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INDIGENOUS INTRACULTURAL, INTERCULTURAL AND PLURILINGUAL EDUCATION IN BOLIVIA.

AN ANALYSIS OF ITS IMPLEMENTATION.

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Abstract

Like the rest of Latin American states, Bolivia's colonial history was marked by the mainstream society domination, assimilation and cultural eradication, which forced indigenous peoples to resist and claim their rights.

One of these is the right to education, which is an economic, social and cultural right, enshrined in several international legal instruments Bolivia has ratified or accessed. Like all human beings, indigenous peoples enjoy this fundamental right but the specific indigenous context must be taken into account when ensuring its enjoyment.

The purpose of this thesis is to analyse Bolivia's compliance with its international treaties obligations regarding the availability, accessibility, acceptability and adaptability of the right to education, through the evaluation of the "structure, process and outcome indicators". The struggle of indigenous movements and the evolution of the political and educational contexts led to the establishment of an intracultural, intercultural and plurilingual education, aimed to be consistent with the cultural diversity of the country. Our analysis demonstrates that, although Bolivia recognises and protects legally the right to education and makes efforts to ensure this through several action plans and programs, the reality of education on the ground seems to be still far from the state's international obligations.

Table of acronyms

ACHR	American Convention on Human Rights
ADRDM	American Declaration of the Rights and Duties of the Man
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CEPOs	Consejos Educativos de los Pueblos Originarios
CESCR	Committee on Economic, Social and Cultural Rights
CRC	Convention on the Rights of the Child
CRCtee	Committee on the Rights of the Child
ESFM	Escuelas Superiores de Formación de Maestros
HRC	Human Rights Council
IACHR	Interamerican Commission on Human Rights
IACtHR	Interamerican Court of Human Rights
IBE	Intercultural bilingual education
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
ICESRC	International Covenant on Economic, Social and Cultural Rights
ICCPR	International Covenant on Civil and Political Rights
ILO	International Labour Organisation
INE	Instituto Nacional de Estadísticas
IPPE	Intracultural, intercultural and plurilingual education
ILV	Instituto Lingüístico de Verano
MAS	Movimiento al Socialismo
NICNP	Native indigenous *campesino* nations and peoples
OHCHR	Office of the High Commissioner for Human Rights
OPCE	Observatorio Plurinacional de la Calidad Educativa

UDHR	Universal Declaration of Human Rights
UIS	UNESCO Institute for Statistics
UN	United Nations
UNDRIP	United Nations Declaration on the Rights of Indigenous Peoples
UPR	Universal Periodic Review

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I. Introduction

A. History

The issue of indigenous peoples in Latin America arose with the European discovery of overseas population in the XV-XVIth century. The invading powers proclaimed unilaterally their right to conquer the territory and to appropriate lands, natural resources and assets. Colonisation was a new era of persecution, oppression, destruction and terror and had different forms, such as "civilisation", physical elimination, evangelisation and exploitation of indigenous peoples.

The relation between national states (as a result of the dismemberment of old colonial empires) and indigenous peoples had the colonial imprint of domination and subordination. "Historically, the vision of these communities has been focused on a perception of delay, hindrance and obstacle to the development of civilization, based almost exclusively in terms of economic interest"[1]. Considered as "savages" or "barbarians", indigenous peoples had to be guided towards civilisation and development, by the eradication of their identity and culture. However, the reality showed "an increasing dispossession of lands, the exploitation of indigenous labour, the destruction of the environment and the appropriation of economical resources"[2]. The aggravation of indigenous life conditions, the discrimination and the violation of their rights resulted notably in increasing poverty, malnutrition and diseases, racism, social and political marginalisation, ethnic violence and disintegration of traditional communities and concomitant emigration to poor areas. Additionally, "the destruction of what indigenous peoples had built for hundreds of years and the incorporation of social, juridical, political, religious institutions, alien to their thinking and worldview"[3] was part of the broader social, economical, political and cultural/identity destruction of indigenous peoples and their assimilation to the mainstream society.

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[1] Texts originally in Spanish are the author's translation. GONZÁLEZ PAZOS, 2006, p. 208.
[2] STAVENHAGEN, 2006, p. 22.
[3] BA TIUL, 2006, p. 570.

B. Indigenous resistance and movements

The indigenous culture was (is) considered an obstacle to the assimiliationist purposes of the hegemonic society. From the perspective of asymmetrical power relations with the dominant culture and society, indigenous culture is conceived as a dominated culture. Indigenous peoples started to resist culturally to the cultural hegemony of the mainstream society, which tried "to impose its social project to the rest of the society [… notably through the legitimisation of institutions such as education, language, religion…] by achieving the universal recognition of the hegemonic culture as unique, valid and legitimate"[4]. By strengthening their cultural identity through language, religion and economic activity, as part of their resistance, indigenous peoples were able, to a certain extent, to preserve their culture and to survive.

In the XXth century, the increasing democratisation in Latin America, the international recognition of human rights and the acceleration of globalisation led to the emergence of indigenous movements at national and international levels. Internationally, these movements arose in the 1980's and strengthened especially in 1992 with the sesquicentennial of the "Meeting of two worlds" and the United Nations (UN) proclamation of the First International Decade of the World's Indigenous Peoples (1995-2004).

With their social struggle, indigenous peoples denounced, firstly, the internal colonialism reflected in the interethnic relations with the mainstream society based on power and domination[5]. Secondly, the indigenous movements claimed the respect for their identity, collective particularism and culture in which they are rooted like every human being. In order to fully enjoy their rights, they demanded the recognition of their collective rights, especially the right to self-determination, autonomy and participation in decision-making. In this sense, indigenous peoples claim their "rights to have rights, according to Hannah Arendt"[6], which implies, on one hand, the equality of rights (individualism of human rights) and, on the other hand, the right to difference (being

[4] CABRERA, 1995, p. 90.
[5] STAVENHAGEN, 2013, p. 36.
[6] Idem.

one of the several collective human rights that exist). Thirdly, indigenous movements asked for the promotion of interculturality, that implies the recognition by the mainstream society of the state's cultural diversity and the enrichment of mutual learning.

C. National, regional and international responses to indigenous movements

Without an intention of secession or independence from the state, the indigenous struggle for the respect and promotion of their rights made them progressively visible on the national and international arenas.

Although indigenous peoples had been ignored by newly formed Latin American states in the first half of the XXth century, the eighties and nineties established a new era of legal and constitutional reforms. Some constitutions finally recognised indigenous peoples as part of the nation and as direct political interlocutors; Van Cott calls this "multicultural constitutionalism"[7]. Even though the formal recognition of indigenous peoples and its impact in each legal system is different, "the effect of 'etnification' of constitutional texts meant the end of a long period of [indigenous] invisibility"[8]. Additionally to constitutional recognition, states adopted domestic laws concerning indigenous peoples and the administration of territory and natural resources.

Regionally, neither the American Convention on Human Rights (ACHR)[9], nor the American Declaration of the Rights and Duties of the Man (ADRDM)[10] or other interamerican instruments refer explicitly to indigenous peoples' rights. Therefore, the Interamerican Commission on Human Rights (IACHR) and the Interamerican Court of

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[7] VAN COTT, 2000, p. 257. Additionally, Raquel Irigoyen explains the evolution of pluralist constitutionalism from multicultural constitutionalism (in the eighties) to pluricultural constitutionalism (in the nineties) to, finally, plurinational constitutionalism (XXIth century). IRIGOYEN, 2009, p. 2.
[8] MARTÍ I PUIG, 2011, p. 170.
[9] American Convention on Human Rights (22 November 1969) [hereinafter "ACHR"].
[10] American Declaration of the Rights and Duties of Man, Resolution XX (1948) [hereinafter "ADRDM"].

Human Rights (IACtHR) had to interpret broadly the rights contained in these legal instruments in a way that includes indigenous peoples' rights[11].

Internationally, at the end of the XXth century, we have seen a growing concern on the issue of indigenous peoples and the concomitant adoption of several international legal instruments. "Indigenous peoples' unprecedented political mobilization coincided with an international effort to codify social, economic and cultural rights"[12]. On one hand, the adoption of the ILO Convention nº 169 on Indigenous and Tribal Peoples[13] and the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)[14] led to promote and protect explicitly the rights of indigenous peoples. On the other hand, although they do not refer expressly to indigenous peoples, the International Covenant on Civil and Political Rights (ICCPR)[15], International Covenant on Economic, Social and Cultural Rights (ICESCR)[16] and International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)[17] (at the UN level) and the ACHR and ADRDM (at the interamerican level) have been interpreted by the competent international institutions according to the acceptance that prevails on indigenous peoples' rights. Additionally, indigenous peoples became subjects of new indigenous-specific institutions and programs, such as the United Nations Working Group on Indigenous Peoples (UNWGIP) and the Special Rapporteur on Indigenous Issues.

Furthermore, "the application and the interpretation of international legal instruments in favour of indigenous peoples […] leads to the emergence of a uniformed and generalized consensus on the content of these international norms […] and on common

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[11] RODRÍGUEZ-PIÑERO ROYO, 2011, p. 156.
[12] VAN COTT, 2000, p. 260.
[13] ILO, Convention (nº 169) concerning Indigenous and Tribal Peoples in Independent Countries (27 June 1989) [hereinafter "ILO Convention nº 169"].
[14] UN Doc., United Nations Declaration on the Rights of Indigenous Peoples, General Assembly Resolution A/RES/61/295 (13 September 2007) [hereinafter "UNDRIP"].
[15] UN Doc., International Covenant on Civil and Political Rights, General Assembly Resolution 2200A (XXI) (16 December 1966) [hereinafter "ICCPR"], especially, article 27.
[16] UN Doc., International Covenant on Economic, Social and Cultural Rights, General Assembly 2200A (XXI) (16 December 1966) [hereinafter "ICESCR"].
[17] UN Doc., International Convention on the Elimination of All Forms of Racial Discrimination, A/RES/2106 (XX) (21 December 1965) [hereinafter "ICERD"].

principles on indigenous' rights"[18]. This widely accepted normative core of principles reflects the emerging international customary law on the matter "which impose obligations on states […] independently of the international treaties obligations"[19].

D. Conclusion

In conclusion, because of the national and international response to indigenous movements and their increasing visibility, indigenous peoples became subjects of international law with individual and collective rights. These new non-state actors have managed to participate in and influence decision-making processes, asking for a transformation of the state's relations, and "appear to be gaining recognition as having a unique or *sui generis* status"[20].

Nevertheless, there is an important gap between theory and practice in this issue. Firstly, although they responded rather actively to indigenous struggle for their recognition and rights, states fear for their national sovereignty and territorial integrity and are generally reluctant to recognise indigenous peoples' right to self-determination. In fact, this recognition would imply that the power and territorial control are no longer concentrated in the hands of the State only[21].

Secondly, at this point in time, Latin America lives "in an era of questioning human rights because many states considered them as an obstacle to economic globalization progress and new political-economic contexts"[22]. In fact, the new cultural hegemony, "the neoliberalism, the internationalization of the economy and globalization of economic and cultural process, […], the technological development […and] the competitiveness"[23] do not take into account national characteristics and identities, which illustrates the perpetual civilization and assimilation project of states.

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[18] ANAYA, 2006 (a), p. 53.
[19] Ibid, p. 55.
[20] ANAYA, 2006 (b), p. 119.
[21] APARICIO WILHELMI, 2006, p. 415.
[22] GÓMEZ ISA & BERRAONDO, 2013, p. 10.
[23] CABRERA, 1995, p. 96.

In brief, “it is all a matter of power. However, the focus is different: while the mainstream society focuses on power sharing and its conditions, indigenous peoples, in general, focus on the meaning of power and want to recover their collective and human dimension”[24].

[24] APARICIO WILHELMI, 2006, p. 421.

II. Research question and Methodology

A. Research question

After contextualising the colonial history of Bolivian indigenous peoples and analysing the international and national legal frameworks of their right to education, we will evaluate Bolivia's compliance with its international treaties obligations regarding the right to education. Taking into account Bolivia's educational legal framework, especially the new law on education "Avelino Siñani-Elizardo Pérez" (2010) which establishes an intracultural, intercultural and plurilingual education, this study aims to reveal the state's progresses and obstacles as regards to the availability, accessibility, acceptability and adaptability of the right to education, by using the structure, progress and outcome indicators.

B. Methodology

i. The subject

The right to education is part of my increasing interest on the rights of the child and the importance of education. As I already had the chance to focus on Colombian indigenous peoples in my thesis (at the Université Libre de Bruxelles) on legal pluralism, I decided to deepen my knowledge with a more practical analysis on a specific human right. The reason I have chosen Bolivia is because it inaugurated a new cycle in the so-called "indigenous constitutionalism", which is know as "plurinational constitutionalism". In fact, not only it recognises explicitly indigenous peoples as diverse cultures but also as peoples who enjoy the right to self-determination. By doing so, Bolivia became a plurinational and intercultural state, under the principles of egalitarian legal pluralism[25].

ii. The extent

This thesis concerns Bolivian indigenous peoples's right to education. In the first part, after contextualising the issue of indigenous people in Latin America, by explaining the

[25] IRIGOYEN, 2009, p. 2.

colonisation and assimilation background, the indigenous resistance and movements and the responses to this by national, regional and international communities, we will focus on the theoretical aspect of the right to self-determination, the right to education and intercultural education. In the second part, we will focus on Bolivia's case and analyse, firstly, indigenous peoples' situation in the country and the evolution of the domestic legal framework regarding indigenous education, with a special focus on the two educational reforms and laws in 1994 and 2010. Secondly, for the evaluation of Bolivia's compliance with its obligations towards the right to education (through the "structure-process-outcome" indicators and "4-A" framework), we will focus on primary and secondary education, leaving aside tertiary education, due to its single importance and the limited space of this thesis. We will not distinguish between the three educational systems in Bolivia, namely fiscal (public), private and conventional, except when analysing (only) public teachers training. Finally, as we will not focus on a specific indigenous community or area of the country, mainly because of the impossibility to conduct a field research in Bolivia, our aim is to give a general panorama of the right to education in the country.

iii. Tools of investigation

For the development of this thesis, we had recourse to different tools of investigation depending on the theoretical and on the more practical parts. The theoretical parts result from an analysis of the doctrine (mainly in Spanish) and national, regional and international legal instruments. It also results from Prof. Gunther Dietz's lessons on "Diversity and intercultural education"[26] and several conferences on indigenous issues, namely conferences in the "Encuentro Multidisciplinario sobre Pueblos Indígenas" (EMPI)[27] and that on "Indigenous peoples and natural resources"[28] by the Special Rapporteur on the rights of indigenous peoples at that time, Prof. James Anaya.

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[26] Lessons on "Diversity and intercultural education", as part of the "Master in International Migrations and Social Cohesion" (MISOCO), Deusto University, Bilbao 20-21 May 2014.
[27] V ENCUENTRO MULTIDISCIPLINARIO SOBRE PUEBLOS INDÍGENAS (EMPI), "Movilidades indígenas, derechos e identidades", Instituto de Derechos Humanos Pedro Arrupe and EURAC research, Deusto University, Bilbao 15-16 May 2014.
[28] ANAYA J., "Indigenous peoples and natural resources", DeustoForum and Instituto de Derechos Humanos Pedro Arrupe, Deusto University, Bilbao 29 May 2014.

As regards to the practical evaluation of Bolivia's fulfilment of the right to education, through the "structure, process and outcome indicators" scheme, we did a legal comparison between national (the Constitution of 2009 and the law on education "Avelino Siñani-Elizardo Pérez" of 2010) and international legal texts on the right to education. We also used doctrine on Bolivia's education (which includes several interviews to important education actors on the ground) and information on national education institutions and programs mainly found on official websites. Finally, we based our study on statistics, reports of treaty bodies and Universal Periodic Review (UPR) and interviews to two indigenous participants of the "Training Program on Human Rights for Indigenous Peoples of Latin America" (Instituto de Derechos Humanos Pedro Arrupe, Deusto University), Marcelino Higueras Saavedra and with Yamila Gutierrez Callisaya.

iv. Limitations

One of the main limitations of this thesis, especially when evaluating a state's effective compliance with a right, is the lack of field research to Bolivia, due to economic and time reasons. This field research would have gave us the opportunity to interview education actors on the ground and, consequently, have a more practical point of view on the implementation of the right to education in reality. In addition, it would also have allowed us to focus on a specific indigenous community or area of Bolivia. In brief, the lack of fieldtrip has an impact on the limited sources we possessed and used to study Bolivia's compliance, that is to say mainly treaty bodies and UPR reports, interviews with two indigenous participants of Deusto Training Program on Human Rights for Indigenous Peoples and relevant doctrine on the state's education. This compels us to give a more general panorama of the right to education in Bolivia, instead of a more focused and specific analysis of one community or area of the country.

Furthermore, we are conscious that it is still early to evaluate the implementation of a law adopted three years and a half ago and recently in the process of implementation. However, the information we possess through statistics, treaty bodies and UPR reports, interviews and relevant doctrine (including interviews of people on the ground),

allowed us to identify, to a certain extent, the gap between theoretical recognition of the right to education and its effective implementation and respect on the ground.

Another limitation of this thesis is the language of the majority of our bibliography, namely Spanish. Therefore, we had to translate almost all sources; this has an impact on the time spent for our analysis and on a potential loss of meaning of the original information.

III. The right to education: legal framework

A. The right to self-determination and the right to education

i. The right to self-determination

As we have seen, Latin American states have resisted in recognising indigenous peoples' right to self-determination because they fear for their sovereignty and national integrity. In fact, they tend to assimilate the indigenous claim for the right to self-determination to a call for secession or independency, which would endanger the control over their territory and national resources in a context of growing capitalism. However, indigenous peoples "have rejected almost universally the aspirations for an independent state since they consider the right to self-determination as a base to ensure a dignified existence as differentiated group inside existing state borders"[29].

For the purpose of this thesis, we understand the right to self-determination linked to the right to education. In order to enjoy the latter and to achieve an intercultural education, the former opens the door for the participation and the inclusion of indigenous peoples' cultural particularities into the design and implementation of education.

a. Definition

"Self-determination, in its many forms, is […] a precondition for indigenous peoples to be able to enjoy their fundamental rights and to determine their future, preserving, developing and transferring their specific ethnic identity to future generations"[30]. It is both an end (the recognition of self-determination) and a mean (the everyday practice of self-determination) and it includes four elements: "autoaffirmation, autodefinition, autodelimitation and autodisposition"[31].

[29] ANAYA, 2006 (a), p. 37.
[30] APARICIO WILHELMI, 2006, p. 409.
[31] LÓPEZ BÁRCENAS, 2006, p. 432.

"The right to self-determination is the first collective right that allows the exercise of all others [… and which is] essential for the survival and integrity of their societies and cultures"[32]. It is achieved "by the consensual development of context-specific arrangements that uphold for indigenous peoples [considered simultaneously different and yet parts of the state] both spheres of autonomy commensurate with relevant cultural patterns and rights of participation in the political processes of the states in which they live"[33].

b. Legal instruments

Although the right to self-determination is enshrined in article 1 of both ICESCR and ICCPR, these international treaties apply exclusively in a colonial context. The ILO Convention nº 169 recognises implicitly this right, through articles 2 and 33 (the institutionalisation of participation) and articles 6, 7 and 15 (the general framework for consultation and participation). Using terms similar to those of the ICCPR and ICESCR which affirm the right to self-determination for all indigenous and non-indigenous peoples, article 3 of UNDRIP provides that:

> "Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development",

including notably indigenous peoples' right to education. This right is not specially granted to indigenous peoples since they enjoy fundamental rights in the UNDRIP like everyone, but it must be understood according to indigenous particular characteristics. Moreover, according to James Anaya, article 3 (and the very existence of the UNDRIP) constitutes "the recognition of the historical and present negation of the right and the necessity to remedy to it"[34].

Finally, the right to self-determination is a right of all peoples to equally exercise

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[32] LÉGER, 2002, p. 4.
[33] ANAYA, 2006 (b), p. 116. The right to self-determination is recognised as international customary law, by which indigenous peoples have a right to "demarcation, ownership, development, control and use of the lands they have traditionally owned or otherwise occupied and used". ANAYA & WIESSNER, 2007.
[34] ANAYA, 2011, p. 54.

control on their own destiny and therefore is closely linked to the concepts of autonomy and self-government, participation and consultation.

c. Autonomy and self-government

The UNDRIP enshrines the right to autonomy and bases it explicitly in the right to self-determination: "Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions"[35].

Although the rights enshrined in the UNDRIP are applicable universally to all peoples, the right to autonomy is based on "the application of the right to self-determination [which] applies in a *sui generis* way, in view of the particular circumstances and history"[36] of indigenous peoples. In brief, autonomy is the specific form indigenous peoples have chosen to exercise their right to self-determination.

d. Participation

The right to self-determination is also closely linked to indigenous peoples' right to participation for matters affecting them:

> "Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State"[37].

Additionally, the ILO Convention nº 169 state that governments shall: "establish means by which these peoples can freely participate, to at least the same extent as other sectors of the population, at all levels of decision-making in elective institutions and administrative and other bodies responsible for policies and programmes which concern them"[38].

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[35] UNDRIP, art. 4.
[36] ANAYA, 2011, p. 48.
[37] UNDRIP, art. 5.
[38] ILO Convention nº 169, article 6, paragraph 1 b.

This is a fundamental aspect of the exercise of self-determination because of indigenous peoples' non-dominant position in society and political and economical vulnerability. Therefore, the devolution of authority through democratic participation to indigenous communities decreases their vulnerability against the interests of the majority[39].

e. Consultation

The right to self-determination implies that indigenous peoples must be consulted by the state for "every administrative or legislative measure that affects their rights enshrined in internal and international systems ..."[40] regarding their lands, natural resources, customs, culture, … Article 19 of UNDRIP provides that "States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them". The right to previous consultation is enhanced in the ILO Convention nº 169 which imposes an obligation to the states to "consult the peoples concerned, through appropriate procedures and in particular through their representative institutions, whenever consideration is being given to legislative or administrative measures which may affect them directly"[41].

The right to be consulted in order to obtain their free, prior and informed consent is not only a procedural but also a substantive right because it allows indigenous peoples to enjoy other human rights[42]. The importance of this right explains that the IACtHR has decided that the states' positive obligation to consult is a "general principle of international law"[43].

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[39] ANAYA, 2011, p. 56.
[40] *Pueblo indígena Kichwa de Sarayaku vs. Ecuador* (IACtHR, 2012), paragraph 166.
[41] ILO Convention nº 169, article 6, paragraph 1 (a).
[42] STAVENHAGEN, 2013, p. 33.
[43] *Pueblo indígena Kichwa de Sarayaku vs. Ecuador* (IACtHR, 2012), paragraph 164.

f. Conclusion

In conclusion, "the rights to participation and to consultation are complementary to the right to autonomy; this complementarity shows a dual aspect of the right to self-determination: on one hand, the autonomous government and, on the other hand, the participative implication"[44]. Therefore, indigenous peoples cannot be regarded as isolated from the social and political structures of the state, but rather be considered as different but yet parts of the whole societal structure, including the international community.

Although the rights to self-determination, autonomy and self-government, participation and consultation are enshrined in international texts, in practice there is still reluctance from states to recognise these rights and to comply with their positive obligations. If the right to self-determination is not implemented effectively or denied to indigenous peoples, there cannot be real democracy, recognition of interculturalism and practice of intercultural learning in Latin American states.

ii. The right to education

a. Definition

The right to education is an economic, social and cultural right. "Education is both a human right in itself and an indispensable mean of realizing other human rights"[45]. According to Katarina Tomasevski, "Education operates as a multiplier, enhancing the enjoyment of all individual rights and freedoms where the right to education is effectively guaranteed, while depriving peoples of the enjoyment of many rights and freedoms where the right to education is denied or violated"[46]. It is an empowerment right and "the primary vehicle by which economically and socially marginalized adults and children can lift themselves out of poverty and obtain the means to participate fully

[44] ANAYA, 2011, p. 56.
[45] UN Doc., CESCR, General Comment nº 13 "The Right to Education (Art. 13)", E/C.12/1999/10, (8 December 1999), paragraph 1 [hereinafter "General Comment nº 13"].
[46] TOMASEVSKI, 2009, p. 10.

in their communities"[47]. The right to education is also linked to the development of human personality, as "a well-educated, enlightened and active mind, able to wander freely and widely, is one of the joys and rewards of human existence"[48].

b. Legal instruments

International human rights law recognises the right to education as a fundamental right for everyone. This right is enshrined in several international legal instruments; some recognise the fundamental right to education for everyone, others specifically acknowledge the collective educational rights of indigenous peoples.

