

**THE RIGHT TO POLITICAL PARTICIPATION OF INDIGENOUS WOMEN IN  
LATIN AMERICA: COMPARATIVE ANALYSIS OF MECHANISM OF PROTECTION  
IN BOLIVIA, COLOMBIA AND MÉXICO**

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## Executive Summary

In most States with recognition of indigenous right to political participation, women are not entitled with the same rights and possibilities to participate as are men. This problem is easily identifiable in the process of autonomous elections of municipality government, in some communities' women have no right to participate in the process of election, to vote or been voted. And most of the legal systems in Latin-American do not provided from guarantees for the effective access of indigenous women to political participation.

Even though some States had implemented some measures to address this problem, as the imposition of gender quotas, it seems to be ineffective. The solution given by the States to control the “rules of the game” in political participation of indigenous woman can be seen as an imposition that brakes with the harmony of collective right to self-government and self-determination. Indigenous women' right to political participation have two different aspects, in one hand is an individual right to politically participate in the decision-making process of government without discrimination, but also have a collective right as members of an indigenous community to self-determination and non-external interference.

This thesis will analyze the solution that three Latin-American Legal Systems have given to this challenge. How their legal framework and public policies have approached the problem, if they have, as well as the level of effectiveness that those solutions have had over the protection of the right to indigenous women to political participation.

## Introduction

- a. Historical Background: Indigenous peoples fight for recognition of the rights to self-determination and self-government

Latin America have a large and diverse indigenous population. Information of the United Nations have established the existence of at least 826 indigenous communities in all America<sup>1</sup>; and the latest data reported in 2010 estimates that in Latin America around 45 million persons are identified as members of an indigenous group<sup>2</sup>; this number represent the 8% of the entire population in Latin-American<sup>3</sup>. The percentage of indigenous populations varies in a significant manner depending on the country and the region, for example there are countries such as Bolivia and Guatemala where a strong percentage of the population have self-identified as members of an indigenous peoples, 41% to be exact<sup>4</sup>. In the opposite extreme there are countries as El Salvador where only the 0.2% of their population are considered as such<sup>5</sup>.

Indigenous peoples in Latin American Countries have been historically marginalized and victims of different forms of external domination. The subjugation of indigenous peoples in America dates back to the age of the European colonization, when indigenous territorial, cultural and political autonomies were taken away by force and the indigenous population was turn into slaves at the

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<sup>1</sup> United Nations, ECLAC, “Guaranteeing indigenous people’s rights in Latin America: Progress in the past decade and remaining challenges”. Distr.: Limited, LC/L.3893/Rev.1 (2014). Original: Spanish. United Nations; p. 38.

<sup>2</sup> Ibid., p. 36.

<sup>3</sup> See World Population Review, “Latin American Population 2018”.

<http://worldpopulationreview.com/continents/latin-america-population/>

Note: There is an important international debate about whom shall be considered as indigenous person and indigenous peoples. Different standards are been used to determinate whether or not a person or a group can fall under the definition of Indigenous. No international instrument provides a fix definition. The 1957 ILO convention 107 had an attempt to defined what should be understood as indigenous peoples, but this definition was withdraw when ILO 169 entered into force. ILO 169, nevertheless opts for adopting the concept of self-identification as fundamental criteria to determinate whom are indigenous peoples (article 1.3). The American Convention on the rights of indigenous peoples, also accepts the self-identification standard (article 1).

<sup>4</sup> The World Bank Group, “Indigenous Latin America in the Twenty-First Century” (2015); 25.

<sup>5</sup> Ibidem.

service of the colonizers<sup>6</sup>. But the problem did not stop with independence of Latin-American States, discrimination against indigenous has prevailed until present day<sup>7</sup>. States have constantly created public policies aimed to wipe out indigenous communities and to take away their lands.

An example of the modern-day policies of rejection against indigenous communities are the military campaigns undertaken by Guatemala in the 80s, when the government created armed operation aimed to annihilate indigenous communities, resulting in horrible massacres which cause the extinction of many indigenous peoples<sup>8</sup>. These military operations were justified under the excuse that indigenous peoples were a threat to their nation due their different ideology and their fight for an autonomous possession of their lands<sup>9</sup>. In 2009, special forces of the police of Peru had a deadly confrontation with Amazonian indigenous whom opposed to the privatization of their lands<sup>10</sup>. In Mexico, two massacres related to paramilitary intervention were committed in the 90s against indigenous peoples, Rio Blanco Massacre<sup>11</sup> and Acteal Massacre<sup>12</sup>.

In addition to extermination policies, indigenous peoples have always struggle with structural discrimination which has had a negative impact into the full enjoyment of their human rights<sup>13</sup>.

<sup>6</sup> See Anibal Quijano, "Colonialidad del poder, eurocentrismo y América Latina" in *La colonialidad del saber: eurocentrismo y ciencias sociales. Perspectivas Latinoamericanas*, Edgardo Lander, Buenos Aires: CLACSO (2000). <http://bibliotecavirtual.clacso.org.ar/ar/libros/lander/quijano.rtf>

<sup>7</sup> Abdulgaffar Peang-meth, "The Rights of Indigenous Peoples and Their Fight for Self-Determination" *World Affairs*, Vol. 164 (2002); p. 1.

<sup>8</sup> Inter-American Court of Human Rights, "Case of Río Negro Massacres v. Guatemala", *Judgement* (2012); Par. 56-101.

<sup>9</sup> *Ibid.*, par. 57

<sup>10</sup> Inter-American Commission on Human Rights, "La CIDH condena los hechos de violencia en Perú", *press release*, No. 35/09 (2009), <http://www.cidh.oas.org/Comunicados/Spanish/2009/35-09sp.htm>; See also, Martí Orta y Joan Martínez Alier, "Explotación y despojo en la amazonia: Matanza de indígenas en Perú", *LE MONDE diplomatique* (2009) [http://www.medelu.org/IMG/pdf/PERU\\_ALIER\\_p22.pdf](http://www.medelu.org/IMG/pdf/PERU_ALIER_p22.pdf);

<sup>11</sup> See Comisión Nacional de los Derechos Humanos "Síntesis Recomendación 104/95" (1995): [http://www.cndh.org.mx/sites/all/doc/Recomendaciones/1995/Rec\\_1995\\_104.pdf](http://www.cndh.org.mx/sites/all/doc/Recomendaciones/1995/Rec_1995_104.pdf)

<sup>12</sup> See Suprema Corte de Justicia de la Nación, "Violación al debido Proceso caso Acteal", *Crónicas del Pleno y las Salas* (2009). [https://www.sitios.scjn.gob.mx/codhap/sites/default/files/cronicas\\_pdf\\_sr/cr-acteal-A.pdf](https://www.sitios.scjn.gob.mx/codhap/sites/default/files/cronicas_pdf_sr/cr-acteal-A.pdf)

<sup>13</sup> Alvaro Bello Marta Rangel, "La equidad y la exclusión de los pueblos indígenas y afrodescendientes en América Latina y el Caribe", *Revista CEPAL*, no. 76 (2002), p. 40. [https://repositorio.cepal.org/bitstream/handle/11362/10800/076039054\\_es.pdf?sequence=1](https://repositorio.cepal.org/bitstream/handle/11362/10800/076039054_es.pdf?sequence=1)

Indigenous people had to face institutionalized racism, lack in the access to education, health services and welfare<sup>14</sup>. Although it can be said that unequal access to rights and lack of social welfare also affects other social groups of Latin American population, the World Bank and the Economic Commission for Latin America and the Caribbean have highlighted that these problems are maximized for indigenous people<sup>15</sup>. As a result of the structural marginalization, the indigenous population has had a critical decrease, to the point of being at risk of extinction in some regions of Latin America<sup>16</sup>; and even those current existing indigenous communities are been forced to deny their identity with the intention to avoid discrimination.

For many years, Indigenous movements have fought against exclusion, inequality, marginalization and in favor of the recognition of their individual and collective rights, as humans and as peoples. As a result, in the last decades domestic and international legal systems have adopted the new legal framework, as mentioned by the WVG *“Law and public policy have moved from a clearly assimilationist paradigm—intended to integrate indigenous peoples into mainstream society—to a multiculturalist agenda aimed at preserving cultural differences and safeguarding the rights of indigenous peoples to reproduce their cultures and languages, manage their lands and natural resources, and govern themselves according to their political systems and customary laws”*<sup>17</sup>. The

<sup>14</sup> International Fund for Agricultural Development, “Engagement with Indigenous Peoples”, *Policy* (2008), p. 7-9 [https://www.ifad.org/documents/38711624/39417924/ip\\_policy\\_e.pdf/a7cd3bc3-8622-4302-afdf-6db216ad5feb](https://www.ifad.org/documents/38711624/39417924/ip_policy_e.pdf/a7cd3bc3-8622-4302-afdf-6db216ad5feb), see also United Nations Human Rights Commissioner, “The right to Development and indigenous peoples”, *Informative note* (2016), p.1 [https://www.ohchr.org/Documents/Issues/RtD/RTD\\_IndigenousPeoples.pdf](https://www.ohchr.org/Documents/Issues/RtD/RTD_IndigenousPeoples.pdf)

<sup>15</sup> The World Bank “indigenous Peoples, still the poorest of the poor”, *Policy Brief* (2015), p. 2-4. [http://siteresources.worldbank.org/EXTINDPEOPLE/Resources/407801-1271860301656/HDNEN\\_indigenous\\_clean\\_0421.pdf](http://siteresources.worldbank.org/EXTINDPEOPLE/Resources/407801-1271860301656/HDNEN_indigenous_clean_0421.pdf), and United Nations, Economic Commission for Latin

America and the Caribbean, “Guaranteeing indigenous people’s rights in Latin America Progress in the past decade and remaining challenges”, *Summary* (2014), p.69. [https://repositorio.cepal.org/bitstream/handle/11362/37051/4/S1420782\\_en.pdf](https://repositorio.cepal.org/bitstream/handle/11362/37051/4/S1420782_en.pdf)

<sup>16</sup> United Nations, Economic Commission for Latin America and the Caribbean, “Guaranteeing indigenous people’s rights in Latin America Progress in the past decade and remaining challenges”, *Summary* (2014), p.38 [https://repositorio.cepal.org/bitstream/handle/11362/37051/4/S1420782\\_en.pdf](https://repositorio.cepal.org/bitstream/handle/11362/37051/4/S1420782_en.pdf)

<sup>17</sup> The World Bank Group (2015), p. 47.

recognition of indigenous peoples' rights in international law has had a slow and difficult development.

The International Labour Organization (ILO) was the first UN organization in bringing awareness to the international community about the challenges faced by the indigenous peoples<sup>18</sup>. The ILO's efforts in the field were crystalized in 1957 with the adoption of the first binding treaty on indigenous' rights "*The Convention Concerning the Protection and Integration of indigenous and Other Tribal and Semi-Tribal Populations in Independent Countries*" (Convention No.107)<sup>19</sup>. The Convention No.107 imposed over the States the obligation to take measures for the effective protection and integration of member of indigenous populations into the "national community"<sup>20</sup>. However, this approach placed indigenous peoples as object of protection rather than subjects of law entitled with autonomy and rights<sup>21</sup>.

After 1950, other UN organizations such as the Economic and Social Council (ECOSOC), the Food and Agriculture Organization (FAO), the United Nation Educational, Scientific and Cultural Organization (UNESCO) and, the World Health Organization (WHO) started to work in the field<sup>22</sup>. Parallel to growth of UN awareness on the issue, indigenous peoples' organizations began to gain strength and visibility in the international arena, in 1975 it was celebrated the first "International Conference of Indigenous People" which led to the formation of the "World Council of Indigenous

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<sup>18</sup> Alexandra Tomaselli. *Indigenous peoples and their right to political participation: international law standards and their application in Latin America*. Baden-Baden: Nomos (2016), pp. 40-42. See also International Labour Organization (ILO) "Indigenous Peoples: Living and Working Conditions of Aboriginal Populations in Independent Countries" (1953).: International Labour Organization (ILO) "Living and Working Conditions of Indigenous Populations in Independent Countries" *International Labour Conference*, Thirty-Ninth Session, (1956)

<sup>19</sup> Tomaselli (2016), p. 42.

<sup>20</sup> International Labour Organization (ILO) "Convention concerning the Protection and Integration of Indigenous and Other Tribal and Semi-Tribal Populations in Independent Countries". Entry into force: 02 Jun 1959. Preamble.

<sup>21</sup> Tomaselli (2016), p. 42.

<sup>22</sup> International Labour Organization (ILO) "Living and Working Conditions of Indigenous Populations in Independent Countries" *International Labour Conference*, Thirty-Ninth Session, (1956), pp- 21-43.



Peoples”<sup>23</sup>. The consolidation of this international working groups and other kind of manifestations from indigenous peoples’ movement become an important element in the reinforcement of the international understanding in the topic<sup>24</sup>.

A new perspective on the rights of indigenous peoples was embraced for the international community in 1989 with the adoption of *the Convention concerning Indigenous and Tribal Peoples in Independent Countries* (Also name the ILO Convention 169); convention adopted in substitution of the ILO Convention 107<sup>25</sup>. The Convention 169 recognize the existence of indigenous peoples’ collective rights such as the right to participation, consultation and identity<sup>26</sup>, abandoning the paternalistic view of the ILO Convention 107. Other important international document was adopted in 2007 “*The United Nations Declaration on the Rights of Indigenous Peoples*”, which consolidated the contemporary vision of indigenous’ rights and establishes standards and guarantees for the full enjoyment of rights by the indigenous as peoples and individuals<sup>27</sup>. This declaration is the first international document in recognized the existence of indigenous peoples’ rights to political participation, self-determination and self-government<sup>28</sup>.

In the same way as the universal system, the Inter-American System on Human Right took a long time in recognizing self-determination and self-government right to indigenous peoples. Since the OAS creation indigenous peoples right was a topic over the table, nevertheless states opted for maintaining a paternalistic attitude over the issue, aiming to protect and defend “Indians” as

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<sup>23</sup> Tomaselli (2016), p. 42.

<sup>24</sup> UN OHCHR. “Indigenous Peoples and the United Nations Human Rights System”, Fact Sheet No. 9/Rev.2. (2013) p.1 <http://www.ohchr.org/Documents/Publications/fs9Rev.2.pdf>

<sup>25</sup> “Convention concerning Indigenous and Tribal Peoples in Independent Countries” Adopted on 27 June 1989, also known as ILO Convention 169. Signed and ratified by Bolivia, Mexico and Colombia.

<sup>26</sup> ILO Convention 169, articles 2 and 6.

<sup>27</sup> “The United Nations Declaration on the Rights of Indigenous Peoples” Adopted on 13 September 2007.

<sup>28</sup> Ibid., Articles 3 and 4.

vulnerable individuals<sup>29</sup>; this paternalistic view started to slowly change after the 70s. One of the reasons to this slow development may be that the American Convention on Human Right does not contain any explicit clause related to rights of indigenous peoples, and many of the System finding have had to be constructed from a dynamic interpretation of the convention's articles. In 1977, the Inter-American Commission issued its first case in indigenous peoples' rights *Ache v. Paraguay*<sup>30</sup>, the petitioners denounced acts of persecution against the Ache tribe, including killings, children sale of children, lack of medical assistance, torture and forced labor. The Inter-American Commission declare the violation to individual rights such as life, personal integrity and family life, but did not make any pronouncement about collective rights of the tribe<sup>31</sup>. The first case considered by the Inter-American Court on this topic was the 2001 case of *Awes Tingi Mayagna (Sumo) Indigenous Community v. Nicaragua*, the Court recognized indigenous peoples' norms and customs as valid legal systems that should be respected by the States as well the Court held the collective right to land<sup>32</sup>.

Further development in the recognition of indigenous peoples' rights has been made by the Inter-American Court and Commission on Human Rights' jurisprudence. The Inter-American Court and Commission have used universal standards -such as the ILO Convention 169 or the UNDRIP- to give content to the general provision in the American Convention and make a dynamic interpretation to develop an effective framework for protection of indigenous communities<sup>33</sup>.

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<sup>29</sup> Dinah Shelton, "Inter-American Human Rights Law of Indigenous Peoples" in University of Hawai'i Law Review, Vol. 35, (2013), p. 940-943.

