Bolivia

Towards a New Social Contract

A Country Social Analysis

- Volume 1 -

July 2006
CURRENCY EQUIVALENTS
Currency Unit – Bolivian Boliviano (BOB)

EXCHANGE RATE
2005 BOB 8.0661 = US$ 1

WEIGHTS AND MEASURES
Metric System

FISCAL YEAR
January 1 – December 31

Vice President LCR: Pamela Cox
Director LCC6C: Marcelo Giugale
Director LCSES: Laura Tuck
Sector Manager LCSEO: McDonald Benjamin
Task Team Leader LCSEO: McDonald Benjamin
ABBREVIATIONS AND ACRONYMS

COB  
Central Obrera Boliviana—Bolivian Central Workers’ Union

CSA  
Country Social Analysis

DfID  
UK Department for International Development

GDP  
Gross Domestic Product

HCL  
Hydrocarbons Law of 2005

ILO  
International Labor Organization

INRA  
Instituto Nacional de Reforma Agraria—National Agrarian Reform Institute

JICA  
Japanese International Cooperation Agency

LAC  
Latin America and the Caribbean

NGO  
Non Governmental Organization

OTB  
Organización Territorial de Base—Basic Territorial Organization

SIDA  
Swedish International Development Agency

TCOs  
Tierras Comunitarias de Origen—Original Community Lands

UK  
United Kingdom of Great Britain and Northern Ireland

This volume is a product of the staff of the International Bank for Reconstruction and Development / The World Bank. The findings, interpretations, and conclusions expressed in this paper do not necessarily reflect the views of the Executive Directors of The World Bank or the governments they represent. The World Bank does not guarantee the accuracy of the data included in this work. The boundaries, colors, denominations, and other information shown on any map in this work do not imply any judgment on the part of The World Bank concerning the legal status of any territory or the endorsement or acceptance of such boundaries.
Bolivia: Towards a New Social Contract

Table of Contents

Executive Summary ................................................................. i
1. Introduction.............................................................................. 1
2. Indigenous rights ................................................................. 5
3. Land and territory ................................................................. 13
4. Decentralization with inclusion ........................................... 19
5. Equitable access to justice .................................................... 25
6. Closing considerations.......................................................... 33

List of Boxes

Box 2.1. Constitutional Principles for Indigenous Territory based on International Experience... 8
Box 2.2. Principles for the Process of Incorporating Indigenous Rights into the Constitution..... 9
Box 3.1. Alternative Land Access Methods........................................... 15

List of Figures

Figure 5.1. Perception of Legal Compliance (2005) ......................................................... 27
Figure 5.2. Survey Question: Do Courts act transparently and impartially? ....................... 27

List of Tables

Table 1.1. Incidence of Poverty and Extreme Poverty by Income (Percent) ......................... 2
Table 4.1. The Hydrocarbon Law Increases Disparities in Interregional Transfers............... 20
Table 4.2. Constitutional Principles and Options for Consideration .................................... 23
Table 5.1. Constitutional Principles Related To Access to Justice, for Consideration by the
Constituent Assembly ........................................................................... 30
FOREWORD

This Country Social Analysis is the product of a multi-sectoral team of Bolivian, regional and international specialists. The team was led by McDonald Benjamin and included Gregor Barié and Jorge Uquillas (indigenous rights), Malcolm Childress (land and territory), Rémy Prud’homme and Jonas Frank (decentralization), Lisa Bhansali, Julissa Mantilla and Beatriz Perez Perazzo (access to justice), Oscar Antezana and Fernando Jiménez (socioeconomic annex). Roberto Laserna, Carlos Toranzo and Jose Luis Exeni prepared valuable background papers for this study. The concept was developed with significant contributions from Reidar Kvaan, Connie Luff, David Tuchschneider, Ruth Llanos and Jairo Arboleda. The team also drew on valuable insights provided by a range of participants in focus group meetings in Bolivia during 2005-06. Peer reviewers for the study were Andrew Norton, Edgardo Mosqueira, Eduardo Gamarra, Eleodoro Mayorga and Ian Bannon. Estanislao Gacitua-Mario and Shelton Davis provided additional review comments. Alejandra Vucetich, Janice Molina, Lidia Wassertheil and Marcelo Romero translated various portions of the report. Irina Ghobrial processed the final document, and Rocio Recalde provided logistical support.

The team would like to express its particular thanks to the Government of Bolivia for its support in the preparation of this study, and the hope that the analysis may serve as an element of a continuing process of dialogue to strengthen social inclusion and social cohesion in Bolivia.

Funding and technical advice for the preparation and dissemination of the study were provided by the UK Department for International Development (DfID), the Japanese International Cooperation Agency (JICA), and the Swedish International Development Agency (SIDA). Their support is gratefully acknowledged.

The report was produced under the overall guidance of Marcelo Giugale, Country Director for the Bolivia, Ecuador, Peru, Venezuela Country Unit, and Laura Tuck, Sector Director for the Environmentally and Socially Sustainable Development Department in LAC.

The views expressed in this report are exclusively those of the authors.
EXECUTIVE SUMMARY

Introduction

Bolivia has been undergoing a long and at times turbulent process of major social change over the past half century. This has resulted in the election of Bolivia’s first indigenous president in December 2005. On 6th August, 2006, a Constituent Assembly will meet in Sucre to develop a more inclusive and cohesive social contract that would be reflected in a new Constitution by August 2007. At the same time, a referendum was held on July 2, 2006, in which four of Bolivia’s nine departments voted in favor of autonomy. These proposals represent an important if risk-laden moment in the country’s effort to achieve lasting social change.

Bolivia’s socioeconomic challenges are enormous. It has the lowest average income in South America (US$950/person), one of the highest Gini coefficients (0.58), and one of the lowest rates of social mobility in the region. A rural Bolivian who is indigenous has a 70 percent chance of living in extreme poverty. Only 2.5 percent of Bolivian land is cultivable, yet 10 percent of farming units control 90 percent of land. Women are twice as likely to be illiterate as men. A baby born in Tarija is three times more likely to live to see its first birthday than a baby born in Oruro. Bolivia’s best hope to redress these imbalances (gas) is instead reinforcing them: hydrocarbon rents range from US$166 per person in Tarija to just 39 cents per person in La Paz.

Bolivia’s historically determined structure of governance and power has perpetuated this inequality and exclusion. It was born with the Toledan “Two Republics” system that stratified society into a privileged minority—seeking rents from silver mining—and a subjugated indigenous majority. Independence did not change the basic structure of society. Instead, a gradual transformation of society was brought on by the creation of a permanent working class in the tin mines; an increased sense of nationalism as a result of the Chaco war (1932-35); the introduction of universal suffrage, agrarian reform and education reform following the 1952 revolution; decentralization and popular participation in the 1990s after the return to democracy in the 1980s, and increasing empowerment of indigenous communities following a historic march to La Paz in 1990. Yet the paternalistic and rent-seeking patterns established by the early elites have persisted to this day, with the difference that a plethora of new actors have joined the political scene with the view that the state should provide for them. This has complicated governability by a state that has not been well placed to aggregate demands into a consensus for social justice. The social conflict has translated into extreme political instability in recent years, with massive mobilizations, and the forced resignation of two presidents from office. Nonetheless there is scope for constructive dialogue in Bolivia, as has been demonstrated in the agreements reached in advancing towards a Constituent Assembly.

In this context, the Bank and its donor partners¹ have been invited to provide analytical support on some of the most difficult issues that the country is facing at this time: how should Bolivia ensure that the collective rights of its large indigenous population are appropriately reflected and respected in law and in practice? How should the country address issues of access to land and territory in the most equitable and efficient manner? How should

¹ The CSA is jointly financed by the World Bank, the UK Department for International Development (DfID), the Japanese International Cooperation Agency (JICA), and the Swedish International Development Agency (SIDA).
resources and responsibilities be assigned between national, sub-national and possibly also indigenous territorial authorities within a cohesive state structure? How should royalties from hydrocarbons be distributed? How should the country ensure access to justice for all of its citizens? The four main chapters of the CSA seek to tackle these issues, as they address: (1) indigenous rights; (2) land and territory; (3) decentralization, including the distribution of rents from hydrocarbons, and (4) access to justice. The overview volume (Volume I) adumbrates the Bolivian context and reviews each of these four areas briefly, whereas Volume II provides a more detailed analysis of each area, and includes a socioeconomic annex with basic data for the study.

Indigenous Rights

An estimated 5.1 million Bolivians are indigenous. They are grouped into 34 distinct indigenous or original peoples. Although they account for 62 percent of the population, it is only in 1994 that Bolivia’s Constitution made a clear break with the past in proclaiming a range of rights for indigenous peoples, thereby beginning the process of establishing a multi-ethnic, pluricultural state.

