

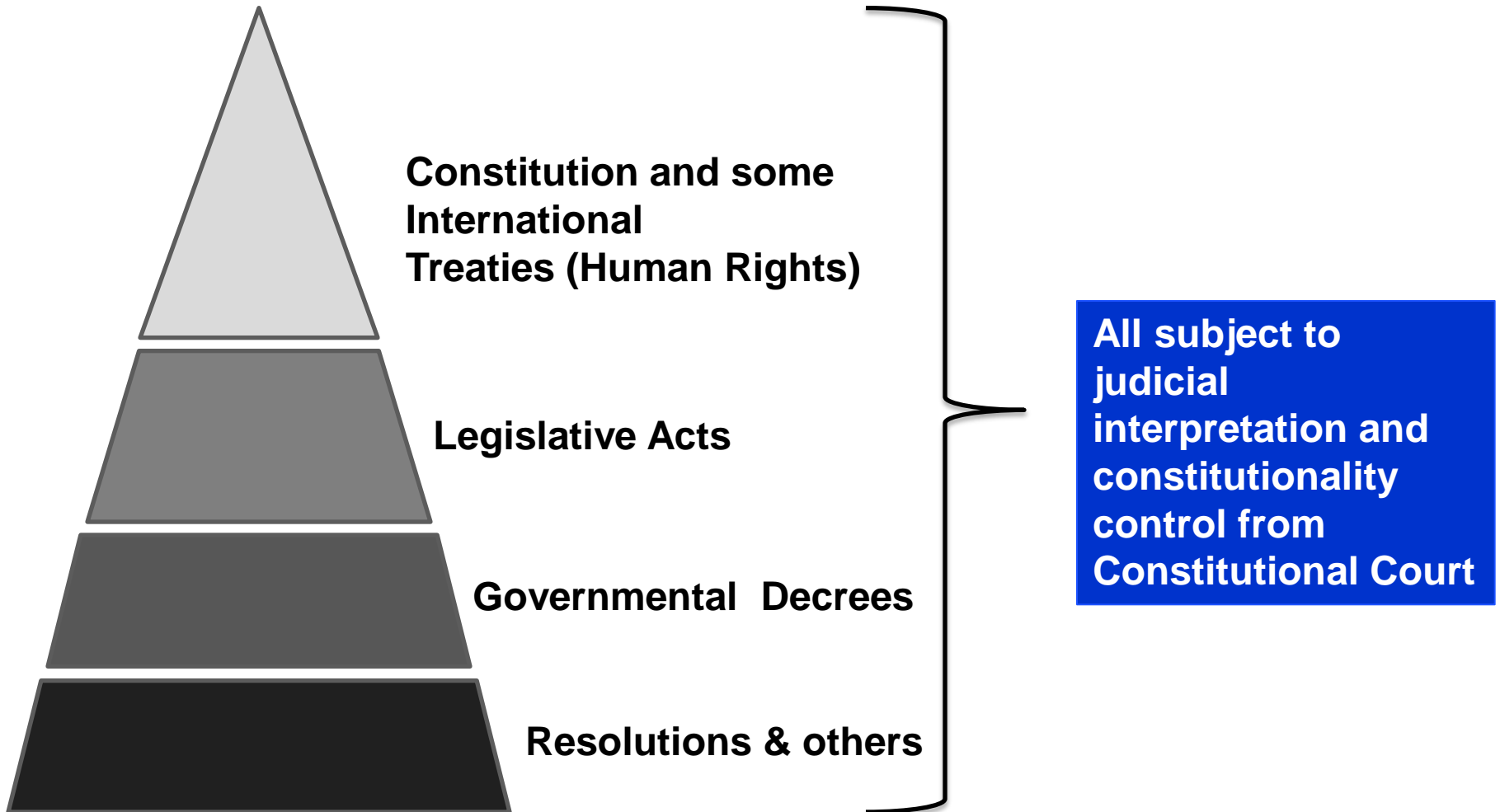


Customary and Indigenous Law and Governance Side event

Customary law of indigenous communities in Colombia

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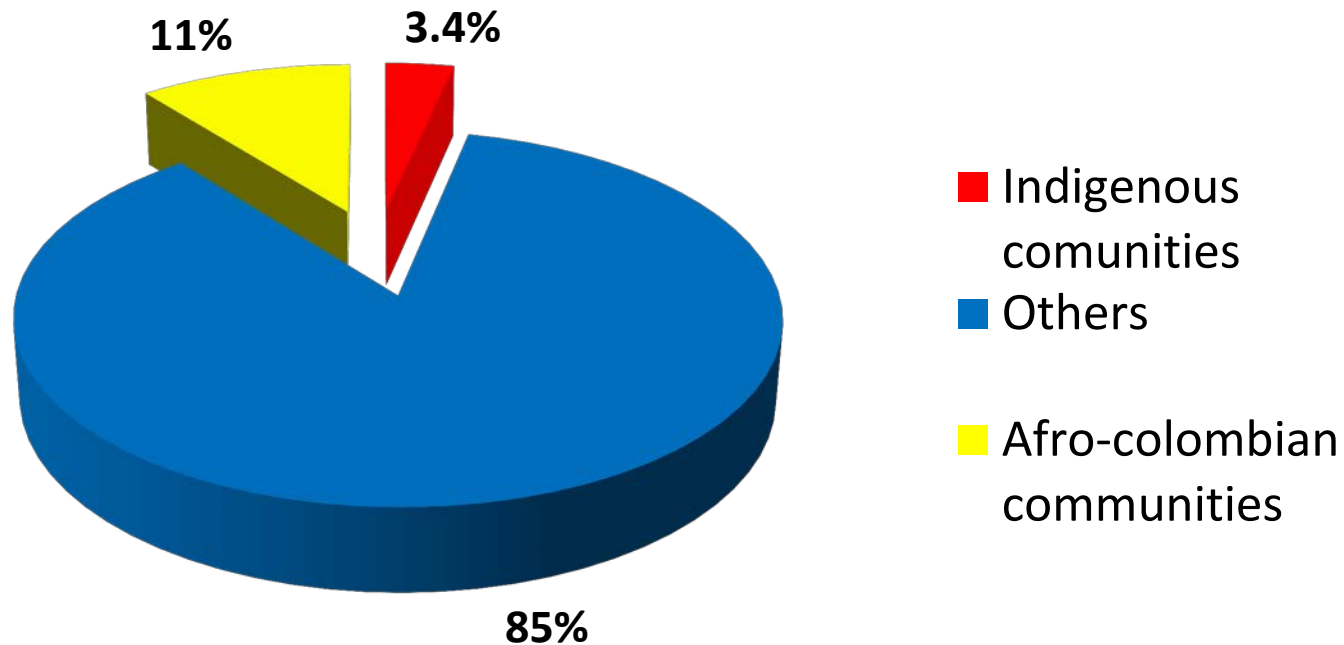
Where does Customary Law fit in?



General context of indigenous communities in Colombia

- According to the latest official Census (2005):
 - There are **87** recognized indigenous communities.
 - **737** indigenous reserves have been legally constituted.
 - Around **70%** of indigenous communities are living in these areas.
 - Around **30%** of the total national territory consist of indigenous reserves (**34 million** hectares).
- Institutions in charge of recognizing indigenous communities and of granting collective land titles (indigenous reserves) are the Ministry of the Interior and the Colombian Institute of Rural Development-INCODER.

