked the indigenist elements of his political project with natural resources by proposing an Andean socialist economy. This model would use the wealth created from natural resources to transform the country economically and socially while pursuing environmentally sensitive development and respecting sovereign control of indigenous peoples and nations over their territory.<sup>23</sup>

16 Pavel Camilo López Flores, Disputa por la autonomía indígena y la plurinacionalidad en Bolivia: Resistencia comunitarias al neoextractivismo y al Estado nación, in: Pavel C. López Flores/Luciana García Guerreiro (eds.), Pueblos Originarios en lucha por las autonomías: Experiencias y desafíos en América Latina, Buenos Aires 2016, pp. 119 et seqq.

17 Annegret Mähler, Bolivianische Erdgaspolitik im Wandel, Lateinamerika Analysen 16 (2007), p. 128.

18 Postero, note 4, p. 105; Benjamin Kohl, Linda Farthing, Material constraints to popular imaginaries: The extractive economy and resource nationalism in Bolivia, Political Geography 31 (2012), p. 232.

19 Kohl, Farthing, note 18, pp. 225 et seqq.

20 Pablo Stefanoni, El nacionalismo indígena en el poder, Observatorio Social de América Latina 6 (2006), p. 41.

21 Mayorga, note 7, p. 9.

22 Kohl, Farthing, note 18, pp. 225 et seqq.

23 Kohl, Farthing, note 18, p. 233

#### IV. Constituent assembly and new constitution

Morales tackled his key topic of re-founding Bolivia through a new constitution only 6 weeks after he had taken office. Yet both the constituent assembly and the process of drafting the constitution were controversial and sometimes straight out scandalous: the process was characterized by power struggles between the MAS and opposition, attempts of blocking and sabotaging the project, political and social turmoil in the streets and widespread violence in the country.<sup>24</sup>

For the purpose of this article, the struggle about autonomies in the course of the constituent assembly is worth mentioning. It is important to point out that demands for autonomy were not only raised by indigenous peoples in Bolivia but also by *media luna* departments. Generally speaking, the quest for autonomy pursued by different groups in Bolivia differ substantially from one another: while the indigenous peoples and nations of the *altiplano* try to re-establish an imagined cultural space of the indigenous past and seek for an autonomy within the national State, the demands raised by the lowlands are linked to economic interest, backed up by land-owning elites and business class and have a rather a secessionist character.<sup>25</sup> The *media luna's* claims grew especially strong during the constituent assembly when the prosperous low-lands declared their secessionist autonomy from the Bolivian highlands in an illegal referendum.<sup>26</sup> The MAS government fought these struggles for autonomy in a violent way in the beginning and appropriated them only at a later point of the constituent assembly to gain approval and support for the new CPE.<sup>27</sup>

Finally, the new Bolivian Constitution was approved via public referendum in January 2009. It states that Bolivia is a plurinational State (Preamble, Art. 1 CPE) committed to decolonization (Preamble, Art. 9 (1) CPE). Furthermore, Art. 1 CPE stipulates that, inter alia, the State of Bolivia is “decentralized and with autonomies”. With respect to development and economy, the new Constitution implements resource extractivism as the cornerstone of the Bolivian development project.

24 Miguel A. Buitrago, *Bolivians neue Verfassung – ein Land vor der Zerreißprobe*, GIGA Fokus (2007), p. 2 et seqq.; Robert Lessmann, *Das neue Bolivien. Evo Morales und seine demokratische Revolution*, Zürich 2010, p.13 et seqq.; Postero, note 4, pp. 41 et seqq.

25 Perreault, Green, note 7, pp. 53 et seqq.

26 Postero, note 4, p. 48.

27 Stefan Jost, *Politische Neugründung in der Sackgasse*, GIGA Fokus (2008), p. 2; Miguel Ángel Foronda, *Referéndum autonómico: lo que está tras suyo*, [http://www.la-razon.com/suplementos/animal\\_politico/Referendum-autonomico\\_0\\_2347565280.html](http://www.la-razon.com/suplementos/animal_politico/Referendum-autonomico_0_2347565280.html) (last accessed on 1 November 2018).

## C. Territorial autonomy

### I. Indigenous peoples and territory in Bolivia

#### 1. Double function of territory

The issue of land has always been in the center of the conflict between indigenous peoples and the State in Latin America. Since the 1970s, the conception of land has changed within indigenous movements all over Latin America towards the notion of an ethnically founded territoriality. In this conception, land has a double function: it provides not only the economic basis for production and sustenance, but also the symbolic space for the reproduction of the ethnic and cultural identity.<sup>28</sup> The latter function parts from an understanding of the relationship between man and land differing substantially from western notions. According to indigenous Andean worldview, the *Pachamama*, as personified Mother Earth, is the source of all life. The human being forms part of *Pachamama*, is in constant interaction with her and cannot exist without her.<sup>29</sup> Consequently, territory is among the most pressing demands of indigenous peoples and nations.<sup>30</sup> In this context, indigenous autonomy is not only perceived as the possibility of governing and administrating the territory according to indigenous rules and customs but also to preserve the cultural identity.

Indigenous autonomy is conceptualized as a concrete proposal of materializing decolonization within the territorial structure and organization of the plurinational State. Autonomy can be a way of emancipating and liberating indigenous peoples and nations from colonial institutions and the market economy. The resulting creation of a plurality of spaces of self-determination and self-governance would implicate a new understanding of nation that breaks with the monopoly of the monocultural modern State.<sup>31</sup>

28 *Altmann*, note 3, pp. 211 et seqq.

29 *Raúl Llasag Fernández*, *Derechos de la naturaleza: una mirada desde la filosofía indígena y la Constitución*, in: Carlos Espinosa Gallegos-Anda/Camilo Pérez Fernández (eds.), *Los Derechos de la Naturaleza y la Naturaleza de sus Derechos*, Quito 2011, pp. 78 et seqq.

30 *Consuelo Sánchez*, *Autonomía y pluralismo. Estados plurinacionales y pluriétnicos*, in: Miguel González et al. (eds.), *La autonomía a debate. Autogobierno indígena y Estado Plurinacional en América Latina*, Quito 2010, p. 265.