The rights of indigenous peoples generally fall into three broad categories: culture, territory and autonomy. The current recognition of their cultural rights should still be regarded as a transition to a more complete approach. The challenge at this time is to move from multicultural recognition (multiculturalism), as the affirmation of a historic reality, to a more harmonic and symmetric relationship among cultures (interculturality).

While the territorial rights of indigenous peoples are recognized, they are not very clear at the constitutional level, and their interpretation and application at lower-ranking legislative levels have at times been confusing. Indigenous territorial rights are the basis for any multicultural recognition, since indigenous peoples have a special relationship with their habitats and their survival as peoples often depends on this relationship. Thus greater clarity is warranted in giving real substance to these rights.

The basis for certain rights to self-determination is the constitutional recognition of the legal personality of indigenous peoples. This has led in practice to advances in terms of greater popular participation, the administration of traditional justice and participatory democracy involving indigenous groups, although broadening the scope for self-determination on indigenous territories without isolation from the broader nation remains a key challenge.

The Constituent Assembly might give consideration to emphasizing a core set of cultural, territorial and self-determination rights, drawing on both Bolivian and international experience. These could include, for example, the characterization of Bolivia as a state formed by different individuals and peoples; the principle of indigenous lands as habitats or spaces for cultural continuity; the opportunity to apply various modalities of indigenous lands according to customs (e.g. communal, multi-ethnic, sustainable forests, individual holdings within indigenous districts, among others); the incorporation of indigenous entities within the political-administrative organizational framework for the state, and recognition of traditional justice within a state framework of judicial pluralism that also comprises ordinary justice.

Although it has significant symbolic value, constitutional recognition is only the first step towards a fuller exercise of indigenous rights. These would need to be codified in secondary legislation both via the mainstreaming of indigenous rights in broader legislation (e.g. forestry and education laws) as well as legislation that is specific to indigenous peoples (e.g. to ensure compatibility between indigenous justice and ordinary justice). This is the stage that has
been slowest and most irregular in Latin America, as it is subject to political will, political pressures and country circumstances. A key principle beyond the Constituent Assembly is to maintain channels of dialogue without bureaucratizing conflict. It is also essential for indigenous peoples to strengthen their capacity to negotiate common interests with a national perspective and different visions of the state, as well as to strengthen capacity among key non-indigenous actors, for example on indigenous justice within the justice sector.

**Land and Territory**

*Land rights and particularly indigenous land rights have long been a source of social tension in Bolivia.* While the land policy framework (1996-2006) aimed appropriately to make land tenure more equitable, secure and sustainable, the implementation of the related INRA Law (No. 1715 of 1996) has fallen short of expectations. There have been successes in land regularization but less progress has been made in improving equity in land distribution. To date the approach to implementing the law has been legalistic and process-driven, which has not proven sufficient or effective. A more fruitful approach may be to guide policy and institutions by specific objectives or results, and to hold institutions accountable for their achievements.

**Bolivia faces five central land policy challenges for poverty-reducing growth, social stability and environmental sustainability.** These challenges are: (1) completing land regularization and restoring confidence in land institutions, (around 15 percent of lands have been regularized and 30 percent are in process at present, although decisions on large properties in excess of 10,000 hectares could usefully be reviewed); (2) regularizing indigenous land (which involves addressing third party claims and implementing a more efficient, transparent and participatory process); (3) resolving demands for land distribution through a range of mechanisms that are driven by objective of increasing access to land for productive but poorer Bolivians (for example, land purchase and leasing programs, improved markets, or equity-sharing enterprises); (4) maintaining the integrity of Protected Areas and Forest Reserves (close to half of Bolivian territory is under forest cover); and (5) improving land taxation, (which could simultaneously increase local government revenues and improve incentives for land owners and speculators to use their land to its maximum productivity or else to release it onto the market).

**With regard to indigenous territory, Bolivia’s constitutional basis for recognizing indigenous territory is established.** While consideration could usefully be given to international best practices in this area, for example strengthening recognition of indigenous territories as habitats, perhaps the key issues at stake are the following: first, the Constitution provides only for the modality of original community lands (TCOs) but this modality, designed with the lowlands in mind, is incompatible with established land practices and with local territorial-administrative structures in the highlands, so that a more flexible approach is warranted to address both indigenous titling and territorial administration. The second key issue that might be clarified at the constitutional level is the question of the level of autonomy over natural resources, including mineral and forest resources. Beyond the constitutional level, a range of institutional and legal reforms could usefully be considered to implement the constitutional goals, especially to address third party claims in indigenous areas; overlapping forestry concessions and indigenous land areas; and a reconsideration of the indigenous lands articles of the INRA law to allow duly formed indigenous territorial administrations to determine the nature of the specific land rights to be granted in their territory, whether these be communal, private or otherwise.

---

2 During the 1960s-1990s, successive governments made large grants of fertile lands in the eastern lowlands to a relatively small number of political supporters. This selective assignment of land compares with broad-based land reform in the Altiplano after 1952. Bolivia thus faces major inter-regional differences between the Altiplano and the lowlands, as well as intra-regional inequity in land distribution in the east.
Decentralization with Inclusion

Bolivia was a highly centralized nation until 1994, when the first phase of decentralization created municipalities as full-fledged local governments. This process could usefully be strengthened, as the quality of services in all sectors is uneven across regions and there are major disparities between urban and rural areas. Improving the coverage and quality of public services is essential to address social disparities in Bolivia.

The current phase of decentralization faces three serious challenges that will make improvements more conflictive. First, the political election of regional authorities in 2005 and the transfer of new resources to these authorities under the Hydrocarbons Law without defined expenditure responsibilities make it harder to ensure an efficient use of Bolivia’s limited public resources. Second, responsibilities among government levels are still not well articulated. Third, the inter-governmental fiscal framework does not distribute resources equitably or create incentives for adequate fiscal responsibility in sub-national governments.

Around two-thirds of the additional tax resources to be collected under the 2005 Hydrocarbons Law have been allocated to the nine departments. There are two reasons why this might not be an optimal approach. First, oil and gas rents are potentially very large but they are also highly volatile. Municipalities and departments would be much better served by resource flows that are more stable, so that receiving a fixed share of total government revenue, including from hydrocarbons (perhaps with small HC rent grants is to producing regions), would be more advisable than receiving a large share of one volatile revenue source. Second, natural resources are rarely evenly distributed across a country, so that the concentration of their revenues in the producing departments will inevitably increase inequality and thereby undermine social cohesion.

Decentralization implies decisions and choices in at least five areas: governance rules, expenditures assignments, taxation, transfers, and borrowing. These choices have consequences in at least four domains, namely political participation, interregional equity, public services efficiency and equity, and macro-economic management. A range of international experiences can be brought to bear in tailoring the decisions (for example, on transfer policies) to maximize the benefits across these domains (for example, enhanced public sector efficiency).

A Constitution is fixed and written for the very long term, whereas decentralization arrangements need to adjust over time. A new Constitution could usefully justify, suggest and facilitate good decentralization policies in relation to governance rules, expenditures assignments, taxation, transfers, and borrowing. International experience points to a range of principles in these areas that might be considered in the debate leading to a new Bolivian Constitution. On the other hand, this experience also strongly suggests that it is best to reflect only the broader principles in the Constitution and to leave the details to secondary legislation.

The ratification of a new Constitution will certainly imply the need for follow-up actions in the short, medium and long term. These could begin with ensuring adequate implementation capacities and consensus building mechanisms. Other elements might involve a transparent financial management system; civil service management tools; transparent mechanisms for public procurement; mechanisms to monitor and evaluate the quality of public services; improved resource distribution through a restructuring of the transfer system; and basic fiscal responsibility rules. Additional policies over time might focus on separating responsibilities among the national, departmental, and municipal levels to promote more accountability at each level, and transferring additional responsibilities and resources to subnational levels in the longer term, as well as expanding sub-national tax-raising authority. An
ideal outcome of implementing such policy options would be increased social inclusion and cohesion via basic equity (or progressiveness) in resource distribution, and the promotion of local governments that are more accountable to the citizens.

**Equitable Access to Justice**

*In a democratic system, the enforceability of rights and freedoms requires a legal and institutional order that ensures the prevalence of the “Rule of Law”.* The rule of law is based on three fundamental principles: (1) the limitation of power, effected via the constitutional distribution of powers; (2) the principle of legality, by which government bodies are subject to the law, and (3) the declaration of fundamental rights. The rule of law therefore necessarily places a major responsibility on the judicial system to reach all of the population and to offer a service that is accessible, agile and impartial.

* Bolivia has had nineteen Constitutions since 1825. * The present Constitution, approved in 1994, has significantly expanded social rights (first established in the 1938 Constitution) with the recognition of indigenous rights within a multi-ethnic, pluricultural state. Moreover it has effectively acknowledged indigenous common law not only as a source of law but as an inherent right in the state, and has thereby also admitted for the first time the existence of organs with rule-of-law powers other than the three traditional branches (legislative, executive and judicial).

