Dialogue between Societies: The Order of Law and Politics and Collaborative Practice (Karai and Guaraní)

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DIALOGUE BETWEEN SOCIETIES

The Order of Law and Politics and Collaborative Practice (Karai and Guaraní)

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This booklet was originally published in Spanish as "Diálogo entre Sociedades. El orden politico-legal y la práctica colaborativa (lo karaí y lo guaraní)", La Pluma del Escribano, Tarija (Bolivia), 2020.

The text is a summary of some of the key results of a research that I carried out between 2010 and 2014 in Bolivia. The complete results are presented in my doctoral thesis which was published in 2017 in Wiesbaden, Germany under the title *Konflikttransformation durch Verfassungsdialoge. Herrschaft, Recht und kollaborative Praxis in Bolivien* by Springer VS.

I worked in Bolivia from 2008 to 2014 as a peace and conflict advisor in the field of dialogue processes and I started this research out of the need to understand the context we worked in. The ideas and opinions that I present here are mine and don't necessarily represent the opinion of any of the organizations I worked for.

After publishing the above mentioned thesis in Germany, I looked for ways to make the results of my research accessible to readers in Bolivia. I'm very grateful to the publisher *La Pluma del Escribano* for the support in publishing the booklet in Spanish and for agreeing to the open access publication of this English translation.

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Introduction

"*To see clearly it´s often sufficient to change perspective" (*Antoine de Saint-Exupéry). The change of perspective reveals hidden aspects of past and present. In this booklet I will offer a description of the incompatibility and the fundamental misunderstanding between the western world (the order of law and politics) on one hand and the Guaraní society and philosophy of life on the other. It´s an invitation to change perspective in order to see if we can find new approaches for solutions.

For this purpose we need to start by asking questions. The first question, I will explore in this booklet, is "What is the difference between the western world and the Guaraní society?" I would like to stress that *society* is more than just a number of people and their identities, it´s particularly the *relationships between those people* that distinguish one society from another. The theory of social systems[1] offers a perspective on the western world as an order of law and politics and a perspective on the Guaraní society as collaborative practice, which sheds some light on the fundamental disaccord between two orders of society that are practiced in Bolivia. From this perspective I would like to revisit the recent history of conflicts between the nations called "Naciones y Pueblos Indígenas Originarias Campesinas" (NPIOC) in the Bolivian Constitution (art. 2), which can be translated to "rural native indigenous nations and peoples"[2] on one hand and the Bolivian State on the other hand in order to see what precisely is their conflict and how does is manifest itself.

The second question, I will ask, is: "What does dialogue mean?" The word is used in many different contexts and thus may mean many different things. I will show that a true dialogue between two different forms of society is only possible under certain structural conditions. As we will see, for the Bolivian

[1] On several occasions I will refer to the work of Niklas Luhmann, a German sociologist whose writings have also been partly translated to English. Luhmann is considered one of the founders of the theory of social systems. Nevertheless, for an introduction to the theory of social systems I recommend recurring to secondary sources that structure his ideas and concepts, such as those cited below.

[2] For a better readability of the text I will use the short form "indigenous nations" further on. This choice of words is based on my experience with Guaraní communities whom I have often heard referring to themselves as "indigenous". I´m aware that in other regions the term is considered derogative and people prefer "original nations" or "first nations", but none of these terms is common in the particular context I write about here.

context, those structural conditions have already been formulated quite precisely. They can be found in the proposal for a constitution developed by the so-called *Pacto de Unidad* (Pact of Unity). For a number of reasons, large parts of the Pact of Unity's proposal have not been implemented in the 2009 constitution (Frey 2017: 83 et seqq.). That´s why I will ask a third question: "Where and how does the dialogue about indigenous autonomy continue?" In the last part of this booklet we will have a look at the drafting process for the Statute of the *rural native indigenous municipality* of Huacaya.

The processes of establishing so-called indigenous autonomies in Bolivia are ongoing in Huacaya and other places. But the topic has a significance that exceeds the Bolivian context. In his book *Strange Multiplicity* the Canadian philosopher James Tully examines the question if modern constitutions are able to recognize and accommodate cultural diversity (Tully 1995: 1). Tully concludes that constitutions based on ideas of liberty, equality and sovereignty are unable to include cultural diversity in an adequate manner because *"the language of modern constitutionalism which has come to be authoritative was designed to exclude or assimilate cultural diversity and justify uniformity."* (Tully 1995: 58). In view of the existing cultural diversity, Tully calls for a constitution that is, in itself, a dialogue of mutual recognition in the spirit of Haida Gwaii (Tully 1995: 24). Haida Gwaii is the name of a Canadian archipelago and the spirit Tully refers to is expressed in a work of art by the sculptor Bill Reid. The sculpture shows a group of very different passengers travelling together in a canoe. For Tully, the main characteristic of this voyage is the fact that the passengers *"are exchanging their diverse stories and claims as the chief appears to listen attentively to each, hoping to guide them to reach an agreement, without imposing a meta-language or allowing any speaker to set the terms of the discussion"* (ibid.). The chief, too, is subject to the rule of mutual recognition, all their relationships are reciprocal (Shadbolt 1998: 187 et seqq.).

In my perception, this allegory describes the same kind of communication that is also practiced among the Guaraní: it´s collaborative practice. This is why I believe that the answers and solutions that will be found in the indigenous autonomies in Bolivia are relevant to first nations in both Americas and possibly on other continents.

Understanding the problem from the perspective of the theory of social systems

Communication, systems and the order of law and politics

A key element in the theory of social systems is communication. Social systems are produced and reproduced through communication, understood as a three-step-procedure: *"In its simplest terms a communication is a synthesis of information, utterance and understanding."* (King and Thornhill 2003: 11) The last step illustrates the fact that communication never lies in the hands of only one participant, there's always a need for a second party that receives the communication.

According to Luhmann, a society is constructed through communication. The western society in particular consists of a number of function systems whose communications follow a binary code with a positive and a negative value. *"Law, for example, recognizes everything that may be understood as either lawful or unlawful as belonging to the legal system and to no other system, while at the same time it alone is capable of determining the difference between lawful and unlawful." (King and Thornhill 2003: 24)* The legal system comes to life and reproduces itself whenever that particular distinction between lawful and unlawful is transmitted in a communication. Whenever a system categorizes an event in the binary distinction of its respective code, it creates and understands the difference between its own communications and those of all others (ibid.)

In the binary code of one system, there's no third option. Any third option would belong to a different system. The huge advantage of the binary scheme lies in reducing significantly the risk of misunderstandings in the communication process and thus facilitating mediated communication (non face-to-face interaction). The binary scheme reduces complexity.

Luhmann distinguished three different types of systems: 1) function systems (society), 2) organizations and 3) interactions (King and Thornhill 2003: 7). Let's have a closer look at law as a system to understand the difference between society's function systems and organizations:

The function system law consists of all communications in the binary scheme of lawful/unlawful, independently of the identity of the parties

involved. The function system can reproduce itself anywhere, even in a schoolyard discussion between youngsters, provided the lawfulness or unlawfulness of something is being discussed. The organization "law", on the other hand, consists of the official legal institutions. The communication of the legal organizations equally revolves around the lawfulness or unlawfulness of things, but additionally the legal organizations communicate decisions, because they hold the power of decision making. The communications of organizations are "compact" (Seidl and Mormann 2014: 139) because they contain two elements: the binary distinction and the information, that a decision has been made.

Power is a complex medium in the theory of social systems and appears in different forms. As political power it is the code of communication of the political system and it is a legally defined power (King and Thornhill 2003: 107 et seq.). The political system manages power within a legal framework that it forms itself and at the same time is subject to. Luhmann describes this relationship between law and politics as structural coupling (King and Thornhill 2003: 200), implying that each of the systems follows its own code, but to do so, is partially dependent on operations performed by the respective other systems. This structural coupling between law and politics is the nucleus of the order of law and politics.

Beyond the political system, power can be found in organizations. Some organizations hold decision making power regarding their function systems' binary code, like the judiciary for the legal system, or schools for the education system, but every organization holds a distinctive form of power called organizational power. Through organizational power it is possible to impose many more different actions than through physical force. Organizations enforce obeisance through regulation of the conditions of membership. In this way, organizations can prescribe certain ways of communication, regulate the employment of personnel and their exact position within the organization (Seidl and Mormann 2014: 141).

