Plural approach to inter-ethnic conflict resolution and integral articulation of the regulatory framework in the Andean Zone: Colombia, Ecuador and Bolivia

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This article belongs to a series of case studies prepared by the International Network for Reflection and Proposals on a Plural Approach to Constitutions (INC)[1], a project of the Institute for Research and Debate on Governance (IRG).
The INC argues that the challenge faced by constitutions is their ability to give life to the social contract and flesh out complex political, social and normative dynamics. In their production, in the definition of their terms and in their implementation, constitutions are called upon to integrate widely differing conceptions of power. Novel approaches to constitutions are urgently required given the current international crisis in political legitimacy.
For the INC it is very important to share and compare concrete experiences from around the world – such as those presented in these case studies – in order to contribute new thinking to current debates on the subject.

This study was written by Cristina Echeverri Pineda and Nathalia Sandoval Rojas and coordinated by Professor Virginie Laurent and Marion Muller, member of the INC and Associate Experts to the IRG.

1. http://www.institut-gouvernance.org/diversidad.html

Executive summary

Subject

This case study aims to describe the constitutional reform process that took place in Bolivia, Colombia and Ecuador within the last years. The case study analyses the constitutions, the content of the constitutional texts and their implementation by the actors.

Content

Since the 1980s, many constitutional reforms have been carried out in Latin America. They implemented democratic and plural societies, open to diversity and respectful of a large range of human, individual and collective rights. They embody a new way of "thinking the nation": multiethnic and multicultural in Colombia, intercultural in Ecuador and in Bolivia (*Sumak kawsay*, "living well" and *Suma qaman*, "good living").

The recognition of ethnic and cultural diversity by these three Andean countries is an innovative approach to political conflict situations: between society and political institutions, between the so-called communitarian majority and minorities. The description of the Colombian, Ecuadorian and Bolivian cases reveals that the reference to multi or interculturality is a key issue that must be addressed in order to redefine the Nation (or the State). This can be achieved through the constitutional texts enhancing "unity in diversity", but also through the implementation of these texts in the concerned societies.

Such a change involves the implementation of new legal tools, which includes: the "action for protection" (*acción de tutela*)[2] and the "prior consultation" (*consulta previa*) of the indigenous communities prior to any State decision likely to have an impact on their way of life[3]. These two remedies therefore enhance –at least officially- the respect of distinct "world views". Consequently, the institutions and the national and international arbitrators which enforce the constitutional rights related to diversity, acquire a growing major role: for instance, the Constitutional

2. Implemented by the Colombian constitution of 1991, it allows one person whose fundamental rights have been threatened or violated by a public authority or a civilian to call upon a judge of the Republic to ensure their immediate protection.

3. Implemented by the ILO Convention 169 and included in the Colombian, Bolivian and Ecuadorian constitutions, it aims to favor dialogue between actors in order to provide a solution to their dispute.

Court in Colombia or the Multinational Constitutional Court of Bolivia, but also the Inter-American Court and Commission of Human Rights.
Nonetheless, resorting to action for protection and prior consultation is mainly insufficient to resolve conflicts. Yet, it will ensure the parties concerned agree on the genuine and compelling nature of conciliation.

Issues and results

The Bolivian, Colombian and Ecuadorian constitutional processes are noteworthy in their openness to citizen participation. Recognizing diversity on a horizontal plan, these constitutional texts impel the rethinking of nation, State and public action through a prism of unity and equality in plurality, notably by integrating new mechanisms such as action for protection and prior consultation.
Using those mechanisms, the distinct groups within the society, either in majority or minority positions, have come to use shared referent. Speaking then a common language established by their constitutions and practices, they learn to understand each other. The action for protection and prior consultation can then be qualified as “pedagogical tools” enhancing better living together, inclusive of social diversities at stake in Bolivia, Colombia and Ecuador.
These constitutional processes enforce social, legal and political innovation that favor the peaceful or even harmonious cohabitation of diverse world views. The action for protection and prior consultation are procedures through which the intercultural approach is set as a governance modality. This is to say a mechanism which permits constructive interactions (complementarity and hybridization) between distinct regulations, those of the State and those of indigenous communities. Thus, they enhance the legitimization of public governance. This intercultural approach has an international resonance, as it is also the governance method of the Inter-American System of Human Rights. Here, the national and regional scales are mutually reinforcing.

Introduction

Since the 1980s, Latin America has experienced a wave of constitutional change. The majority of countries have adopted new constitutions or reformed their existing documents (Gargarella and Courtis, 2009; Uprimny, 2011). Between 1978 and 2009 15 new constitutions were adopted in the region (Negretto, 2011). All of these new constitutional texts have recognized a broad range of rights, valued differences between citizens and enshrined a democratic and plural vision of society (García Villegas, 2012: 91). In the Andean countries (Colombia, Ecuador, Bolivia and Peru) this tendency has had the peculiarity of having served to re-imagine the nation, breaking with the prevailing model according to which each country was held to be homogenous and uniform in nature.

Indeed, in their new constitutions these countries began to recognize and value the diversity of their cultural and ethnic composition and in particular the importance of their indigenous and Afro-descendent communities. While Colombia may not have been the first country - in 1991 - to enshrine its ethnic and cultural diversity in its constitution, it is considered to lead the region in terms of the progress it has made since then in developing multicultural policies in favor of the indigenous and Afro-descendent population (PNUD, 2010). It is held to be one of the most progressive in terms of the legal framework it has developed in this field (Bonilla Maldonado, 2006: 15). The Ecuadorean and Bolivian constitutions of 2008 and 2009, respectively the most recent constitutional texts produced in the Andean region, go further in their recognition of diversity, not only questioning the vision of the countries as culturally and ethnically homogeneous but breaking with the unitary model by describing both countries as *plurinational* and *intercultural* states (Valarezo, 2009).

The movement of the Andean countries from a homogenizing vision to one where ethnic and cultural differences are recognized, protected and valued has given rise to new ways of dealing with the conflicts that commonly occur between majority society - and its political institutions– and the ethnically different communities, which are numerically or politically in the minority and whose forms of regulation only apply within their communities or territories. In the cases described in this paper the multitude of regulations that exist, and their more or less successful articulation, will become clear. The circumstances examined in the case studies have their origins in situations of “conflict” involving indigenous communities and to which solutions were sought by recourse to the rights

contained in the "*acción de tutela*" (Colombia)[4] and in *"consulta previa"*[5] (prior consultation) and "*acciones de constitucionalidad"* (Colombia, Ecuador, Bolivia). The results of the negotiations involving these mechanisms have been various and not all have led to a definitive resolution of the conflict. However, as will be seen, it is possible to observe how prior consultation modified the way in which conflicts were resolved, obliging the parties to encounter spaces for concertation and to reach minimum agreements concerning the visions of society that motivate each party to the dispute. In some cases these mechanisms have led to a coming together of views.

This text presents three case studies from the Andean region that reflect this movement towards a plural approach. They examine conflicts involving: the land occupation movement of indigenous communities in the Alto Nápoles sector of the city of Cali (Colombia); oil exploration in the territory belonging to the Sarayaku indigenous people in Ecuador; and the construction of a highway in the Isiboro Sécure National Park and Indigenous Territory (TIPNIS)[6] in Bolivia. Each case study is prefaced by brief contextual information illustrating the most important aspects of the constitutional change in the country. Next, a narrative is provided of each conflict and the way in which the introduction of prior consultation led to the creation of concertation spaces for the resolution of the conflicts, even though these efforts were not necessarily definitive.

4. Introduced in the 1991 Colombian Constitution, the *acción de tutela* (commonly translated as a "writ for the protection of constitutional rights" or "tutela") is a mechanism that permits any person in Colombia to go before a judge, without the need for legal representation, to request the immediate protection of fundamental rights that have been violated or threatened by a state authority or private individual.

5. Enshrined in ILO Convention 169 and incorporated into the constitutions of Colombia (1991), Ecuador (2008) and Bolivia (2009), the principle of *consulta previa* (prior consultation) requires that before any decision that might directly affect the future of indigenous peoples, the state should enter into dialogue with the community - which should be advised by independent professionals - in order to consult with them about the nature, timing and potential impact of a given project or legislative measure.

6. Translator's note: the initials TIPNIS from the Spanish *territorio indígena y parque nacional Isiboro-Secure.*

I. Colombia

1. Overview

Before the New Constitution: no room for pluralism

Colombia has traditionally been a "country of constitutions", which were changed frequently at the close of the numerous civil wars waged in the country following independence from Spain (1819). In the years leading up to 1990, the 1886 Constitution had become the longest-lived of all the country's constitutions (Valencia Villa, 2010), but the country was far from stable socially or politically. For over two decades before the creation of the National Constituent Assembly (NCA) in 1990, Colombia had been immersed in a political and social crisis that impeded resolution of any kind of social conflict.

First, the regime only permitted participation by the elites and traditional bureaucracies (the Liberal and Conservative parties) and, in consequence, had not made even formal spaces available for the participation of consolidated social actors such as the political left, or others who were beginning to gain visibility in national life and seeking to forge links with one ideology or another: students, indigenous groups, peasants, trade unionists, women and members of political alternatives such as the *Unión Patriótica* (whose members were subsequently pursued and almost entirely liquidated) (Restrepo, 1991). Second, guerrilla groups founded in the 1960s, such as the FARC and the ELN, grew stronger, while newer groups such as the M-19, the *Movimiento Armado Quintín Lame* (MAQL) and the EPL were formed (see Annex I.1). During the 1980s the Colombian authorities stepped up their fight against drugs trafficking, which provoked a violent response from the cartels in the cities and rural areas, including a series of high profile murders of important political leaders (Leal and Zamosc, 1990).

The 1990-1991 National Constituent Assembly

In these circumstances, student groups – principally led by students from private universities – began to promote the idea of organizing a National Constituent Assembly. They were successful in channeling the demands of a broad cross-section of society, which wished for a reform of the 1886 Constitution. The emerging idea, which was finally accepted by the government and approved by the

Supreme Court of Justice, developed into an initiative with a plural focus. Broad sections of society converged in the process. Ordinary citizens presented proposals to sessions known as *mesas de trabajo* (round tables) and it was possible for any topic of importance to be discussed by spokespeople who had been elected by groups that reflected the diversity of the population and the multiplicity of its political views (See Annex I.2).

Thus, sectors participated in the NCA that previously had barely had any voice at all in significant decision-making spaces, including members of the left, representatives of indigenous peoples, protestant church leaders and students. In addition, the period leading up to the formal establishment of the NCA provided conditions that were conducive to the demobilization of the M-19, MAQL and EPL guerrilla groups. These transformed themselves into political parties that were represented on the NCA. This, then, was the composition of the NCA whose discussions gave rise to the 1991 Constitution, a document rich in rights that created new, pluralist, mechanisms for the resolution of conflicts (Dugas, 1993).