*The structure of the Judicial Branch was strengthened after 1994,* in an effort to make judicial services more efficient and independent, for example by the creation of a Constitutional Tribunal, Ombudsman and a Judiciary Council. Other changes since 1994 have included modified procedures for appointing Supreme Court justices and reforms in the penal code to incorporate a system for accusations and oral arguments, so as to speed up processes.

*In spite of the reforms and modifications implemented, and some successes, Bolivians continue to face obstacles in securing accessible, agile and impartial justice.* The challenges are reflected in inadequate services, insufficient economic resources for justice and the police, delays in judicial proceedings, and a perceived lack of independence and transparency of the justice sector. The broader challenges in access to justice are aggravated by discrimination, for example on the basis of gender and ethnicity.

*A range of constitutional principles emerge from Bolivian and international experience for consideration in the Constituent Assembly.* These principles fall into four main areas: strengthening of the judicial system and the rule of law so as to ensure improved access to ordinary justice for all citizens; recognition of traditional community justice in the Constitution; strengthening of gender equity in access to justice; and consolidation of human rights via principles of equality and non-discrimination.

*Enhancing the reliability and efficiency of the ordinary justice system is also a clear priority beyond the Constituent Assembly,* in order to improve social inclusion via better access to justice. Again, international experience offers a series of lessons in legal and judicial reforms to strengthen access to ordinary justice that present a range of options for consideration by Bolivians. In order to ensure the integration of ancestral justice within the framework of the rule of law, a favored option would be the approval of a coordination law on this matter, developed in a highly participatory manner. In relation to gender perspectives, the key challenge is not so much the approval of new legislation as the enforcement of existing legislation, as well as capacity building and oversight of justice sector practitioners, in both the ordinary justice and indigenous justice sectors, so as to ensure equal rights for both men and women.
Closing Considerations

This Country Social Analysis has attempted to provide an understanding of selected key challenges facing Bolivia, looking to their roots in the history and institutional structure of the country to derive a series of findings for consideration.

- The social exclusion and absence of social cohesion observed in present-day Bolivia have their roots in Bolivia’s colonial history.

- While the country’s institutional transformation has been substantial over time, it is still incomplete.

- The colonial era also gave rise to paternalist and rent-seeking perspectives in relation to the state that are still prevalent today and that make it harder to achieve social inclusion and cohesion.

- The challenge is to forge a truly democratic state characterized by good governance that promotes more equal opportunities and therefore greater social mobility for its people.

- The bold proposal of a Constituent Assembly and referendum on autonomy, when set against Bolivia’s historical backdrop of conflict and social exclusion, represents an important if risk-laden moment in the country’s effort to achieve lasting social change.

- The work of the Constituent Assembly could usefully maintain as a guiding principle the promotion of increasing equality of opportunity and the rule of law, even—and indeed especially—in areas in which consensus may be difficult to achieve, such as decentralization.

- While the process of establishing a new social contract is a profoundly Bolivian process, there is a role for the international community to play in supporting the process and its aftermath, so as to help Bolivians set the foundations for a dignified, just and productive Bolivia.
1. INTRODUCTION

Bolivia has been undergoing a long and at times turbulent process of major social change over the past half century. This has resulted in the election of Bolivia’s first indigenous president in December 2005. On 6th August, 2006, a Constituent Assembly will meet in Sucre to develop a more inclusive and cohesive social contract that would be reflected in a new Constitution by August 2007. Previously excluded sections of the Bolivian population will have an opportunity for the first time to be associated with the preparation of a new Constitution. At the same time, a referendum will be held in July 2006 on autonomy. These proposals represent an important if risk-laden moment in the country’s effort to achieve lasting social change.

Bolivia’s geography and demography are important in explaining its economic development. The country has significant but unevenly distributed resources, especially mining and hydrocarbons, whose location has driven the location of centers of wealth and power over time. Bolivia’s terrain and land-locked position also result in large inequalities in access to transport that militate against rapid growth and equitable development and complicate national cohesion. Bolivia has a young and rapidly growing population that is urbanizing rapidly, and migrating to the lowlands in search of fertile lands and jobs, thereby changing the social and political landscape of the country. Moreover, while Bolivia has the highest proportion of indigenous to total population in the Americas, there has been a steady process of acculturation.

Bolivia’s colonial history also helps to explain its current social exclusion. The Toledan “Two Republics” system, established at the beginning of the colonial era to create an efficient system for exploiting silver from the mines in Potosi, stratified society into a privileged, rent-seeking minority and a subjugated indigenous majority. The key institutions used to maintain this structure and impede virtually all social mobility included geographic segregation along ethnic lines, forced labor and indentured service systems, limitation of citizenship to a privileged oligarchy of Spanish origin, restriction of education to the privileged few, heavy taxation of indigenous people, co-opting of indigenous caciques in the system, and military repression.

Independence brought turbulence but did not change the basic structure of society. The land grabs, repeated coups and frequent constitutional reforms (including the first one immediately after Bolívar left the country in 1826), form the historical backdrop to the relatively weak institutionality in modern-day Bolivia and to the less than fully rooted support for private property rights. A gradual transformation of society was brought on by the creation of a permanent working class in the tin mines, the increased national consciousness brought on by indigenous and non-indigenous Bolivians fighting alongside each other in the Chaco war (1932-35), the introduction of universal suffrage, agrarian reform and education reform following the 1952 revolution, decentralization and popular participation in the 1990s following the return to democracy in the 1980s, and increasing empowerment of indigenous communities following a

---


historic march to La Paz in 1990. Thus a historical perspective illustrates the scope of the country’s political evolution from “Two Republics” to a “multi-ethnic, pluricultural” democracy with the 1994 Constitution.

**Bolivia’s socioeconomic challenges are enormous.** At US$950/person, real GDP per person for average Bolivians today is the same as it was for their grandparents in the 1950s. Much of that income is in relatively few hands. And Bolivia, with some of the highest income inequality in the region (a Gini coefficient of 0.58), is also one of the countries with the lowest social mobility in the region—meaning that those born poor are very likely to remain poor. One in five Bolivians does not formally exist for the state—since they were never registered at birth. A rural Bolivian who is indigenous has a 70 percent chance of living in extreme poverty (see Table 1.1). Only 2.5 percent of Bolivian land is cultivable, yet 10 percent of farming units control 90 percent of land. The 2001 census shows one in three rural households living in poor quality dwellings. Credit per capita is 50 times higher in Santa Cruz than in Potosí. Women are twice as likely to be illiterate as men. The average indigenous person earns 27 percent less than his or her non-indigenous counterpart with the same level of education. A baby born in Tarija is three times more likely to live to see its first birthday than a baby born in Oruro. And Bolivia’s best hope to redress these imbalances (gas) is instead reinforcing them: hydrocarbon rents range from US$166 per person in Tarija to barely 39 cents per person in La Paz (see Chapter 1 of Volume II, as well as the Socioeconomic Annex, for more details).

**Table 1.1. Incidence of Poverty and Extreme Poverty by Income (Percent)**

<table>
<thead>
<tr>
<th>Population</th>
<th>Incidence of Poverty (%)</th>
<th>Incidence of Extreme Poverty (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Total</td>
<td>Indigenous</td>
</tr>
<tr>
<td>Nacional</td>
<td>63,1</td>
<td>73,9</td>
</tr>
<tr>
<td>Urbano</td>
<td>51,5</td>
<td>59,1</td>
</tr>
<tr>
<td>Rural</td>
<td>82,8</td>
<td>86,3</td>
</tr>
<tr>
<td>Department Capitals</td>
<td>48,6</td>
<td>56,8</td>
</tr>
</tbody>
</table>


**Bolivia’s historically determined structure of governance and power has perpetuated this inequality and exclusion.** Elite capture of all three branches of a highly centralized state facilitated rent-seeking and preferential assignment of state resources. The state’s pervasive historic role meant that organized interaction with the state was essential, including among rival elites. This inevitably implied weak governance, i.e. weak accountability to the broad citizenry and weak reflection of its interests, as well as the inequitable application of formal rules. With the rise of union power through the growth of mining and of the state bureaucracy, new actors joined the political scene in the early 19th century with the same perspective that the state should provide for them. Indeed, a common view of the state in Bolivia even today is that of a father figure, and the great provider and guarantor of jobs and subsidies—public goods are associated with free goods. Poor willingness to pay and high expectations of support suggest that paternalism and rent-seeking may be cultural legacies of Bolivia’s early history.

---

8 See Roberto Laserna et al.: ibid.
9 See the World Bank’s Institutional and Governance Review for Bolivia (2000) on patronage and the state.
The political structure of society has become significantly more complex over time.\textsuperscript{10} The decline of mining and its central workers’ union (COB) and the advent of democracy in the 1980s created the space for a plethora of alternative civil society organizations to emerge, including indigenous organizations, workers’ unions and guilds, trade associations, civic organizations, neighborhood organizations, and NGOs around gender and other issues. This plethora of corporate organizations making demands on the state has complicated governability and charting a clear course for the nation, especially since many of the new social movements have less of a trajectory in negotiating, and since the formal structure of the state has not been well placed to aggregate demands into a consensus for social justice. In this environment, with countervailing demands for particular privileges (that often build on existing concessions that made the group powerful), unless there is a clear and widely recognized source of impartial moral leadership, it is very difficult to resolve questions of distributions without conflict.