31 *López Flores*, note 16, p. 130; *Raúl Prada Alcoreza*, *Autonomías y descolonización*, in: Pavel C. López Flores/Luciana García Guerreiro (eds.), *Pueblos Originarios en lucha por las autonomías: Experiencias y desafíos en América Latina*, Bueno Aires 2016, p. 70; *Diego Laurenti Sellers*, *Autonomía Indígena Originaria Campesina en tierras altas de Bolivia*, *Revista Izquierdas* 36 (2017), p. 224.

## 2. Territorial organization in the *altiplano*

Indigenous peoples and nations in the *altiplano*<sup>32</sup> traditionally organize according to the system of the *ayllu*, a community inhabited by extended family and kin groups.<sup>33</sup> The *ayllu* is both territorial unit and social system and represents the cell of social life in the Andes. Its political system is centered around communal values and a rotation-based land tenure policy. Within the *ayllu*, there are *comunidades* (communities) consisting of various *sayañas* (in Aymara) or *tasa jall'pa* (in Quechua), indivisible units of land a family needs for their own sustenance. This land is normally divided into different parts that are located in different climatic zones within the *suyo* (union of two complementary *ayllus*) or *marka* (union of various *ayllus*) to ensure amplified crop.<sup>34</sup> The organization of indigenous territory in the *altiplano* is characterized by a high degree of continuity as the structure of the *ayllu* was generally maintained through colonial times and even after the agrarian reform of 1953.<sup>35</sup>

## II. Territorial Autonomies within CPE and national law

### 1. Legal framework

The legal framework for indigenous territorial autonomies in Bolivia is mainly determined by the CPE and the Autonomy Law (*Ley Marco de Autonomías y Descentralización – LMAD*).<sup>36</sup> In general, Art. 269 (2) CPE states that Bolivia is organized territorially into departments, provinces, municipalities and indigenous originary peasant territories (*territorios indígena originario campesinos – TIOCs*)<sup>37</sup>. Furthermore, Art. 1 CPE stipulates that, inter alia, the State of Bolivia is “decentralized and with autonomies”. Art. 6 (2) No 2 LMAD defines “administrative decentralization” as the transfer of competences from a public body to another one of the same administration, which is hierarchically inferior. In contrast, pursuant to Art. 6 (2) No 3 LMAD autonomy is to be understood as the “governmental quality” (*cualidad gubernativa*) of a territorial unit that is equal in rank to other autonomous territorial entities. On the level of autonomous territorial entities, one must make a distinction between departmental (Art. 277–279 CPE, Art. 30–32 LMAD), regional (Art. 280–282 CPE,

32 Here we only concentrate on indigenous territorial organization in the Andean highlands. As pointed out before, the indigenous nations in Bolivia are not homogenous. Therefore, in the lowlands there are other systems of territorial organization to be found.

33 Arturo Urquidi, *Las comunidades indígenas en Bolivia*, Cochabamba 1970, p. 122 et seqq.

34 Laurenti Sellers, note 31, pp. 226 et seqq.

35 Juliana Ströbele-Gregor, *Politische Kultur der Aymara und Quechua in Bolivien – Formen des eigenständigen Umgangs mit der Moderne in: Max Peter Baumann (ed.), Kosmos der Anden*, München 1994, p. 467.

36 *Ley N° 031* of 19 July 2010.

37 TIOCs are collective land ownership units that prior to the entry in force of the CPE in 2009 were called communal originary territories (*tierras comunitarias de origen*).

Art. 19–24 and 37–41 LMAD), municipal (Art. 283–284 CPE, Art. 33–36 LMAD) and indigenous autonomies, i.e. AIOCs (Art. 289–296 CPE, Art. 42–48 LMAD). Art. 276 CPE clarifies that the particular autonomous territorial entities shall not be subordinate to each other and shall have equal constitutional rank.

Obtaining autonomous status is not an automatism. The creation of the different autonomous territorial units rather is the result of specific procedures defined by the LMAD. Hence, one can say that, in accordance with the Constitution, two distinct political and administrative systems are operating in parallel across Bolivia:<sup>38</sup> departments, provinces, municipalities and TIOCs within the decentralized regime on the one hand and the aforementioned autonomous territorial entities on the other hand.

## 2. Prerequisites and creation process of an AIOC

As mentioned above, an AIOC is one of the autonomous territorial entities provided by the legal framework. An AIOC constitutes a sort of special indigenous autonomy that is qualitatively different to the other autonomy models.<sup>39</sup> While the other types of autonomy are aligned with liberal democratic processes of decentralization, AIOCs are intended as a form of reconfiguring the liberal State.<sup>40</sup> Pursuant to Art. 289 CPE indigenous autonomy consists in self-governance as an exercise of free determination of the indigenous originary peasant nations and peoples (*naciones y pueblos indígena originario campesinos*, NPIOCs) whose population shares territory, culture, history, languages and own juridical, political, social and economic organization or institutions. However, it is important to clarify that indigenous autonomies – as well as the other types of autonomy – do not represent a form of sovereignty or separatism from the Bolivian national State.<sup>41</sup>

The two central constitutional prerequisites are outlined in Art. 290 CPE, according to which the creation of an AIOC requires an ancestral territory currently inhabited by those peoples and nations and a self-governance that is exercised according to their norms, institutions, authorities and procedures. Further prerequisites are laid down in Art. 56–58 LMAD corresponding to the particular entity entering the creation process.<sup>42</sup>

The Constitution and the law foresee three different possibilities to create an AIOC. Pursuant to Art. 291 (2) CPE and Art. 44 LMAD, an AIOC can be established via conver-

38 *Jean-Paul Faguet*, Impacts and Consequences of Autonomies in Bolivia: Elements for a Discussion, IDB Policy Brief No. 122 (2011), p. 7.

39 Cf. *Faguet*, note 38, p. 7.

40 *Aaron Augsburger, Paul Haber*, Constructing Indigenous Autonomy in Plurinational Bolivia. Possibilities and Ambiguities, *Latin American Perspectives*, online first (2018), p. 2

41 *Jason Tockman, John Cameron*, Indigenous Autonomy and the Contradictions of Plurinationalism in Bolivia, *Latin American Politics and Society* 56 (2014), p. 51.

