3. LAND AND TERRITORY

INTRODUCTION

Even though Bolivia is a large country (almost three times the size of Germany), cultivable lands are limited and their distribution is highly unequal. Of a total of 109 million hectares, almost half is covered by forests, and one third is semi-desertic or arid. Only eight million hectares can be classified as potentially productive for agriculture, out of which only about 2.5 million hectares have ever been used for cultivation. Almost 10 percent of the existing agricultural units (almost 60,000 units) control 90 percent of agricultural territory. The distribution also varies from the lowlands where medium and large farms are predominant, to highlands and valleys where small units are the norm. The majority of the families in the Altiplano are considered indigenous and live in communities that have some type of indigenous territorial administration. At a national level, land claims have been made under the current legal framework for almost 21 million hectares, most of them forest areas.

Land rights and particularly indigenous land rights have long been a source of social tension in Bolivia. The same is true today, as the unequal distribution of land and capital in the fertile and expansive lowlands, segmented and exclusive land markets, the problematic management of forests and indigenous territories, and a scarcity of arable land and poor connections to market in the densely populated highlands, keep employment low in rural areas and perpetuate rural poverty. This continues to drive migration to urban areas, which also fail to provide quality employment, and fuels ecological deterioration and social conflict. Since Bolivia’s economy is highly land- and resource-based, concerted and sustained attention to land and land-based resources (i.e., soils, forests) is essential to turn these into means of reducing poverty in lieu of sources of conflict. To this end, the Government has pledged to undertake a new era of land reform and rural development, and in May 2006 it launched a program of five new sub-decrees focused on revitalizing the stagnant land redistribution process. In addition, the Congress approved a revision to the Agrarian Reform Law (Law No. 1715, known as the INRA Law) in November 2006, with the goal of promoting a more productive and equitable use of lands that are unproductive or were appropriated illegally.

LAND

The land policy framework of 1996-2006 aimed appropriately to make land tenure more equitable, secure and sustainable. Unfortunately the implementation of the INRA Law No. 1715 (1996) has been inconsistent and often ineffective, falling short of expectations particularly in identifying public lands and reverting underutilized lands to the State for distribution, and in improving equity in land distribution. Inadequate land taxation policies and administration are dampening incentives to improve land utilization and open up land markets. Indigenous land titling has advanced, but the process has been characterized by conflict and many claims have not been addressed. A system of protected areas and forest management is operating,

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1 It is believed that there are about 550,000 peasant families and 50,000 agricultural commercial operations in the country. Around 450,000 peasant families work the lands in the Altiplano and almost 100,000 in the lowlands.
but some of the protected areas are being logged illegally and are subject to clearing for cattle ranching, soybean cultivation and small farmer agriculture. Better tools and more effective institutional arrangements are necessary to achieve the goals of the INRA Law. Instead of the legalistic and process-driven approach of the past, which has not proven sufficient or effective, policy and institutions could more optimally be driven by specific objectives, and institutions held accountable for their achievements, instead of simply reporting their actions.

**Bolivia faces five central land policy challenges for poverty-reducing growth, social stability and environmental sustainability.** These challenges are: a) Completing land regularization and restoring confidence in land institutions; b) Regularizing indigenous land; c) Resolving demands for land distribution through mechanisms that are driven by objective, not by process, and that draw on multiple instruments to achieve the objectives; d) Maintaining the integrity of Protected Areas and Forest Reserves, and e) Improving land taxation.

The first challenge is to complete land regularization and restore confidence in land institutions. Land regularization (saneamiento) is the main focus of the existing land policy, based on the INRA Law. Since 1996, the tenure situation has been clarified on 15 million hectares, and work is continuing on a further 30 million hectares, out of a total of 107 million hectares of land requiring regularization in Bolivia (see Table 3.1). In spite of these accomplishments, many challenges remain and the land institutions (particularly INRA and the Agrarian Tribunals) have suffered an erosion of public confidence. Increased participation by communities in the process (which is often contracted out) would help in making the saneamiento (or land regularization) process more transparent and accepted.

