

# Women and Legal Pluralism: Lessons from Indigenous Governance Systems in the Andes

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*Abstract.* The shift towards legally plural multicultural and pluri-national citizenship regimes in the Andes formally recognised indigenous peoples' community-based governance systems. These tend to emphasise participation, deliberation and service to the collective, but are often criticised for discriminating against women. We argue that recent constitutional reforms and legislation combining recognition of collective rights claims with institutional guarantees for gender equality have in fact amplified indigenous women's different strategies of 'negotiating with patriarchy', allowing them to further the transformation of their organisations and 'custom'. Such strategies are necessary because of the intersections of race, class and gendered exclusions that indigenous women experience, and possible because of the diverse and dynamic nature of community governance systems. Despite systemic and structural constraints on the guarantee of indigenous peoples' rights, the actions of organised indigenous women over the last two decades point to new ways of imagining more plural, less patriarchal forms of citizenship.

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## *Introduction*

Multicultural and pluri-national regimes in Latin America that guarantee autonomy rights for indigenous peoples explicitly recognise the need to

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balance group rights and individual rights and freedoms, and to provide special protections for vulnerable groups including women, youth and religious minorities. At the same time, mechanisms to ensure such protections (usually involving judicial review of specific cases) must guard against the dangers of reproducing institutional expressions of class and race privilege, or cultural bias. But prejudices that minority communities are illiberal, or at least less liberal than the overall polity is presumed to be, are stubbornly persistent. A repeatedly voiced concern is that greater autonomy rights for indigenous people to exercise their own forms of governance and law will be prejudicial to indigenous women. Feminist theorists of multiculturalism reject colonial binaries of liberal dominant societies and illiberal minority autonomies, signalling the dangers of essentialising and reifying culture, and exaggerating cultural differences.<sup>1</sup> Such critiques are evident in the demands of indigenous women for greater political and civic citizenship within their collective rights to autonomy as peoples, including rights to participate in decision-making and to redefine indigenous customary law.<sup>2</sup>

Just as we don't accept Latin America without indigenous peoples, neither do we accept a world where women are absent from spaces of power, representation and decision-making. Nor do we accept attempts to justify those absences by saying it's part of 'tradition' that women aren't political representatives. We know that's not true. In our history there were female priests, governors of *ayllus* (*curacas*), *cacicacas* and spiritual leaders. We still have women who represent us despite all the difficulties [...] We've seen how sometimes they try to justify violence against women or other kinds of mistreatment by saying it's to do with our culture. But we refuse to accept that our cultures are oppressive. If that were the case then it's time to change those aspects [...] Cultures aren't made of stone, they're alive, dynamic and can be changed.<sup>3</sup>

While women have always been active in indigenous peoples' struggles to defend their territories, livelihoods and cultural identities, we suggest that their participation in the mobilisations of the past three decades has consolidated a regional movement and transnational epistemic community which

<sup>1</sup> Anne Philips famously argued for the need to discuss 'multiculturalism without culture' or without static, bounded notions of specific differences attributable to 'cultures'. Anne Philips, *Multiculturalism without Culture* (Princeton, NJ and London: Princeton University Press, 2007); *Gender and Culture* (Cambridge: Polity Press, 2010).

<sup>2</sup> See *Foro Internacional de Mujeres Indígenas* (International Indigenous Women's Forum, FIMI-IWWF), Mairin Iwanka Raya: *Mujeres indígenas confrontan la violencia. Informe complementario al estudio sobre violencia contra las mujeres del secretario general de las Naciones Unidas* (New York: FIMI, 2006); IWWF, *Political Participation of Indigenous Women in Democratic Politics: Women's Leadership and Governing from a Pluralist Perspective* (2014), draft document on file with authors.

<sup>3</sup> Carmen Blanco Valer, *Las hijas de la Pachamama. Género y mujeres indígenas en los Andes* (Quito: Fundación de Culturas Indígenas Kawsay, 2011), pp. 155–6. *ayllu* = traditional Andean community; *cacica* = female chief.

open up new possibilities for ‘transforming culture’.<sup>4</sup> Whether via the traditional political leadership of their families, increased access to formal education, or participation in community projects in dialogue with different outside actors, women gradually increased their self-esteem and acquired skills that facilitated their leadership roles in local organisations or communal councils. As Ecuadorian leader Rosa María Vacacela states:

Since I was a child I took part in the *mingas* and community meetings with my parents. I really liked to see how people came together to work and solve problems, it gave me the courage and desire to participate. I should also emphasise my father’s leadership role, he taught me to take part in the organisation and to think about the wellbeing of others, in the strength that organised people have.<sup>5</sup>

As they assumed regional and national leadership roles within indigenous movements, women started either to demand the creation of special sections within mixed organisations (for example the *Dirigencia de la Mujer* in Ecuador’s *Confederación de Nacionalidades Indígenas del Ecuador* – CONAIE),<sup>6</sup> or else to establish women’s organisations. The latter include examples such as the *Organización Nacional de Mujeres Indígenas Andinas y Amazónicas del Perú* (ONAMIAP), created following 13 years of consciousness-raising and training by means of a permanent workshop convened by the Chirapaq (Centre for Indigenous Cultures of Peru) NGO, directed by indigenous intellectual and activist Tarcila Rivera Zea.<sup>7</sup> Another emblematic example is the *Federación Nacional de Mujeres Campesinas, Indígenas Originarias de Bolivia ‘Bartolina Sisa’* (FNMCIQB-BS), that emerged out of the mixed peasant union *Confederación Sindical Única de Trabajadores*

<sup>4</sup> Stéphanie Rousseau and Anahi Morales Hudon, ‘Paths towards Autonomy in Indigenous Women’s Movements: Mexico, Peru, Bolivia’, *Journal of Latin American Studies*, 48: 1 (2016), pp. 33–60.

<sup>5</sup> Rosa María Vacacela, 1997, quoted at page 171 in Mercedes Prieto, Clorinda Cuminao, Alejandra Flores, Gina Maldonado and Andrea Pequeño, ‘Mujeres indígenas y la búsqueda del respeto’, in Mercedes Prieto (ed.), *Mujeres ecuatorianas. Entre las crisis y las oportunidades, 1990–2004* (Quito: CONAMU, FLACSO, Ecuador, UNIFEM, UNFPA, 2005), pp. 147–94. *minga* = traditional collective work party.

<sup>6</sup> *Ibid.*, p. 179. *Dirigencia de la Mujer* = Women’s Leadership Section; *Confederación de Nacionalidades Indígenas del Ecuador* = Ecuadorian Confederation of Indigenous Nationalities.

<sup>7</sup> See ONAMIAP’s website: <http://www.onamiap.org/2010/08/nuestra-historia.html> (last access 5 Dec. 2016). Tarcila Rivera Zea is also co-founder of the *Enlace Continental de Mujeres Indígenas de América* (Continental Network of Indigenous Women of America, ECMIA), an important platform of exchange and training for American indigenous women. In February 2016 she was nominated as candidate for the UN Permanent Forum on Indigenous Issues by the Peruvian government; see: ‘Anuncian candidatura de Tarcila Rivera Zea como miembro del Foro Permanente para las Cuestiones Indígenas de la ONU’: <http://www.cultura.gob.pe/es/comunicacion/noticia/anuncian-candidatura-de-tarcila-rivera-zea-como-miembro-del-foro-permanente> (last access: 10 Dec. 2016). *Organización Nacional de Mujeres Indígenas Andinas y Amazónicas del Perú* = Peruvian National Indigenous Andean and Amazonian Women’s Organisation.

*Campesinos de Bolivia* (CSUTCB);<sup>8</sup> and more recently the lowland women's *Confederación Nacional de Mujeres Indígenas de Bolivia* (CNAMIB), that originated in the mixed *Confederación de Pueblos Indígenas de Bolivia* (CIDOB).<sup>9</sup> At first these initiatives met with strong resistance from male leadership, but over time they facilitated women's contributions to shared struggles for collective rights and autonomy from their own standpoints.

Women's agency eventually extended beyond national borders through the organisation of Continental Meetings of Indigenous Women (the first held in Quito in 1995) and their active participation at international events such as the Fourth World Conference on Women in Beijing 1995 or the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance in 2001.<sup>10</sup> At such encounters women formulated their specific claims vis-à-vis indigenous movements, women's movements, development cooperation institutions and governments.<sup>11</sup> The effectiveness of women's organising was also evident at critical junctures such as the Bolivian Constituent Assembly (2006–7), where an impressive 45 per cent of the female constituents were indigenous, and where the aforementioned 'Bartolinas' (institutional members of the unity pact forged amongst all nationwide ethnic organisations) succeeded in ensuring that many of their gender-specific demands were included in the constitutional proposal.<sup>12</sup>

<sup>8</sup> Cecilia Salazar, *Movimiento de mujeres en Bolivia: La Federación de Mujeres Campesinas 'Bartolina Sisa' y los clubes y centros de madres* (La Paz: Servicio Holandés de Cooperación al Desarrollo, 1998). *Federación Nacional de Mujeres Campesinas, Indígenas Originarias de Bolivia 'Bartolina Sisa'* = 'Bartolina Sisa' National Confederation of Peasant, Indigenous, and Native Women of Bolivia; *Confederación Sindical Única de Trabajadores Campesinos de Bolivia* = Bolivian Peasant Workers' Unitary Trade Union Confederation.

