Institute for Research and Debate on Governance

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Diversity and Public Action, a Challenge to the Legitimate Democratic Governance

The case of Constitutions and Human Rights

International Meeting Process for Debate and Proposals on Governance
Addis Ababa (Ethiopia) Meeting, November 2012

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FOREWORD

Following the Bamako, Polokwane-Pretoria, Lima, Arusha, Saarbrücken, Yaoundé, and Tunis stages[1], it is at Addis Ababa that the International Meeting Process for Debate and Proposals on Governance came to an end. Based on the observation of the growing divorce between the State and its people, the idea for the International Meeting Process was born from the need to change the design of public policies, notably the reform of the State, and to show that the State is rooted in a multiplicity of sources of legitimacy. Identifying the main sources of legitimacy at work in an area and understanding their articulation at a given point in time are some of the highlights of this initiative. But very quickly arose the question of how it was possible to promote articulations that enable legitimate governance and therefore adhesion of actors to State power, which is the embodiment of this diversity. Participants in the meetings of the International Meeting Process then turned their focus on the analysis of experiments that would allow for a better understanding of the implications of each modality of articulation (complementarity, competition, ignorance, substitution, hierarchical integration, etc.), in terms of legitimacy of the State and of the characteristics of the interaction qualified as constructive. As the debates progressed, so was reinforced the conviction that this was a strong and shared challenge of both public governance and the renewal of the State.

Building on the conclusions of the different stages of the International Meeting Process, the Addis Ababa Meeting was specifically dedicated to this second point and refocused the reflections on the challenges of the management of diversity through public action, through the cases of constitutions and human rights. Entitled "Diversity Management through Public Action: the case of Constitutions and Human

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1. For an exhaustive list of the International Meeting Process for Debate and Proposals on Governance's partners, please refer to the following website: www.institut-gouvernance.org/international-meeting.html

Rights", the meeting took place on the 28th and 29th of November, 2012. This document is the result of interactions between all participants – African, Latin American, and European. We would like to thank them for the richness of their participation, their freedom of speech, and the trust they expressed during these two days of debate. This analysis stems from their shared experiences and reflections. We wanted to restore them as closely as possible to enhance the collective intellectual journey without going into a linear and nominative synthesis exercise. Consequently, the overall reflection proposed here, while bearing a collective voice, does not bind the participants. The objective is that these proceedings constitute an analysis document that opens a new phase of our reflection in the field, that of developing a framework for analyzing the sources of legitimacy and proposals for a plural approach (based on the taking into account of diversity and the strengthening of constructive interactions) of the State and of public action.

The Addis Ababa meeting was organized with the support of the Charles Léopold Mayer Foundation for the Progress of Humankind and the French Ministry of Foreign Affairs, and in partnership with the Alliance for Rebuilding Governance in Africa, the University of Addis Ababa, the International Organization of the Francophonie and the South African Institute of International Affairs. They are all here gratefully acknowledged.

Finally our thanks go to the members of the IRG team, Julien Moity, Marion Muller, Rita Savelis, and Thomas Weiss, for their essential work in organizing this meeting and in the writing of this analysis document.

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INTRODUCTION

The taking into account of the diversity of regulations at work within a society, cornerstone of legitimate democratic governance

It was following the regional meeting for west Africa, which was held in Bamako, Mali in 2007, that the initiative for the International Meeting Process for Debate and Propositions on Governance[2] was launched by the IRG. As mentioned in the foreword, this International Meeting Process aimed at highlighting a central axis – that was however neglected – of the analysis of the processes of the legitimation of the State (that is to say the adhesion of actors to it): the plurality of sources of legitimacy, that is to say the importance of taking into account the diversity of sources and their interactions for the legitimation of the State. Conceiving State reform and more generally public action by confining it to and working on a single source of legitimacy (whether it be official legality, tradition, religion, etc.) established as exclusive or dominant runs the risk of contributing to widen the growing gap between societies and their States. Far from being a simple intellectual or expert's debate, this reconciliation, in view of defining a social contract which embodies societies in their intrinsic and changing diversity, refers back to sometimes serious crises and conflicts that make up people's daily lives. That is why it seemed important for us to help improve approaches and practices by striving to understand how it is possible to identify the various sources of legitimacy at work within a

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2. The International Meeting Process then traveled to Africa's different sub-regions – Polokwane-Pretoria, South Africa in 2008 (Southern Africa); Arusha, Tanzania in 2009 (Eastern Africa); Yaoundé, Cameroon in 2010 (Western Africa); Tunis, Tunisia in 2012 (Northern Africa); and Addis Ababa, Ethiopia in 2012 (Eastern Africa) – as well as South America for the Lima Meeting in Peru in 2009 (Andean America) and Europe for the Saarbrücken Meeting in Germany in 2011 (Western Europe).

given society and how they interact. Thus, the International Meeting Process allowed us to seek out, at the source, these realities and to systematically cross-reference them so as to establish a transversal analysis; which in turn enabled the establishment of a line of questioning and propositional axes for a constructive taking into account of the sources of legitimacy and for the reinforcement of democratic governance – not only more legitimate with regards to each individual context, but also rooted in the shared global challenges we all face. Such was the purpose of the International Meeting Process, which ended in Addis Ababa with a highlight on the "comprehension of the diversity of sources of legitimacy and the importance of their interactions".

However, this meeting was also the starting point of a propositional reflection. It was held in a highly symbolic continental political capital and focused on the sharing of experiences and discussions on various existing arrangements (institutional engineering, "informal" mechanisms, the role played by "interface" actors, etc.) for the taking into account and management of interactions between sources of legitimacy at work within a society; and on the analysis thereof.

