2. INDIGENOUS RIGHTS

INTRODUCTION

Almost ten percent of the population of Latin America is indigenous. According to Convention 169 of the International Labor Organization Concerning Indigenous and Tribal Peoples, an indigenous individual is someone who is acknowledged by his/her community and who considers him/herself as such (Article 1\(^1\), 1989). Thus “Indigenous Peoples” is an approximate concept in international law, based on self-attribution and self-identification (see Annex 2.1. for definitions of “Indigenous Peoples”). According to this concept, there are an estimated 650 distinct indigenous peoples in the region, with a total population of 43 million. One out of every eight of them is Bolivian (see Figure 2.1, which shows the location of indigenous peoples in Bolivia).\(^2\)

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\(^1\) Article 1:
1. This Convention applies to:
(a) tribal peoples in independent countries whose social, cultural and economic conditions distinguish them from other sections of the national community, and whose status is regulated wholly or partially by their own customs or traditions or by special laws or regulations;
(b) peoples in independent countries who are regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonisation or the establishment of present state boundaries and who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions.

2. Self-identification as indigenous or tribal shall be regarded as a fundamental criterion for determining the groups to which the provisions of this Convention apply.

3. The use of the term peoples in this Convention shall not be construed as having any implications as regards the rights which may attach to the term under international law.


\(^3\) Unlike elsewhere in LAC, Bolivia’s 5.1 million indigenous population, who are members of 36 distinct indigenous or original peoples, account for the majority of the population (62 percent based on self-identification, or 53 percent based on the language spoken- see Tuchschneider 2006). This note abstracts from the rich cultural differences among indigenous peoples to focus on their common challenges and rights.
Indigenous peoples are protected under a range of international agreements. These include the Universal Declaration (Art. 7\(^4\) and 17\(^5\), 1948), the International Convention on the Elimination of All Forms of Racial Discrimination (Art. 5\(^6\), 1965), the International Covenant on

\(^4\) Art. 7: All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

\(^5\) 1) Everyone has the right to own property alone as well as in association with others.

\(^6\) In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights:

(a) The right to equal treatment before the tribunals and all other organs administering justice;
(b) The right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual group or institution;
(c) Political rights, in particular the right to participate in elections-to vote and to stand for election-on the basis of universal and equal suffrage, to take part in the Government as well as in the conduct of public affairs at any level and to have equal access to public service;
(d) Other civil rights, in particular:
(i) The right to freedom of movement and residence within the border of the State;
(ii) The right to leave any country, including one's own, and to return to one's country;
(iii) The right to nationality;
(iv) The right to marriage and choice of spouse;
(v) The right to own property alone as well as in association with others;
(vi) The right to inherit;
(vii) The right to freedom of thought, conscience and religion;
(viii) The right to freedom of opinion and expression;
(ix) The right to freedom of peaceful assembly and association;
(e) Economic, social and cultural rights, in particular:

The rights of indigenous peoples generally fall into three broad categories: culture, territory and autonomy. Cultural rights refer to the recognition of the multicultural character of a nation, its historic cultural diversity and differentiated identities, and rights to bilingual/intercultural education. Territorial rights are based on the recognition of the special relationship that indigenous peoples have with their habitats, and include rights to collective ownership of, and to the protection of, these habitats. Rights to self-determination recognize indigenous forms of government, and the right to establish their own special justice based on traditional practices, and to participate in decision-making regarding issues of relevance to them.

INDIGENOUS RIGHTS IN BOLIVIA

Indigenous peoples are mentioned in five articles of the 1994 Bolivian Constitution and in more than 100 Bolivian laws, supreme decrees and directives. Article 1 of the current Bolivian Constitution characterizes the country as “multi-ethnic and pluricultural, constituted as a unified republic.” This represents a major departure from the past, as indigenous peoples had only been mentioned once, in the 1938 Constitution. Indeed, the 1994 Constitution refers specifically to indigenous peoples in various articles (see Annex 2.2).

Nonetheless the rights must be examined in the constitutional context, considering the internal hierarchy. For example, the state’s traditional control over the land and the subsoil (Art. 136) as well as the possibility of expropriation for public use (Art. 22) can contradict the protection of native community lands.

(i) The rights to work, to free choice of employment, to just and favourable conditions of work, to protection against unemployment, to equal pay for equal work, to just and favourable remuneration;
(ii) The right to form and join trade unions;
(iii) The right to housing;
(iv) The right to public health, medical care, social security and social services;
(v) The right to education and training;
(vi) The right to equal participation in cultural activities;
(f) The right of access to any place or service intended for use by the general public, such as transport hotels, restaurants, cafes, theatres and parks.