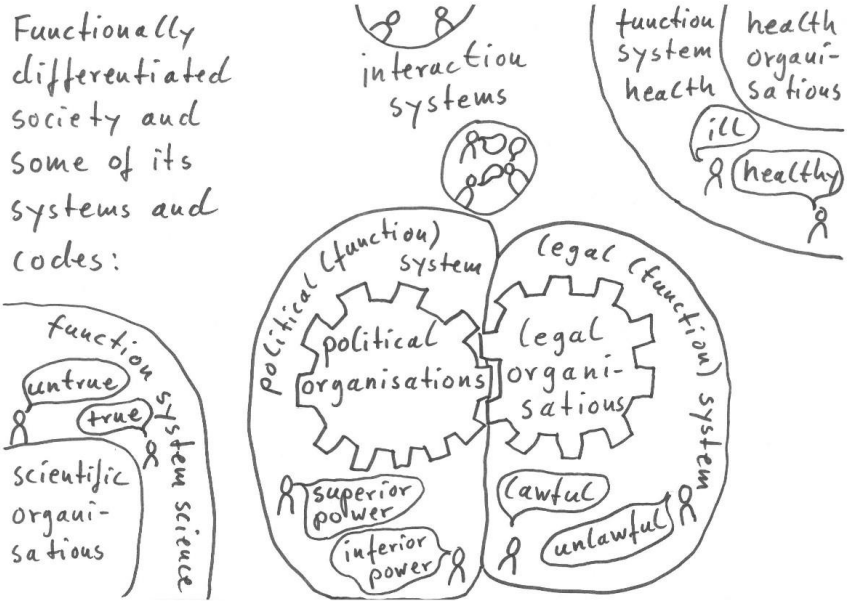

Illustration no. 2: The illustration shows the functionally differentiated society with a selection of function systems (and their respective organization systems) and the structural coupling between the political and the legal system at the core. Drawing by Verena Frey, based on Luhmann´s work.

In the modern western society, that Luhmann calls *functionally differentiated society* (King and Thornhill 2003: 34), function systems and organizations emerge from a binary communication code like lawful/unlawful (law), thruth/untruth (science) (Seidl and Mormann 2014: 136) or ill/healthy (health). Political power resides in the political system, but organizational systems also hold power that is expressed in the conditions of membership[3] or through decisions in their respective field of competence. This power tends to manifest

[3] In the Bolivian context, this provokes questions regarding corruption. The problem of corruption is still being discussed in social systems theory. Luhmann believed that if families or or other personally related groups usurp certain systems, then we could no longer speak of a functionally differentiated society. Newer publications, on the other hand, stress the fact that corruption happens universally in all states, although it's particular expression and impact can be different. As a result, the fact that corruption happens in Bolivia does not as such deprive the state of its nature as a functionally differentiated society.

itself on the level of meta-communications, this concept will be explained in the next chapter.

In contrast to function systems and organizations, interaction takes place between present persons (King and Thornhill 2003: 17). Therefore, an interaction system is not limited to the use of the *symbolically generalized media of communication* (King and Thornhill 2003: 23), like power, law or truth. The topic of any communication can be chosen freely and can change at any moment. An important consequence of this is that it isn't reduced to a binary yes-or-no scheme.

Collaborative practice and its mechanisms of reproduction

At the beginning, I introduced Tully and the spirit of Haida Gwaii. The allegory of the travelers in the canoe symbolizes an order of society that differs from the functionally differentiated society described above. In this chapter I would like to describe this other order of society in the terms of the theory of social systems, focusing on its communications. I will refer to Bolivian examples, because I believe this other form of communication is also practiced in Bolivia, mostly among the so-called "rural, native, indigenous nations and peoples".

I would like to point out that I'm exploring a communication practice. By no means does this imply an innate or acquired characteristic of a person. It's rather an individual decision about how to relate to and communicate with others case by case. With the exception of the nations in voluntary isolation, Bolivians who identify with one of the "rural, native, indigenous nations and peoples" do usually participate at least occasionally in communications of function systems and organizations. Nevertheless, according to the below cited studies, their internal communication practices and decision making mechanisms differ from the above described communications and mechanisms of the functionally differentiated societies.

In his book *La comunidad hoy* (The community today), Xavier Albó describes a series of practices of the Guaraní nation[4], specifically in communities in the

[4] The Guaraní nation traditionally inhabits the South American Chaco region. People and communities that identify themselves as Guaraní inhabit Bolivia, Paraguay, Argentina and Brazil and their histories differ. In Bolivia, the Guaraní nation is the most populous indigenous nation in

province Cordillera in the Santa Cruz department (Albó 1990: 29). Those communities have an assembly (*jemboati*) as their highest instance of decision making (Albó 1990: 240). They also have elected representatives (*mburuvicha or kuña mburuvicha*), but a strong leadership can only be observed in times of crisis. In times of peace, the role of the leaders is to facilitate consensus.

The assembly does not cast a majority vote, rather it looks for a particular type of consensus. This consensus does not require a wholehearted agreement from everybody, rather, since individual freedom is an important value, dissidents can always voice their opinion as long as no harm is done. What the assembly tries to achieve is not consensus as one common opinion, it's consensus as *modus vivendi*, as the solution that everybody can live with, better defined as "consent".

In the words of Francisco Pifarré: *"This mechanism of consensus is as classical as it is valid today in Guaraní society. The assembly does not vote nor is there demagogic pressure to achieve one or the other decision. Opinions are voiced and pondered in order achieve a spontaneous decision or balance of opinions ('consensus')"* (Albó 1990: 242).

That means that the search for consent does not make use of the binary schemes of functional systems. What is wanted is not the yes-or-no of the binary scheme, like a distinction between lawful and unlawful or between superior and inferior power. Instead, the goal is to respect everybody's needs and interests in the best possible way. Instead of a "yes-or-no", communication focuses on "yes, and", which requires, as a first step, the recognition of the other side's needs and interests as legitimate, adding to them, in a second step, one's own equally legitimate needs and interests. This search for consent is what I will refer to as *collaborative practice*. And while there are certainly many cultural differences between the Guaraní nation in Bolivia and the inhabitants of Haida Gwaii, Tully's description of the spirit of Haida Gwaii as a process of mutual recognition makes me believe that collaborative practice is an essential part of what the canoe voyage symbolizes.

Let's see how collaborative practice is established and what's the source of its impressive resilience. As a first step I would like to explore the role of the mechanism called "indigenous justice" for collaborative practice.

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the Bolivian lowlands. The history of the Guaraní in Bolivia is strongly marked by their long-lasting resistance against the Bolivian Republic that was defeated in the battle of Kuruyuki in 1892.

To approach this topic, it's necessary to introduce another conceptual element of the theory of social systems: Second order observation (King and Thornhill 2003: 19). Above we stated that social systems arise through communications in a specific code or scheme. Given the enormous complexity of life, as a first step, a specific event needs to be singled out and a particular value of the code needs to be attributed to it. This simultaneous operation of discerning and labeling is called observation. Every observation, after its occurrence, can be the object of another observation.

This second observation, that observes another observation, is called second order observation. After the occurrence of an observation, the same or another observer can observe *how* the first observation was done (ibid).

Through second order observation it is possible that a system gains conscience regarding the particular code or distinction it just used and questions it. In this way, the human consciousness can reflect on earlier decisions and a social system can communicate about its own communication. Let's see what indigenous justice does in case of the Guaraní communities.

The justice of the Guaraní communities is practiced in the assembly, with participation of the whole community (Fernández M. and Illanes V. 2010: 28). An investigation led by the Ministry of Justice about community justice among the Guaraní (Ortiz y Caurey 2010) concludes that *„ …there are no formulas to practice the "full life" in the future, there's only feeling and experimenting all things together. [...]. This also implies that there are no pure norms or stable guidelines, only those that are constantly subject to the change of perception of life. The determination of perennial norms would convert their authors to unjust persons tomorrow" (Ortiz y Caurey 2010: 248).* Just like it seems impossible to fixate "indigenous" laws, the investigators conclude that it's very difficult to even classify "offenses". It's obvious that Guaraní community does not judge in the binary scheme of lawful/unlawful. Instead, the investigators emphasize that "the traditional version and the ideological tenor of all interviews show that said justice is subordinate to the "good life" or the "harmonious life" ..." (Ortiz y Caurey 2010: 247). It focuses on re-establishing harmony in those cases where it has been disturbed.