<table>
<thead>
<tr>
<th>Status of Regularization</th>
<th>Area (hectares)</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Titled</td>
<td>9,255,285</td>
<td>9</td>
</tr>
<tr>
<td>TCOs</td>
<td>5,700,000</td>
<td>5</td>
</tr>
<tr>
<td>Land to be Titled</td>
<td>10,469,111</td>
<td>10</td>
</tr>
<tr>
<td>In Process</td>
<td>29,983,107</td>
<td>28</td>
</tr>
<tr>
<td>Land to be Regularized</td>
<td>57,044,220</td>
<td>53</td>
</tr>
<tr>
<td>Total</td>
<td>106,751,723</td>
<td>100</td>
</tr>
</tbody>
</table>

Source: Sist - INRA

The land regularization process also needs to look very carefully at the social and economic function of non-regularized properties in the country and of properties that are in-holdings within claims for indigenous community lands—Tierras Comunitarias de Origin (TCOs)—with the purpose of clarifying which areas can be subject to reversion to the State and which were acquired legitimately and are in compliance with the “economic and social function” required by the law (Arts. 7³ and 169⁴ of the Constitution). This concept is key in establishing

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³ Art. 7º.- Derechos Fundamentales

Toda persona tiene los siguientes derechos fundamentales: 
a) A la vida, la salud, la seguridad e integridad física y moral y el libre desarrollo de la personalidad.  
b) A la libertad de conciencia, pensamiento y religión; a emitir y a recibir libremente ideas, opiniones, creencias e informaciones por cualquier medio de difusión.  
c) A reunirse y asociarse para fines lícitos y pacíficos.
legitimate property rights in Bolivia and probably will become increasingly important in the future. On the other hand, this revision has in the past been subject to acts of corruption and abuses by state actors. The key issue to ensure the feasibility of this process is to clarify the definition of the “economic and social function,” for example based on clear benchmarks, and assure that the process to establish these functions is more transparent, independently verifiable, open to all stakeholders, and less subject to manipulation for political or arbitrary reasons. If the objectivity, social inclusion and legal integrity of the regularization process is not strengthened, there is a risk that these measures could unleash an uncontrolled process of land invasions and renewed land conflict in the eastern lowlands which could be detrimental to all social groups involved. Handling this process with vision and respect for the rule of law is an immediate challenge for the government. These are not constitutional issues; rather, they can be addressed via amendments to the current Law 1715 and its implementing regulations. Government appears to have taken important first steps in this direction with the issuance of five Supreme Decrees in May 2006 that are designed to speed-up land regularization and close loopholes, and the Congress recently approved reforms to the INRA Law, notwithstanding stiff opposition from larger landowners.

A second pillar of pro-poor land policy for Bolivia is the recognition of indigenous land claims. Indigenous land recognition needs to meet the social demands of the indigenous population and create secure tenure on the enormous areas subject to ancestral claims. Since the promulgation of Law 1715, 440 TCOs (Tierras Comunitarias de Origen) have been created with an area of 5.2 million hectares. While successful in creating a large number of legally protected indigenous lands, the process up to date has also been characterized by many conflicts and confusions. These involve the claims of third parties, forest concessions, and properties in areas claimed by indigenous people—particularly in the lowlands—as well as disputes over the extent of claims in the lowlands and the highlands, tensions between individualized holdings and collective titles granted to TCOs, bureaucratic slowness in processing claims, and insufficient
community involvement in the process. A key problem is that the TCO is a form of private land title which is being used by indigenous communities as an instrument for territorial administrative control for lack of good alternatives. With the objective of advancing in a socially acceptable manner, it is essential to recognize the role of community decisions in the determination of the property regime that should be applied in indigenous communities. In addressing potential legal or constitutional changes it may become preferable to seek to expand the scope of indigenous units of territorial administration in such a way as to permit a wider range of land tenure designations within indigenous territories (such as individual family use rights and common use rights).\footnote{8}

\textit{The third key pillar, land redistribution, has largely failed.} While land administration is steadily improving, its impact on growth and poverty reduction is still minimal because of the highly unequal land tenure structure, exclusionary land markets, ineffective property taxation and a lack of access to input and output markets which disadvantage smallholders from expanding their land area through rental or purchase. Although the Agrarian Reform (1953) broke up traditional \textit{haciendas} in the highlands and valleys, a new version of the large landholding system arose in the eastern lowlands (Santa Cruz, Beni, Pando) during the 1960s-1990s, as successive governments made grants of lands estimated at close to 30 million hectares to political supporters. These large land grants provided the land base for industrial crops and livestock ventures, but provoked increasing popular outrage that peaked in 1993-1994, forcing governments to change their approach, which led to promulgation of the \textit{INRA Law}.\footnote{9} Bolivia thus faces major inter-regional differences between the \textit{Altiplano} and the lowlands, as well as intra-regional inequity in and distribution.\footnote{10}

\textbf{Box 3.1. Alternative Land Access Methods}

\textit{Equity-sharing Models} are being used in Southern Africa. Landowners faced with expropriation and the former workers on their estates form joint-stock companies with common ownership. These schemes prevent the technology and market-linkages from being lost during land reform.