<sup>9</sup> Stéphanie Rousseau, 'Disputando la indigeneidad: Las organizaciones de mujeres indígenas-campesinas bolivianas en el escenario post-constituyente', *Decursos. Revista en Ciencias Sociales* 24 (2011), pp. 139–62. *Confederación Nacional de Mujeres Indígenas de Bolivia* = Bolivian National Indigenous Women's Confederation; *Confederación de Pueblos Indígenas de Bolivia* = Bolivian Indigenous People's Confederation.

<sup>10</sup> In the 1995 Fourth World Conference on Women at Beijing, indigenous women demanded equal participation in the political systems of their countries and within the governance structures of their respective peoples (Beijing Declaration of Indigenous Women, 7 Sept. 1995).

<sup>11</sup> Tarcila Rivera Zea, 'Racismo y discriminación contra las hijas de la madre tierra', *Asuntos Indígenas* 1 (2001), pp. 24–31; 'Mujeres indígenas americanas luchando por sus derechos', in Martha Sánchez Néstor (ed.), *La doble mirada: Voces e historias de mujeres indígenas latinoamericanas* (México D.F.: Instituto de Liderazgo Simone de Beauvoir, UNIFEM, 2005), pp. 33–50, Rosalva Aída Hernández Castillo, 'Feminismos poscoloniales: Reflexiones desde el sur del Río Bravo', in Liliana Suárez Navaz and Rosalva Aída Hernández Castillo (eds.), *Descolonizando el feminismo: Teorías y prácticas desde los márgenes* (Madrid: Ediciones Cátedra, 2008).

<sup>12</sup> These demands included election of the national legislature according to principles of gender parity and alternation, and equal gender rights to land titling and property; see Stéphanie Rousseau, 'Indigenous and Feminist Movements at the Constitutional Assembly in Bolivia: Locating the Representation of Indigenous Women', *Latin American Research Review*, 46: 2 (2011), pp. 5–28.

Within spheres of local self-rule, indigenous women have fought to gradually gain representation across the Andes. We argue that their efforts to transform their community-based, informal governance systems can be understood as a response to the intersectionality of exclusions and subordination they experience, as well as to the opportunities opened up by national and transnational processes of legal change. The analytical paradigm of intersectionality first emerged from the experiences of African-American women and questions the utility of essentialist social categories, such as ‘women’, ‘indigenous’ or ‘black’ as a guide for understanding people’s concrete life circumstances.<sup>13</sup> Instead intersectionality theory signals the specific, grounded ways in which these abstract social categories intersect and mutually constitute each other in particular historical contexts to produce what Patricia Hill Collins calls ‘the matrix of domination’.<sup>14</sup> Intersectionality points to the ways in which distinct configurations of power and oppression naturalise certain hierarchies and forms of violence (including race, class, gender and sexuality), and interact to shape the lives of men and women as well as their ascribed social roles, experiences and life prospects.

Indigenous and non-indigenous activists and researchers working in and on Latin America have made important conceptual contributions to these debates, underlining the centrality of colonial categories and legacies for understanding intersectional forms of exclusion and domination, as well as the possibilities for resistance.<sup>15</sup> Analysing the intersecting axes of race, class and gender inequalities faced by Bolivian highland women who migrate from rural areas to semi-urban neighbourhoods to secure their subsistence through commerce or domestic service, Silvia Rivera Cusicanqui observed that ‘to be a woman, indigenous (or *chola*, or *birlocha*) and on top of that

<sup>13</sup> Patricia Hill Collins, *Black Feminist Thought: Knowledge, Consciousness, and the Politics of Empowerment* (Boston, MA: Unwin Hyman, 1990); ‘La política del pensamiento feminista negro’, in Marysa Navarro and Catherine Stimpson (coords.), *¿Qué son los estudios de mujeres?* (Buenos Aires: Fondo de Cultura Económica, 1998), pp. 253–312; Kimberlé W. Crenshaw, ‘Mapping the Margins: Intersectionality, Identity Politics, and Violence against Women of Color’, *Stanford Law Review*, 43: 6 (1991), pp. 1241–99; Angela Davis, *Mujeres, raza y clase* (Madrid: Akal Ediciones, 2004); Bell hooks, ‘Mujeres negras: Dar forma a la teoría feminista’, in Bell hooks, Avtar Brah, Chela Sandoval and Gloria Anzaldúa (eds.), *Otras inapropiables. Feminismos desde las fronteras* (Madrid: Traficantes de Sueños, 2004), pp. 33–50; María Lugones, ‘Colonialidad y género’, *Tabula Rasa*, 9 (2008), pp. 73–101.

<sup>14</sup> Hill Collins, ‘La política del pensamiento’.

<sup>15</sup> See particularly Lugones, ‘Colonialidad y género’; on postcolonial intersectionality and gender and development policies see Sarah Radcliffe, *Dilemmas of Difference: Indigenous Women and the Limits of Postcolonial Development Policy* (Durham, NC and London: Duke University Press, 2015); Jelke Boesten, *Intersecting Inequalities: Women and Social Policy in Peru, 1990–2000* (Philadelphia, PA: Pennsylvania State University Press, 2010); Susan Paulson, ‘Towards a Broader Scope and More Critical Frame for Intersectional Analysis’, in Wendy Harcourt (ed.), *The Palgrave Handbook of Gender and Development* (Basingstoke and New York: Palgrave Macmillan, 2016), pp. 395–412.

poor ... constitutes a triple stigma which prevents a growing number of people from enjoying the dignified status of human being'.<sup>16</sup> Studies by Marisol de la Cadena and others point to the ways in which social relations and interactions in the Andes are imbued not only with colonial binaries and hierarchies of 'Indians' and 'mestizos' (despite actors' fluid, ambiguous, and contextual performances of these identities), but also with internalised gender hierarchies within families and communities which can often place indigenous women at the very bottom of racialised systems of subordination. Much more than is the case for men, 'Indian-ness' is inscribed and reproduced through the bodies, language, clothing and daily practices of indigenous women.<sup>17</sup>

Further, researchers have shown how racial categories and racism disproportionately affect indigenous women who have migrated to cities. M. Cristina Alcalde, for example, explores the ways in which what she calls the regionalisation of race and racism can play a role in abuse within intimate relationships for first-generation Andean migrant women in Peru: 'In the most intimate of spaces, the ascription of Indianness and the amount of education attributed to them by their partners are also major factors in the violence experienced.'<sup>18</sup> Similarly, Susan Paulson also links the increase in domestic violence in Bolivia within ethnic Mizqueña families with increased migration: as families and individuals strive to acquire 'urban' behaviours, women come to embody rural 'backwardness', increasing their vulnerability to violence.<sup>19</sup> As a paradigm, intersectionality signals the limitations of approaches that conceive of women simply in terms of their gender and individual agency. Emphasising connections between the structural and interpersonal forms of violence and domination experienced by different groups or individuals, it underlines the importance of analysing positionality, location and the possibilities for emancipatory action within and between different epistemic communities.

Such perspectives are central to understanding contemporary processes of legal change in the Andes.<sup>20</sup> In common with non-indigenous women,

<sup>16</sup> Silvia Rivera Cusicanqui (ed.), *Ser mujer indígena, chola o birlocha en la Bolivia postcolonial de los años 90* (La Paz: Ministerio de Desarrollo Humano, 1996), p. 22.

<sup>17</sup> Marisol de la Cadena, 'Las mujeres son más indias: Etnicidad y género en una comunidad del Cuzco'; Marisol de la Cadena (ed.), *Formaciones de indianidad. Articulaciones raciales, mestizaje y nación en América Latina* (Popayán: Envión Editores, 2008); see also Linda Seligmann, 'Between Worlds of Exchange: Ethnicity among Peruvian Market Women', *Cultural Anthropology*, 8: 2 (1993), pp. 187–213; Mary J. Weismantel, *Food, Gender and Poverty in the Ecuadorian Andes* (Philadelphia, PA: University of Pennsylvania Press, 1989).

<sup>18</sup> M. Cristina Alcalde, *The Woman in the Violence: Gender, Poverty, and Resistance in Peru* (Nashville, TN: Vanderbilt University Press, 2010), p. 74.

<sup>19</sup> Susan Paulson, 'Familias que no conyugan e identidades que no conyugan: La vida en Mizque desafía nuestras categorías', in Rivera Cusicanqui (ed.), *Ser mujer indígena*, pp. 85–154. Mizqueña = from the province of Mizque, in the department of Cochabamba, Bolivia.