The ICESCR (articles 13 and 14) and the Convention on the Rights of the Child (CRC)[49] (articles 28 to 31) contain universally applicable standards to the right to education. Article 13 of ICESCR "is the most wide-ranging and comprehensive article on the right to education in international human rights law"[50]. It adds three objectives to article 26 of Universal Declaration of Human Rights (UDHR)[51]:

> "education shall be directed to the human personality's 'sense of dignity', […] enable all persons to participate effectively in a free society [… and] promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups"[52].

Additionally to the Covenant, the Committee on Economic, Social and Cultural Rights (CESCR) adopted two General Comments on "the Right to Education" (nº 13) and the "Plans of action for primary education" (nº 11)[53]. The right to education is also enshrined in the CRC, which establishes the fundamental right to education for every child and also refers specifically to minorities and indigenous children. Furthermore, the

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[47] General Comment nº 13, paragraph 1.
[48] Idem.
[49] Convention on the Rights of the Child, General Assembly Resolution A/RES/44/25 (20 November 1989) [hereinafter "CRC"].
[50] General Comment nº 13, paragraph 2.
[51] Universal Declaration of Human Rights, General Assembly Resolution 217A (III) (10 December 1999) [hereinafter "UDHR"].
[52] ICESCR, article 13, paragraph 1.
[53] UN Doc., CESCR, General Comment nº 11 "Plans of action for primary education (article 14)", E/C.12/1999/4 (10 May 1999) [hereinafter "General Comment nº 11"].

right to education is enshrined in articles 10, 14 and 16 of Convention on the Elimination of All Forms of Discrimination against women (CEDAW)[54] and article 5e,v and 7 of ICERD. Regionally, the ADRDM recognises and promotes the right to education in order to achieve a decent life and equal opportunities (article 12) as well as the Protocol of San Salvador (article 13).

Although we will discuss the collective aspect of indigenous peoples' right to education in the next chapter, it is relevant to mention that, regarding indigenous-related legal instruments, the ILO Convention nº 169 and the UNDRIP recognise collective educational rights to indigenous peoples in order to take into consideration their specific needs. Articles 26 to 31 of the ILO Convention nº 169 focus on the right of indigenous peoples to acquire education on at least an equal footing with the rest of the national community, while maintaining their culture, traditions and language, through an adapted curriculum designed with indigenous participation. Indigenous peoples are also entitled to acquire general knowledge in order to participate fully in their communities. Finally, governments must take measures to make indigenous peoples know their rights and duties and to eliminate prejudice and discrimination towards them. Additionally to this provision, article 14 of UNDRIP recognises indigenous peoples' educational autonomy. Finally, the collective educational rights of indigenous peoples are also enshrined in the Committee on the Rights of the Child (CRCtee) General Comment nº 11 on "Indigenous children and their rights under the Convention"[55].

c. State's obligations

As the right to education is an economic, social and cultural rights, we will examine state's obligation regarding this category of rights and concrete obligations towards the right to education.

[54] Convention on the Elimination of All Forms of Discrimination against Women, General Assembly Resolution, A/RES/34/180 (18 December 1979) [hereinafter "CEDAW"].
[55] UN Doc., CRCtee, General Comment nº 11 "Indigenous children and their rights under the Convention", CRC/C/GC/11 (30 January 2009) [hereinafter "CRCtee General Comment nº 11"].

1. Obligations

As the right to education is an economical, social and cultural right, according to article 2 of ICESCR, states undertake

> "to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures".

Article 2 "describes the nature of the general legal obligations undertaken by States parties to the Covenant"[56] and the General Comment nº 3, the Limburg Principles[57] and the Maastricht Guidelines[58] interpret these obligations.

As "it is now undisputed that all human rights are indivisible, interdependent, interrelated and of equal importance for human dignity […] States are as responsible for violations of economic, social and cultural rights as they are for violations of civil and political rights"[59]. Like civil and political rights, economic, social and cultural rights impose on states three types of obligations: to respect, to protect and to fulfil (which includes obligations to facilitate and to provide). These obligations require states, respectively, "to refrain from interfering with the enjoyment of economic, social and cultural rights […] to prevent violations of such rights by third parties [… and] to take appropriate legislative, administrative, budgetary, judicial and other measures towards the full realisation of such rights"[60].

The Limburg Principles and the Maastricht Guidelines specify that "A failure by a State Party to comply with an obligation contained in the Covenant is, under international law, a violation of the Covenant"[61]. The extent of a state's obligation depends on the

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[56] UN Doc., CESCR, General Comment nº 3 "The Nature of States Parties' Obligations (Art. 2, Para. 1 of the Covenant)", E/1991/23 (14 December 1990), paragraph 1 [hereinafter "General Comment nº 3"].
[57] UN Doc., Commission on Human Rights, The Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights, E/CN.4/1987/17 (8 January 1987), paragraphs 16 to 34 [hereinafter "The Limburg Principles"].
[58] UN Doc., The Maastricht Guidelines of Economic, Social and Cultural Rights, E/C.12/2000/13 (22-26 January 1997) [hereinafter "The Maastricht Guidelines"].
[59] The Maastricht Guidelines, paragraphs 4-5.
[60] The Maastricht Guidelines, paragraph 6.
[61] The Limburg Principles, paragraph 70 and The Maastricht Guidelines, paragraph 6: "Failure to perform any one of these three obligations constitutes a violation of such rights".

nature of the obligation, "whether it is an obligation that 1) must be immediately realized, 2) constitutes a minimum core obligation or 3) is an obligation subject to progressive realization"[62]. According to General Comment nº 3, the violation of minimum core and progressive obligations creates a *prima facie* violation that can be justified by the state in the conditions of paragraph 10. However, there is no justification for a violation of immediately realised rights (paragraph 9).

Regarding the right to education specifically, states have the immediate obligation to ensure that primary education is free and compulsory for all and to ensure non-discrimination in all forms of education. As minimum core obligations, states must recognise the right to education enshrined in article 13, paragraph 1 of ICESCR, provide free and compulsory primary education for all in accordance with article 13, paragraph 2, (a) and provide educational free choice subject to minimum educational standards. Finally, state's progressive obligations are notably to ensure the availability (and consequently, accessibility, acceptability and adaptability) of free secondary and tertiary education.

2. The "4-A framework"

The content of human rights, in particular economic, social and cultural rights, has been explored through the so-called "4-A" scheme, reflecting availability, accessibility, acceptability and adaptability of a right. According to the General Comment nº 13 of CESCR, "education in all its forms and at all levels shall exhibit the following interrelated and essential features: availability, accessibility, acceptability and adaptability"[63]. Availability refers to government's obligation to ensure that "functioning educational institutions and programmes have to be available in sufficient quantity within the jurisdiction of the State party"[64]. Several concrete measures are

[62] KALANTRY, GETGEN & KOH, 2009, p. 50.
[63] General Comment nº 13, paragraph 6. This approach corresponds in particular to the UN Special Rapporteur on the right to education's preliminary report to the Commission on Human Rights: UN Doc., Economic and Social Council, Preliminary report of the Special Rapporteur on the right to education Ms. Katarina Tomasevski, submitted in accordance with the Commission on Human Rights resolution 1998/33, E/CN.4/1999/49, paragraph 50 (13 January 1999) [hereafter "Tomasevski 1999 Report"].
[64] General Comment nº 13, paragraph 6, (a).

explained in the Tomasevski 1999 Report[65] which focuses only on primary education, whereas the ICSECR states that "Primary education shall be compulsory and available free to all; secondary education shall be made generally available and accessible [… and] higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means …"[66]. Accessibility means that "Educational institutions and programs have to be accessible to everyone, without discrimination, within the jurisdiction of the State party"[67] which includes the notions of non-discrimination, physical accessibility and economic accessibility. Acceptability addresses "the form and substance of education, including curricula and teaching methods, […which] have to be acceptable to students and, in appropriate cases, parents …"[68]. Finally, adaptability addresses the need for education to be flexible and able to respond to the needs of students within their diverse social and cultural settings[69].

3. Indicators

In order to evaluate state's treaty compliance to human rights, and in this case to the right to education, we will focus on the "structure-process-outcome" indicators framework. The UN 2006 Report applied it in order "to bring to the fore an assessment of steps taken by the State parties in addressing its obligations - from intent to efforts, and on to outcomes of those efforts"[70]. Recently, the UN 2008 Report reaffirmed the relevance of this framework as it allows "to measure the commitment of the duty-bearer to the relevant human rights standards, the efforts that were undertaken to make that commitment a reality and results of those efforts over time as reflected in appropriate summary indicators"[71].

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[65] Tomasevski 1999 Report, paragraphs 51 to 56.
[66] ICESCR, article 13, 2 (a),(b),(c).
[67] General Comment nº 13, paragraph 6 (b).
[68] Ibid, paragraph 6 (c).
[69] Ibid, paragraph 6 (d).
[70] Un Doc., Report on Indicators for Monitoring Compliance with International Human Rights Instruments, HRI/MC/2006/7 (11 May 2006), paragraph 16 [hereinafter "UN 2006 Report"].
[71] Un Doc., OHCHR, Report on Indicators for Promoting and Monitoring the Implementation of Human Rights, UN Doc. HRI/MC/2008/3 (6 June 2008), paragraph 8 [hereinafter "2008 Report on Indicators"].

Structural indicators determine if domestic laws are in conformity with the state's treaty obligations. These indicators reflect "the ratification/adoption of legal instruments and existence of basic institutional mechanisms deemed necessary for facilitating realization of the human right concerned"[72]. Therefore, a State violates the ICESCR if it adopts a law or a policy, or fails to reform or repeal an existing law that is incompatible with its obligations relating to economic, social and cultural rights[73], and in this case, to the right to education.

Process indicators measure "the extent to which the laws and policies of the State are effectively designed to implement the realization of the right"[74]. Consequently, a State is in failure with the ICESCR if it fails "to implement without delay a right which it is required by the Covenant to provide immediately"[75] or "to remove promptly obstacles which it is under a duty to remove to permit the immediate fulfilment of a right guaranteed by the Covenant"[76]. Regarding the minimum core of obligations, a State can attribute its failure "to a lack of available resources [… by demonstrating] that every effort has been made to use all resources that are at its disposition in an effort to satisfy, as a matter of priority, those minimum obligations"[77]. Finally, regarding state's progressive realised rights, any deliberately retrogressive measure "would require the most careful consideration and would need to be fully justified by reference to the totality of the rights provided for in the Covenant and in the context of the full use of the maximum available resources"[78]. In this regard, with respect to education, "there is a strong presumption of impermissibility of any retrogressive measures taken in relation to the right to education …"[79]. In addition, the Maastricht Guidelines and the Limburg

[72] UN 2006 Report, paragraph 17.
[73] The Maastricht Guidelines, paragraphs 14 (d) and 15 (b).
[74] KALANTRY, GETGEN & KOH, 2009, p. 40.
[75] The Maastricht Guidelines, paragraph 15 (h) and the Limburg Principles, paragraph 72.
[76] The Maastricht Guidelines, paragraph 15 (g) and the Limburg Principles, paragraph 72.
[77] General Comment nº 3, paragraph 10.
[78] Ibid, paragraph 9.
[79] General Comment nº 13, paragraph 45.

Principles add a justification for the violation of progressive rights, which is that the state acts due to *force majeure*[80].

Finally, outcome indicators measure the *de facto* compliance with treaty obligations that is the actual implementation of human rights on the ground. These indicators "capture attainments, individual and collective, that reflect the status of realization of human rights in a given context"[81]. Thus, a state violates its immediate obligations under the ICESCR if the reality on the ground is not in line with these obligations, "even if the result cannot be directly linked to State's policy or practices"[82]. Concretely, if statistical evidence suggests inequality and discrimination in the enrolment in schools (because significantly fewer girls are enrolled than boys), the State can be considered in violation of the ICESCR[83]. With respect to the minimum core of obligations, a state is in violation if the reality on the ground shows that a minimum core of guarantees is not given to the population. The state can justify the outcome if it can "demonstrate that every effort has been made to use all resources that are at its disposition in an effort to satisfy, as a matter of priority, those minimum obligations"[84]. Applied to the right to education, a state violates the ICESCR if a significant number of children who are in age for primary school are not enrolled, because this suggest that education is not free and/or compulsory. The state may justify this outcome by proving that the situation is the result of a lack of resources. Regarding progressive obligations, if the reality on the ground suggests "a halting or retrogression of the progressive obligations, then states may be considered to be in *prima facie* violation of the ICESCR [… unless the state justifies the negative outcomes by] proving it has made all efforts to ensure that such retrogressing or halting does not occur, but such retrogression or halting is occurring due to factors outside of its control"[85]. In the case of education, a state would be in violation of ICESCR if fewer students are enrolled in tertiary education than there were years ago, because it implies a failure to satisfy its obligations under the right to

[80] The Maastricht Guidelines, paragraph 14 (f) and the Limburg Principles, paragraph 72.
[81] UN 2006 Report, paragraph 19.
[82] KALANTRY, GETGEN & KOH, 2009, 2009, p. 56.
[83] Ibid, p. 57.
[84] General Comment nº 3, paragraph 10.
[85] KALANTRY, GETGEN & KOH, 2009, 2009, p. 57.

education. Therefore, the state must justify that it made all efforts to avoid the retrogression and that the latter is due to factors out of its control[86].

B. Indigenous peoples' educational autonomy and intercultural education

International human rights law recognises that "the individual right to education, even if it is fully implemented, is not sufficient to guarantee that this meets the needs of indigenous societies"[87]. Therefore, ILO Convention nº 169 and the UNDRIP acknowledge some collective educational rights for indigenous peoples in order to take into account their cultural and identity specificities.

i. ILO Convention nº 169 (article 27) and UNDRIP (article 14)

a. ILO Convention nº 169, article 27

1. ILO Convention: specificities

The ILO Convention concerning Indigenous and Tribal Peoples in Independent Countries (nº 169) was adopted on 27 June 1989 and entered into force on 5 September 1991. It has been ratified by 22 countries[88], which have one year to align legislation, policies and programmes to the Convention before it becomes legally binding. The Convention creates legally binding obligations for states which produce direct effects in the internal legal order. Additionally, countries that have ratified are subject to supervision regarding its implementation through reports to the supervisory bodies of the ILO.

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[86] Ibid, p. 58.
[87] HENRIKSEN, 2008, p. 51.
[88] ILO, NORMLEX (Convention nº 169), at http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO:11300:P11300_INSTRUMENT_ID:312314:NO (consulted on 13 May 2014).

This Convention resulted from the revision of the Indigenous and Tribal Populations Convention (nº 107) adopted in 1957 and ratified by 27 countries. Although the ILO Convention nº 107 reflected the paternalistic and assimilationist philosophy of that time, it was a pioneering document as it was the first attempt to codify international obligations of states regarding indigenous and tribal populations and it was the first international convention on the subject. The ILO Convention nº 169 reflects a marked off in the philosophy of the previous text as it is expressed in the preamble that recognises "the aspirations of these peoples to exercise control over their own institutions, ways of life and economic development and to maintain and develop their identities, languages and religions, within the framework of the States in which they live, …".

In general, the protection of indigenous and tribal peoples in existing laws and policies is not insufficient and not effective. "National laws often do not address their specific situations, characteristics and needs, and they are often among the most impoverished and disadvantaged in any country"[89]. Although it does not define explicitly the beneficiaries, the Convention recognises a wide range of collective rights to indigenous and tribal "peoples" as such and not as individual persons.

Finally, the provisions of ILO Convention nº 169 are compatible with those of the UNDRIP. The adoption of the latter illustrates the broader acceptance of the principles of the Convention beyond the number of ratifications. Despite this, many indigenous leaders have expressed their concern with regards to "the limitations on content with which the Convention was adopted […] This was definitely a step forward but now we see that it was the maximum step governments could make, the proof being the few ratifications this landmark agreement could achieve"[90].

[89] INTERNATIONAL LABOUR OFFICE, 2003, p. I.
[90] GÓMEZ, 2006, p. 151.

2. Article 27

Article 27 of ILO Convention nº 169 reflects the fundamental philosophy of the Convention, which is is to promote and protect indigenous and tribal peoples' right "to simultaneously be able to maintain and develop their own cultures, ways of life, traditions and customs, and to continue to exist as parts of their national societies; with their own identity, cultures, structures and traditions"[91].

Paragraph 1 of the established article stipulates that

> "Education programmes and services for the peoples concerned shall be developed and implemented in co-operation with them to address their special needs, and shall incorporate their histories, their knowledge and technologies, their value systems and their further social, economic and cultural aspirations".

The article implies the full participation of indigenous peoples in the education programs in order to ensure they reflect their cultural features, aspirations and priorities. Paragraphs 2 and 3 recognise indigenous and tribal peoples' right to educational autonomy in the implementation and establishment of education programs and institutions. In fact, paragraph 2 encourages "the progressive transfer of responsibility for the conduct of these programs". Paragraph 3 enshrines indigenous' right "to establish their own educational institutions and facilities" if they meet fixed minimum standards, and obliges states to provide appropriate resources for this purpose.

b. UNDRIP, article 14

1. UNDRIP: specificities

The United Nations Declaration on the Rights of Indigenous Peoples was adopted through resolution 61/295[92] of General Assembly on 13 September 2007. After a twenty years drafting process, an overwhelming majority of Member States adopted the resolution, with the exception of four states that voted against it but have reversed their

[91] HENRIKSEN, 2008, p. 51.
[92] A/RES/61/295 (13 September 2007).

position since[93]. The active involvement, advocacy and participation of indigenous representatives throughout the draft gives a high degree of legitimacy to the UNDRIP that "substantially reflects indigenous peoples' own aspiration"[94].

Indigenous peoples' rights are grounded in international human rights instruments. The UNDRIP does not create new or special rights for indigenous peoples; it represents "an authoritative common understanding, at the global level, of the minimum content of the rights of indigenous peoples"[95] and gives precise guidelines to states when applying existing human rights to the specific indigenous context.

The Declaration does not create *per se* legally binding obligations on states. As it has received a majority support, "the Declaration represents a commitment on the part of the United Nations and Member States to its provisions, within the framework of the obligations established by the Charter of the United Nations"[96]. However, the Declaration still adopts "language that imposes obligations and responsibilities on States. Accordingly, the UN system is increasingly recommending that States take concrete and targeted actions in this regard"[97].

The worldwide support UNDRIP received "indicates an international consensus on the normative expression of the rights of indigenous peoples in a way that is coherent with existing international human rights standards"[98]. Therefore, it is increasingly argued that some aspects of the provisions of the Declaration can also be considered as reflecting norms of customary international law[99].

The UNDRIP text has a *sui generis* nature, as well as it negotiations[100]. Some sensitive issues generated difficulties during negotiations, specially the right to self-

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[93] Australia, Canada, New Zealand and United States of America.
[94] A/65/264 (9 August 2010), paragraph 60.
[95] A/HRC/9/9 (11 August 2008), paragraph 85.
[96] A/64/338 (4 September 2009), paragraph 48.
[97] APF & OHCHR, 2013, p. 38.
[98] Ibid, p. 39.
[99] ANAYA & WIESSNER, 2007.
[100] The negotiations "created a division between state delegations, on the one hand, and indigenous representatives, on the other. [… The former] wanted changes to the Sub-Commission Text, or at least, were willing to consider them [… whereas the latter] insisted that they could not accept them [… while

determination, the free, prior and informed consent and the definition of indigenous peoples (which is inexistent in the declaration text; the complexity of the issue required the removal of the definitional article)[101].

Finally, although the UNDRIP is not a legally binding instrument, we have seen that it is an international consensus and a strong commitment of states. According to Luis Enrique Chávez, the Chairperson-Rapporteur of the Working Group on the Draft Declaration, a consensual text would have been extremely hard to achieve "given the nature of the difficulties some delegations had. […] A unique opportunity to obtain a declaration presented itself and we were able to make the most of it. I am convinced that, in time, this Declaration will take its place as one of the universal human rights instruments, the major example of which, the UDHR, let us not forget, was also adopted by means of a vote"[102].

2. Article 14

Article 14 establishes both an individual right to equal access to education and a collective right to education in accordance with indigenous peoples' specific needs and particularities. This article should be interpreted in light of articles 3 and 4 of UNDRIP, which recognise the right to self-determination, to autonomy and to self-government.

Paragraph 1 of article 14 provides for educational autonomy; indigenous peoples have "the right to establish and control their educational systems and institutions providing education in their own languages, in a manner appropriate to their cultural methods of teaching and learning". However, such arrangements must meet minimum standards for education[103]. Paragraph 2 determines that indigenous individuals "have the right to all levels and forms of education of the State without discrimination"[104]. Finally, paragraph

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having difficulties] in producing alternative proposal". CHÁVEZ, 2009, pp. 100-101.

[101] CHÁVEZ, 2009, pp. 102-104.

[102] Ibid, pp. 105-106.

[103] Article 14, paragraph 1 reaffirms the content of article 29, paragraph 2 of the CRC, which provides for the liberty to establish and control educational institutions, subject to the observance of certain core principles.

[104] Article 14, paragraph 2 reaffirms the provisions of article 13, paragraph 1 of the ICESCR and article 28 of CRC.

3 emphasises that states shall take effective measures, in conjunction with indigenous peoples, in order for them (including indigenous peoples living outside their communities) "to have access, when possible, to an education in their own culture and provided in their own language".

There are two main categories of educational systems, the traditional and the mainstream. The former can be described as "a lifelong pedagogical process [of oral tradition] and an intergenerational transfer of knowledge […] achieved through the principles of participatory learning, holistic growth, nurturance and mutual trust"[105]. It is aimed at maintaining a harmonious community, at preparing children to life and responsibilities towards their community and at ensuring that community members enjoy adequate life conditions and social, cultural and political stability. The latter involves "a standard set of curricula provided by education ministries based on Government policy"[106]. The progressive recognition of cultural diversity allows for the integration of indigenous perspectives and languages into the mainstream education system in order to educate students in a culturally sensitive manner and raise awareness of cultural differences.

It results from article 14 that indigenous peoples' right to educational autonomy (i.e: the right to establish and control their systems and institutions) "should be interpreted as being applicable to both categories. Consequently, states are expected to equip indigenous communities by integrating their perspectives and languages into mainstream education systems and institutions[107], and also by respecting, facilitating [through adequate financial funds] and protecting indigenous peoples' right to transfer knowledge to future generations by traditional ways of teaching and learning" while making sure national minimum standards are met.

[105] A/HRC/EMRIP/2009/2 (26 June 2009), paragraphs 43-44.
[106] Ibid, paragraph 51.
[107] This refers to intercultural education and IBE.

ii. Towards an intercultural education

a. Context

Approximately 50 million indigenous peoples in Latin America and Caribbean belong to the almost 671 indigenous groups of the continent (many of whom in Mexico, Peru, Guatemala, Bolivia and Ecuador) who speak roughly 500 indigenous language in total[108].

Interculturality in Latin America is "closely linked with the Latin-American indigenous issue, since it was from the analysis of the relation between indigenous and non indigenous peoples that the notion of interculturality and the derived intercultural education emerged from social sciences …"[109]. For states, interculturality is based on "a legal perspective, constituent of every democratic society, which considers cultural diversity as legitimate, indivisible from the other human rights and indispensable for the construction of a fair society with social cohesion"[110]. It is considered to be a required reparation of a historical debt to indigenous peoples by the mainstream society. Indigenous peoples interpret interculturality "in a socio-political way and conceive it as a project of emancipation from economic liberalism and cultural and symbolic globalisation processes which threaten the maintenance of their culture"[111].