42 Cf. *Alexandra Tomaselli*, Indigenous Peoples and their Right to Political Participation, *Baden-Baden* 2016, p. 365.

sion of a municipality, a TIOC or a region<sup>43</sup>. Consequently, the territorial boundaries of the once created AIOC correspond to those of the converted territorial entity. The conversion of a municipality constitutes the first and primary path towards the creation of an AIOC.<sup>44</sup> To date, two of the three fully established AIOCs are the result of the conversion of municipalities (Charagua and Uru Chipaya) while one (Raqaypampa) took the TIOC path.<sup>45</sup>

In general, the conversion procedure is complex and laid out in detail in the Art. 50–63 LMAD. Concrete potential perplexities in the creation of AIOCs will be addressed later in this article.<sup>46</sup> Suffice here to outline the basic steps of the conversion procedure that consists of one initial and four additional steps.<sup>47</sup> The process is initiated by a referendum on the conversion into an AIOC (or consultation in the case of TIOCs) held within the territorial entity. If the yes vote obtains the absolute majority of the votes, the four additional steps follow. First, the NPIOCs of the territorial entity will have to convene a deliberative body (*órgano deliberativo*) that, second, has the mandate to draft an autonomy statute, effectively a form of indigenous “miniature Constitution”. Once adopted by a two third majority of the deliberative body, in a third step, the statute is subject to a constitutional review by the Plurinational Constitutional Court (*Tribunal Constitucional Plurinacional* – TCP). Fourth and finally, if approved by the TCP, another referendum on the statute will be held. After a successful referendum the AIOC will come into effect once its governing body is established, cf. Art. 55 LMAD.

### 3. Competences of the AIOCs

The allocation of competences between the State and the AIOC results from the general provisions laid down in Art. 297–305 CPE. Pursuant to Art. 303 CPE, the competences of an AIOC primarily correspond to the converted territorial unit, i.e. municipality, TIOC or region. In principle, there are four types of competences: prerogative (*competencias privativas*), exclusive, concurrent and shared. Except for the prerogative competences, which are reserved to the central level of the State, Art. 304 CPE reproduces this system of allocation of competences with respect to the AIOC. In general, AIOCs have exclusive competence over the definition and management of their own forms of economic, social, political, orga-

43 Pursuant to Art. 280 (1) CPE and Art. 19 LMAD a region is composed of various municipalities or provinces that have geographic continuity within the boundaries of a department.

44 Jason Tockman, John Cameron, Wilfredo Plata, *New Institutions of Indigenous Self-Governance in Bolivia: Between Autonomy and Self-Discipline*, Latin American and Caribbean Ethnic Studies 10 (2015), p. 40.

45 Jason Tockman, *Eliding consent in extractivist states: Bolivia, Canada, and the UN Declaration on the Rights of Indigenous peoples*, The International Journal of Human Rights 22 (2018), p. 329.

46 See below D. V.

47 Cf. Tomaselli, note 42, p. 365. The creation of the AIOC Uru Chipaya outlined by Marcelo Miguel Silva Mollinedo, *Análisis del estatuto autonómico indígena originario de la nación Uru Chipaya*, Revista Jurídica Derecho 6 (2017), p. 139 et seqq. may serve as a concrete example for the completion of the steps.

nizational and cultural development, Art. 304 (1) No. 2 CPE. Furthermore, for the purpose of this article, the allocation of competences vis-à-vis natural resources is worth mentioning. Art. 349 and Art. 359 CPE spell out that natural resources and hydrocarbons “are property of the Bolivian people” and that the State has control over them. Admittedly, Art. 304 (1) No 3 CPE establishes the AIOCs’ exclusive competence over the management and administration of renewable natural resources (see also Art. 403 (1) CPE). However, Art. 298 (2) No 4 CPE postulates that (non-renewable) natural resources, especially minerals like lithium, fall under the exclusive competence of the State. The State may transfer regulatory and administrative authorities to the AIOC but retains exclusive legislative authority. Moreover, the nationalized hydrocarbon sector (cf. Art. 359–368 CPE) falls under the prerogative competence of the central State including legislative, regulatory and administrative authority. President Morales reaffirmed the central State’s jurisdiction over subsurface resources in Bolivia when formally receiving the autonomy statute of the Uru people in Chipaya in 2011.<sup>48</sup>

#### 4. *Current situation of AIOCs*

The creation of AIOCs is an ongoing process. Overall, as of June 2017, 34 municipalities and TIOCs have entered the process – the Guaraní municipality of Charagua, the Uru municipality of Chipaya and the Quechua territory of Raqaypampa being the only entities successfully converted into AIOCs.<sup>49</sup> The rest are at varying stages of the process. However, several municipalities have suspended it for an indefinite time.<sup>50</sup> Others, that initially showed interest in indigenous autonomy failed to meet the formal prerequisites for the first round of referenda, which was to coincide with national elections in December 2009.<sup>51</sup>

### III. *Preliminary conclusion*

Summing up, Bolivia has experienced radical changes in the last 20 years and indigenous matters gained importance in the political sphere. According to the findings above, Bolivia has responded to the key demand of indigenous peoples, the right to land, by enshrining provisions on autonomy in its Constitution and sub-constitutional laws. AIOCs seem to fulfil indigenous peoples’ and nations claim for a double-functioned territory. At first glance,

48 Los Tiempos, Evo advierte que autonomía no da derecho sobre recursos, <http://www.lostiempos.com/actualidad/nacional/20111228/evo-advierte-que-autonomia-no-da-derecho-recursos> (last accessed on 1 November 2018). For the translation see *Tockman, Cameron*, note 41, p. 54: “In the constitution, it says that natural resources belong to the administration of the Plurinational State. In some regions, they are trying to create confusion [...] some of our brothers say that because they have indigenous first peoples autonomy they are entitled to the natural resources. These, especially the hydrocarbons, metal and nonmetal resources, belong to the national government.”

49 *Tockman*, note 45, p. 329.

50 Cf. *Tockman, Cameron, Plata*, note 44, p. 41.

51 *Tockman, Cameron*, note 40, p. 53.

Bolivia makes a big step towards the self-imposed goals of decolonization and plurinationality by granting indigenous autonomy. Yet, a closer look may reveal a different picture. The analysis of the legal, cultural and administrative realities in Bolivia exposes six multi-layered perplexities regarding indigenous territorial autonomy.