<sup>20</sup> The vast majority of indigenous women in Latin America still live in poverty, lack access to basic services or secure land titles, and rarely finish primary education. They also suffer racism and discrimination by the media, state officials and other citizens. Pamela Calla, 'Luchas

indigenous women face naturalised patriarchal norms, rules and practices; those who dare to transcend these can suffer symbolic, physical and psychological violence. As numerous studies have shown, all these factors pose enormous obstacles to the achievement of greater gender justice in local communities.<sup>21</sup> However, intersectional forms of exclusion and discrimination across race, class, gender and other hierarchies of classification mean the issue of access to justice is far from straightforward. In practice, informal community-based governance tends to provide more accessible forms of dispute resolution for indigenous women than the formal institutions of the state. Many indigenous women therefore tend to adopt strategies of what Saba Mahmood has termed ‘negotiating with patriarchy’ in order to secure transformations at different scales, rather than directly confronting indigenous men who are their allies in struggles against racist exclusion and in favour of indigenous self-determination.<sup>22</sup> Indeed multilayered and intersecting patterns of subalternity mean that many indigenous women activists reject feminism’s privileging of gender over other axes of discrimination and insist on the inseparability of gender, race and class domination in their experiences.<sup>23</sup>

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legales y política de las calles en torno al racismo: Descentrando la patriarcalidad del Estado Plurinacional de Bolivia’, in R. Aída Hernández Castillo and Andrew Canessa (eds.), *Género, complementariedades y exclusiones en Mesoamérica y los Andes* (Quito: Editorial Universitaria Abya-Yala/London: National Academy/Copenhagen: Grupo Internacional de Trabajo sobre Asuntos Indígenas, 2012); Comisión Económica para Latinoamérica y el Caribe (Economic Commission for Latin America and the Caribbean, CEPAL-ECLAC), *Mujeres indígenas en América Latina: Dinámicas demográficas y sociales en el marco de los derechos humanos* (Santiago de Chile: Centro Latinoamericano y Caribeño de Demografía (CELADE)-División de Población y División de Asuntos de Género de la CEPAL, 2013), available at <http://www.cepal.org/es/publicaciones/mujeres-indigenas-en-america-latina-dinamicas-demograficas-y-sociales-en-el-marco-de> (last access 5 Dec. 2016); ECLAC and Chirapaq, *Violence and Indigenous Women. Document presented to the CSW57* (Lima: ECLAC/Chirapaq, 2013); Rachel Sieder and María Teresa Sierra, *Indigenous Women’s Access to Justice in Latin America* (Bergen, CMI Working Paper Bergen, 2010).

<sup>21</sup> Rocío Franco Valdivia and María Alejandra González Luna, *Las mujeres en la justicia comunitaria: Víctimas, sujetos y actores. Serie Justicia Comunitaria en los Andes: Perú y Ecuador*, vol. 3 (Lima: IDL, 2009); Hernández Castillo and Canessa (eds.), *Género*; Miriam Lang and Anna Kucia, *Mujeres indígenas y justicia ancestral* (Quito: UNIFEM, 2009); Mercedes Nostas Ardaya and Carmen Elena Sanabria Salmón, *Detrás del cristal con que se mira: Órdenes normativos e interlegalidad. Mujeres Quechuas, Aymaras, Sirionó, Trinitarias, Chimane, Chiquitanas y Ayoreas* (La Paz: Coordinadora de la Mujer, 2009); Sarah Radcliffe, *Desarrollo, diversidad y reconocimiento: Mujeres indígenas y afroecuatorianas, compartiendo preocupaciones y agendas* (Quito: GIZ / Oxfam, 2014).

<sup>22</sup> Saba Mahmood, ‘Feminist Theory, Embodiment, and the Docile Agent: Some Reflections on the Egyptian Islamic Revival’, *Cultural Anthropology*, 16: 2 (2001), pp. 202–36; *Politics of Piety: The Islamic Revival and the Feminist Subject* (Princeton, NJ: Princeton University Press, 2005).

<sup>23</sup> Melissa Forbis, ‘Hacia la autonomía: Zapatista Women Developing a New World’, in Christine Eber and Christine Kovic (eds.), *Women of Chiapas: Making History in Times of Struggle and Hope* (New York: Routledge, 2003), pp. 231–65; Denise Arnold and

It's different, because they [the feminists] are from the city and they think everything is easy. For us from the countryside it's more difficult. They know how to read, some are professionals. We're not professionals. We have ideas, we know how to think, but they often act as if they know more.<sup>24</sup>

Following Monique Deveaux, we favour a pragmatic, politically focused and context-sensitive approach to understanding conflicts between greater group rights to self-governance and individual women's rights – an approach that focuses on women's situated and strategic interests.<sup>25</sup> In this commentary article, we synthesise key characteristics of community-based governance systems and obstacles to women's greater participation in these, subsequently reviewing a variety of strategies pursued by indigenous women's organisations in the Andes. We argue that their efforts to transform 'custom' and community-based governance arrangements are fundamental to struggles for gender justice in Andean societies, and to re-imagining more plural and less patriarchal forms of citizenship.

### *Multiculturalism, legal pluralism and protections for women in the Andes*

Latin American countries acknowledged the multicultural character of their nations in response to indigenous movements' claims for self-determination and international legal developments, including the ratification of International Labour Organisation Convention 169 concerning Indigenous and Tribal Peoples in Independent Countries of 1989 (ILO C169) and the adoption of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) by the UN General Assembly in 2007.<sup>26</sup> In constitutional reforms and secondary legislation that varied in scope and content, indigenous peoples were officially recognised in their distinctive cultural identities and as

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Alison Spedding, 'Género, etnicidad y clases sociales: la mujer en los movimientos sociales y movimientos de mujeres', in Jesús Espasandín López and Pablos Iglesias Turrión (eds.) *Acción colectiva y poder político* (Barcelona: El Viejo Topo, 2007), pp. 155–88; Patricia Richards, 'The Politics of Gender, Human Rights, and Being Indigenous in Chile', *Gender and Society*, 19: 2 (2005), pp. 199–220.

<sup>24</sup> Felipa Merino from Las Bartolinas, cited in Rousseau, 'Disputando la indigeneidad', p. 157.

<sup>25</sup> Monique Deveaux, 'A Deliberative Approach to Conflicts of Culture', *Political Theory*, 31 (2003), p. 781.

<sup>26</sup> Willem Assies, Gemma van der Haar and André Hoekema, *The Challenge of Diversity: Indigenous Peoples and Reform of the State in Latin America* (Amsterdam: Thela Thesis, 2000); Donna Lee Van Cott, *The Friendly Liquidation of the Past: The Politics of Diversity in Latin America* (Pittsburgh, PA: University of Pittsburgh Press, 2000); 'Constitutional Reform in the Andes: Redefining Indigenous–State Relations', in Rachel Sieder (ed.), *Multiculturalism in Latin America: Indigenous Rights, Diversity and Democracy* (New York: Palgrave Macmillan, 2002), pp. 45–73.

subjects of collective political, economic, social and cultural rights, including the right to administer community affairs by recourse to their own legal norms and procedures.

The new constitutions also reflected increased dialogue between normative systems of indigenous customary law and international human rights law across the region. In the 1990s Latin American countries adopted the Convention to Eliminate All Forms of Discrimination against Women (CEDAW) and introduced legislation to improve gender equality. This meant that many internationally recognised women's rights became increasingly embedded within national legal systems, at least at the level of legal doctrine. The constitutional recognition formulae of indigenous jurisdictions adopted throughout the 1990s in Peru (1993; Art. 149), Bolivia (1994; Art. 171) and Ecuador (1998; Art. 191) included clauses stipulating that local customs could not violate individual rights.<sup>27</sup>

Indigenous women gradually gained voice within these processes of legal transformation. The constitutional reforms of the 1990s were not yet explicit in terms of their specific interests, yet this changed throughout the 2000s. Organised indigenous women succeeded in articulating their perspectives to such an extent that today it seems difficult to imagine how future constitutional reforms or legislative measures in the Andes could be conducted *without* their participation. Despite disenchantment on the part of many indigenous peoples with the limited results of multicultural state reforms, their promises have played a key role in subsequent processes of mobilisation, contestation and political change. As Donna Lee Van Cott observed, rather than foreclosing more radical alternatives, liberal multiculturalism – and its successor, so-called 'post-neoliberal' plurinationalism in Ecuador and Bolivia – opened footholds within the formal political systems for the development of more transformative projects.<sup>28</sup>

<sup>27</sup> Ecuador's 2008 Constitution (Art. 171) directly referred to women's rights and their participation and decision-making; Bolivia's 2010 Law on Jurisdictional Demarcation stipulated that indigenous and ordinary jurisdictions should respect women's rights, guarantee their equal access to positions of legal authority, prevent violence against women and desist from using conciliation when resolving cases of gender violence (Art. 5, 10, Ley de Deslinde Jurisdiccional). In Peru, indigenous women positioned their demands for participation and recognition within the negotiations around the Law on the Right to Prior Consultation of Indigenous and Native Peoples, adopted in 2011; the 2012 law regulating the right to consultation stipulates measures to guarantee women's participation and representation.

<sup>28</sup> Donna Lee Van Cott, 'Multiculturalism versus Neoliberalism in Latin America', in K. Banting and W. Kymlicka (eds.), *Multiculturalism and the Welfare State: Recognition and Redistribution in Contemporary Democracies* (Oxford and New York: Oxford University Press, 2006), p. 285; on 'post-neoliberal' Latin America see Mark Goodale and Nancy Postero, *Neoliberalism Interrupted: Social Change and Contested Governance in Contemporary Latin America* (Stanford, CA: Stanford University Press, 2013).