Conflict is inevitable in any society, and has turned violent in Bolivia in recent years, even though the country has considerable potential for dialogue. In socially cohesive countries, conflict is usually channeled through established political institutional channels (e.g. via the legislature or litigation in courts). In recent years in Bolivia, social conflict has translated into extreme political instability, with a sharp increase in strikes, blockades and massive mobilizations, and the forced resignation of two presidents from office. Notwithstanding the rise in conflict, there is scope for constructive dialogue in Bolivia, as has been demonstrated in popular participation at the local level, national dialogues, and the agreements reached in proceeding towards a Constituent Assembly. The government’s vision for this process is “a political and social process launched to reconstruct the social contract in Bolivia and to create a new national vision that is inclusive and highly democratic, and that promotes a space for meeting and reconciliation among Bolivians.”\textsuperscript{11}

In this context, the Bank and its donor partners\textsuperscript{12} have been invited to provide analytical support on some of the most difficult issues that the country is facing at this time: how should Bolivia ensure that the collective rights of its large indigenous population are appropriately reflected and respected in law and in practice? How should the country address issues of access to land and territory in the most equitable and efficient manner? How should resources and responsibilities be assigned between national, sub-national and possibly also indigenous territorial authorities within a cohesive state structure? How should royalties from hydrocarbons be distributed? How should the country ensure access to justice for all of its citizens? The four main chapters of the CSA seek to address these questions.

\textsuperscript{10} See Carlos Toranzo and Jose Luis Exeni: Empoderamiento, participación e instituciones en Bolivia, Background Paper for the Bolivia CSA, September 2005, prepared with DfID support that is gratefully acknowledged.

\textsuperscript{11} This is the objective of the Presidential Representation to the Constituent Assembly and the Referendum on Autonomy. Also see Garcia Linera (2004).

\textsuperscript{12} The CSA is jointly financed by the World Bank, the UK Department for International Development (DfID), the Japanese International Cooperation Agency (JICA), and the Swedish International Development Agency (SIDA).
2. INDIGENOUS RIGHTS

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, 1989). Thus “Indigenous Peoples” is an approximate concept in international law, based on self-attribution and self-identification. 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.


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 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. 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 (Art. 171, see Volume II, Chapter 2 on Indigenous Peoples). The constitutional provisions are also complemented by more than 100 laws, supreme decrees and directives that specifically refer to indigenous issues and consolidate multi-cultural 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).

14 Unlike elsewhere in LAC, Bolivia’s 5.1 million indigenous population, who are members of 34 distinct indigenous or original peoples, account for the majority of the population (62 percent).
15 See: Articles 61, 222, 223 and 224, which refer to the rights of indigenous peoples to present candidates for office, and Article 171, which recognizes their social, economic and cultural rights.
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 had been almost totally concealed after the 1952 Revolution by the use of ambiguous concepts like “rural worker” or comunero (member of a commune). While the 1994 Constitution does proffer elements for a definition of indigenous peoples, it does guarantee their legal personality (Art. 171, II), which is fundamental for acting legally as a collective entity. Moreover, key issues like 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 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. 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. 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.

16 “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).
17 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.”
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 Nation 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
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 (like 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, even in the absence of specific legislation that would be highly recommendable to integrate community justice into a broader justice framework involving ordinary justice, constitutional primacy has been established in Bolivia, and the 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).

There has been growing international recognition of indigenous cultural and territorial rights across the region, offering a range of options for Boliviav 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. 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 2.1 summarizes 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 in 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 identical 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).

“After waiting for ten years, it is urgent for a law of constitutional development to be passed, but we believe that it is more important that the principle aspects be clearly contemplated in the new Constitution, especially in terms of competence, sentencing, institutionalism and the need for official law to recognize community justice.” (Valcarce, 2004: 65).
to 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 2.1. 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 by 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 their forced transfer or resettlement 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 cases, the 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 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 wellbeing 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

---

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, 2i); “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).
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, and seeking modalities for autonomy that provide for articulation rather than separation within the state, and that involve balancing legitimate differing interests.  

Box 2.2. Principles for the Process of Incorporating Indigenous Rights into the Constitution

**The Constitution is not a panacea.** Constitutions cannot drastically change reality, although they outline a general framework, a number of rules of the game, that help to address discrimination and exclusion, as happened with the indigenous population of Brazil.

**Bolivia needs to develop its own constitutional model.** The Bolivian indigenous peoples are not national minorities but historical peoples that were systematically excluded. The application, of exogenous legal patterns has created susceptibility and skepticism in Bolivia vis-à-vis what is foreign. Nonetheless, lessons from other countries can help to open up options, deepen reflection, and enhance the final proposal.

**To manage expectations, the process should recognize that there are no absolute rights.** Indigenous peoples’ 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. Indigenous rights also involve responsibilities. There will need to be a judicious balance between indigenous and broader human 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.

**The process should seek to balance indigenous peoples’ 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.

**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, not 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 addition, the Constituent Assembly might give consideration to emphasizing a core set of cultural, territorial and self-determination rights.** 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 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

---

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.

25 The current Criminal Procedures Code (1990), for instance, largely resembles other codes in the region.

26 In 1988, the Brazilian Constitution stated (art. 67) that: “The Union will conclude indigenous land demarcation within five years.” What should be done when the government does not abide by the Constitution? The Law promises, without compelling. Establishing intermediate complaining instances (e.g. the Public Defender, ombudsman) might be the first step towards greater legal efficacy.
and non-renewable resources with participation in gains from the extraction of the latter). 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 in this Volume).

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 does not strictly follow classical doctrines on legal hierarchy, but rather specific social and political factors (see Volume II, Chapter 2).

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 promoting transparency and disclosure of information. Capacity building should also include key

---

27 Indigenous justice has still not been studied and systematized sufficiently, however some basic principles can be identified that operates consistently if invisibly in any process of administration of indigenous justices (see Barie 2005). 1. Comprehensiveness: upon analyzing conflicts, not only the facts of the case are examined, but also the environment, the family and personal precedents. 2. Communal and public consideration: The community plays an important role since conflicts are presented and discussed in a general assembly or meeting. The process of forgiveness and redemption happens before everyone’s eyes, which gives it more value and sustainability. 3. Harmony and balance: the re-establishment of harmony, not punishment, is the final goal of the justice. 4. Quick, oral treatment: the process of administering justice generally is oral, not written, although upon reaching an agreement there may be documentary evidence and a public ritual. The process ends up being very quick when compared with any ordinary justice case. 5. Reconciliation. Traditional justice emphasizes reconciliation and reestablishment of relationships wherever possible. 6. Restitution. The delinquent must make up the damage that she or he caused, for example by returning stolen livestock. 7. Dynamism: The fact that indigenous justice is not codified and that it has a strong oral tradition means it is dynamic and adapts to all situations. There are never pending cases for lack of relevant legislation.

28 See Section on Equitable Access to Justice for principles related to traditional indigenous justice.
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.*
3. LAND AND TERRITORY

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 drives 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.

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, 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 (i.e. for their results and not for their inputs).

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 so-called INRA Law. Since 1996, the tenure situation has been clarified on 15.4 million hectares, and work is continuing on a further 31.7 million hectares, out of a total of 107.5 million hectares of land requiring regularization in Bolivia. 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 saneamiento more transparent and accepted.

---

The saneamiento (or land regularization) process also needs to look very carefully at large properties (of over 10,000 hectares) and properties which are in-holdings within claims for indigenous community lands—Tierras Comunitarias de Origin (TCOs)—in order to assure that these properties are fully utilized, truly complete their economic and social function, and thus should be titled. However, 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.

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 in-holdings particularly in the lowlands, disputes over the extent of claims in the lowlands and the highlands, tensions between individualized holdings and the collective title 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. 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 the indigenous territory (such as individual family use rights and common use rights).

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 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 INRA Law. Bolivia thus faces major inter-regional differences between the Altiplano and the lowlands, as well as intra-regional inequity in land distribution. Confronting large landholders with legislation and the potential for

---

30 An additional 124 TCO requests on 16.1 million hectares are in process and a further 50 new requests have been made on an additional 4.5 million hectares in highland areas.
31 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).
32 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
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. 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.

Box 3.1. Alternative Land Access Methods

**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.

**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.

**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 exchange for resolving tax liens or granting planning permissions. This technique is proven in peri-urban areas and could be adapted to rural situations such as lowland Bolivia.

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.

33 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.

34 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).
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. 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.

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 171 of Bolivia’s Constitution. The 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

---

35 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).