\textit{Contract farming}, such as the experience with snow peas and broccoli in highland Guatemala, provides farmers with small plots of land the technological package and a guaranteed price for producing a specific product under contract. Contract farming works well for crops with high labor inputs, which help to bring landless agricultural laborers into the production process.

\textit{Land sharing/negotiation} is a technique used primarily in Asian cities such as Jakarta and Dhaka to accommodate settlers on tax delinquent or underutilized parcels by negotiating with landholders in

\footnote{8}The Constituent Assembly may thus find it necessary to clarify whether all indigenous lands must be titled as TCO (as the first clause of Art. 171 indicates) or whether community decisions can be used to determine the property regime in the indigenous community (as the final clause of the Article 171 seems to indicate).

\footnote{9}In its comments on the CSA, the Government has underscored that this process was vitiated by political favoritism, especially during 1970-82, resulting in “historic damage…to the State” and that a profound agrarian reform is essential to improve access to land and create opportunities to “live well”. While the INRA law was important, it was insufficient to fulfill its basic objective of ensuring such access. Moreover, it was not accompanied by resources and policies to promote rural development. Thus the expansion of the agricultural frontier resulted in depredated lands and impoverished peoples for lack of economic development support to accompany the process.

\footnote{10}The western valleys are home to 60 percent of the landholders in the country but amount to only 10 percent of the agricultural land (1.1 million hectares). In contrast, the eastern lowlands contain only 18 percent of landholders but account for 75 percent of the land used for production (8.5 million hectares). Within the eastern lowlands, there are impoverished rural populations of recent migrants in northern Santa Cruz or enclave Guarani and Chiquitano groups that do not have access to large underused amounts of land, e.g. 108,000 hectares lie fallow as banks have foreclosed on them but not yet sold them.
Confronting large landholders with legislation and the potential for expropriation creates incentives to subvert, avoid and challenge the law. A more pragmatic vision of land redistribution might rely on a diversified set of instruments and focus on the objectives of actually getting good agricultural land under the control of the most productive of the landless (see Box 3.1.). This approach would take a much more inclusive view of rural development that also embraces employment-creation and non-farm activities as solutions to the problem of landlessness. In this pragmatic vision, a wide variety of mechanisms including public reversion, land purchase and leasing programs, improved markets, social pacts, contract farming, and equity-sharing enterprises could be marshalled to address the problem. A less recommendable method of redistributing land would be to hand out public lands under forest cover in order to promote agricultural production, since these lands are important for water management and carbon sequestration, and are generally characterized by low agricultural productivity once they are cleared, and therefore do not help the beneficiaries to escape poverty.

**The fourth key area is maintaining the integrity of protected areas and forest reserves.** Bolivia ranks sixth in the world in the size of its tropical forest endowment, with almost half of the country (some 53 million hectares) still covered with natural forests. It is the world leader in voluntary forest certification, with 2.2 million hectares of forest certified as sustainably managed forests, and forest products accounted for 11 percent of legal Bolivian exports (US$117 million dollars) in 2003. Bolivia also has an extensive protected areas system, comprising 22 million hectares (more than 20 percent of Bolivian land area) that includes a wide variety of forests, wetlands, and other natural ecosystems, with many endemic animal and plant species. The protected areas can generate significant tourism revenues, and are still an underutilized but potentially significant source of local development. If well managed, Bolivia’s protected areas and forest reserves have a major potential to contribute to the Millennium Development Goals of environmental sustainability and poverty eradication. On the other hand, if they are neglected or opened up to inappropriate land uses, their contribution to Bolivia’s sustainable development could be irreversibly lost. The sustainable management of these natural resources requires a strong compromise at the state level and larger community participation (See Box 3.2).