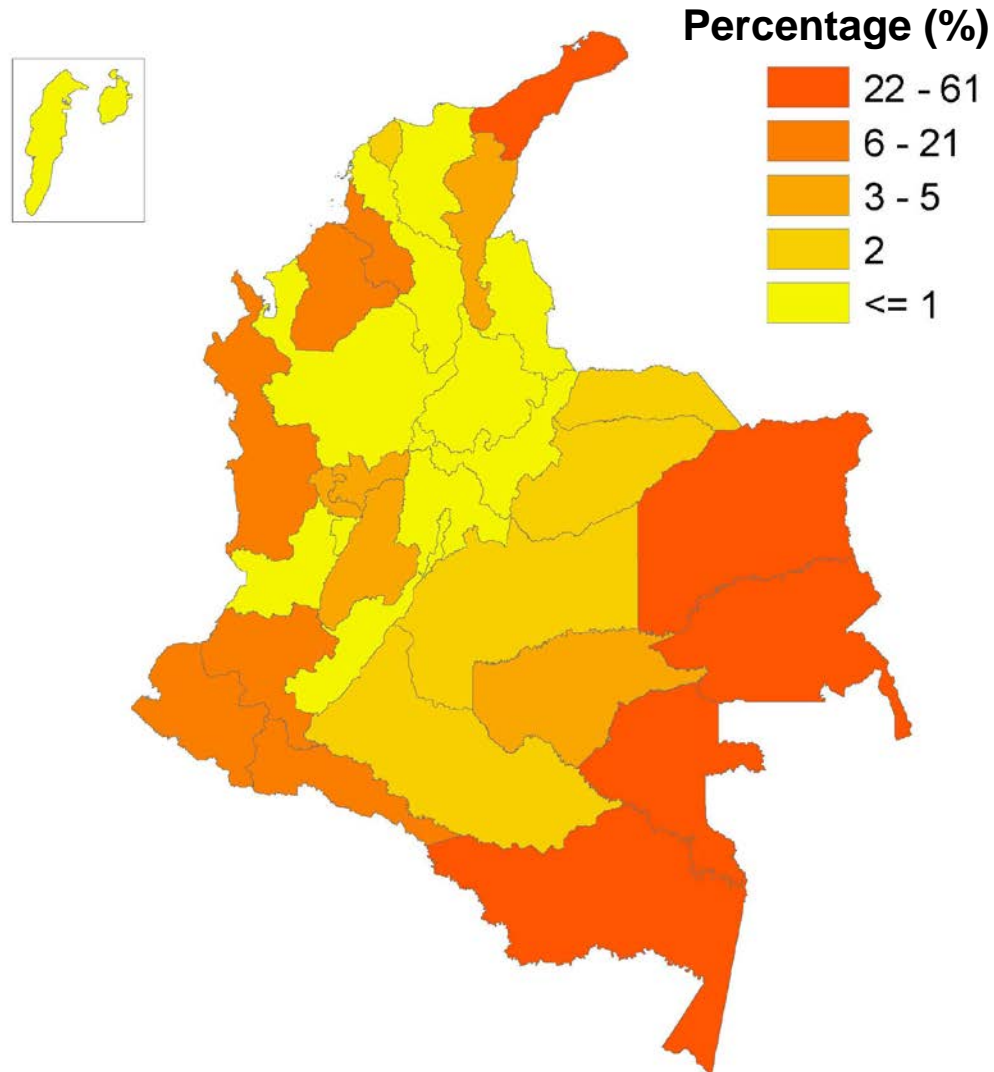
Colombian Population – Official Census 2005



Year	Total Population	Indigenous communities	%	Afro-Colombian communities	%
1993	33.109.840	532.233	1,6	502.343	1,5
2005	41.468.384	1.392.623	3,4	4.311.757	10,6

Source: The National Administrative Department of Statistics -DANE (Colombia)

Participation of Indigenous communities In relation to total population by region



Source: The National Administrative Department of Statistics -DANE (Colombia)

Key constitutional principles related to Customary Law

- Legal pluralisms: Article 1 proclaims that Colombia is a social, democratic, participative, decentralized and **pluralist** Republic.
- Cultural and ethnic diversity: Article 7 recognizes and protects the **cultural and ethnic diversity** in the country.

Constitutional building blocks for Customary Law

- **Legal autonomy**: Article 246 grants indigenous authorities **jurisdictional functions** in their territory according their **norms and procedures**, as long as it **does not contradict the Constitution and existing laws**. **Coordination** between both legal systems is required.
- **Political autonomy**: Article 286 grants legal status to indigenous territories as a **decentralized political entity**.
- **Administrative and financial autonomy**: Article 287 states that indigenous territories have **administrative and financial autonomy** to govern themselves.
- **FPIC through consultation procedure**: Article 33 recognizes human rights conventions (e.g. ILO 169) as part of the constitutionality block.

Judicial decisions on Customary Law

The Constitutional Court of Colombia developed interpretation rules to resolve conflicts between jurisdictions and guarantee the autonomy of indigenous communities. Example:

- **Maximization/minimization Rule:** “The autonomy of indigenous communities must be **maximized** and **restrictions** to safeguard interest of higher hierarchy **minimized**, by applying the following criteria (T-523/1997):
 - a. The restrictive measures should be necessary to protect an interest of higher hierarchy (e.g. national security).
 - b. It must be the least burdensome measure for the autonomy of such communities.

Harmonizing management plans and life plans