The 1991 Constitution

The 1991 Constitution recognized pluralism as one of the founding principles of the Colombian state (See Annex I.3). This was expressed in the articles recognizing multi-ethnicity and pluriculturality as well as in the granting of specific rights not only to indigenous populations but also to Afro-Colombians, *raizals*, (black English-based creole speaking inhabitants of the islands of San Andrés and Providencia) and Colombian Roma.

The central importance of pluralism was also clear from the enshrining of freedom of conscience, gender and religious diversity and the principle of participatory democracy. Similarly, it was apparent in the creation of mechanisms and institutions permitting these rights to be claimed: the Constitutional Court made up of nine magistrates drawn from different political and philosophical tendencies, responsible for deciding the constitutionality of laws, the *acción de tutela* and the right to prior consultation mentioned above.

Implementing the Constitution

Twenty years after the promulgation of the 1991 Constitution, the mechanisms that emerged as a result of the struggles of a wide range of social actors are frequently used as tools of political mobilization. Under the shelter of the Constitution, many demands which could not previously have been aired publicly or received a response from the authorities may now be expressed in new scenarios of discussion such as those opened up by the *acción de tutela* and the

acción de constitucionalidad, both of which are heard by the Constitutional Court. Examples include the struggles for recognition of the LGBTI community, women's rights over their bodies and sexuality, the right of indigenous communities to prior consultation, higher education places for the Afro-Colombian population and the rights of victims of political violence to truth, justice and reparation.

In the case of the indigenous peoples, who in 2005 constituted 3.36% of the total population (DANE, 2008), the 1991 Constitution opened up a particularly important opportunity to pursue all-embracing solutions to the conflicts affecting them. Without abandoning methods such as land occupations and street demonstrations they began to have recourse to the law, demanding recognition of their rights to self-determination and to employ their own models to resolve social conflicts. Specifically, the Constitution recognized the right of communities to preserve their territory and culture, to elect their own representatives to national bodies, to administer their own resources and spend them on health and education, to apply their own forms of justice within their communities and to be consulted prior to the taking of any decisions that might affect them (Laurent, 2005) (see Annex I.4).

The case described in this paper occurred in this precise context. It involved people from two indigenous communities that enjoyed rights under the Constitution and which, following a series of confrontations, decided to instigate *acciones de tutela* before the Constitutional Court, demanding respect for their rights as indigenous communities to territory, autonomy and housing. As will be seen, the Court offered protection but did not find in favor of either of the parties to the *tutela*, ordering instead a concertation process to decide on the future of the community. Thus, although the intervention of the Constitutional Court did not bring about the definitive resolution of the conflict, it did propitiate an inclusive, plural, approach to it.

Phase	**Plurality of actors: intercultural /interdisciplinary/intergenerational dimension**	**Regulatory mechanisms / actions / norms /examples with a pluralist focus**
Pre-Constituent Assembly	- Traditional political class: Conservative and Liberal Parties - Guerrilla and other armed groups: FARC, ELN, M-19, EPL, Quintín Lame - Drugs cartels - Emerging social actors without formal representation: students, indigenous communities, peasants, trade unionists, women, Unión Patriótica, Afro-Colombians	- Peace negotiations with guerrilla groups – some unsuccessful and others partial, as none are able to bring an end to Colombia's armed conflict - Traditional/ancestral mechanisms for the resolution of conflicts within indigenous communities, for example, *cabildos* and community assemblies threatened/questioned by majority society

Phase *(continued)*	Plurality of actors: intercultural /interdisciplinary/intergenerational dimension	Regulatory mechanisms / actions / norms /examples with a pluralist focus
Constituent Assembly / Constitutional Text	- Presidents Virgilio Barco (1986-1990) and Carlos Gaviria (1990-1994) - Students, especially from private universities backing with the support of the general population - Nationwide voting to elect the NCA: the *séptima papeleta* ("Seventh Ballot Paper") (citizens' initiative promoted by students, enjoyed widespread support) - Political parties ("traditional parties") - Emerging political groupings with their origins in demobilized armed groups ("the left") - Indigenous communities, Afro-Colombians - Protestant and Catholic Churches	- Round tables organized by local authorities to collect proposals from citizens and organizations (Sept – Nov 1990) - Preparatory Commissions - NCA in session in Congress building - Direct representation of previously excluded sectors. Important to note presence of indigenous communities - Wide-ranging academic and public debate on the deliberations of the NCA - Articles on multiculturalism and ethnic diversity drafted - Recognition of equality - Rights for ethnic communities enshrined - Creation of the Constitutional Court and the mechanisms to present claims before it (*acciones de tutela* and *acciones de constitucionalidad*) - Various forms of justice enshrined: *justicia en equidad*, (equity justice), *justicia de paz* (justice in peace), *justicia indígena* (indigenous justice), *justicia arbitral* (arbitration justice) and *justicia ordinaria* (ordinary justice). See Annexes I.3 and I.4
Application of the Constitution	- Constitutional Court - International Courts - Multiple political parties, movements and groupings - Indigenous communities, African-Colombians, peasants, *raizales*, Roms - Feminist, LGBTI and other gender and identity-based organizations - Organizations representing the internally displaced population - Ministries and other state institutions - Human Rights and other NGOs	- Presentation of cases by social groups to the Constitutional Court, and recognition by the Court that the human and constitutional rights claimed have been violated by act or omission by the state or other private citizens - Creation or formalization of concertation for a with minority groups to resolve conflicts. For example: the *Mesa permanente de concertación con los pueblos y organizaciones indígenas* (Permanent concertation round table of indigenous peoples and organizations) coordinated by the Ministry of the Interior, the Constitutional Court's Special Monitoring Unit on the Situation of the Displaced Population - Recognition and official support to alternative methods for the resolution of conflicts such as the jueces *de paz* (peace judges), and special indigenous jurisdiction - Prior consultation for ethnic groups (indigenous communities and Afro-Colombians,) on private and state decisions that might affect them

Table 1. Constitutional phases / plural focus in Colombia.

2. Case study: the territory of the *cabildo* of Alto Nápoles (Cali, Colombia)

Towards the end of 2009, about 120 families belonging to the Nasa and Yanacona indigenous communities left their ancestral homelands in the Department of Cauca to travel to the city of Cali, in Valle del Cauca Department, one of the most important cities in the region. They arrived on the steep hillsides surrounding the city and, as the land was unoccupied, began to build houses for themselves out of bamboo and plastic sheeting. In order to preserve their traditions they also established a new *cabildo*[7] which they named *Alto Nápoles – Santiago de Cali – Valle del Cauca Nasa Ukawe sx Taj,* to elect their leaders (*gobernadores* or governors) and to live according to regulations derived from an amalgam of Nasa and Yanacona law rather than the legal norms of majority society.

However, on 7 December 2009, Ignacio Franco Buitrago, claiming to be the owner of the lands occupied by the community, made a police complaint seeking the support of the municipal authorities in his attempts to oust the community. Police from the *Fray Damián* police station initiated eviction proceedings. On 15 February 2010, the local police inspector went to the site to gather evidence that the claims made by Franco Buitrago were true. He was able to confirm that the community had constructed several improvised dwellings known as *cambuches* and had felled a few trees. He also discovered that the occupied lands did not in fact belong to Franco Buitrago but to the Social Housing Department of the Municipality of Cali. Consequently, as required by the law, the police inspector ordered the members of the community to return the land to its owners or face eviction. At the same time he dismissed Franco Buitrago's claim, as it had been demonstrated that the land was not his.

The indigenous community refused to comply with the order to leave the land, seeking instead, without success, to negotiate with the Mayor's office. The inspector therefore prepared to carry out the eviction by force. At this moment of high tension several members of the community decided to initiate an *acción de tutela*, so that the legal authorities, and in particular the Constitutional Court, could decide whether the 120 indigenous families had any rights over the land or whether, instead, they should leave and seek somewhere else to live.

7. The *cabildo* is a political institution elected and recognized by the members of the community. It represents the community legally, exercises authority and carries out the activities attributed to it by the laws, uses, customs and internal regulations of each community (Law 89 of 1890 and Decree 2164 of 1995).

Background information

In order to understand the conflict surrounding the occupation of the lands at Alto Nápoles by the indigenous communities some factors should be borne in mind:

Over the past decade the hillsides in the *Comuna 18* area of Cali, where Alto Nápoles is situated, have been the site of the most intense expansion of informal construction in the city. According to the local press the first illegal settlers arrived in the area some 20 years ago (2012, October, Caliescribe). As none of the neighborhoods settled in this way have been recognized by the municipal administration, demonstrations to oppose evictions or obtain legal title or relocation to other homes are frequent, as are confrontations between communities and the police when the latter seek to enforce the law (See, for example: Notiagen.wordpress, 18 July 2012; 2009, 26 de abril, El País).

Much of the illegal settlement carried out in the *Comuna 18* has occurred in areas where the danger of landslides is marked. The terrain is affected by erosion caused by quarrying for coal and sand and by indiscriminate logging at the heads of the river gullies that abound in the area (Departamento Administrativo para la Administración del Medio Ambiente, n.d.). For these reasons the *Comuna 18* has been identified as one of the city's priority environmental zones and is not considered suitable for construction. Several different organizations work with the indigenous community in order to mitigate environmental damage (Comunicadores Populares – Cali, February 2011).

Historically, Cali has been a recipient of rural migrants who have been unable to find economic opportunities in the countryside. Furthermore, over the last three decades it has become an important host to people internally displaced by the armed conflict and sociopolitical violence that affect the country. According to figures produced by the *Personería Municipal* (Municipal Ombudsman's Office), Cali is the third most important recipient of displaced persons in the country, most of whom come from the south west of the country.

The Nasa community is the second largest indigenous group in the country, with approximately 138,501 members (Observatorio del Programa Presidencial de Derechos Humanos y DIH, 2010) while there are an estimated 21,457 Yanacona (*ibid*., n.d.). Their ancestral lands are located principally in the Cauca Department.

Because their lands occupy a privileged position in the mountains and on the route to the Pacific Ocean, these indigenous communities repeatedly find themselves in the firing line of confrontations between Colombia's legal and illegal armed groups in their struggle for control of territory and drugs trafficking routes.

This explains why, between 2003 and 2008, 53% of all the internally displaced persons in the Department of Cauca came from the region where the Nasa live (*ibid*., 2010, 12).