36 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.
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 is 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 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 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 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 the more 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 determinations 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).

Bolivia’s constitutional basis for indigenous land recognition is established, and while it could be clarified further, the key areas for strengthening lie beyond the Constitution. While consideration may be given to some of the other constitutional developments in the region, e.g.

---

37 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.
strengthening recognition of indigenous territories as habitats, the key issue at stake is the question of the level of autonomy over natural resources, particularly mineral and forest resources, as well as following up beyond the constitutional level with institutional and legal reforms. 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. Beyond existing concessions, the potential for community-managed forest enterprises by indigenous communities themselves is huge and under-exploited. In highland areas it is important to prioritize territorial administration through the Popular Participation Law above the titling of indigenous communities using the modality of the TCO. What is called for is a reconsideration of 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 (see Chapter 3 of Volume II for a fuller treatment of these issues).
4. DECENTRALIZATION WITH INCLUSION

Bolivia was a highly centralized nation until 1994. The first phase of decentralization in Bolivia started in 1994 when municipalities became full-fledged local governments, with elected authorities, local taxes, central government transfers, and expenditure responsibilities. Before that, there had been few municipalities with weak power. Regions were mostly administrative sub-divisions of the national government, until locally elected councils (indirect suffrage) were introduced in 1995, and with appointed, not elected, executive bodies (prefectos).

Political decentralization has been accompanied by expenditure decentralization but not fiscal decentralization. Bolivia is by now a fairly decentralized country in terms of expenditures. With the passage of the Hydrocarbons Law (HCL) in May 2005, the share of total public expenditures made by sub-national governments rose from an already high 27 percent to 35 percent. On the other hand, service delivery has not improved significantly with decentralization. The quality of services in all sectors is also uneven across regions, and there are significant disparities between urban and rural areas. This is important as inadequate and unequal service delivery, particularly in the case of education and health, is at the heart of social disparities and low social mobility in Bolivia. On the fiscal side, departmental governments are not entitled to collect taxes, and while municipalities have taxing powers—they administer the automobile tax and the property tax—they raise only six percent of total taxes and royalties, which is equivalent to the proportion of taxes raised by municipalities in most other countries in Latin America. Therefore there is an unusually high vertical gap (between revenues and expenditures) for subnational governments in Bolivia, which in turn results in central government transfers representing about 75 percent of the resources of municipalities and nearly all prefecture resources.

Two key recent developments, the Hydrocarbons Law and direct election of prefects, shape—and constrain—the future path of decentralization. The election of prefectos for the first time in December 2005 has given them a mandate from the people instead of from the head of state, leading to de facto autonomy of prefectures in terms of political decentralization. Moreover, roughly two-thirds of the additional tax resources to be collected from the HCL, (estimated to total US$240 million in year 2006) have been allocated to the departments and

---

40 These figures compare with Argentina’s provinces, which execute 45 percent of total public spending, and Brazil’s states and municipalities, which execute 40 percent. By contrast, subnational expenditures are five percent of the total in most Central American countries. The share of municipalities (18 percent before the HCL, and 22 percent after the HCL) is greater than that of prefectures (nine percent before the HCL; 13 percent after the HCL), and the former have a greater degree of control over expenditures, as earmarking means Prefectures can freely allocate only eight percent of their resources.
42 These values were calculated prior to the adoption of Decree No. 28701 in May, 2006, which nationalized hydrocarbons revenues in Bolivia.
municipalities without them assuming new responsibilities. For prefectures, this represents an average increase of more than 50 percent in the level of transfers. These decisions limit the country’s options to the extent that resources that might otherwise have been used to create incentives for institutional strengthening or better service delivery have already been assigned to subnational governments, and indeed in a highly inequitable way. They provide US$16 per capita to La Paz (which has one of the largest incidences of poverty) while Pando (among the least poor) receives US$407 (see Table 4.1 below). As a consequence, the transfer system will aggravate rather than alleviate the already large interregional disparities.

Table 4.1. Increase in Disparities in Interregional Transfers Produced by the Hydrocarbons Law of 2005 (USD/ per capita)

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Chuquisaca</td>
<td>20.7</td>
<td>48.5</td>
<td>Tarija</td>
<td>199.2</td>
<td>246.0</td>
</tr>
<tr>
<td>La Paz</td>
<td>9.5</td>
<td>15.8</td>
<td>Santa Cruz</td>
<td>18.4</td>
<td>25.7</td>
</tr>
<tr>
<td>Cochabamba</td>
<td>20.1</td>
<td>30.3</td>
<td>Beni</td>
<td>31.0</td>
<td>71.8</td>
</tr>
<tr>
<td>Oruro</td>
<td>22.2</td>
<td>60.0</td>
<td>Pando</td>
<td>125.5</td>
<td>407.2</td>
</tr>
<tr>
<td>Potosí</td>
<td>15.0</td>
<td>35.8</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

*Note: Values for 2005 are based on the annual budget. Values for 2006 are estimated. Source: World Bank (2006b).*

The current phase of decentralization faces three serious challenges that will make improvements more conflictive. First, as noted, starting decentralization with the political election of regional authorities and the transfer of new resources without any responsibilities will make it extremely difficult to ensure an efficient use of Bolivia’s limited public resources. Second, responsibilities among government levels are still disjointed and fragmented. Third, the intergovernmental fiscal framework does not distribute resources equitably or encourage proper fiscal responsibility among sub-national governments. Subnational debt is managed with little transparency and oversight, and there are no rules or enforcement mechanisms in place to encourage responsible management of finances.

Hydrocarbons revenues play a critical role in Bolivia’s decentralization process. Oil and gas rents are potentially very large but they are also highly volatile, and there are sound reasons to believe that the rents should “belong” to the central government rather than regional governments. The first reason is equity. Oil and gas resources are typically concentrated in given areas of a country’s territory without any relation to population and levels of development. Bolivia is no exception in this regard. Allocating the hydrocarbon rent to the producing regions will therefore result in potentially enormous differences between regions or departments in unearned per capita resources. The second reason is volatility. Since hydrocarbon rents are very unstable over time, recipient sub-national governments would have very unstable resources. Such instability is also a problem for the central government, but is much more manageable because the central government has other, more stable, sources of revenues. In this context, even

---

43 While Decree No. 28421 of October 2005 earmarks the resources for certain sectors and provides for the transfer of additional responsibilities to municipalities and prefectures in the areas of rural development, employment creation, and public health, it is not yet clear whether the central government will stop providing such services, and/or in which jurisdictions such activities were carried out in practice. These two factors largely determine whether or not the measures foreseen in Decree No. 28421 contribute, at least at the margin, to fiscal neutrality.

44 These transfers might increase as a result of decisions in May 2006 regarding the nationalization of hydrocarbon resources.

45 See Catena, Marcelo; Navajas, Fernando 2006: Oil & Debt Windfalls and the Fiscal Dynamics in the Highlands: Bolivia in the roller-coaster, FIEL, IDB, processed.

 earmarking oil rents for sub-national governments is inadvisable, since it is the most volatile source of government revenue. Municipalities and departments would be much better served by resource flows that are more stable, so that receiving a fixed share of total revenue including hydrocarbons revenues (perhaps with small grants of hydrocarbons rents producing regions) would be more advisable than receiving a large share of a volatile revenue source. However this more prudent path has not been taken to date in Bolivia.

Decentralization implies decisions and choices in at least five areas: governance rules, expenditures assignments, taxation, transfers, and borrowing.47

Governance rules – Considering decentralization and autonomy, a first set of decisions relates to the structure and type of authority at local levels. For example, in many Latin American countries, elected councils decide the salaries of mayors and councilmen. While this is done in the name of respectable principles, in practice it leads to excesses that undermine the credibility of decentralized governments. The central government could introduce norms governing such salaries. These norms could be (as is the case in France for instance) a function of the size of the decentralized government.

Expenditure assignments – Certain services should clearly be allocated to the central government (defense, foreign affairs, justice, research) or to municipal governments (street cleaning, street lighting, sewerage). But for many other services, options are open. This is in particular the case for education, health, transportation, and welfare. A clear division of labor between the three levels of government is desirable, but it will never be —and should not be— absolute.

Taxation – Decisions about the allocation of responsibilities cannot be separated from decisions about the allocation of taxes and about a transfer system. It is very important that municipalities and departments be responsible for taxes. This means they must have access to tax bases, and decide (vote) tax rates.48 It is the right to increase or decrease the tax rate that defines the ownership of a tax, and that promotes accountability to citizens.

Transfers – One reason for existence of transfers from central government to municipalities and departments is that it is impossible to decentralize as many taxes as would be required to finance desirable decentralized expenditure. Another reason is to correct for differences between municipalities and between departments. All transfers correct the vertical gap between revenues and expenditures, but only well-designed transfers can partly correct the horizontal gaps between richer and poorer areas. A first basic distinction is between (i) specific transfers for a particular purpose or project, and (ii) general transfers (called block grants) that come without strings attached and can be used by sub-national governments as they see fit.