The diversity of sources of legitimacy refers to a diversity of regulations at work

To better understand the terms of legitimation of power in the various sub-regions of the world, the International Meeting Process began to identify and analyze the different sources of legitimacy which form the basis, or not, of the people's adhesion to power. For purposes of analysis, notably for the understanding of each source and the interactions between them, it appeared important to characterize the notion of a source of legitimacy in its components. Thus, it appears that each source of legitimacy (tradition, religion, territory, deliverance of basic social services, etc.) refers to a regulation and can be apprehended as a system of norms (rules, which are not necessarily inscribed in law), authorities (institutions that embody a specific regulation, as for example religious and traditional leaders, mayors, heads of armed movements, etc.), and

values (such as individual property) that underlie the first two points (norms and authorities) and guide an actor's (individual or collective) behavior. It is important to underline that this characterization of the sources of legitimacy is not intended to be exhaustive or to serve as a set definition. Each step of the International Meeting Process successively strengthened its validity as a working tool to identify, qualify, and understand the sources present and the way they interact. By the same, the International Meeting Process was interested in the various existing regulations that, notably, structure the worldviews, cohesion, and relationship to the State of the different groups (social, socio-professional, religious, ethnic, etc.) that compose any given society.

As part of this initiative, various types of regulations have been identified[3], ranging from the obvious (relating to customs, religion, or formal law) to the least expected (such as those associated with armed groups or sectarianism) but claimed by actors as effective in meeting their needs. It is also clear that these regulations were and are not fixed or definite. They evolve through their interactions with each other.

The diversity of sources of legitimacy refer to a diversity of regulations to manage

This diversity of regulations, in constant interaction (exclusion and ignorance being an example of such a type of interaction) and evolution is thus a challenge for public management and its objective of social cohesion. One of the lessons of the International Meeting Process is that the State should seek to promote constructive interactions between these regulations in order to encourage dialogue and exchange around a commonly shared project on the one hand, and to let its nature evolve in a plural manner (i.e. based on the diversity) on the other. It is indeed at the meeting point of the different regulations that the social contract

3. Séverine Bellina, « La Diversité en Quête d'État : la Gouvernance Légitime en Création », in Institut de Recherche et de Débat sur la Gouvernance, *La Gouvernance en Révolution(s). Chroniques de la Gouvernance 2012*, 390 p., Éditions Charles Léopold Mayer, Paris, 2012.

is defined and that a society's rules are produced. The interaction and articulation of these regulations is therefore a central issue, shared the world over, of legitimate democratic governance. Indeed, the legitimation of power implies that it take this diversity into account to foster the emergence of a broader regulation that is shared, inclusive, and effective.

Yet, as it was pointed out very often in the debates, current events are filled with daily examples of the lack of taking into account of diversity in the development of public policies, in the definition and practice of the social contract. While supposedly governing a society and its people, public institutions and regulations therefore seem to not be embodying the needs and interests of their people who identify themselves less and less in them. Disconnected from its society, the State is unable to perform its regulatory functions. Actors (populations, civil society, private sector organizations, institutions, etc.) then mobilize parallel or competing regulations to meet their aspirations and material and symbolic needs: customs, religion, and informal economies, for example. Accordingly, adherence to extreme regulations (armed movement, narcotics trafficking, religious or cultural extremism, etc.) tends to grow and weaken States.

Taking the diversity of regulations into account: the case of Human Rights and Constitutions

Against this backdrop of a growing divorce between societies and their States, it is imperative that the various regulations at work in our societies are taken into account by public action. It is also crucial that their interactions be governed by the State. It was stated several times, that at a given moment, "the regulatory conflict, in its resolution, has to be supersized by the political authority". However, in its current design, the State is not able to promote "constructive interactions" between different regulations. This is precisely one of the conclusions of the International Meeting Process' earlier stages. It emphasized the importance of interactions between regulations in order to promote

their hybridization and allow the emergence of legitimate regulations. It is through public policies that a society can define the principles of interactions between existing regulations that best serve its social contract. As the debates evolved throughout the International Meeting Process, two institutions and themes stood out: Constitutions and Human Rights.

They enable the analysis to focus on the question of the existence of a diversity of regulations and on the challenges of their interactions. Norm supposed to embody the "social contract", the "founding myth", the "sacred stories" of societies, the constitution appeared, notably during the 2008 Polokwane-Pretoria Meeting in South Africa, as a central axis for reflection and propositions for a creative approach of public action. During this colloquium, were discussed existing approaches and constitutional processes that aim to restore constitutions as the social contracts of country, or at least as best reflecting the constitutive diversity of the concerned countries. At the heart of a society's common desire to live together, the constitution is a relevant object of analysis to better understand the issues and possible arrangements for a better incarnation of the hybridization of the various regulations at work in a given country. Whether the result of a crisis, a serious conflict or strong evolution of a country, the constitution is often one of the first institutions to be called into question or modified. This is because it is indeed at the very heart of the representations that a society has of itself, of its common aspirations, of its power. In this context, discussions also underlined the importance, in a parallel and complementary way, of the field of human rights. This theme was strongly put forward, at the Lima Meeting in Peru in 2010, as being strong and original examples of constructive interactions between different modalities of social regulation. Indeed, the question of human rights is probably one of those that can cross different worldviews in their definition while providing a so-called universal design. How does this happen and what process does it follow? The Latin-American experience has put forward cutting-edge experiments that overcome the dialectics of ignorance of various conceptions in the name of universality or vice versa, and of the affirmation

of culturalist practices against universalism. While respecting the legal hierarchy of norms and by shedding concepts of competitive or hierarchical relationships between different regulations, the inter-American system of Human Rights developed a jurisprudential principle based on the concept of integral reparation that allows for a constructive articulation of the concerned regulations[4].

Constitutions and human rights are thus the two themes around which the debates were focused on in Addis Ababa. The meeting, based on the analyses and experiments developed throughout the International Meeting Process, should be able to not only close the process but also, and especially, kickoff a new stage of work of the IRG: the elaboration of a table/grid of understanding and operational proposals on issues of State legitimacy and more specifically on the modalities of diversity management by public action. Some thirty institutional practitioners and experts on constitutions and human rights attended the meeting to cross their "field" experiences in terms of regulation interaction. These practitioners and experts shared experiences from several geographical areas (Africa, the Arab World, the Americas, Europe). Their testimonies and subsequent discussions helped to highlight a number of issues, limitations, and principles to be taken into account in order to promote constructive articulations between regulations.