As it has in the case of other indigenous communities in the country, the Inter-American Commission on Human Rights granted precautionary measures to the Nasa community and its leaders on 7 January 1998, ordering the Colombian state to guarantee protection. Subsequently, on 14 October 2004 it ordered protection measures to the displaced persons' organization the *Asociación caucana de desplazados del Naya* (Asocaidena), and on 31 October 2005, similar measures in favor Nasa leaders from the *Asociación de Cabildos Indígenas del Norte del Cauca* (ACIN) in the north of the Department of Cauca.

Members of the Nasa community have said of the confrontations between guerrillas from the FARC and the army "*we declare ourselves in permanent resistance until the armed groups and armies leave our home*". As a people, they have declared "*no more war, no more armed groups and armies wherever they come from, no more attacks, no more disrespect, no more violations, no more invasions of our territories"* (ACIN, June 2012).

The development of the conflict and a plural approach to its resolution

Following the decision of the judges of the first and second instance that the eviction order should stand, in 2011 the Constitutional Court agreed to review the case. In doing so it was aware that it faced a complicated situation. On the one hand multiple actors with opposing interests were involved in the conflict – principally the municipal authorities and the police on one side and the community that had occupied the land on the other. The conflict was distinguished by the fact that, unlike the other inhabitants of the *Comuna 18* who were mainly peasant migrants, this case personified the country's pluricultural nature, made up as it was of members of indigenous groups that enjoy special protection under the Constitution.

In addition, resolution of the case would have to take into account the claim of the community that they had arrived in Alto Nápoles because they had been forcibly displaced by the violence affecting the indigenous communities in Cauca Department. Although this information had not been confirmed it was consistent with available reports on the situation of violence there and reflected the fear the indigenous communities felt. Furthermore, the role of indirect actors was relevant to the situation: the Inter-American Commission and Court had previously pronounced on the dangers faced by the indigenous communities caught in the crossfire of the conflict.

Within the national legal framework, the Constitutional Court justice Luis Ernesto Vargas Silva, who was responsible for reviewing the *acción de tutela* presented by the community, understood that one of the fruits of the Constituent Assembly had been the recognition and protection of the country's ethnic and cultural diversity. In its 20 years of existence the Constitutional Court has developed jurisprudence that has given flesh to the principles of recognition and protection. This has included: the special relationship that entire communities, rather than individuals, have with the territories they inhabit, as spaces where they are able to develop their culture and customs; the right of communities to autonomy, understood as the capacity to govern themselves and determine their future; and, as a result of this autonomy, their right to prior consultation, which creates a duty on the part of the state and of private individuals to consult indigenous communities before adopting any decisions that might affect them directly.

Furthermore, in response to Colombia's crisis of forced internal displacement and despite the fact that no such duty is explicitly mentioned in the constitution, the Constitutional Court has, from about 2000, recognized that displaced persons have fundamental rights derived primarily from international human rights law. The Court has decided numerous cases in which it has recognized the right of displaced persons to obtain temporary shelter when they have been forced to leave their lands and to receive advice about finding permanent accommodation.

To these considerations should be added the fact the Court's decision did not reflect only the position of the justice Vargas Silva, but the views of two others – Mauricio González and María Victoria Calle – who together with Silva comprised the Court's Review Chamber, responsible for deciding this *acción de tutela.* This being the case, the procedure followed within the Chamber is also plural in as much as it reflects the views of several different justices. It is important to note, however, that the final decision was in the end supported by all three.

The Court began by noting that the invaders consisted of different indigenous groups and were not members of a community with historical roots in the Alto Nápoles. However, the establishment of the *cabildo* and the recognition afforded by the Nasa and Yanacona to the individuals who initiated the claims meant that it should be recognized as a bona fide indigenous community that merited the special protection owed by the state to ethnic diversity.

Having decided this point, the Court determined that while the decision of the police to proceed with the eviction was legitimate in law, it would be wrong to proceed as this would deprive an indigenous community of a territory that was so important to their culture without responding their housing needs. This in turn would continue the situation of displacement that led the community to occupy

the land in the first place. As the land in question was vacant when occupied, it met the requirements to serve as a temporary refuge.

It is of particular interest that the Court did not limit itself to ordering the parties to act appropriately. Its decision was considerably more complex. It ordered the responsible ministries (Agriculture, the Environment, Housing and Land Development, Finance and the Interior) to initiate a process of concertation with the emerging community of Alto Nápoles in order to determine whether a return process could be initiated. If this were not to prove possible "because of the difficult public order situation in Cauca Department, in particular in the places traditionally inhabited by indigenous peoples, and the community's decision to settle in lands far from their place of origin", it ordered the state to initiate procedures to include the petitioners in the government's scheme for adjudicating, restoring or recovering lands.

In relation to the parties to the conflict, the Court ordered the Fray Damián police station to suspend the eviction procedure during the concertation process and requested the housing department to maintain Alto Nápoles as a temporary refuge for the 120 families currently occupying it, ensuring that conditions were provided to allow the settlers to live in a dignified manner. Finally, the Court requested the settlers to accept and implement the recommendations made by the environmental protection authorities, especially as concerned the felling of trees in the area they were occupying (Constitutional Court of Colombia, Sentence T-282 of 2011).

The justice González indicated that it seemed strange to him that, although the Court accepted that the occupation of the land was illegal, the municipal housing office was ordered to carry out measures to convert it into a temporary refuge pending completion of the Ministry of the Interior's consultation. However, as has been noted, these reservations did not stop him supporting the majority decision.

The Court's intervention in the conflict suggests several questions. It is clear that it did not take a definitive decision on the final fate of Alto Nápoles lands and the resettlement of the community which was left to be thrashed out in the negotiations between the Ministry of the Interior and the *cabildo*, whose outcome was unclear. To understand the complexity involved it is helpful to note that several months later González was responsible for deciding other *acciones de tutela* brought by the community but that in these instances he did not order the protection of the refuge but authorized the eviction to be carried out providing the inhabitants had agreed to it beforehand (Constitutional Court, Sentence T-528 de 2011).

In this scenario it is evident that the decision could not have been imposed by a single state body but had to be negotiated in a process involving the community, different state institutions and experts on indigenous matters. The decision required that aspects such as the relocation of dwellings in circumstances of ongoing armed conflict were taken into account. To these difficulties should be added the different decisions taken by the Constitutional Court itself in their attempts to resolve the conflict. There were no obvious solutions to this complex case and neither the results of the negotiations between the community and the Ministry of the Interior, nor the path to implementing the decisions of the Court were clear. The challenge of protecting the common interest over state property without affecting the rights of the community over the Alto Nápoles lands – central to its survival – are considerable.

II. Ecuador

1. Overview

Starting in the 1990s Ecuador lived through a period of profound instability in its democratic institutions that was reflected in the removal of three presidents as a result either of popular agitation or decisions of the legislative branch. Between 1996 and 2005 Abdalá Bucaram (1996-1997), Jamil Mahuad (1998-2000) and Lucio Gutiérrez (2003-2005) were overthrown in response to a series of factors that led to mass demonstrations, in the central mountain region (the *Sierra*) and especially in Quito. These popular mobilizations reflected the response of indigenous, African-descendant and women's movements to neo-liberal economic policies, to the political elite and to the state's deinstitutionalization (Paz and Cepeda, 2008).

The 1990s saw the emergence of new social movements in public life, in particular indigenous, African-descendant and women's organizations, which successfully pressed for the inclusion of a rights-based focus in the agenda of the Assembly that drafted the 1998 Constitution. Following Bucaram's overthrow, Fabián Alarcón (1997-1998) was named as interim president. Alarcón convened a popular consultation process that led to the creation of a Constitutional Assembly charged with reforming the 1979 Constitution. The Constitutional Assembly initiated its labors in December 1997 when it voted by majority to assume the form of a Constituent Assembly that would have powers to write an entirely new Constitution. On 5 June 1998 the Constitution was approved in the city of Riobamba, entering into force in August of the same year with the inauguration of President Jamil Mahuad. Paz and Cepeda (2008) maintain that while the Constitution signified advances in terms of rights and guarantees, it also enshrined a neo-liberal economic model, opening the way to wholesale privatization.

The Constitution incorporated 36 of the 39 proposals made by women's organizations, including equal participation in elections for public office, a women's right to determine her sexual and reproductive life and the recognition of domestic labor as productive work (Valladares, 2003). The indigenous and Afro-Ecuadorian movements achieved recognition for their collective rights, a change in the way the country was described, away from identification as a "mestiza"

(mixed heritage) nation to an assertion of its pluricultural and multiethnic nature that required the state to consult with indigenous and afro-Ecuadorian communities before taking decisions concerning their territories.

The Constituent Assembly and the 2008 Constitution

Following the promulgation of the 1998 Constitution, Lucio Gutiérrez seized power, jointly with Antonio Vargas president of the *Confederación de Nacionalidades Indígenas del Ecuador* (Confederation of Ecuadorian Nationalities - CONAIE), in a coup d'etat against the incumbent Jamil Mahuad. During the 2002 election campaign Gutiérrez appealed for unity between the indigenous communities, the population and the armed forces. In large part his success may be explained by the alliances he forged with the Ecuadorian left and the indigenous movement but also by his 'anti-politics rhetoric', which sought to respond to the crisis in the representative model by establishing in its place a system of direct representation unmediated by political institutions and the party system (Echeverría, 2007). Gutiérrez was deposed in April 2005 following a wave of demonstrations protagonized by the middle class. These were not rooted in the social movements but in temporary middle class networks that bred collective action (Ramírez, 2005). The wave of demonstrations culminated in the election of President Rafael Correa en 2006, who convened a new National Constituent Assembly, presenting it as a way to resolve the economic, social and political problems facing the country.

The National Constituent Assembly deliberated at a time when social movements were at a low ebb. On 15 April 2007 82% of valid votes were cast in favor of establishing a Constituent Assembly with full powers to draft a new Constitution; in the Assembly elections held in November, 80 of the 130 members belonged to the governing alliance *Acuerdo País*. The new Constitution was promulgated in 2008 and approved by a constitutional referendum in September of the same year (Larrea 2008: 80).

The 2008 Constitution: towards an intercultural and pluricultural state

The 2008 Constitution defines the Ecuadorian state as intercultural and plurinational. It recognizes indigenous, Afro-Ecuadorian and Pacific littoral inhabitants (*montubios*) and "established *sumak kawsay,* or 'living well' as the development goal of the nation, increased collective rights and the recognition of the indigenous justice system" (Larrea 2008: 80).

Plurinationality[8] is the political and legal organizations of the peoples and nations of the country. The Plurinational State emerges when various peoples and nations unite under a single government and Constitution.