The origins of intercultural education are subject to two different interpretations[112]: some authors consider it comes from the development of multiculturalism, a movement claiming the right to difference in the United States in the sixties and seventies, which moved to Europe and Latin America rather as interculturalism[113]. To the contrary, other authors argue that intercultural education developed simultaneously in different regions of the world. As regards more specifically to the origins of intercultural education in

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[108] UNDP, 2013, available at http://www.undp.org/content/undp/en/home/presscenter/pressreleases/2013/05/22/pueblos-indigenas-en-america-latina-pese-a-los-avances-en-la-participacion-politica-las-mujeres-son-las-mas-rezagadas-segun-el-pnud.html (consulted on 10 May 2014). *See also* CEPAL, 2006, p. 145, available at http://www.eclac.cl/publicaciones/xml/0/27480/PSE_2006.pdf (consulted on 10 May 2014).
[109] LÓPEZ, 2001, p. 2.
[110] HIRMAS READY, 2009, p. 92.
[111] LUNA & HIRMAS READY, 2005.
[112] ANTOLÍNEZ DOMÍNGUEZ, 2011, p. 3.
[113] DIETZ, 2007, pp. 29-30.

Latin America, some authors believe that the intercultural discourse between Anglo-Saxon and occidental European countries was transmitted to Latin America through the international pressure to implement interculturality on the ground and to reform Latin American constitutions[114]. Other authors support the idea that intercultural education appeared in the indigenous public education from the seventies[115]. It was the result of the failure of states' assimilation and acculturation processes, indigenism, which intended to integrate indigenous population to the mainstream society. Consequently, due to their colonial and domination historical backgrounds and their position in society, indigenous movements arose from the seventies and claimed a transformation of the state's social system as part of their social, political and identity struggle. They alleged not only "a cultural recognition and a dialogue to obtain more power and/or positive discrimination actions, but also […] a new fair, diverse, democratic and inclusive society …"[116]. This means that a mere recognition of indigenous existence and cultural particularities is not enough; it must be a two-way process with an interaction between indigenous peoples and the state and an adaptation of the mainstream society to the intercultural character of the state.

One of the indigenous claims relates to the right to education and the need of educational proposals that meet their cultural particularities, namely an intercultural education. In fact, the lack of quality education is "a major factor contributing to the disadvantaged position of indigenous peoples"[117] and intercultural education is required for "the enjoyment, maintenance and respect of [indigenous peoples'] cultures, languages, traditions and knowledge"[118] as well as their empowerment.

An essential element of indigenous peoples' identity is their language(s). "The knowledge, the specific ways of thinking and of interpreting the world, and the cultural

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[114] DIETZ & MATEOS, 2008, p. 39.
[115] This notion was mentioned for the first time in the Latin American context by Mosonyi and González Ñañez, at the XXXIX International Congress of Americanists (1970). They referred to an educational project developed with indigenous people in Venezuela and stressed the need to rescue the "baré" language and other cultural particularities of the community. OSUNA NEVADO, 2011, p. 27.
[116] ANTOLÍNEZ DOMÍNGUEZ, 2011, p. 24.
[117] A/HRC/EMRIP/2009/2, paragraph 2 (26 June 2009).
[118] STAVENHAGEN, 2008, p. 98.

values of a society, community or group are contained and reflected in their language and transmitted inter-generationally through this medium"[119], becoming also a source of empowerment. The significance of maintaining their linguistic particularities and the concomitant appropriation of the hegemonic language justify the bilingual focus of Latin American intercultural education. As a consequence, states started to implement the "transitional bilingual education, which recognised the differences between the mainstream and indigenous languages, and resorted to the transitory use of indigenous languages in order to facilitate the learning of a European language and its written codes"[120]. In the seventies, states implemented the new model of "bilingual education of maintenance and development" which intended to consolidate the use of the mother tongue to facilitate the learning of a second language, and to contribute to the construction of a society that accepts its cultural and linguistic diversity[121]. Finally, in the eighties, indigenous peoples decided to go "beyond mere linguistic claims [… and asked for] a substantial change in the educational curriculum, in order for it to take into consideration their knowledge, skills, history and traditional values"[122]; this development transformed bilingual education into the "intercultural bilingual education" (IBE). Nowadays, IBE is developing progressively and ten Latin American constitutions refer to IBE with a varied usage of terminology and content. "This achievement is principally due to the fact that the right to education constitutes a fundamental element of indigenous peoples' aspirations and demands, in terms of equality and opportunity, equal development and maintenance, and respect for indigenous languages and cultures"[123].

In brief, indigenous claims resulted in an evolution of the educational framework as states moved from "compensatory educational arrangements, focused on finding solutions to educational deficiencies regarding indigenous peoples"[124] to the progressive

[119] KING & SCHIELMANN, 2004, p. 41.
[120] LÓPEZ, 2001, p. 7.
[121] COMBONI SALINAS, 2002, p. 274.
[122] Idem.
[123] AGUILAR, LAFOSSE, ROJAS & STEWARD, 2010, pp. 82-83.
[124] LÓPEZ & KÜPER, 1999, p. 71.

implementation of a framework that should involve indigenous peoples' particularities and participation and should imply a change in the state's social organisation.

b. Definition

Interculturality is "neither a homogenous nor an unidirectional concept"[125] but it is a contested notion in constant negotiation and definition. It has "never been defined operationally by any educational program or outlined substantively (or in legal terms) in any legal or normative texts …"[126]. According to Inmaculada Antolínez Dóminguez, interculturality refers to "processes of interaction, negotiation, communication and conflict in 'desirable' egalitarian conditions between different cultural groups"[127], which have interethnic, interlinguistic and interreligious relations. However, in most cases, this interaction occurs in terms of "inequality, domination and ethno-racial hierarchies"[128]. Interculturality cannot be considered as "a simple communication or transfer of cultural contents between two cultures which can be blocked by the social asymmetry in their relation. [… The aim] is an attempt of intercultural communication based on an interaction between the two cognitive systems"[129]. Additionally, interculturality must not be confused with interculturalism[130]; the former responds to the factual level, whereas the latter refers to the normative, socio-political and ethical levels and reflects the coexistence in diversity through the principles of equality, difference and positive interaction[131]. In short, defining interculturality leads "to adopt a political, social and cultural position facing social reality"[132].

There is no dominant concept that combines the two notions of interculturality and education. In fact, there is a tension between different terms, namely IBE, multicultural

[125] SARTORELLO, 2009, p. 78.
[126] CAVALCANTI SCHIEL R., http://alhim.revues.org/1883 (consulted on 9 May 2014).
[127] ANTOLÍNEZ DOMÍNGUEZ, 2011, p. 3. Although interculturality is often confused with multiculturality, the two concepts have distinct meaning and content; multiculturality is "a purely descriptive term that reflects the multiplicity of cultural groups in a given context without the need for interaction between them" (Idem).
[128] MALGESINI & GIMÉNEZ, 2000, p. 258.
[129] COMBONI SALINAS, 2002, p. 278.
[130] DIETZ & MATEOS, 2008, p. 38.
[131] Idem.
[132] SARTORELLO, 2009, p. 78.

education, intercultural education and indigenous education, that reflect diverse theories and historical contexts but refer all to the issue of indigenous peoples in their relation with the State and the global society. In this thesis, we decided to focus on IBE, for which there is also no unique definition. We decided to concentrate on Luis Enrique López's definition, for whom IBE is "an education rooted in the learners' culture of reference but opened to the incorporation of elements and content from other cultural horizons, including the universal culture. It is also an education conveyed in an Amerindian language or in Spanish or Portuguese, which encourages the development of students' communication skills in two languages: the mother tongue and the second language"[133].

Before analysing the IBE characteristics that emerge from this definition, we will consider the notions of culture and cultural diversity as they are the cornerstone of IBE. Although defining the concept of culture is a delicate task, Carmen Camilleri's definition (often cited in education) refers to a "set of meanings (beliefs, values, cosmovisions) shared by a group, which lead to interpret reality and behave in ways commonly valued and likely to persist over time"[134]. The concept of cultural diversity is also difficult to define. Diversity is conceived as "A situation that includes representation of multiple (ideally all) groups within a prescribed environment [… and] most commonly refers to differences between cultural groups, although it is also used to describe differences within cultural groups …"[135]. It emphasises "the multiplicity, overlapping and crossing between sources of human variation"[136]. More specifically, cultural diversity is "embodied in the uniqueness and plurality of the identities of the groups and societies making up humankind. As a source of exchange, innovation and creativity, cultural diversity is as necessary for humankind [… and] is the common heritage of humanity …"[137]. In brief, "education is attributed a protagonist role in the

[133] LÓPEZ, 2001, pp. 7-8.
[134] GIL JAURENA, 2008, p. 105.
[135] Diversity Dictionary, Entry "Diversity", available at http://www.ohio.edu/orgs/one/dd.html#4 (consulted on 24 May 2014).
[136] DIETZ, 2007 (a), p. 8.
[137] UNESCO, 2001, art.1.

implementation of 'principle, norms and practices' that contribute to the positive assessment and maintenance of cultural diversity"[138].

c. Characteristics of intercultural education

IBE is antagonist to the assimilation and segregation state policies that considered indigenous peoples' cultural and linguistic particularities ('differences') as an obstacle for their incorporation into the national process of modernisation and for their learning development. Based in particular on Luis Enrique López's definition of IBE, we will analyse its characteristics.

The IBE is not a "different, exclusive or parallel category of education but rather emphasizes the need to address indigenous peoples' specific needs in order to raise awareness and broaden the scope of discussion …"[139] on the right to cultural difference and recognition of cultural diversity. Pluralistic systems of education are recognised by important legal provisions, which affirm their equal importance and equitable relations[140]. Therefore, "states are obliged to ensure that education is flexible and adaptable to the specific needs, cultures, languages and situation of indigenous peoples …"[141].

In order to guarantee cultural safety and to tackle discrimination and exclusion of indigenous peoples, education should be culturally acceptable and flexible for indigenous students. This implies not only appropriate content but also "traditional pedagogies […] with a view to preserving and making full use of culturally appropriate methods of communication and transmission of knowledge"[142]. It also involves the use of students' mother tongue (L1) as an important foothold for both "the appropriation of reading and writing skills as well as in learning the L2"[143] (the mainstream language, normally Spanish). This could overcome the "double semi-literacy" created by

[138] OSUNA NEVADO, 2011, p. 47. *See also* UNESCO, 2001, Annex for implementation point 7.
[139] KING & SCHIELMANN, 2004, p. 14.
[140] A/HRC/EMRIP/2009/2 (26 June 2009), paragraph 55.
[141] Ibid, paragraph 26.
[142] UNESCO, 2001, Annex for implementation point 8.
[143] LÓPEZ, 2009, p. 39.

assimilationist policies, which left many students without sufficient base in either language (L1 and L2). In fact, IBE encourages linguistic diversity "at all levels of education, wherever possible, and fostering the learning of several languages from the earliest age"[144]. In order to provide students with appropriate learning language and pedagogical content and methods, teachers need a professional training in order to implement effectively IBE policies in the classrooms. Finally, IBE entails a curriculum that reflects indigenous' cultural values and beliefs[145]. There is a need for indigenous peoples' participation in all steps of the curriculum design in order to avoid a curriculum based on "centralised, uniformed and ethnocentric"[146] values of the mainstream society, which marginalises the difference. The involvement of authorities and members communities, families and teachers in "the planning, the design, the implementation and the evaluation"[147] of the curriculum show the interconnected process between school, communities and families.

Although education systems need to be responsive to the specific cultural perspectives of indigenous students, at the same time they have to provide "for the acquisition of knowledge and skills that enable [indigenous peoples] to participate fully in the larger society"[148]. Therefore, IBE has to foster synergies between traditional and universal knowledge in order to achieve mutual understanding and learning among all students, as well as tolerance and peace[149]. On one hand, the integration of indigenous perspectives in education allows indigenous students to value, affirm, to be proud of their own culture and to increase their self-esteem. On the other hand, for mainstream students, intercultural education should raise awareness of the cultural diversity of their society and make them more respectful and tolerant towards it[150]. For this reason, IBE is aimed to be an intercultural education for all, based on education relevance, coexistence and

[144] Ibid, point 6.
[145] UNESCO, 2007, pp. 33-38.
[146] KING & SCHIELMANN, 2004, p. 184.
[147] STAVENHAGEN, 2008, p. 108.
[148] UNESCO, 2007, p. 17.
[149] A/HRC/EMRIP/2009/2 (26 June 2009), paragraph 13.
[150] COMBONI SALINAS, 2002, p. 283.

inclusion[151]. It is intended that students do not only "tolerate the differences but respect, revalue and accept them positively"[152]; this is called by Luis Enrique López "mental decolonisation of society"[153]. Therefore, cultural diversity should been seen as an enrichment for society. Through constitutional recognition of cultural diversity and effective implementation of human rights and fundamental freedoms, states should respond "positively to pupil diversity and [see] individual differences not as problems, but as opportunities for enriching learning"[154].

In sum, "intercultural education must be conceived as a holistic approach in education, so that 'intercultural' is not an adjective but a 'whole' that should permeate every practice and education system"[155]. Carmen Osuna Nevado[156] reminds also that the bilingual aspect of IBE should not monopolise the intercultural one (like it is the case nowadays); IBE cannot be a mere bilingual education without the incorporation of cultural particularities in the learning and teaching processes (on two levels: both in content and in methodology).

d. Challenges of intercultural education

We have seen the conditions required by the IBE to break "with the explicit or implicit ethnocentrism implied historically by the educational politics of assimilation"[157], which tried to correct behaviours opposed to those of the mainstream society. In fact, the traditional idea of assimilation and homogeneity does not correspond to reality and states cannot deny the heterogeneity of Latin American societies.

Nevertheless, despite the progressive development and implementation of IBE, "the full enjoyment of the right to education [and consequently of the IBE …] is not a reality for

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[151] HIRMAS READY, 2009, p. 92. Respectively, these terms refer to the cultural relevance in learning processes, to the coexistence of different cultures and points of view, and to the inclusion of students despite inequalities.
[152] LÓPEZ, 2001, p. 16.
[153] LÓPEZ, 2009, p. 49.
[154] UNESCO, 2005, p. 12.
[155] OSUNA NEVADO, 2011, p. 61.
[156] Ibid, p. 27, 183-184.
[157] FORQUIN, 1991, p. 24.

most indigenous peoples …"[158], mainly because of discrimination and lack of equal access to education. More precisely[159], poverty, geographical isolation, lack of school materials and State's funds, teacher's ignorance of indigenous culture and languages, lack of education in indigenous' mother tongue, of adapted pedagogical methods and of participation in the curriculum design are important factors that reflect indigenous peoples' "educational poverty"[160]. Additionally, states' intercultural education policies focus on rural areas (where the concentration of indigenous peoples is the largest) and do not take into account indigenous peoples who migrated or have been displaced to urban areas. As a result of this set of factors, it has been observed that indigenous students' academic results are lower than other students and that illiteracy rates are higher as well as "the levels of repetition, desertion and abandonment"[161].

Educational poverty is the result of "the insensibility of Latin American education systems to integrate indigenous particularities"[162] and to adapt the pedagogical framework, under the guise of a universalising tendency. "Constitutional or legal changes [… to achieve and implement equal access to education and IBE] do not necessarily suppose a modification in the policies or in plans and actions which reflects the inertia of years of colonisation and occidentalisation"[163].

In this regard, states face a double challenge: on one hand, they have "to support and promote the maintenance, use and survival of indigenous peoples' cultures, languages, knowledge, traditions and identity [and, on the other hand, they must] provide and develop the knowledge and skills that enable indigenous peoples to participate fully and equally in the national and international community"[164].

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[158] A/HRC/EMRIP/2009/2 (26 June 2009), paragraph 87.
[159] STAVENHAGEN, 2008, pp. 101, 105. *See also* A/HRC/EMRIP/2009/2 (26 June 2009), paragraphs 86, 91, 98-102, 108 and 113.
[160] LÓPEZ, 2001, p. 5.
[161] HIRMAS READY, 2009, p. 93.
[162] Ibid, p. 6.
[163] COMBONI SALINAS, 2002, p. 269.
[164] KING & SCHIELMANN, 2004, p. 20.

e. Conclusion

In conclusion, interculturality and its pedagogical application, IBE, cannot be considered in isolation from the globalisation process, the neoliberal policies and the adherence to democratic and human rights imperatives in which Latin American states are involved[165]. Interculturality and IBE aim at articulating the differences in a society "but not at making them disappear under the slogan of unity in diversity"[166]. For this, they transcend the indigenous scope in order to involve the whole society; "the rereading of the national reality"[167] needs to be a two-way process. In fact, Latin American mainstream societies and states must change their attitude towards cultural differences in their society so as to rethink globally education with a perspective against racism and discrimination and to introduce new concepts, values, skills and pedagogic methods. This must be done with the participation of indigenous peoples because "the issue is no longer planning *for* the indigenous populations, but rather *with* them, and, moreover, arriving at proposals stemming *from* their own perspectives and viewpoints".[168]

In sum, IBE above all relates to indigenous peoples' rights; "the use and development of indigenous languages and the cultivation and enjoyment of indigenous cultures is a right in itself now internationally sanctioned"[169]. Therefore, "accepting diversity nowadays is not only a progressive or altruist attitude, it is a condition for the deepening of democracy and for the respect of everyone's human rights"[170].

[165] SARTORELLO, 2009, p. 80.
[166] LÓPEZ, 2001, p. 9.
[167] Idem.
[168] LÓPEZ, 2009, p. 48.
[169] Ibid, p. 37.
[170] POBLETE MELIS, 2009, p. 199.

IV. Case-study: Bolivia

A. Bolivian context

i. Indigenous peoples: statistics

Although we are conscious of the difficulty of providing accurate demographic information on a country, it is nevertheless interesting to observe the statistics concerning the proportion of indigenous population, especially in a country such as Bolivia, which has always been considered as having an indigenous demographic majority.

Out of a total population estimated at 10.598.035 for midyear 2014[171], 62,2% is indigenous[172]. However, this figures has been contradicted by the National Census of 2012, according to which only 41% of the population self-identifies as belonging to an indigenous nation or population[173]. This decrease of percentage and, therefore, the denial of indigenous identity might be justified by the stigmatisation indigenous peoples have been victim of. Nevertheless, this contradicts past years increasing revalorisation

[171] Centro Latinoamericano y Caribeño de Demografía (CELADE), División de Población de CEPAL, Estimaciones y proyecciones de población a largo plazo 1950-2100, Entry "Bolivia (Estado Plurinacional de / *Plurinational State of*)", at http://www.eclac.cl/celade/proyecciones/basedatos_BD.htm (consulted on 30 May 2014).

[172] Sistema de Indicadores Sociodemográficos de Poblaciones y Pueblos Indígenas (SISPPI), Entry "Porcentaje de Población Indígena", available at http://celade.cepal.org/redatam/PRYESP/SISPPI/ (consulted on 30 May 2014). *See also* Instituto Nacional de Estadísticas (INE), Entry "Estadísticas sociales - Población indígena", available at http://www.ine.gob.bo/ (consulted on 30 May 2014).

[173] INE, "Bolivia. Características de población y vivienda. Censo Nacional de Población y Vivienda 2012", La Paz, 31 July 2013, Table nº 7, p. 31. This census is controversial, especially regarding the self-identification as indigenous peoples. An evaluation of the extent and quality of the census had to be done by three international organisms (CELADE, World Bank and United Nations Population Fund). However, in August 2013, the President of CELADE confirmed that the census was official and that there will not be a technical audit but that an overall evaluation will be conducted for July 2014. MEALLA, 2013, available at http://www.la-razon.com/nacional/Celade-evaluara-anuncia-primer-resultado_0_1892810762.html (consulted on 29 June 2014).

of indigenous identity and constitutional recognition of indigenous peoples' rights in Bolivia and justifies the controversy created by the National Census of 2012.

Linguistically, article 5 of the Constitution recognises 36 indigenous languages as official languages of the state along with Spanish. According to the national census of 2001, 18,3% of the total population is monolingual (4,1% and 34,9%, respectively in urban and rural areas), 32,3% speaks Spanish only (48,1% and 13,7%) and almost half of the population (49,5%) speaks both an indigenous language and Spanish (47,8% and 51,4%)[174].

In brief, Bolivia is one of the Latin American countries with the greatest proportion of indigenous peoples (more than half of the population). Indigenous peoples are explicitly recognised in article 2 of the Constitution:

> "Given the pre-colonial existence of native indigenous *campesino* nations and peoples (NICNP) and their ancestral control on territories, their self-determination is guaranteed in the setting of State unity, that consists in their right to autonomy, to self-governance, to their culture, to recognition of their institutions and to consolidation of their territorial entities, under this Constitution and the law"[175].

Furthermore, the figures above demonstrate the significant cultural and linguistic diversity of Bolivia, which recognises itself constitutionally as:

> "a Social Unitarian State of Community Plurinational Law […] based on political, economical, legal, cultural and linguistic plurality and pluralism"[176].

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[174] Ibid, Entry "Lengua Indígena".

[175] This article highlights the pre-colonial existence of indigenous peoples and their right to self-determination. NICNP is the translation of "nación y pueblo indígena originario campesino", whose rights are recognised in articles 30 to 32 of Bolivian Constitution (2009). Although there is a debate on this concept, especially regarding the term "*campesino*", we will use indifferently the term "indigenous peoples" to refer to this concept. Additionally, we did not enter into the complex debate on indigenous peoples definition because it is outside the scope of this thesis. We refer to the position of the previous Special Rapporteur on Indigenous Peoples, J. Anaya, who argues that "there is no need for a definition if we consider that indigenous peoples are not granted special rights but enjoy equally fundamental rights applied in a specific context, which takes into consideration their cultural particularities". ANAYA J., "Indigenous peoples and natural resources", DeustoForum and Instituto de Derechos Humanos Conference, Deusto University, Bilbao 29 May 2014.

[176] Bolivian Constitution (2009), art. 1 and Preamble.

Cultural diversity is "the essential basis of the Community Plurinational State"[177] and the state assumes the existence of indigenous cultures as a strength and "preserves plurinational diversity as a historical and human heritage"[178].

ii. Evolution towards IBE prior to educational reforms

In order to understand the context in which the educational reform of 1994 emerged, we will analyse the evolution of the Bolivian educational system from the beginning of the XXth century until the reform.

The Bolivian education at the beginning of the XXth century must be understood in a political context of state transformation under the liberal regime[179]. This regime developed "an education with a more modernising horizon, led by foreign experts"[180], which tried to take into consideration the indigenous issue, left on the side of the construction process of the republican state.

The political context changed with the end of liberals and the beginning of republican governments in the twenties, which continued the construction of a Bolivian nation-state. The thirties were marked by the indigenous educational experience of "Escuela Ayllu de Warisata" (1931-1940), an education from the indigenous perspective and integrated in the community. Until today, "Warisata persists in the national ideology as one of the best experiences of indigenous education that emerged and was implemented from below"[181]. However, Mario Yapu does not consider this experience as a good antecedent for the bilingual aspect of education; in the context of national construction in which education played a central role and Spanish was essential, "Warisata expected indigenous peoples to learn Spanish"[182].

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[177] Ibid, art. 98, I.
[178] Ibid, art. 9, 2 and 3. *See also* art. 30, II, point 2 and art. 100, I.
[179] Mario Yapu reminds that, before this period and around 1874, there was a first tendency of decentralisation, called "municipalisation of education", which did not prosper. In the same time and until the XXth century, Bolivia developed an innovative but fragmented "intuitive pedagogical model". Mario Yapu, interviewed by Jorge A. Mayorga Lazcano in MAYORGA LAZCANO, 2012, p. 50.
[180] Idem.
[181] LÓPEZ, 2005, p. 77.
[182] Mario Yapu, interviewed by Jorge A. Mayorga Lazcano in MAYORGA LAZCANO, 2012, p. 51.

The fifties started with the "National Revolution" (1952), which carried out important reforms in the socio-political organisation of the country. One of the reforms concerned the education that played a key role in the process of creating a homogenous nation and solving the "indigenous problem"[183] by incorporating indigenous peoples into the national life[184]. In 1955, the "Código de la Educación" was adopted[185]. This basic legal text illustrates the socio-political context of the time, namely the nationalisation of natural resources and education. While fragmented in the past, education was finally concentrated in one legal instrument which, on one hand, unified the whole system, and on the other hand, divided it into "urban and rural" education in terms of regime and treatment[186]. Although this division already existed, the Code "advocated a uniformed and homogenising education that only paid attention to a condition of class which differentiated urban students from rural: their peasant condition"[187]. In brief, this process "unified while invisibilising the diversity of indigenous peoples which were excluded before"[188].