This document is intended, in a logic of proceedings, to accurately reflect the conduct of the meeting, thus allowing a better understanding of the collective reflection that took place. However, it is also the first document of this propositional step. For this reason, it is constructed in such a way as to underline, on the basis of experiences shared during the meeting, the first principles for a constructive articulation of regulations at work in a society for a legitimate democratic governance. Its outline thus follows the actual sessions of the colloquium. We chose to relate the different shared experiences anonymously. We would like to further underline that they are necessarily biased towards the

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4. For more information on this jurisprudence, please refer to: www.institut-gouvernance.org/en/etude/fiche-etude-1.html

colloquium's topic and are non exhaustive. Their purpose is not to give a precise and detailed account of the presented events, but rather to provide elements for the discussion at hand.

PART I

The management of diversity: examples of regulation interaction modalities

The exchanges allowed the identification of different interaction modalities for the management of the diversity of regulations, both in terms of constitutional processes and implementation of human rights mechanisms. Thereby, concrete examples of processes and tools were set forth.

Interaction modalities in the field of constitutions

The processes of drafting constitutions take shape in different ways and show a more or less inclusive consideration for the diversity of regulations at hand. Participants presented innovations especially in terms of "constitutional and institutional engineering", that is to say, the design and use of constitutions and institutions to define the most appropriate modalities to take into account the diversity of regulations and to answer the challenges of a given situation. Ethiopian and Burundian participants thus shared experiences from their countries where the constitutional tool was used to resolve conflicts related to the management of ethnic pluralism. But this tool is not only used to provide a response to a specific crisis. Participants from Andean America pointed out that it could also be used to lay the foundations of a new State regulation. One that is more inclusive of a country's diversity, especially around a "constitutional activism" that seeks, for example, to articulate the rights of indigenous peoples within the State law. Finally, the Icelandic experience demonstrates the importance of the constitutional process itself, designed in a multi-actor and integrative perspective in order to allow the taking into account of the diversity of regulations at work in that country.

Constitutional engineering in Africa: recognition and representation of ethnicity

Around the issue of ethnic diversity and the risks of breaking up of a country that may result if it is not taken into account, it appears that the choice of a particular institutional system can pave the way for a

society's pacification by the taking into account or recognition of the diversity at hand. The cases of Ethiopia and Burundi are interesting from this point of view. However, as a solution identified at a specific point in time when dealing with a crisis, does institutional engineering actually allow for an opening of the status quo and avoid a phase shift with the political, social, and demographic developments of a country? Nothing is less obvious.

The recognition of ethnic plurality: ethnofederalism in Ethiopia

With more then eighty different ethnic groups, as many languages, four dominant religions, and a growing socio-professional diversity as a result of the country's economic development, Ethiopia is a genuine mosaic and melting pot of diverse regulations. So how to facilitate a peaceful coexistence? How to create a shared and inclusive regulation? This was partly the objective of the new Constitution of 1995, which marked a break with past power centralization practices of past regimes.

An Ethiopian participant, expert in law and governance, explained that during Ethiopia's modern history, from the 19th century's[5] last emperors to the communist Derg regime (1947 to 1987), the country was characterized by a strong central authority that had no or very little consideration for the country's rich diversity. This is what can be seen from the rebellions, which were fueled by identity and linguistic concerns, under the reign of Haile Selassie, or the strong repression followed by quasi-permanent guerrillas during the Derg regime. With their regional and ethno-linguistic components, the various guerrillas responsible for the fall of the Derg regime found themselves invested with unprecedented legitimacy in their claim for recognition and consideration of their ethnic and linguistic identities in the country's governance.

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5. In particular, Menelik II and Tewodros II, who proclaimed the official language as being Amharic, at the expense of his empire's other languages.

From the national conference in 1991 to the entry into force of the new Ethiopian Constitution in 1995, a new way of managing diversity, capable of responding to the country's specific context was conceived: a federal system was established. It is based on a territorial administrative division that gathers distinct ethno-linguistic groups in states (nine federal states and two city regions) that have a large degree of autonomy. Each federal state thus has its own official language that is used in its school system. The Ethiopian Constitution recognizes the ethnic and linguistic diversity as a component of the country's reality and creates new institutions (including the federal states based on ethnicity) to guarantee that diversity. This system represents a radical questioning of the concept of the State that existed before: the country moved from a "centralized" empire without recognition of its ethnic diversity to a federal State that derives its legitimacy from the recognition of the right of self-determination for the major ethno-linguistic groups.

The result of a particular context, this constitutional and institutional arrangement aimed at a peaceful articulation between the needs and aspirations of the country's main ethno-linguistic groups. However, despite the constitutional recognition of all languages (article 5 of the Constitution), there is in fact the supremacy of one ethnic group, the Amharas; one language, Amharic; and an ethnically based political party, the EPRDF (the former party of national liberation against the Derg regime). The other ethno-linguistic groups – and even more so for those who do not enjoy the federal region status – are increasingly confined to their regions, strengthening in particular their regional affiliation feelings. Because of this imbalance of power, territorial ethno-linguistic division inhibits interactions among the federal states in the sense that the construction of a feeling of national unity becomes difficult.

Nevertheless, as pointed out by another Ethiopian participant, constitutional recognition of diversity, in this case ethnic plurality, enabled Ethiopia to counter centrifugal logics: "After the departure of Eritrea, many other groups could have done the same thing, but thanks to the recognition of and respect for diversity, it has not been the case".

The question now resides in whether or not this particular arrangement is the first step towards a constructive articulation of the various regulations, particularly due to the different cultural practices of each ethnic group, supported by the Federal Government and embodiment of the country's union.

The institutional representation of ethnic diversity: the case of post civil war Burundi

After more than thirteen years of particularly violent and bloody civil war, and under high external pressure, a transition process was initiated in Burundi with the signing of the Arusha accords in August 2001 and August 2005. These agreements are a typical example of constitutional and institutional engineering set up precisely to provide a solution to a specific problem: the representation of different ethnic groups within the State's institutions (presidency, government, administration, parliament, army, etc.). The negotiations, which enabled the establishment of a unique system specially adapted to the management of ethnic plurality, had as an objective the concrete recognition of diversity, secured by specific mechanisms and institutional arrangements.