<sup>30</sup> Inter-American Commission of Human Rights, "Ache v. Paraguay", Case 1802, issued on 27 May 1977 <http://www.cidh.oas.org/Indigenas/Paraguay.1802.htm>

<sup>31</sup> Ibidem. See also Ariel Dulitzky, "Los Pueblos Indígenas: Jurisprudencia del Sistema Interamericano", *Revista IIDH*, Vol. 26, p.139 <http://www.corteidh.or.cr/tablas/r19805.pdf>

<sup>32</sup> Dinah SHELTON, *Inter-American Human Rights Law of Indigenous Peoples*, University of Hawai'i Law Review, Vol. 35, Issue 2 (Spring 2013), p. 947-948.

<sup>33</sup> Ibid., p. 938-940.

During the first decades, the Inter-American jurisprudence developed the notion of indigenous peoples' collective rights, mainly around property and cultural rights. In the last decade the Court began to incorporate the notion of self-determination and self-government in its cases, but always subordinate or construct thought the right to land and resources<sup>34</sup>.

In 2016, after more than 17 years of political dialogue, the Organization of the American States (OAS) adopted the first American instrument for the protection of indigenous people's rights: *The American Declaration on the Right of Indigenous Peoples*. This declaration has been seen as a historical debt from the American System to the Right Indigenous peoples<sup>35</sup>. Although, from many years both the Inter-American Commission and the Inter-American Court had issued general reports and resolutions on individual complaints about indigenous rights, there was not a comprehensive approach to the rights.

While both Declarations recognize important rights to indigenous peoples, one of the most controversial and innovative is the right to self-determination, especially in the relation with the right to self-government and political participation<sup>36</sup>. The participation in the decision-making process and the election of their own representatives has become a cornerstone for the respect of indigenous communities' human rights<sup>37</sup>. The international recognition of these rights, along with

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<sup>34</sup> Ibid., p. 968. See also Inter-American Court of Human Rights, "Case of The Kichwa Indigenous People of Sarayaku V. Ecuador", *Judgment on the Merits* of 27 June 2012 [http://www.corteidh.or.cr/docs/casos/articulos/resumen\\_245\\_ing.pdf](http://www.corteidh.or.cr/docs/casos/articulos/resumen_245_ing.pdf); and "Case Saramaka vs. Surinam", *Judgment of 28 November 2007*, par. 83 [http://www.corteidh.or.cr/docs/casos/articulos/seriec\\_185\\_ing.pdf](http://www.corteidh.or.cr/docs/casos/articulos/seriec_185_ing.pdf)

<sup>35</sup> OEA Reportaje, *La declaración es el primer instrumento en la historia de la OEA que promueve y protege los derechos de los pueblos indígenas de las Américas*. [http://www.oas.org/es/centro\\_noticias/comunicado\\_prensa.asp?sCodigo=C-075/16](http://www.oas.org/es/centro_noticias/comunicado_prensa.asp?sCodigo=C-075/16)

<sup>36</sup> Declaration on the Right of Indigenous Peoples, Article 4 and 5.

<sup>37</sup> See UN Human Rights Council, "Final study on indigenous peoples and the right to participate in decision-making", *Report of the Expert Mechanism on the Rights of Indigenous Peoples*, July, 2011. A/HRC/EMRIP/2011/2

important changes in the legal framework of American States, have guarantee to indigenous peoples a better level of representation in national and local political spaces.

b. Objective of the thesis

The enhancement of the right to self-determination and self-government has brought indigenous peoples' better opportunities for access to public election position at National level and a recognition of their own ways of governmental organization. Many Latin-American States have improved their guarantees to the participation of indigenous peoples in National and community affairs<sup>38</sup>. Although the inequality gap has continued to be large, it is clear that increasing respect for the political participation of indigenous communities has positively impacted well-being and effective access to rights. However, recognizing the political participation of indigenous communities has not increased the level of political participation of indigenous women inside and outside of their communities at the same level as indigenous men. Even though the International Declaration and most of the domestic legal systems recognized the right to equal accesses to rights for indigenous women and men, the political participation of indigenous women is still a challenge<sup>39</sup>.

In most States having recognized indigenous right to political participation, women are not entitled with the same rights and possibilities to participate as are men. This problem is easily identifiable in the process of autonomous elections of municipality government, in some communities' women have no right to participate in the process of election, to vote or been voted. Since, the right to self-determination and self-government entitles indigenous peoples to determinate their own systems

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<sup>38</sup> United Nations, ECLAC, p., 19.

<sup>39</sup> Declaration on the Right of Indigenous Peoples, Article 21.

of government and election, some indigenous peoples have norms or customs which ban women from political participation. Specific examples of this practices will be developed in the following chapters. Most of the legal systems in Latin-American, do not provided from guarantees for the effective access of indigenous women to political participation.

Even though some States had implemented solution to this problem, as the imposition of gender quotas or gender parity in elected positions, it seems to be ineffective measures. The solution given by the States to control the “rules of the game” in political participation of indigenous woman, can be seen as an imposition that brakes with the harmony of collective right to auto government and self-determination. It is important to see that in the right to political participation of indigenous women exist a double character, in one hand the right as individual to political participation, but in the other hand it has a collective component: the right as indigenous to auto determination and no external interference.

This thesis will analyze the grantees for the protection of political participation of indigenous women given by Bolivia, Mexico and Colombia Legal Systems. The three-jurisdiction selected have make Constitutionals reforms for the protection of indigenous peoples right to self-government and have taken different legal solutions towards the protection of the right to political participation of indigenous women. This thesis aims to describe how each legal framework and public policies had balanced the protection of the right to equal political participation entitle by all women and men against the protection of the right to self-determination and self-government of indigenous peoples, as well to measure the effectiveness of those solutions have had over the protection of the right to political participation of indigenous women peoples within their communities.

## Chapter I. The right to self-determination and self-government of indigenous peoples as a hitch to indigenous women right to political participation

### *1. Indigenous peoples right to self-determination and political participation*

The right to self-determination of indigenous peoples have been recognized at the national level by many American States. During the last century, America have witnessed constitutional reforms with the aim to officially recognize rights to indigenous as peoples, in countries as Mexico, Bolivia, Colombia, Panamá, El Salvador, Nicaragua, y Perú<sup>40</sup>. Those constitutional reform where not a spontaneous expression of political will by American States, but rather the outcome of many years of struggles face by indigenous communities at national and international arenas<sup>41</sup>.

Additional to Constitutional reforms, the international community have started to produce different instrument and legal documents which serve as evidence of an international tread for a global recognition of the right of indigenous peoples to self-determination. The right to self-determination was first recognized at international level by the United Nation Declaration on the Right of Indigenous Peoples, adopted by the General Assembly on September 13<sup>th</sup>, 2007. The 2007 Declaration determinate in its Article 3 that *Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development*. This article reproduces exactly the same wording used by the International Covenant on Civil and Political Rights and the International Covenant

<sup>40</sup> Bartolomé Clavero, "Derechos indígenas y Constituciones Latinoamericanas", in *Pueblos Indígenas y Derechos Humanos* (Bilbao: Universidad de Bilbao, 2006), p. 324

<https://idus.us.es/xmlui/bitstream/handle/11441/69267/Derechos%20Ind%C3%ADgenas%20y%20Constituciones%20Latinoamericanas.PDF?sequence=1&isAllowed=y>; See also, Federico Justiniano Robledo, "Tutela constitucional de los derechos de nuestros pueblos indígenas", in *Ius et Praxis*, No. 2 (2002)

[https://scielo.conicyt.cl/scielo.php?script=sci\\_arttext&pid=S0718-00122002000200007](https://scielo.conicyt.cl/scielo.php?script=sci_arttext&pid=S0718-00122002000200007)

<sup>41</sup> Federico Justiniano Robledo (2002).

on Economic, Social and Cultural Rights when talking about the right of ‘all peoples’ to self-determination<sup>42</sup>.

Scholars and international organism -as the UN Human Rights Committee- have suggested that the choose of wording made by the drafters of the declaration was an intentional statement recognizing that indigenous peoples, as all other peoples, are granted of the right to self-determination as prescribed by the Bill of Rights<sup>43</sup>. In other words, without the need of binding instruments accepting to the right to self-determination of indigenous peoples, existing binding instruments contending the right to self-determination such as the article 1 from the ICCPR and ICESCR have been used for the protection of indigenous peoples rights<sup>44</sup>.

One of the most important obstacles for the adoption of the right to self-determination of indigenous peoples in binding instruments is the concern of some States about this right been use by indigenous peoples as a basis to secessionist attempts<sup>45</sup>. Nevertheless, there is important empirical evidence supporting that indigenous peoples do not have the intention to separate from

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<sup>42</sup> Abdulgaffar Peang-meth, “The Rights of Indigenous Peoples and Their Fight for Self-Determination”. in *World Affairs*, Vol. 164, Fascículo 3 <http://eds.a.ebscohost.com/eds/detail/detail?vid=0&sid=f602ab48-430e-475e-b64d-14a6f7e5d08d%40sessionmgr4007&bdata=Jmxhbm9ZXMmc2l0ZT1lZHMtOGl2ZQ%3d%3d#AN=6352191&db=edb> and Christopher Fromherz, “Indigenous Peoples' Courts: Egalitarian Juridical Pluralism, Self-Determination, And The United Nations Declaration On The Rights Of Indigenous Peoples”. In *University of Pennsylvania Law Review*. Vol. 156, p. 1343.

<sup>43</sup> John B. Henriksen, “Research on Best Practices for the Implementation of the Principles of ILO Convention No. 169, Key Principles in Implementing ILO Convention No. 169”, Published by the Programmed to promote ILO Convention No.169; and María Leoni, “Gender Equality and Indigenous Peoples Right to Self-determination and Culture. American”, *University International Law Review* (2013), p. 1605 (referring to Human Rights Committee's considerations of the fourth periodic report of Canada on implementation of the Covenant on Civil and Political Rights.) and Catherine J. Iorns, “Indigenous peoples and self determination: Challenging state sovereignty”, *Case Western Reserve Journal of International Law*, Vol. 24 (1992), p. 205-2012.

<sup>44</sup> María Leoni (2013), p. 1605 (referring to Human Rights Committee's considerations of the fourth periodic report of Canada on implementation of the Covenant on Civil and Political Rights.) Christopher Fromherz, p. 1343

<sup>45</sup> See Sarah Sargent, “Indigenous Self-determination: the root of State Resistance”, *Denning Law Journal*, Vol 24 (2002), pp.117-118.

their States, rather they fight for their recognition within the State's legal framework<sup>46</sup>. Due this pragmatic reason is not enough, there are guarantees and limits to this right, even the 2007 Declaration provides a limitation and protects territorial integrity of the States. Article 46 of the 2007 Declarations states *"Nothing in this Declaration may be construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States"*. Indigenous people's self-determination gives autonomy to indigenous peoples within the legal frame of the state<sup>47</sup>.

In the same venue, the American Declaration on the Rights of Indigenous Peoples adopted in 2016 by the General Assembly of the Organization of American States, in its article III declares the right of indigenous peoples to self-determination using virtually the same language as the International Declaration, the ICCPR and the ICESCR. The Article III states: *Indigenous peoples have the right to self-determination. By virtue of that right, they freely determine their political status and freely pursue their economic, social, and cultural development.*

In the same way as the universal system, the Inter-American System on Human Right took a long time in recognizing self-determination and self-government right to indigenous peoples. Since the OAS creation indigenous peoples' rights were a topic over the table, nevertheless states opted for maintaining a paternalistic attitude over the issue, aiming to protect and defend "Indians" as vulnerable individuals<sup>48</sup>; this paternalistic view started to slowly change after the 70s.

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<sup>46</sup> Scoot Simon, "Indigenous Peoples and Hunting Rights", *Confronting Discrimination and Inequality in China: Chinese and Canadian Perspectives*, edited by Erroi P. Mendes and Sakunthala Srighanthan, (University of Ottawa Press: Ottawa, 2009), p. 407 <https://www.jstor.org/stable/j.ctt1ckpdk1.22>. Sarah Sargent (2002), p.123. Fromherz, Christopher, p. 1345, See Catherine J. Iorns (1992), 230.

<sup>47</sup> Scoot Simon (2009), p. 407.

<sup>48</sup> Dinah Shelton (2013), p. 940-943.



Further development in the recognition of indigenous peoples' rights has been made by the Inter-American Court and Commission on Human Rights' jurisprudence. The Inter-American Court and Commission have used universal standards -such as the ILO Convention 169 or the UNDRIP- to give content to the general provision of the American Convention and make a dynamic interpretation to develop an effective framework for protection of indigenous communities<sup>49</sup>. During the first decades, the Inter-American jurisprudence developed the notion of indigenous peoples' collective rights, mainly around property and cultural rights. In the last decade the Court began to incorporate the notion of self-determination and self-government in its cases, but always subordinate or construct thought the right to land and resources<sup>50</sup>.

The American Declaration on the Right of Indigenous Peoples adopted in 2016, was a historical debt from the American System to the rights of indigenous peoples<sup>51</sup>. Although, from many years both the Inter-American Commission and the Inter-American Court had issue general reports and resolution on individual complaint about indigenous rights, there was not a comprehensive approach to the rights. One of the most important elements in the American Declaration is the expresses recognition of the "collective" nature of certain rights. Article VII of the the Declaration states as follow<sup>52</sup>:

<sup>49</sup> Dinah Shelton (2013), p. 938-940.

<sup>50</sup> Ibid., p. 968. Inter-American Court of Human Rights, "Case of The Kichwa Indigenous People Of Sarayaku V. Ecuador", *Judgment of June 27, 2012*, (Merits and reparations).

[http://www.corteidh.or.cr/docs/casos/articulos/resumen\\_245\\_ing.pdf](http://www.corteidh.or.cr/docs/casos/articulos/resumen_245_ing.pdf); and Corte Interamericana de Derechos Humanos, Caso del Pueblo Saramaka vs. Surinam, Sentencia del 28 de noviembre de 2007 (Excepciones Preliminares, Fondo, Reparaciones y Costas, <http://www.bjdh.org.mx/>. pár. 83

<sup>51</sup> OEA Reportaje, "La declaración es el primer instrumento en la historia de la OEA que promueve y protege los derechos de los pueblos indígenas de las Américas".

[http://www.oas.org/es/centro\\_noticias/comunicado\\_prensa.asp?sCodigo=C-075/16](http://www.oas.org/es/centro_noticias/comunicado_prensa.asp?sCodigo=C-075/16)

<sup>52</sup> Organization of American States. General Assembly. Regular Session. (46th : 2016 : Santo Domingo, Dominican Republic) American Declaration on the Rights of Indigenous Peoples : AG/RES.2888 (XLVI-O/16) : (Adopted at the thirds plenary session, held on June 15, 2016). p. ; cm. (OAS. Official records ; OEA/Ser.P) ; (OAS. Official records ; OEA/ Ser.D). <http://www.oas.org/en/sare/documents/DecAmIND.pdf>

Indigenous peoples have collective rights which are indispensable for their existence, wellbeing, and integral development as community. In this regard, the states recognize and respect, the right of the indigenous peoples to their collective action; to their juridical, social, political, and economic systems or institutions; to their own cultures; to profess and practice their spiritual beliefs; to use their own tongues and languages; and to their lands, territories and resources. States shall promote with the full and effective participation of the indigenous peoples the harmonious coexistence of rights and systems of the different population, groups, and cultures.<sup>53</sup>

As well, article XXI of this Declaration makes an important and clear statement about the collective right of indigenous peoples to self-determination, autonomy, and political participation. The Declaration is expressly establishing that indigenous peoples, as peoples, should have representation and participation in the decision-making process and institutions of the State and also stresses the individual rights to participation with-out discrimination<sup>54</sup>. The rights established by the Declaration represent an important statement in the protection of the right of indigenous peoples, but still not binding that is why is important to look up to the jurisprudence of the Inter-American Court. The jurisprudential development over the right of indigenous peoples to political participation supports what is established by the Declaration.

The Inter-American Court have recognized the right of indigenous peoples to maintain their own traditional political institutions, as well as the right to participate through this institution

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<sup>53</sup> American Declaration on the Right of Indigenous Peoples (2016), Article VII.