#### D. Perplexities in the creation of AIOCs

##### I. AOICs' inherent subordination to the State

When looking at the legal framework for indigenous territorial autonomy, it is striking that central provisions are explicitly subject to constitutional limitation. Art. 2 and 290 (2) CPE underline that indigenous self-governance must be exercised “in harmony” or “in accordance” with the Constitution and the law. Art. 292 CPE states that the elaboration of the AIOCs' autonomous statutes, although based on indigenous norms and procedures, must be compatible with the CPE and the law. This leads Tockman et al. to the conclusion that “AIOCs should be understood as administrative units that comply with and reproduce the unitary state.”<sup>52</sup>

From a rule of law perspective, the priority of the Constitution and the law over indigenous self-governance is necessary to ensure the constitutional State. However, via the constitutional limitation clauses, the State retains final control over the creation and administration of AIOCs. Consequently, the indigenous autonomy established under the CPE is inherently subordinated to the national State.

This finding illustrates a fundamental tension in the process of fostering decolonization through the establishment of a plurinational State. According to the concept of coloniality of power, the State in Latin America is not only a relic of colonialism but continues to be fundamentally colonial and colonizing.<sup>53</sup> Altmann argues that a decolonial State cannot exist because the State is per se a colonial construct; every State continues to be a colonial State which will be unwilling to grant meaningful autonomy and territorial rights.<sup>54</sup> Plurinationality necessarily challenges the common idea of the monocultural State and thus questions the concept per se. Therefore, the plurinational State is a paradox as it assumes the existence of the very concept it seeks to overcome.<sup>55</sup>

52 Tockman, Cameron, Plata, note 44, p. 39.

53 Rita Laura Segato, Aníbal Quijano y la perspectiva de la colonialidad del poder, in: Aníbal Quijano (ed.), *Des/colonialidad y bien vivir. Un nuevo debate en América Latina*, Lima 2014, pp. 57 et seqq.; Altmann, note 3, p. 288.

54 Philipp Altmann, Sumak Kawsay as an Element of Local Decolonization in Ecuador, *Latin American Research Review* 52 (2017), p. 749 et seqq.

55 Schavelzon, note 13, p. 167

## II. Irreconcilability of the AIOC-system with indigenous ancestral practices

As pointed out before, AIOCs must be compatible with the Bolivian Constitution. Notwithstanding, indigenous ancestral practices differ fundamentally from the republican State, politics and democracy spelled out in the CPE.

The political and social organization of Andean indigenous peoples and nations<sup>56</sup> is tied to their living space; the arid, cold and adverse nature of the *altiplano*. In order to survive in the hostile environment, the communities adopted the principles of reciprocity, solidarity, honesty, consent, dualism and redistribution of goods which continue to be the basis of social relationships until today.<sup>57</sup> The political system and decision-making procedures of the *ayllus* follow these principles. For example, political offices are assigned to members of the community through a system of rotation, closely tied to an ancient practice of crop and agricultural rotation that had to be employed to cultivate the hostile *altiplano*. According to the principle of duality, the married couple is the basic unit of political life. Positions of authority are held by couples and community members enter in the process of rotation only when they get married and start to cultivate their own land.<sup>58</sup>

The *asamblea* (assembly), the meeting of the heads of the families, is the most important decision-making organ within the *ayllu*. Within the *asamblea*, everything is decided through the principle of consent and open ballot system because the reunion had the task of making people overcome differences and ensure cohesion within the community, which was necessary for survival.<sup>59</sup> The heads of the *asamblea* combine judicial, executive and legislative powers.<sup>60</sup> Furthermore, they serve as an intermediary between the *ayllu* and superior beings. As traditional offices are closely linked to ritual festivities and have religious functions, secularization is impossible.<sup>61</sup>

This short overview shows that the ancestral practices of decision-making of Andean indigenous peoples and nations are irreconcilable with the liberal conception of democracy. Yet, due to the general priority of the Constitution, the AIOCs are obliged to adapt liberal

56 Again, we concentrate on the indigenous peoples and nations in the *altiplano*. Ancestral practices of the indigenous peoples and nations in the lowlands differ fundamentally from those of the *altiplano*, cf. *Augsburger, Haber*, note 40, p. 9.

57 *Ingrit Bettin*, *Weltbild und Denken in den Zentral-Anden*, in: Max Peter Baumann (ed.), *Kosmos der Anden*, München 1994, p.17 et seqq.

58 *Laurenti Sellers*, note 31, pp. 225 et seqq.; *Jason Tockman*, *The Hegemony of Representation: Democracy and Indigenous Self-government in Bolivia*, *Journal of Politics in Latin America* 9/2 (2017), p. 133.

59 *Ströbele-Gregor*, note 35, pp. 469 et seqq.

60 The heads of the *asamblea* serve as judges within the *ayllu*. As the peoples and nations do not have codified laws but decide case by case, every judgement entail also a legislative act, cf. *Juliana Ströbele-Gregor*, *Culture and Political Practice of the Aymara and Quechua in Bolivia. Autonomous Forms of Modernity in the Andes*, *Latin American Perspectives* 23/2 (1996), pp. 78 et seqq.

61 *Ströbele-Gregor*, note 60, pp. 78 et seqq.

principles such as the division of powers (Art. 12 CPE) and secular political offices (Art. 4 sentence 2 CPE) even though this is fundamentally inconsistent with the ancestral ruling through the *asamblea*.

### III. Hierarchization within demodiversity

Pursuant to Art. 11 (1) CPE, Bolivia adopts three varieties of democracy: participative, representative and communitarian democracy, the latter being the indigenous form of democracy. Thus, the CPE establishes *demodiversidad* (demodiversity), a system of co-existence of a variety of forms of democracy besides liberal democracy, the one that has become mainstreamed around the world.<sup>62</sup> Demodiversity is a concept entangled with plurinationality and decolonization. The notion acknowledges the validity of diverse forms of deliberation and decision-making, ranging from individual vote to consent, from elections to rotation system, from running for office to having the obligation of taking it.<sup>63</sup> The objective of demodiversity is complementing and enriching liberal democracy rather than replacing it.<sup>64</sup>

Through the constitutional consecration of demodiversity, the Bolivian State acknowledges the legitimacy of indigenous forms of decision-making and politics. The practices, institutions and concepts of the 36 indigenous peoples and nations officially complement the liberal democratic system from which they were excluded for so long.<sup>65</sup> This leads Santos to the conclusion that Bolivia has one of the most advanced constitutional formula regarding democracy in the world.<sup>66</sup> Notwithstanding, in contrast to what the CPE postulates, these types of democracy are not equally important and valid, as the process of AIOC creation shows.