The presence, at the meeting, of a former Burundian high official who participated in the negotiation of the agreements allowed for a direct testimony of the prevalence of the concern for representativeness amongst those who led the negotiations. Indeed, the agreements organized a genuine power sharing. They provided for a transition period of three years before new elections, during which the leaders of the two main conflicting groups exchanged the post of President mid-term. The vice-presidency was split to ensure the representation of the two main ethnic groups, the Tutsis and the Hutus. A Senate, with special powers, was created with a quota system ensuring that no Burundian ethnic group would be marginalized. Extending beyond the two warring groups, quotas allowed for the representation of all segments of Burundian society, including women and minority groups such as the Pygmies. For the latter, who represent 1% of the country's population, a quota of three seats was granted, both in the Senate and in the National

Assembly. In the event that election results do not meet the quotas, a co-optation system was devised to ensure full representativeness as defined by the constitution.

As was pointed out by the participants, if the institutional engineering tool cannot be an end in itself in terms of diversity management, it is an essential element to integrate in any long-term strategy. This is even truer when the ethnic issue is concerned. Indeed, the management of the latter implies a broader articulation between the different regulations at work, which are driven by the different ethnic groups or communities, and the creation of a peaceful and shared social contract. If the ethnic question directs our collective imaginations to Africa and its violent crises, recent history reminds us that Europe faced and still faces this challenge, and so does each of our societies.

Constitution engineering in Andean America: (neo) constitutionalism based on diversity

It is precisely a broader view of the concept of ethnic diversity, extended to the notion of cultural diversity thus integrating the plurality of regulations and worldviews to the idea of coexistence of different ethnic groups, that Andean America offers. Continental and historical context is obviously different, but the analysis of this type of institutional engineering can allow the integration of the choice of the institutional system in an integrated vision of the governance of the concerned country. The experiences of Andean American countries have made it possible to address the constitutional tool under the prism of multicultural and plurinational management of the diversity of regulations.

Multicultural constitutionalism, or the multicultural management of diversity, was the direction taken by many Andean American countries starting in the 1990s. This type of management seeks to make coexist in a same institutional framework a variety of regulations by granting citizenship rights, claimed as historical and original rights, to minority and marginal groups – including indigenous peoples. In Colombia, during the 1991 constitutional reform, the constitution

officially granted special rights to certain cultural and ethnic groups. A constitutional court was established to arbitrate disputes between various modes of regulation. However, with no guarantee of representation of indigenous peoples or Afro-descendants in the court, it has little impact and is essentially the "guardian" of State law.

With Bolivia's 2009 constitutional reform, and to a lesser extent that of Ecuador in 2008, a different type of constitutionalism emerged: plurinational constitutionalism. This plurinational management of cultural diversity, of the diversity of worldviews, has been touted as a step forward for the taking into account of the diversity of regulations by a State. Both constitutions did indeed go beyond the recognition of specific rights or citizenship rights group. They changed the very concept of the source of law in these countries. For example, in Bolivia, the laws and customs originating from indigenous peoples are now an accepted and integral part of the source of general of law within the country.

This constitutional pluralism is declared in the constitution's first article: *"Bolivia is constituted in a Social Unitary State of Communitary Plurinational Law, free, independent, sovereign, democratic, intercultural, and decentralized with autonomies. Bolivia is based in the plurality and in the political, economic, juridical, cultural, and linguistic pluralism, in an integrative process of the country."* To ensure the implementation of these objectives, a Plurinational Constitutional Court was created in which sit at least two members of indigenous communities. According to a Colombian participant, a constitution that recognizes a variety of sources of law and sets up appropriate mechanisms of constitutional justice marks the establishment of a new type of constitutionalism that he called "strong constitutionalism" or "neo constitutionalism".

Constitutional engineering in Europe: Iceland's integrative and multi-actor constituent process

In Europe, the case of Iceland shows that for a small country with no apparent problem of ethnic diversity, the question of the diversity of

values and of social contract conceptions also arises. The context of the economic crisis that befell the country opened the way for the expression of popular and political diversity. However, the establishment of a process for a constructive articulation between the various regulations present quickly found itself frozen within the existing institutional and political framework.

A former member of the Icelandic Constitutional Council charged with drafting a new constitution presented the example of Iceland's constitutional reform process. In 2008, the country's financial crisis led to a political and social crisis that fundamentally put into question the Icelandic constitutional and institutional system. Despite new elections in 2009, reclamations remained very strong and the "street pressure" did not weaken in its demands for deep reform of the State and its political institutions. In response, the Prime Minister proposed a constitutional revision in Parliament. The Constitutional Committee of Parliament then recommended appealing directly to the Icelandic citizens in order to make them active participants of the reform.

The first step was the gathering of approximately 1,000 randomly selected citizens that were convened in a national forum whose task was to define the values representative of Icelandic society, those they wished to see included in the new constitution. The second step was the election by universal suffrage of 25 citizens, among 523 candidates, who were to compose the Constitutional Assembly in charge of drafting the new constitution based on the findings from the first stage. The discussions in the Constitutional Assembly, which became the Constitutional Council, were open to the public and broadcasted on the Internet. In addition, the project was submitted for review and comment to the citizenry. In all, the Constitutional Council received more than 3,500 comments and some 360 formal constitutional article proposals. Each comment and proposal was discussed by the Constitutional Council; any citizen behind a particular comment or proposal could be present during its examination.

The produced constitutional draft was then submitted to a referendum on October 20th, 2012, along with a question asking voters to vote

for or against the continuation of the constitutional reform process. Just under 75% of participants in the referendum voted "yes" for the continuation of the process and also validated the draft prepared by the Constitutional Council. After months of filibustering, the parliamentary session ended in late 2013 without any progress on the issue, thus burying the draft constitution.