**Box 3.2. Conflict and Forestry Management since the 1996 Forestry Law**

Bolivia’s Forestry Law No. 1700 of 1996 led to significant changes in the country’s regulations on forest management and harvesting, including requiring management plans for any timber harvesting and the banning of chainsaws in the production of saw timber. In practice, these proved to be critical barriers to community forestry on TCOs, which quickly fell under pressure to sign exclusive contracts with companies in order to meet the technical requirements for commercially harvesting timber. Many of these agreements were unfavourable to the indigenous communities, giving them little say in how the forests were managed. By 1999, Bolivia’s Superintendent of Forests had reviewed 90 third-party forest management plans for TCOs and annulled all of them.

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11 The country’s wood reserves amount to 317 million cubic meters, and sustainable timber production potential exceeds 20 million cubic meters yearly. Its forestry sector comprises nearly 1,000 registered businesses, generates 50,000 direct jobs and contributes more than US$5 million per year in tax revenues to the government.

12 For example, the number of visitors to the Reserva Nacional Eduardo Avaroa, the country’s most visited, rose from 13,000 (in 1999) to 43,000 (in 2003) and continues to grow. This tourism generated over $160,000 annually in entry fees, along with a much greater overall economic impact. The challenge is to manage this economic activity sustainably and to ensure more widespread and equitable participation in its benefits. Land clearing pressures on certain forested areas can also be alleviated by broadening access for local people to their benefits (e.g. harvesting of Brazil nuts).
The **New Forestry Law** also led to conflicts between indigenous land and forest concessions. By 1997, Bolivia had leased 5.8 million hectares of forest to 85 companies under the new law. Of this area, 700,000 hectares contained lands to which indigenous peoples had existing title claims. In 1999, indigenous organizations in Bolivia brought land conflicts caused by the **Forestry Law** to the **International Labour Organization** and in 2000, **Bolivia’s Supreme Court** ordered that concessions within indigenous land claims be first subject to the titling process. Nonetheless, Administrative Resolution No. 098 was issued by the Authorities, limiting the land rights claims process to 30 days. Three months after passing the Resolution, 3.8 million hectares of previously contested forest land had been designated harvestable, including 800,000 hectares of the Chiquintano Dry Forest. AR No. 098 became one of the impetuses of the Third Indigenous and Campesino March in 2000, which forced its repeal.

Bolivia is the country with the most forestland certified under the **Forest Stewardship Council** (FSC) program. However, certification has not reached indigenous peoples and their forests to the extent that might be expected, as nearly all of the certified forests in Bolivia are managed by private industry. Only one indigenous territory in Bolivia, the TCO Yuqui-CIRI, is currently certified—their 51,390 hectares of forest represents less than 3 percent of the country’s 1.9 million hectares of certified forests. Meanwhile, in 1999, **FSC** certified a 100,000 hectare concession managed by La Chonta Logging Company of which 90 percent overlaps the Guarayo indigenous territory.

A **final pillar of a pro-poor land policy in Bolivia is land taxation, which is where the promise of fiscal decentralization and pro-poor land policy meet.** Improving property taxation, particularly in rural municipalities, could simultaneously improve local government revenues and create a better incentive environment for land owners and speculators to use their land to its maximum productivity or release it onto the market. At present, land taxes account for 51 percent of total municipal tax revenue, but 90 percent of this revenue is collected in only ten municipalities. The logistical problem of inadequate physical and legal information on the properties and virtually nonexistent property valuation capacity for tax purposes can be overcome by municipalities creating their own simple cadasters for tax purposes, utilizing the self-declaration of value by owners in the first instance, which can later be upgraded when **municipios** gain access to the real-estate information system of the legal cadastre maintained by **INRA** and the Property Registry.13 To this end, municipal cadastral information systems need to be interconnected with the legal cadastre to obtain access to up-to-date physical and legal data, and supplemented with economic valuation of the properties. The political problem of a highly visible tax can be addressed first by making benefits highly visible, especially through visible public works in the municipality. Moreover, the political reluctance to alienate large landowners by enforcing the tax provisions—since land taxes are highly progressive—can be addressed by linking federal transfers to the tax effort by municipalities so as to make the rural land taxation scheme more effective, and by opening the tax records to greater public scrutiny.