At the same time, the authors emphasize the fact that this form of justice requires an active community as *„a group of people that share a territory, a way of thinking and a 'common' way to act."* Additionally, *"the blame is always shared*

between individual and community" (Ortiz y Caurey 2010: 249), the co-responsibility of the family and the community is always considered.

In the light of these descriptions I would like to describe indigenous justice as a process of self-observation. By means of a second order observation, the system reflects about its own (past) communications. The 'offense' is a disruption of the "yes, and" - code which can take any form, which is why it is so difficult to classify them. Through the mechanism of indigenous justice, the community makes explicit that the code of its communications should be "yes, and". It is a reminder for everybody and together the community reflects on what needs to be done in order to overcome the disruption and return to collaborative practice. Since communication always requires more than one participant it is necessary to also consider collective responsibility.

In the long run, collaborative practice needs a forum for self-reflection, given that the individuals are also citizens and participate at least occasionally in communications of the legal or political system. A periodic reflection about the collaborative communication mode is thus necessary or at least highly useful.

To complete this perspective on collaborative practice and its code of communication I would like to add that it's not only important to reflect on the code occasionally and undertake corrections, the code also needs to be properly established in the beginning.

This is where education comes into play. The source for the following considerations is the regional curriculum of the Guaraní nation[5].

The document clarifies that *"we understand education as the formation of new generations for the good life in the community"* (APG and CEPOG 2014: 7). The goal of the education is to prepare new generations for collaborative practice.

The goal is defined as *"acquiring knowledge, abilities and cultural practices that are used for the good life in equilibrium and dialogue with the social, cultural and natural environment. This knowledge is part of life itself and relates to social equilibrium (life in community) ..." (APG and CEPOG 2014: 15 s.*). The knowledge constructed in the education process are the practical abilities required for

[5] The law *Avelino Siñani-Perez* that came into force in 2010 defines in its art. 70 that curricula should integrate the vision of the NPIOC inhabiting the respective region. As a consequence, the "Consejo Educativo del Pueblo Originario Guaraní" (Education Council of the Guaraní Nation) prepared the regionalized curriculum of the Guaraní Nation.

collaborative practice. In this sense, education is not a recompilation of historical data, but aims to *"revive the system of symbolic and practical relationships valid in original societies" (APG and CEPOG 2014: 17)*, always including new aspects that are useful.

These goals of the education process make it obvious that the so-called indigenous education is equally a forum of self-observation of the system. It's the forum that precedes justice, it's the place where collaborative practice and the abilities that are useful and necessary for this practice are established and transmitted to new generations.

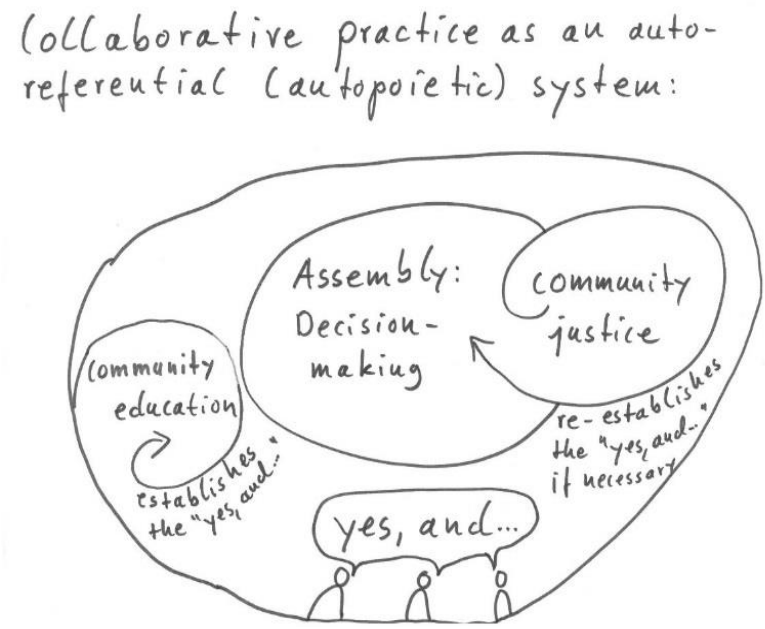

Illustration no. 3: The illustration shows the central instance of collaborative practice and its two mechanisms for self-reflection that help to build and reinforce the communication mode. Drawing by Verena Frey, based on concepts developed in Frey, 2016.

I would like to finish this chapter by reiterating once more that the code "yes, and" can be practiced by anyone and is not necessarily linked to an indigenous identity. Mediators around the world promote this code when they try to resolve conflicts outside of the legal system. You don't have to be indigenous to value and appreciate this code of communication. The special characteristic of collaborative practice as a social system is precisely the capacity to recreate and stabilize itself as a system through mechanisms like community justice and community education. According to Luhmann, the key characteristic of a system is its capacity to create itself all the elements of which it consists ("autopoiesis") (King and Thornhill 2003: 22). Through community education and indigenous justice, collaborative practice becomes an auto-referential and autopoietic system.

The evolution of the conflict

Looking at the two different communication schemes, the codes employed by functionally differentiated society and the communication code of collaborative practice, the question arises, where exactly is the conflict and how does it come into existence. It's time to have a closer look at the history of conflicts that preceded the Bolivian constitution of 2009.

In their investigation of the role of the indigenous lowland nations in the Bolivian constitutional process, Valencia and Égido summarize the main demands of the five indigenous marches between 1990 y 2006 (Valencia García and Égido Zurita 2010: 206 et seqq.). The investigation shows that in the marches there were three topics of central importance. Firstly, the word territory appears in almost all the marches' short titles. In the same way, the topic of natural resources is recurring. And there's another recurring topic that is sometimes described with the words "popular sovereignty" and sometimes as "political participation", The authors indicate that 1996, this demand was for the recognition of indigenous forms of organization in the so-called process of "popular participation"[6] and in 2002 and 2004 it was a demand for the re-organization of the Bolivian State though a Constitutional Assembly. The complete list of demands in every march was longer and much more detailed,

[6] This refers to a constitutional reform that aimed at decentralization.

but the central topics were always territory, natural resources and the re-organization of the state.

In the indigenous perception of the world, the people belong to the land and not the other way around. As Clavero explains, the sovereignty of the "independent" states in in some cases was equivalent to the complete expropriation of the original population: The Constitution of Chile dating from 1822, for example, stated in its article 3 the following borders of the state: From Cape Horn to the Atacama desert, from the Andes to the Pacific Ocean. This declaration included extensive territories whose inhabitants had still remained at a distance to the colonial power to this point, like the Mapuche nation (Clavero 2008: 23). The independent American constitutions negated the idea that there could be autonomous, state-free areas anywhere: *"The constitutional approach starts with ignoring the indigenous space with the virtual massive expropriation of land and natural resources that this implies"* (ibid).

From this moment on, in the political and legal institutions of the Republic, any dispute regarding land and territory was limited to questions of rightful ownership and legal or illegal possession. That is the only distinction the legal system can make. The characteristic of the land as a commodity, as belonging to someone, could not be questioned within the legal system, since it was a basic precondition of the Republic itself.

We've seen above that communication requires an act of reception by another party, which is why it is impossible to communicate towards the legal system the notion that the people belong to the land and the refusal to see the land as an individual possession. But here we have a strong inequality in the communications, because the state, in its communications defies the necessity to have its communications actually received: Government decisions or the decisions of other official institutions also limit people's individual choices if they don't accept or understand them. They don't even need to actually receive them. The individual "reception" of a law is presumed with its publication. This mechanism was already established in the Bolivian Constitution of 1826, which defined in its article 76 that every law should be approved promulgated with this formula: *"… we let all Bolivians know that the legislative body decreed and we promulgate the following law."* This was followed by the text of the law and the formula. *"So we order all authorities to comply with make comply with this law."*

By means of this fiction a forced communication between both sides is established. On the level of content they can't understand each other, because

their concepts are incompatible, the distinctions that the state's system can make are insufficient to grasp the fundamental disagreement: The legal system can only distinguish if the land belongs to one or the other. That it might not have any owner, might not be subject to ownership at all, is unimaginable and not perceivable to the legal system. In contrast, the laws regarding ownership of the land are forced on all inhabitants.