Despite the fact that it was not able to achieve its ultimate goal of implementing a new constitution, this constitutional reform process was very innovative. For the Icelandic participant, leaving the actual drafting of the new constitution in the hands of 25 volunteer citizens and not politicians was a real breath of fresh air. Indeed, these citizens, unlike parliamentarians, had no conflicting interests with regards to the constitutional reform process since their work and careers did not depend directly on its outcome. Through this process, the constitution is much more accessible and embraceable by the Icelandic people. Accessible by the vocabulary used but also through its dissemination, particularly the fact that a copy was sent to each Icelandic household prior to the elections. Embraceable because the citizens were able to participate, directly or indirectly through new technologies, in the actual constitutional reform process; thus giving them the feeling that the new constitution is a more accurate reflection of their daily realities.

Nevertheless, this experience raises two sets of questions. On the one hand, the constitutional reform process did not solve the problem of its implementation or that of daily practices. Indeed, the reform process was open and inclusive; the constitutional text reflects these innovations but what about after? How to ensure the translation into political, legal and parliamentary terms of a text stemming from a citizen participatory process? Would the practices of the new constitution be different from those of the old one? Would the Icelandic people be more involved and vigilant to the respect of the new constitution's provisions? If the elaboration of the new constitution solved the social and political crisis, could it have brought the citizens closer to their State and elected officials? Could it have been the start of a long-term and sustainable arrangement?

On the other hand, if the reform process did indeed suscitate much enthusiasm in its beginning, the process seems to have progressively lost its momentum. The low voter turnout (less than 40%) in the election of the 25 members of the Constitutional Assembly (later called the Constitutional Council) strongly prejudiced their legitimacy to rewrite the constitution, to the point that their election was invalidated. It is thanks to the government's will that these 25 citizens were just narrowly re-legitimized to write the new draft constitution. Today, this low participation and resulting issue of legitimacy of the Constitutional Council is seen as one of the key moments of the process, which then gave weapons to parliamentarians to argue that the constitutional reform was not really necessary since not desired or supported by the people of Iceland.

This example illustrates an innovative multi-actor integrative approach. The Icelandic reform process actually involved all the components of Icelandic society by enabling every citizen to get involved and received political support from State institutions. Together, they participated in the redefinition of the collective imagination and the values that are the foundation of Icelandic society. They did so through a process that, supposedly, opened the possibility for constructive interactions between the various "regulations", notably the values held by the people of Iceland.

Interaction modalities in the field of human rights

Alongside the issue of constitutions, the IRG and its partners have found, over the course of the International Meeting Process, that the field of human rights was central to the articulation of worldviews. Exceeding the sole concern of conformity to an international standard, the recognition and consideration of different regulations in terms of human rights and worldviews have become major issues with regards to the public management of diversity and of the creation of an inclusive and common will to live together. The participants of the meeting largely confirmed this by sharing experiences of interactions between regulations and their impacts on the design and implementation of human rights.

Inter-American Court on Human Rights and case law engineering: the intercultural and interdisciplinary approach

The regional level of the Inter-American system of human rights has gradually allowed the development of an innovative approach and tools for the protection of human rights and, more generally, for the taking into account of the diversity of worldviews in the definition and application of international and national law. The post-dictatorship context and the need to define a common base in light of the diversity of Latin American States led to the emergence of a human rights protection system more human-centered then State-centered; which paved the way for the development of a case law based on intercultural and interdisciplinary principles.

More specifically, the cases brought to the Inter-American Court of Human Rights (based in San Jose, Costa Rica) are studied through the prism of expertise from the different disciplines and cultures involved. Anthropologists add their expert understanding of the concerned community, the significance of the sustained prejudice to the individual from said community, and the meaning, for the individual and his community, of justice and reparation. Meanwhile, the victim is invited to speak in his/her native language, even dressed in his/her traditional clothes. The judges then give their ruling – basing it on both the American Convention on Human Rights and the practical terms and understanding of justice of the concerned community. This approach has allowed the development of jurisprudence whose central component is the recognition of the diversity of worldviews of indigenous peoples.

When the Inter-American Court on Human Rights concludes on a violation of human rights, it is required by Article 63 of the American Convention on Human Rights to order that reparations be made to the victims. The originality of the Inter-American Court on Human Rights lies in its conception of reparations and in the process it uses to define them. Based on multidisciplinary expertise (anthropological, economic, sociological), the Court has developed the concept of "full reparation" so as to go beyond the mere monetary compensation. Indeed, a human

rights violation creates physical, psychological, and "life plan"[6] damages that have an impact on the future prospects of the victims. All the innovation of the Inter-American Court on Human Rights lies in the recognition that crimes and consequential damages have different meanings and effects depending on the worldviews and social representations at work in different communities. This includes taking into account the significance of the prejudice suffered, not only from the point of view of the victim but also that of his/her community. This point was strongly emphasized by a Mexican lawyer to the Inter-American Court of Human Rights, especially for cases involving indigenous communities that have very different worldviews from those prevailing in the continent's States.

From this innovative regulatory framework, the Inter-American Court on Human Rights is able to create a constructive interaction between the regulations of the different actors. It requires reparations that make sense for the victim and the perpetrator (which in the cases raised by the Inter-American Court of Human Rights is the State). They range from restoration of freedom and/or material goods to satisfaction measures such as public excuses, creating memorials, and to rehabilitation measures to repair the psychological and/or physical damage. By way of example, one can cite the case of Escue Zapata Vs. Colombia in which the Court condemned the State of Colombia for not having returned the remains of the Indian leader Zapata, who was arbitrarily killed by the Colombian army. The long wait for their leader's remains was considered by the Court as having a negative impact "of spiritual and moral character, to his family and culture, thus affecting the harmony of the land"[7] because of the importance of the link between land and an individual who must be "sowed" after his death.

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6. This is the term coined by the Inter-American Court on Human Rights to explain the long-term upheaval caused by the suffered prejudice: the altering of one's life plan.

7. Melisa Lopez, "Cosmovision and human rights: International Law as founded in a pluricultural approach. The Inter-American Court on Human Rigths." This study is available on the IRG's site through the following link: www.institut-gouvernance.org/fr/analyse/fiche-analyse-513.html

Last point of with regards to the integral reparations concept, its "non-repetition of violations guarantees" are measures imposed on convicted States by the Inter-American Court of Human Rights in order to prevent the reproduction of the same human rights violation. To do so, the Court may order training for a State's offending elements (for example, training for military or police), or awareness campaigns on the rights of indigenous peoples. More importantly, it may, under Article 2 of the American Convention on Human Rights, order States to change their laws and/or constitutions. In so doing, the Inter-American Court of Human Rights promotes the establishment of constructive interactions between regulations and the worldviews that drive them.