As set out above, the creation of an AIOC requires a specific expression of the willingness of the NPIOCs. Art. 290 (1) CPE foresees that this mode of free determination is implemented via consultation, while pursuant to the LMAD different forms of the expression of willingness apply according to the particular territorial entity to be converted into an AIOC, i.e. consultation or referendum. In any case, pursuant to Art. 54 (1) LMAD the final decision about the autonomy statute must be made via referendum. Art. 12 of the Electoral Law (*Ley del Régimen Electoral*)<sup>67</sup> defines “referendum” as a constitutional mechanism of direct and participatory democracy through which citizens decide on specific topics by universal suffrage. Put differently, the CPE makes the referendum the decisive mechanism for the creation of an AIOC. As a consequence, the creation process mixes the three varieties of

62 *Antoni Aguiló Bonet*, *Descolonizar la democracia: apuntes sobre demodiversidad y nuevo constitucionalismo en Bolivia*, Astrolabio. Revista internacional de filosofía 19 (2017), p. 27.

63 *Boaventura de Sousa Santos*, *Refundación del Estado en América Latina. Perspectivas desde una epistemología del Sur*, Lima 2010, p. 98.

64 *Bonet*, note 62, p. 33.

65 *Bonet*, note 62, p. 32.

66 *De Sousa Santos*, note 63, p. 99.

67 *Ley N° 026* of 30 June 2010.

democracy in a peculiar and confusing way: In order to fully exercise communitarian democracy within an AIOC, people have to make use of mechanisms of direct democracy – namely referenda – which follow the logic of representative democracy – namely secret individual vote and majority decision – within the territorial entity corresponding to the system of representative democracy.

This leads to a hierarchization of the varieties of democracy where the majority of individual secret votes is decisive, subordinating communitarian to representative democracy.<sup>68</sup> Thus, not only does the mandatory referendum reproduce and perpetuate the hierarchization, but it also underpins the perceived supremacy of liberal democracy that demodiversity is trying to overcome. Consequently, demodiversity might be enshrined in the CPE at first sight, but it loses its revolutionary potential when put into practice.

#### *IV. Sacrificing indigenous interests for neo-extractivism*

Bolivia is the country most dependent on the exportation of raw materials in Latin America. In 2016, 95 % of the exported goods were raw materials<sup>69</sup>, 70 % of which were mining products and hydrocarbons.<sup>70</sup> The question of resource extraction holds further potential to conflict with indigenous territorial autonomy. By establishing the aforementioned Andean socialist economy, the Morales Administration tries to harmonize the need for extracting the State's resources on the one hand and indigenous autonomy rights on the other. However, it becomes clear that the Bolivian neo-extractivist State model is incompatible with the idea of promoting indigenous rights in the light of the principle of free, prior, and informed consent (FPIC) and the concept of *vivir bien*.

##### *1. Neo-extractivism in Bolivia*

Commonly, Bolivia is labelled a neo-extractivist State. Neo-extractivism is an economic model installed by the leftist or progressive governments that ruled a majority of Latin American countries in the first decade of the new millennium. It stands in the tradition of the classic extractivism, an economic system oriented towards the exploitation and export of unprocessed natural resources. The fundamental difference between the neo-extractivist model and the traditional system is the active engagement of the State. The natural resources are often nationalized and the resource rents are used to finance social programs, thus interlinking extractivism and social policies. Consequently, neo-extractivism perpetu-

68 *Pere Morell i Torra*, *Disputar la autonomía: crónica etnopolítica del referéndum de aprobación del Estatuto de Autonomía Guaraní Charagua Iyambae*, *Cuestión Agraria* 3 (2017), p. 70.

69 ECLAC, *Statistical Yearbook for Latin America and the Caribbean 2017*, <https://www.cepal.org/en/node/45607> (last accessed on 1 November 2018), p. 40.

70 IBCE, *Bolivia: Principales productos exportados al mundo Gestión 2016 (Datos preliminares)*, <http://ibce.org.bo/documentos/informacion-mercado/2016/Bolivia-Principales-productos-exportados-al-mundo-gestion-2016.pdf> (last accessed on 1 November 2018).

ates Latin America's dependence on natural resources, whereas it confers the extractivism certain legitimation and links it to a discourse of national development.<sup>71</sup>

## 2. FPIC

FPIC is a fundamental component of indigenous self-determination. It is featured in different international legal instruments, most prominently in the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) and the ILO Convention 169. For instance, in the context of extractivism, the central provision of Art. 32 (2) UNDRIP postulates that

*“States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.”*

The legal quality and contours of FPIC, however, remain ambiguous and contested. With regards to its legal content, FPIC requires States, at a minimum, to consult indigenous nations and peoples before implementing decisions affecting their interests. A more radical approach, in contrast, demands that States should obtain consent and in the case of its absence refrain from implementing the measure at issue.<sup>72</sup> When it comes to the legal quality of FPIC, it must be noted that UNDRIP as such does not constitute an international legally binding instrument, whereas the ILO Convention 169, by contrast, constitutes an international convention with binding legal effect. Both legal quality and content are subject to international practice, especially international jurisprudence, that helps to shed light on FPIC as a legal mechanism.