With the Indigenous and Tribal People's Convention, 1989 (also known as Convention 169), that was ratified in Bolivia in 1991, the indigenous people's right to possess their traditionally and actually inhabited areas was recognized (art. 14), same as the right to conserve their customs and customary laws (art. 8). Once the Convention was ratified, the demand for a territory and the conservation of customs and customary law could be articulated within the state's legal system. The topic of natural resources is closely linked to this, because it's not primarily about participation in the economic gain, instead the central aspect is the integrity of the territory (Valencia García and Égido Zurita 2010: 157). The collective territory in indivisible and inalienable. The use of natural resources is always a breach of the territory, with multiple ecological and social consequences. That's why the demands regarding natural resources are in fact a sub-topic of the territory topic, but given the immense importance of natural resources for the national budget, they tend to end up in the center of attention. Here, too, the law gives a shape to the demands. To put an end to the exploitation of natural resources in indigenous territories is not a demand that could be articulated within the legal system, since it has no legal foundation and additionally endangers the fundament of the state's existence. Instead, the demands refer again to the Convention 169 which established a right to a prior consultation process and a free prior informed consent in the case of the exploitation of natural resources in indigenous territories in its art. 6.

In sum, there's a conflict topic that is initially inexpressible (and very old) and that slowly gains a form through partial demands that are legally expressible in front of the Republic's institutions. Nevertheless, the conflict could not be solved through these legally expressible demands. While the ILO Convention 169 recognizes tribal people's traditional institutions, it does not go as far as stating a right to self-government inside their territories. Equally, the rights of participation that were established in the "Law of popular participation" (Ley de Participación Popular) couldn't solve the conflict. The law of "popular participation" (decentralization) was aimed at giving more

influence to the local communities in local politics. But the political system (be it national or local) can only understand that this or that side holds more or less power. Collaborative practice, in turn, has no use for political power. Political power is majority power that imposes itself by force. The essence of collaborative practice is the search for consensus and a way of cohabitating and sharing. Any attempt to take over political power requires the collaborative practice to negate the communications that is consists of, negate its own essence. Collaborative practice would have to suppress itself in order to get to a position of political power.

Nevertheless, in the wake of the law of popular participation in Bolivia, a number of people came into positions of (local) political power who identify themselves as indigenous. The usual chain of events is that they adopt the communications of political power and leave collaborative practice behind.

In the middle of all these failed communications, what are the messages that are really being transmitted?

According to Watzlawick, every communication has an aspect of content and an aspect of relationship (Watzlawick, Beavin and Jackson 1967: chap. 2.33). The content aspect is what we communicate about the topic. In the relationship aspect we communicate about our mutual appreciation or our aversions or our relationship of power: Do we respect each other? Who holds more power? This aspect usually is not explicit, it remains in the realm of what goes without saying, in the subconscious. Watzlawick calls this meta-communication. The implicit message that the state transmits in all its activities is "I hold power over you." And the demands for territory and the recognition of the indigenous forms of organization implicitly defy that pretense. This means that for a long time the conflict took place in the level of meta-communication, in the implicit pretense that the state has the power and the right to impose its decision and the implicit denial of that pretense, the non-recognition of the order of law and politics. Finally, the conflict becomes explicit with the demand to reestablish the state through a Constitutional Assembly. In this demand, the accumulated history becomes explicit: It reminds everybody of the fact that collaborative practice came already constituted as a society and was forcefully assimilated in earlier constitutions. It explicitly refuses the state's pretension and demands a new order of society.

With the demand to reestablish the state through a Constitutional Assembly finally the actual conflict between two different orders of society became visible.

The conflict until now hidden in the meta-communications becomes the central topic on the level of content. This means that for the first time in history there's an actual possibility to solve something.

It's certainly nothing new to say that in Bolivia two incompatible sides confront each other (see Farah and Vasapollo 2011, e.g.). But the analysis of each system's communications offers the advantage to discuss the topic without having to recur to individual identities. Obviously, whether or not one identifies with one of the rural, native, indigenous nations is an individual decision in which no one but the involved person has any right to an opinion. There can be no objective criteria for subjective, individual identities. As a consequence, the category of *persons self-identified as indigenous* is not very useful for a scientific analysis.

The perspective that I offer here with its focus on communication allows us to describe more precisely the fundamental conflict between two different orders of society that exist in Bolivia side by side, because it focuses on the code of communication and not on the people. It would be difficult to find today in Bolivia people who exclusively use collaborative practice, because collaborative practice is not identical with the people that identify themselves as Guaraní. Collaborative practice constitutes itself in the moment where those (or other) people search for consent in the assembly or practice their justice. Collaborative practice exists in a parallel manner to the order of law and politics because people have the capacity to communicate in different ways in different moments.

And, as we will see now, this perspective also allows us to approach the central question: What could a dialogue between those two orders of society look like?

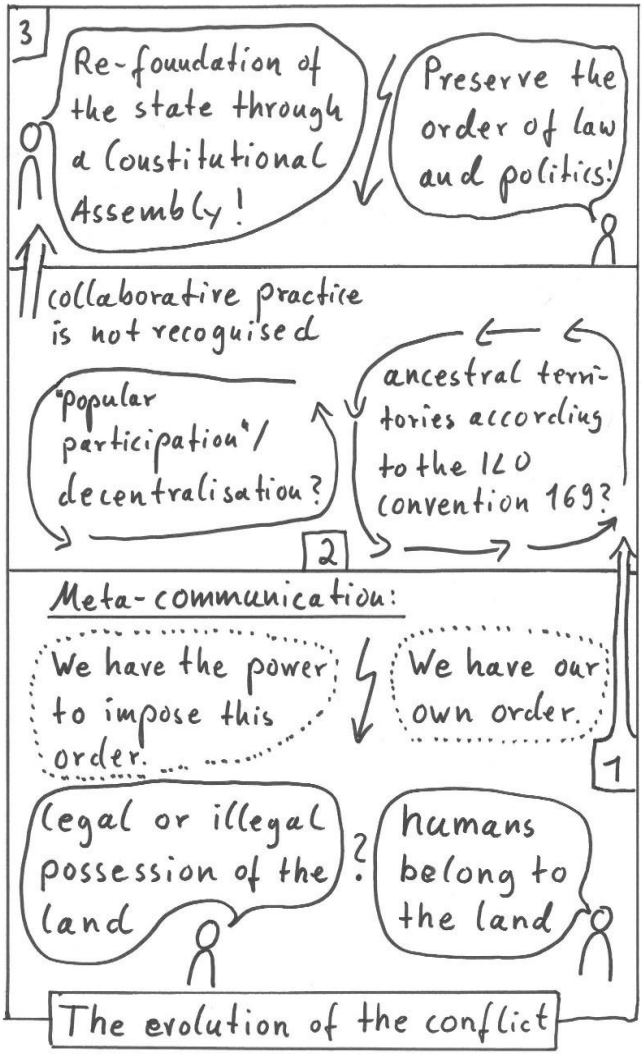

Illustration no. 4: The illustration shows how the conflict moves from the level of meta-communication towards a direct expression. Drawing by Verena Frey, based on the description of the history of indigenous marches by Valencia and Égido.

The concept of dialogue

The term dialogue has been used in innumerable occasions and contexts, to an extent where it seems to apply to any communication process that has no other name, provided that it is a long and complicated process with several participants and diverging opinions. For this reason, I would like to start by clarifying what kind of quality a dialogue process needs to have. I will refer to a model called "democratic dialogue" that has been developed by professionals and evaluated in a number of experiences (Pruitt and Thomas 2007: 188 et seqq.). The term itself seems to generate confusion, because the notion of "democratic" in our understanding is usually linked to the order of law and politics. Nevertheless, as I will show, this type of dialogue aims at consensus, not majorities and is precisely designed to make assumptions visible and question them, which is why I believe it to be an apt method for a dialogue between orders of society.