<https://www.oas.org/en/sare/documents/DecAmIND.pdf>

<sup>54</sup> Organization of American States. General Assembly. Regular Session. (46th : 2016 : Santo Domingo, Dominican Republic) American Declaration on the Rights of Indigenous Peoples : AG/RES.2888 (XLVI-O/16) : (Adopted at the thirds plenary session, held on June 15, 2016). p. ; cm. (OAS. Official records ; OEA/Ser.P) ; (OAS. Official records ; OEA/ Ser.D). <http://www.oas.org/en/sare/documents/DecAmIND.pdf>

in the decision-making process of the State<sup>55</sup>. The Court have also established that those rights are collective rights based in the self-determination of indigenous peoples<sup>56</sup>. The Court have also established the interrelation between the protection of individual political rights and the respect to collective rights to political participation, in the case of the *Chitay Nech y otros v. Guatemala*, the Court determinate that the forced disappearance of a lider of indigenous peoples have an effect over the collective political rights of the community<sup>57</sup>. As well the Court have established that the political participation of indigenous peoples in the State institutions have to be in accordance to their own political institutions and traditions, and State have the obligation to guarantee their participation in equality and without discrimination<sup>58</sup>.

Even though, there is not a binding instrument declaring the existence of a right to self-determination of indigenous peoples, the American and International Declarations as well as the argumentation about the interpretation on the ICCPR and ICESCR are solid proofs of the existence of an international trend for the recognition of the indigenous peoples' right to self-determination. As mention by Scoot Simon "[the right to self-determination is an] *inherent right due their presence on and their use of traditional territories prior to the arrival of modern nation-state*"<sup>59</sup>. Moreover, as we are going to study further in the next sections in Mexico, Colombia and Bolivia there is a constitutional recognition to the right to self-determination. In México and Bolivia is

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<sup>55</sup> Inter-American Court of Human Rights, "Chitay Nech Vs. Guatemala", Judgement 25 May 2010, 107-108. [http://www.corteidh.or.cr/docs/casos/articulos/seriec\\_212\\_ing.pdf](http://www.corteidh.or.cr/docs/casos/articulos/seriec_212_ing.pdf) ;

<sup>56</sup> Inter-American Court of Human Rights, "Pueblo Saramaka vs. Surinam", Judgement 28 November 2007 [http://www.corteidh.or.cr/docs/casos/articulos/seriec\\_172\\_ing.pdf](http://www.corteidh.or.cr/docs/casos/articulos/seriec_172_ing.pdf).

<sup>57</sup> Inter-American Court of Human Rights "Chitay y Nech vs. Guatemala".

<sup>58</sup> Inter-American Court of Human Rights "Yarama vs. Nicaragua", Judgement 23 June, par 202 [http://www.corteidh.or.cr/docs/casos/articulos/seriec\\_127\\_ing.pdf](http://www.corteidh.or.cr/docs/casos/articulos/seriec_127_ing.pdf)

<sup>59</sup> Scott Simon (2002), p. 405.

explicitly referred in the constitution, while in Colombia have been established by the Constitutional Court<sup>60</sup>.

In general, the human rights framework in the International and Inter-American System contain individual rights<sup>61</sup>. Historically, human rights have been conceived as counterbalance of the government for the protection of the individual of the community. Important international human rights instruments as the ICCPR and the ICESCR contain mainly individual rights or right that while individual, can only be exercise in group (such as the right to culture). The first exception to this reality is the right to self-determination contain in both Covenants, which is a right for the people without an individual foundation, a collective right<sup>62</sup>.

There is not a fixed interpretation about the content of the indigenous peoples' self-determination, as a new concept there are a lot of different approaches and the configuration and content give to the right, mainly falls in the State jurisdiction. Each American State have giving a very different configuration to this right in their legal systems -we will explore individual approaches in the next chapter-. Nevertheless, the international framework gives a minimum standard of interpretation and express that self-determination is the right of indigenous peoples to *freely determine their political status and freely pursue their economic, social, and cultural development*<sup>63</sup>.

The right to self-determination is not a compilation of specific rights, but rather a principle of communal organization which allows them to protect by their own political, economic, social and

<sup>60</sup>Corte Constitucional Colombiana, "Sentencia T-300/18", par 3.4.3.

<http://www.corteconstitucional.gov.co/relatoria/2018/T-300-18.htm>

<sup>61</sup> María Leoni, "Gender Equality and Indigenous Peoples Right to Self-determination and Culture", in *American University International Law Review* (2013), p. 1063.

<sup>62</sup> Christophe Fromherz, p.1354.

<sup>63</sup> United Nations Declaration on the Rights of Indigenous Peoples, Article 3.

cultural structures<sup>64</sup>. For indigenous peoples the right to self-determination it is the foundation and source of all other rights<sup>65</sup>. As we can see one of the foundations of the right to self-determination is the right to determinate their own political status. This means, the right to determinate their role in the decision-making process of internal and external affair which have a direct effect over their community. This paper will focus only in one of the components of this right, the indigenous peoples' right to freely determinate their political status.

Alexandra Tomaselli makes an important work developing the content of political component of the indigenous peoples' right to self-determination, on her work she names this right as the right to political participation of indigenous peoples<sup>66</sup>. According to Tomaselli, the indigenous right to political participation have three dimensions<sup>67</sup>:

*I. Right to self-government:* meaning governmental autonomy in matters relating to their internal and local affairs (protected by the United Nations Declaration on the Right of Indigenous Peoples, article 4); the right to determinate their political status (protected by Declaration, article 3), and the right to maintain and strengthen their distinct political institutions (protected by Declaration, article 5)<sup>68</sup>.

*II. Right to participate in the political live of the State:* entitles the indigenous peoples to the possibility to participate in the decision-making process in all levels of government and have direct or indirect representation<sup>69</sup>. This collective right can be grantee in many forms: through the right

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<sup>64</sup> Lisa Strelein, "The language of sovereignty in the treaty debate", in *What Good Condition? Reflections on an Australian Aboriginal Treaty*, (ANU Press, 2006) p. 179.: <https://www.jstor.org/stable/j.ctt2jbkr2.19>.

<sup>65</sup> Ibid., p.182.

<sup>66</sup> Alexandra Tomaselli, *Indigenous Peoples and their Right to Political Participation: International Law Standards and their Application in Latin America*, Germany: NOMOS (2016), p., 175..

<sup>67</sup> Ibid., p. 254

<sup>68</sup> Ibid., p. 206-209.

<sup>69</sup> Ibid., p. 210-2011.

to association in political parties, through electoral representation systems or representative quotas<sup>70</sup>.

*III. Right to consultation:* The right to free, previous and informed consent before the State adopt administrative or legislative measure which have a direct effect over the indigenous peoples' life<sup>71</sup>.

From Tomaselli interpretation of the collective right to political participation of indigenous peoples, we can identify two dimension one internal and the other one external. The internal dimension is constructed by the right to self-government and governmental autonomy of indigenous peoples over matters related to their internal affairs, which allows them to maintain and strengthen their distinct political institutions. While the external dimension of their collective right to political participation entitle them as groups to participate and have a direct and indirect representation in the decision-making process of all levels of government<sup>72</sup>. Right to Political Participation cannot be defined as a singular right, but as the right to enjoy a concurrence rights and freedoms which guarantees indigenous peoples to take part in the decision-making process of their community and their state, as individuals and as an autonomous collectivity, as peoples<sup>73</sup>.

The right to self-government has been one of the most important for indigenous peoples. Bringing autonomy in many areas. The right of indigenous peoples to self-determination cannot be fulfill, unless the State legal system recognize their right to freely determinate their government without any external interference in total autonomy<sup>74</sup>. However, the right to self-government is a very

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<sup>70</sup> Ibid., p. 205

<sup>71</sup> Ibid., p 206.

<sup>72</sup> Ibid., p. 210-2011.

<sup>73</sup> Laura Bocalandro, "The Right to Political Participation in International Law", *Proceedings of the Annual Meeting (American Society of International Law)*, Vol. 86 (1992), pp. 249-261 <http://www.jstor.org/stable/25658642> ; and Alexandra Tomaselli, p. 177-183.

<sup>74</sup> Abdulgaffar Peang-meth, "The Rights of Indigenous Peoples and Their Fight for Self-Determination" in *World Affairs*, Vol. 164 (2002), p.1.

complex topic which present numerous theoretical and juridical problems. Those problems exist mainly because the indigenous peoples' *cosmovision* of government does not strictly fall within the classic definition of democracy.

The recent development of the concept of legal pluralism have try to give an answer to those problems. The right to self-government also presents jurisdictional problems and tension with other rights, mostly when trying to "balance" individual rights and the right to self-government. The right to self-determination has caused other important tensions with individual rights, as the customary practices of physical punishments and the indigenous understanding of family life, but this thesis is going to focus mainly in one of the most important tension of the indigenous peoples right to self-government, which have been classified as one of the biggest and more important tension: the right to political participation if indigenous women within their indigenous community.

## *2. Indigenous Women right to political participation*

The recognition of the right to political participation to indigenous peoples is a paramount in the development of indigenous peoples' rights and autonomy, nevertheless the international instruments protecting indigenous peoples' rights and freedoms lacks standards for protection and promotion of indigenous women rights to equal political participation as individuals and as part of their community. Both, the Declaration and the Convention are silent about the discrimination suffer by women when exercising their rights to political participation inside and outside their community and do not impose over states or indigenous communities any obligation to guarantee free and equal participation to indigenous women. In 2006 during the drafting process of the Declaration, the UN Special Rapporteur on Violence against Women criticized the document for

not including any international standard for indigenous women's rights protection. The Rapporteur disapproved the lack of safeguards for women's protection against male-dominant exercise of right to autonomy and self-government<sup>75</sup>.

The lack of protection of indigenous women right to political participation in this framework can have three possible explanations; first, the framers did not consider to be necessary to make an explicit mention to the right to equal participation of women since there is a sufficient specialized framework protecting the right of women to political participation; second, the framers did not consider that exclusion and discrimination was a problem affecting indigenous women's right to political participation in special manner; or three there was a lack of indigenous women participation in the construction of this international instruments which produce an invisibilization of their problems. In order to answer determinate, the correct explanation is important to look at the international framework protecting women political participation in order to determinate if indigenous women's right to political participation is sufficiently protected by those instruments.

In 1953, the UN adopted the *Convention on the Political Right of Women*, which was the first international instrument recognizing equal political rights to women—even before the International Covenant on Civil and Political Rights. The Convention establish the right of all women to be *entitled to vote in all elections on equal terms with men, to be eligible for elections to all publicly elected bodies and to hold public office and exercise all public functions* all this without any discrimination<sup>76</sup>. In 1980 *Convention on the Elimination of all Forms of Discrimination against Woman*, which in the same line as the 1953 Convention protect women against discrimination in

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<sup>75</sup> UN, UNGA, Report of the Special Rapporteur on violence against women, its causes and consequences, Yakin Ertürk, "Intersections between culture and violence against women", A/HRC/4/34., par. 38.

<sup>76</sup> UN *Convention on the Political Right of Women*, articles 1-3.



the political and public life of the country and ensure participation of women on equal terms with men to vote, participate in the formulation and implementation of government policy, to hold public office and to free association<sup>77</sup>. Both documents give minimum standard for protection of women's rights to political participation, but the content of this frame work is mainly limited to individual participation of women in electoral process.

Attempting to translate the content of those international instrument into the complex formulation of the right to indigenous peoples to political participation creates important difficulties and vacuums. First, because the right to political participation of indigenous women it is not limited to individual participation in elections but have a collective dimension. As noted by the 2013 ECOSOC *Study on Indigenous women's Political Participation*: "Indigenous women, in the exercise of their political rights, must be considered individuals, but also members of their peoples; that gives rise to specific responsibilities related to the community". Second, the existent framework produces a tension between the right of indigenous peoples to self-determination and conservation of their customs and traditional institution and the protection of women against discriminatory practices which limits their right to political participation<sup>78</sup>. Third, this framework does not consider the intersectional nature of the discrimination lived by indigenous women, since their lack of political participation does not derivate solely from their condition as women, but from a double discrimination for been women and indigenous.

Even though, the international framework does not provide explicit protection for indigenous women political participation, their right to equal and non-discriminatory participation in decision making process implicitly streams from an intersection of rights, both for their right to self-

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<sup>77</sup> Convention on the Elimination of all Forms of Discrimination against Woman (CEDAW) article 7

<sup>78</sup> Indigenous and Tribal Peoples Convention, 1989 (No. 169). Articles 1 and 2.

determination as member of indigenous peoples as well as from their right to equal participation as women<sup>79</sup>. The right to political participation of indigenous women have an individual and a collective dimension, the individual dimension of this right entitles each indigenous woman to participate free from any form of discrimination based in her gender and her membership to an indigenous people -or the intersection of those discriminations-, inside and outside their communities. In the other hand it is necessary to protect the collective rights of indigenous women as member of their communities, the State have to respect and protect their right to self-determination, self-government and collective participation and it is necessary that women have an active voice in the construction of the collective will of their peoples<sup>80</sup>.

A specialized framework for the protection of indigenous women is necessary to protect them because of their special level of vulnerability, indigenous women are in an intersection of discriminations witch many times made them invisibles and silence their voices. The United Nations Economic and Social Council have pointed out the lack of representation and participation of indigenous women in national and local political process, even though the level of participation varies from country to country and between indigenous communities<sup>81</sup>, in general few indigenous women are available to participate in national and communitarian political process and most of the

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<sup>79</sup> Human Rights Council “Report of the Special Rapporteur on the rights of indigenous peoples” Victoria Tauli Corpuz. A/HRC/30/41, 2015, pp. 10-12.

<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/173/83/PDF/G1517383.pdf?OpenElement>

<sup>80</sup> María Teresa Sierra, “Esencialismo y Autonomía: paradojas de las reivindicaciones indígenas” in *Autoridades* (1997), p, 139. <https://www.insumisos.com/lecturasinsumisas/Reivindicaciones%20indigenas.pdf>

<sup>81</sup> United Nations, Economic and Social Council, “Study on indigenous women’s political participation at the international, national and local levels”. Permanent Forum on Indigenous Issues Twelfth session New York, 20-31 May 2013 <https://undocs.org/E/C.19/2013/10>

time indigenous political structures and self-governance agreements tend to be patriarchal and exclude the involvement and perspectives of women<sup>82</sup>.

While the Inter-American Court have not done any specific pronouncement about how the right of collective or individual political participation can be guaranteed to indigenous women, the Declaration contain a specific section with a general obligation over the States and the indigenous peoples to prevent and eradicate all forms of violence and discrimination against indigenous women (Article VII). This declaration statement has its foundation over another really important Inter-American instrument: The Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women “Convention of Belem do Para” have made a such impact in the protection of women in America. Article 4 (j) of the Convention stipulates “very woman has the right to the recognition, enjoyment, exercise and protection of all human rights and freedoms embodied in regional and international human rights instruments, [which] include [...] the right to have equal access to the public service of her country and to take part in the conduct of public affairs, including decision-making”<sup>83</sup>. As well the Inter-American Democratic Charter established in its article 28: “States shall promote the full and equal participation of women in the political structures of their countries as a fundamental element in the promotion and exercise of a democratic culture.”<sup>84</sup>

Despised the lack of Inter-American jurisprudence in relation to the interpretation of the right of indigenous women to political participation, the Inter-American system has developed very important guidelines for the State in order to fulfill their obligations to protect indigenous women

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<sup>82</sup> Inter-American Commission on Human Rights, “The Road to Substantive Democracy: Women’s political Participation in the American”, p. 35-37 and 40

<https://www.cidh.oas.org/pdf%20files/POLITICAL%20PARTICIPATION.pdf>

<sup>83</sup> Ibid. par. 28.

<sup>84</sup> Ibid., par. 29.

against violence and to guide to better practices to guarantee the equal participation of indigenous women. The Inter-American Court had established that any governmental act that affect the rights sphere of indigenous women is necessary that the governmental take an “holistic approach”, this have to take into consideration sex, gender and the indigenous women’s cosmovision (worldview); as well as historic racism and discrimination lived by them<sup>85</sup>. The Inter-America Commission stated that in order to fulfill this obligation is strictly indispensable for the State to take into consideration the indigenous women’s own concept about their human rights, the individual and collective nature of their human rights and the unique relationship existing between the indigenous women and their lands and the nature<sup>86</sup>. So, States have to take into consideration the holistic approach when creating stands for the protection of indigenous women right to political participation.