In this context of homogenisation of the society, bilingual education, which had started in the thirties with Warisata, continued to develop progressively. One important experience is the "Instituto Lingüístico de Verano" (ILV)[189], which developed mainly in the oriental part of Bolivia from 1955[190]. Through the construction and implementation of indigenous alphabets, bilingual methodologies and educational materials, ILV aimed at using bilingual education to respond to educational claims of indigenous peoples. According to the agreement, ILV "not only had to educate but also hispanicise ("*castellanizar*") and evangelise in order to incorporate [indigenous peoples] to the national life"[191]. Even though the aim of ILV was the acculturation and assimilation (although named "integration") of indigenous peoples, "we must admit that the use of

[183] ARRUETA, 2011, p. 5.
[184] OSUNA NEVADO, 2011, p. 77.
[185] Bolivian Code of Education, adopted on 20 January 1965 [hereinafter "Code of Education"].
[186] Mario Yapu, interviewed by Jorge A. Mayorga Lazcano in MAYORGA LAZCANO, 2012, p. 51.
[187] LÓPEZ, 2005, p. 83.
[188] Mario Yapu, interviewed by Jorge A. Mayorga Lazcano in MAYORGA LAZCANO, 2012, p. 51.
[189] Summer Institute of Linguistics.
[190] An agreement was signed by the Bolivian Government and ILV on 12 August 1954 and was enshrined in the Supreme Decree nº 4835, adopted on 18 January 1958.
[191] LÓPEZ, 2005, p. 88.

indigenous languages at school and the work of ILV member […] helped indigenous peoples to be aware of the importance of their languages and the enhancement of it in the communities"[192].

The seventies were marked by the dictatorship in Bolivia, "under a military regime that did not allow the recognition of cultural diversity previously recognized [… This implied] a stagnation regarding the adoption of innovative educational policies, whose victims were the populations excluded of the modernising project of those regimes"[193].

The eighties were a period of democratisation in which the heterogeneity and plural character of the country were rethought. As a criticism to the previous homogenisation of society, several reforms were implemented. In 1983-1984, the first documents of rural teachers, "Central Obrera Boliviana" (COB) and "Confederación de los Campesinos" were published[194]. They claimed the acceptance of indigenous linguistic and cultural diversity and advocated that education should be intercultural and bilingual, through a process of decolonisation. These claims were forgotten and recovered in the nineties but they "went beyond what was implemented in the educational reform of 1994"[195]. Furthermore, in 1983 the "Servicio Nacional de Alfabetización y Educación Popular"[196] was created, with the participation of indigenous organisations, in order to recover and value indigenous peoples culture and languages, through policies that characterised the national situation until today. In addition, the "Proyecto de Educación Intercultural Bilingüe"[197] (PEIB, co-managed with UNICEF and the Ministry of Education and Culture) emerged "as a response to the educational model in force at that time which still aimed at homogenise society"[198] and was applied, from 1988 to 1994.

Finally, we will mention two events that marked the important changes in the nineties, namely the "Marcha Indígena por el Territorio y la Dignidad"[199] (1990) and the World

[192] Ibid, p. 90.
[193] ARRUETA, 2011, p. 8.
[194] Respectively, the Bolivian Workers' Union and the Confederation of Peasants.
[195] Mario Yapu, interviewed by Jorge A. Mayorga Lazcano in MAYORGA LAZCANO, 2012, p. 51.
[196] The National Literacy and Popular Education Service.
[197] The Intercultural Bilingual Education Project.
[198] ARRUETA, 2011, p. 9.
[199] The Indigenous March for Territory and Dignity.

Conference on Education for All (Jomtien, 1990). The former was a march organised by indigenous peoples who claimed the recognition of their territories and the respect of their rights as citizens, including education. It is considered to be "the turning point for indigenous peoples' participation in the political framework, the recognition of their territorial collective rights, the ratification of ILO Convention nº 169 and the approval of the Educational Reform"[200]. The Jomtien Conference led to the creation of the "Equipo Técnico de Asesoramiento a la Reforma Educativa"[201] in 1991, which was responsible for the elaboration of the Educational Reform Law (nº 1565) in 1994.

iii. Educational Reforms (1994 and 2010) and surrounding normative framework

a. The Educational Reform of 1994: "Ley de Reforma Educativa (nº 1565), 7 July 1994

On 7 July 1994, the National Congress adopted the "Ley de Reforma Educativa" (nº 1565)[202], which derogated to the Code of Education of 1955. This law established a participative, intercultural and bilingual education, with a constructivist methodology. By this, it recognised firstly the need to democratise the education management and secondly the cultural and linguistic diversity of Bolivia. In continuation, we will analyse the important aspects of the Reform.

1. Participative education

The first cornerstone of the Educational Reform is the participative education, enshrined in several articles of "Ley de Reforma educativa". Article 1, point 6, refers to the participation of society in all steps of the education development in order to respect society's interests and needs. Furthermore, popular participation is considered as one of the structures of the educational system (article 4, point 1) and one of its objectives in order to allow the access of education to everyone, without discrimination (article 3, point 5).

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[200] OSUNA NEVADO, 2011, p. 83.
[201] The technical Unit for the assessment of the Educational Reform.
[202] Law on Educational Reform (nº 1565), adopted on 7 July 1994. [hereinafter "Ley de Reforma educativa"].

Popular participation is based on the "Ley de Participación Popular"[203] adopted on 20 April 1994 (three months before the "Ley de Reforma Educativa") and on two Supreme Decrees that organise the organs of popular participation[204]. The law aims to restructure the country through a process of decentralisation (administrative and of natural resources), which is also enshrined in the "Ley de Decentralización administrativa"[205]. This process led to "a greater delegation of responsibilities at the local level and to the strengthening of the role played by indigenous organisations and traditional authorities in their relation with the state"[206] as they were recognised for the first time a legal personality[207]. In the normative framework of the "Ley de Participación Popular", the strengthening of political indigenous structures and of indigenous peoples identity were intended to have a great impact on the construction of IBE.

Out of the seven mechanisms of popular participation enshrined in the "Ley de Reforma Educativa" (article 4), we will focus on "Juntas Escolares" and "Consejos Educativos de los Pueblos originarios" (CEPOs) as they illustrate precisely popular participation[208]. The "Juntas Escolares"[209] involve parents and members of the community, who supervise the education development from the planning to the evaluation, as a social control inside local schools. These school boards play an important role because they collect the national and local guidelines regarding education and implement them in a way that takes into consideration de needs and particularities of the community schools. The (eight) CEPOs[210] are NICNP' organisations of social participation in education, legally recognised by the state since 1994. Since 2004, they develop a joint work in the

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[203] Law on Popular Participation (nº 1551), adopted on 20 April 1994. [hereinafter "Ley de Participación Popular"].
[204] Supreme Decree nº 23949 on "Regulation on Organs of Popular Participation" ("Reglamento sobre Órganos de Participación Popular"), adopted on 1 February 1995 and abrogated by Supreme Decree nº 25273 on "Organisation and Functions of Core and District School Boards" ("Organización y Funciones de las Juntas Escolares, de Núcleo y Distrito"), adopted on 8 January 1999.
[205] Law on Administrative Decentralisation (nº 1654), adopted on 28 July 1995.
[206] JÍMENEZ NARANJO, 2005, p. 15.
[207] Ley de Participación Popular, art. 4.
[208] Respectively, the School Boards and the Native Peoples Educational Councils.
[209] Ley de Reforma Educativa, art. 6, point 1 and Supreme Decree nº 23949, art. 4 and Supreme Decree nº 25273, art. 7 to 15.
[210] Ley de Reforma Educativa, art. 6, point 5 and Supreme Decree nº 23949, art. 26 to 31. *See also* "Consejos Educativos de los Pueblos originarios", available at http://www.cepos.bo/home.

entire country, through the "Comité Nacional de Coordinación"[211]. They are one of the main participation organisms in the elaboration of new national educational policies that take into account the linguistic and cultural particularities of communities represented by members of these CEPOs.

2. Intercultural education

The second pillar of the Educational Reform is interculturality, which "assumes the socio-cultural heterogeneity of the country"[212] and "allows the access of all Bolivians to education, without any discrimination"[213]. The intercultural focus refers to the construction of a curriculum elaborated with indigenous peoples participation and that contains knowledge, values and contents from both indigenous peoples and universal heritage. Although interculturality is one of the most important aspects of the curriculum that has to permeate the whole educational system, it had been less implemented in the Reform, compared to the bilingual or constructivist approaches. This is probably because education under the Reform focused on rural areas and not on the whole country, questioning the "education for all" of article 3, point 5 of the "Ley de Reforma Educativa".

3. Bilingual education

The third key point of the Reform is bilingualism as enshrined in article 1, point 5 and article 9, point 2 of the law. Even though languages have a major weight in IBE, the linguistic aspect brought resistance from parents who wanted their children to learn the mainstream language (Spanish) in the hope of a social ascent if leaving their community[214]. It also brought difficulties for teachers to implement IBE because of "the hispanisation (*castellanización*), teachers' lack of knowledge while reading and writing quechua, the recurrent need to refer to Spanish, the discontinuity of bilingual practice and the predisposition of children to quechua"[215].

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[211] National Committee of Coordination (of CEPOs).
[212] Ley de Reforma Educativa, art. 1, point 5.
[213] Ibid, art. 3, point 5.
[214] JÍMENEZ NARANJO, 2005, pp. 43 and 45.
[215] Ibid, pp. 59-60.

4. Constructivist pedagogy of education

The main achievement of the Educational Reform of 1994 is the radical pedagogic-didactic change: constructivism. It is closely linked to interculturality and bilingualism of IBE that the Reform tried to promote. The constructivist pedagogy is characterised notably by "the practice of group work, the new relation between teachers and students and the new forms of constructing knowledge"[216]. The focus is on the importance that children acquire in the construction of their own learning, through creativity, liberty and capacity. Therefore, the child is considered to be at the centre of the learning-teaching process as a motor of his/her own knowledge and the teacher is a support to this process[217].

5. Strengths and obstacles

After a long historical and political process to achieve an education adapted to the cultural and linguistic diversity of the country, Bolivia adopted the "Ley de Reforma Educativa" in 1994. Although the law introduced four essential changes regarding education, namely the participative, intercultural, bilingual and constructivist education, the Educational Reform has been often criticised.

The Reform is a Decree-Law that had to be applied in all primary public schools of Bolivia. However, it did not reach urban areas and was implemented essentially in rural indigenous parts of the country. This questions the education for all recognised in article 3, point 5 of the law. It also explains the "impression that IBE was only for indigenous peoples and the lack of effort to implement it also in cities". In rural areas, the Reform was applied in schools considered predominantly indigenous-speaking. Nevertheless, parents, members of the communities and teachers criticised IBE because they considered it as an imposition. In fact, it did not emerge from them, they had not been consulted and it did not take into account the reality in classrooms[218]. Furthermore, interculturality is linked to the educational curriculum. Besides the official one, a regional diversified curriculum had to be implemented, by incorporating NICNP' knowledge. However, the implementation of curricular diversification was difficult

[216] Ibid, p. 64.
[217] Mario Yapu, interviewed by Jorge A. Mayorga Lazcano in MAYORGA LAZCANO, 2012, p. 52.
[218] OSUNA NEVADO, 2011, p. 102 and JÍMENEZ NARANJO, 2005, pp. 26-27.

because it was only about "incorporating folkloric elements in the learning program [… in a specific context] without diversifying it from the whole indigenous philosophy and knowledge"[219]. In this sense, the interculturality approach of education lacked of effective implementation under the "Ley de Reforma Educativa".

Regarding the bilingual aspect of the Educational Reform, many parents consider indigenous languages as an obstacle for their children progress and social outcome, and therefore insist in the learning of Spanish[220]. Additionally, although the Reform succeeded to incorporate indigenous languages in the learning process, which improved educational achievements[221], these languages were not developed after primary school and Spanish remained the language taught in all others levels of education[222].

As regards to constructivism, despite its success as a new pedagogic method and the teachers' training for its correct implementation, "at the micro pedagogic level of classrooms, teachers developed strategies that they already knew and reliable for them, from a previous training, because there was a lack of appropriate monitoring"[223] of IBE.

Finally, according to Osuna Nevado, "many peoples believe nowadays that the Reform has been thought and elaborated from 'occidental' schemes which had no link with Bolivia"[224].

Nevertheless, the "Ley de Reforma Educativa" was an achievement in terms of participative education. "This reform was the result of an accumulative process of IBE projects and experiments, most of which followed bottom-up approaches"[225]. Firstly, the "Juntas Escolares" involved parents and members of the community who exercised a sort of social control on education in the community schools. Nonetheless, some teachers considered this control as an excess of attributions that interfered with their

[219] ARRUETA, 2011, p. 2.
[220] JÍMENEZ NARANJO, 2005, p. 43.
[221] ARRUETA, 2011, p. 1.
[222] Ibid, p. 15.
[223] Ibid, pp. 11-12 and 20.
[224] OSUNA NEVADO, 2011, p. 93.
[225] LÓPEZ, 2009, p. 24.

profession[226]. Secondly, the creation of CEPOs led to the elaboration of culturally appropriate educational policies at the national level. It also "opened a debate between teachers, parents and indigenous organisations regarding the aims of IBE […] which have been accepted by them and afterwards explicitly defended"[227]. This contradicts the initial strong criticism from parents towards IBE, which is partially justified by the fact that "they ignored the aims of IBE which they distrusted for being a practice organised by the Ministry of Education"[228]. This was due to two different logics regarding IBE; the Educational Reform sustained a new educational model whereas parents focused on the economic and social destiny of their children[229]. In addition, parents also "mistrusted the recent interest of the state, inexistent in the past, for the teaching of [indigenous languages] to their children"[230].

b. Transition to the "Ley de la Educación 'Avelino Siñani-Elizardo Pérez'" (2010)[231]

The period between the two laws on education (1994 to 2010) is characterised by events and normative changes that explain the outcome in 2010 of the "Ley de la Educación 'Avelino Siñani-Elizardo Pérez' (nº 070)".

This transitional period is marked by Evo Morales becoming the first indigenous president of Bolivia in 2005, when we won the elections (with the political party he co-founded, *Movimiento al Socialismo,* MAS) with 53,72% of votes. He entered into functions the 22 January 2006 and implemented a series of normative changes that we will briefly analyse.

[226] Ibid, p. 100 and Mario Yapu, interviewed by Jorge A. Mayorga Lazcano in MAYORGA LAZCANO, 2012, p. 53.
[227] JÍMENEZ NARANJO, 2005, p. 27.
[228] Ibid, p. 43.
[229] Mario Yapu, interviewed by Jorge A. Mayorga Lazcano in MAYORGA LAZCANO, 2012, p. 53.
[230] JÍMENEZ NARANJO, 2005, pp. 43-44.
[231] The law was so called because Avelino Siñani (1881-1941) and Elizardo Pérez (1892-1980) were two indigenous teachers who struggled for indigenous education and who founded the "Escuela Warisata" on 2 August 1931.

1. Abrogation of the "Ley de Reforma Educativa (nº 1565)" and implementation of the Project "Avelino Siñani-Elizardo Pérez"

When the coca trade unions led by the MAS entered into function, they proposed a radical change of Bolivian education. They abrogated the "Ley de Reforma Educativa" of 1994 and started to implement the Project of Education "Avelino Siñani-Elizardo Pérez", even without the majority approval of teachers and national population[232]. MAS justified the abrogation of the "Ley de Reforma Educativa" stating that "Bolivian education is based on the neoliberal model and globalised capitalism and it is part of the processes of colonisation and decolonisation of the country. Therefore it does not comply with the requirements and claims of the populations and communities [… because] it transplant mechanically educational theories and approaches alien to our reality"[233].

2. "Asamblea Constituyente" (2006)

The new government of Evo Morales convened the Constituent Assembly on 6 August 2006. After the social upheaval (known as "*Octubre Negro*", "Black October") in 2003, which marked a turning point in Bolivian history, there was a need for a social forum that could elaborate a re-foundation of the country "including, for the first time, all Bolivians that had been excluded by the pro-neoliberal institutions"[234]. The Assembly represented "an initial response from the new government to indigenous claims [… that focused mainly on] the end of internal colonialism and the beginning of multicultural visions of Bolivia, opening opportunities to achieve democracy based on the aspirations of different ethnic identities"[235]. The Constituent Assembly represents the main focus of political and social fluctuations Bolivia has experienced in recent times, notably of educational changes[236].

[232] This project was enacted into the "Ley 'Avelino Siñani'" only after five years of implementation.
[233] ARRUETA, 2011, p. 18.
[234] DEL CAMPO, 2012, p. 13.
[235] GAMBOA ROCABADO, 2014, p. 3.
[236] OSUNA NEVADO, 2011, p. 104-105.

3. "Plan Nacional de Desarrollo" (2006)

The "Plan Nacional de Desarrollo"[237] was presented to the government on 16 June 2006 and approved by the Supreme Decree nº 29272 on 12 September 2007. In order to depart from the context of colonialism and neoliberalism, which led to social and economic inequalities and exclusion, the Plan aims to create a "dignified, sovereign, productive and democratic Bolivia of Living Well ("*Vivir Bien*"). The proposals and guidelines of the Plan will serve to construct a multinational and community state and allow the empowerment of emerging social movements and indigenous peoples"[238]. We will briefly analyse the four aspects of the Plan in relation to education.

Regarding a "dignified Bolivia", the Plan considers that neither the Code of Education (1955), nor the Educational Reform of 1994 have been able to overcome the colonial model which did not take into consideration students' identity and cultural diversity. In order to address the problems left by the Reform (notably, exclusion, discrimination, exploitation, lack of intercultural education and of participation), the Plan intends to establish "a new social pact for an inclusive, inter and intercultural, productive, creative, scientific and transforming education […] on the basis of a horizontal intercultural dialogue"[239]. In order to so, the first policy refers to the transformation of the educational system, which will cover all levels of education, be an instrument of liberation and constitution of a new state and involve the permanent and committed participation of social and territorial organisations. The second policy aims to provide quality education that prioritises the equality of opportunities, with a special focus on rural and peri-urban areas. As regards to the "democratic Bolivia", although the Plan does not focus specifically on education, for Mario Yapu it is linked to "the new forms of managing the political power in a democratic society and, in this sense, education can eventually be a component of such a society"[240]. The "productive Bolivia" includes the productive education (more precisely, the new model of "sociocommunity productive"

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[237] National Plan of Development. "Plan Nacional de Desarrollo 'Bolivia Digna, Soberana, Productiva y Democrática para Vivir Bien'", 2006 – 2011, approved by Supreme Decree nº 29272, adopted on 12 September 2007. [hereinafter "Plan Nacional de Desarrollo"].
[238] Plan Nacional de Desarrollo, presentation.
[239] Ibid, chapter II "Bolivia Digna", 2.5.2.
[240] Mario Yapu, interviewed by Jorge A. Mayorga Lazcano in MAYORGA LAZCANO, 2012, p. 54.

education, the "*nuevo modelo sociocomunitario productivo*") that promotes a sustainable development to avoid economic dependency and imbalance. Finally, the "sovereign Bolivia" focuses more on the self-determination and on the relations between the Plurinational State of Bolivia and the international impositions[241].

4. Ley nº 3560 (Transposition of UNDRIP) (2007)

Furthermore, the Law nº 3760 was adopted on 7 November 2007 and elevated the 46 articles of UNDRIP to the status of national law. By doing so, Bolivia is one of the few Latin American countries that complied with article 38 of UNDRIP: "States, in consultation and cooperation with indigenous peoples, shall take the appropriate measures, including legislative measures, to achieve the ends of this Declaration".

5. Adoption of the new Political Constitution in 2009

Finally, on 25 January 2009, Bolivia held a referendum to adopt the new national Constitution that established for the first time the plurinational character of the Bolivian state. For the first time, the writing of the constitutional text involved popular participation; in fact, the Constituent Assembly played a crucial role in the writing process and in the reconstruction of a legitimate democratic political system. The emergence of a new Constitution in 2009 is the result of several factors, mainly the democratic crisis between 2000 and 2003 with the fall of the ex President Gonzalo Sánchez de Lozada and the effort to apply the rights of indigenous peoples enshrined in the ILO Convention nº 169 and the UNDRIP[242]. In brief, the solution to the colonial problem in Bolivia has been "the constitutionalisation of [411] indigenous peoples rights that establishes the collective and institutional participation of these peoples in the organs and structure of the State"[243]. In brief, as we have analysed before, the new Constitution of Bolivia is one of the most advanced in terms of indigenous peoples' recognition and has the particularity of recognising Bolivia as a "Social Unitarian State of Community Plurinational Law"[244].

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[241] Idem.
[242] MAMANI CONDORI, 2011, pp. 179.
[243] Idem.
[244] "Estado Unitario Social de Derecho Plurinacional Comunitario", Bolivian Constitution (2009), article 1.

c. The "Ley de la Educación 'Avelino Siñani-Elizardo Pérez'", 20 December 2010

After having analysed the normative changes that marked the period between 1994 and 2010, we will focus on the establishment of the new Bolivian educational system through the "Ley de la Educación 'Avelino Siñani-Elizardo Pérez'", adopted on 20 December 2010[245].

From an educational perspective, the adoption of the law was preceded, firstly, by the "I Congreso Nacional de Educación de los Pueblos Indígenas Originarios"[246] in 2004. Following this Congress, several indigenous and peasant organisations elaborated an educational document (the "Libro Verde", the "Green Book"), which contained the claims, points of view and projections of native indigenous nations in order to transform the educational policies of the country. Moreover, in 2006, two measures that led to the educational revolution were promoted. The "Comisión Nacional de la Nueva Ley Educativa Boliviana"[247], in which twenty-two national institutions and organisations participated, was formed and focused on the writing of new educational policies. The results were presented in the "II Congreso Nacional de Educación"[248], in which thirty-three organisations from civil society participated.

1. Analysis of the "Ley 'Avelino Siñani'"

- *General overview*

The Plurinational State of Bolivia, through the Law 'Avelino Siñani', is in the process of implementing the new educational model based on the following pillars: intraculturality, interculturality, plurilinguism, decolonisation, productive and community education[249]. It is an epistemological shift from the intercultural bilingual education (IBE) under the 1994 Educational Reform to the intracultural, intercultural and plurilingual education (IIPE) under the Law 'Avelino Siñani'. The Ministry of Education and Cultures explains that the construction of IIPE is based on the following educational experiences: "the educational experiences developed in the native

[245] Law on Education 'Avelino Siñani-Elizardo Pérez' (nº 070), adopted on 20 December 2010 [hereinafter "Law 'Avelino Siñani'"].
[246] I National Congress on Education of Native Indigenous Peoples.
[247] National Commission on the New Educational Law of Bolivia, created by Supreme Decree nº 28725, adopted on 24 May 2006.
[248] II National Congress on Education.
[249] Ley 'Avelino Siñani-Elizardo Pérez', art. 1, points 1, 5 and 6.

communities, from which their knowledge, skills and cultural values of education transcend […]; the pedagogic experience of the school "Ayllu de Warisata" that becomes the fundamental principle of the new curriculum in Bolivian education […]; the contemporary psychological and pedagogical approaches […] such as the historical and cultural focus […and] the liberating pedagogy"[250].

In order to implement the IIPE, the state has elaborated a plurinational basic curriculum (article 69) and has supported the CEPOs in the construction of regionalised curricula (article 70). Regionalised curricula are based on the sociocultural and linguistic context of the autonomous territorial entities, and express the particularity and complementarity with the basic curriculum (article 70, point 1)[251]. In this sense, the NICNP develop productive and community educational processes, in accordance with the productive vocations of the territorial context (point 2), and they share concurrent competences with the state regarding the management of this type of curricula (point 3). In brief, "the new productive social and community curriculum has been given to the Bolivian population as a working document […] that must be discussed, adjusted [contextualised and adapted] by society, because the management of the Plurinational State in a participative and consensual way is a requirement of the political process of transformation"[252].

We will now analyse the different pillars enshrined in the Law 'Avelino Siñani' and their close interrelation.

- *Intraculturality*

Intraculturality is explained in article 6 as

> "promoting recovery, strengthening, development and cohesion within the cultures of NICNP, intercultural and afro Bolivians communities for the consolidation of the Plurinational State, based on equity, solidarity, complementarity, reciprocity and justice".