The concept of *interculturality*[9] describes the horizontal and synergistic interaction between one or more cultures. It assumes that none of the parts is superior to any other, creating circumstances that favor integration and harmonious coexistence between all individuals. It is an assumption that this kind of intercultural relation involves respect for diversity; though conflicts are inevitable, they shall be resolved through processes of conciliation.

"Sumak kawsay"[10] or "living well" is the overarching paradigm serving as a touchstone against which concepts of development and economic growth must be judged. The principle does not imply putting a brake on economic activities but using natural resources and biodiversity in a sustainable manner and maintaining environmental balance. Living well represents an attempt to restore the idea of life as central goal of the economy.

Phase	**Plural actors: intercultural / interdisciplinary / intergenerational.**	**Mechanisms / Actions / Regulations / Examples with a pluralist focus.**
Pre-Constituent Assembly	- The political power of the social movements (indigenous organizations, Afro-Ecuadorians and women) can be seen to have played a role in removal of presidents Abdalá Bucaram (1996-1997) and Jamil Mahuad (1998-2000) - Lucio Gutiérrez (2003-2005) was removed in April 2005 as a result of middle class demonstrations, using household objects to protest - Rafael Correa's first act after becoming president is to convene a popular consultation process to decide whether there should be a Constituent Assembly	- Rafael Correa relied on the constitutional principle of national sovereignty and on art. 104 of the 1998 Constitution giving the president the right to organize popular consultations to convene a Constituent Assembly - The citizen consultation took place on 15 April 2007, with 81.5% of votes cast in favor - Crisis of representation and legitimacy of the political system - Rejection of political institutions and party system - Rejection of neo-liberal policies

8. See Constitución Política del Ecuador, 2008; Constitución Política del Estado Plurinacional de Bolivia, 2009; and Acosta y Martínez (comp.), 2009; Cruz Rodríguez, 2012; Tapia, 2007, 2012.

9. See Constitución Política del Ecuador, 2008; Constitución Política del Estado Plurinacional de Bolivia, 2009; and García y Tuasa, 2007; Walsh, 2008.

10. See Constitución Política del Ecuador, 2008; Constitución Política del Estado Plurinacional de Bolivia, 2009; and Dávalos, n.d.; Larrea Maldonado, 2008.

Phase *(continued)*	Plural actors: intercultural / interdisciplinary / intergenerational.	Mechanisms / Actions / Regulations / Examples with a pluralist focus.
Constituent Assembly / Constitutional Text	- Promoted by Rafael Correa Delgado in his 2006 presidential campaign - The *Alianza País* won 80 seats (70% of the total) in the 30 September elections - The National Constituent Assembly had full powers to draft a new constitution; it ordered the existing National Congress to be dissolved. The Assembly immediately assumed legislative functions, forming a group for the purpose - The 2008 Constitution was drafted between 30 November 2007 and 24 July 2008. It was submitted to a constitutional referendum on 28 September 2008 with 63.93% of votes cast in favor	- Art. 1, convening the Constituent Assembly indicated that it would have full powers to elaborate a new constitution and to alter the institutional framework of the state. Art. 10 established that the Constitution was to be approved by absolute majority (50% plus one) of Constituent Assembly members - that is, 66 members. Consequently, the *Alianza País* had no need to negotiate agreements with other sectors
Application of the Constitution	- International Courts - Indigenous Afro-Ecuadorian and women's organizations - Creation of the Development Project for indigenous and Afro-Ecuadorian peoples (PRODEPINE) - Human Rights and other NGOs	- Recognition and official support to other methods of conflict resolution, such as special indigenous jurisdiction - Prior and/or pre-legislative consultation with all ethnic communities concerning the decisions of private and state legislative proposals or laws that might affect them - Approval of special indigenous and pluricultural electoral districts - Affirmative action measures - Organic law establishing collective rights for the African-Ecuadorian population

Table 2. Constitutional phases / plural focus in Ecuador.

2. Case Study: Oil exploration in the indigenous territory of the Kichwa people of Sarayaku[11]

Background information

In order to understand the conflict from the point of view of the Kichwa people of Sarayaku people, the following information should be borne in mind:

The Kichwa people of Sarayaku are an indigenous community living in the Ecuadorian Amazonian region on the River Bobonoza. It is one of the largest and most densely populated Kichwa settlements in the country. According to the census there are about 1,200 inhabitants living in five settlements. The Kichwa's political structures have been recognized by the state since 1979 and form a part of the CONAIE.

On 12 May 1992, the *Instituto de Reforma Agraria y Colonización* (Agrarian Reform and Colonization Institute), adjudicated an area known as *Bloque 9* (Block 9) to the communities of the River Bobonoza, comprising approximately 230,000 hectares, of which 135,000 corresponded to the Kichwa people of Sarayaku.

Hydrocarbon exploration began in the Ecuadorian Amazon in 1960, and the first crude oil was discovered in 1970. From this date on the oil sector has been seen as a strategic national asset.

Oil exploration in Sarayaku territory

Following an international tendering process, on 26 July 1993 the Ecuadorian government awarded a participation agreement to the national oil company (Petroecuador), the Compañía General de Combustibles S.A. (CGC) and the Argentinian oil company San Jorge S.A. to explore for and exploit crude oil in Block 23 of the Amazonian region. The agreement covered 200,000 hectares of which territories belonging to the Kichwa made up 65%.

The Kichwa people of Sarayaku opposed the entry of the oil companies to their territory from the start. However, once the agreement had been signed, and in the face of CGC's desire initiate its environmental management plan and begin exploration, the company made several different attempts to reach agreement with the communities. It sought to enter into direct contact with the population, offering money in exchange for development schemes and work opportunities, provided

11. Information on the events that occurred between 1993 and 2010 in Sarayaku is taken from the ruling of the Inter-American Court of Human Rights, Sarayaku v. Ecuador (2012) and the website maintained by the community itself: http://sarayaku.org/

basic health services, paid community members to convince their neighbors of the merits of exploration, contracted a company known as Daymi Service S.A. to resolve community conflicts, even going so far as to create a puppet "independent community of Sarayaku" that would be amenable to signing an agreement permitting the company to enter the territory.

However, none of these actions resulted in the indigenous authorities accepting exploration in their territories. In 2002, community members began to make representations before the Ecuadorian state. They informed the Minister of Mines and Energy that they opposed the activities of CGC in their territory. They informed the National Human Rights Ombudsman (a state official responsible under the 1998 Constitution for providing state criminal defense and ensuring Human Rights protection) who issued a declaration ordering the territory to be respected. Finally, the community presented an acción de constitucionalidadseeking to protect its rights, which was decided in its favor.

Despite these successes, conflict was inevitable. The CGC, supported by Ecuadorian troops, began occupying Sarayaku territory and to plant pentolite explosive charges across the territory as a preparation for exploration activities. The community opposed these actions with force and declared a "state of emergency" in their territory under whose terms part of the community relocated to the borders of their lands for a period of six months to prevent the entry of CGC workers. However, the only result of this action was the arrest of several members of the community on 25 January 2003.

Following the arrests CGC entered the indigenous territories causing considerable damage, according to testimony from the inhabitants. The Inter-American Court of Human Rights, reported an inhabitant describing how a massive tree of great importance to the community was destroyed: "(…) oil company employees had entered his sacred forest in PINGULLU and had destroyed all the trees that existed there, particularly, the great tree of Lispungu, which has left him without the power to obtain his medicine to cure the ailments of his children and relatives [.…]" (IACtHR, 2012, p. 27). The community also complained that part of the scared mountain *Wichu kachi* ("the parrots' salt lick") was affected as were other sites used for initiation ceremonies, interrupting Uyantsa, the most important festival in the calendar, which takes place in February each year.

Although all activities in Block 23 were ordered suspended in 2004 as a result of the confrontations with the indigenous communities, in 2009 Petroecuador's board voted to resume activities. Finally, following long drawn out negotiations involving Petroecuador and CGC, a contact ending the exploration and exploitation of crude in area was signed by mutual agreement on 19 November 2010.

Nevertheless, the protocol stated that "no environmental liability exist[ed]". The indigenous community strongly opposed the entry of CGC into their territory and maintained their opposition subsequently when the contract was ended without the payment of compensation for the damage caused to the community and without the removal of the explosives that had been buried in their territory.

The cause of the Kichwa people of Sarayaku and their international allies

Given the fact that the Kichwa community was unable to find a satisfactory resolution to the conflict within Ecuador they decided to take their case to international human rights jurisdiction. On 19 December 2003 the community lodged a complaint with the Inter-American Human Rights Commission jointly with the *Centro de Derechos Económicos y Sociales* (CDES), an Ecuadorian NGO founded in 1997, and the International Coalition of Organizations for Human Rights in the Americas (CEJIL), an international organization based in Washington that specializes in taking cases to the Inter-American System. Other supporters included organizations such as Amnesty International, the Forest Peoples Program and the legal clinics of the universities of San Francisco (Quito), Seattle and Yale.

After the case was admitted by the Inter American Court, for the first time in its history, rather than hearing the case in San Jose Costa Rica where the Court is based, or in another country, it was decided to send a delegation of judges to Sarayaku territory in April 2012 so that they would be able to get to know the land and listen to the statements of community members. The delegation, consisting of judges form the Court, government representatives and indigenous leaders met principally in the community's assembly house (Tayjasaruta).

During the visit to the Sarayaku territory the Secretary for Legal Affairs of the Ecuadorian Presidency, Alexis Mera, stated that the government of Rafael Correa (2007-2012) wished to recognize the international responsibility of the Ecuadorian state for the oil explorations carried out by CGC in 2003. He indicated that the President had ordered the company not to carry put any further exploration activities unless it guaranteed prior consultation with the communities and the welfare of the inhabitants of the areas affected were improved:

"And I say this in the most direct way possible. In fact, this hearing was convened at the request of the President of the Republic himself: it was the President himself who requested in writing that the President of the Inter-American Court of Human Rights come here to verify the situation of the Sarayaku people, and also to verify that it was this Government that expelled the CGC oil company. When we took office five years ago we discovered all these incidents and all this unease

and the serious problem in the block and, as you know, our reaction was, to expel the CGC oil company. It is no longer carrying out exploitation activities. And there will be no more oil exploitation without prior consultation".