The Inter-American Commission issue a report in 2017 about Indigenous Women Human Rights in the Americas, in this report established guiding principles to the respect of indigenous women:

- First principle is that is necessary to the state to treat the indigenous women as empowered actors and not as vulnerable subjects need for protection, it is necessary to respect their right to autonomy<sup>87</sup>.
- Second principle is the intersectionality, States have to take into consideration the holistic nature of the right of indigenous peoples and integrate it to the creation of strategies for the

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<sup>85</sup> Inter-American Commission on Human Rights. “Mujeres Indígenas y sus derechos humanos en las Américas ” (Indigenous Women and their Human Rights in the Americas). OEA/Ser.L/V/II. Doc. 44/17. April 17, 2017, p. 29.

<sup>86</sup> Ibid, p. 30.

<sup>87</sup> Ibid, p. 35.

promotion and protection of indigenous women, taking into consideration factors such as sex, ethnicity, religion, age, among many others<sup>88</sup>.

- Third principle, States should take into consideration the right to self-determination is in order to fully understand indigenous women as part of a indigenous people<sup>89</sup>.
- Fourth principle, the Commission recommended States to endorse the active participation of indigenous women in every process that affect their rights, expressing their views in a collective as women and as part of the community. Principally in the drafting of those instrument which determinate their rights<sup>90</sup>.
- Fifth principle, Collective and Individual dimension of their rights. It is necessary to understand the rights of indigenous women as rights with two dimension that should not be separate. The State have to take these two dimensions in making acts of protection of indigenous women<sup>91</sup>. In cases as *Tui Tojín v. Guatemala* the Court recognized the importance of take into consideration the indigenous cosmovision of the women in order to determinate their rights and to determinate the community consequences which a human rights violation to women could have had<sup>92</sup>

When a State is implementing measures to protect the rights to political participation of indigenous women, they should follow the holistic approach presented by the Inter-American Commission. This approach place indigenous women above a just a victim, but it recognized indigenous women as actors with rights and with self-determination that should participate in the construction and

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<sup>88</sup> Ibidem.

<sup>89</sup> Ibid, p. 39.

<sup>90</sup> Ibid, p. 35.

<sup>91</sup> Ibid, p. 37.

<sup>92</sup>Inter-American Court of Human Rights, “Tiu Tojín Vs. Guatemala” , Judgement 26 Nov 2008.  
[http://www.corteidh.or.cr/docs/casos/articulos/seriec\\_190\\_ing.pdf](http://www.corteidh.or.cr/docs/casos/articulos/seriec_190_ing.pdf)

protection of their own rights. It is important that the Commission emphasized the individual and collective perspective of the rights of indigenous peoples, because it allows to see indigenous women as part of process of construction of their indigenous identity and community.

### *3. Collective rights vs. individual rights: gender perspective vs self-determination*

As we mentioned before, the new era of improvements in the recognition of collective rights for indigenous peoples have bring important challenges, one of them is the accommodation of individual rights within the structures of collective indigenous autonomies. As María Leoni have argued collective right of indigenous peoples to self-determination seem to have produced a vacuum in the protection of individual rights inside indigenous communities<sup>93</sup>.

One of the principal “problems” detected is the existence of a gender base violence. Maria Leoni had argued that “*while the international framework is appropriately designed to address the rights of indigenous communities and their individual members vis-a-vis the State and the larger society, it fails to address situations of gender inequality within the community*”<sup>94</sup> they argued that “*gender equality and customary laws often collide*”<sup>95</sup>. The principal claim is that the right to self-determination legitimate cultural practices and harmful customs based on gender discrimination<sup>96</sup> and give the indigenous communities legitimacy to drag indigenous women rights to political participation.

It is true that some indigenous customs, practices or laws maybe discriminatory, nevertheless indigenous peoples *cosmovision*, culture and practices are not intrinsically discriminatory against

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<sup>93</sup> María Leoni (2013), p. 1055.

<sup>94</sup> Ibidem.

<sup>95</sup> Ibid, p. 1056.

<sup>96</sup> Ibidem.

women and they can change over time. The right to self-determination does not limit the State ability to take measures toward protection indigenous women and the own indigenous peoples can take stapes and make cultural changes in order to reinforce the positive protection of the right of indigenous peoples. Some indigenous communities with traditional forms of self-government, have been criticized for “limiting” the right of indigenous women to participate in the decision-making process inside the community, for example in some communities’ women are not allowed to vote or to occupy part in the government of their communities. This fact produces a tension between the indigenous peoples’ collective right to self-determination and the individual right of indigenous women to political participation and that States should intervene in order to protect the right of women.

This paper proposes that in order to determinate if the State intervention is justifiable, fist is necessary to determinate if there is such tension of rights. Whether the right to self-determination of indigenous peoples actually crates a limitation to the indigenous women right to political participation. Second, if there is a limitation to the right of indigenous women to political participation, determinate whether or not the State intervention and limitation to the right of indigenous peoples to self-determination is in fact a possible alternative for the protection of indigenous women rights.

The limitation of women into communitarian government does not necessary means that indigenous women do not have a right to political participation, since political participation can be performed in many different ways. But indigenous peoples do not follow this formula in the understanding on political participation. Indigenous peoples do not have a unique system of political participation or election of their leaders, this significantly varies from community to

community, but is possible to say that much of them do not follow the western formula of free, universal and secret vote, following the rule of one person one vote.

Many indigenous peoples use the communitarian gathering as way to elect their representatives, this gathering mostly have public elections, the votes are not secret and does not follow the one person, one vote but one family one vote<sup>97</sup>. Consequently, it is not possible to determinate a priori that an indigenous system of election in which women do not participate is discriminatory. There should be a specific study taking into consideration the specific cosmovision of the community in order to determinate whether or not the practices are contrary to women rights.

On the other hand, even on those case where a tension between rights can be identified, there is another important issue. There should be a determination about whether the State should limit the right to self-determination and self-government in order to protect indigenous women political rights and if the measures taken to protect women are proportional. As we mention before, a State intervention in indigenous women affairs should have an holistic approach, not only the State should protect the right of indigenous women to be free from discrimination, but States should take into consideration the other dimension of the indigenous women rights and protect their identity as indigenous. State cannot make indigenous women decide whether they prefer their right to political participation over the autonomy of their peoples.

This thesis proposes that even on those case where we can consider that women rights are being limited by an indigenous customary rule on the election of representatives, the State intervention should be directed towards the straitening of indigenous women decision-making power, and allow indigenous women to self-determinate which are the better measures to be taken according to their

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<sup>97</sup> This topic will be further discuss in the Bolivian chapter.

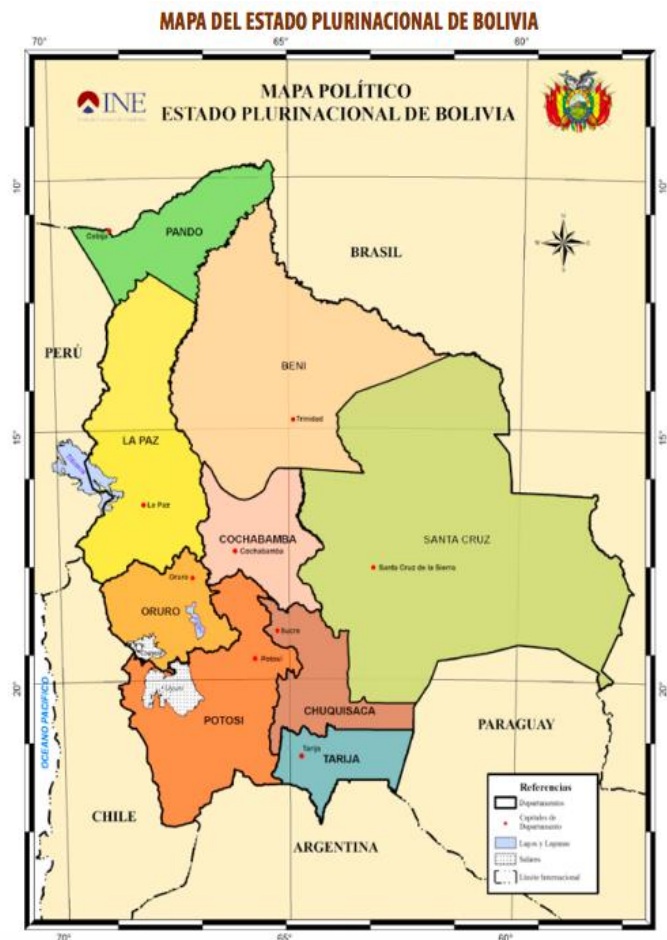


own cosmovision. This does not mean that the practices should be tolerate and that indigenous women should accept without hesitation their lack of political participation, but rather that there should be a change but should flow directly from the indigenous peoples themselves or in some cases, the State intervention should be made by an organism legitimized by the own community. Tension between women right to political participation and indigenous right to self-determination is not a fight between collective and individual rights, but rather a normative tension inside an autonomous legal system which should be resolve by the own legal system with its own norms. This problem should be resolve in a holistic form and protect women right to political participation while protecting the community autonomy.

## Chapter II: Standards of Protection for the Right to Political Participation of Indigenous Women in Bolivia

### 1. *The Protection and Development of the Right to Political Participation Indigenous people in Bolivia*

Bolivia is located in Central South America with an estimate population of over 11 million people<sup>98</sup>. In 2012, nearly 42 percent of the Bolivian population considered themselves as members of one indigenous community<sup>99</sup>. The indigenous population have had an important decrease from the previous years, only in 2001 the National Institute for Statistics reported that over a 62 percent of the Bolivians population self-identify as indigenous<sup>100</sup>. There has been an alarming reduction of 20 points over the last decade in the self-identification of Bolivian



Source: Bolivian National Institute of Statistics. 2012

population as indigenous<sup>101</sup>. Bolivian legal system officially recognizes 43 indigenous peoples,

<sup>98</sup> Projection taken from the 2012 Bolivian Institute of Statistic. See *Censo de Población y Vivienda 2012*, Instituto Nacional de Estadística Bolivia, 2012. Published on February 2015, p. 12

[http://cedla.org/blog/grupopolitica/fiscal/wp-content/uploads/2015/02/CENSO\\_POBLACION\\_FINAL.pdf](http://cedla.org/blog/grupopolitica/fiscal/wp-content/uploads/2015/02/CENSO_POBLACION_FINAL.pdf)

<sup>99</sup> Censo de Población y Vivienda 2012, p. 29

<sup>100</sup> Comisión Económica para American Latina y el Caribe, CEPAL, “Los pueblos indígenas de Bolivia: diagnóstico sociodemográfico a partir del censo del 2001” *Documentos de Proyecto* (2005), p. 61

<https://www.cejamerica.org/Documentos/DocumentosIDRC/121bolivia.pdf>

<sup>101</sup> There is a strong position about the existence of a biases in the censuses produces by an error in the methodology applied in the 2012 census, adjudicating the change of proportional self-identification to a change in the question

and there are 37 spoken languages, including Spanish<sup>102</sup>. The indigenous peoples are denominated by Bolivian law as *Naciones o Pueblos Indígena Originario Campesinos* – Original Indigenous and Peasant Nations or Peoples-.

### 1.1 Indigenous Rights in Bolivia

Before the Spanish conquest, Bolivia had an important population of native Americans, mainly from the Quechua and Aymara peoples. During the years 1500s and 1800s, the Spanish empire dominated by force the land of Bolivia. The original population of the Americas were put into slavery, forced into labor with no economic or social rights. The social, economic and political system of the colonized Bolivia was based on racial designation (*Castas*). The native American where denominated as *Indios*, this *casta* was at the bottom of the social class system with almost non-existing rights. In the highest point of the hierarchy where the Spanish people (People born from Spanish parents in Spain) and the *Criollos* (People born from Spanish parents in America), which were the only *castas* with a full recognition of their rights. Other *castas* as the *mestizos* were born out of interracial marriages<sup>103</sup>. Native Americans try to resist and combat the Spanish occupation, without success.

Between 1809 and 1825 the *criollo elites* started independence movements aimed to gain freedom from the Spanish Crown<sup>104</sup>. Nevertheless, the independence of Bolivia did not have a real impact

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applied in the census of 2012. Contrary to the census of 2001, the 2012 census does not question whether a person perceive themselves as indigenous, but whether they belong to an indigenous community. For more information See A. Gutiérrez, “¿Reducción de la Auto Pertenencia indígena en Bolivia? Una aplicación experimental en el diseño de cuestionarios”, in COMPENDIUM, No 9 (2017), pp. 12–35.

<sup>102</sup> Censo de Población y Vivienda 2012, p. 29, *also see* Bret Gustafson, “Diversity and Democracy in Bolivia: Sources of Inclusion in an Indigenous Majority Society”, Global Center for Pluralism (2017), p.1 [https://www.pluralism.ca/wp-content/uploads/2017/10/Bolivia\\_Complete\\_Case.pdf](https://www.pluralism.ca/wp-content/uploads/2017/10/Bolivia_Complete_Case.pdf)

<sup>103</sup> Bret Gustafson (2017), p. 3.

<sup>104</sup> Eric Landivar, “Indigenismo and Constitution in Bolivia: An Approach from 1990 to our days”. In Rev. Boliv. de derecho No. 19 (2015), p. 474. ISSN: 2070-8157.

on the independence of the native American from elite's oppression. As mentioned by professor B. Gustafson "the new Republic of Bolivia transformed *indios* from laboring subjects of the Crown into laboring subjects of the new state"<sup>105</sup>. After independence, Bolivia started a process of construction of its identity, but this process was led by criollos and political elites, and indigenous peoples were left outside the new nation project. The new regime kept taking advantage of indigenous population and left them without any political or economic power at all. Even though, indigenous peoples or native Americans were no longer considered as slaves, their forced exploitation continued under control of landlords<sup>106</sup>.

Between 1935 and 1952, a new reformist movement started growing in Bolivia. Supported by ostracized social groups, the Nationalist Revolutionary Movement Party started gaining weight in the political arena of Bolivia. This Party was led and supported by indigenous groups and *campesinos* (rural land workers). This organization fought for the recognition of indigenous and *campesino* rights, with the aim to stop the discrimination and marginalization against this social group<sup>107</sup>. The new era of international support over indigenous rights played a key role for the success of this political group<sup>108</sup>. The constitution of 1938 drafted with influence of this revolutionary movement, was the first constitution making an express recognition about Bolivia's ethnic diversity and the existence of the Indigenous Communities<sup>109</sup>, but the Constitutional recognition did not represent an important impact over the right of indigenous peoples<sup>110</sup>.

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<sup>105</sup> Bret Gustafson (2017), p. 4.

<sup>106</sup> Ibidem.

<sup>107</sup> Almut Schilling-Vacaflor, "Bolivia's New Constitution: Towards Participatory Democracy and Political Pluralism?" in *Jornal Revista Europea de Estudios Latinoamericanos y del Caribe* No. 90 (2011), p.6.

<sup>108</sup> Ibidem.

<sup>109</sup> Eric Landivar (2015) p. 474.

<sup>110</sup> Ibidem.

In 1952 the Nationalist Revolutionary Movement execute a *coup d'etat* and they came into power of Bolivian State. During their government period, many important legal changes were made, and Bolivian legal framework have a positive effect over the life conditions of indigenous peoples. The 1952 *campesino* reform had the effect of give back indigenous the ownership over their ancestral lands, which had been taken away by the Spanish crown and gave to landlords<sup>111</sup>. The new government also grand decision-making power to all citizens, including members of indigenous communities; making the right to vote a universal right<sup>112</sup>. Before 1952, the right to vote right was reserve for men from elite social class, only the 3% of Bolivia population had access to the right to vote and the vast majority did not have access to political participation<sup>113</sup>. The Constitution of 1962 also respected the right to communal ownership<sup>114</sup>. and universal votes contained in the previous constitution<sup>115</sup>. Additionally, the 1962 constitution recognized that Bolivia as “multicultural”<sup>116</sup>.

In the 90s, the indigenous movements start gaining significance in the political arena of Bolivia<sup>117</sup>. The pressure generated from the indigenous groups push the government into recognizing the existence “multicultural nation”<sup>118</sup>. In 1994 there was a reform to the 1961 Constitution, the Congress recognized for the first-time rights to the indigenous peoples, previous constitutions only accepted their existence but did not grand any rights<sup>119</sup>. The congress also made a constitutional reform which name Bolivia as a Pluricultural nation, finally recognizing the existence of multi-

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<sup>111</sup> Ibid., p. 475.