7 In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.
8 Articles 61, 222, 223 and 224 refer to the rights of indigenous peoples to present candidates for office, and Article 171 recognizes their social, economic and cultural rights.
9 Art. 136 - Los bienes nacionales son del dominio originario del Estado
I. Son de dominio originario del Estado, además de los bienes a los que la ley les da esa calidad, el suelo y el subsuelo con todas sus riquezas naturales, las aguas lacustres, fluviales y medicinales, así como los elementos y fuerzas físicas susceptibles de aprovechamiento.
II. La ley establecerá las condiciones de este dominio, así como las de su concesión y adjudicación a los particulares.
10 Art. 22 - Garantia de la propiedad privada
I. Se garantiza la propiedad privada siempre que el uso que se haga de ella no sea perjudicial al interés colectivo.
II. La expropiación se impone por causa de utilidad pública o cuando la propiedad no cumple una función social, calificada conforme a ley y previa indemnización justa.
The constitutional provisions are also complemented by more than 100 laws, supreme decrees and directives that specifically refer to indigenous issues and consolidate multicultural approaches, including for example the laws of Popular Participation (1994), Educational Reform (1994), Agrarian Reform (INRA, 1996), Municipalities (1999) and Civic Associations and Indigenous Peoples (2004). Annex 2.3 indicates the extent of the filtration of indigenous rights in Bolivia’s legislation.

The proclamation of cultural rights in the Bolivian Constitution breaks with the silence of the past, but must still be regarded as a transition to a more complete approach. The existence of indigenous peoples in Bolivia (also known in some cases as first or original peoples), had been almost totally concealed after the 1952 Revolution by the use of ambiguous concepts like “rural worker” or comunero (member of a commune). The 1994 Constitution guarantees the legal personality of indigenous peoples (Art. 171, II), which is fundamental for acting legally as a collective entity. On the other hand, basic concepts such as elements for a definition of indigenous peoples, cultural promotion (not just recognition and protection), official languages and intercultural bilingual education were relegated to secondary legislation. The recognition of the “social, economic and cultural rights of indigenous peoples” (Art. 171, I), which are individual rights established in the International Pact on Economic, Social and Cultural Rights (1966), is not formulated in terms of acknowledging differential aspects to those rights for indigenous peoples. In addition, the frequent use of the concept of “rural workers”, the establishment of an official religion (Art. 3) and a “national culture” (Art. 192), suggest that the constitutional tradition of nationalism still prevails, and the different cultures do not appear in

11 Art. 171 - Reconocimiento de derechos de pueblos indígenas
I. Se reconocen, se respetan y protegen en el marco de la ley, los derechos sociales, económicos y culturales de los pueblos indígenas que habitan en el territorio nacional, especialmente los relativos a sus tierras comunitarias de origen, garantizando el uso y aprovechamiento sostenible de los recursos naturales, a su identidad, valores, lenguas, costumbres e instituciones.
II. El Estado reconoce la personalidad jurídica de las comunidades indígenas y campesinas y de las asociaciones y sindicatos campesinos.
III. Las autoridades naturales de las comunidades indígenas y campesinas podrán ejercer funciones de administración y aplicación de normas propias como solución alternativa de conflictos, en conformidad a sus costumbres y procedimientos, siempre que no sean contrarias a esta Constitución y las leyes. La ley compatibilizará estas funciones con las atribuciones de los Poderes del Estado.

12 “The state attempted to construct a homogenous society in a society that was essentially heterogeneous. In the new constitutional text, the state acknowledges the social reality of Bolivia, which goes way back,” (Jost et al, 2003: 17).

13 Art. 171- Reconocimiento de derechos de pueblos indígenas
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15 Valcarce (2004) states: “There is no sense in acknowledging the rights to social security, work, health, education, etc., without offering a special, distinctive connotation for the indigenous peoples. Keep in mind that these human rights have already been recognized for all Bolivians, both indigenous and non-indigenous.”

16 Art. 3 - Libertad de Culto
El Estado reconoce y sostiene la religión católica, apostólica y romana. Garantiza el ejercicio público de todo otro culto. Las relaciones con la Iglesia Católica se regirán mediante concordatos y acuerdos entre el Estado Boliviano y la Santa Sede.