The efforts by subaltern women to advance debates and concrete measures to contest gender discrimination within their local communities and organisations – and in society as a whole – that we describe in more detail below are courageous and impressive. However, they are constrained by numerous factors, including the continued subscription of Andean governments to natural resource extraction on indigenous lands and secondary laws and procedures aimed at setting limits on indigenous autonomies. Additionally, members of the judiciary and the police are resistant to acknowledging indigenous peoples' jurisdictions; and racist labelling of indigenous customs by politicians and the media continues.<sup>29</sup> Nonetheless, processes have been set in train which point towards new paths to greater gender justice, respecting women's individual rights while furthering the collective rights and demands of the indigenous collectivities of which they form an integral part.

### *Community-based governance and law in the Andes*

Despite many differences, at least three features of community-based governance and legal institutions of indigenous peoples in the Andes stand out: continuity, dynamism and diversity. All of these are central to understanding indigenous women's efforts to secure greater voice and participation within informal systems of governance and to transform 'custom'.

#### *Continuity*

Indigenous forms of self-regulation in the Americas existed prior to the arrival of colonial forces in the fifteenth century, and today in the twenty-first century many groups residing in rural and semi-rural areas continue to organise community life through their own institutions, authorities and norms. Beginning with the imposition of colonial rule, indigenous institutions co-evolved in an uneasy and asymmetric relationship with the dominant colonial and later republican political regimes. While there were prescriptions to align indigenous law with 'official' law,<sup>30</sup> in general indigenous peoples maintained the right to adjudicate minor internal conflicts according to their own norms as long as these did not contradict norms of the Catholic Church nor laws introduced by the Spanish colonial administration.

<sup>29</sup> See Anna Barrera, 'Turning Legal Pluralism into State-Sanctioned Law: Assessing the Implications of the New Constitutions and Laws in Bolivia and Ecuador', GIGA Working Paper 176 (2011); *Violence against Women in Legally Plural Settings: Experiences and Lessons from the Andes* (Abingdon and New York: Routledge, 2016).

<sup>30</sup> Such as the prohibition of polygamy; see Marcelo Fernández Osco, *La ley del ayllu. Práctica de jach'a justicia y jisk'a justicia (justicia mayor y justicia menor) en comunidades aymaras* (La Paz: PIEB, 2000).

Indigenous peoples were also able to maintain pockets of autonomy after the transition to independent Latin American republics. They continued to transmit their specific forms of knowledge, memory and traditions to future generations despite attempts to 'protect' or assimilate them, such as the agrarian reforms of the mid-twentieth century. This occurred not least as a means to safeguard their survival and internal coherence in societies characterised by pervasive racialised segmentation and accelerated exploitation of natural resources in the lowlands by foreign companies and settlers. Given the limited and uneven physical presence of public institutions and services, and high degrees of mistrust of the state judiciary, one of the main reasons why indigenous peoples today ascribe legitimacy to their institutions of political-legal self-governance resides in their perception that these are constitutive elements of these groups' collective histories and identities. Importantly, this also holds true for indigenous women, who have often challenged gender-discriminating features of these community-based institutions where they exist by drawing on historical examples of indigenous women's agency and leadership (for example leaders such as Dolores Cacuango in Ecuador, or early twentieth-century women's organising in the Cauca, Colombia).<sup>31</sup> In some contexts (as we discuss below) they have developed reinterpretations of Andean concepts of complementarity in order to further their claims. They thus anchor their claims for voice in the present in analyses of women's vital role in indigenous governance and struggle in the past.

### *Dynamism*

Indigenous governance systems – like all legal orders – are neither static nor impermeable. Law, understood as an authoritatively enforced cognitive and normative framework for conduct and interaction among members of a given social group, is created, reproduced, interpreted, scrutinised and transformed in people's perceptions and through social practices.<sup>32</sup> Given that law serves as a means for the distribution of social positions, relationships and resources among groups and individuals, it tends to reflect prevailing power constellations and conflicts of interest within and among groups at a given moment of time.

<sup>31</sup> Leonor Lozano, 'Participate, Make Visible, Propose: The Wager of Indigenous Women in the Organizational Process of the Regional Indigenous Council of the Cauca (CRIC)', in Rachel Sieder (ed.), *Demanding Justice and Security; Indigenous Women and Legal Pluralities in Latin America* (New Brunswick, NJ: Rutgers, forthcoming).

<sup>32</sup> Franz von Benda-Beckmann, 'Who's Afraid of Legal Pluralism?', *Journal of Legal Pluralism and Unofficial Law*, 47 (2002), p. 38; Jane K. Cowan, Marie-Bénédicte Dembour and Richard A. Wilson, 'Introduction', in Jane K. Cowan, Marie-Bénédicte Dembour and Richard A. Wilson (eds.), *Culture and Rights: Anthropological Perspectives* (New York: Cambridge University Press, 2001), p. 12.

Furthermore, as emphasised by legal sociologist Boaventura de Sousa Santos, in contexts marked by the operation of more than one legal order in a given socio-political space these are no longer conceived of as closed or separate entities, but combine in practice generating complex and potentially conflictive configurations of ‘interlegality’.<sup>33</sup> Accordingly, while any subaltern legal order continues to constitute a ‘semi-autonomous social field’ with the capacity to provide rules and means to assert compliance for a certain group, it is simultaneously influenced by developments, rules and decisions emanating from other regulatory fields with which it interacts.<sup>34</sup>

What Santos described on an abstract level has been mirrored in Latin America’s history of legal pluralism: indigenous groups were able to partly uphold their norms and institutions across time; however, changes in the historical context and the centuries-long interplay between state and indigenous normative orders resulted in modifications, imbrications and syncretism. Indigenous legal authorities not only reacted to community-based demands and internal developments, they also confronted exigencies posed by colonial and republican law, the rules imposed by priests, state intermediaries (such as the *jueces de paz* in Peru, the *teniente político* in Ecuador, or the *corregidor* in Bolivia), and local strongmen (*patrones* or hacienda owners). More recently they have also encountered international human rights norms, ‘project law’ diffused by development cooperation agencies and the law of transnational enterprises.<sup>35</sup> Such external influences were hardly ever directly imposed on indigenous jurisdictions; rather, local responses have ranged from the partial adaptation of external elements of law, to the revitalising of pre-existing ‘autochthonous’ norms linked to processes of identity reaffirmation and ethnogenesis, through to outright resistance to external influences. Thus the restructuring of communities’ governance systems into new organisational schemes such as ‘*campesino* (peasant) communities’ in Peru or *tierras comunitarias de origen* (TCO) in Bolivia has not led to a complete abandonment of former institutions, authorities and customs, but rather to the partial accommodation of previous features within new official schemes, or else the continued assignment of specific functions to traditional authorities.<sup>36</sup>

<sup>33</sup> Boaventura de Sousa Santos, ‘Law: A Map of Misreading, Toward a Postmodern Conception of Law’, *Journal of Law and Society*, 14: 3 (1987), pp. 279–302.

<sup>34</sup> Sally Falk Moore, ‘Law and Social Change: The Semi-Autonomous Social Field as an Appropriate Subject of Study’, *Law & Society Review*, 7: 1 (1973), pp. 719–46.

<sup>35</sup> Markus Weilenmann, ‘Project Law – Normative Orders of Bilateral Development Cooperation and Social Change: A Case Study from the German Agency for Technical Cooperation’, in Franz von Benda-Beckmann, Keebet von Benda-Beckmann and Anne Griffiths (eds.), *Mobile People, Mobile Law. Expanding Legal Relations in a Contracting World* (Aldershot: Ashgate, 2005), pp. 233–55. *Jueces de paz* = justices of the peace; *tenientes políticos* and *corregidores* were local judicial-administrative officials of the colonial period.

<sup>36</sup> Xavier Albó, *Movimientos y poder indígena en Bolivia, Ecuador y Perú* (La Paz: CIPCA, 2009).

Another aspect which adds to the flexibility and ‘informality’ of indigenous governance practices in the Andes is their fundamentally oral and dialogue-based nature. With the exception of formal statutes – a legal requirement introduced for campesino communities (in Bolivia and Peru) or *comunas* (in Ecuador)<sup>37</sup> – the norms or sanctions to be applied to a specific problem are typically not codified. However, the absence of written norms does not mean that no rules exist. Communities usually share a common understanding of the competent authorities, relevant norms, necessary procedural steps and potential measures to be taken. Even so, deliberations tend to adapt to the respective facts and circumstances of individual cases and to the situations of the parties involved. Legal discourses and argumentation may encompass more traditional or more innovative interpretations of local norms or the adaptation of concepts and ideas stemming from other legal spheres. Many people can participate at some stage of a deliberative process and ultimately have a say in determining the outcome.<sup>38</sup>

Therefore, quite to the contrary of what may be associated with concepts such as ‘traditional’ or ‘customary’ law, indigenous law is defined by its transformative and adaptive nature. While it is certainly true that transformations can advance in more or less conservative directions with respect to gender relations, this fluidity constitutes a key point of departure for current debates about how to achieve greater gender justice within community-based political and legal institutions.

