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Multiculturalism in Colombia:

TWENTY-FIVE YEARS OF EXPERIENCE

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I. INTRODUCTION

Since the 1980s, Latin America has emerged as a "constitutional laboratory"—in the two decades between 1978 and 2009, 15 major processes of constitutional reform took place in the region.[1] Most of the constitutional changes that emerged from these initiatives provided the basis for democratic and pluralist societies that are respectful of difference(s) and recognize a wide range of individual and collective rights.[2] In this context, Colombia's experience was "pioneering," offering new visions of "living together". With the Constitution adopted in July 1991, the country has officially opened up to multiculturalism[3] for the first time in its history, and the diverse composition of the nation has been clearly acknowledged.[4]

Based on the holistic reading of pluralism used by the Global Centre for Pluralism (2015), this paper focuses on the explicit redefinition of Colombia as a multiethnic and multicultural nation that has occurred over the last decades. First, it refers more specifically to the process leading to a "broad and participatory" National Constituent Assembly that was convened in 1990–91, one that reflected the political, ethnic and religious plurality of Colombian society, and with the participation of three representatives of indigenous peoples.[5] Second, it examines the content of the articles in the Constitution and the main laws following from it that have recognized population groups previously legally excluded and/or treated as invisible, including indigenous peoples.[6] Finally, the changes in practices—ways in which the relationship between indigenous peoples, the state and other social actors changed—are considered in order to situate indigenous peoples in Colombia about 25 years after the Constitution of 1991 was adopted.

The paper pays particular attention to indigenous peoples who are, in Colombia as in much of Latin America, the embodiment of "legitimate alterity" in processes of rights-claiming, and recognition of ethnic and cultural diversity.[7] Despite the small proportion of indigenous people in the population

This paper is part of a new publication series from the **Global Centre for Pluralism** called **Accounting for Change in Diverse Societies**. Focused on six world regions, each "change case" examines a specific moment in time when a country altered its approach to diversity, either expanding or eroding the foundations of inclusive citizenship. The aim of the series – which also features thematic overviews by leading global scholars – is to build global understanding of the sources of inclusion and exclusion in diverse societies and the pathways to pluralism.

(3.4% of the total, according to the latest census from 2005) and substantial heterogeneity (87 ethnic groups, 64 languages),[8] they gained visibility on the strength of their mobilizations as well as the significant rights that are now constitutionally recognized. In turn, their experience of resistance, by way of their organization, and via political and electoral participation, brought real achievements, through dialogue with the state and by asserting their right to express a cultural distinctiveness.

However, we should not be under the illusion that indigenous populations alone embody the expression of multiculturalism. Other "minorities"[9] have mobilized to demand recognition of their identity in recent decades, and they currently enjoy some specific treatment from the state. These groups include Afro-descendants, Roma (or gypsies)[10] and LGBTI (lesbian, gay, bisexual, transsexual, intersexual) persons.

Taking the broad view, and by way of contextualization, this paper returns briefly to historical conditions in Colombia that reveal a story of nation-building marked by strong inequalities: between conquerors and conquered; colonizers and colonized; and full-fledged citizens and second-class citizens. Next, the move towards multiculturalism itself is described, the goal being to understand how pluralism has been practised in Colombian society from the development of the "rules of the game" adopted by the National Constituent Assembly of 1991 through to the uncertainty that surrounds the application of constitutional articles on an everyday basis. The Constituent Assembly in 1990–91, and the resulting Constitution, recognized national diversity. Thus, contemporary sources of exclusion as well as inclusion can be identified by examining legal developments, design of public policies related to cultural specificities and mechanisms to protect diversity, and the slow application of constitutional principles and the limitations imposed by state agencies. Despite this, societal projects often clash, racism endures, autonomy is limited and new dependencies have arisen. To finish, some lessons that emerge from the Colombian experience are mentioned, analyzed today through the pluralism lens and which, by way of a virtuous circle, albeit with limitations, reveals positive interactions between practices and attitudes. All of this implies building pluralism into Colombia's self-identity as a nation and its task of democratic consolidation.

II. ORIGINS AND RESPONSES TO DIVERSITY: PEOPLE, NATION, STATE

The history of modern Colombia and of the indigenous peoples that live there is closely linked to the marks left by the conquest (*conquista*) and colonization imposed by Spain, as well as nation-building after independence in 1819. As soon as the Spaniards entered their territories, indigenous peoples had to bow to rules that were alien to their social structures, and they suffered from unrelenting marginalization and discrimination. However, at times in the 20th century, they managed to achieve some self-protection with resistance strategies that strengthened their authority within spaces for dialogue with state leaders; these opened the way to

making their demands clear on the national stage.[11]

Conquista and the Colonial Period: Spanish Laws and Institutions to Control Native Peoples

Through a land occupation process that left the remote southeast lands of Amazonia and Orinoquía unoccupied for some time, the conquistadores reached the Andean area from the Atlantic coast between 1509 and 1539. From there, as the colonial regime became stronger, a series of institutions were imposed on the regions they controlled. As a reward for the conquistadores, a system of land distribution (known as the *merced*) and of men—the *repartimiento de indios*—was established. Indigenous people were thereby placed under the legal protection of individual representatives of the Spanish Crown, to whom they had to pay tribute. Converting the "distribution of Indians" into *encomiendas* i.e. allotment of Indian labor, much like slavery, progressively strengthened this dependency. Legalized in 1538, this system officially sought to protect indigenous people from abuse and to allow them to be evangelized. However, it soon turned into a system of slavery passed from generation to generation.

After 1680, the Council of the Indies[12] made indigenous people subjects of the "Republic of the Indians," which paralleled the "Republic of the Spaniards." This Republic of the Indians was based on the institution of the *comunidad*, which was governed by indigenous authorities under the control of the Spaniards. Parallel to this, the indigenous model of land occupation on reservations (*resguardos*) expanded, distributing poor quality land on mountain slopes. The aim of both institutions was to separate indigenous people politically and geographically as well as to maintain the tribute system and an available workforce.

Later, however, two elements of the legislation about reservations allowed indigenous people to gain certain advantages. Beginning in 1561, they were recognized as collectively owned and deeded land, and the reservation had to function under the authority of an indigenous council (*cabildo*), which oversaw their internal operation. Furthermore, the land could not be divided.

Nevertheless, over the centuries, the reservation system failed to prevent the dispossession of indigenous people and their confinement to poor quality land. Furthermore, in the late 18th century, the *resguardo* was targeted for extinction. The plan was to eliminate all kinds of special treatment of indigenous people in order to favour their assimilation, as recommended by Creole thinker Pedro Fermín de Vargas:

> ...with the aim of improving our agriculture, it would be necessary to *hispanicize our Indians* [emphasis added]. Their general insolence, stupidity and indifference to anything that touches and motivates other men makes us believe that they come from a degenerate race... It would be desirable to exterminate the Indian race, intermarrying Indians with whites, declaring them free of all tributes and other specific taxes, and granting them property through land.[13]

Independence, the Republican Period and New "Citizenship"

After independence, this desire for "hispanicization" was replaced by efforts to "nationalize" the Indians, inspired by the spirit of the liberators who were in charge of the new states. Officially in favour of the "equality of races," Simón Bolívar aimed to "liberate the indigenous people." To promote the creation of a class of small independent producers who would ensure the prosperity of the economy and the stability of political institutions, *resguardos* had to be dissolved, as they were considered by the liberal elite to be an obstacle to individual effort, progress and modernity. However, beyond discourse that advocated citizen equality, the distinction was maintained between socially, economically and politically powerful groups with access to the decision-making process (literate, land-owning white men) and broad sectors of society that were excluded from it (indigenous people, Afro-descendants, women, poor people in general).

Under the conservative influence of Rafael Nuñez' government, Law 89 of 1890, titled, "determining the way in which the savages should be governed so that they may adapt to civilized life," maintained the *resguardos* system. Until it was finally declared unconstitutional in 1996, this law assigned indigenous people the same status as minors, legally speaking. But it was also to become one of the tools with which they could claim a right to self-determination. By declaring the lands on the reservations *imprescriptibles*, *inembargables* and *inalienables* (i.e., not subject to a period of limitations, not subject to seizure and inalienable), and by reasserting the role of authorities in the *cabildo*, it laid the foundations for a certain level of indigenous autonomy.