Democratic dialogue is understood as a communication process that goes beyond the exchange of opinions or the negotiation of positions. Rather, the idea is to reflect one's own identities, values and prejudices as well as the identities, values and prejudices of the other side, with the goal to change the relationships between people in a fundamental way. Democratic dialogue aims at a change in the participants themselves. It aspires to give rise to new problem solving capacities through active and profound listening (Pruitt and Thomas 2007: 23). The goal is for the transformation to be reflected on the individual, the personal and the collective level. Dialogue processes can revolve around the most diverse topics, even legislative processes can be designed as dialogue processes. In this case, the transformation does not only reach the personal, interpersonal and collective level, it can also reach the structural level.

The handbook of democratic dialogue identifies five basic principles of dialogue: inclusiveness, joint ownership, learning, humanity and a long-term perspective (Pruitt and Thomas 2007: 26 et seqq.).

Inclusiveness requires that all involved parties participate in the dialogue process (Pruitt and Thomas 2007: 26). If one or more of the involved parties remain excluded from the dialogue, there's a risk that those parties might sabotage the process. Additionally, conditions that permit everybody's equal and full participation need to be established. This refers to simple things like

the need for translations for people who speak different languages, so that everyone can express themselves in their own language or the fact that participation should not be subject to economic conditions like the cost of transport to the place of the dialogue. But the principle of inclusiveness can also pose more complex problems, especially if there's a need for some kind of representation. In principle, a dialogue as an individual learning process can only have effects on and between the participants. But if a group wants to be represented by people who do not take decisions in the name of the group, but who bring the dialogue to the group by facilitating the flow of information and the search for consensus, the structure of the dialogue process needs to respect that practice in a way that decisions can only be taken once those representatives had a chance to communicate with their respective groups and reach a consensus.

The principle of *joint ownership* requires that through the dialogue all the participants come to co-own the object of the dialogue with the same rights and obligations on all sides (Pruitt and Thomas 2007: 28). This principle relates to the participant's motivation: In a dialogue, the participants meet other people who are strangers or with whom they may even have had a conflictual history that has activated negative emotions. The goal of the process is that participants question also their own actions and attitudes and learn something. This is not easy and it needs a strong incentive: Something important needs to be at stake and the participants need to be able to trust that they can't be deprived of this important thing arbitrarily by the others. That's why dialogue can't just be a consultation process in which one side has the liberty to accept or reject the results. Equally, the dialogue can only revolve around topics on which the participants have decision making power. The object of the dialogue needs to be at the group´s common disposal and shared equally between all of them. Since dialogue is a process, the necessity for joint ownership also extends to the dialogue process itself: Only if every step of the process is co-designed by the participants together can they be certain that nobody will suddenly acquire exclusive power over the object of the dialogue through procedural tricks. Opening oneself to new perspectives is only possible at a person's individual pace.

The goal of a democratic dialogue is an individual *learning* process, in which the participants reflect on their own attitudes, prejudices and behavioral patterns. (Pruitt and Thomas 2007: 29 et seqq.). This learning is always

individual and can't be forced from the outside. It's a voluntary opening of one's own mind.

The principle of *humanity* implies that the participants develop empathy for each other during the process and this is only possible through authenticity (Pruitt and Thomas 2007: 30). In the dialogue, conversations should always be focused on the things that truly matter and at a profound understanding of the other side's point of view.

The *long-term perspective* refers to two things: One aspect is that dialogue processes take the time that they take (Pruitt and Thomas 2007: 31). The above described learning processes don't happen overnight. As a second aspect, it's advisable to select a topic for the dialogue that has a long-term perspective. (Pruitt and Thomas 2007: 32). Topics referring to current political debate always carry the risk that people are more on the lookout for a specific immediate advantage. In the long-term perspective, things often look completely differently.

I believe that the dialogue between different orders of society that Tully proposed needs to have this quality, meaning it should comply with these five principles. This kind of dialogue can only take place under certain **structural conditions**, which allow for inclusiveness and joint ownership. As I'm going to show in the next chapter, in the Bolivian context these structural conditions for a true dialogue between different forms of society have been formulated quite precisely in the Pact of Unity's proposal for a constitution.

The Pact of Unity's proposal for a constitution as an attempt to create the conditions for a dialogue

The Pact of Unity was formed in 2003, as a collaboration between the most important organizations that identify themselves as rural, native or indigenous in Bolivia with the goal of promoting the constitution making process and developing a consolidated position regarding the constitution (Pacto de Unidad 2010: 35). The pact is not an organization itself, it's more a process and a forum created for a specific purpose. As part of this collaboration, two different documents were prepared and presented (Pacto de Unidad 2010: 144 et seqq.).

The first document was presented to the recently formed Constitutional Assembly in August 2006. It contains basic principles and fundamental considerations regarding the concept of a Plurinational State (Pacto de Unidad

2010: 143). The second document was presented in May 2007 and has the form of a complete constitutional text for a Plurinational State, based on the principles detailed in the first document (Pacto de Unidad 2010: 167).

From the start I would like to emphasize that in my perspective, the Pact of Unity's proposal served a double purpose. On one hand there was a need to make good use of the occasion and give a shape to the new constitution, meaning that there was an immediate need for a new structure of the state and that is one of the objectives of the document: re-shaping the state immediately. At the same time it soon became obvious that in this particular constitution making process, in the middle of many different and hard political fights (for details see for example Zuazo Oblitas and Quiroga San Martín 2011), the necessary conditions for a true dialogue were not given and also that a communicative dysfunction of centuries would probably not be overcome in two years (remember the long-term perspective). This is why I believe that the proposal also had the objective to establish the basic conditions for a process that could – in time – come to a solution of the above described conflict. This is why I would like to focus on how the structure of the state proposed by the Pact of Unity would for the first time have created the conditions for a true dialogue between different orders of society in Bolivia.

Already in the first document, the central demand was the Plurinational State[7]. What did that mean? In the Pact of Unity's proposal it's a decentralized state that consists mainly of a number of local units, some of them long-known, like the municipalities, some of them completely new like the local or regional autonomies of rural, native, indigenous nations or of the Afro-Bolivian or intercultural communities (art 146.).

But what did indigenous autonomy mean for the Pact of Unity? The goal of indigenous autonomy was to *"break the verticality of the current state, its power structure, and allow for the construction of a new state from 'below', from the base"* (Pacto de Unidad 2010: 151). Thereby it becomes explicit that indigenous autonomy does neither mean just a form of self-governance within the western state model, nor does it mean autonomy in the sense of sovereignty or independence. Rather, indigenous autonomy was supposed to be the nucleus of the new state on the local level, together with the other local units, where the

[7] Since 2009, the official name of the country is Plurinational State of Bolivia. The name was adopted, the original concept behind it, though, only in very small parts.

important aspects of life would be decided and the decisions implemented. Indigenous autonomy was supposed to be installed either in a municipality or a certain territory (and formal ownership of the land was explicitly not a precondition for an autonomous territory, see art. 201 of the proposal) and – just like the municipalities and the other local units, indigenous autonomy was supposed to have all the basic administrative competences. This included administration of justice, education, health, identity documents and many more (art. 148).

The intercultural and Afro-Bolivian communities were supposed to have similar rights and competences. The central state, in turn, was supposed to have competences in the areas of customs, currency, armed forces and such (art. 140). In the areas of health and education, the goal was a cooperation between the central state and the local units (art. 141).

From a legal point of view, it´s striking that the legislative competence was supposed to reside exclusively in the central state, indigenous autonomy only had a competence for administrative regulation (art. 143). But a closer look reveals that the relationship between the central state and the indigenous autonomy was strongly marked by the fact that the indigenous autonomy was supposed to administrate indigenous justice as defined in art. 102, that is to say it would administrate justice in any event and any area of competence for all its members.

This means that although the central state was supposed to retain the exclusive legislative competence, only indigenous justice could judge the legality of any administrative decision of the indigenous autonomy. Conflicts about competences and their limits were supposed to be resolved in common mixed entities with the participation of both types of justice and ultimately by the Constitutional Court (art. 112), which by its composition was equally supposed to be a mixed entity, since three of the seven judges were supposed to be elected directly by the indigenous representatives in the Plurinational Assembly (art. 111).