Borrowing – Sub-national governments are generally eager to borrow, however the amount that can be borrowed is limited by the future flow of taxes and transfers. Constraints should be placed on local and regional borrowing and can take various forms, such as: a maximum debt to own resources ratio, a maximum debt service to own resource ratio, or prior central government authorization for additional borrowing.

47 See Volume II, Chapter 4 for more details and international experiences in these areas, as well as in relation to the domains described below.
The choices in these five areas have consequences in at least four domains, namely political participation, interregional equity, public services efficiency and equity, and macro-economic management.

**Political participation** – Municipal and regional politicians constitute a pool from which national politicians might emerge, and one can argue that the larger this pool is, the better it is for a democratic nation. Because sub-national elections are usually more open than national elections, it is easier for members of minorities and for women to access politics at this level than at the national level. For example, in most countries the share of women is higher in local and regional councils than in national assemblies.

**Interregional equity** – Decentralization is often seen as a way of reducing disparities automatically between municipalities or between departments. Unfortunately, in practice decentralization often contributes to increased rather than reduced disparities. Reducing disparities can only be achieved if a transfer system is designed to assign more resources consistently (on a per capita basis) to the poorer municipalities and departments.

**Public services efficiency and equity** – Decentralization should contribute to improve the efficiency of public service delivery. Because decisions are taken closer to users and beneficiaries, it is expected that the decisionmakers will be more accountable to their electors. Decentralization by itself however, does not guarantee public service equity, due to two factors: (i) in terms of inter-regional equity, richer regions might benefit more from tax decentralization or from a poorly designed transfer system that distributes resources inequitably, and (ii) intra-regional differences might not decrease due to elite capture of local governments, lack of transparency, or poor investment decisions.

**Macroeconomic management** – Decentralization often results in higher expenditures, as the cases of Colombia, Ecuador, Argentina and Brazil have demonstrated. This is due to transfers to subnational governments and the granting of new revenue bases for subnational taxation without dismantling central institutions at the same time, and reassigning expenditure responsibilities to the subnational levels.

**Decentralization cannot be seen as a substitute for an explicit inclusion policy.** Nonetheless, the increase in political participation made possible by decentralization will benefit members of target groups and influence their decisions. Similarly, a more efficient and above all a more egalitarian supply of public services will benefit minorities (who happen to be particularly important in the poorer departments or municipalities).

**The Constituent Assembly offers an important opportunity to lay the foundations on which decentralization policies will be developed and implemented in future.** The main difficulty is that a Constitution is fixed and written for the very long term, whereas decentralization arrangements need to adjust over time. Thus a well-written Constitution usefully justifies, suggests and facilitates good policies, but does not prescribe them in detail. Some basic, robust principles dealing with processes rather than specific policies are needed. Table 4.2 provides some examples of options with regard to principles based on international experience that could be considered in crafting a new Constitution for Bolivia.
### Table 4.2. Constitutional Principles and Options for Consideration

<table>
<thead>
<tr>
<th>Area</th>
<th>GOVERNANCE RULES</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sovereignty</td>
<td>The Constitution might state that both levels of governments are sovereign in matters of their competence. The list of their responsibilities is better left to secondary legislation, as it will change over time.</td>
</tr>
<tr>
<td>Elections</td>
<td>Rules governing the election of municipal councils, departmental councils, mayors and prefectos, should be laid down in broad terms, with a view to avoid or minimize conflicts and generate sufficient stability. The length of terms might be specified broadly: “from 3 to 6 years”, to be decided by specific subsequent laws.</td>
</tr>
<tr>
<td>Creation, suppression, separation or mergers of subnational governments</td>
<td>Rules relative to the creation, suppression, separation or mergers of municipalities should usefully be laid down in broad terms. In many cases, cooperation may be an alternative to mergers, and the Constitution could make explicit reference to the possibility of creating <em>mancomunidades</em> or other groupings of municipalities.</td>
</tr>
<tr>
<td>National common rules in accounting, reporting, monitoring, compensation</td>
<td>The existence of strong and independent sub-national governments is not inconsistent with the imposition of national common rules in accounting, reporting, monitoring, and compensation policies. This should be stated explicitly in the Constitution, even though these rules would ideally be left to subsequent laws. Specific institutions, such as Courts of Accounts could also be referred to in the Constitution.</td>
</tr>
<tr>
<td>EXPENDITURE ASSIGNMENT</td>
<td></td>
</tr>
<tr>
<td>Defining responsibilities</td>
<td>The Constitution might usefully state that the three levels of government contribute to the provision of public services, and/or that municipalities are mostly responsible for services of local interest, departments for services of regional interest and the centre for services or national interest.</td>
</tr>
<tr>
<td>Principle of Subsidiarity</td>
<td>The Constitution could make reference to the principle of subsidiarity, according to which services are provided at the lowest possible level, except when there are good reasons to provide them at a higher level.</td>
</tr>
<tr>
<td>Horizontal and Vertical Cooperation</td>
<td>The Constitution should probably allow for horizontal and vertical cooperation in services provision, where ‘horizontal’ refers to cooperation between municipalities or departments and ‘vertical’ refers to cooperation between different levels of governments.</td>
</tr>
<tr>
<td>TAXATION</td>
<td></td>
</tr>
<tr>
<td>Tax bases</td>
<td>Inasmuch as possible, departments and municipalities should have access to important tax bases. The tax bases allocated to departments and municipalities should be as immobile and as evenly distributed as possible.</td>
</tr>
<tr>
<td>Tax sharing</td>
<td>The Constitution should probably not rule out the sharing of tax bases.</td>
</tr>
<tr>
<td>Tax rates</td>
<td>The departments and municipalities should be free to decide the rate of their taxes.</td>
</tr>
<tr>
<td>Tax administration</td>
<td>Sub-national governments should be free to delegate tax base assessment or tax collection to other bodies</td>
</tr>
<tr>
<td>Coordination</td>
<td>The Constitution could establish a coordination committee with representatives from the 3 governmental levels.</td>
</tr>
<tr>
<td>TRANSFERS</td>
<td></td>
</tr>
<tr>
<td>Entitlements</td>
<td>A basic principle is that departments and municipalities are entitled to substantial and predictable transfers.</td>
</tr>
<tr>
<td>Types of transfers</td>
<td>A second principle might be that the system shall consist of both global and specific grants.</td>
</tr>
<tr>
<td>The distributing pool</td>
<td>A third is that the total amount of transfers, in particular global transfers (unconditional grants), to be allocated is determined as a percentage of certain national taxes and resources, although it is highly advisable to leave that percentage to be specified in subsequent legislation.</td>
</tr>
<tr>
<td>Allocation Formula</td>
<td>A fourth principle relates to allocation formula. This can be different for departments and for municipalities.</td>
</tr>
</tbody>
</table>
**Note:** The Constitution should probably not include mathematical formulae, but it should indicate the objectives and possibly the criteria of such formulae. It should in particular explicitly say that formulae must be equalizing, that is that poorer entities should, all other things equal, receive more on a per capita basis. It should probably be explicitly stated that this important criteria applies also to transfers based on hydrocarbon proceeds. This fundamental criterion to promote spatial equity in Bolivia need not be the only one stated in the Constitution.

<table>
<thead>
<tr>
<th>Coordination</th>
<th>The Constitution could create a Committee entrusted to examine regularly the transfer situation, to undertake analysis and to make recommendations.</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>BORROWING</strong></td>
<td></td>
</tr>
<tr>
<td>Right to borrow</td>
<td>The key principle is that subnational governments would have the right to borrow, but that central government would have the right to control subnational government borrowing.</td>
</tr>
<tr>
<td>Fiscal responsibility</td>
<td>Subnational governments are entitled to borrow only as much as they can repay.</td>
</tr>
<tr>
<td><strong>ASYMMETRY</strong></td>
<td></td>
</tr>
<tr>
<td>Differential Treatment</td>
<td>The Constitution should probably not enter into the detail of what differential treatment should consist of, but could include an article enunciating the legitimacy of differential treatment of regions and municipalities.</td>
</tr>
</tbody>
</table>

**The ratification of a new Constitution will imply the need for follow-up actions in the short, medium and long term.** The initial phase would probably need to be directed at ensuring adequate implementation capacities, including consensus building mechanisms to facilitate political dialogue and preempt potential conflicts. Additional elements might usefully include a transparent financial management system that provides access to budget information to authorities at different levels of government as well as to citizens; human resource management tools to make the public wage bill transparent and to make staff recruitment and hiring transparent and competitive; transparent mechanisms for public procurement; and mechanisms to monitor and evaluate the quality of public services. The other priority would be to improve resource distribution through a restructuring of the transfer system. It is essential that hydrocarbons-based transfers be allocated to department and municipalities in a fair and redistributive fashion. In addition some basic fiscal responsibility rules, notably limits on new departmental debt, would need to be put in place. In the medium term, policies might focus on separating responsibilities among the national, departmental, and municipal levels to promote more accountability in each of the sectors, and on revising the funding formula for current services to provide incentives for improving quality and reducing inequalities. In the longer term, additional responsibilities and resources might be transferred to subnational levels, including expanded tax-raising authority, and stronger inter-governmental coordination might be promoted.