In fact, at the turn of the 20th century, there was growing interaction between indigenous peoples and the state. Beginning in the 1920s, some interesting initiatives arose, instigated by indigenous leaders from the southwest of the country for the "defence of the indigenous race"[14] and to claim voting rights, albeit unsuccessfully.[15] But, above all, a significant turnaround began in the way in which the mobilization expanded nationwide in the 1970s with the creation of organizations representing the "indigenous" communities.[16]

The Regional Indigenous Council of Cauca (CRIC) appeared in 1971. It served as a model for the proliferation of such regional associations throughout Colombia: its claims were the right of indigenous peoples to collective territories and their own authorities; and it sought to promote respect for elements that are considered as pillars of their identity, such as the defence of the history, language and customs of indigenous peoples, and their views on education and medicine.[17] In turn, in these years there was a rapprochement between indigenous organizations and the non-indigenous population, including peasants, workers, students and other left-leaning militants.[17] Demands were shared for profound social change and for opening-up the political system, which was considered too exclusive.

Organizations also emerged at the national level. In 1982, the National Indigenous Organization of Colombia (ONIC) federated regional associations around the principles of *unidad, tierra, cultura y*

autonomía (unity, land, culture and autonomy). In addition, dissidents from CRIC, self-proclaimed as the "critical sector," led to the establishment of the Governors on the March movement at the start of the 1980s, which changed its name to Movement of Southwest Indigenous Authorities and the Movement of Indigenous Authorities of Colombia (AICO in Spanish) in 1987. Also arising within the Cauca Department, it was more closely linked to the traditional indigenous authorities than to any type of external influences, although it sought to work with the support of solidarity groups.

As a result, indigenous mobilization followed a "dual track" of contentious mobilization and legal appeals that was to endure even after the promulgation of the Constitution of 1991. Alliances with non-indigenous people on the one hand encouraged them to take up certain practices of the peasant movement around protecting their land, such as land-recuperations, roadblocks, marches and other demonstrations of discontent.[18] However, on the other, they also made legal claims demanding their "fair application."

III. THE MOVE TOWARDS PLURALISM IN COLOMBIA: THE CONSTITUENT ASSEMBLY AND THE CONSTITUTION OF 1991[19]

One of the main points of interest of the constitutional renewal that took place in Colombia in 1991 relates to the fact that it can be read, in part, as the result of strong citizen participation and the integration of ethnic, religious, gender and political minorities in public debate. Although only the Parliament was authorized to make constitutional change, a constituent assembly was convened, and officially elected, in 1990, in response to pressure from many sectors of opinion in favour of a reform of the Constitution of 1886. This National Constituent Assembly included social actors who had always taken a backseat within the political sphere: representatives of non-Catholic religious associations, a student leader, women, ex-combatants of demobilized guerrilla groups[20] and representatives of indigenous organizations.

Indeed, due to their open nature, elections to the Constituent Assembly led to unprecedented mobilization by indigenous organizations. Of these, the Movement of Indigenous Authorities was the first to act. As expressed by one of AICO's assessors,, Víctor Daniel Bonilla, "... when the whole nation opened up to the initiative of a National Constituent Assembly, as a way of achieving certain changes in the state, the Movement of Indigenous Authorities entered to decisively promote the project."[21] The National Indigenous Organization of Colombia also supported the Constituent Assembly,

asserting that, "the unity of the popular sector is built on diversity."[22] Two prominent figures from these organizations joined the Assembly: Lorenzo Muelas, on behalf of the Movement of Indigenous Authorities of Colombia; and Francisco Rojas Birry, representing the National Indigenous Organization of Colombia. Originating from a department on the Pacific Coast (Chocó) with a large population of Afro-descendants, the latter also took it upon himself to be "the voice" of his "brothers in suffering" within the Constituent Assembly.[23] Moreover, in 1991, a peace agreement with an armed group created to defend the indigenous communities of southwest Colombia, known as the Quintín Lame Armed Movement, meant that one of its delegates was able to enter the Constituent Assembly.

In addition to these channels of direct participation in the constitutional debate, the implementation of mediation between the whole of Colombian society and its representatives within the Assembly should also be highlighted: claims made individually or through social organizations, including indigenous ones, could be sent to the Constituent Assembly via spaces such as *mesas de trabajo* (round tables) and *comisiones preparatorias* (preparatory commissions).

Within this context, indigenous demands were made for democratization and for a Colombia that respected its own diversity.[24] As a result of such deliberations, there was a noticeable impact on the text. In fact, when the Constitution of 1991 placed the emphasis on the country's multiethnic and multicultural nature, the position of the so-called "ethnic groups" within it was altered. Indigenous populations have been the main beneficiaries of measures, which, based on positive action, provide guidelines for their relative autonomy.

In addition to recognizing their languages and granting the right of indigenous peoples in border areas to dual citizenship (Article 10, Article 96), the Constitution of 1991 lays the foundation for a treatment tailored to their specific cultural values regarding education (Article 10, Article 96), health (Article 49), the environment (Article 330) and justice (Article 246). It reiterates their right to collective land ownership (Article 63, Article 286, Article 321, Article 329) and to elect their own authorities (Article 330). It also stresses the need to respect the cultural, social and economic integrity of indigenous communities, and to carry out prior consultation before starting projects to exploit natural resources in their territories (Article 330). It foresees special constituencies (Article 171, Article 176) that ensure the access to Congress of three elected members who represent indigenous groups. And, above all, the state is assigned the responsibility of ensuring that citizens enjoy equality: "The state recognizes and protects the ethnic and cultural diversity of the Colombian Nation" (Article 7); "The state will promote the conditions so that equality may be real and effective and will adopt measures in favor of groups that are discriminated against or marginalized" (Article 13).[25]

IV. VECTORS OF PLURALISM: SOURCES OF INCLUSION AND EXCLUSION

Twenty-five years after the promulgation of the Constitution of 1991, it is pertinent to pay attention to the way in which it has been put into practice and, in this regard, specifically to analyze the experience of indigenous peoples. For this purpose, by way of a "diagnosis," their current living conditions are examined. Later, the scope generated by the transposition or not of principles in favour of diversity in material and symbolic mechanisms is presented, as well as possible limits and negative effects. "Vectors of pluralism" are thereby identified, or in other words, sources of inclusion and exclusion linked to constitutional change.

Processes of exclusion and marginalization, that are still operative after two and a half decades under the new Constitution, characterize the indigenous population. The population is rendered "statistically invisible" in both demographic and socio-economic terms because of the lack of data about them. Simultaneously, the limited data that is available shows marked inequalities among ethnic minorities in general, including the indigenous population, and the rest of the population in terms of education, health, employment and work benefits.[26] There is a greater propensity for truancy among this population group, while students' grades are below the national average. They are exposed to greater informality in the labour market and receive less attention within the social protection and medical systems. Therefore, they are regularly affected by higher rates of malnutrition and infant mortality.[27] In addition, it is estimated that 63% of the indigenous population is mired in poverty as compared to 54% of the entire population of Colombia.[28] Finally, indigenous peoples as well as Afro-Colombian communities have been among the main collateral victims of Colombia's internal armed conflict, being continually affected by threats, aggression and forced displacement.[29] Bearing these data in mind, the experience of 25 years of "Colombian-style multiculturalism" has been mixed. In 1991, indigenous organizations welcomed the Constitution. Some months after it was adopted, the Regional Indigenous Council of Cauca (CRIC) was complimentary: "... the new Constitution gives us elements and tools to continue our struggle for the rights of indigenous peoples, black communities and marginalized sectors in the cities and in the countryside."[30] On paper, most of the demands made by indigenous organizations had been satisfied. Moreover, much of the pluralism given expression in the Constitution of 1991 was translated into laws, public policies and presidential decrees.[31]

Progress made in Legislation and Policy

Law 24 of 1992 and Law 201 of 1995 respectively defined the functions of the Ombudsman and the Office of the Controller General of Colombia,[32] and these officials were assigned the responsibility of ensuring that rights and freedoms of ethnic minorities were respected. Law 60 of 1993 (which was later replaced by Law 715 of 2001) foresaw the transfer of national resources to indigenous *resguardos*. Law 100 of 1993 (aimed at creating a comprehensive national social security system) and then Law 115 of 1993 (the General Education Law)

allowed indigenous communities to benefit from respect for their cultural particularisms in terms of health and education, and granted them the administration of their own medical and educational systems. In turn, Law 270 of 1996 recognized the validity of indigenous justice, although it was never implemented. Finally, more recently, decrees #1952 and #1953 were signed by President Juan Manuel Santos in October 2014 to confirm the principle of territorial, political, budgetary, educational and health autonomy, which had been strongly demanded by indigenous communities over recent decades.