In sum, in the Pact of Unity's proposal, the Plurinational State was a state composed of local units that could each practice entirely their respective forms of communication and decision making. The central state would continue to make laws (exclusively) but it wouldn't be able to impose the implementation

of those laws in the indigenous autonomies. Any conflict that arose would be solved in some common mixed entity.

On the other hand, the indigenous autonomy was also supposed to actively contribute to the construction of the Plurinational State as a whole. Let's have a look at how the indigenous autonomies were supposed to participate in the states' decisions.

According to the Pact of Unity's proposal, the legislative authority, called the Plurinational Assembly should consist of 70 direct representatives of the indigenous nations and intercultural and Afro-Bolivian autonomies (art. 58) who should be designated according to their respective customs. Additionally, 70 representatives would be elected as direct candidates[8] in their respective constituencies and a total of 27 direct candidates would be elected in the departments[9].

It's particularly the fact that the assembly was supposed to consist of 70 indigenous representatives and 70 plus 27 direct candidates elected in their constituencies, in a precarious balance of power, that makes the Pact of Unity's proposal seem not only to be an immediate "solution", but also an attempt to start a long-term dialogue and establish through the constitution the basic conditions under which the principles of inclusiveness, joint ownership, learning, humanity and long-term perspective could be implemented.

This Plurinational Assembly offers the conditions for an encounter of two different forms of society. In all issues concerning the indigenous autonomies it would have to discuss and achieve agreements, because the Plurinational Assembly's decisions could not be implemented forcefully in the indigenous autonomies, due to their administrative authority and the full independence of indigenous justice. It wouldn't be enough to somehow reach a majority. A real agreement would be required, based on the understanding of necessities and possible benefits. Both sides would really have to listen to each other, for the first time in their history.

[8] The idea was to directly elect individual candidates instead of giving votes to parties and their list of candidates.

[9] Bolivia is geographically divided into nine departments.

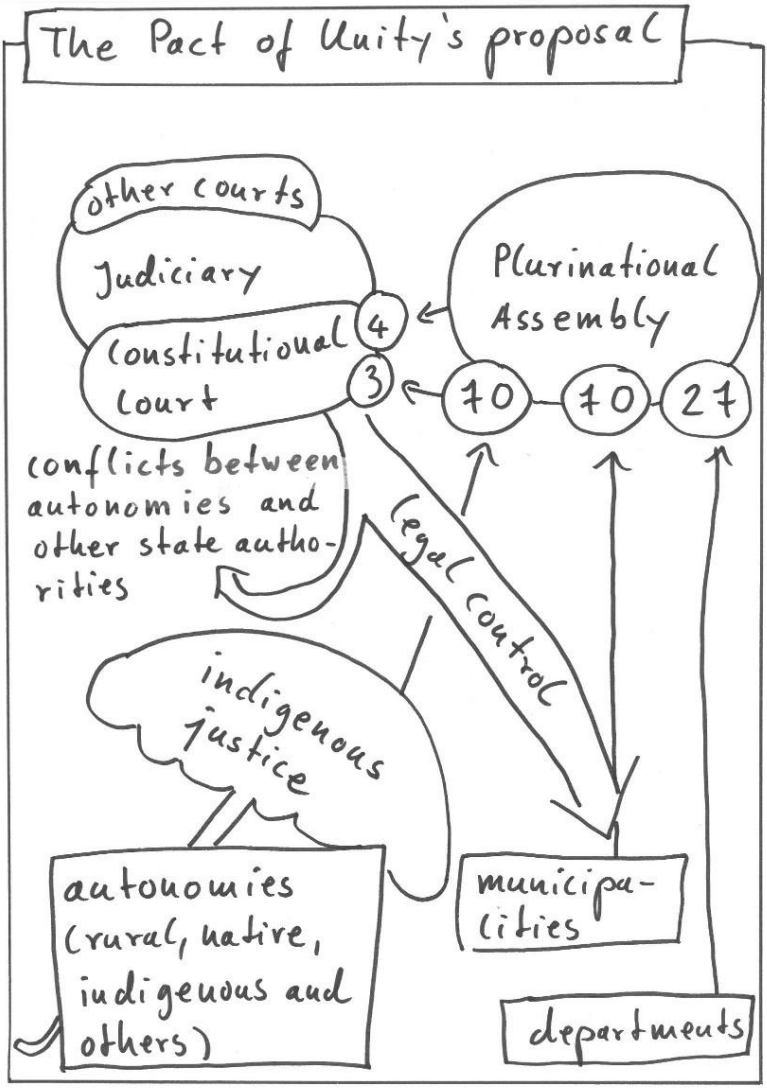

Illustration no. 5: The illustration shows the central organs of the Plurinational State as proposed by the Pact of Unity, their respective relationships with each other, their composition and the role of the indigenous autonomies. Drawing by Verena Frey, based on the pact of Unity´s proposal

Regarding the dialogue principles we can assert the following: The principle of *inclusiveness* would be guaranteed on one hand through the number of representatives that each social system would send to the Assembly. At the same time, the code of communication would have to change between collaborative practice (in all aspects that affect the indigenous autonomies) and the practice of decision making through political majority, in all aspects that are under the authority of the central state. The Plurinational Assembly would practice both types of communication, according to the occasion and this would quite probably generate some learning on all sides. *Joint ownership* would be guaranteed because no side could impose itself on the other.

The principle of *joint ownership* illustrates very strongly Tully's criticism that constitutions that are based on liberty, equality and sovereignty are unable to include cultural diversity in an adequate way, since they aim at subordination and assimilation. Tully emphasizes the importance of the recognition of diversity in the constitutional dialogue (Tully 1995: 23) and shows that one of the basic assumptions of modern constitutionalism is the idea that individuals who did not yet form any kind of society previously come to an agreement on society through the constitution. This denies the possibility that there could be groups that have already been constituted as societies in a different way before (Tully 1995: 58 et seqq.).

If such a previously formed society does exist and if it does not organize its cohesion on the base of individual rights and political majorities, then it can't participate in any real dialogue *within the order of law and politics*, because what's at stake, the very principles of organization of society, are presupposed and never discussed. In the kind of Plurinational Assembly projected by the Pact of Unity, on the other hand, the form of communication and decision making itself would have to be discussed in each case and the participants would have to decide on it together, as required by the principle of *joint ownership*. The proposed structure of the Assembly makes the discussion about the order of society as a common project possible and necessary. The recognition of diversity is only possible under the condition that no side has the power to impose itself on the other. From this perspective, the power balance of the Plurinational Assembly that might appear precarious, is not a defect but rather an important condition for the dialogue. Creating a new constitutional order with the goal to *start* a dialogue obviously takes the principle of *long-term perspective* very seriously.

Inclusiveness and joint ownership are the dialogue principles that most strongly depend on the structural conditions, more specifically on the balance of power. The Pact of Unity's proposal describes the structural conditions under which a dialogue between collaborative practice and the order of law and politics would be possible. The implementation of the principles of learning and humanity in a dialogue process depend more on the participating individuals and the dynamics of the process.

Since the Pact of Unity's proposal has not (yet) been implemented in reality, the implementation of the principles of learning and humanity can't be verified. But it seems likely that the Plurinational Assembly as projected by the Pact's proposal, would have been a place for learning about collaborative practice and maybe also about the efficiency of majority decisions, with regard to the discussion time as well as the swiftness of their implementation and, first and foremost, the members of the Plurinational Assembly would have been able to question their own communication practices and preferences.

As mentioned above, the actually existing Constitution of the Plurinational State of Bolivia has a number of important shortcomings with regard to the Pact of Unity's proposal: With only seven representatives of indigenous nations in the actually existing Plurinational Assembly, nobody needs to make any effort to enter into a dialogue with them. A rural, native, indigenous autonomy exists in the 2009 constitution, but the concept has some important differences to the Pact of Unity's proposal. Establishing an indigenous autonomy is subject to several strict limitations. In can only be established in ancestral territories (art. 290), groups that migrate lose the right to an autonomy. Additionally, the term territory implies a territory that's been legally assigned and titled accordingly by the INRA[10] while at the same time the aspired re-distribution of territories is complicated by the fact that the limitations of the latifundium set in the constitution only apply to future latifundiums, not to already acquired ones (art. 399). The Law of Delimitation of Territorial Units that entered into force in February 2013, establishes in its art. 6 the principle of territorial continuity. More than half of the indigenous territories in the Bolivian Lowlands do not have this continuity, they consist of many unconnected small pieces of land assigned to indigenous communities, resembling rag rugs, and for this reason

[10] *Instituto Nacional de la Reforma Agraria*, Bolivian authority for land titles.

it's legally impossible to establish an indigenous autonomy in them (Colque and Chumacero R. 2011: 108).