**TERRITORY**

**Looking beyond land issues, a key area for policymakers is indigenous territory.** The 1996 **INRA Law** classifies different land tenure regimes and defines the procedures for legal recognition of indigenous land. It also incorporates constitutional guarantees to indigenous peoples to their communal lands of origin, under article 17114 of **Bolivia’s Constitution.** The

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13 In its comments on the CSA, the Government has noted that the **National Agrarian Reform Institute** has not transferred cadastral information on regularized lands to municipalities and indigenous districts to enable them to upgrade their tax base. It also underscored the importance of the principle of equitable land taxes, i.e. higher taxes on those who own more land.

14 Art. 171 - Reconocimiento de derechos de pueblos indígenas
original thrust of the indigenous land rights legislation focused on the eastern lowlands where the concept of large collectively owned-managed extensions of land was generally compatible with indigenous societies’ land use patterns. In the highlands the issues are quite different and the legal paradigm of indigenous community land as a property right is inappropriate for the complex territorial relationships of the highland communities and the varied systems of traditional property rights valid within them. In essence, TCOs are a modality for land tenure. But this modality is in many cases incompatible with other modalities in use in the highlands, including individual tenure and mixed systems of collective and individual tenure. The imposition or use of the TCO as the only land tenure modality available to indigenous communities, a modality which is legally unrelated to territorial administration, in fact complicates both land tenure traditions as well as territorial administration in the highlands.

The implementation of the legal framework for indigenous land and territory in the eastern lowlands has been plagued by bureaucratic challenges and third party claims. Much of the problem in lowland areas stems from the complexity and insufficient transparency of the bureaucratic procedures required for land recognition, and the problem of third party claims by settlers who have legal title to land included in an indigenous land claim, as well as by others who have no title or certified use rights. The unsatisfactory resolution of third-party claims and compensations is one of the main sources of conflict around indigenous land in the eastern part of the country. This could be addressed using various alternative solutions, based for example on experiences in Peru and the United States. One option is to pay the third parties for their improvements, while requiring that they remove themselves from the TCO land claim area. Another is to create joint ventures between the third parties and the indigenous groups, so that the land is used for the benefit of the indigenous community regardless of the formal ownership. A third option is for the indigenous community to purchase land from the third parties in strategic areas to consolidate their claims, as was done by the Navajo Nation and the Red Lake Band of Ojibwe in the US. Proposals for national or international land funds for this purpose have also

15 Several other environmental laws in Bolivia relate to indigenous land tenure: The Forestry Law (No. 1700) of 1996, the Environment Law (No. 1333), adopted in 1992, the International Labor Convention (ILO) No. 169. Law 1257, passed in 1991, incorporates the Convention into Bolivian law. Further initiatives to increase participation include the creation of a legal service for assisting indigenous peoples in the implementation of their rights to land and natural resources (Decree No. 26151).

16 Claims to indigenous land in the Amazon region have made by representatives of groups such as the Chácobo, Pacahuara, Ese Eja, Caineo, Araona, Yaminahua, Machinery and Tacona, mostly through the Central Indígena de la Región Amazónica de Bolivia (CIRABO). In Beni, the 14 TCO claims include groups from the Mojeños, Yuracaré and Chimán that have run into problems with overlapping forest concessions and large cattle farms represented by the FEGABENI (Beni Cattle Farming Federation). In Santa Cruz, Guarani, Ayoreo and Chiquitano groups have filed 21 land claims, with the Association of Guaraní Peoples (APG) playing a key advocacy role on their behalf. These groups have encountered problems of third party parcels in the areas claimed as well as special problems of captive communities—Guarani communities employed in their totality as workers in large farms, often with little remuneration and few economic alternatives.

17 Much of the work is concentrated in the hands of INRA land technicians and lawyers with insufficiently participatory processes and a lack of transparency in the fieldwork, recognition of third-party rights and drafting of administrative resolutions.
been made. Each one of these options may have relevance in different areas of eastern and Amazonian Bolivia.

In the highland areas the challenge is that the TCO framework is often incompatible with established land practices and with local territorial-administrative structures. The attempt to apply the model of indigenous property rights (TCO) has led to a lack of recognition of existing individual and communal property rights within communities and spurred conflict between communities, resulting paradoxically in a diminished ability of indigenous communities to define their own administrative and management models for their lands in some cases and preventing legal and social recognition of existing land rights in others. The key is the principle of determination of property regime based on decisions taken by the communities. The pre-colonial and colonial history of western and highland Bolivia has created a diverse set of traditional Quechua and Aymara territorial-administrative divisions (ayllus and markas), which function together with and as part of national political-administrative units. Bolivia’s Law on Popular Participation, which provides for the modality of the Indigenous Municipal District, is currently the most appropriate starting point for establishing territorial recognition. The TCO modality together with the other forms of property available in Bolivian law, are more appropriate as subsidiary determinants of property rights within indigenous territorial jurisdictions.