17 Art. 192 - Las manifestaciones del arte e industrias populares son factores de la cultura nacional y gozan de especial protección del Estado, con el fin de conservar su autenticidad e incrementar su producción y difusión.
the same conditions and are not equally valued. Nevertheless the 1994 reform has fulfilled a fundamental role in terms of the transition of a state that considered itself to be homogenous (structured only on social classes) to a state made up of different cultures and worldviews.\(^{18}\) The constitutional challenge is now to move from multicultural recognition (multiculturalism) as the affirmation of a historic reality to a more harmonic and symmetrical relationship among cultures (interculturality).

**Indigenous territorial rights are the basis for any multicultural recognition**, since indigenous peoples have a special relationship with their environment and their survival as peoples often depends on this relationship.\(^{19}\) These issues are taken up more fully in the next Section on Land and Territory, however it is worth noting here that, while significant progress has been made in titling original community lands (*Territorios Comunitarios de Origen*—TCOs), the territorial rights of indigenous peoples are not very clear at the constitutional level, and their interpretation and application at lower-ranking legislative levels has at times been confusing. Strategic issues like the use of the soil and subsoil, participation in the exploitation of strategic resources, and the inalienable character of the TCOs were relegated to the [INRA Law](#) and others, while the linkages between TCOs and municipalities have not been adequately addressed in law. Moreover, there have been significant practical challenges in relation to the juxtaposition of protected areas or forests with indigenous settlements, illegal invasions of TCOs, the incompatibility of the TCO model with traditional land rights practices in the [Altiplano](#), and the ineffectiveness of the National and Departmental Agrarian Commissions in resolving disputes.\(^{20}\)

**Indigenous people gained certain rights to self-determination as a result of the 1994 Constitution.** The constitutional recognition of the legal personality of indigenous peoples provides the basis for certain rights to self-determination founded on three key points: popular participation, the administration of justice and participatory democracy. These rights should not be seen as extending to the level of formal autonomy (as for example in the case of municipal autonomy). Instead, they involve a limited and not always explicitly clarified faculty for governing through indigenous authorities and customs, including justice, and the possibility of collective representation in certain state proceedings. For example, the [Popular Participation Law of 1994](#) provides for the creation of Basic Territorial Organizations (OTBs) among indigenous and rural communities, as well as Indigenous Municipal Districts within a given municipality, each of which is represented by an indigenous vice-mayor. In the area of traditional justice (see Box 2.1), constitutional primacy has been established in Bolivia even in the absence of specific legislation,\(^{21}\) and such coordinating legislation would be highly recommendable to integrate community justice into a broader justice framework involving ordinary justice. Moreover, the

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\(^{18}\) Significant practical advances have also been made in terms of cultural rights, including the recognition of Quechua and Aymara as official languages in 2000 (Decree No. 25.894), the revival of ethnic identities and the symbolic recovery of their value in terms of public opinion, the consolidation of indigenous organizations and their recognition as entities capable of negotiating with the state, the promotion of state policies that favor indigenous peoples via different departments and ministries, especially the [Ministry of Rural, Agricultural and Environmental Development](#), and educational reforms that are promoting the recovery and study of indigenous languages and boosting the self-esteem of indigenous children. “In terms of bilingual education, we are on the cutting edge in Latin America. Now we must advance on intercultural development as a two-way street, an understanding between the dominant culture and indigenous cultures,” (interview with Marisol Quiroga, former Minister of Education from 2004-2005).

\(^{19}\) Rodolfo Stavenhagen, United Nations rapporteur, states: “…the group formed by the land, the territory and the resources constitutes a question of essential human rights for the survival of indigenous peoples,” (Stavenhagen, 2002).

\(^{20}\) “The rights of the TCOs in terms of exploiting the resources of the subsoil are minimal. The commercial use of renewable resources, be this traditional use or large-scale exploitation, are subject to the Forestry Law. The TCOs have not been given a clear legal status in the state’s governmental structure and thus they are not given the capability to pursue their own development policies,” (Hoekema and Assies, 1999: 427).

\(^{21}\) “The principles, guarantees and rights acknowledged by the Constitution cannot be altered by laws that regulate the exercise of these rights or which require previous directives to ensure their fulfillment,” (Art. 229).
Constitutional Tribunal has ruled in favor of community justice on several occasions. Finally, the 1994 Constitution extended representation in all voting spheres (constitutional, national, uninominal district and municipal levels) beyond political parties to include civic groups and indigenous peoples, and acknowledges their “uses and customs as legitimate legal bases for the nomination of candidates” (Art. 1 and 26, Law on Civic and Indigenous Groups, 2004).