Since intraculturality emerged from indigenous peoples organisations, managing the

[250] Ministerio de Educación y Culturas, 2008, p. 21.
[251] Regionalised curricula are an initiative from the Native Indigenous Nations and Peoples, elaborated by their respective CEPOs.
[252] MINISTRY OF EDUCATION OF BOLIVIA, IIPP, PIEB, DANIDA, 2012, p. 7.

recovery and empowerment of their own knowledge and skills should be "participative, consensual and local, as it concerns each indigenous nation and people"[253] in accordance with its cultural and linguistic context. In this sense, NICNP become direct protagonists in the construction of new education models in accordance with their worldviews and values, which are also incorporated in the Plurinational curriculum (article 6). In brief, "the revaluation of 'the indigenous' and 'the original' makes sense in a context of 're-funding of the country' and is conceived in the struggle against racism, in which from my point of view, discrimination against indigenous peoples is endemic"[254].

- *Decolonisation*

It is impossible to conceive intraculturality without understanding the historical development of colonialism and the impact on indigenous peoples life. In order to recover, value and empower their cultures, indigenous peoples need to break the colonial scheme that makes them think "their cultures are inferior, 'primitives', as compared to the supposed superiority of capitalist civilisation […] In this sense, decolonisation is not only a pedagogical matter; it is political proposal to go out of the colonial capitalism and to construct an alternative coexistence order, inspired by indigenous peoples life style"[255]. This is why intraculturality was not mentioned in the Educational Reform of 1994; "there was no problematisation of the colonial education or of the coloniality of Bolivian society"[256].

- *Interculturality*

Intraculturality is not exclusively an inward movement for the reason that cultures are not self-sufficient. Therefore, interculturality implies mutual dialogue and learning between cultures, as well as coexistence in equal conditions and without hierarchy[257]. "Unlike the "Ley de Reforma educative" that established interculturality as a

[253] Ibid, p. 7.
[254] OSUNA NEVADO, 2011, p. 120. In this context, Bolivia adopted the Law against Racism and all forms of Discrimination ("Ley contra el Racismo y toda forma de Discriminación, nº 045", adopted on 8 October 2010). The first general principle is interculturality (article 2, a) linked to education (article 6, point 1).
[255] Ibid, p. 9.
[256] Ibid, p. 25.
[257] Ibid, p. 27.

transformation of the domination relations between cultures inside Bolivia, the "Ley 'Avelino Siñani'" focuses on the existent cultural relations in Bolivia with the rest of the world"[258]. Consequently, the duality of intra and interculturality implies not only "the enhancement of 'the own' in contact with 'the other'"[259] but also the transformation of society and state organisation. In brief, it is not possible to conceive an intracultural education that is not intercultural at the same time; the two notions are inseparable because "in Bolivian reality, there is not a single community that has no intercultural relations"[260]. Finally, there is a close link between the three notions we analysed, intraculturality, decolonisation and interculturality. Some authors believe that in order for indigenous peoples to value their own knowledge, they must proceed to decolonisation, first, so as to be able to dialogue with the others afterwards. To the contrary, Jiovanny Samanamud considers that there are not two different moments; "in order to reconstruct and revalue ourselves (intraculturality), we need to enter the dialogue […] because no culture has historically developed only from itself"[261] (interculturality) while dialoguing internally (decolonisation).

- *Productive and community education*

Finally, intraculturality is intrinsically linked to the community and productive education. The new sociocommunity productive model promotes "sustainable development that guarantees processes of production, conservation, handling and defense of all natural resources, strengthening the territorial management of native indigenous nations and peoples, *mestizos* and afro"[262]. In order to respect the specificities of each territory and to avoid economic dependency and imbalance, a community, productive and territorial educational model must be put in place in a way appropriate to each case[263].

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[258] ARRUETA, 2011, pp. 20-21.
[259] OSUNA NEVADO, 2011, p. 195.
[260] Intervention of Jiovanny Samanamud in "the dialogue with the public", in MINISTRY OF EDUCATION OF BOLIVIA, IIPP, PIEB, DANIDA, 2012, p. 10.
[261] Ibid, p. 57.
[262] Ministerio de Educación y Culturas, 2008, p. 23.
[263] OSUNA NEVADO, 2011, p. 119. The "productive and territorial" education must be understood in the context of the Framework Law on Autonomies and Decentralisation 'Andrés Ibáñez' ("Ley Marco de Autonomías y Decentralización 'Andrés Ibáñez'" (nº 031), adopted on 19 July 2010.

The community education is a continuous process of "training, growth and maturation by which children and young persons become integral members of the community; it does not focus on the accumulation of knowledge, but rather on the practical management and internalisation of learning. […] Knowledge is transmitted intergenerationally and it is not for the individual but rather for the benefit of the entire community. [Additionally] the processes of learning are linked to the territory, with centuries of natural and human life"[264]. In this sense, community education is integral because knowledge, values and capacities are interrelated to their practical use.

Community education is also productive because "education, the process of becoming a member of the community, aims to achieve the productive and practical subsistence of the family and the community"[265]. Productive education, recognised in the "Plan Nacional de Desarrollo" under the "Productive Bolivia" section and in the Bolivian Constitution (2009), "is not only the production of material and market goods, but also the production of symbolic goods, the training and production of persons. Therefore, it is a conception of productive education in which production is amplified by its semantic content"[266].

More practically, community and productive education enables the empowerment of communities' own educational and pedagogical forms, which are based on the following questions: "Why are you going to study? How will you contribute to the development of your community or municipality?"[267].

- *Strengths and obstacles*

According to Mario Yapu, the strength of the "Ley 'Avelino Siñani'" is its legal framework: the "Plan Nacional de Desarrollo" of 2006 and mostly the Bolivian Constitution (2009). In this context, "education is meant to play a new role leaving

[264] MINISTRY OF EDUCATION OF BOLIVIA, IIPP, PIEB, DANIDA, 2012, p. 20.
[265] Idem.
[266] Mario Yapu, interviewed by Jorge A. Mayorga Lazcano in MAYORGA LAZCANO, 2012, p. 54.
[267] Interview with Marcelino Higueras Saavedra, Popular educator (trainer in education, natural resources and legal fields, from the Department of Chuquisaka, Municipality of Tarabuco), Bilbao, 3 June 2014. [hereinafter "Interview with Marcelino Higueras Saavedra"].

room for innovation because its ideological apparatus is based on the two legal instruments"[268].

However, the law in itself has been criticised in many aspects. Firstly, according to José Antonio Arrueta, its terminology "charged with adjectives and limited arguments, prescriptive and at the same imbued by a pragmatic discourse […] that implies confusion, ambiguity and an undoing debate on its instrumentation"[269] makes the implementation of the law difficult. Secondly, although it is the "Law on Education" which is part of the "Educational Revolution", "it emerged from a political point of view, rather than an epistemological and educative perspective"[270]. While some see it as a criticism, other consider that "an educational proposal, irrespectively from its nature but even more if it pretends to be alternative, must be linked to the set of state policies, because education cannot be isolated from economic and politic relations"[271]. Therefore if the educational proposal of the Ministry of Education does not find correlations in the state and government policies, "this proposal is not only naive but also unfeasible"[272]. Finally, a further obstacle of the law is that, although the law recognises that IIPE permeates the entire educational system and is a right for all[273], it focuses excessively on "the indigenous"[274]. "This perspective makes the law, as well as the previous one ("Ley de Reforma educativa"), suffer a sort of 'epistemological reductionism', leading to the perception that education is 'only for indigenous peoples'"[275]. This endorses the idea that the new law did not change the rigid concept of culture, which conceives population as divided between two main cultural groups clearly defined: indigenous and non-indigenous. According to Carmen Osuna Nevado, "this concept of culture denies, not only the diversity inside each main group, but also the proper diversity of each individual. Therefore, this maintains a sort of homogenisation; in terms of education, it might result in the development of strategies and ideas that encourages the

[268] Mario Yapu, interviewed by Jorge A. Mayorga Lazcano in MAYORGA LAZCANO, 2012, p. 58.
[269] ARRUETA, 2011, p. 18.
[270] Interview with Marcelino Higueras Saavedra.
[271] MINISTRY OF EDUCATION OF BOLIVIA, IIPP, PIEB, DANIDA, 2012, p. 46.
[272] Idem.
[273] "Ley 'Avelino Siñani'", art. 1, point 6 and art. 3, point 8.
[274] MINISTRY OF EDUCATION OF BOLIVIA, IIPP, PIEB, DANIDA, 2012, p. 47.
[275] ARRUETA, 2011, p. 19.

discrimination against which society is intended to fight"[276], increasing consequently educational segregation and differentiation.

- *Conclusion*

In conclusion, according to article 3, point 8 of the "Ley 'Avelino Siñani'", "education is intracultural, intercultural and plurilingual in all the education system". The curriculum and IIPE in general are conceived in a holistic and integral way, referring to the contents, methodologies, objectives and evaluations criteria[277].

The new educational model, through the pillars enshrined in the "Ley 'Avelino Siñani'", calls for "reciprocity, complementarity, duality, equality and respect"[278] between the different educational systems of Bolivia (the NICNP and the Plurinational state systems). In order to achieve coordination in equal conditions regarding education, there cannot be a dominant and a subordinated system. Reciprocity is understood as "the principle of mutual cooperation, independent from rewards or monetary exchange. In quechua, this principle means 'Today, for me in this space and in this time, tomorrow for you in this same space and time'. Duality is the process of construction of the Ayllu, the worldview of native indigenous peoples. It refers to the participation of woman and man, 'Qhari-Warmi': one does not go forward without the other"[279].

B. Bolivia's compliance with its international obligations regarding the right to education

Bolivian colonial history, socio-economic inequalities and cultural diversity have led to a normative evolution regarding the right to education. The "Ley 'Avelino Siñani'" of

[276] OSUNA NEVADO, 2011, p. 362.
[277] MINISTRY OF EDUCATION OF BOLIVIA, IIPP, PIEB, DANIDA, 2012, p. 18.
[278] Interview with Marcelino Higueras Saavedra. *See also* "Ley 'Avelino Siñani'", art. 3, point 13.
[279] Idem.

2010 introduced several changes in the educational system, especially compared to the Educational Reform of 1994. These educational changes concern notably the curriculum, popular participation, teachers training, institutional structure and funding.

i. Methodology

Due to the limited extent of this thesis, our analysis will be centred mainly on the three first elements (curriculum, popular participation and teachers training) as they are the core of the new law. As mentioned *supra*, we will focus on primary and secondary education (and not on tertiary), without distinguishing between "fiscal, private, conventional educational systems"[280], except for teachers training for which we will examine only the public. As we will not concentrate on a specific community or area of Bolivia, our aim is to give a general panorama of the right to education in the country.

This study aims to reveal, on one hand, the progress Bolivia has achieved, and on the other hand, the obstacles it faces as regards to the fulfilment of the right to education. For this, we will firstly observe the international treaties protecting the right to education Bolivia is party to. Secondly, using the "structure, process and outcome indicators", we will examine Bolivia's compliance regarding availability, accessibility, acceptability and adaptability[281] of education.

In order to develop a coherent study of the "4-A framework", we will refer to the reports on the "4-A" of the previous Special Rapporteur on Education, Katarina Tomasevski[282]. We will also use the guidelines on "National Implementation" and the "Monitoring Guide" provided by "The Right to Education Project"[283].

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[280] Bolivian Constitution (2009), art. 70, paragraph III.
[281] For the study of adaptable education, we will only focus on indigenous peoples' particularities and needs and we will not address adaptability regarding child labour or children with disabilities.
[282] TOMASEVSKI, 1999 and TOMASEVSKI, 2009.
[283] Right to Education Project, "National implementation" and "Monitoring Guide – The right to education indicators (May 2013)", at http://www.right-to-education.org/page/national-implementation (consulted on 20 June 2014).

As for the three indicators, regarding the "Structure" indicator, we will do a legal analysis by comparing the content of the Bolivian Constitution and the "Ley 'Avelino Siñani'" with the ICESCR, CRC, ILO Convention nº 169 and the UNDRIP (that the government transposed into national law)[284]. As regards to the "Process" indicator, we will measure Bolivia's effort to comply with its international obligations regarding the right to education by analysing the doctrine on Bolivia's educational system and official websites of national institutions (especially that of the Ministry of Education) and of programs that are implemented in the country. For the "Outcome" indicator, we will examine, to the extent possible, the reality of education on the ground, based on statistics on education in Bolivia, reports from the CRCtee, CESCR and UPR, the interview to Marcelino Higueras Saavedra and Yamila Gutierrez Callisaya and information from the doctrine on Bolivia's education, including interviews to the Minister of Education and educational actors[285]. More precisely regarding statistics, for both "Process" and "Outcome" indicators, we will examine statistics that reflect the reality of education in the country. We will mainly use the UNESCO Institute for Statistics (UIS) database, as it offers the most complete and up-to-date (until the year 2011) statistics on education, compared to UNDP "Human Development Report 2013. The Rise of the South: Human Progress in a Diverse World", UNESCO "Global Monitoring Report 2013/2014. 'Teaching and learning: Achieving quality for all'" and World Bank database. In fact, one main issue is that the different databases consulted did not measure the same concepts, did not provide statistics for the same period of time or lacked disaggregated among relevant sub-groups within society. Therefore, we used the more wide-ranging database and referred to World Bank database twice for indicators that were missing in UIS. Furthermore, except for one indicator (literacy rates), we have chosen not to use national statistics because the last census of 2012 only covers school attendance and illiteracy rates. In addition, we are conscious that, when

[284] Although we will not use it in our legal analysis, we are conscious that Bolivia committed to achieve the eight United Nations Millennium Development Goals by the target date of 2015, and especially, the second Goal "Achieve Universal Primary education".

[285] We did not base our arguments on indigenous organisations' declarations regarding education because we could not find them. Education does not seem to be a priority topic of declaration for indigenous organisations as they focus more on other immediate urgencies, such as the environment, the right to land, the right to free, prior and informed consent.

the government is in charge of compiling data, it may cover up unfavourable information, produce inaccurate data or simply refuse to release data[286]. Moreover, we must specify that most of the education-related data is for 2011 but others are for 2010 due to the lack of information in UIS database. Finally, in order to examine progress or retrogression in Bolivia's efforts to respect its international education obligations, we compared the data of 1994 and 2010 or 2011 to observe the difference between the two educational reforms. However, when using the National Census of 2012 data for literacy rate, the comparison is made with the years 1992 and 2001.

In brief, we must clarify that "indicators have a problem known as "slippage", [… that is to say] they do not precisely or entirely measure the concept they are designed to assess"[287], because this concept might be difficult if not impossible to measure. Despite certain limitations, the three indicators remain a relevant tool to measure state's compliance with its treaties obligations, as it points out the failures and helps to identify future improvements for where violations were found.

ii. Bolivia's ratification or accession to international legal instruments

Bolivia is part of the main international legal instruments that enshrine the right to education, without making any reservation or derogation. It proceeded to the accession of the ICESCR on 12 August 1982 and it ratified the CRC on 26 June 1990 and the ILO Convention nº 169 on 11 December 1991[288]. Moreover, it ratified the ICERD on 22 September 1970, the CEDAW on 8 June 1990[289] and the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions on 8 April 2006[290].

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[286] BARSH, 1993, p. 102.
[287] KALANTRY, GETGEN & KOH, 2009, pp. 91-92.
[288] UN, Treaty collection, at https://treaties.un.org/Pages/Treaties.aspx?id=4&subid=A& lang=en (consulted on 11 June 2014). It signed the CRC on 8 March 1990, available at http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO:11300:P11300_INSTRUMENT_ID:312314:NO (consulted on 11 June 2014).
[289] UN, Treaty collection, at https://treaties.un.org/Pages/Treaties.aspx?id=4&subid=A& lang=en (consulted on 11 June 2014). It signed the CEDAW on 30 May 1980 and the ICERD on 7 June 1966.
[290] UNESCO, Convention on the Protection and Promotion of the Diversity of Cultural Expressions ratifications, at http://www.unesco.org/eri/la/convention.asp?order=alpha&language=E&KO=31038 (consulted on 11 June 2014). It is important to note that Bolivia did not ratify the UNESCO Convention against Discrimination in Education (adopted on 14 December 1960).

As regards to Latin American legal instruments, Bolivia ratified the OAS Charter on 25 September 1950, accessed to the ACHR on 20 June 1979 and ratified the Protocol of San Salvador on 12 July 2006[291]. Finally, in 2007, Bolivia adopted the law nº 3760[292] that elevates de UNDRIP to the status of national law which becomes consequently legally binding in the national legal system.

Furthermore, article 13, paragraph III of Bolivia's Constitution provides that "the international treaties and conventions ratified by the Plurinational Legislative Assembly which recognise human rights […] prevail in the domestic order" and that the Constitution must be interpreted in conformity with the international human rights treaties ratified by Bolivia.

iii. Structure indicator

As explained *supra*, structural indicators assess the extent to which a state's domestic laws comply with its international legal obligations towards economic, social and cultural rights. The failure by a state party to comply with a treaty obligation is, under international law, a violation of that treaty[293].

a. Availability

Availability refers to the government's obligation to establish schools, respect private schools and provide enough resources for the development of educational institutions[294]. According to both Bolivian Constitution and the "Ley 'Avelino Siñani'", the state recognises and respects the functioning of conventional and private educational

[291] OAS, Current Status of Signatures and Ratifications of the Inter-American Treaties, at http://www.oas.org/dil/treaties_A-41_Charter_of_the_Organization_of_American_States_sign.htm (for OAS Charter), http://www.cidh.oas.org/Basicos/English/Basic6.prot.sn%20salv%20Ratif.htm (for Protocol of San Salvador) and http://www.oas.org/dil/treaties_B-32_American_Convention_on_Human_Rights_sign.htm (for ACHR), (consulted on 11 June 2014). It signed the OAS Charter on 30 April 1948 and the Protocol of San Salvador on 17 November 1988.
[292] Ley nº 3760, adopted on 7 November 2007.
[293] The Limburg Principles, paragraph 70 and the Maastricht Guidelines, paragraph 5.
[294] Tomasevski 1999 Report, paragraphs 51 to 56. ICESCR, art. 13, paragraph 2, point e and CRC, art. 28, paragraph 1, point a, b and d.

units[295]. In addition, both national texts provide that "education constitutes a supreme function and greatest financial responsibility of the state, which has the indeclinable obligation to sustain, guarantee and manage it"[296].

b. Accessibility

Accessibility means that education must be accessible to everyone, physically and economically, without discrimination. The ICESCR, CRC, ILO Convention nº 169 and UNDRIP recognise the right of everyone to education that must be enjoyed without discrimination (or on equal footing)[297]. In this sense, Bolivia's legal framework is in conformity with international treaties as both the Constitution and the "Ley 'Avelino Siñani'" recognise that "everyone has the right to receive education at all levels in a universal, productive, free, integral and intercultural way, without discrimination"[298]. In addition, article 82, paragraph I of the Constitution guarantees explicitly the access to education in equal conditions, as a responsibility of the state.

In addition, the ICESCR acknowledges that all education must be economically accessible but goes further for primary education[299]. Not only it requires primary education to be compulsory but also that the state shall ensure it immediately free of charge to everyone[300] or adopt a plan of action, within two years, for the progressive implementation of free primary education, within a reasonable number of years[301]. As regards to secondary education, the state must aim to the progressive introduction of free education[302]. Bolivia's legal texts go beyond its international obligations. Firstly, both the Constitution and the "Ley 'Avelino Siñani'" state that "education is

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[295] Bolivian Constitution, art. 87 and 88, paragraph 1 [and] Ley 'Avelino Siñani', art. 2, paragraphs 3 and 4.
[296] Ibid, art. 77, paragraph 1 [and] art. 1, point 2.
[297] ICESCR, art. 2, paragraph 2 and art. 13, paragraphs 1 and 2; CRC, art. 28, paragraph 1; ILO Convention nº 169, article 26 and UNDRIP, article 14, paragraph 2. It is to be noted that the ICESCR gives a non-exhaustive list of discrimination grounds for the enjoyment of the rights it recognises.
[298] Bolivian Constitution (2009), art. 17 [and] Ley 'Avelino Siñani', art. 1, point 1. Like the ICESCR, Bolivian Constitution develops a non-exhaustive list of discrimination grounds (article 14) for the enjoyment of the rights it enshrines.
[299] ICESCR, art. 13.
[300] Ibid, art. 13 paragraph 2, point a and CRC, art. 28, paragraph 1, point a.
[301] ICESCR, art. 14.
[302] Ibid, art. 13, paragraph 2, point b.

compulsory until the baccalaureate"[303], not limiting the explicit obligation of the state to provide compulsory primary education. Secondly, both national texts recognise, in a general way, the right to every person to free education at all levels[304], and specify that public education ("fiscal") is free at all levels until higher education (and not only primary education)[305]. Additionally, in order to ensure everyone's access and permanency in education, both the Constitution and the "Ley 'Avelino Siñani'" ensure that the state will help with priority students with less economical resources (through economical help, alimentation programs, clothing, transport and school material) and students in remote areas where education is physically difficult, with student residences[306].

c. Acceptability

Acceptability implies that states have the obligation to provide an acceptable, high-quality education to all students[307]. Acceptability illustrates that the right to education "by its very nature calls for regulation by the State, regulation which may vary in time and place according to the needs and resources of the community and of individuals"[308]. Therefore, states are obliged to ensure that "all schools conform to the minimal criteria which it has developed, thus ensuring one component of making education acceptable"[309].

An acceptable education implies notably the respect for parents' freedom to have their children educated in conformity with their religious, moral or philosophical convictions[310]. Bolivia's domestic texts comply with this obligation as they enshrine the respect for "the right of mothers and fathers to choose suitable education for their daughters and sons"[311].

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[303] Bolivian Constitution, art. 81 [and] Ley 'Avelino Siñani', art. 1, point 3.
[304] Ibid, art. 17 [and] art. 1, point 1.
[305] Ibid, art. 81 [and] art. 1, point 9.
[306] Ibid, art. 5, point 11 [and] art. 82, paragraph II.
[307] ICESCR, art. 13 and General Comment nº 13, paragraph 6, point c.
[308] *Belgian Linguistic Case* (ECtHR, 23 July 1968), paragraph 5.
[309] TOMASEVSKI, 2009, p. 29.
[310] ICESCR, art. 13, paragraph 3 and CRC, art. 29, paragraph 1, point b.
[311] Bolivian Constitution, art. 88, paragraph II and Ley 'Avelino Siñani', art. 2, paragraph V.

Acceptability of education is also linked to the language of instruction, which can preclude children to learn or to attend school if not acceptable[312]. As regards to indigenous peoples, "Measures shall be taken to preserve and promote the development and practice of the indigenous languages of the peoples concerned"[313]. In this sense, when possible, indigenous students should be taught to read and write in their mother tongue (that is indigenous) and measures shall be taken to ensure that they also learn the mainstream language (that is Spanish)[314]. Bolivian education is plurilingual because of the population's linguistic diversity[315]. According to article 7 of the "Ley 'Avelino Siñani'", education should start in the mother tongue and "its use is a pedagogical necessity in all aspect of the learning process".

Finally, acceptability refers also to the states' recognition of "indigenous peoples' right to establish and control their own educational systems and institutions providing education in their own languages, in a manner appropriate to their cultural methods of teaching and learning"[316]. This right is subject to the condition that such institutions meet minimum standards established by the competent authority in consultation with indigenous peoples[317]. The ILO Convention nº 169 adds that appropriate resources must be provided by the state for this purpose. Bolivia's national texts address implicitly this right by recognising constitutionally autonomous territorial entities[318] inside Bolivia competent notably for education and the decentralisation of education, through regionalised curricula to be designed and implemented by the CEPOs in order to be appropriate and adapted to the community needs[319].