In parallel, the mutation of what could previously have been considered as specific measures concerning the "indigenous issue" into an initiative for a "Public Policy for Indigenous Peoples" merits attention. Launched in 1984, for the first time the Indigenous Development Program (PRODEIN) organized a consultation between indigenous organizations and the state. It recognized the errors committed in the past in relation to indigenous communities, called for their ethnic identity to be respected and proposed protecting their rights to their own collective territories and authorities, as well as their autonomy in education, health and internal development. After the Constitution of 1991, three new negotiating bodies were ratified through Decrees #1396 and #1397 of July 1996, signed by the then-president Ernesto Samper. They were a Commission on Human Rights, National Commission for Indigenous Territories and Permanent Roundtable for National Policy Coordination.[33]

Coordinated by the Ministry of Interior with the support of the National Planning Department, the Permanent Roundtable for National Policy Coordination has become a model for dialogue within the national institutional framework and, since then, has led to a series of meetings. Participating in them are delegates of indigenous organizations, indigenous former members of the Constituent Assembly, congressmen elected on behalf of the indigenous movement and government representatives. Their mandate is to discuss core issues for indigenous populations (territory, identity, autonomy, self-government and participation, prior consultation, socio-economic issues and other rights).[34]

However, indigenous people would have to wait for the government's National Development Plan 2006–10 to find a specific reference to: "a comprehensive policy for indigenous peoples that will be formulated in a concerted manner."[35] Subsequently, the National Development Plan 2010-2014 (Law 1450 of 2010) defined:

> as a strategic guideline *the differential focus in public policy actions* [emphasis added] aimed at generating conditions for equal opportunities and comprehensive social development, considering the specific population, regional and characteristic differences of different ethnic groups, in such a way that their survival as cultures and timely, efficient and appropriate attention is guaranteed.[36]

Finally, the National Development Plan 2014–18 (Law 1753 of 2015) reiterated the validity of constitutional rights related to indigenous peoples, as well as the necessity to take them into account

through public policy, with a differential approach accorded to the relationship between their organizations and the state.

Moreover, it should be noted that the constitutional recognition of diversity has helped strengthen the validity of indigenous claims. In this regard, it is important to stress the role played by the Constitutional Court, which was also created along with the Constitution of 1991, and is known for its progressive judicial and emancipatory activism.[37] Legal tools from the constitutional text itself have been introduced so as to ensure greater control over citizens in public affairs and with respect to their fundamental rights, such as "*tutela*" (legal protection), "*acción de constitucionalidad,*"[38] (constitutional action), and "*consulta previa*"[39] (prior consultation).

These mechanisms have often been the basis of legal decisions aimed at public bodies (ministries and other state offices), claiming respect of the principle of the nation's diversity. In addition to judgments in favour of practices that are assumed to be ethno-cultural particularisms,[40] the Court has declared laws voted without the prior consultation of indigenous communities unconstitutional and thus, demanded their cancellation;[41] and has forced the state to honour its commitment to ending the marginalization of ethnic groups and in favour of the "differential focus" to problems related to them.[42]

There is also a transnational and regional influence behind this multiculturalism. Over recent decades, several legal supports have been developed at the international level for advocating on behalf of the rights of indigenous peoples: for example, Convention 169 of the ILO, ratified by Colombia in August 1991; and the United Nations Declaration on the Rights of Indigenous Peoples, which Colombia adopted in April 2009 after having initially abstained.[43] In addition, in the case of Colombia, and in Latin America in general, the roles played by the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights (IACHR) are significant.[44]

Finally, it is worth mentioning how indigenous peoples have access to spaces of national deliberation, based on reforms in favour of broadening citizens' prerogatives, such as the 1986 municipal reform and the popular election of mayors since 1988, and the popular election of departmental governors and the creation of special constituencies with seats reserved for indigenous peoples (three for the Senate, two for the House of Representatives) in the Constitution of 1991. With these spaces for participation, the 1990s saw new political forces that, based on the experiences of social mobilization started in the 1970s, settled for an electoral representation specific to indigenous peoples and have remained active since then.[45]

With regard to prospects for pluralism, an indicative symbolic dimension of change can also be noted; discourses about "savages who need civilizing" have given way to officially recognized pride in national diversity following the Constitution of 1991.[46] The coming to power of President Juan Manuel Santos in August 2010 was also significant here. As minister of Defence during former President Álvaro Uribe's presidency, he made a radical shift, although not in all government policies, in the way

of interacting with the people who make up the nation.[47] Therefore, before his investiture ceremony in Bogota, he unexpectedly requested a visit to the Kogi Indians of the Sierra Nevada de Santa Marta. Just a few hours before taking possession of the presidential palace, and accompanied by his family, he took part in an indigenous ritual.[48]

Whether this gesture was from personal conviction or a media strategy, it nonetheless revealed Santos' willingness to promote rapprochement with indigenous peoples. And the president's posture was later maintained and extended to his colleagues, as could be seen, for example, in meetings held between ministers and officials of the different ministries and representatives of indigenous organizations within the framework of the Permanent Roundtable for National Policy Coordination. Although the issues discussed continue to be the object of multiple disagreements, President Santos' representatives seem to have obeyed the order to "treat the opponent well" and always in a friendly and respectful tone.[49]

V. VECTORS OF EXCLUSION: BLOCKADES, CLASHES AND RACISM—OBSTACLES TO PLURALISM

Although these changes were favourable to the expression of a national identity founded on diversity, struggles were persistent and numerous between indigenous organizations and state leaders after 1991. The need to respect agreements made with successive governments became a recurring theme among indigenous organizations. On several occasions, indigenous organizations opted for a return to taking concrete action: reclaiming land, roadblocks, marches and demonstrations. Often dubbed *Mingas* (in reference to the Quechua word used to designate communal work for the well-being of all), these tactics have been taken up in the name of "active resistance."

For example, there was a peaceful occupation of the headquarters of the Episcopal Conference in Bogotá for more than 30 days and protests undertaken simultaneously throughout the country in July 1996. This latter mobilization contributed to the creation of the aforementioned Permanent Roundtable for National Policy Coordination, Commission on Human Rights of Indigenous Peoples and National Commission for Indigenous Territories. Furthermore, the blocking of the Pan-American Highway in June 1999 led to the signing of Decree #982 that same year by President Andrés Pastrana, "by which the National Government creates a Commission for the comprehensive development of indigenous politics [and] measures are adopted to obtain the necessary resources." Later mobilizations also attracted attention, in particular the great march between Popayan and Cali in September 2004, known as *Minga por la Vida, la Justicia, la Alegría, la Autonomía y la Dignidad* (Minga for Life, Justice, Joy, Autonomy, and Dignity) and especially the *Minga Nacional de Resistencia Indígena y Popular* (National Minga of Indigenous and Popular Resistance) that began on 12 October 2008. The latter initiative was a significant milestone in the capacity of indigenous organizations to bring together broad sectors of

the population, not just indigenous peoples, but also Afro-Colombians, peasants, students and women, as well as many other sympathizers. In turn, it reflected the articulation of demands made specifically in relation to indigenous populations with broader claims for change of Colombian society as a whole, thereby offering a space for open discussion between everybody in Colombia.[50]

On several occasions these actions were concluded by the opening or restarting of dialogue between indigenous organizations and public representatives, although not without first giving rise to confrontations, sometimes violent, between the parties involved in the conflicts.[51]

Both mass mobilizations and legal actions have tended to bring about clashes between priorities that are difficult to reconcile, such as between neoliberal projects or "megaprojects" and communities' lives. In parallel, one of the main complaints of indigenous organizations is the fact that, even after 25 years since the Constitution of 1991 was adopted, several aspects set out in it remain to be implemented. These include ambivalence about indigenous peoples' right to their own territories as well as the question of special indigenous jurisdiction.