<sup>112</sup> Almut Schilling-Vacaflor (2011), p.6.

<sup>113</sup> Ibid., p.5.

<sup>114</sup> Eric Landivar (2015), p. 474.

<sup>115</sup> Ibidem.

<sup>116</sup> Ibidem.

<sup>117</sup> Ibidem.

<sup>118</sup> Bret Gustafson (2017), p. 6.

<sup>119</sup> Eric Landivar (2015), p. 482.

ethical identity of the Country. But, despite the important legislative steps, the social-economic situation of indigenous peoples did not improve<sup>120</sup>.

After the 1994's Constitutional reforms, there were many other legislative measures taken with the aim of strengthen indigenous persons political participation on national elections. But this pluricultural vision was too limited to expand indigenous peoples right to self-determination and autonomy<sup>121</sup>, as the Constitution did not recognize indigenous peoples in Bolivia as part of State or its institutions<sup>122</sup>.

In 2003, an important civil society movement against the former president Gonzalo Sánchez lead to the election of a new president and, eventually, the drafting of a new constitution. The movement was mainly organized by indigenous and workers groups, supported by other middle-class sectors of the society<sup>123</sup>. For the first time in Bolivia and any Latin-American Country, indigenous peoples' rights were a cornerstone for the foundation of the new nation. The drafting of the 2009 Constitution had as funding purpose to eradicate all the bad consequence that Bolivian nation had from the Colonization period. The new constitution rejects the conception of Bolivia as a Pluricultural nation and embrace the concept of Bolivia as Pluri-national State<sup>124</sup>, therefore Bolivia Constitution recognized every indigenous people as a Nation in its own.

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<sup>120</sup>Almut Schilling-Vacaflor (2011), p.7.

<sup>121</sup> Ibidem.

<sup>122</sup> Eric Landivar (2015), p. 474.

<sup>123</sup> Bret Gustafson (2017), p. 8.

<sup>124</sup> Almut Schilling-Vacaflor (2011), p.4.

## 1.2 Constitutional construction of right to political participation of indigenous communities

The Bolivian Constitution has had different phases when it comes to the recognition of rights for indigenous peoples. As we mention before, when Bolivia gained independence in 1825 indigenous peoples did not have any rights. In 1938, the Bolivian Constitution take back the lands of indigenous communities under the control of landlords, but the Constitution does not explicitly denominate this as a collective right for indigenous peoples, but for *campesinos*. Finally, in 1994 the Constitution recognized the existence of indigenous peoples and declares Bolivia as a pluricultural republic<sup>125</sup>.

### 1.2.1. Process of Constitutional reform (2009)

The New Constitution of Bolivia promulgated in 2009 make a radical transformation on the structure of the Bolivian Nation. The Constitution not only recognizes rights to indigenous peoples, but rather base the entire existence of the Bolivian state under the conception of a multi-national structure. Meaning, Bolivian constitution recognized that within its borders many other autonomous nations coexist. The main purpose of this new constitution is to eradicate the bad consequences paid by indigenous communities in the colonialist era which force them to assimilate themselves to a European-centered culture and political structure<sup>126</sup>. Article 1 of the 2009 Bolivian Constitution establishes:

*Bolivia is constituted as a Unitary Social State of Pluri-National Communitarian Law (Estado Unitario Social de Derecho Plurinacional Comunitario) that is free, independent, sovereign, democratic, inter-cultural, decentralized and with autonomies.*

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<sup>125</sup> Eric Landivar (2015), p. 470.

<sup>126</sup> Ibid., p. 470-507.

*Bolivia is founded on plurality and on political, economic, juridical, cultural and linguistic pluralism in the integration process of the country.*<sup>127</sup>

Article 3 of the Constitution explains what a “Pluri-National” State means: *The Bolivian nation is formed by all Bolivians, the native indigenous nations and peoples, and the inter-cultural and Afro-Bolivian communities that, together, constitute the Bolivian people*<sup>128</sup>.

The new political configuration of the Bolivian State had an enormous impact over indigenous peoples’ political rights. Indigenous peoples were not only recognized with the right to self-determination (article 30.II.4), but they were entitled as full nations with territorial, cultural and political autonomy but came together to create the Bolivian Pluri-nation. Article 30 fraction I from the Bolivian Constitution establishes: *A nation and rural native indigenous people consists of every human collective that shares a cultural identity, language, historic tradition, institutions, territory and world view, whose existence predates the Spanish colonial invasion*<sup>129</sup>. Article 30 goes on and name the different rights of indigenous nations from which we should highlight the right to self-determination, the right to their institutions be part of the general structures of the State, to practice their political and juridical systems according to their own cosmovision and to participate in the organs and institution of the States. This is what the constitution recalls as “communitarian democracy”<sup>130</sup>.

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<sup>127</sup> “Constitution of the Pluri-national State of Bolivia” (2009), translation obtained from *Constitute Project ORG* website, Article 1, [https://www.constituteproject.org/constitution/Bolivia\\_2009?lang=en](https://www.constituteproject.org/constitution/Bolivia_2009?lang=en)

<sup>128</sup> Ibid., article 3.

<sup>129</sup> website, Article 1, [https://www.constituteproject.org/constitution/Bolivia\\_2009?lang=en](https://www.constituteproject.org/constitution/Bolivia_2009?lang=en)

<sup>129</sup> Ibid., article 30.

<sup>130</sup> Almut Schilling-Vacaflor (2011), p.7.



### *1.3 Scope of the Constitutional right to self-determination and political participation of indigenous nations*

The new Constitutional era in Bolivia redefined the right to self-determination of indigenous peoples and completely transforms what most legal systems understand about indigenous peoples' right to political participation. The article 30 of the Constitution establishes that indigenous peoples have the right to political participation which allows them to practice their own forms of government (internal political participation) and to participate in the central State institutions (external political participation). In order to guarantee the external political participation, the Constitution recognized that indigenous peoples have the competence to designate candidates for public office -like any other political party-, so right to political participation of indigenous peoples it is not limited to internal participation. The new constitution grants indigenous peoples collective decision-making power over their own institutions as well as over national institutions<sup>131</sup>. The Pluri-national State do not only recognize indigenous communities' existence, but actually recognize that there are different nations within the same State and that all of them should somehow participate in the State institutions<sup>132</sup>.

The Constitution institutes Bolivian as a democratic State, democracy that can be Constitutionally exercise in three different schemes: direct participation, representative participation and communitarian democracy (Article 11.II). Bolivian Constitution denominate to those methods of decision-making process and political participation as forms of democracy: representative democracy, participative democracy and communitarian democracy<sup>133</sup>. Communitarian

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<sup>131</sup> Eric Landivar (2015), p. 473.

<sup>132</sup> Ibid., pp. 478.

<sup>133</sup> Ibid., pp. 486.

democracy refer to the right of indigenous peoples to elect their own government in accordance their own legal systems, and the right to collectively participate in State institutions<sup>134</sup>. The Bolivian constitution does not limit political participation to the electoral process and does not consider representative democracy as the only way to achieve democracy<sup>135</sup>.

Since Bolivia is not *per se* a federation, but a Pluri-national State there is a particular scheme of governmental structure and territorial organization. There is a central government which represent the unity of the Bolivian nations, and then they have a Departmental Government, Regional Government, Municipal Government and in the bottom of the organizational structure they have the *Autonomías Indígenas Campesinas* (indigenous autonomies). Contrary to the tendency in other Latin-American Countries, such as Mexico or Colombia, Bolivia does not assimilate indigenous peoples with the figure of municipalities but create a new figure which recognizes their specific characteristic.

The *Autonomías Indígenas Campesinas* are established by the article 289, they have the rights to self-determination and to self-government<sup>136</sup>. The election of representative in Bolivian *Indigenous Autonomies* are supervised by the Plurinominal Electoral Institute, which should be integrate with magistrates with enough knowledge and sensibility about the indigenous legal system<sup>137</sup>. The system of Indigenous Autonomies have important limitations to indigenous peoples rights to political participation, first communitarian democracy in the relation to Autonomies participation in mainstream state institution do not allow indigenous peoples to elect their

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<sup>134</sup> Almut Schilling-Vacaflor (2011), p.9.

<sup>135</sup> Eric Landivar (2015), p. 486

<sup>136</sup> Almut Schilling-Vacaflor (2011), p.10.

<sup>137</sup> Constitución Política el Estado Plurinacional de Bolivia (2009), Articles 205 to 2012.  
[https://www.oas.org/dil/esp/Constitucion\\_Bolivia.pdf](https://www.oas.org/dil/esp/Constitucion_Bolivia.pdf)

representatives through their own norms or customs, but should be elect with the universal vote system<sup>138</sup>.

The biggest challenge for indigenous peoples' autonomies is system used by the state to determinate whether a community can be denominate as an Indigenous Autonomy, since there is not an automatic recognition of this quality. The Constitution rather than make a close list of existing indigenous nations, it sets a Constitutional mechanism for the recognition of Indigenous Autonomies. So, in order to exercise their rights to self-government and self-determination, indigenous nations should be recognized by the government, with a process that includes an a prior consultation with all the members of the indigenous community and ask them to submit a written version of their fundamental law.

The *Ley Marco de Autonomía y Descentralización*<sup>139</sup> regulate the process to recognition of indigenous peoples' as *Autonomía Indígena Originaria Campesina*, process that entitled them with the rights to self-determination and to self-government<sup>140</sup>, hence to exercise the election of representatives' trough their own norms and organization<sup>141</sup>. First, the indigenous community should have a certificate from the *Ministerio de Autonomía* (Autonomies Ministry); this institution should decide about whether or not the solicitant community can be considered as indigenous peoples inhabiting an ancestral land. Before presenting their request to the Ministry, the indigenous community should make a referendum -with the participation of at least 30 percent

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<sup>138</sup> Eric Landivar (2015), p. 489.

<sup>139</sup> "Ley Marco de Autonomía y Descentralización, Andrés Ibáñez", promulgate on 19 July 2010.  
<http://www.planificacion.gob.bo/uploads/marco-legal/Ley%20N%C2%B0%20031%20DE%20AUTONOMIAS%20Y%20DESCENTRALIZACION.pdf>

<sup>140</sup> Eric Landivar (2015), p. 495.

<sup>141</sup> Ibidem.

of all the citizens- in order to determinate whether or not such community should request the recognition as an autonomy.

The secondary law also requests from indigenous peoples to make a statute -very similar to a constitution- where they should establish -among other things- their system of government. The statute should also be approved by a referendum. Landivar argued that this requirement limits the autonomy of indigenous peoples since their norms and governmental systems are product of an oral tradition is contrary to the nature of the indigenous communities to ask for a written process<sup>142</sup>. From the creation of 2009 Constitution, only 1 indigenous community has successfully ended the process and got their recognition as indigenous autonomy<sup>143</sup>, manly due the burden represented by this process.

## 2. *Indigenous women guarantees for the protection of political participation*

### 2.1 *Constitutional construction of right to political participation of indigenous women*

The process of drafting of the 2009 Bolivian Constitution, was importantly influenced by Indigenous Women Movements. While the process was mainly lead by men-dominant indigenous organizations and mainstream women organization<sup>144</sup>, Stéphanie Rousseau explains how the indigenous women in Bolivia fought for a voice in the assembly and push Women movement to integrate indigenous perspectives in their clams and so they will also be part of the Constitutional debate<sup>145</sup>. But mainstream women groups and indigenous women had very different understanding

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<sup>142</sup> Eric Landivar (2015), p. 490.

<sup>143</sup> See, Official web site Pluri-National Electoral Organ, Autonomies section  
<https://www.oep.org.bo/aio/aprobacion-del-estatuto-indigena-originario-campesino/>

<sup>144</sup> Stéphanie Rousseau, "Indigenous and Feminist Movements at the Constituent Assembly in Bolivia: Locating the Representation of Indigenous Women", *Latin American Research Review*. Vol. 46, No. 2 (2011), pp. 5-28.

Published by: The Latin American Studies Association

<sup>145</sup> Ibidem.

of what gender parity means and what they want to reach when asking the government for mechanism of protection<sup>146</sup>.

As was mentioned before, most indigenous peoples in Bolivia are from Andean ethnicity. In the Andean culture the union between a man and a woman is considered as the more sacred element of the indigenous society, the couple represent the basic unity of the society. All cultural and social element of Andean peoples are constructed over this union call the *chachawarmi*. For Andean peoples of Bolivia, the *chachawarmi* is present in all the elements of nature, animals, plants and even in the relation of the sun with the moon<sup>147</sup>. The Andean peoples believe that the *chachawarmi* should be present even in the public life of the community and in political participation<sup>148</sup>. Even the agriculture process is based in the performances of a dual work, where each gender have a fixed role and the production system depend upon each gender performance of their own task, men plow while women spread the seeds<sup>149</sup>.

Andean women understand gender parity as the perfect equilibrium in *chachawarmi*, armory among genders and complementary unity between men and women, which come from a collectivity rather than from an individualist perspective<sup>150</sup>, while mainstream feminist search for gender parity represents a fight for individual rights and an *advocacy for gender quotas*<sup>151</sup>. Indigenous women organization advocate in favor of land ownership rights, women's participation

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<sup>146</sup> Mala Htun and Juan Pablo Ossa, "Political inclusion of marginalized groups: indigenous reservations and gender parity in Bolivia" on *Journal Politics, Groups, and Identities*, Vol 1 (2013), p. 4-25, DOI: 10.1080/21565503.2012.757443.

<sup>147</sup> I. S. R. Pape, "This Is Not a Meeting for Women: The Sociocultural Dynamics of Rural Women's Political Participation in the Bolivian Andes" *Latin American Perspectives*, No. 6, (2008), p. 46.

<sup>148</sup> Mala Htun (2013), p. 5.

<sup>149</sup> Pape (2008), p. 62.

<sup>150</sup> Stéphanie Rousseau (2011), p. 16.

<sup>151</sup> Mala Htun (2013), p. 8.

in land decision-making bodies, education, sanction for domestic violence, among others<sup>152</sup>. Even though, indigenous women were present in the discussion for the drafting in the new Constitution there is non-explicit protection of their political rights. Indigenous women were victims of intersectionality and their demands were diluted in the demands of women groups and indigenous groups. Nevertheless, this does not mean that indigenous women rights are non-guaranteed by the constitution.

The Bolivian Constitution provides for specific mechanism of protection of women political rights and indigenous political rights. In the case of women, the article 26 of the Constitution determines that the right to political participation should be an equalitarian participation between men and women<sup>153</sup>. There is not explicit provision in the constitution or in the secondary law related to the special protection that indigenous women need, as member of indigenous peoples and as women. The lack of explicit protection may be a product of the imposition of the mainstream women groups over the demands of indigenous women or may be a way to protect all women, indigenous and non-indigenous, without the need of an intervention in the interpretation of way equality means and how should it be interpreted.

## 2.2 *Protecting indigenous women rights to equal participation while protecting the right of indigenous peoples' to self-determination*

The *chachawarmi* duality is also present in the decision-making process of indigenous peoples in Bolivia. From their *cosmovision*, man and woman as a couple and in behalf of their family are the ones with decision-making power. They should take decision about the public life of the nation in

<sup>152</sup> Stéphanie Rousseau (2011), p. 18.

<sup>153</sup> Constitution of the Pluri-National State of Bolivia (2009), Article 26.

private in an equal consensus, and then the men should go to the public and express the will of his family. From the Andean perspective, there is not limitation of women right to political participation since their voice is been hear trough his partner<sup>154</sup>.

Nevertheless, there is an important problem in the political participation of Andean women<sup>155</sup>. Most of them are not allowed to talk in the meeting even in those cases where they men partner is not available to assist to the communal assembly and the woman should have the right to talk on the behalf of her family<sup>156</sup>. Also, is very rare that men will previously discuss their decision with women because most of the time they do not have the agenda of the reunion ahead of time<sup>157</sup>.

Andean women interviewed, point out that they are constantly left out of the decision-making process of the community<sup>158</sup>. But, the real problem behind the restricted political participation of indigenous women in Andeans Societies is not the duality cosmovision, but the reality in practice where men have taken over the control and restricted in a discriminatory way the participation of women. Therefore, the real problem is not the indigenous *cosmovision*, but how *machismo* is permeating indigenous culture, and how *machismo* influence the way in which men and women from the communities interpreted their *cosmovision* trough the lends of *machismo*.