### *Diversity*

A third aspect which has to be taken into account when discussing alternatives for tackling gendered hierarchies within indigenous governance institutions is the enormous diversity of these institutions, norms and practices. Undoubtedly a number of common features of indigenous legal processes do exist: indigenous law does not constitute a differentiated and autonomous

<sup>37</sup> These legal stipulations contain a basic description of the community governance structure, rules for membership and major offences to be dealt with by the community council or assembly; their update or alteration implies long and bureaucratic procedures before the respective (and often remote) state entity.

<sup>38</sup> See Hans-Jürgen Brandt and Rocío Franco Valdivia, ‘El tratamiento de conflictos: Un estudio de actas en 133 comunidades indígenas y campesinas en Ecuador y Perú’, *Justicia comunitaria en los Andes: Perú y Ecuador* (Lima: IDL, 2006); E. Córdor Chuquiruna (co-ord.), *Estado de la relación entre justicia indígena y justicia estatal en los países andinos. Estudio de casos en Colombia, Perú, Ecuador y Bolivia* (Lima: Comisión Andina de Juristas, 2009); Boaventura de Sousa Santos and José Luis Exeni Rodríguez, *Justicia indígena, plurinacionalidad e interculturalidad en Bolivia* (Quito: Abya Yala / Fundación Rosa Luxemburg, 2012); Boaventura de Sousa Santos and Agustín Grijalva Jiménez, *Justicia indígena, plurinacionalidad e interculturalidad en Ecuador* (Quito: Abya Yala / Fundación Rosa Luxemburg, 2012).

sphere of the community structure, but forms an integral part of a community's social and cultural life. Instead of trained legal professionals, elected or appointed community members hold distinct positions within community authority structures for shorter or longer time periods. Depending on the type, severity and recurrence of a particular issue, distinct forums may be deemed competent to adjudicate conflicts and take decisions. These generally start with the family, but can then involve individual members of entire councils of authorities, followed by the community assembly, and then higher-level organisations. Procedures tend to place much emphasis on extensive dialogue and a thorough analysis of the background and underlying causes of a conflict. Sometimes these are accompanied by specific ritual practices. The rulings or sanctions may be at the same time moral, exemplary, compensatory, reconciliatory, rehabilitative, or punitive in nature and typically aim at the prevention of further harm, as well as the restoration of social relations and communal peace.<sup>39</sup> However, such common features notwithstanding, close attention to specificity and context is essential in any consideration of gender dynamics within indigenous community legal and governance systems.

### *Community governance systems and gender asymmetries*

Social relations and gendered dynamics amongst the indigenous peoples of the Andes have been shaped by internal dynamics and the impacts of colonisation, evangelisation, socioenvironmental changes and government policies.<sup>40</sup> Today, and particularly in rural settings, women and men are expected to perform different but complementary tasks along all stages of life. Next to productive activities such as agricultural work, livestock breeding, or gathering of food in the forest, women are commonly responsible for caring for the family in the domestic sphere. More generally, membership in a community implies

<sup>39</sup> Brandt and Franco Valdivia, 'El tratamiento de conflictos'; de Sousa Santos and Exeni Rodríguez, *Justicia indígena ... en Bolivia*; de Sousa Santos and Grijalva Jiménez, *Justicia indígena ... en Ecuador*.

<sup>40</sup> Many of these factors are thought to have caused or deepened gender asymmetries. Denise Arnold and Juan de Dios Yapita, 'Los caminos de género en Qaqachaka: Saberes femeninos y discursos textuales alternativos en los Andes', in Rivera Cusicanqui (ed.), *Ser mujer indígena*; Wara Alderete, 'Healthy Communities, Healthy Women: Society and Gender in the Andes', in Diana Vinding (ed.), *Indigenous Women: The Right to a Voice*, IGWIA Document 88 (Copenhagen: IGWIA, 1998), pp. 52–64; María Eugenia Choque and Mónica Mendizabal, 'Descolonizando el género a través de la profundización de la condición *sullka* y *mayt'ata*', *T'inkazos*, 13: 28 (2010), pp. 81–97; Franco Valdivia and González Luna, *Las mujeres en la justicia comunitaria*; Nostas Ardaya and Sanabria Salmón, *Detrás del cristal*; Silvia Rivera Cusicanqui, 'Democracia liberal y democracia del ayllu: El caso del Norte de Potosí, Bolivia', in Silvia Rivera Cusicanqui, *Violencias (re)encubiertas en Bolivia* (Santander: Otroamérica, 2010 [1993]), pp. 159–207; 'Mujeres y estructuras de poder en los Andes: De la etnohistoria a la política', in *ibid.*, pp. 209–34.

becoming part of interdependent and reciprocal ties within the core and extended family, neighbourhood and the entire collectivity. The collective's wellbeing stands at the centre of spatially concentrated indigenous groups, and the coherence of families and the community depends on the willingness of each member's assumption of (gendered) responsibilities, for example, in joint communal works, spiritual rites, festivities, or the exercise of authority functions. In exchange, each family and community member can also count on the support of the collective in certain situations, such as tilling of lands, construction of a house, restoration of damage, and taking care of his or her belongings, fields, or children during periods of absence.<sup>41</sup>

If we look at mechanisms of conflict resolution and decision-making in all community-level forums – core and extended families, community councils, assemblies, state intermediaries, or larger organisations – gendered hierarchies become palpable. Women's lack of participation cannot be assumed; even though men hold public leadership roles, women and families play a fundamental role in these. Yet they are generally underrepresented as authorities and elected representatives because, amongst other reasons, involvement in community affairs is time-consuming and difficult to combine with the heavy burden of domestic tasks, or because their partners prohibit them from becoming involved in community affairs.

We confront a lot of male indigenous or ancestral authorities. They discriminate against us for being women. Sometimes [they include] our own husbands, [they say it's] because women don't know how to read or write, or because they can't leave the house or take part in a meeting or a workshop in the community because of their child care obligations, much less go to the city.<sup>42</sup>

Even if women decide to participate in these spaces of deliberation or are encouraged by their partners and families to do so, the obstacles to making their voices heard are tremendous. Women often suffer from low self-esteem because they tend to have less schooling and limited mastery of the official (Spanish) language. Participation in community leadership means they are expected to deal with issues in which they have typically gained little or no experience, and may confront symbolic, physical and psychological violence.

<sup>41</sup> Alderete, 'Healthy Communities'; Andrew Canessa, 'Género, lenguaje y variación en Pocobaya', in Denise Y. Arnold (ed.), *Más allá del silencio: Las fronteras de género en los Andes* (La Paz: ILCA, CIASE, 1997), pp. 233–50; 'The Indian Within, the Indian Without: Citizenship, Race, and Sex in a Bolivia Hamlet', in Andrew Canessa (ed.), *Natives Making Nation: Gender, Indigeneity, and the State in the Andes* (Tucson, AZ: University of Arizona Press, 2005), pp. 130–55; Julieta Estremadoyro 'Domestic Violence in Andean Communities of Peru', *Law, Social Justice & Global Development [Electronic Law Journal]*, 1 (2001), available at [http://www2.warwick.ac.uk/fac/soc/law/elj/ugd/2001\\_1/estremadoyro/](http://www2.warwick.ac.uk/fac/soc/law/elj/ugd/2001_1/estremadoyro/) (last access 7 Dec. 2016); Nostas Ardaya and Sanabria Salmón, *Detrás del cristal*.

<sup>42</sup> Claribel Yarari, Tacana leader from the Bolivian lowlands, page 154 in Lang and Kucia, *Mujeres indígenas*.

He said, 'I'm going to go to that meeting.' I said, 'I'm going too.' ... My husband said, 'You have to speak too', but I said, 'I can't, I don't know how to' ... He said, 'You have to talk like this.' I told him, 'But I'm embarrassed' ... 'Why are you embarrassed?' he said. Now I'm not, well, afraid. At first I just kept quiet but now I speak in my own language.<sup>43</sup>

According to testimonies, women tend to be listened to less, receive less space for talking, and see their arguments receiving less recognition. Norms of 'decent' behaviour often enforce their silence or secondary-symbolic roles, and women are often ridiculed when they do find the courage to speak up in public assemblies. Even those elected to important political positions report being subjected to malicious gossip, social censure and violence.

Discrimination against women who use the *pollera*, the *cholitas*, is really strong. Sometimes they say to their faces that they're more submissive, that the *cholita* is more obedient. So when I go into the Ministry of Justice some people are tearing their hair out. They say, 'How can a domestic servant be a government minister?'<sup>44</sup>

Younger women, though generally more formally educated than their elders, are discriminated against by men not just for their gender but also their age. Lastly, indigenous legal institutions have largely failed to deal with gender violence, sexual abuse and rape – rights violations affecting many indigenous girls and women. Typically they either declare themselves unable to deal with the offence, or favour the perpetrators in specific disputes. Given such failures to provide access to justice for women and girls, these systems have come under scrutiny in recent years both by indigenous women themselves and by non-indigenous sectors of Andean societies.<sup>45</sup>

<sup>43</sup> Quote from Chimane woman from Bolivian lowlands, page 91 in Tania Melgar, *Detrás del cristal con que se mira: Mujeres chimane, órdenes normativos e interlegalidad* (La Paz: Coordinadora de la Mujer, 2009). *pollera* = one-piece traditional skirt.