Rich in natural resources, sometimes difficult to access and suitable for harbouring illegal activities, indigenous territories are exposed to the interests of multiple actors.[52] They appear at the centre of disputes with national and multinational companies considered "driving forces" of the country's economy (such as building infrastructure, agribusiness, mining and the exploitation of natural resources), but often opposed by the communities who live in the areas concerned on the grounds they are harmful to them.[53] In addition, the incursion of armed groups into indigenous territories and the repeated violations of the rights of the communities have been frequently denounced by their organizations.[54] Likewise, as it is not legislated, the issue of indigenous justice continues to be mired in debate. In a notable case from September 2015, one of the indigenous leaders of the 2008 *Minga* was sentenced to 16 years in prison. He was convicted by the ordinary courts of having promoted the kidnapping and torture of a member of the military. However, according to the arguments for the defence, the soldier had been arrested and punished by participants of the mobilization as a whole, and not by one of its leaders. In addition, the punishment he received (by whipping) would have been applied in accordance with indigenous customs. And there was a clear rationale: the man had been caught conducting an undercover operation to leave radio equipment and arms in the settlement of the mobilization in order to discredit it. In response, at the start of October 2015, the Regional Indigenous Council of Cauca (CRIC), made a public statement in which it called for "an urgent public debate on constitutional rights that are violated and criminalized."[55]

Finally, expressions of intolerance against indigenous peoples and the Afro-descendant population continue despite the Constitution of 1991, and its guarantees and promises. On repeated occasions, both differences in the ways of thinking about national priorities and claims for indigenous autonomy described above have led to the manifestation of behaviours that are clearly or more

subtly racist. One notable example is the proposal by a Senator close to former president Álvaro Uribe to divide the Cauca Department into two areas, one for mestizos and another for indigenous people, so as to protect its territory from an "invasion" by the latter.[56]

Beyond these manifestations of behaviour not in keeping with pluralism, the application of constitutional and legally recognized rights has tended to generate new problems. One example is that, alongside the indigenous autonomy guaranteed by the Constitution of 1991, "new dependencies" on the state apparatus have appeared. It is the responsibility of the Division of Indigenous Affairs of the Ministry of Interior to judge whether a community meets the criteria for being identified as indigenous and thereby whether its members gain access to the differential treatment provided by the law. In addition, the state, especially via the courts, is often allocated the last word in disputes when there are ambiguities or disagreements between national and customary standards.[57]

At a community level, action and initiatives have been hampered by national directives to which indigenous peoples have had to submit; for instance, in their school and medical programs. They also may be required to go through the intermediary of the municipal or departmental authorities to access public money set aside for them. The new responsibilities of the managers of these economic resources, and educational and health systems have generated rivalries within indigenous communities and organizations. The latter also face the problem of a lack of financial and human capital to respond to their needs, especially when it comes to securing ethno-educational services or combining their claims for "traditional" medicine with "Western" methods.[58]

In more general terms, carrying out these functions in the Colombian context of a neoliberal economy often leads to proposals for the privatization of public services and of the state ceasing to take responsibility for the latter. Attributing competences and resources to indigenous populations which were, until then, administered by the state, could be on a par with the implementation of indirect-rule practices. At the same time, by publically managing ethnicity, anti-establishment processes would thus be avoided.[59]

Finally, it is necessary to look at the emergence of fresh inequalities between populations, including indigenous and Afro-descendant on the one hand, that receive some albeit varying degrees of differential constitutional and legal treatment, and others among the mestizo people who do not fall within the compass of the principle of "differential focus."

Alongside these issues, there are also challenges to the operationalization of the very concept of "differential focus". The relative precariousness of inter-institutional coordination is a factor, as well as the fluctuating nature of the relationships between indigenous and state organizations, as leaders and officials change.

This aspect is particularly complex when applied to issues such as prior consultation that certainly requires a minimum degree of "political will" by the state to allow it to be implemented. It involves

a number of difficulties in practical terms for the mechanism to be used vis-à-vis all the communities, even those in remote parts of the country. It also requires effective coordination between the different state agencies, although they do not necessarily have converging priorities for action and budgets.[60]

VI. EMERGING LESSONS ABOUT PLURALISM

After 25 years of multiculturalism, Colombia's story reveals a number of lessons. On the one hand, there have certainly been changes in the way the nation and citizens think about the country's diversity and, based on this, how relationships are organized between populations and institutions. Ethnic groups and other minorities are now visible and present in the public debate. Their capacity for dialogue with state agents and agencies has grown. A legal arsenal has been built to guarantee their right to equality within difference. On the other hand, these advances have not removed all obstacles and risks, such as legal and political blockages, new inequalities and interethnic rivalries, and enduring racism.

Clearly, the practice of pluralism cannot be reduced to the implementation of recognition policies; it can only come about under the condition of effective and opportune articulation between attitudes, law and actors. In the case of Colombia, there is a trend, not new, but increasingly more visible, towards the appropriation by social actors of constitutional texts and mechanisms so as to ensure that individual and collective rights are enforced. Therefore, the instruments provided by the Constitution of 1991, such as guarantees of protection, constitutional standing or prior consultation, stand out as some of the means available to indigenous peoples and others to advance their claims. In many situations, although these instruments are insufficient to achieve a resolution of conflicts between the main players, they have the advantage of reinforcing the taken-for-granted consensus among the parties. In this sense, they resemble "educational tools" for living together better, and contribute to drawing up shared references for the dissemination of a "common language."

Furthermore, the pluralistic composition of the Constituent Assembly had an impact on the content of the text to which it gave rise, with its focus on multiculturalism. Thus, unprecedented participation in the national debate by those who until then were relegated to the background as minorities means that today they consider the institutional and legal frameworks as their own and therefore, more legitimate. In turn, the state and its agencies "remodelled" themselves: they were open to, albeit sometimes obliged to, take into account the diversity of the Colombian population and the types of norms that co-exist within the national space.

An additional point worth highlighting is the effective inclusion of the reference to ethno-cultural community practices not just in the law, but above all, and often much more efficiently, via jurisprudence. On several occasions the Constitutional Court or the Inter-American Court of Human Rights have shown their concern for respecting pluralism as it is now constitutionally

and legally defined. Through rulings directed at the legislature and executive, including ministries and public authorities in general, judges repeatedly speak of constitutional commitments to promote respect for diversity and the responsibility of the state in this regard.

Finally, also worth remembering is the long-standing "dual track" nature of indigenous social and political mobilization, and its propensity to combine ethno-cultural demands with claims shared with various other actors in favour of profound social change. Indigenous organizations and other minorities have never renounced contentious action maintained alongside their dialogue with the state within a legal framework. Through protests and other demonstrations, they continue to put pressure on national authorities to ensure their rights are recognized or, at least, their claims are listened to, although success is often limited. The broad reach of these mobilizations is striking. Alongside indigenous peoples, they include different types of social organizations (peasants, Afro-descendants, women, unions, the left in general) grouped around shared demands, for greater equity in political, economic, social and cultural terms.

In short, in the case of Colombia, the beneficial combination that arises between the following elements can be considered as pivot points that act in favour of pluralism: on the one hand, the emergence of an appropriate regulatory framework for pluralism, social appropriation and calls for respect in legal matters; and, on the other, the solidity and breadth of social mobilization, within which indigenous organizations play an exemplary role.