Furthermore, acceptability implies that states must provide a high-quality education to every student. Bolivia's Constitution and the "Ley 'Avelino Siñani'" explicitly state that

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[312] CRC, art. 30.
[313] ILO Convention nº 169, art. 28, paragraph 3 and UNDRIP, art. 13, paragraph 3.
[314] ILO Convention nº 169, art. 28, paragraphs 1 and 2.
[315] Bolivian Constitution, art. 78, paragraph 2 and Ley 'Avelino Siñani', art. 1, point 6; art. 3, point 8.
[316] UNDRIP, art. 14, paragraph 3; ICESCR, art. 13, paragraph 4; CRC, art. 29, paragraph 2 and ILO Convention nº 169, art. 27, paragraph 3.
[317] ICESCR, art. 13, paragraph 4; CRC, art. 29, paragraph 2 and ILO Convention nº 169, art. 27, paragraph 3.
[318] Bolivian Constitution, art. 1.
[319] Ley 'Avelino Siñani', art. 69-70.

education must be of quality[320]. In order to guarantee quality education in the whole national educational framework, both domestic legal texts recognise the need to implement a system of "follow-up, measurement, evaluation and accreditation of the educational quality"[321], with social participation[322]. In order to do so, firstly, there is a need for "international indicators, parameters of evaluation and accreditation of educational quality that respond to the socio-cultural and linguistic diversity of the country"[323]. Secondly, the system of control of the educational quality "will be the responsibility of a public institution, technical and specialised, independent from the relevant Ministry"[324], the "Observatorio Plurinacional de la Calidad Educativa" (OPCE)[325].

d. Adaptability

"Education has to be flexible so it can adapt to the needs of changing societies and communities and respond to the needs of students within their diverse social and cultural settings"[326].

Firstly, adaptability implies that educational programs (especially curriculum and pedagogic methods) and services "address [indigenous peoples'] special needs, and shall incorporate their histories, their knowledge and technologies, their value systems and their further social, economic and cultural aspirations"[327]. In this sense, states shall take measures for indigenous peoples "to have access, when possible, to an education in their own culture and provided in their own language"[328]. Although education must be flexible to indigenous peoples' cultural needs, the imparting of general knowledge and

[320] Bolivian Constitution (2009), art. 78, I [and] "Ley 'Avelino Siñani'", art. 1, point 5; art. 2, paragraph II; art. 3, point 4.
[321] Ibid, art. 89 [and] art. 5, point 5.
[322] "Ley 'Avelino Siñani'", art. 5, point 18.
[323] Idem.
[324] Bolivian Constitution (2009), art. 89.
[325] Plurinational Observatory of Educational Quality, created by the Ley 'Avelino Siñani' (article 83) and regulated by Supreme Decree nº 0832 (adopted on 30 March 2011).
[326] General Comment nº 13, paragraph 6, point d. *See also* CRC, art. 30; ILO Convention nº 169, art. 27, paragraph 1 and UNDRIP, art. 14, paragraph 13.
[327] ILO Convention nº 169, art. 27, paragraph 1.
[328] UNDRIP, art. 14, paragraph 3.

skills will help these students to participate fully and on an equal footing in their own community and in the national community[329]. Regarding adaptable educational programs and services, Bolivia's Constitution and the "Ley 'Avelino Siñani'" recognise explicitly that "education is intracultural, intercultural and plurilingual in the entire educational system"[330]. One main objective of education is "to develop educational programs relevant for each socio-cultural, linguistic, historical, ecological and geographical context, sustained in a intercultural curriculum"[331]. In this sense, in addition and complementarily to the basic Plurinational basic curriculum, the law establishes regionalised curricula for the seven sociolinguistic regions defined by the Ministry of Education[332]. Regionalised curricula reflect knowledge, skills, worldview, history, … of NICNP as defined by the native indigenous peoples organisations who take into account cultural, linguistic, territorial and productive criteria. Moreover, the consolidation and strengthening of indigenous cultural identity of Bolivia is based on "own sciences, techniques, arts and technologies, in conjunction with universal knowledge"[333]. In brief, both legal texts state that Bolivia's education is inclusive, diverse and plural because it assumes the diversity within the population and "offers a timely and relevant education according to the necessities, expectations and interests of all…"[334]. Finally, because education is intercultural, diverse and plural, there is mutual learning between mainstream society and indigenous education[335] and this should allow indigenous students to participate in the national community.

Secondly, according the ILO Convention nº 169 and the UNDRIP, education programs and services should not only be adapted to indigenous peoples' cultural particularities but also developed and implemented in co-operation with them[336]. Both national legal texts

[329] ICESCR, art. 13, paragraph 1 and ILO Convention nº 169, art. 29-30.
[330] Bolivian Constitution, art. 78, paragraph 2 and Ley 'Avelino Siñani', art. 1, point 6; art. 3, point 8. *See also* Bolivian Constitution, art. 17 and Ley 'Avelino Siñani', art. 1, point 1.
[331] Ley 'Avelino Siñani', art. 5, point 15.
[332] Ibid, art. 70.
[333] Ibid, art. 4, point 4.
[334] Ibid, art. 3, point 7; art. 3, point 4 and Bolivian Constitution, art. 84.
[335] Bolivian Constitution, art. 17 and Ley 'Avelino Siñani', art. 1, point 1; art. 3, point 4.
[336] ILO Convention nº 169, art. 27, paragraph 1 and UNDRIP, art. 14, paragraph 3.

state explicitly that education is, *inter alia*, participative[337]. In fact, one of the objectives of education is:

> "to consolidate the Plurinational Educational System with the direct participation of mothers and fathers, social, trade union and popular organisations, institutions, NICNP, afrobolivians and intercultural communities in the formulation of educational policies, planning, organisations, follow-up and evaluation of the educational process, ensuring its quality"[338].

Such participation in the education sector is enshrined in Chapter IV of the "Ley 'Avelino Siñani'" as "Social Community Participation", whose participation instances are notably the "Consejos Educativos Social Comunitarios"[339] and the "Consejos Educativos de Naciones y pueblos indígenas originario campesinos"[340]. Such participation is directly linked to the autonomy of NICNP that is recognised constitutionally as their right to self-governance and the exercise of their self-determination[341]. Concerning more specifically NICNP's autonomy towards education, the law recognises the concurrent competence for the planning and implementation of educational policies in their autonomous territorial jurisdictions and participative management of the education levels[342].

Finally, in order to offer an adapted education to NICNP students, teachers must be trained to impart such knowledge through appropriate pedagogical methods. Although neither the ICESCR nor the UNDRIP enshrine explicitly the need for an adapted teachers training, it is indispensable in order for indigenous peoples' own educational institutions to provide education "in a manner appropriate to their cultural methods of teaching and learning"[343] and for indigenous students to have "access, when possible, to

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[337] Bolivian Constitution, art. 78, paragraph 1 and Ley 'Avelino Siñani', art. 1, point 5; art. 3; art. 4, point 7; art. 71.
[338] Ley 'Avelino Siñani', art. 5, point 5. *See also* art. 2, paragraph I; art. 3, paragraph 2 and Bolivian Constitution, art. 83.
[339] Social Community Educational Councils. Ley 'Avelino Siñani', art. 92, point d.
[340] Educational Councils of NICNP. Ley 'Avelino Siñani', art. 92, point c.
[341] Bolivian Constitution (2009), art. 1 and 289. The autonomy of NICNP is closely linked to the decentralisation of the country, as enshrined in the Framework Law on Autonomies and Decentralisation 'Andrés Ibáñez' (nº 031), adopted on 19 July 2010.
[342] Ley 'Avelino Siñani', article 92, paragraph 3, points a to c.
[343] UNDRIP, art. 14, paragraph 1.

an education in their own culture and provided in their own language"[344]. The "Ley 'Avelino Siñani'" explicitly enshrines the training of teachers in conformity with the transformation of the educational framework; for this, "the material conditions of teaching staff shall be continuously improved"[345]. The training is "intracultural, intercultural and plurilingual [as well as] diversified because it responds to the economic, productive, sociocultural characteristics"[346] of the country and should be based on teachers' "knowledge of the reality, cultural identity and socio-historical process of the country"[347]. In this sense, the training aims to form professionals who are "critical, reflexive, self-critical, proactive, innovative, researcher, committed to democracy, to social transformation and to the inclusion of all Bolivians"[348]. Finally, as regards to the levels and institutions of training, the law makes a distinction between initial training that is the exclusive competence of the "Escuelas Superiores de Formación de Maestras y Maestros"[349] (ESFM), the postgraduate training that is the competence of the "Universidad Pedagógica"[350] and finally the continuous training[351].

In conclusion, based on the analysis of the "Structure" indicator, we can say that Bolivia's domestic legal texts on education (the Constitution and the "Ley 'Avelino Siñani'") are very complete and go even beyond some of its international obligations towards the right to education. As regards to the right to education, Bolivia's legal system comply with treaty obligations as both texts enshrine all the requirements implied by an available, accessible, acceptable and adaptable education.

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[344] Ibid, art. 14, paragraph 3.
[345] ICESCR, art. 13, paragraph 2, point e.
[346] Ley 'Avelino Siñani', art. 32, points 2 and 4.
[347] Ibid, art. 33, paragraph 2.
[348] Ibid, art. 33, paragraph 1.
[349] Superior School of Teachers Training. Ibid, art., 35-36.
[350] Pedagogic University. Ibid, art. 39. The Pedagogic University "Mariscal Sucre" is a national institution, subordinated to the Ministry of Education, which was created by the Supreme Decree nº 25386, adopted on 21 May 1999. Its mission is "the training of professionals in Educational Sciences, highly qualified in the different academic levels of undergraduate and postgraduate, who have to respond to the demands and tendencies of the national education as well as to the necessity of a sustainable development of the multiethnic, pluricultural and multilingual nation". Universidad Pedagógica "Mariscal Sucre", at http://www.upedagogica.edu.bo/nosotros.php (consulted on 20 June 2014).
[351] Ley 'Avelino Siñani', art. 40.

iv. Process indicator

Process indicators "seek to measure the quality and extent of state efforts to implement rights by measuring the scope, coverage, and content of strategies, plans, programs, or policies, or other specific activities and interventions designed to accomplish the goals necessary for the realisation of a given right"[352].

a. Availability

The Ministry of Education is the highest educational authority in Bolivia and an important institution that promotes availability of education. In fact, its mission is to "design, implement and execute educational policies and strategies that are inclusive, equitable, intracultural, intercultural, plurilingual, scientific, technical, technological, quality, with social participation from territorial, community, productive and decolonising perspectives, through the Plurinational Educative System"[353], as well as to assume responsibility for their implementation, supervision and control. For this, the "Ley 'Avelino Siñani'" establishes the "Instituto de Investigaciones Pedagógicas Plurinacional"[354] which is in charge of designing and developing support strategies to the policies of transformation of the Plurinational Educational System, notably regarding education. Furthermore, besides the "Normas Generales para la Gestión Educativa 2014"[355], the Ministry of Education is in charge of two main action plans. Firstly, the "Plan Nacional de Desarrollo" (2006-2010 followed by 2010-2015)[356] aims to transform the educational system and provide a quality education that prioritises the equality of opportunities, as explained *supra*. Secondly, the Ministry focuses on the

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[352] IACHR, "Guidelines for Preparation of Progress Indicators in the area of Economic, Social and Cultural Rights", OEA/Ser/L/V/II.129 (Doc. 5), 5 October 2007, paragraph 31.

[353] Ministerio de Educación del Estado Plurinacional de Bolivia, Misión, at http://www.minedu.gob.bo/index.php/ministerio/mision-y-vision (consulted on 17 June 2014). *See also* Ley 'Avelino Siñani', art. 77.

[354] Institute of Plurinational Pedagogical Investigations. Ley 'Avelino Siñani', art. 87.

[355] General Norms on Education Management, approved annually by the government. Ministerial Resolution nº 001/2014, adopted on 2 January 2014 and modified by Ministerial Resolution nº 015/2014, adopted on 17 January 2014.

[356] The second "Plan Nacional de Desarrollo" (2010-2015) contains the same aims regarding the educational policy of a "dignified Bolivia". Plan de Gobierno 2010 – 2015, adopted on August 2009, available at http://www.oep.org.bo/PadronBiometrico/comunicacion/programas/APPB_APB.pdf (consulted on 17 June 2014).

"Estrategia de la Educación Boliviana 2004-2015"[357] whose characteristics will constitute in the next years "the main instrument to contribute to human, economic and social development of Bolivia, as well as to achieve the development of Bolivian education and the commitments made by the country in the different international agreements"[358].

Additionally, Bolivia has adopted several educational programs and projects mainly in the areas of literacy, quality education and new technologies[359] that demonstrate its effort to implement the right to education in conformity with its treaties' obligations. Concerning literacy, the government of Evo Morales adopted the "Programa Nacional de Alfabetización 'Yo, sí puedo'" followed by the "Programa Nacional de Post Alfabetización 'Yo, Sí Puedo Seguir'"[360], which aim to progressively eradicate illiteracy, especially in the marginalised and excluded sectors of society.

Furthermore, in order to evaluate the improvement or retrogression of a state's efforts to provide available education to all, two additional indicators can be used: the percentage of gross domestic product (GDP) spent by the government for education and the percentage of GDP *per capita* spent by students for education. Firstly, Bolivian government has continuously increased its public spending for education from 1994 (4,78%) until 2009 (8,08%)[361]. However, from 2010, the budget allocated to education has decreased to 7,60% and 6,89% (in 2010 and 2011 respectively)[362]. This retrogression could be overcome from 2014 as the President Evo Morales announced on 6 June 2014 that 8,7% of GDP will be spent for education that year (the second highest

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[357] Strategy of the Bolivian Education 2004-2015.
[358] Ministerio de la Educación, 2003, available at http://planipolis.iiep.unesco.org/upload/Bolivia/Bolivia%20Estrategia%20de%20la%20educacion%202004-2015.pdf (consulted on 17 June 2014).
[359] Organización de Estados Iberamericanos Para la Educación, la Ciencia y la Cultura (OEI), Sistemas Educativos Nacionales: Bolivia, at http://www.oei.es/quipu/bolivia/ (consulted on 17 June 2014).
[360] Supreme Decree nº 004 on the creation of the National Program of Post-Literacy "Yo, Sí Puedo Seguir", adopted on 11 February 2009.
[361] UNESCO Institute for Statistics (UIS), Entry "Education - Financial resources - Expenditure on education as % of GDP", at http://data.uis.unesco.org/?CS_referer=&CS_ChosenLang=en (consulted on 24 June 2014).
[362] Idem.

percentage of GDP after Cuba, 12%)[363]. Secondly, the expenditure per student as a percentage of GDP *per capita* has constantly varied until today for both primary and secondary education. There has been a retrogression for both levels of education from 2010 as the expenditure per student decreased, especially in primary education[364]. In 2011, the schooling expenditure per student reached 18,54% and 19,52% of GDP *per capita*, for primary and secondary education respectively.

b. Accessibility

As we have seen, Bolivia commits legally to free (and compulsory) education. The governmental policies are in conformity with the domestic law as no policy on charging fees exists in Bolivia[365].

In order to ensure that education is economically accessible, the government has created and implemented the program "Bono Juancito Pinto" since 2006[366]. It is a grant of 200 *bolivianos* awarded annually to families for school expenses, in order to increase school enrollment, decrease drop-out, desertion and indirect educational costs as well as to reduce the intergenerational transmission of poverty. This program concerns boys and girls enrolled in public educational units of the entire national territory.

Regarding the access to education without discrimination, the government has developed several programs in order to insure equality as regards to gender, urban and rural areas, ethnic groups and special needs[367]. One of the main policies that tackles the equality of education is the "Campaña Boliviana por el Derecho a la Educación" ()[368] created in 2009 by national and international institutions. It is a plural and democratic institution that develops educational public policies, which focus notably on socio-

[363] Ministerio de Educación, 2014, available at http://www.minedu.gob.bo/index.php/component/k2/3-noticias-recientes/2999-presidente-evo-morales-conmemora-a-maestros-con-dos-proyectos-deportivos (consulted on 17 June 2014).
[364] (Respectively for primary and secondary education) From 22,25% and 19,90% in 2009, to 21,29% and 19,17% in 2010, and 18,54% and 19,52% in 2011. The World Bank, Data on Bolivia, at http://data.worldbank.org/country/bolivia (consulted on 17 June 2014).
[365] TOMASEVSKI, 2006, p. 184.
[366] This was introduced following the nationalisation of the oil and gas industries and it is established by the Supreme Decree nº 28899, adopted on 26 October 2006.
[367] MARTÍNEZ, 2012, p. 13.
[368] Bolivian Campaign for the right to education. "Campaña Boliviana por el Derecho a la Educación", available at http://www.campanaderechoeducacion.edu.bo/ (consulted on 18 June 2014).

economic, ethnic and gender equity in education. Firstly, regarding gender equality, Bolivia established a project on access and school permanence of girls in rural education[369] and adopted the "Plan Nacional Para la Igualdad de Oportunidades 'Mujeres Construyendo la Nueva Bolivia, Para Vivir Bien'" (2008)[370]. Through a process of cooperation between the government and women organisations, this plan intents to identify gender inequalities and design strategies to overcome them. It focuses notably on education and aims to make sure that "Until 2020, the Bolivian state […] facilitates the access, the permanency and the promotion of women at all levels of education, with an offer of quality, without sexist stereotypes, taking into account their specific needs, their knowledge and skills, according to their life-cycle and with a intercultural perspective"[371]. Secondly, as regards to non-discrimination towards people with disabilities, the government established the "Plan Nacional de Igualdad y Equiparación de Oportunidades para Personas con Discapacidad"[372], which aims to establish policies and strategies "for the construction of a more inclusive, just and human society, that respects and protects the exercise of the rights belonging to people with disabilities, in their ethnic and gender condition"[373].

Finally, education must also be physically accessible. For this, the government adopted two policies related to new technologies; the new information and communication technologies[374] that aims to give access to actualised information especially in the most

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[369] Ministerio de Educación, 2005 (a), available at http://www.oei.es/quipu/bolivia/proyecto_acceso_permanencia_ninas_educacion_rural.pdf (consulted on 17 June 2014).

[370] National Plan for Equal Opportunities "Women building the new Bolivia to 'Vivir Bien'". Ministerio de Justicia y Viceministerio de Género y Asuntos Generacionales, 2008 (b), available at http://www.hsph.harvard.edu/population/womenrights/bolivia.women'splan.08.pdf (consulted on 19 June 2014).

[371] Ibid, p. 103.

[372] National Plan for Equality and Equalisation of Opportunities for People with Disabilities. Defensor del Pueblo y CONALPEDIS, 2006, available at http://www.ops.org.bo/textocompleto/ndis27668.pdf (consulted on 17 June 2014). The plan was established through the Supreme Decree nº 28671 (adopted on 7 April 2006), as a result of a coordinated action between the National Comity of People with Disabilities (CONALPEDIS), the Ombudsman (*Defensor del Pueblo*), organisations of and for people with disabilities and the government.

[373] Ibid, p. 10.

[374] OEI, TIC: Nuevas Tecnologías y Educación, at http://www.oei.es/tics.php (consulted on 17 June 2014).

remote areas of the country), and a community educational telecenter[375].

c. Acceptability

As explained *supra*, Bolivia's national legal framework provides the respect for parents' convictions regarding their children's education, the need for an education in indigenous peoples' mother tongue, the state's recognition of indigenous peoples' own educational institutions, as well as a quality education.

As regards to this last aspect and according to Mario Yapu, although the "Ley de Reforma Educativa" (1994) established institutions to evaluate the quality of education[376], from 2006 to 2010, "the term educational 'quality' has practically been removed from the educational lexicon without elucidate its meaning [because it has been associated strongly to the economic neoliberal model] …"[377]. This apparent retrogression seemed to change progressively with the adoption of the "Ley 'Avelino Siñani'" and the concomitant introduction of the concept of "Vivir Bien"[378]. Facing "the difficulty of the current political context to generate new general and effective criteria" [the OPCE has the important task to discuss and] analyse what is a good education and what are effective criteria to evaluate educational quality"[379]. For this, it published two documents on the monitoring, measurement, evaluation and accreditation of education

[375] Red latinoamericana portales educativos (Relpe), Telecentros Educativos Comunitarios en Bolivia, at http://www.relpe.org/ultimasnoticias/telecentros-educativos-comunitarios-en-bolivia/ (consulted on 17 June 2014).
[376] Article 21 of the "Ley de Reforma Educativa" establishes the "Sistema Nacional de Acreditación y Medición de la Calidad Educativa" (SINAMED) (under which the "Sistema de Medición de la Calidad" (SIMECAL) operated), managed by the autonomous and specialised institution called "Consejo Nacional de Acreditación y Medición de la Calidad Educativa" (CONAMED).
[377] YAPU, 2010, p. 60.
[378] The indigenous concept of "Suma Qamaña" (in *aymara*) or "Vivir Bien" (that could be translated in English as "Living Well") refers to "live in harmony and in balance; in harmony with the cycles of the Mother Hearth, cosmos, life and history, and in balance with all form of existence […] It means to complement each other and share without compete, live in harmony between persons and with the nature". (p. 21-22). This concept arose with the process of revalorisation of indigenous worldview, customs and traditions. It is enshrined in several articles of the Constitution, especially in article 80, paragraph I (referring to education). Nowadays, the "Vivir Bien" is not only a philosophical concept but represents also a struggle and state policy alternative to the actual development model. HUANACUNI MAMANI, 2010, pp. 21-22.
[379] YAPU, 2010, p. 61.

quality[380], which gives a new definition of quality whose dimensions are "the harmonic coexistence in community and complementarily with nature and cosmos, the development of knowledge and skills based on education process that are practical, theoretical and productive, the equality of opportunities and conditions, and the cultural identity in dialogue and mutual respect between cultures"[381]. Moreover, although it is an enormous task, there seems to be an improvement as the OPCE set up the "Plan Estratégico Institucional 2011-2015" in order "to bring and help the achievement of a quality education for all without discrimination in the entire Plurinational educational system"[382]. Despite this, quality remains one of the main issues and critics of Bolivia's education. The definition of quality education in the two OPCE documents remains very vague and theoretical. Therefore, there is a need to establish the concrete content of educational quality, specific indicators to measure it and effective measures to ensure it. Quality of education depends mainly on the design, content and implementation of the curriculum and teachers training, but also on the cultural adaptability of education.

d. Adaptability

As analysed *supra*, Bolivia's Constitution and "Ley 'Avelino Siñani'" explicitly recognise the need for an adapted education to indigenous peoples' cultural particularities and needs, as well as the state's obligation to ensure indigenous peoples' participation in the adaptability of curriculum, teaching methods and educational services. In this sense, Bolivia has developed several programs and policies in order to ensure an adapted education.

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[380] Ministerio de Educación y Observatorio de Calidad de la Educación, 2009, available at http://www.opce.gob.bo/DOCUMENTOS/sispleace2010.pdf (consulted on 19 June 2014) and 2012, available at http://www.opce.gob.bo/DOCUMENTOS/SISPLEACE.pdf (consulted on 23 June 2014). In English: Plurinational System of monitoring, measurement, evaluation and accreditation of education quality.

[381] Idem.

[382] Institutional Strategic Plan 2011-2015. Ministerio de Educación y OPCE, 2011, available at http://www.justicia.gob.bo/index.php/normativa/pei-2012/doc_download/109-plan-estrategico-institucional-2011-2015. (consulted on 17 June 2014).

Firstly, concerning the adapted curriculum and pedagogic methods, one of the main policies set up by the government is the "Instituto Plurinacional de Estudio de Lenguas y Culturas"[383] (IPELC) as enshrined in article 88 of the Constitution. It is a decentralised entity from the Ministry of Education that develops processes of linguistic and cultural investigations (paragraph 1) and that is competent to create linguistic and cultural institutes for each of the 36 indigenous languages recognised in the Constitution (paragraph 2). The main objective of IPELC is to "recognise, protect, promote, disseminate, develop and regulate the linguistic individual and collective rights"[384] of Bolivia's inhabitants as well as the equality of all official languages recognised constitutionally.