<sup>44</sup> Quote from Casimira Rodríguez, indigenous Minister of Justice under the Morales government, at page 79 in Marianela Agar Díaz Carrasco, '¡De empleada a ministra!: Despatriarcalización en Bolivia', *ÍCONOS* 45 (2013), pp. 75–89, available at <http://revistas.flacsoandes.edu.ec/iconos/issue/view/9/showToc> (last access 7 Dec. 2016).

<sup>45</sup> See Franco Valdivia and González Luna, *Las mujeres en la justicia comunitaria*; María de Dolores Figueroa Romero, 'Comparative Analysis of Indigenous Women's Participation in Ethno-politics and Community Development: The Experiences of Women Leaders of ECUARUNARI (Ecuador) and YATAMA (Atlantic Coast of Nicaragua)', PhD thesis, York University, Toronto, 2011; GIZ, *Con más de cinco sentidos: Prevención y lucha contra la violencia hacia mujeres indígenas y afroamericanas y mujeres en zonas rurales* (Bonn: GIZ - Deutsche Gesellschaft für Internationale Zusammenarbeit, 2014); Lang and Kucia, *Mujeres indígenas*; Nostas Ardaya and Sanabria Salmón, *Detrás del cristal*; Radcliffe, *Desarrollo, diversidad y reconocimiento*; Judith Salgado, 'El reto de la igualdad: Género y justicia indígena', in de Sousa Santos and Grijalva Jiménez, *Justicia indígena ... en Ecuador*, pp. 243–78; Zedith Vega Torres, *Mujeres Asháninkas, Nomatsiguengas y Kakintes: Luchando por la igualdad de oportunidades entre hombres y mujeres en la Selva Central del Perú* (Lima: Centro de la Mujer Peruana Flora Tristán, 2009).

*Demands and strategies to enhance women's participation in community governance systems*

Despite all the aforementioned barriers, indigenous women cannot be seen merely as victims of rights violations, but also as active political subjects with agency and voice.

... we never had a passive role, nor did we lament our condition as women. On the contrary, we responded with energy and wisdom to the challenges and obstacles we had to overcome as poor, indigenous women.<sup>46</sup>

Today women look to the agency and leadership of rural women from previous generations for inspiration, women such as Dolores Cacuango and Tránsito Amaguaña in Ecuador, or Domitila Barrios de Chungara in Bolivia, who organised to protest against mistreatment and discrimination, and represented the indigenous movement in international spheres.<sup>47</sup> Also fundamental is the fact that women's voices and participation traditionally resonate in many spaces of family and community life, where they assume responsibility for the collective wellbeing, including performing rituals, serving as interlocutors in extended family networks, or engaging in other, non-corporate forms of agency.<sup>48</sup> In recent decades, growing numbers have met to discuss culture and rights from their own standpoints in new spaces of deliberation, including workshops and summits at local, national, continental and international level.<sup>49</sup> The declarations emerging from such forums bear testimony to indigenous women's understandings of themselves as bearers of both collective *and* individual rights.<sup>50</sup> On the one hand, they have positioned themselves alongside their male counterparts to defend their rights as indigenous peoples and struggle against racism and discrimination. On the other, they have denounced the unequal treatment they experience as women within their families, communities and organisations. In so doing, they do not seek to reject their cultural identities, but on the contrary strive to strengthen them by confronting

<sup>46</sup> Rivera Zea, 'Mujeres indígenas americanas luchando por sus derechos', p. 36.

<sup>47</sup> See, for instance, the memoirs of Domitila de Barrios Chungara in Moema Viezzer, *Si me permiten hablar ... Testimonio de Domitila, una mujer de las minas de Bolivia* (Buenos Aires: Siglo Veintiuno, edición digital, 2005); Lourdes Tibán, 'Las mujeres y la participación en la equidad en las organizaciones indígenas de Ecuador', in Sánchez Néstor (ed.), *La doble mirada*, pp. 51–60.

<sup>48</sup> Rivera Cusicanqui (ed.), *Ser mujer indígena*; Arnold (ed.), *Más allá del silencio*; Blanco Valer, *Las hijas de la Pachamama*.

<sup>49</sup> The FIMI and the ECMIA have evolved into highly relevant spaces of supra-national activism and representation for Latin American indigenous women.

<sup>50</sup> See, for instance, the Beijing Declaration of Indigenous Women (7 Sept. 1995), UN Fourth World Conference on Women, Huairou, Beijing, China, available at [http://www.ipcb.org/resolutions/htmls/dec\\_beijing.html](http://www.ipcb.org/resolutions/htmls/dec_beijing.html) (last access 7 Dec. 2016); ECMIA and Chirapaq, *Violence and Indigenous Women*; FIMI, *Mairin Iwanka Raya*; Sánchez Néstor (ed.), *La doble mirada*.

internal oppressions and insisting on more balanced relationships within the culturally specific spaces they strongly endorse.<sup>51</sup>

We demand that systems of ancestral justice in our countries be strengthened. It's not about creating new parallel [state] structures to strengthen access to justice, like community mediators or courts. Rather it's about recognising the competences, jurisdiction and wisdom of the indigenous authorities who have traditionally mediated and resolved conflicts. At the same time we call on those indigenous authorities responsible for the application of justice to revise ways of resolving cases of physical, sexual and psychological violence against women, maintenance and adultery, conflicts over inheritance and land title, and blocks to women's participation. We also call on them to include organised women in these processes.<sup>52</sup>

The concrete strategies women (and their male allies) have developed to alter harmful practices and injustices are varied and context-specific. On a general level, the use of discourses of *rights* to defend women's interests has resonated within indigenous communities and movements more than initiatives focusing on *gender* issues, particularly as the latter have often been viewed as extraneous and divisive.<sup>53</sup> In the initial stages women's claims for gender justice were rejected as inimical to the collective struggle for recognition and rights by male leaders. However, today the prevalence of machismo and violence against women are generally recognised as internal problems by male leaders in most communities and organisations, even though these are very far from being systematically confronted by social movements.<sup>54</sup> Various options have been pursued by women and men to advance claims for greater gender justice within indigenous governance systems, including the following.

*Consciousness-raising:* Low literacy and mobility, combined with limited access to information and state agencies in rural parts of Andean countries, mean that not all indigenous women and men have become familiarised with discussions revolving around individual and collective rights and gender equality. Thus, sensitisation about rights and discussions about prevailing gender asymmetries and the lack of women's participation continue to be a key entry-strategy in order to raise the level of consciousness about gender injustices. This is the case even among the (geographically) most remote peoples in the Andean high- and lowlands. Such activities may be realised by means of workshops in native languages, radio programmes which enjoy

<sup>51</sup> ECMIA and Chirapaq, *Violence and Indigenous Women*; Figueroa Romero, 'Comparative Analysis'; FIMI, *Mairim Iwanka Raya*; Lang and Kucia, *Mujeres indígenas*; Sieder and Sierra, *Indigenous Women's Access to Justice*.

<sup>52</sup> Excerpt from the 'Declaration of the International Meeting of Indigenous Women in Quito – Ecuador, 24 October 2008', pp. 241–2 in Lang and Kucia, *Mujeres indígenas*.

<sup>53</sup> Andrea Pequeño, 'Violencia de género y mecanismos de resolución comunitaria en comunidades indígenas de la sierra ecuatoriana', in Lang and Kucia, *Mujeres indígenas*.

<sup>54</sup> Radcliffe, *Desarrollo, diversidad y reconocimiento*.

ample coverage in many Andean rural zones, or through innovative activities which touch upon local taboos, such as the organisation of female football competitions.<sup>55</sup> The involvement of both women and men in such events is extremely important; if men are not present it is unlikely that they will reflect upon and take a stance in the debates.

*Leadership training:* Initiatives to provide leadership training for women have likewise been an important factor in increasing women's political participation. Since 1997, female members of the indigenous highland organisation ECUARUNARI<sup>56</sup> have promoted the *Escuela de Formación Política Dolores Cacuango* Political Training School which has strengthened indigenous women's electoral presence at parish, cantonal and provincial level.<sup>57</sup> Sarah Radcliffe points to the importance of backing from male leaders in such efforts in Ecuador: for example, the mayor of Guamote supported a local political training school which prepared women to present themselves as candidates for local councils (the majority of councillors in 2005 were women). And in the province of Chimborazo, the male prefect pushed for an increase in the number of indigenous women in development-related posts on the provincial council.<sup>58</sup> These are important initiatives aimed at increasing the leadership skills and presence of indigenous women in both informal community and formal electoral politics, as well as at breaking down the distance between community and electoral politics.

*Strengthening of women's organising and networking:* Indigenous women have increasingly established female organisations at local and supra-local levels to share their grievances and experiences, and to focus on their common problems. Such organisations often evolve into platforms for consensus-building around concrete strategies to make their claims heard by targeted audiences. Moreover, the presence of an organised female group in a given locality also makes it more difficult to not take their representatives into account when community affairs are being discussed.<sup>59</sup> An important

<sup>55</sup> GIZ, *Con más de cinco sentidos*; Vega Torres, *Mujeres Asháninkas*; Barrera, *Violence against Women*.