Yet, all is not perfect or simple. Within this general outlook, a first challenge is knowing how to achieve the appropriate handling of relationships woven between the state, social actors in general, and indigenous peoples and other ethnic groups, not just by stressing the "differential focus," which contributes to treating specific groups in a manner considered appropriate to their ethno-cultural specificity, but also by recognizing heterogeneity and possible divergences among the whole population. Another challenge for the indigenous peoples of Colombia is to ensure respect of agreements made in the name of diversity, while also and importantly working for the political, economic and social change claimed by all these actors, that go beyond their differences. Meeting this challenge is probably the key to enabling an extension of the exercise of democracy and the defence of the multicultural diversity formally guaranteed by the Colombian Constitution. The need is to balance points of reference to communities' identity with shared values and place for individuals as well as in favour of articulating the ambition of recognition with that of (re) distribution.[61]

In light of these challenges, in Colombia it is important to promote social dialogue from the horizontal perspective of relationships between the state and society, and based on the principle of "equality in difference," which is recognized constitutionally. With this approach, it is important to ensure that talks are held between all actors involved, such as those that we have seen in the Permanent Roundtable for National Policy Coordination. It is equally important for these exchanges not to be confined to the state

and representatives of indigenous peoples, but for them to become wider discussions with other ethnic groups and social sectors, including Afro-Colombians, peasants, women and students, among others. Lastly, it is crucial to actively involve indigenous communities in initiatives for the cessation of armed conflict and peace-building, given their years of experience of civil and peaceful resistance.

NOTES

[1] Gabriel Negretto (2011), "La reforma política en América Latina," *Desarrollo Económico* vol. 198: 197–221.

[2] Roberto Gargarella and Christian Courtis (2009), *El nuevo constitucionalismo latinoamericano: promesas e interrogantes*, CEPAL – *Serie Políticas sociales*, No. 153, Santiago de Chile; Rodrigo Uprimny (2011), "Las transformaciones constitucionales recientes en América Latina: Tendencias y desafío," in *El Derechos en América Latina: un mapa del pensamiento jurídico del siglo XXI*, edited by César Rodríguez Garavito (Buenos Aires: Siglo XXI).

[3] Multiculturalism is understood here as the projection of ethnic and cultural diversity in the public sphere, including the implementation of state measures to support it. For a general focus on multiculturalism and on multi/intercultural politics in Latin America, see Carlos Agudelo and Maité Boullosa-Joly, coordin., (2015), "Dossier Paradoxes et ambiguïtés des politiques multiculturelles," *Problèmes d'Amérique latine* vol. 92: 7–10; David Dumoulin and Christian Gros, eds. (2012), *Le multiculturalisme au concret. Un modèle latino-américain?* (Paris: Presse Sorbonne Nouvelle); Christian Gros (2000), *Políticas de la etnicidad. Identidad, Estado y modernidad* (Bogotá: ICANH); Odile Hoffmann and María Teresa Rodríguez (2007), *Los retos de la diferencia. Los actores de la multiculturalidad en México y Colombia* (México: D.F. CEMCA-CIESAS-ICANH-IRD); Will Kymlicka (1996 [1995]), *Ciudadanía multicultural* (Buenos Aires: Paidós); Alain Touraine (1997). Pourrons-nous vivre ensemble? Égaux et différents (Paris: Fayard); Michel Wieviorka (1993), *La démocratie à l'épreuve. Nationalisme, populisme, ethnicité* (Paris: La Découverte); Michel Wieviorka, dir. (1997), *Une société fragmentée? Le multiculturalisme en débat* (Paris: La Découverte); Michel Wieviorka (2001), *La différence* (Paris: Balland), among others. More specifically about the Colombia case, see, for example, Diana Bocarejo and Eduardo Restrepo, eds. (2011), "Hacia una crítica del multiculturalismo en Colombia," *Revista Colombiana de Antropología* 47 (2); Margarita Chaves, comp. (2011), *La multiculturalidad estatalizada. Indígenas, afrodescendientes y configuraciones regionales de estado* (Bogotá: ICANH); Virginie Laurent (2010), "Con bastones de mando o en el tarjetón. Movilizaciones políticas indígenas en Colombia," *Colombia Internacional* vol. 71: 35–61; Virginie Laurent (2012), "*Dans*, *contre*, *avec* l'Etat: mouvement indien et politique(s) en Colombie, vingt ans après," in *Le multiculturalisme 'au concret.' Un modèle latino-américain?*, edited by Christian Gros and David Dumoulin (Paris: Presses de la Sorbonne nouvelle), 147–58; Virginie Laurent (2013), "Cultures en conflit(s)? Peuples indigènes et politiques publiques en Colombie, vingt ans de réflexions," *Cahiers des Amériques Latines* vol. 71: 75–94; Joanne Rappaport (2008), *Utopías interculturales. Intelectuales públicos, experimentos con la cultura y pluralismo étnico en Colombia* (Bogotá: Editorial Universidad del Rosario/Popayán, Editorial Universidad del Cauca).

[4] The Constitution of 1991 recognized the presence of indigenous and black populations in Colombia, which it qualifies as "ethnic groups" (Art. 10, 63, 68, 72 among others). A series of general and specific rights were named for them, leaning towards the formula of "multicultural citizenship" elaborated by Kymlicka (1996).

[5] Beyond different connotations depending on context (place and time; interlocutors and languages), the words community/people, as well as Afro-descendant/Afro-Colombian/ black (among others), are used in the present text as equivalents.

[6] Peter Wade (1996), "Identidad y etnicidad," in *Pacífico. ¿Desarrollo o diversidad?*, edited by A. Escobar & A. Pedrosa (Bogotá: Cerec, Ecofondo), 283–98.

[7] DANE [National Administrative Department of Statistics] (2007): *Colombia: una nación multicultural. Su diversidad étnica* (Bogotá: DANE), 16, 35, accessed 14 January 2017, https://www.dane.gov.co/files/censo2005/etnia/sys/colombia_nacion.pdf. Much of the indigenous population of Colombia lives on reservation lands distributed from the Andean highlands to the lowlands of Amazonia and Orinoquia, passing through the Atlantic and Pacific coastal areas. There is also an indigenous presence in the cities. Since 2010, these collective territories have been located in 27 of the country's 33 departments, and in 226 of its 1,123 municipalities; therefore, they occupy an area corresponding to 29.8% of the country. UNDP [United Nations Development Program] (2011), *Pueblos indígenas. Diálogo entre culturas. Tercer cuaderno del informe sobre de desarrollo humano*, accessed 15 January 2017, http://pnud.org.co/img_upload/6162646162643434353537373735353535/2012/cuaderno_indigenas.pdf.

[8] The terms "minority" "or "minorities" are understood here to be a political description more than numerically.

[9] In contrast to anti-Roma discrimination in Europe, there is an institutional framework with a "differential focus" (or affirmative action) for this population in Colombia.

[10] This section draws on Raúl Arango and Enrique Sánchez (1998), *Los pueblos indígenas de Colombia* (Bogotá: Tercer Mundo Editores, DNP); Guillermo Bonfil (1977), "El concepto de indio en América: una categoría de la situación colonial," *Boletín Bibliográfico de Antropología Americana* vol. 39: 17–32; Henri Favre (1996), *L'indigénisme* (Paris: PUF); Christian Gros (1991), *Colombia indígena* (Bogotá: Cerec); Virginie Laurent (2005), *Comunidades indígenas, espacios políticos y movilización electoral en Colombia, 1990–98. Motivaciones, campos de acción e impactos* (Bogotá: ICANH-IFEA); Jean Pierre Minaudier (1992), *Histoire de la Colombie. De la conquête à nos jours* (Paris: L'Harmattan); Ximena Pachón (1981), "Los pueblos y cabildos indígenas: la hispanización de las culturas americanas," *Revista Colombiana de Antropología* vol. 23: 297–326; and Consuelo Uribe (1985), *Le visage indien de la Colombie*, thesis of the third cycle, dir. Simone Dreyfus Gamelon (Paris: EHESS) (among others).