One could assume that the State of Bolivia, underlining its plurinational and indigenous character, follows a radical approach of FPIC to promote indigenous self-determination. Yet, on the contrary, the Morales Administration privileges a more restrictive approach to FPIC over a consent-based understanding of the mechanism, which became especially manifest in the course of the TIPNIS controversies.<sup>73</sup> Indeed, when looking at the domestic legal framework, a more rigid approach stands more to reason. Art. 403 (1) CPE recognizes the NPIOCs' right to prior and informed consultation – and not consent – in the context of

71 Eduardo Gudynas, Der neue progressive Extraktivismus in Südamerika, in: Der Neue Extraktivismus – Eine Debatte über die Grenzen des Rohstoffmodells in Lateinamerika, Forschungs- und Dokumentationszentrum Chile-Lateinamerika e.V. & Rosa-Luxemburg-Stiftung, Berlin 2012, p. 46 et seqq.; López Flores, note 16, p. 122.; Alberto Acosta, Extractivism and neoextractivism: two sides of the same curse, [https://www.tni.org/files/download/beyonddevelopment\\_extractivism.pdf](https://www.tni.org/files/download/beyonddevelopment_extractivism.pdf) (last accessed on 1 November 2018), pp. 61 et seqq.

72 Cf. Mauro Barelli, Free, Prior, and Informed Consent in the UNDRIP, in: Jessie Hohmann/Marc Weller (eds.), The UN Declaration of the Rights of Indigenous Peoples, Oxford 2018, p. 248.

73 Cf. Tockman, note 45, p. 335; see for TIPNIS as the “case that rocked Bolivia” Postero, note 4, pp. 122 et seqq.

the exploitation of non-renewable resources found in their territories.<sup>74</sup> Art. 114 of the Hydrocarbon Law (*Ley the Hidrocarburos*)<sup>75</sup> specifies the right to consultation in the hydrocarbon sector. This consultation-based approach is in line with the constitutional allocation of competences between the State and the AIOCs. Recognizing the obligation to obtain consent may otherwise undermine the State's exclusive and prerogative competences in the areas of non-renewable resources and hydrocarbons respectively.

On the other hand, there may be several international law implications arguing for a more consent-based legal understanding of FPIC. In general, a genetic, systematic and teleological interpretation of the provisions of the UNDRIP shows that FPIC must be approached with a certain degree of flexibility that neither restricts it to a mere right to participation nor grants an overreaching right to veto.<sup>76</sup> Allowing States to implement measures that have serious negative consequences on indigenous peoples without their consent would undermine the normative quality of the indigenous peoples' right to self-determination laid down in Art. 3 UNDRIP as a principle of customary international law with the legal character of *ius cogens* unfolding *erga omnes* effect<sup>77</sup>.

This approach is strongly supported by international jurisprudence. The Saramaka People v. Suriname judgement rendered by the Inter-American Court of Human Rights (IACtHR)<sup>78</sup> is worth to be highlighted here.<sup>79</sup> The case addresses the indigenous Saramaka people's right to their land in the context of mining and logging activities carried out by companies on Saramaka territory based on concessions granted by the State of Suriname without consultation with the Saramaka. Drawing on the right to property pursuant to Art. 21 of the American Convention of Human Rights (ACHR), the Court found that the State had violated the rights of the Saramaka people including their rights to natural resources found on and within the territory.<sup>80</sup> Crucially, the Court specified that to be able to restrict the Saramakas' property rights, the measure must be established by law, necessary and proportional and with the aim of achieving a legitimate objective in a democratic society.<sup>81</sup> Moreover, the Court held that in the case of large-scale development or investment

74 Besides, the same article states that NPIOCs have the right to participate in the benefits of the exploitation.

75 *Ley N° 3058* of 17 May 2005.

76 See for details *Barelli*, note 72, pp. 253 et seqq.

77 Cf. ICJ, *East Timor* (Portugal v. Australia), Judgement, I.C.J. Reports 1995, p. 90, para 29; *Marc Weller*, Self-Determination of Indigenous Peoples, in: Jessie Hohmann/Marc Weller (eds.), *The UN Declaration of the Rights of Indigenous Peoples*, Oxford 2018, p. 146.

78 IACtHR, *Saramaka People v. Suriname*, Judgment of November 28, 2007 Series C No. 172.

79 For FPIC in the context of the African human rights system see *Ricarda Rönsch*, Indigenousness and peoples' rights in the African human rights system: situating the Ogiek judgement of the African Court on Human and Peoples' Rights, *Verfassung und Recht in Übersee* (50) 2017, pp. 255 et seqq.

80 In addition, the Court made explicit reference to Art. 32 UNDRIP in its legal analysis, IACtHR, *Saramaka People v. Suriname*, Judgment of November 28, 2007 Series C No. 172, para. 131.

81 IACtHR, note 78, para. 127.

projects that would have a “major impact” within indigenous territory, the State has a duty not only to consult with the indigenous peoples, but also to obtain their free, prior, and informed consent.<sup>82</sup>

For Bolivia, which is party to the ACHR and has accepted the IACtHR’s jurisdiction, the *Saramaka People v. Suriname* case is of particular importance. Referring explicitly to the findings of the IACtHR, the TCP held that indigenous peoples have the power to veto a project when it unfolds “major impact”.<sup>83</sup> The TCP “exhorted” the State of Bolivia to make effective the NPIOCs’ right to consultation in the described sense. However, it is reported that Bolivia’s executive organ has not taken any meaningful steps to comply with the ruling.<sup>84</sup>

The Morales Administration’s rigid view on FPIC rather than following a “sliding scale approach”<sup>85</sup> based on a proportionality test can therefore be contested in the light of international norms and jurisprudence. Although the CPE does not recognize the NPIOCs’ right to consent *in concreto*, Art. 410 (2) sentence 2 CPE states that international treaties and conventions in the matter of human rights are integrated in the “constitutional block” of the State. The Constitution therefore generally has a favorable attitude to international law. This can be evidenced by the transformation of the UNDRIP into Bolivian national law in 2007.<sup>86</sup> International practice concerning the legal scope of FPIC thereby unfolds direct normative power on the domestic level. The discrepancy between the rigid approach on FPIC by the State of Bolivia on the one hand and its self-imposed positions on plurinationality and fostering indigenous rights becomes obvious.

### 3. *Vivir bien*

In an attempt to reconcile the conflicting interests of State and indigenous peoples and nations, the MAS has engaged in a compelling discourse, in which the party justifies the capitalist model and extractivism as tools for an economic liberation and thus necessary to move forward towards decolonization.<sup>87</sup> In the light of this narrative, the MAS argues that the generation of income and the redistribution of wealth could improve the life of the Bolivian people. Yet, the extractivist model is still in clear opposition with the indigenous *cosmovisión* of *vivir bien* which is explicitly enshrined as one of the Bolivians State’s values and ethic-moral principles within the Constitution (Art. 8 (1) CPE).