**Box 2.1 Fundamental Characteristics of Indigenous Justice**

Indigenous justice has not yet been studied and ordered sufficiently, however certain basic principles can be identified that operate consistently albeit invisibly in any process of administration of indigenous justice (see Barié, 2005):

1. **Integrity**: when analyzing conflicts, not only are the facts of the case at hand reviewed, but also the background, family and personal antecedents.

2. **Public and community considerations**: the community plays an important role since conflictive matters are presented and discussed in a general meeting or assembly. The absolution and compensation process happens in front of everybody, which gives it more value and sustainability.

3. **Harmony and equilibrium**: reestablishing harmony, rather than meting punishment, is the ultimate goal of justice.

4. **Orality and speed**: the process of administration of justice is generally oral and not written, even though when an agreement is reached there may be documentary evidence and a public ritual. The procedure is very fast when compared with any ordinary trial.

5. **Reconciliation**: communitary justice underscores the importance of reconciliation and the re-establishment of the relationship between the parties (if possible).

6. **Restitution**: the delinquent must pay restitution for the damage caused, for example by returning stolen cattle.

7. **Dynamism**: The fact that indigenous law is not codified and has a strong oral tradition means that it is dynamic and adapts to all situations. There is no concept of “pending matters due to lack of legislation”.

**INTERNATIONAL EXPERIENCE REGARDING INDIGENOUS RIGHTS**

*There has been growing international recognition of indigenous cultural and territorial rights across the region, offering a range of options for Bolivians to consider.* One feature that is common across countries is that cultural rights are based on the recognition of the existence of multiple ethnic identities in a pluricultural nation (see Annex 2.4). This concept, which has a declarative purpose (occasionally combined with the recognition that indigenous peoples predate the formation of the state), yields other cultural rights, such as the promotion of indigenous peoples as a collectivity, official recognition of minority languages, and bilingual/intercultural education. For example, the Mexican Constitution affirms the “pluricultural composition of the nation” (Art. 2), whereas Venezuela’s Constitution seeks the “promotion and consolidation of their culture” (Art. 121), exemplifying the difference between a mere affirmation and more proactive action. Colombia, Ecuador, Nicaragua, Peru and Venezuela define the official languages in their Constitutions. Brazil offers a coherent example of treatment of bilingual education (Art. 210, 2), while Ecuador’s Constitution indicates that the state promotes “interculturality, which shall inspire its policies and integrate its institutions according to the principles of equality among cultures,” (Art. 62). In the area of territories, Box 2.2. and Annex 2.5. summarize the international experience.

*International experience reveals increasing attention to indigenous rights to self-determination at the constitutional level in the region.* The term “autonomy” is used in the
Constitutions of Nicaragua (Art. 175) and of Peru, which states: “Rural and native communities are autonomous in terms of their organizations, their community work and in the use and exploitation of their lands, as well as in economic and administrative terms, within the limits established by law” (Art. 89). Strong features of autonomy are also found in the Colombian Constitution, where indigenous territories are entities with functions and competencies that are identical to those of the other political-government units (Art. 329). In Ecuador, there are indigenous territorial districts (Art. 224), while the Constitution of Venezuela acknowledged indigenous towns (Art. 169). In Paraguay, indigenous peoples have the right “to freely apply their systems of political, social, economic, cultural and religious organization.” (Art. 63).

### Box 2.2. Constitutional Principles related to Indigenous Territory, based on International Experience

**The most advanced Constitutions conceive of indigenous lands as territories or habitats.** For example, in Venezuela, the state relates the habitat to the survival of indigenous peoples, recognizing original rights over lands they traditionally occupy and which are needed to develop and guarantee their way of life (Art. 119).  

The security of tenure and special protection of these possessions is reflected in their inalienable, imprescriptible and un-mortgageable nature: they cannot be sold, occupied illegally or embargoed by virtue of debts. Moreover the forced transfer or resettlement of indigenous peoples by virtue of expropriation is prohibited.

**The spatial notion of indigenous lands is important,** e.g. Brazil’s Constitution (Art. 231) provides a broad definition of indigenous lands, comprising lands that are occupied, used for activities and necessary for well-being and cultural survival. In other countries, the constitutional framework allows for the possibility of expanding the territorial area based on historical and not just present settlement.