Indigenous justice is recognized in the 2009 constitution but its competences were seriously limited by the Law of Jurisdictional Boundaries that came into effect in December 2010. The area of competence of indigenous justice is limited to issues between indigenous persons, inside an indigenous territory that have traditionally been solved by their customary justice. As a result, all acts and decisions of an indigenous autonomy are completely subject to the state's laws and jurisdiction, the indigenous self-governments need to comply with all norms of public administration. But the fact that it wasn´t implemented doesn´t diminish the transformative potential of the proposal. It´s worthy of being remembered, analyzed and re-discussed.

And history did not stop with the approval of the constitution in 2009. In the last chapter I would like to have a look at a constitutional dialogue that was attempted on the occasion of the transformation of the municipality of Huacaya to a rural native indigenous municipality.

The Huacaya Process

Huacaya is a rural municipality in the department of Chuquisaca, in the Chaco region. According to the 2012 census, Huacaya has 2426 inhabitants (Aruchari and Ledezma 2013: 1) and 65.9 % of the population identify themselves as part of the Guaraní nation (Albó 2012: 238).

One interesting aspect of the process in Huacaya is the fact that since the so-called "law of popular participation" (decentralization), several persons who identify themselves as Guaraní played important roles in the administration and politics of the municipality (Caballero 2011: 24), that is to says that they administrated political power and the regulatory and executive powers of the municipality. For this reason, in the process of conversion of the municipality into an indigenous autonomy, it was necessary to establish a dialogue between collaborative practice and the order of law and politics not only between Guaraní and *karai* (Guaraní term for non-Guaraní persons) but also between people self-identified as indigenous on both sides.

The 2009 constitution opened the possibility to convert municipalities into a rural, native, indigenous autonomy by way of a referendum (art. 294).

In December 2009, a referendum for the conversion of Huacaya to an indigenous autonomy was held and 53.66% of the votes were in favor of the conversion (Aruchari and Ledezma 2013: 2). As a result, a constituent assembly was formed in 2010 with the mandate to elaborate a proposal for a statute of the indigenous autonomy. The constituent assembly finished and approved the statue in 2013 (ibid).

Nevertheless, in the referendum about the proposed statute in 2017, the proposal was not approved by the electorate, 41.4 % of the votes were in favor of the statute, 58.6 % against it[11]. Given that I left Bolivia in 2014, I'm not in a position to supply a detailed analysis of the events of 2017 and I prefer not to speculate about the motives of the rejection of the statute, but I can provide several statistic facts that shed a bit of light on the events. In 2009, the electoral register of Huacaya had a total of 737 voters[12]. In 2017, almost twice that number (1.471 voters[13]) were registered. This increase seems even more surprising if we take into account that according to official census data, the number of inhabitants of Huacaya remained relatively stable between 2001 and 2012, with only 80 persons more registered in the census of 2012 than there were in 2001 (Aruchari and Ledezma 2013: 1)[14].

Caballero mentions that the electoral register normally increases by 20 to 60 people from one election to the next (Caballero 2011: 71). I do not know the reasons for the dramatic rise of the number of voters before the referendum in 2017, but we can certainly conclude that approximately half of the electorate that rejected the statute in 2017 was not present in Huacaya during the elaboration of the proposal which was finished in 2013. This is an important point, because in this chapter I would like to explain the work and process of the constituent assembly of Huacaya and I would like to analyze its quality as to whether the process was a dialogue and complied with the principles mentioned above. Obviously, a dialogue process can only create consensus between the actual participants. The fact that the proposal was rejected four

[11] https://www.oep.org.bo/wp-content/uploads/2017/07/resultados_reaco_2017.pdf

[12] http://eju.tv/index_files/1/ACTADECOMPUTONACIONALGENERALES2009.pdf

[13] https://boliviadecide.blogspot.com/2017/07/referendum-autonomico-2017-recintos.html

[14] The fairly big difference between inhabitants and voters can be explained by an age pyramid that is typical for rural Bolivia where it's not unusual that two thirds of the inhabitants are under 18.

years later by an electorate of which only half the voters had been part of the process of elaboration does not constitute any indication against the process being a dialogue process.

In sum, the conversion of Huacaya to an indigenous autonomy is as yet unfinished. But in spite of the failure in 2017, the mandate given in 2009 to elaborate a statute for an indigenous autonomy is still valid, which is why it was decided to create a new constituent assembly and pick up the process again[15].

The work of the constituent assembly has been documented by Aruchari and Ledezma (Aruchari and Ledezma 2013). In 2014, with support from Daniel Vacaflores and Heidy Aruchari I undertook an investigation in which 19 persons from Huacaya were interviewed. Among the interviewed persons were men, women, young and elderly, some members of the constituent assembly, some members of the municipal council, there were people among them who identified themselves as Guaraní and others who didn't (Frey 2017: 133). In sum, the interviews back up the hypothesis that I had formed based on the documentation done by Ledezma and Aruchari, that the work of the constituent assembly respected the five principles of democratic dialogue, that it was a true dialogue process, as I will show in the following paragraphs.

Inclusiveness

The constituent assembly of Huacaya was formed by one or two representatives of each local community (depending on the number of community members). The members of the constituent assembly were predominantly women (54 %) and 68 % self-identified as Guaraní (Aruchari and Ledezma 2013: 11). The young generation had their own representatives, as well as the elderly (Aruchari and Ledezma 2013: 8).

In the interviews, several people confirmed that both languages were spoken in the constituent assembly (Guaraní and Spanish), according to personal preference, and that everything was translated. This is based on a common practice of the local communities that habitually use and translate between both languages in their assemblies.

[15] http://fuentedirecta.oep.org.bo/noticia/huacaya-retoma-el-debate-de-su-autonomia-indigena/

Having a formal education was not a precondition for being a member of the constituent assembly, the statute was supposed to be *"easy to understand, should be short, should correspond to our reality"* (Aruchari and Ledezma 2013: 17). The sessions of the Assembly were public and *"any person that inhabits the territory of the municipality of Huacaya can be present, propose and make suggestions"* in those sessions (art. 13 of the "reglamento de funcionamiento", code of procedure). To achieve this, the place of the sessions rotated from community to community. As a result, the question of transport became a fundamental issue[16]. The members of the Constituent Assembly that were interviewed confirmed that transport to the respective place of the sessions was always organized for them.

Joint Ownership

From the beginning, there was a strong commitment to consensus: To become a member of the Constituent Assembly, it was not sufficient to be nominated as such by one's own community. The *procedimiento de constitución* (rules for the formation) of the Assembly established that each and every nominated candidate needed to be confirmed by all the delegates present in the Suprazonal Assembly in which the constituent assembly was formed (Aruchari y Ledezma 2013: 11).

The same rules established in their art. 20 that the *Asamblea Interzonal* (Suprazonal Assembly) had to approve the project before the final voting established in art. 53 of the Legal Framework for the Autonomies ("Ley Marco de Autonomías") where two thirds of the votes of the assembly members would have been sufficient to adopt the proposal. According to the process documentation, this need for prior approval was "*the key factor […], so that the statute really contained the mandate of the communities"* (Aruchari y Ledezma 2013: 16). The Suprazonal Assembly is the assembly of leading personalities and delegates from all communities, Guaraní and non-Guaraní in Huacaya.

This is how conditions were established to ensure joint ownership. There was an obvious need for a consensus, since the majority in the 2009 referendum had not been very big and everybody was aware that the statute needed to pass

[16] In rural Bolivia, not every family owns a car and while collective transport is usually available between larger settlements, reaching smaller or more remote communities can be complicated.

another referendum. Also, the fact that the Suprazonal Assembly had to approve the statute proposal increased the pressure towards a common consensus solution.