So, for many indigenous women the solution to this problem is not to change their ideology as indigenous peoples, but rather make a fresh understanding of what *chachawarmi* means and how to achieve a real gender parity that is what *chachawarmi* really teach: a real understanding about cooperation and union between men and women<sup>159</sup>. As many indigenous women have pointed out,

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<sup>154</sup> Pape (2008), p. 49.

<sup>155</sup> Ibid., p. 43.

<sup>156</sup> Ibid., p. 50.

<sup>157</sup> Ibid., p. 49

<sup>158</sup> Ibidem.

<sup>159</sup> Ibidem.

indigenous cultures are not the ones whom reproduces exclusion of women in the political participation, discriminatory *machista* ideology is.

As suggested by Almut Schilling-Vacaflor “*Abuses and repressive mechanisms in the name of self-governance should be prevented, but at the same time the regulations should not be imposed externally ‘from above’. This topic is exceptionally relevant as indigenous-campesino communities are frequently criticized for authoritarian, sexist, and homogenizing tendencies*”<sup>160</sup>.

Indigenous autonomy should never be used as an excuse to discriminate against women and for the men to dominate women but should be an important balance in the mechanism of protection against this abuse. From this thesis perspective Bolivian constitution have found a balanced solution between the protection of women against discrimination and the protection of the right to self-determination.

Bolivian constitution does not impose an explicit obligation over indigenous autonomies to guarantee indigenous women vote in the election of representatives or to be vote as such. Maybe because this kind of obligation would represent an intervention in the self-determination and the right of indigenous peoples to have their own political system according with their *cosmovision*<sup>161</sup>. But this does not mean that Bolivian Constitution and legal system led women non-protected from possible abuse of power of man and possible discrimination against them.

As we saw previously, Bolivia constitution does not assimilate the right to self-government with a cultural right. In other words, in Bolivia the right to self-government does not come from the right of indigenous communities to maintain their traditional forms of government. While the

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<sup>160</sup> Almut Schilling-Vacaflor (2011), p.7

<sup>161</sup> Mala Htun and Juan Pablo Ossa (2013), p.13.



protection of their *cosmovision* and their traditional political institutions can be a consequence from the right to self-government, this is not the main objective for allowing indigenous peoples to have autonomy in the decision about their mechanism of election of representatives.

The main reason for allowing indigenous peoples to self-government is to guarantee their right to self-determination, to decide over their own political institutions without any external intervention. This is way tradition and customs are sources for determination the political system of the indigenous community, but in the exercise of their right to self-determination they are allowing to change traditional practices as long as they do it as an exercise of self-determination.

Bolivian Constitution have an important system to guarantee that self-government is not only a reproduction of tradition, but rather an effective exercise of self-determination of indigenous peoples. Indigenous peoples have the obligation to create a statute where they established their political system of elections. This statute is not aiming to reproduce only customs and traditions, but rather is a democratic process where indigenous peoples have to consult member of the community and in an exercise of self-determination, they can jointly decide they political system. This does not mean they have to eliminate their practices or changes their traditions, most of the time the traditions are the basis for the construction, but there is not any impediment to change and evolve<sup>162</sup>.

Indigenous women are highly benefited by this process of construction. They are available to participate in the construction of the normative basis of their community and they are available to request changes to discriminatory conducts in a participative process where their own cosmovision is taken into consideration. In 2017 Bolivia, the fist *Autonomía Indígena Originaria Campesina*

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<sup>162</sup> Ibid., p. 12

(Aboriginal Indigenous Autonomy) was approved, after an important process of social participation in the drafting of the new statute, forming the Nation of Charagua Iyambae<sup>163</sup>.

The state was drafted with the participation of all sector of indigenous society and approved by a referendum. The Statute approved have a clear gender perspective, even with higher standards than the mainstream laws, with an important use of the inclusive language. The Article 10 of the Charagua Statute established that women and men have right to participate in equality in the process of election of representatives<sup>164</sup>. Explicitly in the right political participation of indigenous women the nation Statute have even a higher level of protection than the mainstream law.

The *Ñemboatimí* or Communal Assembly is the main decision-making mechanism in the Charagua nation. The article 24 of the Statute determinate that the assembly should be constitute by 2 women and 2 men and other 3 representatives without gender differentiation<sup>165</sup>. The *Mborokuai Simbika Iyapoa Reta*, which is the legislative body of the nation should be integrate by 12 representatives, 6 women and 6 men<sup>166</sup>. The *Tetarembiokuai Reta* with similar function as the executive branch is integrate by 6 executives which the Statute expressly determinate in its article 33 that this public office can be exercise by women or men. The Statute even recognized that the administrative personal working at the government should have a balance between women and men<sup>167</sup>.

This is a clear example that the fact an indigenous nation has a different *cosmovision* this does not mean that they are intrinsically discriminatory against women or that their culture is *machista*. On

<sup>163</sup> <http://www.regionsunies-fogar.org/es/media-files/8-noticias/254-nace-la-primera-autonomia-indigena-en-bolivia>

<sup>164</sup> Órgano Electoral Pluri Nacional, Tribunal Supremo Electoral, “Estatuto de la Autonomía Guaraní Charagua Iyambae” *Referendo* (2015); Article 10 [https://www.oep.org.bo/wp-content/uploads/2017/01/estatuto\\_charaguaiyambae.pdf](https://www.oep.org.bo/wp-content/uploads/2017/01/estatuto_charaguaiyambae.pdf)

<sup>165</sup> Ibid., article 24

<sup>166</sup> Ibid., article 28

<sup>167</sup> Ibid, article 33

the contrary, this exercise has made clear that Indigenous communities can be even more advance in their protection of the right of indigenous women. In the actuality, there are other two statutes place into consideration before the government. This other two statutes also have very progressive mechanism for the protection of indigenous women rights<sup>168</sup>.

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<sup>168</sup> Órgano Electoral Pluri Nacional, Tribunal Supremo Electoral, “Estatuto de la Autonomía Raqaypampa” *Referendo* (2016) <https://www.oep.org.bo/wp-content/uploads/2016/12/raqaypampa.pdf> and “Estatuto de la Autonomía Uru Chipaya” *Referendo* (2015) [https://www.oep.org.bo/wp-content/uploads/2016/12/uru\\_chipaya.pdf](https://www.oep.org.bo/wp-content/uploads/2016/12/uru_chipaya.pdf)

### Chapter III: Standards of Protection for the Right to Political Participation of Indigenous Women in Mexico

#### 1. *The Protection and Development of the Right to Political Participation of Indigenous peoples*

Mexico is one of the three Countries forming North America with an estimate population of 119 million people<sup>169</sup>. 25 million people identify themselves as indigenous -25 percent of Mexican population-<sup>170</sup>. There are 89 indigenous languages are spoken<sup>171</sup>, 67 official recognized ethnic groups<sup>172</sup> and at least 623 out of the 2,457 municipalities in Mexico are government under



Source: Mexican National Institute of Statistics and Geography.

indigenous systems of self-government. Nevertheless, there is not a real statistic about the number of indigenous peoples in Mexico, many indigenous communities are not ruled under the self-

<sup>169</sup> Estimation taken from the 2015 Census in Population. Mexican Institute of Statistics and Geography (Instituto Nacional de Estadística y Geografía). See <http://www.beta.inegi.org.mx/temas/estructura/>

<sup>170</sup> Socio Economic Statistics about Indigenous Communities in Mexico, 2015. National Statistics by Federal Entity, Mexican Commission for Indigenous Peoples' Development. Page 54.

<https://www.gob.mx/cms/uploads/attachment/data/file/239923/04-estimaciones-nacionales-por-entidad-federativa.pdf>

<sup>171</sup> Instituto Nacional de Estadística y Geografía, "Perfil Sociodemográfico Estados Unidos Mexicanos", *Censo de Población y Vivienda* (2010), p. 82

[http://internet.contenidos.inegi.org.mx/contenidos/productos/prod\\_serv/contenidos/espanol/bvinegi/productos/censos/poblacion/2010/perfil\\_socio/uem/702825047610\\_1.pdf](http://internet.contenidos.inegi.org.mx/contenidos/productos/prod_serv/contenidos/espanol/bvinegi/productos/censos/poblacion/2010/perfil_socio/uem/702825047610_1.pdf)

<sup>172</sup> Information taken from Cultural information System website, Ministry of Interior, Mexican government official website [https://sic.cultura.gob.mx/index.php?table=grupo\\_etnico](https://sic.cultura.gob.mx/index.php?table=grupo_etnico)

government systems and therefore they are not count as indigenous peoples even though they have an indigenous cultural identity and practices.

As well as in Bolivia, Mexico was colonized by the Spanish empire in 1517. Before the Spanish conquest the now Mexican territory was home for many important Mesoamerican civilization, which were almost weep out by the conquest of Spanish to America, even though the conquest of Spanish people over Mesoamerican people did not produce many deaths, many original habitants of Mexican territory died from diseases brought by Spanish colonizers. Epidemics devastate original inhabitants, taking the life of more than a half of the population<sup>173</sup>.

As well as in Bolivia, Spanish conquest Mexican original inhabitants but did not put them under slavery, by the contrary the Spanish crown allowed indigenous peoples to keep their lands but force them to pay a high amount as tribute to the crown. While Spanish conquerors never wanted to original habitants to mix with them, they were force into assimilation European culture, converting them to the catholic religious and bind them from perform the own cultural and religious systems. Few indigenous cultures, manly those where the Spanish crown did not have access due the presence in high lands and in very far spots manage to conserve their traditions without many influences of European culture<sup>174</sup>. The *casta* system was also implemented in Mexico, with an identical structure as the one mention in Bolivia.

In 1810 Mexico gained its independence from the Spanish crown, contrary to what happen with Bolivia, in Mexico indigenous peoples did have an important role in independence movements. Even though most of the leaders leading the independentism movement where Spanish *criollos*,

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<sup>173</sup> Felipe Navarrete, "Los pueblos indígenas en México", in Comisión Nacional para el Desarrollo de los Pueblos Indígenas (2008), p. 30, [http://www.cdi.gob.mx/dmdocuments/monografia\\_nacional\\_pueblos\\_indigenas\\_mexico.pdf](http://www.cdi.gob.mx/dmdocuments/monografia_nacional_pueblos_indigenas_mexico.pdf)

<sup>174</sup> Ibid., p. 33.

the indigenous movement was really important in the achievement of the independence of Mexico. The new government was founded under the principle of equality for all. Nevertheless, an erroneous understanding of equality cost most of their cultural identity of indigenous peoples<sup>175</sup>. The new government of Mexico believe that the only way to bring equality and progress to Mexico was to eradicate the indigenous culture which they considerate as backward.

They believe the only way to bring progress to indigenous communities was make them learn and practice the occidental culture and language. The new government band collective right to land and start education with and occidental system and only in Spanish. This governmental politics produce an important reduction in indigenous population, Mexico become a majoritarian non-indigenous country.<sup>176</sup> From 1808 to 1921 indigenous population when from a 60% to a 29%.

The elimination of the communitarian land property produced an important revolutionary movement in 1917<sup>177</sup> which additional to their demands on presidential non reelection, fight for the right of indigenous peoples to their lands under the claim “*la tierra es de quien la trabaja*” (the land belong to those whom work on it”. After revolution, Mexico promulgate the 1917 constitution which give back to indigenous communities their right to communal land<sup>178</sup>. But the way in which the 1917 recognized the right and ingenious peoples to land did not make a deep recognition of the right of indigenous peoples as original inhabitant of the Mexican territory, but only give back their lands without giving any additional right or recognition of their rights.

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<sup>175</sup> Francisco López Bárcenas, *Legislación y Derechos Indígenas en México* (Mexico: MC editores, 2010), p. 23 [https://site.inali.gob.mx/pdf/Legislacion\\_Derechos\\_Indigenas\\_Mexico.pdf](https://site.inali.gob.mx/pdf/Legislacion_Derechos_Indigenas_Mexico.pdf)

<sup>176</sup> Felipe Navarrete (2008), p. 38.

<sup>177</sup> Ibid., p. 40.

<sup>178</sup> Ibidem.

As well this constitution put the municipalities as basic political entity and in consequence denied the existing indigenous governments. The new political entities known as municipalities take from indigenous peoples their political rights and their institutional organization<sup>179</sup>. The government keep an integrationist and assimilationist politic among indigenous peoples. The 1917 constitution stayed without modification on the topic until 1992 when for the first time there was a constitutional reform to recognize Mexico as an “pluricultural” nation, but without recognizing any rights or guarantees for indigenous peoples<sup>180</sup>.

There still a tendency to not recognized political or social rights to indigenous communities. The indigenous government even did not exist officially, they survive with political arrangement with the national official party. Indigenous peoples were allowed to have their meetings and to elect in their own way they representatives de facto, but in order that the indigenous leaders where officially recognized the election should be ratified by the process of universal vote.

The constitutional recognition of indigenous rights is very new in Mexican constitution, in 1994 a revolutionary movement started in Mexico. The movement was coalified as a *guerrilla* and has initiated with the aim to revendicate claim for the right of indigenous peoples and the recognition of their autonomy. This movement was violented and was used for the federal government to wipe out indigenous groups, many massacres where committed in this period. In 2001 the Federal government, with the aim to conciliate with the Revolutionary movement signed the *decreto de San Andrés* in which recognized the right of indigenous peoples in the constitution in the article 2 that prevails nowadays.

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<sup>179</sup> Francisco López Bárcenas (2010), p. 46.

<sup>180</sup> Ibid., p. 50.

### *1.1 Constitutional right of indigenous peoples to self-determination and political participation*

Contrary to the Bolivian and Colombian constitution, Mexican constitution englobe all indigenous matters in only one article. The article 2 of the Mexican Constitution established that indigenous peoples have the right to self-determination and autonomy. Explicitly, the article 2, section A, fraction I stablshes that indigenous peoples have right to determinate their own political system. Mexican legal system ubicated the indigenous autonomies at the same level as municipality. They left to the local level to determinate the faculty to determinate the way they will organized the indigenous peoples right to self-determination.

### *2. Guarantees for the political participation of indigenous women*

Mexican constitution is rather explicit in the protection of right of indigenous women to participation. Article 2, section A, fraction III gives indigenous peoples the right to elect their representatives according to their own traditional norms. Nevertheless, they have an explicit limitation on this right:

III. Elect, in accordance with their traditional rules, procedures and customs, their authorities or representatives to exercise their own form of internal government, guaranteeing the right to vote and being voted of indigenous women and men under equitable condition; as well as to guarantee the access to public office or elected positions to those citizens that have been elected or designated within a framework that respects the federal pact and the sovereignty



of the states. In no case the communitarian practices shall limit the electoral or political rights of the citizens in the election of their municipal authorities<sup>181</sup>.

This means, indigenous peoples have the right to internal political determination providing that those tradition does not limit or diminish in some way the right of women and men to political participation. Mexican legal system determinate that indigenous peoples will constitute themselves as institutions at municipal level, meaning indigenous communities and autonomies have the same level as municipalities.

The General Law on Electoral institutions and procedures stablished in its article 3 that the indigenous peoples and communities have the right to elect their own representative in those municipalities with indigenous populations<sup>182</sup>. The Constitution and secondary legislation on each federation entity should regulate the indigenous rights to political participation on municipality. The federal entities (states) would guarantee the right of indigenous peoples to elect their representatives in accordance with their own norms, procedures and customs and guarantee the political equal participation of women and men. Article 2, section 2, fraction VII from the Constitution Stablishes:

Elect indigenous representatives for the town council in those municipalities with indigenous population.

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<sup>181</sup> “Constitution of United States of Mexico”, translation obtained from *Constitute Project ORG* website, Article 2, <https://www.constituteproject.org>

<sup>182</sup> “Ley General de Instituciones y Procedimientos Electorales”, adopted on 23 may 2014, article 3. [http://www.diputados.gob.mx/LeyesBiblio/pdf/LGIPE\\_270117.pdf](http://www.diputados.gob.mx/LeyesBiblio/pdf/LGIPE_270117.pdf)

The constitutions and laws of the States shall recognize and regulate these rights in the municipalities, with the purpose of strengthening indigenous peoples' participation and political representation, in accordance with their traditions and regulations.<sup>183</sup>

This represents a limitation to the right to self-government since indigenous peoples depends ere to be regulate by the states regulation. The municipally level depends over the state regulation, each Mexican state regulate in different way the indigenous peoples right to self-government on their secondary laws. Those states with higher number of indigenous peoples' do have legal disposition about the right equal participation for indigenous women and men<sup>184</sup>. But the legislation does not contain specific guarantees for the protection of indigenous women participation on municipal elections.