**A process for delimiting and physical demarcation is essential,** together with registration in the cadastre, and regularization (clarification of rights to title), in order to guarantee effective protection.

Some Constitutions recognize the symbolic or religious value of the cultural patrimony of indigenous peoples, such as sacred places and temples.

Another important dimension is related to the use of both renewable and non-renewable resources. The usual legal formula maintains the rights of the state to that which is below the land surface, while recognizing consultation and participation mechanisms in extraction programs.

Protection of intellectual property rights over biodiversity and genetic resources is a new theme that appears in some cases, inspired primarily by the Biodiversity Convention (1992).

**Although it has significant symbolic value, constitutional recognition is only the first step towards a fuller exercise of indigenous rights.** Indigenous movements frequently refer to the Constitutions as a basis for defending their rights and opening up the possibility of these rights being reproduced and extended through legislation. In practice, the transformation of constitutional ideals into secondary legislation has been slow and irregular in Latin America, as it is subject to political will, political pressures and country circumstances; indeed a common

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22 Barie (2003) refers to other important principles in certain countries, like the recognition of rights for indigenous peoples irrespective of where they reside, and modalities of representation of indigenous communities in national institutions.

23 For example: “traditionally occupied lands” (Argentina, Art. 75, 17 and Brazil, Art. 231, 1); “original community lands” (Bolivia, Art. 171); “community lands of ethnic groups, indigenous territories, reserves” (Colombia, Arts. 63, 286 and 329); “community lands” (Ecuador, Art. 82, 2); “historical lands of indigenous communities” (Guatemala, Art. 67), property of the Amerindians (Guyana, Art. 142, 2); “lands of indigenous groups” (México, Art. 27, VII); “lands of the communities of the Atlantic coast, communal lands” (Nicaragua, Art. 89); “collective property of indigenous communities” (Panama, Art. 123); “habitat and community property” (Paraguay, Arts. 63 and 64); “lands of native and peasant communities” (Peru, Art. 89); “habitat, lands that indigenous peoples and communities occupy ancestrally and traditionally” (Venezuela, Art. 119).
experience has been the delay of indigenous rights legislation in Congresses. From the abstract concept of the right to an identity to the realization of self-determined well-being of the peoples, there is a long path to tread that involves overcoming barriers such as awareness and mobilizing civil society, active participation in state reforms, making indigenous rights constitutional, and transforming the relevant legislation and the will of public officials, among others. These are steps that are generally built slowly—although Constituent Assemblies offer moments of unequalled opportunity to achieve important steps forward—and involve evaluation of indigenous versus state or non-indigenous rights, as well as balancing legitimate differing interests. In addition, they require the search for autonomy modalities that assure articulation rather than separation within the State.

CONSTITUTIONAL PRINCIPLES AND OPTIONS FOR THE CONSTITUENT ASSEMBLY

The search for a just equilibrium between several valid perspectives is one of the most important principles for the incorporation of indigenous rights in the Constitution. First and foremost, it should be understood that the Constitution is not a panacea and cannot drastically change reality, although it can provide general framework and a number of rules of the game that require further attention. The principles developed by the Bolivian Constituent Assembly could on the one hand help to recognize the country’s distinct reality where indigenous peoples are not national minorities but historical peoples that were systematically excluded, and on the other hand can take advantage of lessons from other countries that can help to identify options, deepen reflection, and enhance the final proposal. A third, very important principle to manage expectations is that the process should recognize that there are no absolute rights. Indigenous people’s rights are not absolute; rather, they are embedded in and limited by the general framework of the Constitution and by the rights of other groups or individuals. There will need to be a judicious balance between indigenous rights and broader human rights, as well as a profound reflection on the responsibilities that accompany those rights. A fourth, essential balance is between indigenous people’s rights as individuals and their collective rights. An approach focusing solely on rights of individual indigenous people may in practice have detrimental effects, while excessive collective rights may violate the rights of others, e.g. internal minorities or women. Finally, indigenous territorial self-government (autonomy) will need to be balanced against broader interests. Autonomy implies a legal and contractual relationship between indigenous peoples and the State, without allowing for absolute freedom and self-determination. Self-determination principles should also consider the presence of non-indigenous population, or of multiple indigenous identities, in multicultural areas.