[11] Created by the Spanish Crown in 1511, the Council of the Indies was designed to regulate the running and administration of the "New World."

[12] Author's translation of a quote in French from Uribe (1985), 14.

[13] One of the reflections of the prominent Nasa indigenous leader Manuel Quintín Lame was formulated in these terms in a text he wrote while he was in jail in the 1930s. It was published in 1971 under the title: *En defensa de mi raza* (*In Defence of My Race*). Manuel Quintín Lame (1971), *En defensa de mi raza* (Bogotá: La Rosca/ Editextos).

[14] On these episodes see, among others: Gros (1991) and Laurent (2005).

[15] There was a need for a generic identity, but use of the word indigenous does not imply a uniform vision of "*being* indigenous." Indeed, demands vary widely across regions and are usually identified with ethnonyms, based on belonging to specific peoples.

[16] CRIC [Regional Indigenous Council of Cauca] (1990), *Historia del CRIC* (Popayán: CRIC).

[17] On the way that non-indigenous influences interact with indigenous organizations, and on the debates that could be originated, see Mauricio Archila (2009), "Memoria e identidad en el movimiento indígena caucano," in *Una historia inconclusa: izquierdas políticas y sociales en Colombia,* edited by Mauricio Archila, Álvaro Delgado, Martha Cecilia García, Jorge Alberto Cote, Oscar Pedraza and Patricia Madariaga (Bogotá: Cinep), 463–534; Mauricio Caviedes (2002), "Solidarios frente a colaboradores: antropología y movimiento indígena en el Cauca en las décadas de 1970 y 1980," *Revista Colombiana de Antropología* 38: 237–60; Laurent (2005) and (2010).

[18] Indeed, the indigenous struggle was located for a time within the framework of the National Association of Tenant Farmers, created in 1968 by an initiative of the president of the Republic within the process of agricultural reform that began in 1961 and became progressively more radical; see Laurent (2005).

[19] For a more detailed look at the process described below, see Laurent (2005); and Virginie Laurent, Cristina Echeverri and Nathalia Sandoval (2015), "Diversité et construction plurielle de l'action publique en Amérique andine: au-delà des conflits, une option viable?," in *Refonder la légitimité de l'État*, dir. Séverine Bellina and Marion Muller (Paris: Karthala), 157–78.

[20] Armed organizations emerged in Colombia after 1964 and, over decades, have fought against the state in many regions of the country. Some demobilized in 1990–91 and were able to participate in the Constituent Assembly.

[21] Víctor Daniel Bonilla (1995), "Itinerario de una militancia paralela: la lucha por los derechos indígenas y la lucha por la democratización en Colombia," in *Articulación de la diversidad. Tercera reunión de Barbados*, compiled by Georg Grunberg, edited by Alicia Barabas, Miguel Bartolomé and Salomon Nahmad (Cayambe, Ecuador: Abya-Yala), 340.

[22] ONIC [National Indigenous Organization of Columbia] (1990), *Unidad Indígena* vol. 95.

[23] Francisco Rojas Birry (1991), "Los derechos de los grupos étnicos (ponencia)," *Gaceta Constitucional* 67 (4 May): 14–21. This indigenous spokesman received a significant part of the vote from the department of Chocó, having the support of its Afro-Colombian population. Alongside candidates who stood on behalf of the indigenous communities, other candidates also competed for the representation of the Afro-Colombian population. However, due to the high number of aspirants and the relative weakness of the Afro-Colombian organization process, they were not elected. See Carlos Agudelo (2005), *Retos del multiculturalismo en Colombia. Política y Poblaciones negras* (Medellín: La Carreta Social, IRD, ICANH, IEPRI); Wade (1996).

[24] For the nation-building projects placed before the Constituent Assembly by indigenous organizations, and presented, as was that of the ONIC case, around the theme of *La Colombia que queremos* (*The Colombia We Want*), see Orlando Fals Borda and Lorenzo Muelas (1991), "Pueblos indígenas y grupos étnicos (ponencia)," *Gaceta Constitucional* vol. 40 (8 April); Laurent (2005); ONIC (1990); Alfonso Peña (1990), "Proyecto de reforma constitucional," *Gaceta Constitucional* 60 (26 April): 7–20; Rojas Birry (1991).

[25] Contrary, however, to the emphasis placed on recognizing numerous rights for indigenous peoples, the treatment provided for Afro-descendants and *Raizales* (Afro-Colombians originating from the Caribbean islands of San Andrés and Providencia) is limited to Transitional Article 55, and to Articles 176 and 310. On discussions that have been able to generate differences in the treatment of the alterity between indigenous, Afro-descendant and even Roma populations, also recognized since 1997, see Juan Carlos Gamboa Martinez (n.d.), "Itinerario de viaje del Pueblo Rom de Colombia," accessed 16 January 2017, http://www.monografias.com/trabajos40/pueblo-rom/pueblo-rom.shtml; Wade (1996).

[26] Consult, for more detail, Global Justice and Human Rights Program (2009), *Discriminación racial en Colombia: informe alterno ante el Comité para la Eliminación de la Discriminación Racial de la ONU -CEDR- 2009*, 9, accessed 16 January 2017, http://www2.ohchr.org/english/bodies/cerd/docs/ngos/observatorio_report_Colombia_CERD75.pdf.

[27] UNDP (2011), 55

[28] UNDP (2011), 52

[29] Indigenous peoples have regularly been caught in crossfire and forced into coexistence with different legal and illegal armed groups: regular armed forces; guerrilla and militia groups in the service of landowners since the 1960s and 1970s; drug traffickers and paramilitaries from the 1980s. For example, see Gros (1991); Laurent (2005); Yvon Le Bot (1994), *Violence de la modernité en Amérique latine. Indianité, société et pouvoir* (Paris: Karthala); Luis Alfonso Fajardo, Juan Carlos Gamboa and Orlando Villanueva (1999), *Manuel Quintín Lame y los Guerreros de Juan Tama. Multiculturalismo, Magia, Resistencia* (Madrid: Nossa y Jara Editores); ONIC [National

Indigenous Organization of Colombia] (2002), Consejo Nacional de Paz, *Los indígenas y la paz. Pronunciamientos, resoluciones, declaraciones y otros documentos de los pueblos y organizaciones indígenas sobre la violencia armada en sus territorios, la búsqueda de la paz, la autonomía y la resistencia* (Bogotá: ONIC); ONIC (2015), *Derechos Humanos y Paz*, http://cms.onic.org.co/consejerias/derechos-humanos-y-paz/; Ricardo Peñaranda (1999), "De rebeldes a ciudadanos: el caso del Movimiento Armado Quintín Lame," in *De las armas a la política*, compiled by Ricardo Peñaranda and Javier Guerrero (Bogotá: Tercer Mundo Editores); Roberto Pineda (2001), "Colombia y el reto de la construcción de la multiculturalidad en un escenario de conflicto," in *La pluralidad étnica en los países en vía de desarrollo*, edited by Manuel José Cepeda and Thomas Fleisner (Fribourg: Institut du Fédéralisme).

[30] CRIC (1991), *Periódico Álvaro Ulcué*, no. 21, p. 2.

[31] For an overview of the institutional processes and the actions undertaken in relation to indigenous peoples in Colombia, the portals of the Directorate of Indigenous Affairs "Colombian Indigenous Information System," **accessed 15 January 2017,** http://siic.mininterior.gov.co/; "Ethnic Affairs" of the National Planning Department, accessed 15 January 2017, https://www.dnp.gov.co/programas/desarrollo-territorial/Asuntos-Etnicos/Paginas/asuntos-etnicos.aspx; and DNP [National Planning Department] (2010), *Información sobre acciones y procesos institucionales para los pueblos indígenas de Colombia* (Bogotá: DNP).

[32] Instituted by the Constitution of 1991, the mission of these two figures is to protect the rights and freedoms of citizens and to prevent any kind of action by public authorities contrary to the law.