International experience offers valuable lessons for consideration. For example, Brazil has one of most advanced legal frameworks for indigenous land tenure in Latin America. Article 231 of the Brazilian Constitution guarantees permanent possession and exclusive use of their traditional lands for indigenous peoples, including soils and waters, although not full ownership. It also prohibits the removal of indigenous peoples from their lands and outside exploitation of their territories. The demarcation and recognition of indigenous lands has been significant. At the same time, the civil administrative grievance procedure introduced under Decree 1775 of 1995 has undermined some of the constitutional and legal protections, and lands are subject to illegal invasions, especially by gold and diamond miners, while indigenous people suffer violent intimidation by powerful landed interests, with insufficient government action to stop these invasions and end the violence. In Colombia, the 1991 Constitution recognizes customary legal systems and traditional authorities as legitimate public entities for autonomous land administration, thereby recognizing the indigenous territorial model of land tenure, which involves communal property ownership as well as jurisdiction over the management of natural resources. Indigenous authorities in the resguardos are legally responsible for land-use and social programs in these indigenous territories, and they receive state funds for their own health, education and social programs (see Griffiths 2002 and Roldán 2004). Additional experiences can be found in Annex 3.1.

CONSTITUTIONAL PRINCIPLES AND OPTIONS FOR THE CONSTITUTIONAL ASSEMBLY

Although the constitutional basis for recognition of indigenous lands in Bolivia is fairly strong, some adjustments could be considered. The most important principles which can be discerned from the above analysis are the following (also see the international experiences gathered in Annex 3.2):

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18 Around 104 million hectares, or more than 12 percent of the national territory of Brazil, mostly in the Amazon region, have been recognized as indigenous lands for indigenous groups representing only two percent of Brazil’s population. On the other hand the process of recognizing indigenous lands has slowed considerably in recent years.
The most advanced constitutions conceive of indigenous lands as territories or habitats. If a state regards itself as multi-ethnic or multi-cultural, then it would make logical sense to recognize different forms of land-holding, especially since land is fundamental to indigenous peoples as established in ILO Convention 169. For example, in Venezuela, the state relates the habitat to the survival of indigenous peoples by recognizing original rights over lands they traditionally occupy and which are needed to develop and guarantee their way of life (Art. 119). Thus the traditional concept of ‘land,’ which only implies commercial property—usually held individually—and the use of renewable resources is transformed in these new Constitutions into new and different legal concepts that, for example, also recognize collective holdings.

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 cases, the framework allows for the possibility of expanding the territorial area on the basis of their historical and not just present settlement.

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.

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).
CONSIDERATIONS BEYOND THE CONSTITUENT ASSEMBLY

The fundamental areas that should be strengthened are generally beyond the Constitution. The key issue at stake is the question of the level of autonomy over natural resources, particularly mineral and forest resources (see the Chapter on Indigenous Rights), as well as the implementation of institutional and legal reforms so as to fulfil the vision that is established in the Constitution. In particular, dealing in practice with third parties is fraught with difficulties but new approaches, including those outlined above, can be introduced to complement what has been a largely ineffectual search for alternative public lands for distribution. In the case of overlapping forestry concessions and indigenous land areas, co-management of the resource and a sharing of the returns to the exploitation offer an important potential solution, while superior rights and a predominant role for the indigenous communities in sustainable forestry management in their areas could be assured in the future. Beyond existing concessions, the potential for community-managed forest enterprises by indigenous communities themselves is huge and under-exploited. Another consideration would be to prioritize territorial administration through the Popular Participation Law above the titling of indigenous communities using the modality of the TCO. It would also be important to reconsider the indigenous lands articles of the INRA law to allow duly formed territorial administrations to determine the nature of the specific land rights granted in their territory—communal, private or otherwise.

encourage the equitable sharing of the benefits arising from the utilization of such knowledge, innovations and practices” (art. 8, j).