The example of the concept of collective property is instructive. The Inter-American Court of Human Rights, through its integrative approach, has acknowledged that environmental destruction related to the exploitation of natural resources in the territories of indigenous communities represents a violation of the collective property rights of these communities. It recognizes that these territories, although not being the property of an individual in particular, represent a collective good that holds specific meanings (notably religious and social) for these communities. In the case of the Mayagna Awas Tingni community[8], the Court held that the destruction of their territories was a violation not only of their collective property, but also an attack on their lifestyle and their cosmovision.

This type of approach, through the integral constructive articulation between the regulations that it opens, enhances the effectiveness of the international human rights system; which becomes a regulation that is hybridized and shared by the concerned actors.

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8. *Ibid*

The role of actors in the definition of institutional engineering that promotes interaction between regulations: judges at the crossroads of legality and legitimacy

Actors, such as judges, are confronted daily by the existing tensions between State law and "parallel" regulation systems. They are at the intersection of the plurality of regulations mobilized by societies and their institutions. Their decisions are essential when addressing "regulatory conflicts", especially with regards to sensitive issues, that directly relate to values and worldviews, such as human rights.

The case of Turkey

The example of polygamy in Turkey illustrates the central role of judges. While State law does not recognize polygamy, which is thus illegal, some courts tend to take this social reality into account in their decisions. For example, in the case of the inheritance of a deceased husband, there is only one official "legally legitimate" wife to whom the inheritance should go to. But the reality is that of the other women are not officially spouses in the eye of the law, but who are legitimately so under Turkish tradition. So as to not discriminate between the "legitimate/official" wife and the other wives, judges have therefore taken into account both the law of inheritance and the social fact of polygamy. This legal practice, accepted by the Turkish State, is symptomatic of the "normative hypocrisy"[9] that exists in the country and whose consequence is the ineffectiveness of legal standards because they are out of phase with the values and customs at work in the society. This "normative hypocrisy" allows both the development of a peaceful articulation between two conflicting regulations, accepting de facto the informal channels of the judicial system, and satisfying the external partners of Turkey – such as the European Union and its condemnation of polygamy, thus displaying a showcase legal norm. Judges make sure that this

9. The term "normative hypocrisy" was used by participants to describe the promulgation of legal norms that have no means to their application or for which there is no real political will to implement them.

gap does not lead to a radical break between State law and practice, therefore allowing the regulations laid by each to not be in pure competition. The space for their interactions is de facto recognized.

The case of Peru

In Peru, community justice implemented in some areas recognizes the cultural identity of indigenous peoples and makes judgments by taking into account the values and norms of these communities. It quickly became apparent that many of the decisions went against Peruvian national law. State judges went beyond the restrictive limits of the State's legal framework to take into account the social reality and the local customs in their judgments. The Peruvian government has remained silent on these court decisions even though they call into question its legislation. This community justice gained so much legitimacy that the Peruvian State had to integrate this system of justice and adapt the judiciary branch accordingly. Thus, the State adjusted to a social reality, to a regulatory system that escaped it. It integrated it in its functioning.

Both in the Turkish and Peruvian cases, judges used their institutional prerogatives to recognize and legitimize practices considered deviant with respect to the State regulation in force. They thus imposed themselves as "norm facilitators"[10] by recognizing common social realities and allowing constructive articulations between, a priori, conflicting regulations in order for justice to be upheld effectively. Moreover, this probably also paves the way for the definition of a peaceful, inclusive and common desire to live together within a same society.

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10. In French "passeur de normes", expression used in anthropology and sociology of law to describe situations of internormativity facilitated by the actions of one or more actors. This expression was notably developed by the Laboratory of Legal Anthropology of Paris (LAJP).

PART II

Reflections to promote constructive interactions between regulations

Whether it be thanks to institutional engineering techniques, the intervention of actors, or interfaces arenas, the examples discussed show that challenges intersect and are shared, throughout the different regions of the world, on the need to promote peaceful coexistence between regulations (therefore their components: authority, norms, and underlying values), if not better constructive interactions between them – which would be the vector of a peaceful and harmonious common desire to coexist together. From the experiences shared by the participants, the discussions highlighted lessons on the modalities of interaction between the different regulations.

Taking the context into account: the premise for any modality of interaction

To be effective, any interaction modality needs to be adapted to the particularities of a given context – in terms of, for example, historicity, demography, power relations within the society, or the nature of the State. The example of Burundi illustrates the need to define distinct modalities of interaction that respond to specific issues. The Arusha Accords, negotiated at the end of the civil war in Burundi, thus had as an objective the pacifying of a situation that was loaded with hatred and resentment. The challenge was to find a way to meet the claims and demands for representation of all the sectors of Burundian society in a way that would not generate a sense of inequality between the different actors involved. For this, an inclusive institutional model was negotiated. It included the implementation of quotas in all the institutions of the Burundian government. This step was crucial to ensure that all components of Burundian society could feel represented and be able to project themselves in a common future. Similarly, in Ethiopia, the federal model emerged as a political solution to maintain unity among the country's 80 ethnic groups.

The context also influences the opening of a political system with regards to the interactions between regulations. In Ethiopia, the imperial tradition of the State leads to a strong centralization of the

ethno-federal system at the expense of a balance between the country's ethnic groups. In closed environments such as Egypt, diversity is recognized only to a limited extent. For the Egyptian State, an individual is either Coptic or Muslim. It does not recognize any other type of identification, whether religious or otherwise. Such a binary approach limits, if not eliminates interaction between regulations and creates situations of high tension. In contrast, the context in Iceland allowed for a constitutional reform based on an integrative multi-actor approach through the creation of dedicated arenas for interactions to meet in – or "points of opening" to use the terminology used by the Icelandic participant.