This declaration was in marked contrast to the positions of the preceding governments of Lucio Gutiérrez and Alfredo Palacios, of more conservative bent and whose representatives maintained that they were under no obligation to consult with the Sarayaku people before carrying out exploration activities in Block 23 (Melo, 2012). But even with the change of approach the IACtHR decided to produce a sentence, which it published on 27 June 2012. The Court welcomed the government's acceptance of events and indicated that in so doing the conflict it had been asked to examine was brought to an end. But it said that it was in any case duty bound to produce a sentence, as this would contribute to the reparation of the victims, establish a scale of compensation and prevent similar occurrences in the future.

The Court confirmed that the Ecuadorian government had no obligation to carry out prior consultation in 1993 when the contract was signed, as the country had not at that stage signed ILO Convention 169 which enshrines the obligation. But once the convention had entered into force it consultation should have begun. This, however, had not happened. According to the IACtHR "*the State not only partially and inappropriately delegated its obligation to consult to a private company, thereby failing to comply with the above-mentioned principle of good faith and its obligation to guarantee the Sarayaku People's right to participation, but it also discouraged a climate of respect among the indigenous communities of the area by promoting the execution of an oil exploration contract*".

As reparation the Court ordered the Ecuadorian state to carry out the studies necessary to excavate the pentolite charges that remained on Sarayaku territory in conjunction with the community, to develop the regulations necessary for prior consultation to be incorporated into domestic law and to train state officials in indigenous rights. It also ordered satisfaction measures, requiring the state to acknowledge its responsibility publicly before the nation and internationally and to disseminate the terms of the sentence (IACtHR, 2012).

Reception and implementation of the Court's sentence: a pluralist examination

It is significant that in this conflict between the Sarayaku people and the oil industry, an important role was played by outside actors who added a more plural focus to the affair. On the one hand, between 1993 and 2007, the Ecuadorian government used the armed forces to support private oil interests and refused

to accede to indigenous demands to enter into dialog. But government policy changed with the arrival to power of President Rafael Correa who values dialog with the indigenous communities on the use made of their territories. On the other hand the international exposure given to the cause of the indigenous communities was valuable too, drawing attention to the issue, framing the struggle in the language of Human Rights and applying pressure within the state to encourage Correa's government to pronounce as it did.

The intervention of the IACtHR was important as well, because it insisted that conflicts about environmental reparations should not be resolved merely by applying the measures decided by the state but taking into account the opinion of the Sarayaku people by implementing the prior consultation mechanism. For José Gualinga, leader of the Sarayaku people, "this sentence is the result of almost a decade of international litigation and establishes a historical precedent in the lives of the peoples and nationalities around the world, who are constantly threatened by extractive policies in the name of the so-called development of the 'first world' and that has nothing at all to do with the cosmovision of the peoples who declare ourselves defenders of the jungle». (Otramérica, 2012)

Examples of this success are the meetings between representatives of the people of Sarayaku and the Ecuadorian ministers of Justice, Human Rights and Non-renewable Resources, among others, to discuss ways to unearth or deactivate the explosives left by CGC in indigenous territories. In addition to participating in these meetings the representatives of the indigenous communities are obliged by their internal regulations to pass the proposals on to the community elders and leaders in assemblies held within their territory before they are able to come to any agreements committing their people to a particular course of action.

The question remains as to whether the Ecuadorian government will take advantage of the opportunity offered by a mechanism such as prior consultation to develop its oil policy or whether, as José Gualinga, leader of the Sarayaku people fears, they will continue oil exploration within the state tender process known as the *XI Ronda Petrolera* (11th Petrol Round), imposing conditions and ignoring the point of view of the communities.

III. Bolivia

1. Overview

At the end of the 1990s Bolivian politics entered a turbulent phase caused by the crisis in its political institutions brought on by popular discontent with the country's neo-liberal elites. This panorama brought with it a rising tide of activism by the social movements. Typical actions transmuted from the dominant tactic of trade union-organized strikes to more dynamic and eye catching actions such as marches, occupations and rioting. Geographically, the actions migrated from the mining centers to rural areas, before becoming generalized across the country - with clear centers of activity in the Aymara-speaking Altiplano, or high plateau, the city of El Alto, Cochabamba and el Chapare, and Santa Cruz. The focus of the protests evolved from demands for employment and improved living conditions to environmental protection and the creation of a plurinational state (Córdoba, 2010: 177).

Evo Morales and the presidential elections of 2005

Evo Morales won the elections held on 18 December 2005 with almost 54% of votes cast for his *Movimiento al Socialismo* (MAS). Morales had been president of the Coordinating Committee of Coca Producing Federations in Cochabamba since 1996, had founded the MAS and led the protests that ousted Gonzalo Sánchez de Lozada from the presidency in 2003. One of Morales' campaign promises had been the development of a new constitution, a process for which his election victory paved the way.

The Bolivian National Constituent Assembly: between expectation and controversy

Elections to the Constituent Assembly were held on 2 July 2006 with voting in the referendum on departmental autonomy taking place on the same day. In the referendum, five western departments (Chuquisaca, La Paz, Cochabamba, Oruro and Potosí) voted No while the other four departments of Tarija, Santa Cruz, Beni and Pando voted *Yes*. These four departments, predominantly low-lying and all located in the east of the country constitute the so-called "Half Moon", whose authorities and civic organizations are openly hostile to the Morales government.

The MAS was successful in most of the country and won over half the seats in the Constituent Assembly, though with an insufficient majority to control the vote on the new Constitution, which required a two thirds majority. The Assembly initiated its activities in August 2006. The 255 members represented 16 political organizations. The MAS had the absolute majority with 137 members (53.7%) while PODEMOS (opposed to MAS) had the second largest presence with (23.5%). The next three organizations had only eight members each. Socially, the Assembly was dominated by members of the lower middle class, most of whom represented some social organization; the professionally qualified were in the minority. Some 60% of members declared themselves to belong to an indigenous group, most of them Quechua speakers and many of whom had been directly proposed by their communities or included in the MAS list (Lazarte, 2008).

The work of the Constituent Assembly was marked by a series of conflicts between the different political groups participating in it, which some characterized as a reflection of the Bolivian conflict (Franchino, 2007), and which meant the deadline of one year to produce the new constitution, set when the Assembly was convened, was not met. The first conflict concerned its procedural rules. The MAS wanted the text of the constitution to be approved by absolute majority, the opposition insisting on a two thirds vote as originally stipulated. This conflict lasted from August 2006 to February 2007, ending when the MAS accepted the two thirds figure. Following a series of political conflicts that polarized the country between supporters of the government and partisans of proposals for departmental autonomy and for naming Sucre as the capital, the Plurinational Constitution was finally approved in 2008, 164 of the 255 assembly members turning up to vote. The Constitution was subsequently modified by Congress and endorsed in a referendum on 25 January 2009, with a favorable vote of 61.43%.

The 2009 Constitution

Article 1 of the 2009 Political Constitution of the State (PCS) recognizes the rights of the *naciones y pueblos indígena originario campesinos* (first-nation indigenous and aboriginal farming peoples). The state is defined as a "… Plurinational Communitarian Social Unitary State under the Rule of Law that is free, independent, sovereign, democratic, intercultural, decentralized, and with autonomies. Bolivia is based on plurality and political, economic, legal, cultural, and linguistic pluralism, within the integrative process of the country". Article 2 expressly guarantees the free determination of the first-nation indigenous

and aboriginal farming peoples within the framework of the unity of the State. Similarly, article 30 recognizes their right to: autonomy, self-government, culture, their own institutions and to consolidate their territorial entities, establishing an exclusive catalog of the rights of the first-nation indigenous and aboriginal farming peoples, including the rights to self-determination and territoriality (art. 30.II.4); institutions that form a part of the structure of the state (art. 30. II.5); develop their own political, legal and economic systems according to their own cosmovision (art. 30.II. 14); obligatory prior consultation (art. 30.II.15); manage their territories autonomously and to the exclusive use and enjoyment of the renewable natural resources found in them (art. 30.II.17); and to participate in the bodies and institutions of the state (art. 30.II.18).

The principles and values of the first-nation indigenous and aboriginal farming peoples are also recognized as those of the PCS. Article 8.I establishes that the state accepts and promotes the following values as guiding ethical and moral principles of Bolivia's plural society: ama qhilla, ama llulla, ama suwa (don't be weak, don't tell lies and don't be a thief) suma qamaña (live well), ñandereko (live in harmony), teko kavi (good life), ivi maraei (Earth free of evil) and qhapaj ñan (noble life or path).

Phase	**Plural actors: intercultural /interdisciplinary / intergenerational.**	**Mechanisms / Actions / Regulations /Examples with a pluralist focus.**
Pre-Constituent Assembly	- Mass protests and demonstrations by indigenous groups throughout the 1990s. - Protests against neo-liberal measures: In October 2003, mass protests by Aymara people living in El Alto and peasants and urban sectors across the country led to the resignation of President Gonzalo Sánchez de Lozada. The Vice President Carlos Mesa took over as president and in 2005, following major demonstrations and a powerful political and social crisis, Mesa resigned, calling presidential elections for December 2005.	When still president, Carlos Mesa introduced a new constitutional article foreseeing the possibility of convening a Constituent Assembly to produce a new Constitution. The decision stated that the Constituent Assembly would have to be established by a law approved by at least two thirds majority of Congress. - Crisis of representation and legitimacy of the political system. - Rejection of the political institutions and parties. - Indigenous marches for the defense of territory. - "Water War" in 2000 in Cochabamba and "Gas War" in 2003.

Phase ***(continued)***	**Plural actors: intercultural /inter-disciplinary / intergenerational.**	**Mechanisms / Actions / Regulations /Examples with a pluralist focus.**
Constituent Assembly / Constitutional Text	- The law to convene the Constituent Assembly sets the date for the same day as a binding national referendum on departmental autonomy. - Evo Morales leads the move to convene the Constituent Assembly. - MAS founded by Evo Morales. - PODEMOS: main opposition to Evo Morales. - Movimiento Sin Miedo (the Without Fear Movement –MSM) – originally allied with MAS but now in opposition. - June 2006 elections for Constituent Assembly convened. - MAS wins a majority of seats on the Constituent Assembly but did not reach the two thirds majority required to approve the new constitution. - Opposition concentrated in the so-called “Half Moon” (Pando, Beni, Santa Cruz and Tarija).	- Law to convene a binding national referendum on the Constituent Assembly for autonomous departments, Number 3365, 6 March 2006. - Article 25 of the Special Law to Convene the Constituent Assembly: “The Constituent Assembly will approve the text of the new Constitution by a two thirds vote of the members of the Assembly present”.
Application of the Constitution	- The 2009 Constitution creates the Plurinational Constitutional Tribunal. - Different indigenous organizations from around Bolivia. - Political parties. - Plurinational Legislative Assembly of Bolivia. - Ministries and state bodies such as the Deputy Interculturality Minister and the Deputy Minister for Decolonization. - Human Rights and other NGOs.	- The Constitution recognizes the rights of first-nation indigenous and aboriginal farming peoples, Bolivia being a country based on plurality and political, economic, legal, cultural, and linguistic pluralism, within the integrative process of the country. Article 2 guarantees the free determination of the first-nation indigenous and aboriginal farming peoples within the framework of the unity of the State. - Special Indigenous Jurisdiction. - Approval of prior consultation.