In terms of content, the Constituent Assembly might give consideration to emphasizing a core set of cultural, territorial and self-determination rights that will allow for the strengthening of interculturality. Among the most important cultural rights that warrant inclusion as constitutional principles are: the characterization of Bolivia as a state formed by different people and peoples; recognition and support for different languages, intercultural

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24 One example of the trade-offs involved includes credit. Loans secured by mortgaged property are among the most secure private loans that can be made and therefore involve larger amounts and lower interest rates than e.g. unsecured loans. By preventing liens on indigenous lands, the law also removes this form of financing for indigenous communities, reducing access and increasing the cost of credit. In this context, a blend of modes of land tenancy or reliance on principles of micro-finance (including mutual guarantees and character-based lending) or on warehouse receipts financing offer alternatives that permit compromises between collective land tenure and access to finance.
education and bilingual education. With regard to territorial rights, it would be helpful to give
due consideration to the principle of indigenous lands as habitats or spaces for cultural continuity
and to follow the most advanced examples in Latin American Constitutions and international
legislation (collective titling of lands that are inalienable, imprescriptible and not subject to
embargo; rights to timely, informed consultation; distinction between renewable and non-
renewable resources with participation in gains from the extraction of the latter—see the Chapter
on Decentralization on the distribution of hydrocarbons rents). As an original contribution drawn
from Bolivian experience, the modern international law approach to territorial rights could be
complemented by support for flexible and proven mechanisms of conflict resolution with non-
indigenous stakeholders, and allow for various modalities of indigenous lands according to
customs (e.g. communal, multi-ethnic, sustainable forests, individual holdings within indigenous
districts, etc.). The key autonomy rights that warrant due consideration at the constitutional level
are related to opportunities for representation and self-determination, and the incorporation of
indigenous entities within the political-administrative organizational framework for the state.
This includes recognition of traditional justice within a state framework of judicial pluralism that
also comprises ordinary justice (see the Chapter on Access to Justice).

CONSIDERATIONS BEYOND THE CONSTITUENT ASSEMBLY

A new Constitution is likely to yield new state policies that will need to be reflected in
secondary legislation beyond the Constituent Assembly. There is little comparative international
analysis of the development of secondary legislation related to indigenous peoples. Generally the
codification of indigenous rights has been driven primarily by specific social and political
factors—for example, one-off responses to events or conflicts—rather than by strict adherence to
classical doctrines on legal hierarchy.

The codification of indigenous rights should occur both in broader legislation that
mainstreams indigenous rights as well as in legislation that is specific to indigenous peoples.
Systematic and organic inclusion of indigenous rights in general legislation (such as education
and forestry laws) is in most cases preferable to separate legislation, although the latter may also
be required (and examples include Panama’s 2000 Law on indigenous intellectual property rights
or Venezuela’s 2000 Law on demarcating and guaranteeing indigenous habitats). It would be
helpful to coordinate the codification of legal reforms by related themes (for example processing
laws on forestry, biodiversity, environment and natural resources as a group) to allow for
systematic review of these areas. Framework legislation that coordinates and articulates laws has
also been used in the region. Below the level of legislation, there may also be important decrees
that affect indigenous rights (as in a 2002 Brazilian decree, regulating police and military activity
in indigenous areas of Brazil).

It is essential for indigenous peoples to strengthen their capacity to negotiate common
interests with a national perspective and a focus and exchange on different visions of the state.
There are various non-government organizations in Bolivia with capacity and expertise in
negotiation skills and consensus building. Following the Constituent Assembly, it will be
important for civil society organizations to actively accompany the process of converting the new
Constitution into state policies. The media will need to play a critical role at this stage in

25 Cultural recognition could take into account the fact that Bolivia has a small Afro-Bolivian population that is largely
settled in the yungas of the La Paz Department. Regional Constitutions have explicitly recognized Afro-descendants
on a par with indigenous peoples (e.g. in Venezuela, Colombia, Ecuador and Peru); this perspective could be
considered in the new Bolivian Constitution.

26 See the Chapter on Equitable Access to Justice for principles related to traditional indigenous justice.
promoting transparency and disclosure of information. Capacity building should also include key non-indigenous actors, e.g. members of the judicial sector who may be called upon to facilitate the transition to a pluralistic system of justice, which Latin American experience suggests may be strongly resisted.

A key principle beyond the Constituent Assembly is to maintain channels of dialogue without bureaucratizing conflict. This would require a public policy that ensures continuous spaces for consultation and participatory planning, instead of sending the most relevant ministry or agency to fix problems ex post. This could take on added importance at the departmental level if the decentralization process is strengthened in the new Constitution.