The role of actors and process: "norm facilitators" and the recognition of social realities

The discussions largely emphasized the crucial role played by certain actors in the articulation of different regulations. This role can be part of an institutional context such as the Inter-American Court of Human Rights. This Court makes up an arena at the frontier of the cultures of the States and the communities, on the margin of national laws and international conventions. It is the meeting point for all these elements and creates an environment auspicious for constructive interactions. Indeed, the Court takes into account the regulations carried by each actor to render a judgment nourished by this diversity. It is a place where "norm facilitators" (particularly judges, experts, and lawyers) give to see all the regulations involved, thus allowing a legitimate decision in the eyes of actors and in line with its principle of integral reparation.

In other contexts, the actors at the interface between regulations sometimes play a role that goes beyond their institutional prerogatives. In Turkey, judges find themselves at the intersection of State law that prohibits polygamy and the practices of some polygamous families. Rather than applying State law without understanding the social reality, they sometimes make the choice to take both the non-official and official wives into account. Such a decision is therefore not "legally

legitimate" but is "socially legitimate". In other words, a judicial decision that takes into account the social fact of polygamy is closer to the reality of families and responds to a greater extent to their needs then does a strict enforcement of State law. Turkish judges that act so reveal themselves as mediators, "norm facilitators" that link two regulations, that of State and the social reality. Their stance and decisions promote interactions and the integration of regulations that develop in parallel to the State – regulations that are legitimate in the eyes of actors in a society but not legal for the State. Note here that the importance of the context, and particularly the "permissiveness" of the State, is central for the freedom of action of these "norm facilitators".

The inevitable, pragmatic, taking into account of values

The debates also emphasized that the question of values was at the heart of the challenges when it comes to the articulation between different regulations. It is because they represent principles that tend to guide the actions of individuals and groups that these values need to be taken into account in the management of pluralism within societies. Indeed, exchanging on values is a way of defusing misunderstanding of others and their actions. This understanding promotes a more constructive interaction, allowing to move towards an interaction that is commonly defined. As the participants underlined, dialogue on values is then essential so that the proposed solution is as suitable as possible with regards to the realities and needs of the interacting parties. However, the underlying objectives and the need for action (i.e. time constraint) define the modalities, which then vary in their degree and depth of interaction between values.

The experience of the Inter-American Court of Human Rights, by putting forth an integrative approach allowing for the construction of a shared vision, demonstrates the importance of integrating the values when articulating different forms of regulations. Concurrently, the Icelandic case underlines that the encounter and dialogue between values, the meeting participants spoke of a "confrontation of values", is

likely to promote the construction of a collective imagination. The definition of values was indeed one of the key points in the constitutional reform of that country. The old constitution, an offshoot of another nation ("quasi-translation of the Danish Constitution of 1874"), was indeed problematic because it did not correspond to the values of the current Icelandic society. One of the missions of the National Forum (composed of 1000 Icelandic citizens randomly selected) was then to redefine the values of the future constitution. Designed as an arena for inclusive dialogue, this forum enabled a confrontation among the different values, which led to a better understanding between them. It led to the formulation of a set of values (including for example the importance of natural resources to Icelandic society) that was submitted, in the form of a report, to the Constitutional Council. This report became the foundation of the Icelandic new draft constitution.

If it is essential to take into account the question of values for the articulation of regulations to be effective, meeting participants stressed, however, that this does not necessarily imply agreement on these values. Thus, several of the cases presented referred to a conflict of values between different modes of regulation. In Turkey, for example, the principles put forward by the State in its legislation aim to out polygamy. The interaction with the regulation that favors this practice is therefore done informally, through judges and thanks to a "legal hypocrisy" that allows the State to overlook such actions while officially condemning the practice. In this case, a "philosophical choice", spontaneous or driven by the constraints of the international political context in favor of a specific set of values, leads in fact to a certain hybridization.

In Colombia, the case of community justice, which applies to offenses concerning the community (where the victim and the offender are both from the same community), can also be the bearer of conflicting values on the nature of the sentences handed out. However, formal recognition of this system of justice by the State allows for a degree of autonomy. Sentences considered contrary to human rights by the Colombian State (such as corporal punishment) can be legitimately applied within the community. The interaction between the regulations

is then performed without a hybridization of values. It can thus be qualified as an "intermediate interaction" which, according to the meeting participants, is just as justifiable and sometimes preferable to resolve an interaction. The participants even described it as being a first step ahead of a second one that would be more thorough in terms of value interaction. For example, according to a Burundian participant, following the policy of exhaustive ethnic representation, Burundi would need a new dialogue on values in order to redefine the collective imagination of the country. This is because contradictions between values and regulations are not static. Indeed, according to a context's evolution, contradictions between values of different regulations can evolve in the same direction. This is why parallelism or partial articulation can enable, sometimes and/or as a first step, a society to remain more peaceful (it is either not ready to open a specific debate – as is the case for Burundi – or the contradictory constraints are too strong, as in Turkey; etc.) than if the choice for a more thorough articulation had been selected. The latter could have instead generated high tensions.

The imperative of action and of the targeted objective

Although the question of values emerged as unavoidable for the participants, they nevertheless stressed the importance of the concrete objective of any constructive articulation between regulations: solving problems of public action. Integrating values in an interaction involves taking the time to confront the different worldviews and taking part in an integrative approach so as to bring about a shared vision. Nevertheless, the time of interaction cannot be indefinite and must necessarily stop at a given time, sometimes even before the interaction can produce a constructive exchange or hybridization of values. Meeting participants used the expression "imperative of the decision" to emphasize the constraint of time: a decision must be made to enable an interaction.

If, in the example of Iceland's constitutional reform, the confrontation of values actually took place, it seems that the integrative multi-actor approach was dragged out too long in time, gradually eroding

citizen participation in the process. The result was the low voter turnout for the election of the Constitutional Council members in charge of drafting the new draft constitution. As mentioned by the Colombian participant, it would then seem that an interaction spread out over a long period of time burns out, firstly due to citizen non-participation.

The imperative of the decision therefore appeals to pragmatism so that not only the interaction may lead to an effective solution, but also that it can meet the challenge of maintaining and sustaining long-term participation of the involved parties. Who, then, has the legitimacy to lead such interaction processes, or even decide when the interaction fails to reach an agreement?