Learning and Humanity

The process documentation states explicitly that *"any type of confrontation or discrimination because of identities was eliminated and things moved on towards teaching and learning in each of the sessions, with 'knowledge baths' and a political practice that was different from what had been known until then, promoted by the those members of the Assembly that were Arakuaiyareta (carriers of knowledge or wise persons). They spoke of altruism, respect, unity to overcome the difficulties. And somehow the Guaraní-Karai-thing was dissolved in that collective learning."* (Aruchari y Ledezma 62013: 21)

In the interviews several people confirmed that they had experienced personal learning in the process, like the art of listening, respecting the other's opinion and finding consensus.

Long-term perspective

The process in which the constituent assembly elaborated the proposal took two and a half years and is being taken up again now. People take the time that's necessary. During the interview, Heidy Aruchari confirmed that the different sides in the process came closer to each other because of the fundamental and long-term topics, like poverty, health and education. She also commented that the *arakuaiyareta* (wise persons) slowed down the process on purpose, saying that they should walk instead of run, so if they fell along the way, the impact wouldn't be so hard.

The process of the constituent assembly in Huacaya respected and implemented the dialogue principles. I don't want to hide that there were difficulties, too. In the interviews, in addition to the perception of a consensus-oriented process, also a perception was voiced of having been defeated by a majority. Specifically, this related to the question of the two executives. The background of this is an old conflict between the two zones that Huacaya consists of, which couldn't be solved in the process, which is why it was decided to have two executives, one for each zone. I would like to add that towards the end the process was complicated by several factors, one of them being the

criminal proceedings against the former Mayor and now member of the constituent assembly José García (Aruchari and Ledezma 2013: 43), an occurrence that left the work practically paralyzed. In this sense I assume that the approval of the statute *"with an ample majority"* (Aruchari y Ledezma 2013: 2) which one of the interviewed persons described as having been defeated by majority might also just have been an attempt to save the current status of the process in a moment were it was no longer possible to continue with the dialogue.

The proposal for the statute of Huacaya

As mentioned above, the statute has not yet entered into force[17]. Nevertheless it's worth having a look at the proposal and see how the indigenous autonomy of Huacaya was going to be structured according to the statute approved by the constituent assembly in 2013.

The ultimate decision making instance was supposed to be the Suprazonal Assembly (art. 36). This assembly was meant to be composed of delegated persons from all communities of both zones of the municipality, Santa Rosa and Huacaya (art. 37 (1)). It was supposed to meet three times a year an whenever necessary (art. 40 and 41). The Suprazonal Assembly would approve the yearly planning and the projects and could revoke the mandate of any representative of the municipality by a common decision with the corresponding Zonal Assembly (art. 38 and art. 78).

In addition to this, the indigenous autonomy was going to have a Legislative Assembly, which is supposed to implement the Suprazonal Assembly's decisions in the form of municipal laws and regulations (art. 48 et seqq.). The Legislative Assembly was supposed to be conformed of 8 persons, four men and four women, two from each zone who would have been elected in their Zonal Assemblies. It's interesting to see how this structure intends to separate the decision making from the formulation of the law. I assume the motive is the following: Inside the narrow framework of the municipal system in Bolivia there's a need for skilled people who can give a legally valid form to the Suprazonal Assembly's decisions. But in Huacaya, the idea was to avoid that those people also take the actual decision and for this reason the decision

[17] According to my knowledge in November 2019.

is taken in the Suprazonal Assembly and the Legislative Assembly is merely a permanent committee that translates the Suprazonal Assembly's decision to laws.

Aruchari and Ledezma emphasize that also in the process of elaborating the statute proposal, lawyers only participated in the last phase, when the fundamental decisions had already been agreed on (Aruchari and Ledezma 2013: 18).

The statute proposal also contains an executive instance, consisting of two persons, one from each zone, who have a technical and administrative team each. The background of this, as mentioned above, is an old conflict between both zones, Huacaya and Santa Rosa. Since it could not be solved in the process of elaborating the statute, the two executives were going to have to solve it together in their everyday work.

The indigenous justice had to remain limited to what was already established in the Law of Jurisdictional Boundaries. Indigenous justice would be practiced in the assemblies at community, zonal and suprazonal level (art 68). In addition to that, justice authorities were going to be elected with the task to invite parties in conflict to a mediation, but mostly they were supposed to represent the indigenous justice in case of conflict with other jurisdictions and were meant to be in charge of the coordination with other instances of the states' justice system (art. 67).

The proposal for a statute for Huacaya is an interesting document that shows one way of practicing collaborative practice on the local level inside the narrow framework of the municipal system in the order of law and politics. Decisions would be taken in the communication code of collaborative practice in the Suprazonal Assembly which has a permanent committee in charge of translating decisions to laws and regulations that are compatible with national legislation and an executive body in charge of executing those decisions. All mandates are revocable at any moment (chapter 9 of the statute). I believe that those conditions are a strong incentive for a future dialogue and the search for consensus between those people that form the Suprazonal Assembly, the Legislative Assembly and the Executive body.

The statute proposal was presented to the Constitutional Court which rejected 25 of its articles (mostly for formal reasons) in a ruling on 25th September 2014. As a result, the proposal document was revised and presented

again. On 19th December 2014 the Court confirmed that the statute was constitutional. Since the process was taken up again, modifications might still be made and may have to be submitted to the Constitutional Court once more.

Conclusions

As I pointed out, there's an impressive abundance of ideas and practices in Bolivia for a dialogue or a constitution making process in the spirit of Haida Gwaii, as Tully calls it. An important reference is the proposal for a constitution elaborated by the Pact of Unity. This proposal makes explicit which structural conditions are necessary in order to implement the dialogue principles of inclusiveness and joint ownership in a true dialogue between the order of law and politics and collaborative practice.

In the Bolivian Chaco, maybe we need to call it a dialogue in the spirit of Tentayapi ("the last home", a place where still many of the Guaraní practices are preserved) or a dialogue in the spirit of ñandereko ("our way of being" in Guaraní). Because that´s where brave and indefatigable people are making use of the limited possibilities offered by the 2009 constitution to continue practicing and searching for ways to establish a dialogue between different social orders.

I spent 6 years in the Bolivian Chaco, as a dialogue facilitator and peace and conflict advisor in local organizations, sponsored by international cooperation organizations. My personal motivation for this research was the question: "What can third parties do to support dialogue processes?" One of my key takeaways in this regards is the fact that a dialogue always takes up speed and energy through local actors. It´s usually local key persons who are well connected and respected who play a decisive role in dialogue processes. As a third party it´s possible to support local actors in their dialogue processes, if you respect the above mentioned dialogue principles.

If you support with resources, for example, the conditions of your financial support should be more oriented towards the quality of the process than towards expected results. Your form of support needs to respect the dynamics of the process.

It´s also possible to assist through experts who support the process, but only if you have sufficient and constant physical presence on the local level, because dialogue is never limited to formal meetings. People communicate and interact

continuously and develop the dialogue further, outside of formal encounters. If you want to support, you first need to gain people´s trust which you can only do by sharing their lives and reality to some extent. And then, in order to support the dialogue, you need to constantly observe the changes and communications and understand the dynamic of the process.

An obvious conclusion derives from all this: It´s always the best and most efficient to start your transformative dialogue at your own home and in your own community. By pointing this out, I don´t want to downplay the impact my colleagues in the international cooperation and particularly the Civil Peace Service can have when they support dialogue processes in other countries. We have seen in our work that third parties can inspire and stimulate the start of a dialogue process or can help to re-animate it when it´s stuck.

What's left for me is to beg pardon for having occupied the experiences of the Guaraní nation with my occidental theories and concepts. I'm aware that the persons involved have other names and concepts for the process and its principles, such as *yeyora* (liberty), *mboroau* (altruism) and *piaguasu* (being patient), for example. But I had to explore the topic from my perspective and I hope that my learning might be useful to other persons with a similar background for understanding the historical processes in Bolivia, on the national level as well as on the local level in places like Huacaya. *Yasurupay tuicha* (many thanks) to all the people who have allowed me to explore a little bit the social practices in the Guaraní communities in the Bolivian Chaco.

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