A central feature of the Andean *cosmovisión*, the way of seeing and interpreting the world, is the indissoluble union between the environment and the human being. According

82 IACtHR, note 78, para. 134.

83 Cf. TCP, *Sentencia Constitucional 2003/2010-R* of 25 October 2010, section III.5; see also TCP, *Sentencia Constitucional Plurinacional 0064/2016* of 1 September 2016, section III.2.

84 *Tockman*, note 45, p. 336 with note 86.

85 Cf. *Barelli*, note 72, p. 258.

86 *Ley N° 3760* of 7 November 2007.

87 *Postero*, note 4, pp. 114, 139.

to this thinking, all beings in nature have a soul and share the same essence and thus the same hierarchical positions as the human.<sup>88</sup> The cornerstones of this philosophy are referred to as *vivir bien* (good life),<sup>89</sup> practiced by a variety of indigenous nations in Latin America.<sup>90</sup> This concept is fundamentally disconnected from the anthropocentric logic of capitalism and socialism.<sup>91</sup> Instead of seeking overboarding development and growth – the better life –, the philosophy of *vivir bien* strives for sufficiency within the community – the good life.<sup>92</sup> Thus, one could say that the philosophy shows some similarities with western conceptions of degrowth.<sup>93</sup> *Vivir bien* emerges naturally from the idea of *Pachamama* as it evokes a peaceful co-existence between mankind and the ecosystem in which nature is not just an object to be exploited and thus calls for a harmonic and equilibrated management of natural resource.<sup>94</sup>

*Vivir bien* and neo-extractivism are therefore fundamentally opposed to each other. The MAS' attempt to interlink resource extraction and *vivir bien* may work in discourse but not in practice. The extraction of natural resources often has strong social and environmental repercussions. Bolivia has an infamous historic record of environmental catastrophes connected to resource extraction, leading to long-lasting pollution of rivers, lakes and grazing land with toxic waste and scarcity of water in arid regions, in which the victims never received any reparation.<sup>95</sup> Neo-extractivism depletes natural resources, destroys territories in a rapid way and thus – due to the double function of indigenous territory – destroys cultures.<sup>96</sup> In balance, by committing to this economic model, the State overrides its own self-imposed principles of *vivir bien* and plurinationality.<sup>97</sup>

#### V. Obstruction of the implementation process by the State

As pointed out before, pursuing autonomy is not an easy task for indigenous peoples and nations because the process of pursuing an AIOC status is loaded with structural problems and barriers. Meeting the legal prerequisites and carrying out the long and bureaucratic process demands technical, administrative and legal skills. As the State itself does neither pro-

88 *María Elisa Durán López*, *Sumak Kawsay o Buen Vivir, desde la cosmovisión andina hacia la ética de la sustentabilidad*, *Pensamiento Actual* 10 (2010), pp. 52 et seqq.

89 Also referred to as *Buen Vivir* or “*Sumak Kawsay*” in Quechua or “*Suma Qamaña*” in Aymara.

90 Besides Andean nations and peoples, similar philosophies are common within the Guaraní, Mapuche, Maya, Kuna (Panama), Shuar and Achaur (Ecuadorian Amazons), cf. *Alberto Acosta*, *Buen Vivir. Vom Recht auf ein gutes Leben*, München 2015, pp. 70 et seqq.

91 *Acosta*, note 90, pp. 70 et seqq.

92 *Schavelzon*, note 13, p. 189.

93 *Altmann*, note 54, p. 749.

94 *Altmann*, note 54, pp. 749 et seqq.

95 *Postero*, note 4, pp. 102 et seqq.

96 *López Flores*, note 16, p. 130.

97 *López Flores*, note 16, p. 133.

vide funding nor administrative assistance, the communities have to rely on NGOs to help them.<sup>98</sup> As Laurenti Sellers points out, besides the lack of legal knowledge, many NPIOCs face mundane practical problems because many of them have never used a computer or do not have bank accounts and thus virtually have no possibility of pursuing autonomy on their own.<sup>99</sup>

Apart from these legal and technical barriers, which prevent many NPIOCs from finishing the process, the MAS Administration has reportedly tried to hamper the creation of AIOCs in an active manner. The TIPNIS controversies and the postures shown by the government during the conflict reveal the logics and strategies of blocking and negating the autonomies guaranteed by the Constitution.<sup>100</sup> The authoritarian traits revealed by the Morales Administration show also true for the process in the municipality of Totora Marka, where the final referendum surprisingly resulted in the rejection of the autonomy statute in September 2015. Both NGOs accompanying the autonomy process as the indigenous population itself reported that the local MAS party had influenced the election process by pressuring the population and starting a dis-information campaign.<sup>101</sup> Dis-information seems to be a common practice to hamper the creation of AIOCs in Bolivia: According to data from Bolivian NGO *Fundación TIERRA* from 2011, many indigenous leaders reported that staff from the Ministry of Autonomies did not provide them with any information about the possibility of creating an AIOC but presented the re-affirmation of the municipality status as only option.<sup>102</sup> Finally, the Ministry of Autonomy was practically dissolved in early 2017, when it was demoted to a Viceministry under the *Ministerio de Presidencia* (Ministry of Presidency).<sup>103</sup> This leads not only to a reduction of staff and resources, but it also creates uncertainty about ongoing and upcoming autonomy processes. Especially within the lowlands, people fear that the subject of autonomy will be politicized and processes will be prolonged and obstructed.<sup>104</sup>

98 *Laurenti Sellers*, note 31, pp. 228 et seqq.; *Postero*, note 4, pp. 163 et seqq.

99 *Laurenti Sellers*, note 31, pp. 228 et seqq.

100 *López Flores*, note 16, p. 131.

101 *Franziska Englert, Maximilian Hedrich*, Machterhalt mit fast allen Mitteln!? Zum Deutschlandbesuch des bolivianischen Präsidenten Evo Morales, Länderbericht Konrad-Adenauer-Stiftung, Oktober 2015, pp. 3 et seqq.