The State here has a special status because it is ultimately the one who will make the decision and act upon it. In Colombia, in its relationship with the community justice system, the State often judges and is an involved party in the confrontation of regulations. If none of the meeting participants questioned the legitimacy of the State to bear the collective interest and to make the decision, the question of its positioning was considered crucial, particularly because of the influence its philosophical choice has on the nature and direction of the interaction – especially if the State itself is the driving force behind it.

For the Uruguayan participant, representative of the Latin-American civil society, so that concrete action may stem from the interaction between regulations, the choice and decision-making has to be for State. Although multi-actor, consultation, and participation processes – involving citizens, civil society, the private sector, etc. – are essential to nourish and justify the decision of the State, they must be limited in time. According to him, it is for the State to ultimately impose a decision if no shared solution is agreed upon.

This prominent place given to the State can nevertheless only be legitimate in the context of a State that allows, encourages, if not embodies the taking into account of the diversity of regulations in its public action. It is also in this respect that it can retain its legitimacy as guardian of the public interest.

CONCLUSION

Towards a plural approach of public action and of the State

As underlined by the debates, the taking into account of the diversity of regulations has repercussions on public policy and in particular on the structure and functioning of the State. It requires a paradigm shift towards a plural approach of the State: namely a State rooted in the premise of diversity, one that strives for unity in diversity. It is precisely on the need for such a reflection that the International Meeting Process concludes. It is also the foundation thereof that the Addis Ababa Meeting has allowed to set forth.

For the IRG, this renewal of the State is based on the principle of integral and constructive articulation. The "integral" qualification refers to the recognition and taking into consideration of the diversity of societies. The term "constructive" refers to a pragmatic approach of public action towards shared goals, based on the contexts, seeking concrete results, and continually adapting to social changes. From the discussions held during the two-day meeting by the different actors present, we can draw several lessons and lines of enquiry on the plural State and its public action.

Recognize and represent diversity

A plural approach to public policy is based firstly on the recognition of the diversity of actors – and therefore of the regulations they carry – within a society. This recognition should be the basic premise for the elaboration of any public action, from its intellectual conception to its implementation and evaluation.

Integrating the values of this diversity of actors is paramount in order to develop and implement a public policy that is consistent with

their expectations and needs. The multi-actor interaction arenas, as the discussion forums in Iceland's constitutional reform process, are concrete instruments to ensure the expression and taking into account of this diversity. Participation and effective appropriation of these spaces by non-State actors is essential. It promotes not only an effective management of diversity, but also the sharing and legitimating of social regulation produced by the State.

Pragmatism and the imperative of the decision

For the sake of pragmatism, multi-actor interaction arenas should be given a defined timeframe to work in and should be steered towards the actual search of concrete results. Ideally, the interaction arena between the different regulations allows for a consensual agreement on which the decision is then based on. However, even if an agreement does not emerge, it is important that the interaction is finally sanctioned by a decision. The imperative of the decision is indeed a major factor in the sustainability of any integrative multi-actor process that aims to produce a shared social regulation.

Adapt to contexts and their evolutions through a permanent reform of the State

Participants stressed the need to avoid falling into the design of a predefined model for the operationalization of the plural State. The implementation of the latter must be done pragmatically and in adaptation to the specific contexts of diversity, permanently evolving with them. This is a prerequisite so that public action does not find itself out of phase with social realities. The State must therefore be attentive to the diversity of its society and continually reassess the form and modalities of its interaction with the various regulations that compose it.

The IRG and its partners will therefore continue their work so as to further the analysis and, especially, to develop proposals for a plural approach of public action, which constitutes a major challenge of

democratic governance in the decades to come. This reflection, as is evident for those who work with intercultural dynamics, opens up to consideration the complexity of societies in what they hold as most intimate, their worldviews, and most universal, the common and shared desire to live together. However, it can lead to theoretical, philosophical, political, and technical shortcuts that lead to the very same problems they are supposed to overcome. The growing divorce between States, societies, and the competing development of regulations endangers the common desire to live together of a given society. The IRG wishes to underline these traps, which can be tempting when faced with the time needed for action, and to provide actors with as many tools as possible so as to adopt other paths.

Diversity and Public Action, a Challenge to the Legitimate Democratic Governance

The case of Constitutions and Human Rights

If there is a lesson one can learn from the political crises and social movements of recent years, it is that States and their societies need to come together and redefine a shared, inclusive, and dynamic definition of their social contract. To do this, it is important to start from the inherently plural character of any society in which actors coexist, and to take into account their needs and the variety of their cosmovisions. It is in this diversity that adhesion to the State is defined and that its legitimacy is built.
The International Meeting Process for Debate and Proposals on Governance placed at the heart of its reflection the often overlooked question of the plurality of the sources of power legitimacy. Coordinated by the IRG, it was able to both identify the main sources and their specificities in the different regions it traveled to, and to analyze their articulations and their impact on the legitimacy of the State.

Bringing the International Meeting Process to a conclusion, the Addis Ababa Meeting aimed to better understand how to promote both the taking into consideration of diversity by public action and constructive interactions between the sources of legitimacy of power. Based on an exchange of experiences – African, Latin American, and European – in the field of constitutional writing and reform processes and human rights, the meeting questioned the practical issues of plural governance. To what extent, and by what modalities, should diversity be the premise of public action? What roles can different actors play in the taking into account of diversity? What institutional arrangements facilitate this taking into account? How can the State embody, and not standardize, this plurality?

This meeting's discussions and debates confirm that it is in public action that the plurality of sources of legitimacy can be articulated to give body to a peaceful and shared common desire to live together. This collective reflection thus contributes to a better understanding of the potential of plural public action, a major focus of the IRG's work.

The IRG is an international forum for reflecting and making proposals on public governance, based in Paris with an office in Bogota. The IRG works with networks of partners around the world with a pluri-cultural, cross-disciplinary, multi-actor and multi-scale approach. The IRG holds an ongoing debate on governance, opening new avenues for research and expertise and helping in the elaboration of public policies. It puts out training modules and publications and sets up forums for international dialogue.

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