*A carefully designed decentralization policy can contribute to increased social inclusion.* An ideal outcome of implementing policy options such as those identified above would be basic equity (or progressiveness) in resource distribution, and increased social accountability at the level of departmental governments to their citizens. To achieve these goals requires a clear strategy of sequenced measures that do not place the country’s finances at risk or impede the capacity of different levels of government to deliver public services. These could usefully begin with a Constitution that sets a clear and simple framework designed to facilitate orderly decentralization, and be followed by secondary, specific legislation that take into consideration the progress made, the changing aspirations of the citizenry, and previously unforeseen opportunities to achieve decentralization with inclusion.
5. EQUITABLE ACCESS TO JUSTICE

In a democratic system, the enforceability of rights and freedoms requires a legal and institutional order that ensures the prevalence of the “Rule of Law”. This requires a country’s norms and rules to be public, known and enforceable through competent, independent and transparent government bodies which guarantee and promote civil and political rights and allow free and equal participation of all citizens. The concept of Rule of Law is based on three fundamental principles: (1) the limitation of power, effected via the constitutional distribution of powers; (2) the principle of legality, by which government bodies are subject to the law, and (3) the declaration of fundamental rights. The ultimate foundation of constitutional rights is the possibility to turn to the judicial bodies in order for these bodies to ensure that such rights will be fulfilled.

The Constitution provides the basis of the Rule of Law. The fundamental organization of the state as well as its institutional and legal structure, are expressed in the Fundamental Law of the State or Constitution. Modern-day constitutions share some common political-philosophical principles which have inspired their contents, such as the sovereignty of the people, the separation of state powers or the ‘Rule of Law’, the preeminence of human rights, and democratic participation in public affairs so as to guaranteeing the enforceability of human rights and the rule of law.

In order to protect human rights, the State must provide the appropriate mechanisms and resources for everyone to have access to justice so as to request legal remedies in case of disputes. The rule of law therefore necessarily places a major responsibility on the judicial system to reach all of the population and to offer an accessible, agile and impartial service.

Bolivia has had nineteen Constitutions, although many of them were only amendments to previous texts. The constitutional evolution is the result of the adjustment to historical and political circumstances characterized by a succession of military coups affecting democratic institutions. Over time, there has been a progressive inclusion of socioeconomic issues and human rights in the Constitutions. During the first Bolivian constitutional and political stage, the 1880 Constitution stands out for its clarity and structure, and its persistence in time. The 1938 Constitution referred to social rights for the first time, acknowledging and protecting labor and related benefits as full rights which cannot be waived by workers and employees. The present Constitution has added the recognition of indigenous rights within a multi-ethnic, pluricultural state and has acknowledged indigenous common law not only as a source of law but as an inherent right of the state, and has thereby also admitted for the first time the existence of organs with rule-of-law powers other than the three traditional branches (legislative, executive and judicial).


The structure of the Judicial Branch and its organization was also strengthened after 1994, in an effort to make judicial services more efficient and independent. The changes included the creation of the Constitutional Tribunal to resolve proceedings on constitutional rights and guarantees, the Ombudsman to receive and follow up on citizens’ complaints, the Judiciary Council (Consejo de la Judicatura) to separate administrative from judicial functions and to heighten disciplinary controls, and the redistribution of land-related administrative and judicial functions to national and subnational Agrarian Tribunals. In addition, the principle of judicial independence was expressly stated in the Constitution, the sector was granted economic and administrative autonomy and security of tenure for magistrates and judges, as well as modified procedures for appointing Supreme Court justices. Finally, changes were made to the criminal investigation and penal charges system through the incorporation of a system for accusations and oral arguments, so as to speed up processes.\textsuperscript{51}

In spite of the reforms and modifications implemented, and some successes, Bolivians continue to face obstacles in securing accessible, agile and impartial justice. The Constitutional Tribunal has been praised for its defense of constitutional rights and the Ombudsman gained important credibility, especially as a neutral mediator, in its first few years, whereas the Judicial Council has not gained public confidence due to bureaucracy and lack of transparency, and there has been at least initial resistance in the judicial branch to switching to the new penal procedures. The challenges are reflected in inadequate services, insufficient economic resources, delays in judicial proceedings, and a perceived lack of independence and transparency of the justice sector (see Volume II, Chapter 5 on Access to Justice):

- The average number of inhabitants per court in Bolivia is 12,405, which implies one of the lowest levels of coverage in the region.\textsuperscript{52}
- The share of municipalities without courts ranges from 27 percent in the department of Tarija to 68 percent in La Paz and 80 percent in Pando.
- Processes are cumbersome: Bolivia still has the highest number of process steps (47) and days of delay (591) in enforcing a loan in the Andean region.
- Both the justice system and the police have inadequate financing.
- The regional distribution of police forces fails to take into account the crime index. For example, the department of Santa Cruz has the highest crime index but the lowest number of police officers per inhabitant.
- Delays in justice mean that Bolivia’s prisons are overcrowded and a large share of Bolivia’s prisoners are detained without sentence under “preventive imprisonment.”\textsuperscript{53}
- The judicial branch is the weakest of the three main state powers, and is regarded as unable to resist pressure from the executive and legislative branches, and unable to condemn members of the political and economic elite for corruption;\textsuperscript{54} indeed, political party interests have often delayed the appointment of justices.
- Over 4,500 charges were pressed against judges and administrative staff during 1998-2001, of which only three percent resulted in any penalties.

The inadequate justice and security services provided by the state have led to many instances of Bolivians taking justice into their own hands. Taking justice into their own hands

\textsuperscript{52} Ibid.  
\textsuperscript{53} The Center for Justice Studies of the Americas, CEJA, reports that as of 2003, the penitentiary system had a capacity of 2,895 places but that the detainees population was 6,547.  
\textsuperscript{54} As indicated in Transparency International’s Global Report on Corruption (see [www.transparency.org](http://www.transparency.org)).
highlights the high potential for conflict that arises in the absence of adequate investment in ensuring swift and equitable justice. In this regard, it is worth emphasizing that the lynchings do not reflect community justice, but rather, quite the contrary, they reflect an absence of justice in general.

**Figure 5.1. Perception of Legal Compliance (2005)**

Percepción en el Cumplimiento de las Leyes (2005)

<table>
<thead>
<tr>
<th>Country</th>
<th>Score</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ecuador</td>
<td>6.9</td>
</tr>
<tr>
<td>Paraguay</td>
<td>6.1</td>
</tr>
<tr>
<td>Peru</td>
<td>5.1</td>
</tr>
<tr>
<td>Brazil</td>
<td>4.6</td>
</tr>
<tr>
<td>Bolivia</td>
<td>4.5</td>
</tr>
<tr>
<td>Venezuela</td>
<td>4.3</td>
</tr>
<tr>
<td>Chile</td>
<td>4.1</td>
</tr>
<tr>
<td>Colombia</td>
<td>3.9</td>
</tr>
<tr>
<td>Uruguay</td>
<td>3.3</td>
</tr>
<tr>
<td>Americas Latin</td>
<td>5.1</td>
</tr>
</tbody>
</table>

Source: Latinobarometro (2005)

**Figure 5.2. Survey Question: Do Courts act Transparently and Impartially?**

Encuesta de Percepción ¿Actúan los tribunales limpia e imparcialmente?

<table>
<thead>
<tr>
<th>Country</th>
<th>Score</th>
</tr>
</thead>
<tbody>
<tr>
<td>Peru</td>
<td>1.6</td>
</tr>
<tr>
<td>Brazil</td>
<td>2.0</td>
</tr>
<tr>
<td>Ecuador</td>
<td>2.6</td>
</tr>
<tr>
<td>Mexico</td>
<td>3.1</td>
</tr>
<tr>
<td>Colombia</td>
<td>3.5</td>
</tr>
<tr>
<td>Brazil</td>
<td>3.6</td>
</tr>
<tr>
<td>Uruguay</td>
<td>3.8</td>
</tr>
<tr>
<td>Chile</td>
<td>4.8</td>
</tr>
<tr>
<td>Costa Rica</td>
<td>5.2</td>
</tr>
</tbody>
</table>

Source: Justicia Viva (2001)

**The broader access challenges are aggravated by discrimination.** Social exclusion can arise due to discrimination on the basis of gender, ethnicity, race, geographic origin, disability, age, religion, sexual preferences, among other factors. For example, in the case of indigenous people, access to justice is complicated at an individual level by remoteness from municipal courts, with time and transport costs also representing a proportionally greater part of their income. Moreover, higher illiteracy rates and less proficiency in Spanish create barriers to access for those whose first language is a native language. These challenges drive home the importance of consolidating common law justice within the rule of law. The difficulties at the individual level are compounded by inadequate support for the legal rights of native peoples at the collective level, for example in relation to consultations on exploitation of natural resources in their lands, or legal protection against invasions of their lands by loggers. Consequently, the lack of access to justice triggers a series of social conflicts.