Secondly, in the context of native indigenous *campesino*'s autonomy regarding education[385], Bolivia recognises NICNP's competence to formulate, approve and implement educational policies (on the basis of their own culture, knowledge and skills) to be applied in their autonomous territorial jurisdictions for the regionalised curricula. This demonstrates the close link between adapted curriculum and indigenous peoples' direct participation in the consolidation of the Plurinational Educational system. Bolivia not only recognises and guarantees strongly the legitimacy and representativeness of the "Consejos Educativos Social Comunitarios"[386] (of community members and parents) in the formulation and guidelines of educational policies, as well as in the planning, control, follow-up and evaluation of the educational process[387]. It also insures the participation of the "Consejos Educativos de Naciones y pueblos indígenas originario campesinos"[388], through their organisations (i.e.: CEPOs and own institutions), "with national, regional and trans-territorial representation, in the formulation of management

[383] Plurinational Institute of Languages and Cultures Studies. "Ley General de Derechos y Políticas Linguísticas" (nº 269), adopted on 2 August 2012; Supreme Decree nº 1313 on the regulation of the functioning of IPELC in accordance with article 88 of the "Ley 'Avelino Siñani'", adopted on 2 August 2012.
[384] "Ley General de Derechos y Políticas Linguísticas" (nº 269), art. 1.
[385] Ley 'Avelino Siñani', art. 80, paragraph 3, points a to c.
[386] Ibid, art. 92, point d.
[387] Ibid, art. 91, points 1 and 6.
[388] Ibid, art. 92, point c.

and educational policies"[389]. More precisely, the CEPOs[390] play a major role in adapted education as instances of social participation in education and technical parts of the native indigenous organisations of Bolivia. In order to propose adapted educational guidelines, they collect knowledge and skills of native indigenous nations and peoples and carryout investigations for the compilation of accurate and actualised information in each CEPO's area of action[391]. Their active participation with the Ministry of Education goes from the planning to the evaluation of education at national level as well as in each autonomous territorial entity[392], with power of decision. In this sense, the government created the "Escuela de Gestión Pública Plurinacional"[393] in 2009, whose objective is to contribute to the construction and consolidation of the new public management, through the training and capacity-building of native indigenous *campesinos* authority, social leaders and public servants for all levels of the government[394]. This training improves the participation of NICNP, especially in the education field, because it covers topics, such as rights of indigenous peoples, state autonomies, the Bolivian Constitution, the construction of the Plurinational State[395], which deepen their knowledge and allow them to participate more effectively in the construction of an adapted education.

Finally, as explained *supra*, the "Ley 'Avelino Siñani'" establishes explicitly the existence and functioning of teachers training. From 1994 to 2010, Bolivia improved its system of teachers training, especially with the Supreme Decree nº 156[396] (2009) that established the new plurinational system of three training levels (initial, postgraduate and continuous) and the competent institutions, namely the ESFM and the "Universidad Pedagógica 'Mariscal Sucre'". According to Magdalena Cajías de la Vega, one of the

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[389] Ibid, art. 92, point c.
[390] There are 8 CEPOs which cover the different regions of Bolivia. Consejos Educativos de los Pueblos originarios, at http://www.cepos.bo/home (consulted on 26 June 2014).
[391] CAUREY, 2013, p. 43.
[392] Idem.
[393] Supreme Decree nº 0212 on the creation of EGPP, adopted on 15 July 2009. *See also* "Escuela de Gestión Pública Plurinacional" (EGPP), at http://www.egpp.gob.bo/ (consulted on 20 June 2014).
[394] Supreme Decree nº 0212, adopted on 15 July 2009, art. 4.
[395] Ministerio de Educación, 2012 (b), p. 5, available at http://www.minedu.gob.bo/phocadownload/Avanzamos/2012/avanzamos%203.pdf (consulted on 23 June 2014).
[396] Supreme Decree nº 156 on the creation of the Plurinational System of teachers training, adopted on 6 June 2009.

main improvement of the Supreme Decree is "the extension of the studies in the ESFM to five years in order for the future teachers to achieve a degree, as a response to prepare teachers capable of facing the challenges of a true educational reform, which requires levels of quality and pertinence in a society with rapid social, cultural, economic and technological changes, as well as the consolidation of the "Universidad Pedagógica de Sucre" to promote postgraduate studies"[397]. In addition, regarding the continuous training of teachers, the "Programa de Formación Complementaria para Maestras y Maestros"[398] (PROFOCOM) is being implemented since June 2012 in the entire country in order to improve the quality of training and facilitate the application of the socio community productive educational model. The holistic objective of PROFOCOM is to "elaborate planning of curriculum development through study, analysis and reflection […] in the scope of the new educational model, displaying values of complementarity and reciprocity in order to transform the new educational practice oriented towards a relevant education"[399].

In conclusion, we can say that Bolivia is making efforts to fulfil its international obligations regarding the right to education by establishing and implementing several actions plans and programs in order to make education available, accessible, acceptable and adaptable to all. However, the decreasing in the percentage of GDP spent by the government for education[400] and the decreasing expenditure per student on education as a percentage of GDP *per capita* both since 2010 constitute a retrogression in making education available.

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[397] CAJÍAS DE LA VEGA, 2012.
[398] The Programme of Additional Training for Teachers.
[399] Ministerio de Educación, 2012 (a), available at http://www.minedu.gob.bo/phocadownload/curricula/4%20uf%20regular%20final.pdf (consulted on 21 June 2014).
[400] Due to the lack of statistical confirmation on the President Evo Morales' announcement that government spending on education will be of 8,7% (of GDP) for 2014, we can only conclude this percentage has decreased.

v. Outcome indicator

In this part, we will try to measure Bolivia's *de facto* compliance with its treaty obligations, that is to say the actual implementation of the right to education on the ground.

The implementation in Bolivia's educational system of the "Ley 'Avelino Siñani'" and the intracutultural, intercultural and plurilingual education it enshrines started in 2013. For the basic Plurinational curriculum, the Ministry of Education affirmed: "the concrete application in classrooms of new programs, contents and teaching approaches … is starting to be applied concretely"[401]. As regards to regional curriculum, "the law started to be implemented in a more limited and slow way, but we can assess its beginning and its focus, especially in PROFOCOM trainings"[402].

a. Availability

The Plurinational State of Bolivia ensures education from the age of 5 to 16 years old (the minimum age of compulsory education) and provides "those who do not timely enter the school system with the possibility of entering Adult Education as from age 15, with schedules that are compatible with work"[403].

The Net Enrolment Rate (NER)[404] in 2011 was of 83,43% and 68,33% in primary and secondary levels respectively. Despite the lack of information for the year 1994, we observe that the NER decreased strongly for primary education since 1998 (93,69%) but increased slightly for secondary education since 2001 (66,11%)[405]. Firstly, this data corroborates CRCtee's concern "that not all children […] attend primary school despite

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[401] Roberto Aguilar, Minister of Education, interviewed by Guiomara Calle in CALLE, 2013, available at http://www.la-razon.com/sociedad/Roberto-Aguilar-originaria-extranjera-materia_0_1755424539. html (consulted on 25 June 2014).
[402] CAUREY, 2013, p. 44.
[403] CRC/C/BOL/4, 25 March 2009, paragraph 195, point a.
[404] According to UIS, NER is the "Enrolment of the official age group for a given level of education expressed as a percentage of the corresponding population". UNESCO, 2009, p.10.
[405] UIS, Entry "Education – Participation – Enrolment ratios", available at http://data.uis.unesco.org/?CS_referer=&CS_ChosenLang=en (consulted on 24 June 2014).

the introduction of compulsory education"[406]. According to Marcelino Higueras Saavedra, one of the reasons for this is that "there is an issue with infrastructures (a same school does different turns in one day in order to accommodate all students), equipment and educational materials"[407]. Secondly, such a disparity between primary and secondary NER may be justified by "the limited offer of secondary education services in the country, especially in rural areas [as well as] the household low income which forces adolescents to early integration in the labour market"[408].

Even though an increasing number of teachers employed has a positive impact on the availability of education, this is not the case in Bolivia. Despite the lack of information regarding the number of teachers employed in the public sector[409], this number increases because the profession is perceived as "an alternative for a work allegedly secure, however this is not the case anymore. […] 10% of each year graduates finds work and 90% do not […], leaving 19.000 qualified teachers unemployed"[410]. In this sense, the important number of teachers in Bolivia has no impact on the availability of education.

Finally, education availability can also be analysed with literacy rates. Bolivia's adult literacy rate (i.e.: for the population of 15 years old or more) reached 94,98% in 2012, which reflects a clear increase compare to 79,99% in 1992 and 86,72% in 2001[411]. The reason for this increase, especially from 2006, may be related to the implementation of "Yo, Sí Puedo" program (2006) aimed to eradicate illiteracy. It was followed by a second in 2009, "Yo, Sí Puedo Seguir", which respected CESCR's recommendation (2008) "to continue its efforts to eradicate illiteracy, including by expanding the coverage of the 'Yo, Sí puedo' program"[412]. However, despite this increase in the literacy rate, two criticisms can made. Firstly, Bolivia failed to remain an illiteracy-free

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[406] CRC/C/BOL/CO/4, 16 October 2009, paragraph 67.
[407] Interview with Marcelino Higueras Saavedra. *See also* MAYORGA LAZCANO, 2012, p. 58.
[408] MARTÍNEZ, 2012, p. 14.
[409] The National Census of 2012 does not include the number of teachers in Bolivia and none of the international database consulted provide this information for Bolivia.
[410] Roberto Aguilar, Minister of Education, interviewed by Victor Orduna in ORDUNA, 2011, p. 4.
[411] National Census 2012, Table 4.1, p. 12.
[412] E/C.12/BOL/CO/2, 8 August 2008, paragraph 27, point g.

territory as UNESCO declared it in 2008 because its illiteracy rate was less than 4%. In fact the illiteracy rate went from 3,77% in 2008 to 5,05% in 2012, exceeding the 4% criteria[413]. Secondly, according to an article of "Programa de Investigación Estratégica en Bolivia" (PIEB)[414], despite a literacy rate of 94,98%, teachers see another reality on the ground, that is to say many graduates from secondary school "are not even able to completely read and write nowadays"[415]. In addition, gender and geographic disparities in literacy rates persist, even though they have decreased since 1992 and 2001. In fact, in 2012, literacy rate was of 97,49% for men and 92,54%[416] for women and urban literacy was of 97,3% while rural was of 88,1%[417].

b. Accessibility

Despite the legal and constitutional recognition of free education in Bolivia, in her report of 2006[418], Katarina Tomasevski classified Bolivia as a country not providing free education, and, in 2009, the CRCtee expressed its concern "that some primary school fees continue to be charged despite the constitutional guarantee of free education"[419]. Although in 2003 the ombudsman tackled the governmental policy of levying charges making education not economically accessible to all[420], in his report of 2013 he did not mentioned specifically this issue; he just stated that "the educational policy allows that almost the totality of children have access to fiscal and free education"[421].

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413 INE, 2014, available at http://www.ine.gob.bo/pdf/boletin/NP_2014_48.pdf (consulted on 10 June 2014).
414 Strategic Investigation Program in Bolivia.
415 ORDUNA, 2011, p. 4.
416 National Census 2012, Table 4.1, p. 12.
417 INE, 2014, Table 1, p. 1, available at http://www.ine.gob.bo/pdf/boletin/NP_2014_48.pdf (consulted on 10 June 2014).
418 TOMASEVSKI, 2006, pp. 197-198.
419 CRC/C/BOL/CO/4, 16 October 2009, paragraph 67.
420 Defensor del Pueblo del Estado Plurinacional de Bolivia, 2003, pp. 26-27, available at http://www.defensoria.gob.bo/archivos/VI%20Informe%20al%20Congreso.pdf (consulted on 20 June 2014).
421 Defensor del Pueblo del Estado Plurinacional de Bolivia, 2013, p. 15, available at http://www.defensoria.gob.bo/archivos/INFORME_SOBRE_DDHH_2013_06121012.pdf (consulted on 26 June 2014).

"Because public funding for education was - and is - insufficient to cover direct, indirect and opportunity costs of school, the definition free education was reduced to fee-free"[422]. Therefore, even if parents do not have to pay enrolment fees, they still have to cover indirect costs, that is to say costs for uniforms, textbooks, school materials, transportation, food, lodging …"[423]. In 2011, the average expenditure per student for education was 2983,28 *bolivianos* (for primary education) and 3142,58 *bolivianos* (for secondary education)[424]. Consequently, the cost of education per student was more than three times the minimum monthly wage, which was 815,4 *bolivianos* in 2011[425], making education economically inaccessible for a large part of the population. Fortunately, Bolivia's government established the "Bono Juancito Pinto" and awarded 200 *bolivianos* annually to families for school expenses. In its report to the CRCtee, Bolivia said this grant was awarded to schoolchildren in primary grades 1 to 5 and it sought "to extend the benefit to students in sixth grade, those in special education and children of young people enrolled in adult education"[426] for that period (2007). The government extended the grant and, in 2007, the total number of beneficiaries increased of 30%, making 73% of schoolchildren beneficiaries of the grant (this means over 1million children throughout the country)[427]. In 2014, the UN High Commissioner for Human Rights found that the "Bono Juancito Pinto" was "expanded to include students up to the fourth year of secondary school and students of specialized schools without age or grade limits"[428]. This grant shows Bolivia's efforts to make education economically accessible but there are still economic barriers to access education. In fact, costs of schooling are linked to "the loss of income for a household of the

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[422] TOMASEVSKI, 2006, p. 35.
[423] Ibid, pp. 189 and 219.
[424] According to the World Bank Database, the expenditure per student for education in 2011 was 18,54% and 19,53% of the Gross Domestic Product (GDP) *per capita*, for primary and secondary school respectively. The GDP *per capita* for that year was 16091,04 *bolivianos*. The World Bank, Data on Bolivia, available at http://data.worldbank.org/country/bolivia (consulted on 23 June 2014).
[425] INE, Entry "Salarios y remuneraciones – salario mínimo nacional", available at http://www.ine.gob.bo/indice/general.aspx?codigo=41201 (consulted on 23 June 2014). *See also* Supreme Decree nº 809 on the establishment of the monthly minimum wage for the management of 2011, adopted on 2 March 2011. It is to be noticed that the government increased considerably the monthly minimum age between 2011 and 2014 as it reaches 1440 *bolivianos*.
[426] CRC/C/BOL/4, 25 March 2009, paragraphs 299 and 301.
[427] CRC/C/BOL/Q/4/Add.1, 6 August 2009, p. 34.
[428] A/HRC/25/19/Add.2, 5 March 2014, paragraph 34.

monetary contribution that a boy, girl, or adolescent could generate during the time she/he normally dedicates to schooling"[429]. Their activities compete with school time, mainly activities carried out in the own homes or paid work. In fact, students who work show lower attendance rates and worse school marks in quality assessments than those who do not work, and withdraw more easily from secondary education[430]. Nevertheless, Bolivia's efforts are undermined by the draft law on the new "Código Niña, Niño y Adolescentes"[431] approved by the Senate on 27 June 2014. This project decriminalises child labour for children of 10 years old or more, provided that they are self-employed. The intention of the Plurinational Legislative Assembly to diminish the minimum age of admission to employment from 14 to 10 years old contravenes international norms on child labour, mainly the ILO Convention nº 138 concerning Minimum Age for Admission to Employment[432]. According to the ombudsman, Rolando Villena, this "is an attack to teenagers' human rights, besides being regressive as countries tend to raise it, and dishonest as it addresses the problem of social violence attacking a vulnerable population"[433]. This new law affects the most vulnerable children and shows that structural barriers are not easy to overcome. These children find themselves in a difficult vicious circle of poverty and illiteracy because, when lowering the minimum age for child labour, children who start to work loose the most important years of education. In brief, we wonder how strong is Bolivia's commitment towards the right to education when adopting such a law.

Furthermore, education must be accessible to all without discrimination. Disparities in education access exist mainly regarding gender and urban/rural education. Regarding gender discrepancy, the CRCtee expressed its concern about "the significant disparities in the State party in the implementation of the rights enshrined in the Convention, reflected in a range of social indicators such as enrolment in and completion of

[429] UIS and UNICEF, 2012, p. 24.
[430] Ibid, pp. 22 and 24-25.
[431] Code on Girls, Boys and Teenagers.
[432] ILO, Convention (nº 138) concerning Minimum Age for Admission to Employment (26 June 1973).
[433] Defensoría del Pueblo, 2014, available at http://www.defensoria.gob.bo/sp/noticias_proc.asp?Seleccion=1007 (consulted on 2 July 2014).

education"[434]. In this sense, CRCtee recommended that Bolivia "ensures that also girls […] fully realize their right to education"[435] and the CESCR requested Bolivia "to ensure the equality of men and women in all spheres of life, in particular by taking effective measures and providing funds to combat discrimination in the education of girls and young women …"[436]. In fact, parents often rely on girls for the family subsistence and school represents a loss of income; a clear example is that "domestic work, with or without monetary compensation, is usually assigned to girls and female adolescents"[437]. Although disparities and concomitant discrimination affect generally girls, this is not always the case in Bolivia. In fact, in 2011, the NER of girls in primary school (83,36%) was lower than that of boys (83,50%) but, to the contrary, it was higher (69%) than that of boys (68,33%) for secondary school[438]. Regarding, out-of-school children, in 2011, the percentage of girls of primary school-age not enrolled in school (13%) was inferior than that of boys (13,30%), whereas the percentage of girls of lower secondary school age (10,30%) was higher than that of boys (10%)[439]. Moreover, as regards to school-life expectancy[440], girls are disadvantaged; in 2012 boys of 25 years old or more could expect a mean of 8,9 years of schooling, whereas for girls it was 7,5[441]. Finally, the disparity concerning the education survival rate[442] in both primary and secondary education in 2010 reflects that the percentage of girls who could expect to reach successive grades (86,24% and 94,01% for primary and secondary

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[434] CRC/C/BOL/CO/4, 16 October 2009, paragraph 28.
[435] Ibid, paragraph 68, point c.
[436] E/C.12/BOL/CO/2, 8 August 2008, paragraph 29.
[437] UIS and UNICEF, 2012, p. 24.
[438] UIS, Entry "Education - Enrolment ratios", available at http://data.uis.unesco.org/?CS_referer=&CS_ChosenLang=en (consulted on 24 June 2014).
[439] Ibid, Entry "Education – Out-of-school children". The percentage of out-of-school children for both sexes was 13, 2% and 10,2% in primary and secondary education respectively.
[440] UIS defines school-life expectancy as "The total number of years of schooling which a child of a certain age can expect to receive in the future, assuming that the probability of his or her being enrolled in school at any particular age is equal to the current enrolment ratio for that age". UNESCO, 2009, p. 7.
[441] UIS, Entry "Education - Educational attainment - Mean years of schooling", available at http://data.uis.unesco.org/?CS_referer=&CS_ChosenLang=en (consulted on 24 June 2014). The mean years of schooling for the population of 25 years old and more of both sexes was 8,2.
[442] The survival rate is the "Percentage of a cohort of pupils (or students) enrolled in the first grade of a given level or cycle of education in a given school year who are expected to reach successive grades". UNESCO, 2009, p. 14.

education respectively) is higher that that of boys (86,13% and 91,75%)[443]. Even though Bolivia must continue its efforts to provide equal gender access to education, the gender divide in the country does not always disadvantage girls as in 2010, both primary and secondary education survival rates were higher for girls and in 2011, more girls were enrolled in secondary school and less out-of-school compared to boys.

Discrimination in access education can also be linked to ethnic groups and urban and rural areas. According to Alejandra Martínez, "while examining if students' ethnic characteristics have an impact on access to education, it is observed that, when focusing on residency areas, the effects [of those characteristics] tend to decrease and even to disappear"[444]. In fact, "there are no important gaps regarding the NER per age between indigenous and non indigenous peoples".[445] Additionally, there is no direct link between indigenous and non-indigenous areas and primary survival rates as this reached more than 86% in 2010[446]. We will therefore focus rather on disparities between urban and rural areas, as "national averages show that disparities [between indigenous and non-indigenous people regarding educational indicators] are almost non-existent"[447]. Nevertheless, it is important to notice a profound gender gap within indigenous populations as, in most Latin-American countries, including Bolivia, women are disadvantaged in comparison to men while it is less or sometime not even the case in non-indigenous populations[448].

Despite the lack of national and international information on NER distribution between urban and rural areas in Bolivia, we can say that primary school attendance rates in rural areas are lower than in urban. In fact, in 2012, the school attendance rate (for the population between 6 to 19 years old and for both sexes) reached 92,61% and 86,23% in

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[443] UIS, Entry "Education - Progression - Survival rates", available at http://data.uis.unesco.org/?CS_referer=&CS_ChosenLang=en (consulted on 24 June 2014). The percentage of survival rate for both sexes was 86,18% and 92,86% for last grades of primary and lower secondary educations respectively.
[444] MARTÍNEZ, 2012, p. 18.
[445] Although "indigenous children's school delays when entering the educational system should be taken into account and corrected …". PONCE, 2012, p. 8.
[446] MARTÍNEZ, 2012, p. 17.
[447] Ibid, p. 18.
[448] Idem. *See also* UIS and UNICEF, 2012, p. 22.

urban and rural areas respectively[449]. Besides the economic barriers due to limited income (which makes it difficult for families to make a living and to face schooling costs), there are also physical and material barriers that explain the lower attendance rate in rural areas. Geographic isolation, lack of qualified teachers, poor educational services, scarcity and lack of building and classrooms maintenance, obsolete and precarious educational material and equipment, … are many factors that justify the important disparity between urban and rural school attendance rates[450]. More specifically, this disparity is higher for secondary education. Rural students who want to access secondary education have less educational opportunities, determined by "problems of offer (only 11,4% of total educational units in rural area cover secondary education), including lack of teachers, absence of educative services for last grades of primary education, and problems of demand"[451]. In brief, the residence area has a great impact on access to education, but also on out-of-school children percentage, school survival rate and school life expectancy; that is to say that education is less accessible to rural children.

Finally, racism and discrimination in schools make education less accessible or even inaccessible for students. As tackled by the ombudsman and reported by an investigation of the Observatory on Racism, "racism and discrimination occur at a structural level in the educational system, as the difference between public and private schools makes some students benefit from a better educational quality"[452]. The investigation shows that, besides the marginalisation towards teachers and students

[449] INE, 2014, Table 1, p. 4, available at http://www.ine.gob.bo/pdf/boletin/NP_2014_48.pdf (consulted on 10 June 2014).
[450] UIS and UNICEF, 2012, pp. 27-28.
[451] MARTÍNEZ, 2012, p. 17.
[452] Defensoría del Pueblo del Estado Plurinacional de Bolivia, 2013, p. 77, available at http://www.defensoria.gob.bo/archivos/INFORME_SOBRE_DDHH_2013_06121012.pdf (consulted on 26 June 2014). *See also* GROVER CHOQUE, 2014, available at http://www.laprensa.com.bo/diario/actualidad/la-paz/20130524/el-racismo-persiste-en-los-colegios_47130_76017.html (consulted on 24 June 2014).

from other origins, students receiving a low educational quality are "from a low social class and indigenous"[453].

c. Acceptability

"How can we talk about education without talking about quality of education?"[454] According to Victor Orduna the quality of education is a "slippery topic, voluntarily ignored (o deferred) by both authorities and teachers mainly because […] it implies to focus on the conditions, achievements, levels, procedures, performances, competences… and in short on the very meaning of Bolivian education"[455]. The concept "quality of education" is complex because it is multidimensional and implies to measure and tackle variables "that depend on subjective criteria (and that can resist, in many cases, to a quantitative measurement)"[456]. According to Marcelino Higueras Saavedra "quality of education is not a good criteria. The criteria should be if Bolivian education responds or not to the needs and problems tackled by society and indigenous peoples"[457]. Although the OPCE has been established constitutionally as competent to measure the quality of education, it is still a critical issue and the progresses made by the OPCE do not yet seem to be relevant[458].

Bolivia's quality of education has been a concern for the CRCtee, which considered it "poor"[459] and, in its joint submission to the UPR, the "Group of Human Rights" indicated that "the quality of education that children receive in public schools is very low"[460]. According to a 25-years-experience Bolivian teacher interviewed by Victor Orduna, "We would be demagogues or dishonest if affirming that the quality of education improved; it has declined dramatically …"[461] and this is mainly because

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[453] GROVER CHOQUE, 2014, available at http://www.laprensa.com.bo/diario/actualidad/la-paz/20130524/el-racismo-persiste-en-los-colegios_47130_76017.html (consulted on 24 June 2014).
[454] ORDUNA, 2011, p. 2.
[455] Idem.
[456] Idem.
[457] Interview with Marcelino Higueras Saavedra.
[458] ORDUNA, 2011, p. 2.
[459] CRC/C/BOL/CO/4, 16 October 2009, paragraph 67.
[460] A/HRC/WG.6/7/BOL/3, 26 November 2009, paragraph 49.
[461] Teacher interviewed by Victor Orduna in ORDUNA, 2011, p. 4.

teachers training has decreased and became insufficient, as what is taught by the ESFM is far away from the reality[462]. We will focus on teachers training in the "availability part" *infra*.