[33] The objective of *Mesa Permanente de Concertación Nacional* (Permanent Roundtable for National Policy Coordination) is to come to an agreement between the indigenous peoples and the state about the administrative and legislative decisions that may affect them, to evaluate the implementation of indigenous policies of the state and to follow up on agreements made there. ONIC [National Indigenous Organization of Columbia] (1996), *Mesa Permanente de Concertació*n Nacional, accessed 21 March 2017, http://www.onic.org.co/noticias/2-sin-categoria/1185-mesa-permanente-de-concertacion.

[34] DNP (2010). On the Permanent Roundtable for National Policy Coordination and the state of its negotiations, see the portal http://www.mpcindigena.org.

[35] DNP [National Planning Department] (2006), *Plan Nacional de Desarrollo 2006–10*, 458, http://www.dnp.gov.co/PND/PND20062010.aspx.

[36] National Development Plan 2010–14, Appendix IV, Bases for the Guarantee Program of the Fundamental Rights of Indigenous Peoples.

[37] Mauricio García and Rodrigo Uprimny (2004), "Corte Constitucional y emancipación social en Colombia," in *Emancipacion social y violencia en Colombia*, edited by Boaventura de Sousa

Santos and Mauricio García Villegas (Bogotá: Norma), 463–514. For an overview of the actions of the Constitutional Court, see http://english.corteconstitucional.gov.co/.

[38] *Tutela* is a mechanism that allows every individual in Colombia who is jeopardized or threatened by any public authority or individual to appear before any judge in the Republic and claim immediate protection of his or her fundamental rights, without the need for a lawyer. The *acción de constitucionalidad* allows citizens to challenge national laws that violate the Constitution.

[39] Enshrined in Convention 169 of the International Labour Organization (ILO) and incorporated into the Constitution of Colombia in 1991, the concept of "*consulta previa,*" that is supposedly also "free and informed," requires that before adopting a decision that directly affects the destiny of an indigenous people, the state initiate dialogue to examine the possible impacts that any project or legislative measure will generate.

[40] The Constitutional Court thereby validated as an expression of multiculturalism ways of administering indigenous justice (for example, by whipping) or by allowing an indigenous candidate access to the Municipal Council of Bogotá even though she was not of the required age. See respectively, Sentence No. T-523/97, accessed 14 January 2017, http://www.corteconstitucional.gov.co/relatoria/1997/T-523-97.htm; and Sentence T-778/05, accessed 14 January 2017, http://www.corteconstitucional.gov.co/relatoria/2005/T-778-05.htm.

[41] Therefore, for example, the Forestry Law of 2006 (Sentence C-030 of 2008), the Rural Development Statute of 2008 (Sentence C-175/09) and the Mining Code Reform of 2011 (Sentence C-366 of 2011) were declared unconstitutional.

[42] In this respect, see, for example, Información Victimas 2012, accessed 15 January 2017, http://www1.cundinamarca.gov.co/PIU-2012/INFORMACI%C3%93N%20VICTIMAS%202012/CORTE%20CONSTITUCIONAL/AUTOS%20ENFOQUE%20DIFERENCIAL/; Corte Constitucionale–Seguimiento sentencia T-025/04 y auto A004/09, accessed 15 January 2017, http://www.corteconstitucional.gov.co/relatoria/autos/2010/a382-10.htm; and Seguimento al cumplimiento de la Sentencia T-025 de 2004, accessed 15 January, http://www.corteconstitucional.gov.co/T-025-04/A2013.php.

[43] Based on Convention 107 of 1957 of the ILO "concerning indigenous and tribal populations" and for a time the only international legal instrument on the rights of indigenous peoples, Convention 169 of the ILO was written in 1989 (for more information on how it works, see "Indigenous and Tribal Peoples," ILO [International Labour Organization], accessed 15 January 2017, http://www.ilo.org/indigenous/Conventions/no169/lang--fr/index.htm. The United Nations Declaration on the Rights of Indigenous Peoples, based on the resolution of the UN General Assembly on 13 September 2007, likewise constitutes a significant benchmark regarding the protection of indigenous rights on an international scale. See "Rights of Indigenous Peoples," accessed 15 January 2017, http://www.

un.org/fr/rights/overview/themes/indigenous.shtml.

[44] Founded in 1959 within the framework of the Organization of American States (OAS), the function of the Inter-American Commission on Human Rights is to promote and protect human rights in the Americas. It is one of the components of the Inter-American System of Human Rights, alongside the Court. The latter defines itself as an "autonomous judicial institution whose purpose is the application and interpretation of the American Convention on Human Rights" (Article 1, statutes). For more information on the Commission and Court, see "¿Qué es la CIDH?," accessed 15 January 2017, http://www.oas.org/es/cidh/mandato/que.asp; and Corte Interamericana de Derechos Humanos, accessed 15 January 2017, http://www.corteidh.or.cr/index.php/es.

[45] About indigenous electoral mobilization experience in Colombia, see, for example, Laurent (2005) and (2010); and Virginie Laurent (2015), "Elecciones 2014 y movilización política indígena: apuestas, ajustes y ¿(re)consolidación?," in *Elecciones presidenciales y de Congreso en Colombia, 2014*, edited by Margarita Battle and Fredy Andrés Barrero (Bogotá: Konrad Adenauer Stiftung), 169–205.

[46] In this respect, it is of interest to highlight, for example, the way in which cultural diversity has been portrayed over recent decades in two famous museums in Bogotá— the National Museum and the Gold Museum. See Jean-Paul Sarrazin (2010), «Représentations et valorisation de l'indigène par les élites en Colombie. Une construction locale de l'altérité dans un contexte globalisé,» PhD thesis, Université de Poitiers – UFR des Sciences humaines et Arts, Laboratoire MIGRINTER (UMR 6588 CNRS/Université de Poitiers), Poitiers, France.

[47] Álvaro Uribe's presidency (2002–10) was characterized by his high level of personal popularity and his positions against illegal armed forces, framed in a government plan known as the Democratic Security Policy and expressed in the slogan *"mano firme, corazón grande"* (firm hand, big heart). In turn, his relationships with social organizations, including indigenous ones, were particularly strained, with them being frequently accused by the upper echelons of power of having links to the guerrillas. On his character and politics, see Fernán González (2010), "*¿De dónde proviene la legitimidad política de Álvaro Uribe Vélez?*," in *Gobernanza y conflicto en Colombia. Interacción entre gobernantes y gobernados en un contexto violento*, edited by Claire Launay-Gama and Ingrid Bolívar (Bogotá: CINEP-IRG), 60–72. Beyond the differences seen between the Santos and Uribe governments on the subject of peace negotiations with armed groups, there was continuity of policies influenced by neoliberalism.

[48] For a critical view of the episode, see, for example, Julia Suárez-Krabbe (2011), "Identidad y ser. Un análisis de ausencias y emergencias con los mamos de la Sierra Nevada de Santa Marta," in *Actas del "IV Training Seminar del Foro de Jóvenes Investigadores en Dinámicas Interculturales (FJIDI)" del Centro de Estudios y Documentación Internacionales de Barcelona*

(CIDOB), Barcelona, 26–28 January 2011 (Barcelona: CIDOB), 159–70, accessed 15 January 2017, http://www.boaventuradesousasantos.pt/media/Formas-Otras_Dec2011.pdf.

[49] The attitude of state agents, including ministers and deputy ministers, displayed at the meetings held within the framework of negotiations is notable for the use of openly friendly words to address indigenous representatives, for example, as "brothers" as well as insistence on making public the "political will" to resolve all kinds of problems. Author's observation and personal notes (2012), Meetings of the Permanent Roundtable for National Policy Consultation, Bogotá, February–March.

[50] For an overview about the *Minga*, see, for example, Mauricio Arcila (2008), *La Minga: "llegaron al corazón del país para quedarse,"* Regional Indigenous Council of Cauca, http://www.cric-colombia.org/noticias/index.php?content=detail&id=200; Laurent (2005) and (2010).

[51] Thus, the 2008 *Minga* allowed the Permanent Roundtable for National Policy Consultation to reconvene; negotiations had broken down shortly after Álvaro Uribe became president.