The maximum Electoral tribunal in Mexico determinate in 2014 a case related with the right of indigenous women to participate in the process of selection their indigenous community representatives, the tribunal determinate that the normative system denominates as "election by uses and customs" will not be valid when the system of election contradicted the principle of universal vote<sup>185</sup>. The tribunal stablished that as general stand all indigenous systems of election should be based on the universal vote system, meaning an individual exercise of the right equal to vote. The problem about this resolution lend in the fact that not all indigenous communities in Mexico sometimes follow a different system of election, when there is not a universal vote but a

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<sup>183</sup> "Constitution of United States of Mexico", Article 2.

<sup>184</sup> "Ley de derechos de los Pueblos Indígenas del Estado de Oaxaca" adopted on 18 June 1998. Article 45 to 57. [http://www.congresooaxaca.gob.mx/legislacion\\_estatales](http://www.congresooaxaca.gob.mx/legislacion_estatales) And "Ley numero 701 del reconocimiento , derecho y cultura de los pueblos indígenas el Estado de Guerrero" adopted on April 2011. Chater IV, <http://www.iepcgro.mx/PDFs/MarcoLegal/Ley%20701%20PueblosIndigenas.pdf>

<sup>185</sup> Tribunal Electoral del Poder Judicial de la Federación, "Indelecio Martinez Domínguez y otros vs. Congreso del Estado Libre y Soberano de Oaxaca" *Jurisprudencia* 37/2014 (2014) <http://sief.te.gob.mx/iuse/tesisjur.aspx?idtesis=37/2014&tpoBusqueda=A&sWord=>

consensus<sup>186</sup>. In other important cases the tribunal went further and determined that even on those indigenous municipalities where women were available to vote and been elected, the States had the obligation to intervene on the indigenous communities in order to give “information” to indigenous persons from the communities in order to change their cultural vision about women participation on public office. This, due in many communities’ women are reluctant to exercise their right to vote<sup>187</sup>.

A paradigmatic case solved by the High tribunal was the case of the indigenous community of San Bartolo Coyotepec. San Bartolo is one of the 623 municipalities in Mexico governed by the denominative system of *usos y costumbres* (Customs). This indigenous community has an electoral system denominative communal assembly, for the election of representatives the community gets together in an assembly. All members of the community -women and men- over 18 years old, sit together and dialogue over the election. Any person present in the assembly can propose a candidate, the proposal will be discussed by the assembly. All people who speak and express the opinion over the proposal and in the end three candidates will be put in the list and there is going to be a public vote. The persons in the assembly will raise their hand to support a candidate and the person with more votes will be elected. Women and men both have the right to vote and been elected.<sup>188</sup>

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<sup>186</sup> Martha Singer Sochet, *Justicia electoral. México, participación y representación indígena* (Mexico: Tribunal Electoral del Poder Judicial de la Federación, 2013), p.16-17

[https://www.te.gob.mx/publicaciones/sites/default/files/archivos\\_libros/Temas%20Selectos%20No.%2038.pdf](https://www.te.gob.mx/publicaciones/sites/default/files/archivos_libros/Temas%20Selectos%20No.%2038.pdf)

<sup>187</sup> Tribunal Electoral del Poder Judicial de la Federación, “Sistemas normativos indígenas. La autoridad administrativa Electoral debe llevar a cabo actos tendientes a salvaguardar la igualdad sustantiva entre el hombre y la mujer”, Jurisprudencia 48/2014 (2014)

<http://sief.te.gob.mx/iuse/tesisjur.aspx?idtesis=48/2014&tpoBusqueda=A&sWord=>

<sup>188</sup> Holly Worthen, “Juzgando a favor de la participación de las mujeres: Los tribunales electorales federales y la acción afirmativa para la igualdad de género en Oaxaca” in *Los Dilemas De La Política Del Reconocimiento En Mexico*, (Mexico: UABJO, 2015); p. 70-73.

In the election of 2013, San Bartolo Coyotepec was electing the member of the *cabildo* (municipal government for by a President, and representatives of other offices like the treasurer, chief in charge of public works, police, water, garbage, etc.). From all the offices, there was no women as candidates. Some women in the community appeal the decision of the assembly and the low tribunal determinate that the election should be done again and at least one woman should be select as candidate in each one of the offices. After the election was made again, women were put in the list as candidates, but no women were elected still for office<sup>189</sup>.

A second appeal was maid and this time the appeal when to the Supreme Tribunal. The supreme tribunal rule in favor of the appellants. From the perspective of the tribunal, In the indigenous community of San Bartolo the violence against women was so root in their culture that even with a formal acceptance of the right of indigenous women to vote and been elected, there were cultural barriers that translate in substantive limitation on the political rights of women. Meaning, even though the indigenous law did not limit the right to indigenous women to vote or been elected, there was a cultural barrier that could only be overcome with State intervention. The tribunal rule that the only way to overcome this cultural barrier was impose the obligation to the communal assembly to elect as candidates only women for all the offices to be elected in that period and in this way guarantee that a woman will be elected for office<sup>190</sup>, as an affirmative action.

The determination of the tribunal limits the right of indigenous peoples to self-determination in a discriminatory way. Since, the right to self-determination of indigenous peoples in Mexico is not an absolute right, and the Constitution determinate that indigenous peoples norms and customs should be in accordance with the rights stablished by the Constitution is important to determinate

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<sup>189</sup> Ibid., 70-71.

<sup>190</sup> Ibid., 71-75.

where or not the measure implemented by the Electoral Body can be considered as an proportional measure. The Mexican Supreme Court have determinate a proportionality test that could help to determinate whether a State intervention in the right of people is Constitutional. This test has four faces: 1. The limitation should have a Constitutionally Valid aim<sup>191</sup>; 2. The limitation should be proper to reach the valid aim<sup>192</sup>; 3. The measure have to be strictly necessary to reach the aim, meaning there is no other less restrictive measure to accomplish the same objective<sup>193</sup>; 4. The measures, while necessary, should be strictly proportional weighting between the benefits that can be expected from a limitation from the perspective of the ends pursued, against the costs that will necessarily occur from the perspective of the affected fundamental rights<sup>194</sup>.

While the measure taken by the Tribunal can easily pass the two fist phases of the test, the real question is whether the determination to request indigenous peoples to only elect women as member of their offices is the alternative less restrictive to the right of indigenous peoples to self-determinate their election and governmental systems. Since this analysis requires to have a closer look to the specific circumstances of the indigenous community, we can say that there are less restrictive alternatives to guarantee the participation of indigenous women in the electoral process, respecting their own traditions and *cosmovision*. Bolivia, for intense accomplished to have a parity in the number of women in indigenous peoples without affecting their right to self-determination. As well, the measure under taken by the Electoral Tribunal is also discriminatory, since other non-

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<sup>191</sup> Suprema Corte de Justicia de la Nación “Primera Etapa del Test de Proporcionalidad, Identificación de una Finalidad Constitucionalmente Válida”, (2016) CCLXX/2016 (10a.).

<sup>192</sup> Suprema Corte de Justicia de la Nación “SEGunda Etapa del Test de Proporcionalidad, Examen de idoneidad de la medida”, (2016) CCLXX/2016 (10a.).

<sup>193</sup> Suprema Corte de Justicia de la Nación “Tercera Etapa del Test de Proporcionalidad, Examen de Necesidad de la Medida”, (2016) CCLXX/2016 (10a.).

<sup>194</sup> Suprema Corte de Justicia de la Nación “Cuarta Etapa del Test de Proporcionalidad, Examen de Proporcionalidad de la Medida en Sentido Estricto”, (2016) CCLXXII/2016 (10a.)

indigenous municipalities with the same level of restriction in the political participation toward women are not being forced to select only female candidates for elections.

There are important statistics that reveal political discrimination of women at municipality level in community's government by political parties. In 2018, political parties registered 4,405 women as candidates to be Municipal presidents, but only 405 obtain the office. Only the 9% of the women candidate get in office<sup>195</sup>. The number does not give a better perspective as what happen in indigenous communities, but there is none pronouncement from the Tribunal about an obligation of political parties to only propose women candidates.

The limitation to the political participation of indigenous women is a cultural issue that affect in the same level to indigenous and non-indigenous communities. There is a false perception that indigenous peoples' political system is based in customary law which is intrinsically violent against women and that the culture of indigenous peoples is discriminatory and only State intervention can modify this culture<sup>196</sup>.

Mexican constitution in theory recognized the right of indigenous peoples to self-determination and self-government but put very strict restriction in the implementation of the right. The indigenous peoples have to adequate their norms and their mechanism of election to the universal vote model. Meaning, election can only be made when each member of the community -including women and men-. The participation of Mexican women does not make an important impact in the operation of gender-based information as it was made with the Bolivian case.

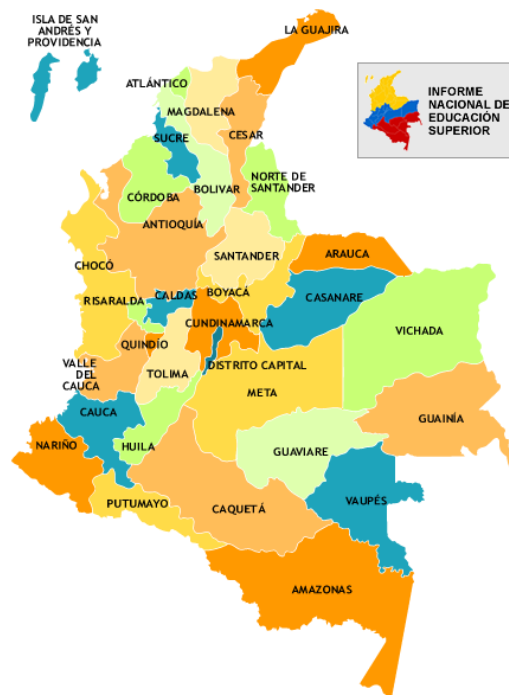
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<sup>195</sup> Information obtained from the official website of Sistema Nacional de Información Municipal <http://www.snim.rami.gob.mx/>

<sup>196</sup> Charlynn Curiel, *Repensando la participación política de las mujeres: discursos y prácticas de las costumbres en el ámbito comunitario* (Mexico: UABJO, 2015) p. 33-35.

## Chapter IV: Standards of Protection for the Right to Political Participation of Indigenous Women in Colombia

Colombia is located in North South America with an estimate population of over 45 million people<sup>197</sup>. Only 3,4 percent of Colombian population identify them-self as members of an indigenous community<sup>198</sup>. Most than 90 percent of Colombian natural areas are located within indigenous people' territory and almost 30% of Colombia territory belong to them<sup>199</sup>. So, even though they are small in number, have a very important territorial impact over the county. Geography most of the indigenous communities in Colombia can be found near the amazons and in high lands. This means most of the indigenous communities are located in very hard reaching places<sup>200</sup>.



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As well as in Mexico and Bolivia, Colombia was also conquered by the Spanish crown. But, contrary to what happen on mentioned countries, in Colombia most indigenous peoples where not reached by the Spanish conquerors since the beginning, principally, due the geographic composition of Colombia which made very difficult for the crown to contact them and stablish

<sup>197</sup> Estimation taken from the 2th preliminary results of 2018 Colombian census. Colombian Institute of Statistic. See <http://www.dane.gov.co/index.php/estadisticas-por-tema/demografia-y-poblacion/censo-nacional-de-poblacion-y-vivenda-2018/cuantos-somos>

<sup>198</sup> Information taken from the website del Departament Administrativo Nacional de Estadística de Colombia (Colombian Institute of Stadistics), *Censo Nacional de Población y Vivienda* (2018) [https://censo2018.dane.gov.co/#antesydespues\\_container](https://censo2018.dane.gov.co/#antesydespues_container)

<sup>199</sup> Felipe Zuluaga, "Protecting Indigenous Rights in Colombia", *Peace Review: A Journal of Social Justice*, Vo.18 (2006), p. 35 <https://www.tandfonline.com/doi/pdf/10.1080/10402650500509489>

<sup>200</sup> Ibidem.

their administration over them<sup>201</sup>. The administration of the Colombian territory opted allowed them to keep certain level of administrative and governmental autonomy, with the only obligation to pay tax to the Spanish crown<sup>202</sup>. The Spanish conquerors established a law to protect the indigenous lands call the *resguardo*, which allowed them to maintain communal ownership over their lands<sup>203</sup>.

The “privileges” conceded by Spanish conquerors were eliminated when *mestizo* Spanish gained their independence from the Spanish crown in 1810. The *mestizo* government adopted a policy of “equalitarian” treatment between indigenous peoples and other social groups in Colombia, as they considered indigenous peoples as to have an inferior level of development compared to the population which had lived under Spanish occupation<sup>204</sup>. The post-independence government referred to indigenous peoples as savages in their legal framework and considered as the best way to “protect” them forced them into a process of deculturalization and assimilation to what they considered as “civilized life”, the European *cosmovision*<sup>205</sup>.

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<sup>201</sup> Sergio Paolo Solano, “Resguardos Indígenas en el Caribe Colombiano durante el siglo XIX”, in *Procesos Históricos*, no. 19 (2011), p. 19-21 <https://www.redalyc.org/pdf/200/20018438005.pdf>

<sup>202</sup> Ibidem.

<sup>203</sup> Ángel Libardo Herreño Hernández, “Evolución política y legal del concepto de territorio ancestral indígena en Colombia”, *El otro derecho*, no. 31 (2004): 255 [http://www.lifemosaic.net/images/uploads/Territories\\_of\\_Life/TOL\\_Resources/Land\\_Rights/Territorio\\_Colombia.pdf](http://www.lifemosaic.net/images/uploads/Territories_of_Life/TOL_Resources/Land_Rights/Territorio_Colombia.pdf)

<sup>204</sup> Isabela Figueroa, “Legislación marginal, desposesión indígena, civilización en proceso: Ecuador y Colombia”, in *Nomadas* no. 47 (2016), p. 47 <http://www.scielo.org.co/pdf/noma/n45/n45a04.pdf>

<sup>205</sup> Diego Martín Buitrago Botero, “Mujeres indígenas: ¿protección constitucional en Colombia?” in *Revista CES*, p. 20. See also Ley 89 de 1890 “Por la cual se determina la manera como deben ser gobernados los salvajes que vayan reduciéndose a la vida civilizada”, *Congreso de Colombia* <http://www.funcionpublica.gov.co/eva/gestornormativo/norma.php?i=4920>



# 1. *The right to self-determination and political participation in Colombia*

The 1991 Colombian Constitution was the first constitution in granting rights to indigenous peoples<sup>206</sup>. Contrary Bolivian and Mexican constitutions, the Colombian constitution granted broad rights to the indigenous peoples from the first draft<sup>207</sup>. The drafters of the 1991 Colombian Constitution tried to incorporate international standards for the protection of indigenous peoples, into the text of the Constitution. The ILO 169 Convention ratified by Colombia in August 1991<sup>208</sup> was an important source of inspiration for the drafting of the 1991 Constitution. The article 7 of the Constitution determinate that Colombia has an ethical and cultural diversity and this recognition of the pluricultural character of Colombia is backup by other rights of indigenous peoples. Specifically, the article 330 of the Constitution recognized the right of indigenous peoples of self-government by indigenous owns uses and customs<sup>209</sup>. Article 330 establishes:

In accordance with the Constitution and the statutes, the indigenous territories shall be governed by the councils formed and regulated according to the uses and customs of their communities and shall exercise the following functions:

1. Oversee the application of the legal regulations concerning the uses of the land and settlement of their territories.

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<sup>206</sup> Andrés Felipe Ramírez Gallego, “La etno-Constitución de 1991: criterios para determinar derechos comunitarios étnicos indígenas”, in *Estudio Socio-Jurídico* No. 9 (2007), p.131  
<http://www.scielo.org.co/pdf/esju/v9n1/v9n1a04.pdf>

<sup>207</sup> Frank Semper, “Los derechos de los pueblos indígenas de Colombia en la jurisprudencia de la Corte Constitucional”, *Anuario de Derecho Constitucional Latinoamericano* (2006), p. 763  
<http://www.corteidh.or.cr/tablas/R21731.pdf>

<sup>208</sup> See, International Labour Organization, official web page  
[https://www.ilo.org/dyn/normlex/es/f?p=1000:11200:0::NO:11200:P11200\\_COUNTRY\\_ID:102595](https://www.ilo.org/dyn/normlex/es/f?p=1000:11200:0::NO:11200:P11200_COUNTRY_ID:102595)

<sup>209</sup> Frank Semper (2006), p. 763. *See also* Sorily Figuera Vargas, “Derecho a la autodeterminación de los pueblos indígenas en el ordenamiento jurídico colombiano”, in *Revistas Unidades* (2015) p. 66  
<https://revistas.uniandes.edu.co/doi/pdf/10.7440/res53.2015.05>

2. Design the policies, plans and programs of economic and social development within their territory, in accordance with the National Development Plan.
3. Promote public investments in their territories and oversee their appropriate implementation.
4. Collect and distribute their funds.
5. Oversee the conservation of natural resources.
6. Coordinate the programs and projects promoted by the different communities in their territory.
7. Cooperate with the maintenance of the public order within their territory in accordance with the instructions and provisions of the national government.
8. Represent the territories before the national government and the other entities in which they are integrated; and
9. Other matters stipulated by the Constitution and statute.<sup>210</sup>

Other political right granted to indigenous peoples in the constitution is the right to have special electoral districts for indigenous peoples in the election of Deputies members granted in the article 177. But there is not an explicit recognition in the Constitution of the right to self-determination of indigenous peoples. Additionally, the constitution is very careful in the denomination given to

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<sup>210</sup> **Constitute Project**, “Colombian Constitution 1991, Reviewed 2015”  
[https://www.constituteproject.org/constitution/Colombia\\_2015?lang=en](https://www.constituteproject.org/constitution/Colombia_2015?lang=en)

indigenous peoples and take away from the denominating the word peoples. Consideration them only as indigenous communities<sup>211</sup>.