Table 3. Constitutional phases / plural focus in Bolivia.

2. Case study: road construction in the Isiboro-Sécure National Park and Indigenous Territory TIPNIS [12]

Since his re-election on 6 December 2009, one of the bitterest conflicts faced by Evo Morales has concerned the proposal to construct a highway through the *Isiboro Sécure* National *Park* and *Indigenous Territory* (TIPNIS). The territory is protected by two mechanisms: it was designated as a National Park by Decree 07401 of 22 November 1965 and declared as an indigenous territory by Decree 22610 of 24 September 1990, following campaigning by the peoples of the region and as a result of the "March for Territory and Dignity" held in 1990. The historical inhabitants of the territory are the Moxeño, Yuracaré and Chimane, with a total population of about 6,000, grouped into 64 communities (SERNAP). On 1 August 2008 the Bolivian Highways Administration awarded a US$415 million contract, to be financed by Brazil, to the Brazilian company OAS for the construction of the 306 km second section of the highway. This second section was planned to cross the TIPNIS, affecting natural forests and eco-fragile zones. Experts said the project would have a negative effect on biodiversity, and the integrity of the park and the indigenous peoples dwelling in it. For these reasons, the three indigenous peoples who live in the area have repeatedly expressed their rejection of the project. The government insists that the highway must be built because it constitutes a potential growth pole for the region and forms a part of the bi-oceanic corridor linking Brazil Bolivia and Chile, which will connect the Atlantic and Pacific oceans.

The first antecedent of the conflict involving the indigenous peoples of the TIPNIS and the Morales government occurred on 15 August 2012 when the indigenous communities of Eastern Bolivia, including the *Confederación de Pueblos Indígenas de Bolivia* (Confederation of Bolivian Indigenous Peoples - CIDOB) and the CIDOB sub-central member organizations representing the communities in the TIPNIS initiated a march from the city of Trinidad to the seat of government La Paz. The Morales government had already said that the construction of the Villa Tunari- San Ignacio de Moxos highway would not be submitted to public consultation. He would therefore enter into dialogue with the communities to explain the importance of the project but not to debate whether or not it would be constructed. In response, the indigenous communities decided to march on

12. The following section is based on a review of the following Bolivian newspapers: *Página 7*, *El Potosí*, *Los Tiempos*, *La Razón Nacional*, *La Estrella de Oriente* and *periódico.com.bo*. Official sources were also consulted, such as the SERNAP (*Servicio Nacional de Áreas Protegidas* - National Protected Areas Service), sentences of the Plurinational Constitutional Tribunal and the websites of organisations working in support of the communities that are demanding protection for the TIPNIS.

La Paz to coincide with the Fifth National Commission of CIDOB's sub-central and regional coordination bodies.

The march was declared to be "For the *Isiboro Sécure* National *Park* and *Indigenous Territory* (TIPNIS)". It was planned in order to pressure the government to pass a law prohibiting construction of the highway. Before the march the indigenous communities and the government entered into dialogue, but this proved unsuccessful and the march went ahead (Periódico Página Siete, 23 July 2011).

The march was positively received in some towns while in others participants were refused access to water, electricity and food. The flashpoint occurred on 25 September 2011 in Chaparina, Beni Department, when the police intervened to prevent the march continuing to La Paz. The police action provoked an angry reaction from the public and led to a crisis in the Morales government leading to the resignation of several ministers (Periódico El Potosí, 4 January 2012).

The march reached La Paz on 19 October 2011 and many inhabitants of the city joined the thousands of indigenous marchers. On 20 October the president reversed his decision to build the highway through the TIPNIS and presented "Short Law" No. 180 to the Legislative Assembly, ordering construction of the second section to cease and declaring the reserve to be "intangible" (literally: "untouchable")[13]. On 24 October the Legislative Assembly approved the Short Law, initiating a debate on the principle of intangibility introduced by the law, which prohibits illegal settlement, commercial forestry activities and projects causing environmental impacts in the region. While the law was welcomed by the marchers it provoked heated debate among indigenous leaders because according to the government intangibility implied abandoning productive activities in the park. The indigenous leadership insisted that this obligation should apply only to the park's high risk zones but that it should not affect the community's hunting fishing or agricultural activities (Periódico Los Tiempos, 25 October 2011).

The conflict continued, and on 17 December 2011 the *Consejo Indígena del Sur del TIPNIS* (Indigenous Council of the South of the TIPNIS - Conisur), allied with the governing party MAS, initiated its own march on La Paz demanding that the highway should be built, for Law 180 to be overturned and intangibility for the TIPNIS to be revoked (Periódico El Potosí, 4 January 2012).

13. Both the meaning and the use of the category "Short Law" (*Ley Corta*) have led to widespread debate in Bolivia because it leads to legal uncertainty. According to Alba (2012) the term "short law" is a singular legislative act that operates according to the following assumptions: "1) it is provisional, pending future incorporation into legislation or the relevant body of law. 2) it is urgent, intended to respond to social pressures for the modification of existing legislation. 3) it is "inorganic" in as much as it is intended to interpret constitutional terms without recourse to the jurisdictional bodies established by the constitution." (Alba, 2012: 4).

Several proposals were advance to resolve the differences between the CIDOB and the CONISUR: to repeal Short Law 180, to modify it (specifically its reference to intangibility), or to enter into dialog with the communities living in the territory about the highway scheme in order to decide on the precise meaning of intangibility (Periódico La Razón Nacional, 31 January 2012).

Faced with these conflicting positions, the Plurinational Legislative Assembly followed the lead given by Conisur, passing Law 222 of 10 February 2012, which established the right to consultation ensuring free, prior and informed consent for the indigenous inhabitants of the TIPNIS, defining the nature of the process and the procedure to be followed. The indigenous communities were required to decide whether they wanted the declaration of intangibility covering their territory to be made permanent and whether the highway should be constructed or not. The CIDOB rejected Conisur's proposal to carry put a consultation on the question of the highway, arguing that the consultation process should take place before the project was signed and construction began, not after. The CIDOB therefore argued that Law 180 should be retained (Periódico La Razón, 4 February 2012).

On 27 February, following the promulgation of Law 222 (on Free, Prior and Informed Consultation with the Indigenous Peoples of TIPNIS), Plurinational Legislative Assembly members Marcela Revollo and Fabián Yaksic from the opposition MSM, and sympathetic towards the CIDOB, lodged an "accción de constitucionalidad" with the *Tribunal Constitucional Plurinacional* (Plurinational Constitutional Tribunal - PCT) (Periódico Página Siete, June 14 2012). They argued that Law 222 was unconstitutional because of the way it regulated prior consultation. Consultation would be inopportune, because it should take place before work started; it would be unrepresentative because it would include communities that did not belong to the TIPNIS sub-central bodies and who the CIDOB considered to have violated the interests of the true inheritors of the land; it contradicted Law 180 whose terms were obligatory; it violated the fundamental principle of prior consultation which should be framed as a part of a negotiation process, the state acting in good faith, whereas in this case consultation had been imposed; and finally, the state was failing to guarantee and respect the rights of the indigenous communities.

In response, two MAS deputies, Miguel Ángel Ruiz Morales and Zonia Guardia Melgar, initiated their own process, arguing in turn that certain articles of Law 180, brought in to protect the TIPNIS, were unconstitutional. Their position was that the law's definition of intangibility implied that it was impossible to develop or alter development policies, programs or projects, limiting the ability of the legitimate inhabitants of communities to manage and control their territory.

On 18 June 2012 the PCT issued Ruling 0300/2012, which found that Law 222's regulations concerning prior consultation were "conditionally constitutional". This meant that, when applied, Law 222 should be conditioned on the agreement of the indigenous peoples and nations. This would reflect the horizontal relationship between the state and the indigenous inhabitants of the TIPNIS, because the communities enjoy the fundamental right of consultation (Periódico Página Siete, 14 June 2012). Thus, the Legislature and the Executive should prepare a joint protocol, agreed with the indigenous communities after full discussion in their own institutions. There would be no impediment to consultation carried out in this manner taking place after construction on the highway had begun as long as the condition stipulating full participation of the indigenous peoples in agreeing the agenda was met. The ruling stated that consultation and participation on equal terms were the most important aspects of the consultation. The terms of participation of the first peoples would therefore be defined during the drafting of the protocol, as they could not be excluded from defining the consultation agenda. They had a fundamental right to full participation in the process that was inherent to their being, their way of life and their territory (Conclusions, Sentence 0300/2012).

Following the publication of the ruling, planning of the prior consultation process - set to conclude before 7 December 2012 – began. The process was not exempt from difficulties, as it started amid accusations that elected officials had sought to influence the decision of the PCT. Thus, the magistrate Gualberto Cusi said that the Minister of Justice, Cecilia Ayllón, and the Deputy Minister Héctor Arce had visited the PCT president in order to influence the outcome of the ruling. These complaints were denied, but they fanned the flames of the accusations that the Bolivian justice system is not independent because it has been coopted by the Executive (laprensa.com.bo, 22 August 2012).

It should also be noted that the consultation itself has not been free of conflict either. On the contrary, multiple complaints have made: interference by the Legislature and the Executive in the legal system, misinformation and failure to consult the procedures with the indigenous communities. The conflict between the parties, then, has continued. In October 2012 the government indicated that two thirds of the indigenous communities of the TIPNIS had been consulted and the remaining third had not, because they disagreed with the procedure. Gabriela Montaño, president of the Senate said, in this respect, "all the communities have the right to be consulted and some have freely decided that they did not wish to participate in the process. Their views will be respected, but they cannot be allowed to impose their views on the rest of the community". She confirmed

that the language used by Law 222 and the PCT refers to concertation and the pursuit of dialog, not consensus, because "there is a big difference between consensus and concertation" (Bolivian Plurinational Legislative Assembly Press Release 9 October 2012).

For his part, Fernando Vargas president of the TIPNIS sub-central bodies and an opponent of the highway was quoted by the indigenous news agency Erbol as saying "the President will win the consultation through trickery [because] the government is trying to commit fraud by busing indigenous people from the Park to Trinidad to consult with them. But this isn't allowed in the communities and if we find out that an indian has gone and spoken in the name of the community he will be punished according to our customs" (Periódico la Estrella de Oriente, 10 October 2012). Vargas also complained that when the government said it had consulted the majority of the communities, they did not say which, where they were located, nor who the people who attended were.