<sup>56</sup> *Ecuador Runacunapac Riccharimuy* = Awakening of the Ecuadorian Indian.

<sup>57</sup> Figueroa Romero, 'Comparative Analysis'. Women's presence is not yet similarly reflected in the leadership of the indigenous movement.

<sup>58</sup> Radcliffe, *Desarrollo, diversidad y reconocimiento*, p. 20.

<sup>59</sup> Aida Hernández Castillo, 'Between Complementarity and Inequality: Indigenous Cosmivision as an Element of Resistance in the Struggle of Indigenous Women', Paper Presented at the Conference Indigenous Struggles in the Americas and around the World: Land, Autonomy, and Recognition, York University, Toronto, 10–11 Feb. 2005; Georgina Méndez Torres, 'Miradas de género de las mujeres indígenas en Ecuador, Colombia y México', in Andrea Pequeño (ed.), *Participación y políticas de mujeres indígenas en contextos latinoamericanos recientes* (Quito: FLACSO, 2009); Sarah Radcliffe, Nina Laurie and Robert Andolina, 'The Transnationalization of Gender and Reimagining Andean Indigenous Development', *Signs: Journal of Women in Culture and Society*, 29: 2 (2003), pp. 387–

process of ‘scaling up’ has occurred in women’s organisational building and networking, which has in turn strengthened local efforts to challenge gendered exclusion within indigenous communities and movements. Transnational networks and organisations such as ECMIA and *Alianza de Mujeres Indígenas de Centroamérica y México* have played crucial roles in getting women’s demands and priorities onto political agendas on the international stage. These have included violence against indigenous women, sexual and reproductive rights, and strengthening of women’s leadership capacities. Pushed by such effective organising, the UN Permanent Forum on Indigenous Issues dedicated an entire session to indigenous women and has coordinated expert seminars on violence against indigenous women.<sup>60</sup>

*Re-signification of ancestral institutions and norms:* Women have reflected on their own value systems and cultural traditions and used them as sources of intra-cultural critique and progressive change.<sup>61</sup> In the Bolivian highlands, for instance, women became aware that the dual and complementary exercise of authority by a married couple (*chacha-warmi / qhari-warmi*) in the community had long been deprived of its substance. Women’s role had been reduced to a ‘companion’ of their spouses in their exercise of community offices, or else their participation in community events as part of a couple was mainly symbolic, rather than anything that carried real political weight. Today, these women aim to reevaluate their roles as *Mama T’allas* (traditional female leaders) not only in community-based systems of self-rule, but also within mixed indigenous organisations.<sup>62</sup> In some contexts the drafting of community charters or local autonomy statutes (the latter according to the provisions of the 2009 Bolivian constitution) provided mechanisms for women to press for their demands to be included within the institutionality of communal governance.<sup>63</sup>

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416; Lynn Stephen, ‘Gender, Citizenship, and The Politics Of Identity’, *Latin American Perspectives*, 28 (2001), pp. 54–69.

<sup>60</sup> CEPAL, *Mujeres indígenas en América Latina*, p. 110. *Alianza de Mujeres Indígenas de Centroamérica y México* = Central American and Mexican Women’s Alliance.

<sup>61</sup> This strategy has been adopted by many women in non-Western settings, both in Latin America – see Morna Macleod, *Nietas del fuego, creadores del alba. Luchas político-culturales de mujeres mayas* (Guatemala: FLACSO, 2011); Shannon Speed, Aida Hernández Castillo and Lynn Stephen, *Dissident Women. Gender and Cultural Politics in Chiapas* (Austin, TX: University of Texas Press, 2006) – and elsewhere; see for example Liv Tønnessen, ‘Between Sharia and CEDAW in Sudan: Islamist women negotiating gender equity’, in Rachel Sieder and John-Andrew McNeish (eds.), *Gender Justice and Legal Pluralities: Latin American and African Perspectives* (Routledge: New York, 2013), pp. 133–55.

<sup>62</sup> Ana Cecilia Arteaga Böhr, ‘Let us walk together’: Chacha-warmi complementarity and indigenous autonomies in Bolivia’, in Sieder, *Demanding Justice*; Choque and Mendizabal, ‘Descolonizando el género’.

<sup>63</sup> The Zapatista Women’s Revolutionary Law, elaborated in 1994, proved an important precursor; see Speed et al., *Dissident Women*.

We have argued that everything be *chacha-warmi*. Before there was the Tata and his Mama, now we're saying [there should also be the] Mama and her Tata. We're elaborating the statutes and the Mamas have spoken. Now there's a line of Tatas and their Mamas are there, but they're still in second place. We've said that if there's a Tata with his Mama at the front of the line, the second in the line should be a Mama with her Tata. They should be alternated to increase participation.<sup>64</sup>

While setting out women's demands in community-level legal charters does not guarantee their implementation, their enunciation and codification as part of local norms provides leverage for women fighting for greater gender justice within indigenous governance systems.

*Appropriation of external legal repertoires:* By ensuring that the articles in the 2008 Ecuadorian constitution referring to indigenous collective rights also included important statements on gender equality and women's participation in local governance systems, women of the *Red de Mujeres Kichwas de Chimborazo* and their allies aimed to make local judicial authorities more responsive to international women's rights. In fact these women mirrored what their broader indigenous movements do on a daily basis, making selective use of nationally and internationally circulating legal repertoires so as to struggle for cultural recognition and distributive justice.<sup>65</sup> Since 2008 these constitutional entitlements have helped women in Chimborazo and other Ecuadorian regions to reinforce their demands for a more gender-balanced local jurisdiction.<sup>66</sup>

*Closing gaps between community-based and state law:* In several rounds of dialogue moderated by the FREMANK women's organisation (*Federación Regional de Mujeres Asháninkas, Nomatsiguengas y Kakintes de la Selva Central*) and a Peruvian NGO, Asháninka, Nomatsiguenga and Kakinte women and men from the central region of the Peruvian Amazon (in the department of Junín) have deliberated on the virtual absence of protective mechanisms addressing violence against women and sexual abuse of school girls in their local systems of self-governance. They agreed upon possible procedures and sanctions to be taken by the community chief and the assembly, which would involve changes in community statutes. They also met in a second round of sessions with representatives of the nearest state justice

<sup>64</sup> Arminda Velasco, CONAMAQ, page 76, in Silvia Vega Ugade, 'El orden de género en el sumac kawsay y el suma quamana. Un vistazo a los debates actuales en Bolivia y Ecuador', *ÍCONOS* 48 (2014), pp. 73–91. See also Arteaga Böhr, 'Let us walk together'. The *Tata* and *Mama* are the traditional male and female leaders.

<sup>65</sup> Emma Cervone and Cristina Cucuri, 'Indigenous Justice, Gender Inequality and the Intercultural State in Chimborazo, Ecuador', in Rachel Sieder (ed.), *Demanding Justice and Security*; Manuela L. Picq, 'Indigenous Worlding: Kichwa women pluralizing sovereignty', in Arlene B. Tickner and David L. Blaney (eds.), *Claiming the International* (London and New York: Routledge, 2013), pp. 121–40. *Red de Mujeres Kichwas de Chimborazo* = Chimborazo Network of Kichwa Women.

<sup>66</sup> Barrera, *Violence against Women in Legally Plural Settings*.

institutions in order to elaborate a 10-year plan to improve accessibility and appropriate services for indigenous victims of violence whose problems could not be satisfactorily resolved by indigenous authorities.<sup>67</sup>

*Adjusting state institutions to women's needs:* Organised Kichwa women from the Ecuadorian municipality of Cotacachi deemed the *Comisarias de la Mujer y la Familia*, the central state instrument to attend to cases of violence, inappropriate for their own indigenous contexts. In alliance with the *Consejo Nacional de la Mujer* (CONAMU), UN Women, a local mestiza women's group and the indigenous mayor they established the *Centro de Atención Integral de la Mujer* in Cotacachi. Here intercultural methodology was developed to provide advice in their mother tongue to indigenous victims of violence and to handle such cases in close cooperation with community-based legal authorities. The methodology thus strengthened the role of local indigenous authorities in the resolution of conflicts. In the event that their intervention proved unsuccessful, representatives of the Centre were committed to assist local authorities and victims in presenting their cases before state legal institutions.<sup>68</sup>

*Seizing spaces for female participation:* Women have increasingly sought to negotiate spaces for female participation in their local systems of self-rule, mixed organisations, municipal, regional and national political offices, and political parties. At community level, they often demonstrate their leadership abilities by serving as secretaries or treasurers of community councils or as leaders of some local female group before becoming considered eligible for offices involving more responsibility, including the administration of justice. Many mixed organisations have introduced a special department for women's issues (such as the Secretary for Women and the Family of CONAIE, Ecuador); in other cases, women have found that they would gain more visibility by establishing exclusively female organisational vehicles (such as the aforementioned ONAMIAP in Peru, or the FNMCIQB-BS in Bolivia). Taking advantage of the new national quota and parity rules, a growing number of indigenous women in Ecuador and Bolivia have also taken the opportunity to run for municipal or national office. However, recent studies have noted that many female councillors and parliamentarians have been

<sup>67</sup> Vega Torres, *Mujeres Asháninkas*; Centro de la Mujer Peruana Flora Tristán, *Manual. Derechos indígenas de las mujeres, adolescentes, niñas y niños asháninkas, nomatsiguengas y kakintes* (Lima: Centro de la Mujer Peruana Flora Tristán, 2011). *Federación Regional de Mujeres Asháninkas, Nomatsiguengas y Kakintes de la Selva Central* = Regional Federation of Asháninka, Nomatsiguenga and Kakinte Women of the Central Jungle.