Most indigenous peoples' rights in Colombian legal system had been gained through the Constitutional Court. In 1991 the Constitutional Court rule in favor of special right for indigenous and indigenous jurisdiction<sup>212</sup>. But the constitutional court have clarified that the indigenous communities also are subject to collective rights and that those rights goes beyond of an accumulation of the individual rights<sup>213</sup>. The Colombian Constitutional Court have amplified the catalogue of rights for indigenous communities, even accepting the right to self-determination<sup>214</sup>.

The Constitutional court said that the right of indigenous peoples to self-government have to be understand under the principle of maximum autonomy. They said that the only way to guarantee the survival of indigenous peoples is the maximum autonomy of the indigenous peoples which should limited the external intervention<sup>215</sup>. The constitutional court said that the indigenous autonomy should be over the national juridical order and in case of coalition with other rights there should be an equilibrium which can not affect in substantive manner the right to autonomy<sup>216</sup>.

## 2. *The right to political participation of indigenous women and guarantees for protection*

The constitution of Colombia does not contain an express limitation in the practice of the right to self-government of indigenous peoples related to gender or political participation of indigenous

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<sup>211</sup> Frank Semper (2006), p. 765

<sup>212</sup> Felipe Zuluaga, "Protecting Indigenous Rights in Colombia", in *Peace Review: A Journal of Social Justice* (2006), p. 56 <https://www.tandfonline.com/doi/pdf/10.1080/10402650500509489>

<sup>213</sup> Frank Semper (2006), p. 764.

<sup>214</sup> Corte Constitucional Colombiana, "Sentencia T-300/18", par. 3.4.3 <http://www.corteconstitucional.gov.co/relatoria/2018/T-300-18.htm>

<sup>215</sup> Ibid., p. 773

<sup>216</sup> Ibidem.

women. But the article 246 establishes that the indigenous peoples' own norms and customs cannot be contrary to the Constitution or the National laws. The article 40 of the Constitution established that all the public administration has to guarantee the sufficient and effective political participation of women and to have the same right and opportunities. Contrary to Mexican Constitution, the Colombian Constitution does not have narrow understanding of what effective political participation and nondiscrimination means. There is not explicit mechanism in Colombian law that protect the right of indigenous women to political participation inside or outside the community.

The two more important laws about political right of indigenous peoples is the Decree 1088 promulgated in 1993 which regulates the creation of indigenous municipalities and autonomies and the 649 Law from 2001 which regulates the special political participation of indigenous peoples in the election of national representative for the Chamber of Deputies<sup>217</sup>. None of these laws and or any other legal disposition in Colombian legal system have any norm establishing guarantees for the protection of indigenous women to participate in a nondiscriminatory basis in the election of their indigenous representatives.

The possible lack of protection does not mean that indigenous women are not political actors in Colombia or that they lack political participations. Colombian indigenous women are considered as very important political actor in the process of peace and protection of indigenous communities against violence, forced displacement and land rights. They have always been part of this process,

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<sup>217</sup>LEY 649 DE 2001 "Por la cual se reglamenta el artículo 176 de la Constitución Política de Colombia", promulgated on 28 March 2001 [http://www.urosario.edu.co/jurisprudencia/catedra-viva-intercultural/Documentos/ley\\_649\\_de\\_2001.htm](http://www.urosario.edu.co/jurisprudencia/catedra-viva-intercultural/Documentos/ley_649_de_2001.htm)

they defend their collective rights and many of them are even run for positions in the National government<sup>218</sup>.

The lack of State intervention has not prevented indigenous women from creating spaces for participation and even groups where they actively participate for the protection of their rights as indigenous and as women. The main demands of indigenous women groups have a very close relation with their collective rights, most of their demands are not even involve with their right to participate within their communities, but the fight in pro of their collective rights and the peace for their indigenous communities which are been hardly affected by the internal conflict in Colombia<sup>219</sup>.

In 2013, the Women's Committee from the Colombian National Indigenous Organization (*Consejería de la Mujer, Familia y Generación de la Organización Nacional Indígena de Colombia*), presented before CEDAW a Shadow Report informing about the situation of Human Rights of Indigenous Women. The report, elaborated by indigenous women themselves, talks about indigenous women right to political participation in Colombia. The report points out that indigenous women political participation in mainstream governmental spaces is extremely limited, while inside their own communities a little better, having similar difficulties as those faced by non-indigenous women<sup>220</sup>. The reports do not present indigenous customs or cosmovision as an extra source of gender oppression, or as the cause of limitation to their rights to political participation;

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<sup>218</sup> Sonia Camila Sandogal Ardila, "Incidencia política de las mujeres indígenas latinoamericanas en medio de conflictos armados internos. Caso colombiano" *Universidad Nacional de Colombia* (2014), p. 47-50.  
<http://bdigital.unal.edu.co/49040/1/1026265935.2015.pdf>

<sup>219</sup> Diego Martín Buitrago Botero, "Mujeres indígenas: ¿protección constitucional en Colombia?" in *Revista CES*, p. 29.

<sup>220</sup> Consejería Mujer, Familia y Generación, Organización Nacional Indígena de Colombia, "Una mirada a los Derechos Humanos de las Mujeres Indígenas Colombianas", *Informe sobre examen Comité CEDAW* (2013): p. 17.  
<http://www.forestpeoples.org/sites/fpp/files/news/2013/10/INFORME%20SOMBRA%20CEDAW%20MUJERES%20INDIGENAS%20COLOMBIA%20%282%29.pdf>

on the contrary, they reflect over the new opportunities for women participation given by indigenous political spaces. They highlight that while in national spaces they does not have any space for intervention in public offices, in local indigenous government there is a growing number of indigenous women being elected as “gubernators” or indigenous leaders<sup>221</sup>. They do not deny the existence of limitation to their rights to political participation whitening their communities, but they recognized this is a general problem for all women and it does not have a direct relation to their indigenous customs or traditions.

The outlook presented before can give a slightly idea about why indigenous women have not reach the Judicial branch, the Constitutional Court or any International mechanism searching for the protection of human rights looking for the protection of their right to political participation within their communities. They may have found better, non-contentious mechanisms to promote the right to political participation inside their indigenous communities. Despite the lack of jurisprudence on the topic, there are important Constitutional Court resolutions which provide a lead about Constitutional limitations for the State intervention in the right of indigenous peoples to self-government and about the Constitutional Court perspective on limiting autonomy in the name of gender equality. As we mention before, the Constitutional Court does not have jurisprudence on the topic, but these sentences act as guidelines about possible outcome to this problem.

In 2000, Colombia the two chambers from the congress approved the draft of the Statutory Law 581, which provided that at least the 30% of all high level decision-making public offices should be held by women<sup>222</sup>. This law also provided that Political Parties should have at least a 30% of

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<sup>221</sup> Ibid., p.18.

<sup>222</sup> Gerardo Durango Álvarez, “Affirmative action as mechanism for gender equality in inclusive political participation: Ecuador, Bolivia, Costa Rica, and Colombia”, *Revista de Derecho*, No. 45 (2016): p. 157. ISSN: 2145-9355

women on their leadership and have 30% women on their list of candidates to popular election offices. While examining the Constitutionality of the norm, the Court determinate that this affirmative action while produced desirable consequences in favor of women, constituted an unacceptable State interference to the political parties' autonomy<sup>223</sup>.

In relation with the governmental autonomy of indigenous peoples, the Constitutional Court have rule in different occasion in relation to the limits to the indigenous autonomies and the State intervention<sup>224</sup>. The Constitutional Court have explained that the only constitutional mechanism entitled to review decisions taken by indigenous autonomies is the Constitutional Court itself, any other judicial body could rule over acts of indigenous authorities<sup>225</sup>. The Court pointed out that the autonomy held by indigenous peoples in Colombia does not mean that they act are shield against Constitutional control. The Constitutional can limit the autonomy of indigenous peoples but should balance the level of intervention protecting the rule of law, without cracking (*resquebrajar*) the indigenous peoples right to autonomy and independence<sup>226</sup>.

The Constitutional court have developed standards of general application for the resolution of constitutional issues related to indigenous autonomy. The first one is the principle "Maximization of Indigenous Communities Autonomy, minimization to restriction of their autonomy", according to this principle, restriction to Indigenous Autonomy are only admissible when (i) given the

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<sup>223</sup> Ibid., 158; *See also* Corte Constitucional República de Colombia, Sentencia C-371/00, "Participación de las Mujeres en Niveles Decisorios de diferentes Ramas y Órganos de Poder Público", (2000): par. 69.

<sup>224</sup> *See*, Corte Constitucional República de Colombia, Sentencias T-232/14 "Derecho a elegir y ser elegido de las minorías étnicas", C-463/2014 "Derechos de los Pueblos Indígenas", C-490/11 "Omisión de la Consulta Previa de Grupos Étnicos en tramite de Ley Estatutaria de Reforma Política", T-713/11 "Acción de Tutela Contra Decisiones de Autoridades de Comunidades Indígenas", *et alia*.

<sup>225</sup> Corte Constitucional República de Colombia, Sentencia T-523/12, "Acción de Tutela contra decisiones de autoridades de comunidades indígenas", (2012): par. 4.

<sup>226</sup> Corte Constitucional República de Colombia, Sentencia T-523/12, "Acción de Tutela contra decisiones de autoridades de comunidades indígenas", (2012): par. 5.2.

circumstances, the limitation is necessary to safeguard a State interest with higher hierarchy level than indigenous autonomy; (ii) The elected limitation is the least restrictive alternative to achieve the objective, least restrictive of the indigenous autonomy (iii) the previous analysis should be made taking into consideration all the particular circumstances of each indigenous community<sup>227</sup>. The second principle is “greater autonomy in decision-making about internal conflicts” which establishes that related to issues where only members of the community are involved, the indigenous community autonomy is wider<sup>228</sup>.

The last principle is “to greater cultural identity, greater autonomy”, as we established before, the foundation to the right to indigenous communities’ self-government and autonomy in Colombia legal system is founded on the right to preserve indigenous communities’ culture and identity, rather than a recognition of their right to self-determination as indigenous peoples. So, this principle gives an important weight to the cultural heritage of indigenous peoples and establishes that on those cases where the limitation interference with a use or custom from the communities, at first, the customs should be respected<sup>229</sup>.

The Constitutional Court standards presented before definitely should be taken into consideration while the Colombia State is taking any action aiming to limit the right to self-government and autonomy of indigenous peoples for the protecting the right of women to political participation inside indigenous autonomies. In this sense, scenarios like the Mexican judicial decision that imposed the obligation to only accept women as candidates for the election of indigenous leadership in order to protect the right of indigenous women to political participation, may seem

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<sup>227</sup> Corte Constitucional República de Colombia, Sentencia C-463/14, “Autonomía Comunidades Indígenas”, (2014): par. 11.1.

<sup>228</sup> Ibid., par. 11.2

<sup>229</sup> Ibid., par. 11.3



as highly restrictive to the autonomy of indigenous communities, while many other less restrictive alternatives could achieve the same outcome.

## Conclusion

Mexico, Bolivian and Colombian Constitutional construction of the right to self-determination of indigenous peoples is very different, while in Bolivia the indigenous peoples are not only part of the governmental structure but are considered as nation themselves in México the right to self-determination of indigenous peoples is assimilated to municipal level of government. In Colombia, the Constitutional Court have extended the right of indigenous peoples to self-determination and determinate the existence of cultural autonomy. The way in which each legal system construct the right to self-determination and self-government of indigenous peoples have a direct effect over the protection of indigenous women rights to political participation.

Bolivia, México and Colombia have taken stapes towards the protection of the right of indigenous women to participate in the political life of the nation, inside and outside their communities. As the Inter-American Commission suggested the protection of the rights of indigenous women should be a holistic work, guide to protect indigenous women collective and individual rights and to access a fair balance which allow them to fully enjoy of their rights.

The new Constitutional order in Bolivia is a great example of the balance between self-determination and protection of indigenous women right to political participation. The Bolivian constitution guarantees indigenous peoples' protection to women without State intervention in the construction of their political systems. Bolivia Constitution guarantees the participation of women in the process of construction of the political system of their community, while providing that this process of decision-making should be made with the participation of all the citizens -including women-.

Bolivian legal system achieved what the others two jurisdiction did not, to understand that the right to self-government is not the right to maintain their traditions and customs, but rather the right to self-determination. While the tradition of the peoples can be one source for the election of indigenous peoples' political system, the foundation of self-government is the will of the people, their right to self-determine. Only if women participate in the construction and consolidation of the foundations for the nations, then we will guarantee they have access to political participation. And this is a lesson not that mainstreams institutions should understand too.

Mexico, in the other hand, while providing very explicit protection for the right of indigenous women to vote and been elected in their communities, fail to protect the right to self-determination. The Constitution determine that indigenous peoples have always to respect the right to universal vote and mainstreams electoral tribunals have even determine the invalidity of elections order to make new ones with the tribunals new configuration of electoral system. This excessive intervention have not had a real impact over the protection of the indigenous women in Mexico. On the contrary, put them in a disjunctive about whether fight for their rights to equal participation or to protect their right to self-determination. In the analyzed case, the Electoral Tribunal failed in provide for an alternative to the lack of political participation of women, which could be less harmful to the right to self-determination of indigenous peoples.

Colombian legal system has even a weaker protection for the right of indigenous women. While the Constitution does not provide the right to self-determination. The right to self-government is only understand as a right for indigenous peoples to maintain their cultural heritage and their traditional ways of government and since there is not any limitation for the non-discrimination of indigenous women, there is not limitation for the maintenance of harmful traditions which limited the political participation of indigenous women. Nevertheless, the Constitutional Court is the only

one from the analyzed systems that have an advanced system to determinate whether a limitation to indigenous peoples' autonomy is or not legitim.

Despite the limited measure undertaken by State for the protection of the indigenous women right to political participation, all States accept that while the right to self-determination allows indigenous peoples to act with autonomy, this autonomy is not an absolute right and in some cases the State intervention is necessary in order to protect indigenous women political rights. In Bolivia, for instance, there is an Electoral Organism which can invalidate Indigenous Peoples resolution, this Electoral Organ safeguards the right of indigenous peoples because some member of the organs is in fact member of indigenous communities. The Colombian legal system, as well proclaims that indigenous peoples should have the maximum autonomy possible. Mexico, is the only one of this countries that seem to give a greater protection to individual rights over self-determination.

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