In November 2012 the government announced that the consultation had started. The preliminary results were that 54 (78%) of the 69 communities had been consulted and that all of these had rejected the principle of intangibility and 71% had favored the construction of the highway. On 7 January the *Sistema Intercultural de Fortalecimiento Democrático* (Intercultural System to Strengthen Democracy), the operational arm of the *Tribunal Supremo Electoral* (Supreme Electoral Tribunal), presented its observation and accompaniment report on the consultation, stating that 58 communities had participated and 11 had decided not to. Of the communities that said yes, 57 were against intangibility and were therefore in favor of the repeal of Law 180. Furthermore, 55 communities decided to support the constriction of the highway while three were opposed. (Periódico Cambio, January 2013). These findings implied that, on the one hand, the Executive should implement the agreements it had come to with the communities of the TIPNIS and on the other, the Legislative Assembly should begin the process of revoking Law 180.

The TIPNIS CASE: a pluralist focus but no integral articulation of the regulations?

The TIPNIS case provides an opportunity to observe how the judicial system and the law were used at every stage of the conflict: Law 180 on intangibility, Law 222 on prior consultation, "demandas de constitucionalidad" brought against these laws by representatives of groups in conflict, and PCT Ruling 0300/2012 of 18 June 2012. However, it is also clear that legal mechanisms were not capable of resolving the conflict on their own. On the contrary, the differences leading

to conflict are beyond the capacity of the legal mechanisms to resolve, though attempts are made to use them to encourage dialogue or resolve conflicts.

The arguments put forward by the PCT in Ruling 0300/2012 are connected with the principles included in the 2009 Constitution. Thus, the ruling indicates that with the declaration of plurinationality the Constitution recognized Bolivia as a diverse country and emphasized that the constitutional principle of living well is a value not only of the first-nation indigenous and aboriginal farming peoples, for whom "it means life in all its fullness, implying first, knowing how to live and then how to live in harmony and balance –harmoniously with the cycles of Mother Earth and the cosmos, of life and history and in balance with all forms of existence, free of hierarchy and with the understanding that everything is important for life" (PCT Ruling). In this sense, the ruling stresses that because living well had been elevated to a constitutional principle it had become one of the founding norms of Bolivia's entire judicial system and was, therefore, central to the future interpretation of legal rules. Thus it highlighted the fact that the founding principle of the constitutional change is the pluralistic composition of the Bolivian people and that the primordial objective of the Plurinational State is 'living well' (PCT Ruling).

Following the promulgation of the new Constitution, pluralism was established as the new judicial, political and social foundation of the country, according to which individual and collective rights should be protected by the state, which is obliged to put into practice the principles established by the constitution (Conclusions of the PCT Ruling).

The enshrined principle of pluralism means not only that all the models of civilization present in Bolivia should be respected, but also that the economic model and all private and public plans should be guided by respect for nature, the search for balance between all the inhabitants of the nation, and the least possible damage to the environment. In addition, at the root of the concept of plurinationality is the intention to foster dialog between different cultural groups and first-nation indigenous and aboriginal farming peoples, bringing together the different systems of logic, knowledge, values, principles and rights to create a reciprocal relationship between the "western" and the culture of the first-nation indigenous and aboriginal farming peoples. The intention is to forge novel institutions and a new legal system, but above all to construct a solid and progressive state founded on the principle of unity in diversity.

Thus, the state will be built as part of a collective enterprise, involving the state and society in a joint effort to discover how to put into practice the principles that have been formally established by the Constitution. This process should involve

the active participation of the population in the decisions of the state in exercise of a pluralist democracy – representative, participatory and communitarian - that exists to guarantee fundamental individual and collective rights.

The ruling places considerable emphasis on the fact that one of the characteristics of the plurinational state is the absence of a hierarchy of rights, all of which are directly applicable and equally protected. This principle strengthens the collective construction of the state. Furthermore, in the Plural State, the value of pluralism is essential to the new legal-constitutional framework. If the principle is to be turned to practical effect it has to be implemented as part of a regime in which the state and the first-nation indigenous and aboriginal farming peoples are equal. In other words, relationships must be horizontal.

Building on the plurinational nature of the state and the principle of interculturality the Constitution establishes the Plurinational Constitutional Tribunal as the body responsible for exercising control over the different jurisdictions and in general over all public bodies. The Tribunal adheres to the principles of intercultural dialog, giving equal representation of the ordinary justice system and the systems of the first-nation indigenous and aboriginal farming peoples. The Bolivian Constitution has developed a plural system to oversee questions of constitutionality that is not limited to exercising control over formal regulations but also those governing the first-nation indigenous and aboriginal farming peoples, resolving conflicts of jurisdiction and reviewing the decisions arrived at by the non-majoritarian systems when they are considered to be inconsistent with fundamental rights and constitutional guarantees.

These powers were introduced under the current Constitution in express recognition of the rights of the first-nation indigenous and aboriginal farming peoples and of the equality of the different justice systems and jurisdictions. But the Constitution has emerged as the result of a process of dialog involving all sectors of Bolivian society including the first-nation indigenous and aboriginal farming peoples who played a central role in consolidating the Plurinational State. Both the systems of the first-nation indigenous and aboriginal farming peoples and of the majority state must operate within the terms of the constitution.

An interesting aspect of this case is that the indigenous communities who are part of the CIBOD demanded that the law regulating prior consultation in the TIPNIS should be declared unconstitutional in order to respect the terms of Law 180. This is why they emphasized the importance of the consultation, emphasizing its role as a mechanism to protect diversity and contribute to the collective construction of the state. In this way it conceived of the consultation process as a form of relationship between the state and the indigenous peoples and as

a mark of respect and recognition of the existence of a plurinational society. It called on the state to conduct consultation because it is a right enjoyed by the indigenous people. The exercise should therefore be carried out "… respecting consensus and following the procedures decided by the peoples being consulted, based, always, on their cosmovision, customs and ways of life. It follows that consultation involves the construction of agreements during which, if the state intervenes, it should do so respecting and accepting the procedures established by the representative bodies of the indigenous people. Both the state and the first-nation indigenous and aboriginal farming peoples must act in this process in good faith". (Constitutional Court Ruling 3: Results of the Consultation).

It is, furthermore, important to note a peculiarity of political processes in Bolivia: its powerful social movements. The TIPNIS case illustrates the partisan behavior of different sectors including government servants, who act to advance their opposing views. Different forms of protest and mass action are employed too, including marches and legal action. The 2009 Constitution created a range of state institutions intended to act as mediators of social conflicts of which, it was recognized, the state, too, could be a party, is the case with the PCT.

Neither the rulings of the PCT nor legislation are necessarily able to resolve conflicts but represent instead their continuation and frequently become contested ground. It should be remembered that the TIPNIS conflict remained alive after the promulgation of Law 180, Law 222 and the ruling of the Court. Therefore, while it is true that the pluralist focus seeks to construct a new form of state through collective action, and though mechanisms have been designed to resolve conflicts – in this case legal – their use is no guarantee that the conflicts will in fact be brought to a final close. It is important not to lose sight of this fact because it might otherwise be thought that employing such mechanisms will necessarily resolve conflicts completely. On the contrary, the TIPNIS case illustrates how hard it is to resolve conflicts using a pluralist focus.

IV. Final reflections

These case studies on Colombia, Bolivia and Ecuador reveal many clues and suggest a range of questions concerning the potential of a plural approach to resolving social conflicts in a period when constitutions and human rights are of growing importance. Effectively, all the cases examined in this paper involve an ethnically diverse population that is demanding rights over territory. But more importantly, they are pursuing their right and their capacity to be considered as political subjects, to propose solutions to the conflicts that affect them as any state institution, to request the intervention of other actors (such as international bodies) and to involve other disciplines in addition to law, including biology, ecology and social work. These are likely to have a contribution to make in response to these disputes, which are not only legal but social and environmental too.

In the case studies presented in this paper these demands have been made using the mechanism of "prior consultation" which introduces a more constructive plural approach to the state. The use of this approach to resolve disputes between ethnically diverse communities and the state is different from integrationist measures that seek to assimilate the indigenous population into majority society or a more separatist approach that seeks to distinguish clearly between the two communities without making any effort to build bridges or resolve the tensions between the two. What is interesting, however, is that this legal mechanism is far from being merely a legal question; it is used by the indigenous communities and all the other actors involved as a political, and even educational tool to resolve conflicts.

It is of course true that the three cases analyzed show that this plural approach and the use of prior consultation do not necessarily result in the total resolution of the conflict at hand. Indeed, in all three cases the fact that it was necessary to reach agreement on the various processes and even the methodology to be used in these concertation processes extended the duration of the conflict somewhat. It even gave the impression, it is true, that no definitive resolution had been achieved. Many factors that are particular to prior consultation, to constitutional frameworks, as well as other factors outside the control of the participants themselves contribute to distorting conflicts, to the appearance of new factors and to their extension into new areas. Nevertheless, prior consultation and the plural approach it brings with it demand that all actors should have the right to a formal space where their voice may be heard and, at the very least, that their proposals are accorded the same value as those made by institutions representing majority power.

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Annexes

I. COLOMBIA

1. The principal guerrilla groups operating in Colombia at the start of the NCA

Fuerzas Armadas Revolucionarias de Colombia (Revolutionary Armed Forces of Colombia - FARC-EP): the FARC, which is still operating today, was founded in 1964. Its members were drawn principally from communist and radical Liberal peasant groups that had been fighting during Colombia's mid-20th Century period of conflict known as La Violencia. Divided into fronts that today operate all over the country, its major successes occurred between 1996 and 1998. The FARC has been involved in several failed negotiation processes with the government (Pizarro, 2011). In the second half of 2012 it initiated a process of negotiation with the government of Juan Manuel Santos (2010-2014).

Ejército de Liberación Nacional (National Liberation Army - ELN): insurgent group founded by peasants and student leaders in the 1960s. One of its most famous members was the priest Camilo Torres who joined the group in 1965 with the intention of articulating the ideas of liberation theology and revolutionary struggle. The ELN is still in operation but in greatly reduced numbers.

Movimiento 19 de Abril (19 April Movement – M-19): this group emerged in 1970 in protest at electoral fraud. Its actions were principally urban. It demobilized on 9 March 1990 following negotiations with the government of Virgilio Barco (1986-1990) and, despite the fact that its presidential candidate Carlos Pizarro was murdered in 1990 participated in the NCA under the name of the Alianza Democrática M-19 (AD-M19).