[52] On the different problems that call into question the principle of indigenous territorial autonomy, see, for example, ACNUR Colombia (2008), *El derecho de los pueblos indígenas a la consulta previa, libre e informada, una guía de información y reflexión para su aplicación desde la perspectiva de los derechos humanos* (Bogotá: ACNUR), http://www.acnur.org/biblioteca/pdf/7602.pdf?view=1; ONIC (2002) and (2015); UNDP (2011); Gloria Amparo Rodríguez (2010), *La consulta previa con pueblos indígenas y comunidades afrodescendientes en Colombia* (Bogotá: Universidad del Rosario), accessed 15 January 2017, http://redjusticiaambientalcolombia.files.wordpress.com/2012/03/libroconsulta_previa_gloria_amparo_rodriguez-de-universidad-del-rosario.pdf. See as well, among others, the portals of indigenous organizations: ONIC (http://cms.onic.org.co/); OPIAC (http://www.opiac.org.co/); MPC (http://mpcindigena.org/); CRIC (http://www.cric-colombia.org/portal/); and ACIN (http://www.nasaacin.org/).

[53] To these problems is added the fact that although this principle was officially ratified, there is still a loophole surrounding the application of the prior consultation principle. The prior consultation bill project introduced in the Colombian Congress in 2014 has brought about discontent among indigenous peoples, as well as limited consideration of their positions by the state. See, for example, "Si no hay concertación, decide el Estado" (2014), *El Espectador*, 2 August, accessed 16 January 2017, http://www.elespectador.com/noticias/politica/si-no-hay-concertacion-decide-el-estado-articulo-508262. For their part, the indigenous communities of the Sierra Nevada of Santa Marta (with whom President Santos held his pre-investiture ceremony in 2010) have opted to suspend the process of any consultation in light of a high number of applications for mining and energy projects in their territory and that, therefore, they declared themselves to

be in an emergency situation. See, for example, Sergio Silva (2016), "Indígenas de la Sierra suspenden consultas previas," *El Espectador*, 14 February, accessed 17 January 2017, http://www.elespectador.com/noticias/medio-ambiente/indigenas-de-sierra-suspenden-consultas-previas-articulo-616518.

[54] The demobilization of paramilitary militias (grouped under the United Self-Defense Forces of Colombia, or AUC) was officially organized in 2005 and peace negotiations were conducted between the government and the remaining active guerrilla groups (Revolutionary Armed Forces of Colombia, or FARC, and National Liberation Army, or ELN) since 2012. However, threats and violent acts perpetrated by actors outside of the institutional framework (nowadays qualified as "criminal gangs") continue regularly against multiple sectors of the Colombian population (who are mainly associated with the left and activities of social mobilization, for example, through organizations of ethnic groups).

[55] Based on these claims and despite appeals that were upheld by the indictment, after a meeting between representatives of indigenous organizations and the Minister of Interior, it was agreed to move the accused leader from the prison in which he was being held to his own community under the custody of an "indigenous guard" (in other words, the community authorities). But, in spite of the temporary resolution of this case, the debate continued about the regulation of special indigenous jurisdiction and how to balance it alongside ordinary courts. See, among others, CRIC [Regional Indigenous Council of Cauca] (2015), *CRIC convoca a debate público de urgencia sobre jurisdicción especial indígena, derecho a la movilización libre y garantías para la protesta social, el 12 de octubre de 2015*, http://cms.onic.org.co/2015/10/cric-convoca-a-debate-publico-de-urgencia-sobre-jurisdiccion-especial-indigena-derecho-a-la-movilizacion-libre-y-garantias-para-la-protesta-social-el-12-de-octubre-de-2015/; (2015), "La minga indígena llegó a Bogotá para exigir la liberación de Feliciano Valencia" (2015), *Las2Orillas*, 25 November, accessed 16 January 2017, http://www.las2orillas.co/la-minga-indigena-llego-bogota-para-exigir-la-liberacion-de-feliciano-valencia. Feliciano was finally released in September 2017.

[56] "'Lo de indígenas en Cauca es una invasión violenta con ataques sobre policía:' Paloma Valencia" (2015), *El Espectador*, 3 March, accessed 15 January 2017, http://www.elespectador.com/noticias/nacional/de-indigenas-cauca-una-invasion-violenta-ataques-sobre-articulo-547248; "Un Cauca para mestizos y otro para indígenas, propone Paloma Valencia" (2015), *El Tiempo*, 17 March, accessed 15 January 2017, http://www.eltiempo.com/politica/partidos-politicos/paloma-valencia-dice-que-se-debe-dividir-cauca-entre-indigenas-y-mestizos/15410396.

[57] On the question of judicialization of indigenous affairs, see, for example, Libardo Ariza (2009), *Derecho, saber e identidad indígena* (Bogotá: Siglo del Hombre, Uniandes, Universidad Javeriana); Diana Carrillo and Santiago Patarroyo (2009), *Derecho, interculturalidad y*

resistencia étnica (Bogotá: Universidad Nacional de Colombia); and Juliana Lemaitre (2009), *El derecho como conjuro. Fetichismo legal, violencia y movimientos sociales*. (Bogotá : Siglo del Hombre, Uniandes).

[58] On this issue, see Bruno Baronnet and Nadège Mazars (2010), "Los pueblos indígenas de Colombia frente a los servicios públicos de salud y educación: las experiencias de gestión propia de la política social," in *¿Desarrollo con identidad? Gobernanza económica indígena. Siete estudios de caso*, coord. by Jean Foyer and Christian Gros (Lima: IFEA, CEMCA, FLACSO), 121–83; Laurent (2010). Decrees 1952 and 1953 would point to counterbalancing this situation, albeit with new questions about their concrete implementation (consult Ministry of Justice (2014), Decree 1953 of 2014, accessed 17 January 2017, https://www.minjusticia.gov.co/Portals/0/DECRETO%201953%20DEL%2007%20DE%20OCTUBRE%20DE%202014.pdf; Presidency of the Republic (2014), Decree 1952 of 2014, accessed 17 January 2017, http://wp.presidencia.gov.co/sitios/normativa/decretos/2014/Decretos2014/DECRETO%201952%20DEL%2007%20DE%20OCTUBRE%20DE%202014.pdf; and "Los principios del decreto 1953 de 2014" (2014), *Actualidad* Étnica, 15 October, accessed 17 January 2017, http://actualidadetnica.com/actualidad/actualidad-col-01/dd-hh/9014-los-principios-del-decreto-1953-de-2014.html.

[59] For more detail about this idea, see, for example, Mylène Jaccoud (1992), «Processus pénal et identitaire: le cas des Inuit du Nouveau-Québec,» *Sociologie et sociétés* 24 (2): 25–43; Christian Gros (1997), "Indigenismo y etnicidad: el desafío neoliberal," in *Antropología de la modernidad*, edited by María Victoria Uribe and Eduardo Restrepo (Bogotá: ICAN), 15–60.

[60] Matters that stand out are, for example, discrepancies in the priorities of the Ministry of Interior (which is mainly responsible for the relationships, policies and dynamics of dialogue with indigenous peoples) and the Ministry of Finance that is concerned with following the established budget lines and the "fiscal sustainability" of any type of project.

[61] In addition to the position of Will Kymlicka (1995) regarding the search for points of equilibrium between liberalism and minority rights, Alain Touraine (1997) and Michel Wieviorka (1993; 1997) emphasize the importance of an actor's freedom to move between unity and diversity in the national space, which they consider to be protection against the parallel abuses of "top-down" cultural homogenization (promoting integration into the Republic) and of the community shutting itself away under the pretext of defending particularisms of identity. Nancy Fraser (2000) warns against the danger of displacing redistribution by too much emphasis on recognition. Nancy Fraser (2000), "Rethinking Recognition," *New Left Review* vol. 3, 106–20. Touraine Alain, « Faux et vrais problèmes », *in* Michel Wieviorka (dir.)*, Une société fragmentée*? *Le multiculturalisme en débat*, Paris, La Découverte, 1997.

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