<sup>68</sup> UN Women, *Progress of the World's Women* (United Nations: New York, 2011), p. 64; Barrera, *Violence against Women in Legally Plural Settings. Comisarias de la Mujer y la Familia* = Commissions for Women and the Family; *Consejo Nacional de la Mujer* = National Women's Council; *Centro de Atención Integral de la Mujer* = Integrated Centre for Women's Aid.

systematically marginalised from decision-making and subjected to harassment and political violence (*acoso político*), for instance through the arbitrary freezing of their salaries, threats or physical attacks, or their being forced to cede their seats to men. Some women have even lost their lives in this struggle.<sup>69</sup> And when indigenous women do achieve formal participation in municipal government, this is not necessarily reflected in policies that benefit women as a whole.<sup>70</sup>

### Conclusions

Academics and activists have theorised the complex intersectionalities of class, gender, racial and other oppressions encountered by indigenous women – and men – across the Andean region, pointing to the enduring consequences of colonialism. By emphasising women’s historical agency and the changes and continuities of their specific roles within different indigenous collectives and society across time and space, such conceptual work contributes to the contemporary strategies of indigenous women to secure greater gender justice. We have argued here that these strategies are inseparable from efforts to secure the materialisation of rights of indigenous peoples as collective entities. In addition, we have demonstrated how the adoption of multicultural constitutional norms and legislation in Andean countries has constituted a more facilitative environment for indigenous women’s activism and for efforts to strengthen gender justice within informal governance systems. By recognising indigenous autonomies and legal pluralism, processes of national constitution-making in Bolivia and Ecuador opened new possibilities for women within those countries’ ethnic communities to articulate their demands for gender justice, framing these within legal-constitutional discourses at international, national and community levels.<sup>71</sup> However, turning these openings and mobilisations into long-term empowerment for women requires that notions of gender justice become embedded within social and cultural dynamics and governance

<sup>69</sup> Deutsche Welle, Reportaje Regional ‘Muertes anunciadas - Femicidios en América Latina’; Available at <http://www.dw.de/muertes-anunciadas-femicidios-en-am%C3%A9rica-latina/a-18055931> (last access 23 Dec. 2016); GIZ, *Con más de cinco sentidos*, pp. 32–5.

<sup>70</sup> Radcliffe, *Mujeres indígenas y afroecuatorianas*, p. 22.

<sup>71</sup> In both countries, the recognition of pluri-nationality has been accompanied by measures to ‘transversalise’ ethnicity and gender in all government policies. For example, in Bolivia, the Vice-Ministry for Gender was abolished and its mandate absorbed into the new Vice-Ministry of Equal Opportunities (part of the Ministry of Justice). At the same time, a new Vice-Ministry of De-Patriarchalisation and Decolonisation was set up to reform what are considered patriarchal and colonial structures; see CEPAL, *Mujeres indígenas en América Latina*, p. 117. The post-CEDAW adoption of national laws against violence against women and of new state institutions to tackle intra-familial violence has also been of central importance in indigenous women’s processes of organisation across the Andes.

structures, something contingent on complex interactions of different factors across multiple scales. In addition, national governments throughout the Andes continue to adopt policies and laws promoting extractive industries which are profoundly detrimental to indigenous peoples' autonomy, self-rule and habitats. These policies have particularly noxious effects on women.

Second, as we have argued here, issues of voice, representation and authority are central to struggles for greater gender justice in subaltern communities. Strategies and medium-term objectives will depend on context and the possibilities of promoting progressive change from within, something which in turn requires support from male leadership and social and political languages and strategies that have sufficient local legitimacy and traction. Even though initiatives to promote change almost always involve alliances beyond the local community, if these are perceived as being external impositions using dominant concepts and analytical frameworks then they are usually doomed to failure. As Deveaux notes, '[p]olicies for the reform of cultural practices that are derived from the mere application of liberal principles or constitutional norms risk misconstruing the actual or lived form of these practices'.<sup>72</sup> In some instances multicultural reforms have encouraged – and built on – alliances between indigenous women community activists and women's rights activists within and outside the state. However, in others they have increased paternalistic, ill-conceived and racist interventions in indigenous communities under the guise of protecting women's rights. Methodologically and politically it is vital to listen to the voices of indigenous women themselves, to learn from how they analyse their situated position as members of minority communities, and what measures they are taking to confront gender discrimination within their communities and organisations. Only by understanding the specific dynamics of local contexts and supporting women's strategies will it be possible to design practical measures to successfully effect change.

Third, neither indigenous cultures nor indigenous law and governance institutions are static. Rather, as we have illustrated, they are dynamic and diverse, characterised by their relative flexibility and their ability to absorb and 'vernacularise' external influences and inputs. This supports broader arguments made by many in the feminist multiculturalist debates.<sup>73</sup> Through creative innovation, re-signification and adjustment, organised indigenous women and their male allies in the Andes are transforming different aspects of their own cultures, rather than dismissing or abandoning them in their pursuit of greater gender justice. In turn, processes of national constitutional legal change have implied reimagining more plural and egalitarian forms of

<sup>72</sup> Deveaux, 'A Deliberative Approach', p. 782.

<sup>73</sup> Ibid.; Philips, *Multiculturalism without Culture; Gender and Culture*; Ayelet Shachar, *Multicultural Jurisdictions: Cultural Differences and Women's Rights* (Cambridge and New York: Cambridge University Press, 2001).

citizenship. Cosmivision, complementarity and gender equity are not mutually exclusive discourses; they have all been successfully invoked to promote positive change within a range of different settings across the region. Far from formal institutional measures such as quotas or parity rule being the sole path to emancipation and gender justice, Andean women become agents of change by a variety of means, in cooperation or alliance with various other players, and at multiple sites. Women are slowly gaining voice within indigenous governance structures, a transformation supported by longer-term social and cultural transformations. While there is no guarantee that such advances cannot be rolled back, the fact that governments in the Andes and regional and international legal frameworks are committed to gender equality, combined with the sustained mobilisation and political articulation of indigenous women's organisations, makes it harder to defend patriarchal backlash. Together these factors provide grounds for cautious optimism.

### *Spanish and Portuguese abstracts*

*Spanish abstract.* La transición hacia regímenes multiculturales y plurinacionales en los Andes formalmente reconoció a los sistemas comunitarios de gobierno de los pueblos indígenas. Estos tienden a enfatizar la participación, deliberación y el servicio al colectivo, pero son con frecuencia criticados por discriminar a las mujeres. Argumentamos que las reformas constitucionales y otras legislaciones recientes que combinan el reconocimiento a las demandas de derechos colectivos con las garantías institucionales a la igualdad han posibilitado diferentes estrategias de las mujeres indígenas de 'negociar con el patriarcado', a la vez permitiéndoles avanzar en la transformación de sus organizaciones y de la 'costumbre'. Dichas estrategias son necesarias debido a las intersecciones de raza, clase y exclusiones que experimentan las mujeres indígenas, y son posibles también debido a la naturaleza diversa y dinámica de los sistemas comunales de gobierno. A pesar de los límites sistémicos y estructurales en relación a la garantía de los derechos de los pueblos indígenas, las acciones de las mujeres indígenas organizadas en las dos últimas décadas señalan nuevas formas de imaginar una ciudadanía más plural y menos patriarcal.

*Spanish keywords:* mujeres, pluralismo legal, indígenas, gobernanza, justicia

*Portuguese abstract.* A mudança em direção a um regime de cidadania legalmente multicultural e plurinacional nos Andes garantiu formalmente o reconhecimento de sistemas de governança comunitários dos povos indígenas. Estes sistemas tendem a enfatizar a participação, a deliberação e o trabalho para a coletividade, mas são recorrentemente criticados pela discriminação contra mulheres. Argumentamos que reformas constitucionais recentes e legislação que combinam o reconhecimento de demandas por direitos coletivos com garantias institucionais de igualdade de gênero amplificaram, de fato, as distintas estratégias femininas de 'negociação com o patriarcado', permitindo que elas aprofundem a transformação de suas organizações e 'costumes'. Estas estratégias são necessárias por causa das interseções entre raça, classe e

exclusões de gênero experimentadas por mulheres indígenas e possíveis devido à natureza diversa e dinâmica dos sistemas de governança comunitários. Apesar das restrições sistêmicas e estruturais das garantias dos direitos dos povos indígenas, as ações de mulheres indígenas organizadas durante as duas últimas décadas apontam para novas maneiras de conceber formas de cidadania mais plurais e menos patriarcais.

*Portuguese keywords:* mulheres, pluralismo legal, indígenas, governança, justiça