Furthermore, acceptability refers also to an acceptable language of instruction. In its reply to CRCtee's list of issues in 2009, Bolivia's language skills development objectives were "Fostering children's development of language skills and their use of their mother tongue (L1) as a means of expression, learning and communication and as a way of assimilating and appreciating the culture of their communities so as to foster their social interaction with the persons around them"[463]. Because the demographic majority of Bolivia is indigenous, the mother tongue of an important part of students is one of the 36 indigenous languages constitutionally recognised. Although the "Ley 'Avelino Siñani'" established a plurilingual education and the language of instruction should be student's mother tongue, indigenous peoples are concerned by "teachers' lack of knowledge about indigenous languages"[464]. There is "a divergence between teacher's mother tongue and their cultural identification. For example, the fact that a person identifies him/herself with the aymara culture does not necessarily means that aymara is his/her mother tongue. […] In this sense, some teachers have lost the ability to use actively the indigenous language corresponding to their cultural identity"[465]. Therefore, in order to implement effectively a plurilingual education, "an additional teachers training on indigenous languages would be necessary"[466], especially because the Minister of Education declared that, from 2013, Spanish, indigenous and foreign languages will be taught in the same course by only one teacher[467].

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[462] Idem. *See also* CRC/C/BOL/CO/4, 16 October 2009, paragraph 67.
[463] CRC/C/BOL/Q/4/Add.1, 6 August 2009, pp. 15 and 27.
[464] LOPES CARDOZO, 2012, p. 118.
[465] Ibid, p. 193.
[466] Idem.
[467] Roberto Aguilar, Minister of Education, interviewed by Guiomara Calle in CALLE, 2013, available at http://www.la-razon.com/sociedad/Roberto-Aguilar-originaria-extranjera-materia_0_1755424539. html (consulted on 25 June 2014).

d. Adaptability

Outcome indicators present a mixed picture of education being increasingly more adaptable in some ways but not in others. The repetition rate for both primary and lower secondary education (for both sexes) increased between 1994 and 2011; from 4,22% to 5,95% (for primary)[468] and dramatically from 3,20% to 6,73% (for secondary)[469]. As regards to early school leaving, the cumulative drop-out rate to the last grade for both levels of education (for both sexes) decreased from more than half between 1994 to 2010; it went from 44,95% to 13,82% (in primary education) and from 12,80% to 7,14% (in secondary)[470]. We will now explain the reasons that justify the rates mentioned.

In order for Bolivia's education to be adaptable, the intracultural, intercultural and plurilingual education enshrined in the "Ley 'Avelino Siñani'" must be effectively implemented with the participation of indigenous peoples. In theory, the "Ley 'Avelino Siñani'" is one of the most advanced in recognising an education that takes into account the cultural and linguistic diversity of the country. "The law contains advanced proposals and principles regarding education. For international institutions, this law is an important normative progress, especially in terms of content, because it seems like Bolivia is recognising its deficiencies in the educational field"[471]. According to the interviewees, the main strengths of the law are productive education ("Before, student were told: 'you must study and that's it!', whereas today they are asked 'why will you study, what will your studies and knowledge bring to the development of your community?'"[472]), students' role as actors of their own learning, regionalised

[468] Although the increase between 1994 and 2011 is not very strong, it must be noticed that the repetition rate between 1998 and 2007 had decreased deeply (2,52% in 1998) and increased strongly from 2008.
[469] For both level of education and both years, the female repetition rate is lower than that of males. UIS, Entry "Education – Progression – Repetition rates", available at http://data.uis.unesco.org/?CS_referer=&CS_ChosenLang=en (consulted on 26 June 2014).
[470] For both level of education and both years, the female drop-out rate is lower than that of males, except for primary education in 2001. UIS, Entry "Education – Progression – Early school leaving", available at http://data.uis.unesco.org/?CS_referer=&CS_ChosenLang=en (consulted on 26 June 2014).
[471] Interview with Yamila Gutierrez Callisaya, aymara anthropologist working in "Consejo Nacional de Ayllus y Markas del Qullasuyu (CONAMAQ) (from El Alto), Bilbao, 5 June 2014. [hereinafter "Interview with Yamila Gutierrez Callisaya"].
[472] Interview with Marcelino Higueras Saavedra.

curriculum and the strong participation of NICNP, teacher organisations, CEPOs and other actors in the discussions and planning[473].

However, for both interviewees, the main obstacle of the "Ley 'Avelino Siñani'" is its difficult implementation, due to the failure of intraculturality. On one hand, "teachers consider the law as 'retrograde'. Intraculturality represents the past and the majority of teachers do not want to go back to the past; they want to think about future development, about technology… there is no sense to value 'the own'. More specifically for rural teachers, as the state seems to guarantee a steady income and career for teachers and as the profession gives them a power position… they will hardly value 'the own' with the advantages they have as state officials."[474]. On the other hand, most parents in the communities consider the "Ley 'Avelino Siñani'" also as retrograde and continue to resist to intraculturality; they want their children to learn Spanish and mainstream knowledge in hopes that they will go to urban areas and progressively ascend socially. "The most problematic issue in the communities is the language; parents consider that children do not need to learn an indigenous language at school because they already speak it at home. In order to understand such parents' resistance, on must understand the process of discrimination they have been through…"[475]: "my children must be different to me in order not to suffer the same linguistic, economic or other discriminations"[476]. This linguistic issue raises the question of the balance between, on one hand, the individual right of parents to see their children learn a specific language (in this case Spanish) and to refuse a language of instruction (indigenous languages), and, on the other hand, the collective right of indigenous peoples to preserve their native languages by teaching them at school.

Furthermore, an adapted education implies appropriate methods of learning and teaching and therefore sufficient and effective teachers trainings. However, teachers training and the implementation of new pedagogical methods seem to have failed to a

[473] Interviews with Marcelino Higueras Saavedra and with Yamila Gutierrez Callisaya.
[474] Interview with Yamila Gutierrez Callisaya.
[475] Idem.
[476] MINISTRY OF EDUCATION OF BOLIVIA, IIPP, PIEB, DANIDA, 2012, pp. 38-39.

certain extent, which undermined the implementation of the "Ley 'Avelino Siñani'"[477]. First of all, many teachers complain about the lack of opportunities for training, especially in rural areas[478]. According to Mieke Lopes Cardozo, "several interviews and observations confirmed that, until today, little has been done to implement training programs at national scale"[479]. Secondly, the situation is confusing because part of the Ministry of Education and of public teachers (especially rural, represented by the "Confederación Nacional de Maestros Rurales", CONMERB) strongly support the new law on education, whereas another part of the Ministry and of public teachers (especially urban, represented by the "Confederación Sindical de Maestros Urbanos"), the ESFM as well as other groups of education actors are resistant to this law[480].

Teachers' opposition to the "Ley 'Avelino-Siñani'" and new pedagogic methods results in a lack of efficient teachers training and consequently to poor quality of education.[481] The main reasons for this are, firstly, that teachers ignore how to innovate due to the lack of guidelines and public policies to guide them in this process[482]. Secondly, because of the institutional apathy and inertia of ESFM, the lack of contact and cooperation between them and with the Ministry of Education, and their refusal to innovate their methodologies[483], "teachers who graduate are not trained for the implementation of the new law"[484]. Finally, the lack of a "validated official document on curriculum transformation for teachers training" remains an obstacle to improve results regarding the quality of teachers training, such as for PROFOCOM[485]. As a consequence to institutional and academic chaos, and to teachers' opposition to the "Ley 'Avelino Siñani'", teachers continue to apply past pedagogical methods with which they are familiar and which are still applied in ESFM. In addition to this, the function of pedagogical advisors was suppressed in 2003 and it left teachers without

[477] Interviews with Marcelino Higueras Saavedra and with Yamila Gutierrez Callisaya.
[478] LOPES CARDOZO, 2012, pp. 102 and 246.
[479] Ibid, p. 192.
[480] Respectively, National Confederation of Rural Teachers and Sindical Confederation of Urban Teachers. Ibid, pp. 104; 109-110.
[481] CRC/C/BOL/CO/4, 16 October 2009, paragraph 67.
[482] Ibid, p. 118.
[483] LOPES CARDOZO, 2012, pp. 103, 120 and 149.
[484] Interview with Marcelino Higueras Saavedra.
[485] CAJÍAS DE LA VEGA, 2012.

pedagogical assessment and training to implement the new methodologies. From that moment, teachers "deployed their own initiatives, reinvented, combined, recovered and recreated methods, didactics and contents"[486]. Traditional teaching styles are still a concern nowadays, also for students: "what we need is trained and updated teachers, because they are very conservative in their teachings and they don't motivate us to learn, what makes us passive"[487]. In brief, there is not enough focus on teachers training. According to a teachers trainer, "the curricular structure is based on the logic that we [trainers] must instruct future teachers to teach in a certain way, we do not see them as planners or facilitators of learning processes"[488]. As the director of the "Centro Boliviano para la Investigación y la Acción Educativas" (CEBIAE)[489] stated, "if we continue to use the concept of the teacher who teaches, instructs and commands, we are lost. […] We cannot talk anymore about the solitary teacher who has the unique responsibility to transmit knowledge and who is the only one having the absolute truth"[490]. With the "Ley 'Avelino Siñani'", teachers must be active, participative and concerned by the community's social and political problems. Since the curriculum transformation is geared to "teachers with power of decision and responsibility towards what, when, why and how they teach [and therefore] co-responsable for the quality of education…"[491], it is important to implement teachers training effectively.

In brief, "in order to overcome the contradictions and the ignorance towards innovation, teachers training in ESFM should have been the main focus of the implementation of the law"[492]. It is too early to analyse clear and tangible results of the new teachers training program under the "Ley 'Avelino Siñani'" because "it is a relatively long process; it will take at least a generation to consolidate the process and be able to evaluate it objectively"[493]. However, we must say that the new system of teachers training opens new spaces for changes in ESFM, which "depend, to a considerable

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[486] ARRUETA, 2011, p. 20.
[487] Bolivian student interviewed by Mieke Lopes Cardozo in LOPES CARDOZO, 2012, p. 147.
[488] Teachers trainer interviewed by Mieke Lopes Cardozo in Ibid, p. 148.
[489] Bolivian Centre for Educative Investigation and Action.
[490] Eduardo González, Director of CEBIAE, interviewed by Victor Orduna in ORDUNA, 2011, p. 3.
[491] ESPEJO TUCO, 2009.
[492] Interview with Marcelino Higueras Saavedra.
[493] Roberto Aguilar, Minister of Education, interviewed by Victor Orduna in ORDUNA, 2011, p. 4.

extent, on the commitment and path of each teacher"[494].

In conclusion of this analysis, even though Bolivia has very complete and advanced legal texts on education and many programs and actions plans to make education available, accessible, acceptable and adaptable, the reality on the ground is different (as demonstrated by statistics, interviews to Bolivian education actors and international reports). In fact, education is not available to all; the NER did reach 100%, there are gender and urban-rural disparities and Bolivia is not an illiteracy-free territory anymore. Education is either accessible to all; education is not free because of many economic barriers, there are gender and urban-rural disparities but we must point out that, in Bolivia, gender discrepancy does not always disadvantage girls. Accessibility of education is undermined by the poor and decreasing quality of education (although this criteria is difficult to measure) and teachers' ignorance of indigenous language they are supposed to teach as languages of instruction. Finally, education is not available to all although the drop-out rates decreased; the repetition rates increased, the implementation of intraculturality failed as both teachers and parents consider the "Ley 'Avelino Siñani'" as retrograde and the lack of efficient teachers training leads to the poor quality of non-adapted education.

[494] LOPES CARDOZO, 2012, p. 158.

V. Conclusion

Like the rest of Latin American countries, Bolivia's colonial history has the imprint of domination and subordination between the state and indigenous peoples. Faced with asymmetrical power relations, indigenous peoples started to resist to the mainstream society's assimilation and cultural hegemony, by claiming the recognition of their identity and collective cultural particularities. In a context of increasing democratisation and progressive recognition of human rights, indigenous movements arose in the 1980's and, without intention of secession or independence, they denunciated the internal colonialism and claimed the equality of rights and the right to difference, as well as the promotion of interculturality. Indigenous peoples's increasing visibility in the national, regional and international scenes led to national legal and constitutional reforms, to the adoption of international legal instruments recognising and protecting indigenous peoples' rights (especially the ILO Convention nº 169 and the UNDRIP) and to the emergence of an international customary law that recognise their *sui generis* status.

Bolivia, whose demographic majority is indigenous and whose President (since 2005) is the first indigenous President in Latin America, stands out as one of the most advanced countries of the continent in terms of national legal reforms regarding indigenous peoples. In fact, the new Constitution of 2009 recognises the Plurinational State of Bolivia as a "Social Unitarian State of Community Plurinational Law […] based on plurality and political, economical, legal, cultural and linguistic pluralism, within the inclusive process of the country"[495].

Regarding more specifically the right to education, the historical and political evolution of the educational system since the beginning of the XXth century led to the recognition of an education adapted to the cultural and linguistic diversity of the country through two strong educational reforms in 1994 and 2010. The first educational reform and the concomitant "Ley de Reforma educativa (nº 1565)" adopted on 7 July 1994 recognised a participative, intercultural, bilingual education (IBE), with a constructivist pedagogy. Although this educational reform was an achievement in terms of participation of

[495] Bolivian Constitution (2009), art. 1.

parents, members of the communities and CEPOs, it gave the impression that IBE was only for indigenous peoples and it showed a clear lack in the implementation of the diversified curriculum, bilingual education and constructivist pedagogy. The transition between the two educational reforms and laws of 1994 and 2010 was marked, firstly, by the election of the President Evo Morales in 2005, the abrogation of the "Ley de Reforma educativa (nº 1565)" and the concomitant implementation of the project "Avelino Siñani – Elizardo Pérez". Secondly, the Constituent Assembly convened in 2006 allowed for a social forum that elaborated a re-foundation of the country including, for the first time, all Bolivians. The same year, the "Plan Nacional de Desarrollo" was adopted to create a "dignified, sovereign, productive and democratic Bolivia to "*Vivir Bien*"[496]. Finally, the adoption of the law nº 3560 in 2007 transposed the UNDRIP into domestic law, which increased the national recognition and protection of indigenous peoples' rights, and in 2009 the new Political Constitution of the State was adopted.

The "Ley de Educación 'Avelino Siñani – Elizardo Pérez'", adopted on 20 December 2010, establishes a new educational model based on the following pillars: intraculturality, interculturality, plurilinguism, decolonisation, productive and community education, which represents an epistemological shift from the intercultural bilingual education (IBE) in 1994. The intracultural, intercultural and plurilingual education (IIPE) aims at the recovery and the empowerment of indigenous peoples' own knowledge, skills and culture, as a need to break from the past colonial scheme, in order to enter in a mutual dialogue and learning with other cultures (mainly the mainstream) and to coexist in equal conditions. In this sense, IIPE is holistic as it refers to the contents, methodologies, objectives and evaluations criteria of education. Moreover, the state has elaborated a plurinational basic curriculum and helped the CEPOs to construct a regionalised curriculum adapted to indigenous peoples' cultural particularities and reality. For this, the new educational model of IIPE calls for

[496] Plan Nacional de Desarrollo, presentation.

"reciprocity, complementarity, duality, equality and respect"[497] between the different educational systems of Bolivia.

In order to evaluate Bolivia's compliance with its international treaties obligations regarding the right to education, we analysed the national educational system, which is characterised by the Educational Reform of 2010 and the concomitant "Ley 'Avelino Siñani – Elizardo Pérez'". We are conscious that it is still early to evaluate the implementation of a new educational system that started in 2012 and 2013 and that varies according to the areas of the country (being faster for the basic curriculum especially in urban areas and slower in rural areas)[498]. However, our analysis through the system of structure, process and outcome indicators allows us to draw some relevant conclusions on the respect and protection of the right to education in Bolivia.

As regards to structural indicators, Bolivian Constitution (2009) and the "Ley 'Avelino Siñani – Elizardo Pérez'" are very complete and advanced in promoting the right to education and they appear to incorporate Bolivia's obligations under the ICESCR, CRC, ILO Convention nº 169 and UNDRIP. In fact, both domestic legal texts make education available as they ensure the government's obligation to establish schools, respect private schools and provide enough resources for the development of educational institutions. Bolivian education seems to be economically and physically accessible to all without discrimination and the national legal instruments go beyond the international obligation of free and compulsory primary education by recognising that education is compulsory until the baccalaureate and that public education is free at all levels until higher education. Both the Constitution and the "Ley 'Avelino Siñani – Elizardo Pérez'" recognise that education must be acceptable and of high quality as they enshrine the respect for parents' convictions in their children's education, an acceptable language of instruction and the respect for "indigenous peoples' right to establish and control their own educational systems and institutions. Finally, both domestic legal texts recognise that education must satisfy the criteria of adaptability by guaranteeing

[497] "Ley 'Avelino Siñani'", art. 3, point 13.
[498] Marcelino Higueras Saavedra commented that in his community and for the majority of rural areas, until 2014 the implementation focused on administrative changes and creation of educational unities, rather than focusing on curricula. Interview with Marcelino Higueras Saavedra.

educational programs and services adapted to indigenous peoples' cultural particularities and needs and developed with their participation, as well as appropriate teachers training.

At the level of process indicators, although Bolivia made efforts to fulfil its international obligations concerning the right to education, it has failed in certain aspects. In fact, the government aims to ensure an education available to all, especially with the Ministry of Education's actions plans and a program to eradicate illiteracy. However, besides the decrease of student expenditure for education (as a percentage of GPD *per capita*) since 2010, the government has decreased its spending for education (as a percentage of GDP) since the same year. By doing so, Bolivia violates its immediate obligation to make primary education available to all and creates a *prima facie* violation of providing secondary education progressively available to all by adopting such a retrogressive measure. Evo Morales' announcement of an increase of government's spending for 2014 (8,7% of GDP) could overcome this failure if it is in fact put in place. Furthermore, the government has established several programs to ensure that primary and secondary education is economically, physically accessible to all on equal footing, which is in conformity with the state's immediate obligation to ensure free primary education to all without discrimination. In addition, in order to improve the acceptability of education, the OPCE published two documents on monitoring, measurement, evaluation and accreditation of education quality. As regards to the availability criteria, the government established several programs and institutions to develop processes of linguistic and cultural investigation (IPELC), to ensure the effective participation of NICNP in education (mainly through CEPOs) and to improve appropriate teachers training in ESFM and university.

Finally, outcome indicators suggest that the reality on the ground paints a mixed picture of Bolivia's consistency with the right to education as enshrined in the treaties it ratified or accessed. The NER not only has decreased for both primary and secondary education since 1998 until today (except a slightly increase in secondary since 2001) but is also of 83,43% and 68,33% in primary and secondary levels respectively. In this sense, Bolivia's education is not available for all and the state violates its immediate obligation

to make primary education available to all and creates a *prima facie* violation in making secondary education progressively available. Additionally, even though the literacy rate reached 94,98% in 2012, Bolivia failed to remain an illiteracy-free territory (as recognised in 2008 by UNESCO), and the gender and urban/rural disparities makes Bolivia violates its immediate obligation to ensure that there is no discrimination in education. Concerning the accessibility criteria, because of the several economic barriers that make education not free, Bolivia fails to provide a free primary education to all as a minimum core of obligations. In addition, in the light of gender and urban/rural disparities, although it is important to highlight that gender disparities in Bolivia do not always disadvantage girls, the state violates its immediate obligation to ensure that education is accessible to all without discrimination. As regards to the acceptability criteria, as the quality education decreased and is considered poor and, and as teachers ignore indigenous language they are supposed to teach as languages of instruction, Bolivia is considered to fail in providing an acceptable education. Finally, the state is unsuccessful to ensure an adaptable education to all in certain aspects. Even though the drop-out rate decreased from more than half between 1994 to 2010, the repetition rate increased for both primary and lower secondary education, and the lack of teachers training adapted to indigenous peoples' cultural particularities, as established in the new educational system, leads to poor quality education.

In brief, Bolivia has very complete and advanced legal texts that protect the right to education. Based strongly on the new Constitution of 2009, the Educational Reform of 2010 and the concomitant "Ley de Educación 'Avelino Siñani – Elizardo Pérez'" establish an education adapted on indigenous peoples' cultural and linguistic particularities. "It is without a doubt that in terms of normative content the new Bolivian Constitution constitutes the most advanced and progressive within Latin America"[499]. The several programs and institutions existing currently in order to make education available, accessible, acceptable and adaptable demonstrate the government's efforts to comply with its international obligations regarding the right to education. Nevertheless, the reality on the ground shows that Bolivia is still far from respecting

[499] AGUILAR, LAFOSSE, ROJAS & STEWARD, 2010, p. 83.

and protecting effectively this right. The implementation of the new educational system in Bolivia "is a relatively long process; it will take at least a generation to consolidate the process and be able to evaluate it objectively"[500].

In 2011, President Evo Morales' advised secondary students in Santa Cruz de la Sierra regarding the importance of education: "You must commit yourselves to the study, in order to be the light and hope Bolivia needs for its development"[501]. Let us hope his government will continue its efforts to ensure the right to education to all Bolivians and so respect fully its international treaties obligations.

[500] Roberto Aguilar, Minister of Education, interviewed by Victor Orduna in ORDUNA, 2011, p. 4.
[501] President Evo Morales discourse to secondary education students in Santa Cruz de la Sierra in 2011, in LOPES CARDOZO, 2012, p. 35.

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Interviews

- Interview (in Spanish) with Marcelino Higueras Saavedra, Popular educator (trainer in education, natural resources and legal fields, from an alternative perception to the formal education, from the Department of Chuquisaka, Municipality of Tarabuco), Bilbao, 3 June 2014.
- Interview (in Spanish) with Yamila Gutierrez Callisaya, aymara anthropologist working in "Consejo Nacional de Ayllus y Markas del Qullasuyu (CONAMAQ) (from El Alto), Bilbao, 5 June 2014.

VII. Annexes

Interview questionnaire[502]

Interview (in Spanish) with Marcelino Higueras Saavedra, Popular educator (trainer in education, natural resources and legal fields, from an alternative perception to the formal education, from the Department of Chuquisaka, Municipality of Tarabuco), Bilbao, 3 June 2014.

Interview (in Spanish) with Yamila Gutierrez Callisaya, aymara anthropologist working in "Consejo Nacional de Ayllus y Markas del Qullasuyu (CONAMAQ) (from El Alto), Bilbao, 5 June 2014.

1. According to you and your experience on the ground, what are the obstacles or failures of the "Ley de la Educación 'Avelino Siñani – Elizardo Pérez' (nº 070)"?
2. Although the Law nº 070 has been criticised in many ways, which aspects would you highlight?
3. Are they strengths of the "Ley de la Reforma Educativa (nº 1565)" of 1994 that are not included in the Law nº 070?
4. From your experience on the field, what is your position on indigenous peoples' participation in the design and implementation of this law?
5. What is your opinion regarding the quality of education in Bolivia this last years, with the implementation of the Law nº 070?
6. And regarding teachers' training and professional skills?
7. Linked to the previous question, what is the impact of eliminating the function of the "asesores pedagógicos" in 2003 on teachers' training and quality?
8. One of the critics regarding the Law nº 070 is that IIPE focuses to much on indigenous peoples which gives the impression that IIPE is only for them, whereas the law provides IIPE for all. Don't you think this leads to an increasing segregation and educational differentiation?
9. In order for indigenous peoples to coordinate the work regarding regionalised curricula in an organised way, the Ministry of Education proposed seven regions. Does this geographical arrangement correspond to indigenous peoples distribution and, if not, what would be the consequences?
10. In order to avoid their children to be victims of the same discrimination, parents in communities want their children to learn Spanish (and not their indigenous language) in hopes they will go to the city and progress socially. Although some consider that parents are progressively aware of the benefits of valuing their own culture and languages (intraculturality), don't you think parents are still massively reluctant to intraculturality?

[502] This questionnaire has been translated from Spanish to English, as the interviews were conducted in the interviewees' language, Spanish.

11. States whose population is partly indigenous have a double challenge: on one hand, they have to support and promote the maintenance, use and survival of indigenous peoples' cultures and, on the other hand, they must provide and develop the knowledge and skills that enable indigenous peoples to participate fully and equally in the national and international community. What do you think about the state's challenges in regards of indigenous peoples?