Movimiento Armado Quintín Lame (Quintín Lame Armed Movement MAQL): an armed resistance group founded in 1983 with self-defense groups established in Cauca Department around 1970 involving some indigenous and non-indigenous leaders and advisors of the Consejo Regional Indígena del Cauca (Indigenous Regional Council of Cauca - CRIC). The MAQL demobilized in May 1991 following negotiations with the government of César Gaviria (1990-1994). As a result of the demobilization process it received recognition as a political movement and was granted an extraordinary seat in the NCA (Laurent, 2005).

Ejército Popular de Liberación (Popular Liberation Army - EPL): a guerrilla group made up principally of dissidents from the Communist Party and the Young

Communist League. It initiated actions in 1968. In March 1991 many of its members re-entered civilian life. Today, however, a small number of militants continue operating under its name.

2. Composition and functioning of the National Constituent Assembly, 1991

After the government of César Gaviria (1990-1994) had convened the NCA by Presidential Decree and the Supreme Court of Justice had indicated that its agenda was unlimited, citizens and social organizations were able to participate in round tables organized by the local authorities to propose and explain suggestions they were making for changes to draft articles. They were also able to participate in preparatory commissions that produced thematic syntheses of the conclusions of each round table. All this material was gathered, and used in subsequent phases of the process.

Subsequently, on 9 December 1990, 70 delegates were chosen by direct election from lists that were presented by different social sectors. The NCA delegates were organized into thematic commissions to discuss initiatives presented by government, the courts and the senate as well as the proposals made by the round tables and the government drafting committee. Each commission was required to propose articles on their respective themes, which were then debated by the NCA in its entirety.

ORGANIZATIONS	MOST IMPORTANT MECHANISM OF PARTICIPATION	REPRESENTATIVES ON THE NCA
Afro-Colombians	Alliance between indigenous representatives and Preparatory Commissions.	Francisco Rojas Birry and Lorenzo Muelas.
*Alianza Democrática M-19**	Direct, elected from NCA list.	Antonio Navarro Wolf.
EPL	Elected from NCA list. No right to vote.	Jaime Fajardo and Darío Mejía.
Indigenous communities (ONIC and AICO)	Elected from NCA list. MAQL representative without voting rights.	Francisco Rojas Birry and Lorenzo Muelas. Alfonso Peña Chepe (MAQL).
Movimiento de Salvación Nacional (National Salvation Movement)**	Direct, elected from NCA list.	Álvaro Gómez Hurtado, Carlos Lleras de la Fuente and 9 others.
Student Movement	Two members included on the Liberal Party's list for the NCA.	Fernando Carrillo Flórez.

ORGANIZATIONS *(continued)*	MOST IMPORTANT MECHANISM OF PARTICIPATION	REPRESENTATIVES ON THE NCA
Feminist movement	Indirect, taken from proposals from the preparatory commissions and round tables through contacts with NCA representatives.	María Teresa Garcés, Otty Patiño, Marcos Chalita, Germán Rojas and Angelino Garzón (AD-M19); Iván Marulanda and Eduardo Verano (Liberal Party).
Movimiento Unión Cristiana (Unified Protestant Movement)	Direct, elected from NCA list.	Jaime Ortiz Hurtado and Arturo Mejía Borda.
Conservative Party	Direct, elected from NCA list.	Augusto Ramírez Ocampo and 8 others.
Liberal Party	Direct, elected from NCA list.	Horacio Serpa and 24 others.
Partido Revolucionario de los Trabajadores (Revolutionary Workers Party - PRT)	Elected from NCA list. MAQL representative without voting rights.	Valentín González and José Matías Ortiz.
Unión Patriótica (Patriotic Union) and *Corriente de Renovación Socialista* (Socialist Renovation Current).	Direct, elected from NCA list.	Alfredo Vásquez Carrizosa and Aida Abella Esquivel.

* Political movement formed following the demobilization of the M-19 guerrilla group.

** The MSN was a dissident group of the traditional Conservative Party, formed in 1990. Its principal leader was Álvaro Gómez Hurtado, member of the NCA, who was murdered in 1995.

Source: Table prepared by the authors from Congreso de la República (1992), Dugas, John (1993), Quintero (2005), Laurent (2005), Orobio Granja (2003) and Presidencia de la República (1991).

3. Pluralism in the 1991 Constitution

The NCA drafted several articles emphasizing the pluralist nature of the country, including the following:

Article 1. Colombia is a social state under the rule of law, organized in the form of a unitary decentralized republic with autonomous territorial entities; it is democratic, participatory and pluralist, founded on respect for human dignity, on the labor and solidarity of the persons constituting it and on the primacy of the general interest.

Article 7. The state recognizes and protects the ethnic and cultural diversity of the Colombian nation.

4. Articles of the 1991 Constitution on indigenous peoples

Article 7. The state recognizes and protects the ethnic and cultural diversity of the Colombian nation.

On cultural autonomy

Article 70. The state has the duty of promoting and fostering access to culture for all Colombians, with equal opportunities by providing full-time scientific, technical, artistic and professional education in all stages of the process by which national identity is created. // Culture, in its different manifestations, is fundamental to nationality. The state recognizes the equality and dignity of all those who live in the country. The state will promote research, science, development and the dissemination of the cultural values of the nation.

Article 10. Spanish is the official language of Colombia. The languages and dialects of ethnic groups are also official in their territories. The education provided in communities with their own linguistic traditions will be bilingual.

On educational autonomy

Article 68. (…)The members of ethnic groups will have the right to schooling that respects and develops their cultural identity. (…).

On territorial autonomy

Article 286. Departments, districts, municipalities and indigenous territories are al territorial entities (…)

Article 329. The establishment of indigenous territorial entities shall be carried out in accordance with the Organic Law of Territorial Planning and their demarcation shall be carried out by the National Government with the participation of representatives of the indigenous communities and on the basis of recommendations made by the Territorial Planning Commission. // Reservations are collective property and are inalienable. // The law defines the relations and coordination of these entities with those of which they form a part.

Paragraph: In the case of an indigenous territory that includes the territory of two or more departments, its administration shall be carried out by the indigenous councils in coordination with the governors of the respective departments. In the event that this territory should decide to constitute itself as a territorial entity, this will be done in fulfillment of the requirements established in the first instance of this article.

Article 330. In accordance with the constitution and laws, indigenous territories shall be governed by councils formed by and regulated according to the customs of their communities and will carry out the following functions:

1. Ensure the application of legal norms for land use and population in their territories.

2. Design policies, plans and programs for economic and social development within their territory, in harmony with the National Development Plan.
3. Promote public investment in their territories and ensure they are duly implemented.
4. Receive and distribute financial resources.
5. Ensure the preservation of natural resources.
6. Coordinate programs and projects promoted by the different communities in their territory.
7. Collaborate with the maintenance of public order within their territory, in accordance with the instructions and arrangements of the National Government.
8. Represent their territories before the National Government and other entities of which they form a part; and
9. Carry out such activities as are identified by the constitution and the law.

Paragraph: the exploitation of national resources in indigenous communities shall be carried out without affecting the cultural, social and economic integrity of the indigenous communities. In the case of arrangements adopted with regards to this exploitation the government will facilitate the participation of representatives of the respective communities.

On political participation

Article 171. The Senate of the Republic shall be formed of one hundred members elected nationally. // Two additional senators shall be elected in a special national electoral district for indigenous communities. // Colombian citizens living or resident abroad may vote in elections to the Senate of the Republic. // The Special National Electoral District to elect senators for the indigenous communities shall operate using the electoral quotient system. // Representatives of the indigenous communities seeking election to the Senate of the Republic should have occupied a traditional position of authority in their respective community or been a leader of an indigenous organization, as certified by the organization in question and authenticated by the Ministry of the Interior.

Article 176. [This article was modified in 2005]. (…) The law may establish a Special Electoral District for representatives of ethnic groups and political minorities. Up to four representatives may be elected to this district.

Article 246. The authorities of the indigenous peoples may exercise their jurisdictional functions within their territorial jurisdiction in accordance with their own laws and procedures provided these are not contrary to the Constitution and laws of the Republic. The law shall establish the mechanisms for coordinating the special district with the national legal system.

II. BOLIVIA

Conflicts over natural resources in Bolivia since the 1990s

The March for Territory and Dignity, to La Paz, organized in 1990 by representatives of indigenous groups from the Amazon region successfully pressured the authorities to grant land titles for their ancestral territories by Presidential Decree. The repercussions of the march, added to the demands of other indigenous groups and the circulation of multicultural proposals among the intellectual elite, led, in the 1994 constitutional reform, to the pronunciation of the heterogeneous nature of the country (Córdoba, 2010:181).

The Guerra del Agua, (Water War). In April 2000 there was a mass social protest in the city of Cochabamba, which came to be known as the "Water War". It was provoked by the attempts to privatize drinking water and sewerage services. The protest, which resulted in the expulsion from Bolivia of the multinational Bechtel, can be seen to mark the origin of the awareness of the issue of privatization and also of the gap between the demands of organized sectors of society, representative democracy and the state (Córdoba, 2010: 183).

The Guerra del Gas (Gas War). The Gas War is the name given to the conflicts that occurred in October 2003 over plans to export Bolivian natural gas to the USA and Mexico. The protestors' first demand was for the suspension of exports until domestic supply was assured, and the second was for a Constituent Assembly, that is, for the creation of a new social contract as the basis of a new, consensual, model of the state. 2003 was the critical year in this process. In February, more than thirty people died in confrontations involving the police and the army in front of government buildings in La Paz. Protests in the capital were successful in preventing financial reforms including an income tax proposal. In October, protests by the Aymara people, the inhabitants of El Alto and peasants and urban inhabitants from around the country led to the resignation of President Gonzalo Sánchez de Lozada. On the evening it accepted the president's resignation, the National Congress swore in the new president, Carlos Mesa. In 2005, following widespread protests and a serious political and social crisis in La Paz, Carlos Mesa resigned as president with new elections being called for December 2005.

III. ECUADOR

The 1998 Constitution and pluralist society in Ecuador

The 1998 Constitution declared Ecuador to be, for the first time in its history, a pluricultural and multi-ethnic country. The Constitution contained an extensive

chapter on indigenous peoples and Afro-Ecuadorians, whom it recognized as holders of rights over their ancestral lands, their traditional forms of social organization and community relations, their heritage, knowledge, education and traditional forms of justice. The 1998 Constitution also incorporated protection of the environment and community participation (Paz and Cepeda, 2008).