102 *Wilfredo Plata, John Cameron*, ¿Quiénes dicen no a las autonomías indígenas y por qué?: pragmatismo, hibridez y modernidades alternativas en la base, *Cuestión Agraria* 3 (2017), p. 33 et seq.

103 *Tockman*, note 45, p. 329.

104 El Periódico, La desaparición del Ministerio de Autonomías preocupa a Tarija, <https://www.elpaisonline.com/index.php/noticiastarija/item/243233-desaparicion-del-ministerio-de-autonomias-dej-a-incertidumbre> (last accessed on 1 November 2018).

## VI. Trading *de jure* for *de facto* autonomy?

Andean indigenous nations and peoples have proven to be very resilient and managed to preserve their culture and traditions despite hundreds of years of exploitation and oppression.<sup>105</sup>

As pointed out above, *ayllus* are often still organized as they were before colonial times and the systems of rotation and consent have not changed even though democracy was formally introduced during republican times.<sup>106</sup> In some areas, due to their remote location, there is no public service provided by the State. Therefore, both political procedures as well as public infrastructure like schools, police or health care are organized independently by the indigenous population. Given this virtual absence of the State, indigenous nations and peoples in Bolivia have retained a high degree of factual autonomy outside State control.

However, engaging in the AIOC creation process challenges this autonomy: NPIOCs must start complying with the Constitution and the law – even if these are irreconcilable with ancestral practice. Within this process, NPIOCs must introduce elements of western democracy and capitalism, such as electoral campaigns and bank accounts, in their communities. According to Laurenti Sellers, some NPIOCs fear that by opting for AIOCs they might lose their “real” autonomy and change it for a “paper one”.<sup>107</sup> Thus, by creating an AIOC, NPIOCs become more entangled with the State and ultimately put their *de facto* autonomy at risk.

## E. Conclusion: A fruitless attempt towards plurinationality and decolonization?

Can the new type of Andean revolutionary Constitutions foster plurinationality and decolonization by granting indigenous autonomy rights? The analysis conducted so far shows that the answer must be twofold. Parting from the example of Bolivia, one must differentiate between the layer of concrete party-political interests and the layer of conceptual problems inherent to decolonization efforts.

As shown before, the MAS pursues a highly contradictive political project with goals that are inherently irreconcilable with each other, as highlighted by the tensions between a neo-extractivist economy model and the indigenist demands. In this context, the MAS has made very clear that it is willing to sacrifice indigenous interests for the sake of the national development project.<sup>108</sup> Thus, there is a juxtaposition of discourse that re-affirms indigenous rights on the one hand and policies that obstruct their concrete materialization on the other hand. It can be argued that the authoritarian MAS never was willing to grant indigenous autonomy in the first place. Bolivian analysts point out that the implementation of AIOCs in the CPE must be seen in the light of the *media luna* autonomy struggles. In this

105 Bettin, note 57, p. 15.

106 Lessmann, note 24, p.119.

107 Laurenti Sellers, note 31, pp. 247 et seqq.

108 Postero, note 4, p. 5.

reading, AIOCs are rather intended to weaken the permitted departmental autonomies from below than to fulfil the claims for indigenous autonomy.<sup>109</sup> These examples underline that fostering indigenous rights, plurinationality and decolonization are merely lip service of the MAS.

With regards to the second layer, the analysis reveals inherent problems in overcoming the coloniality of power through indigenous territorial autonomy. Not only the Morales Administration but also a variety of scholars have argued that the inclusion of AIOCs in the Constitution is a concrete step towards decolonizing the State and achieving plurinationality. Yet, the Bolivian example shows that this claim is overly ambitious.

The central perplexity in Bolivia lies in the attempt to overcome coloniality and its legacies by making use of liberal State mechanisms.<sup>110</sup> Pursuant to the concept of coloniality of power, decolonizing efforts must tackle the State as a colonial institution. Yet, in Bolivia, AIOCs – rather than challenging the State – are conceptualized as entangled with and subordinated to the State. As Mollinedo puts it in his analysis of the Autonomy Statute of the Nation of Uru Chipaya: “[...] it is evidenced that there is still a big challenge ahead to consolidate a new State model by means of this category of autonomy.”<sup>111</sup>

Consequently, the revolutionary Constitutions in Bolivia and Ecuador might be a step in the right direction. At the same time, they are inherently limited: The Constitutions question the character of the national State through the self-imposed objective of decolonization but fail to modify it. Both Constitutions challenge neither the state-centralized tendencies of their government nor the capitalist system of their society.<sup>112</sup>

The Andean Constitutions represent a new type of Latin American constitutionalism that attempts to tackle economic, social and political challenges by the mere fact of postulating the necessary changes.<sup>113</sup> Yet, the texts tend to be ambiguous and often do not specify concrete ways of dealing with these challenges. Thus, they rather have the character of a catalogue of State objectives which – given their vagueness – are difficult to implement. In both cases, one could speak of “Populist Constitutions” which also serve the aim of consolidating power and creating a long-lasting new order from a conjunctural election.<sup>114</sup>

In balance, one can argue that granting indigenous territorial autonomy through AIOCs constitutes a rather fruitless attempt towards achieving the Bolivian States’ self-imposed objective of overcoming colonialism and establishing plurinationality. While some multi-layered perplexities identified in Bolivia are clearly related to the MAS political-party inter-

109 *Foronda*, note 27.

110 *Postero*, note 4, p. 14.

111 *Mollinedo*, note 47, pp. 147 et seq. (Translation by the authors).

112 *Gustavo Esteve*, *La hora de la autonomía*, in: Pavel C. López Flores/Luciana García Guerreiro (eds.), *Pueblos Originarios en lucha por las autonomías: Experiencias y desafíos en América Latina*, Bueno Aires 2016, p. 49.

113 *Meschkat*, note 8, p. 5.

114 See *David Landau*, *Populist Constitutions*, *The University of Chicago Law Review*, 85 (2018), p. 523.

ests, others have a conceptual and more abstract nature. The inherent contradiction of decolonizing a State “through the State” is also valid for the chances and pitfalls of indigenous territorial autonomy in other countries in the process of decolonization such as Ecuador.