**Women in Bolivia suffer significant discrimination.** For example, women represent 50.2 percent of the Bolivian population, but their presence in decision-making realms remains extremely low, even though an affirmative action Law on Quotas has contributed to increases in political representation since the early 1990s. Bolivian Law 1674 (1995) against family or domestic violence, has been virtually useless: since its approval, only five attackers have been put in jail, in spite of statistics showing that as many as seven out of ten women in the country are beaten or sexually abused. One example of highly gender-insensitive legislation that can be cited is the regulation of sexual violence in Bolivia’s Penal Code. Article 317 establishes that the attacker will not be penalized if he decides to marry the victim. The idea underlying the norm is evident, in that sexual rape is considered an offence to the victim’s “honor” but not to her integrity, as stipulated by international standards regarding this issue.

55 See [http://www.cladem.org](http://www.cladem.org). Bolivia’s National Statistics Institute (Instituto Nacional de Estadística) indicates that 53 percent of women surveyed for the National Demographic and Health Survey of 2003 reported suffering physical or sexual violence at the hands of their partner. The ratio rises to 64 percent when emotional violence is included.
International experience offers a series of lessons in legal and judicial reforms to strengthen access to judicial services. A notable example of reforms to administrative justice is Singapore (1988-1993), which reduced the number of cases in process in the Supreme Court by more than 90 percent in less than two years. Similarly, the waiting time as well as the admission of cases by judges was reduced from five years to four months. Singapore reformed its judicial system progressively, starting with administrative functions and then moving to case management and appeals, training of judges and tribunals personnel, modifying the internal structure of courts of justice by creating panels of two judges to hear appeals, introducing night courts and restructuring administration of tribunals. In Germany, the “Stuttgart Model” introduced a simplified civil process, whose main objective was to reduce the number and duration of the several audiences and steps involved in the procedure to simply two stages: instruction and resolution. The result was an 80 percent reduction in the share of share of cases lasting over one year (from 33 percent to 7 percent). Ecuador’s reform of the judicial expedition process and resulted in the separation of judicial activities from merely administrative ones. This separation, together with computerization and reconstruction of the courts to insulate judges, allowed judges to concentrate their time on judging, which sharply reduced the backlog of cases.

International experiences related to justice and social inclusion also offer valuable lessons for consideration. The constitutional acknowledgement of community justice provides a basis for indigenous common law justice mechanisms that help to overcome geographical barriers, imply low economic costs and use the locally predominant language. Most Andean constitutional language is similar in this area, although where Colombia, Peru and Ecuador refer to “authorities,” the Bolivian and Venezuela Constitutions refer to “natural authorities” and “legitimate authorities,” respectively, thereby guaranteeing more explicitly that such authorities are appointed with community support. Another important issue is related to the legal boundaries of the traditional justice applied by the community. Thus, while the Peruvian Constitution establishes the fundamental rights of a person as the limit, other Andean countries regulate this issue more restrictively—Venezuela even establishes “public order” as the limit. In this regard, ensuring coordination between the special jurisdiction and the ordinary system of justice is important, although this follow-up legislation is rare. For example, in Venezuela an Organic Law of Indigenous Peoples and Communities, expected to regulate the constitutional norms in this matter, has not yet been approved, while similar efforts were vetoed or found unconstitutional in Ecuador. The Colombian case is interesting, since the jurisprudence of the Colombian Constitutional Court has recognized but set limits on traditional justice, thereby serving in practice as a substitute for this coordination law. In any case, such a law should not be understood as regulating traditional justice, nor should the validity of constitutionally recognized traditional jurisdiction depend on the issuance of such a law.

In the case of gender, the Vienna Declaration corresponding to the 1993 Second Conference of Human Rights provides the basic formulation of women’s rights for the international community. The Declaration affirms that: “human rights of women and girls are an inalienable, integral and indivisible part of the universal human rights. Full participation of women, in equal conditions, in politics, civil, economic, social and cultural aspects at national,
regional and international levels and the eradication of all forms of discrimination based on sex are priority objectives of the international community. A review of constitutional texts for countries in Latin America suggests that all include the principle of non-discrimination and equality under the law for all their citizens. Some constitutions include an effective recognition of a gender perspective, for example Ecuador’s Constitution (of 1998, Art. 67) requires the state to “promote gender equality” in education, while the Costa Rican Constitution (of 1949, Art. 95) prohibits gender discrimination in the nomination of candidates for political office. While the Bolivian Constitution also recognizes the importance of affirmative action in relation to public participation, it would be convenient to reinforce this general disposition through more specific measures (see Volume II, Chapter 5 for examples).

In terms of the use of language, most Constitutions in the region use neutral language (e.g. “all”, “nobody”), which reinforces the invisibility of differences between men and women. It must be noted the 1999 Constitution of Venezuela is a good example of inclusion as it specifically refers to Venezuelans and to public office holders, including the President, in the masculine and feminine tense. Finally, in terms of economic, social and cultural rights, the Colombian Constitution provides an interesting example since it recognizes equality among women and men in relation to rights and opportunities in the family environment, and establishes that the state will especially support woman head of household.

A range of constitutional principles emerge from Bolivian and international experience for consideration in the Constituent Assembly. These principles can be divided into four key areas: strengthening of the judicial system and the rule of law so as to ensure improved access to ordinary justice for all citizens; recognition of traditional community justice in the Constitution; strengthening of gender equity; and consolidation of human rights via principles of equality and non-discrimination. The key principles are summarized in Table 5.1, and addressed in greater detail in Volume II, Chapter 5 on Access to Justice.

Enhancing the reliability and efficiency of the ordinary justice system is a clear priority beyond the Constitutional Assembly in order to improve social inclusion via better access to justice. This includes reviewing the allocation of economic and logistic resources among justice sector operators on the basis of results-driven objectives (for example, reassigning administrative staff to the areas with the greatest back-log based on monitorable indicators), or police on the basis of crime prevalence. The new Penal Procedure Code and the introduction of the accusatory system also warrant full integration into the Penal Code by modifying the latter. The role for civil society oversight and for linkages between the justice system and the Integral Citizen Security National Plan can also be expanded.

In order to ensure the integration of ancestral justice within the framework of the Rule of Law, a favored option would be a coordination law on this matter. A law on traditional community justice must be oriented towards the resolution of possible conflicts arising between special justice and ordinary justice, and be broadly consulted with indigenous communities. A consequence of the passage of such legislation would be an immediate need for training of operators in charge of delivering community justice, and judges, magistrates and members of the legal profession on the application of special justice.

Table 5.1. Constitutional Principles Related To Access to Justice, for Consideration by the Constituent Assembly

### A. Principles for the strengthening of the judicial system and Rule of Law

- Establishment of selection, appointment, and promotion processes for judges and magistrates conducted through public, transparent processes, via a merit-based system.
- Availability of control mechanisms and systems for judges and magistrates, as well as for administrative staff, so as to reduce perceptions of corruption in the judiciary among Bolivian society.
- Simplification of judicial mechanisms and processes in order to accelerate cases and the consolidation of an effective and fast system of executing sentences.

### B. Principles for access to justice and social inclusion through traditional community justice

- Inclusion of the commitments ratified in ILO Convention 169 in relation to traditional justice at the constitutional level
- Recognition of special justice at the constitutional level, with revocation only by another constitutional norm and not by secondary or tertiary legislation or other disposition of a lower legal hierarchy.
- Reference to the limitations in the applicability of special justice in the Constitution and establishment of the need to issue a subsequent coordination law – in accordance with the ILO 169 Agreement.
- Acknowledgement of the flexibility of indigenous justice in the norms governing indigenous law at the constitutional level.

### C. Principles for the inclusion of gender issues in the Constitution

- Enhanced recognition of gender equality at the constitutional level.
- The use of equal language.
- Prohibition of domestic violence: an important principle for consideration by the Assembly is that every woman has a right to a life free of violence, and that there is a need for the state to take the necessary measures to prevent, eliminate and penalize gender violence.
- Broadening of spaces for gender equality, from the exercise of political, social, economic and cultural rights to include sexual and reproductive rights as fundamental rights.

### D. Principles of equality and of non-discrimination

- As broad a constitutional protection against discrimination as possible, by considering each human being as an equal and broadening the protections established particularly in Article 6, including for such reasons as sexual orientation, ethnic origin, disability, gender, age, religion, creed, among others.
- Inclusion of a definition of discrimination based on international treaties in the matter ratified by the State.

---

In relation to gender perspectives, the key challenge is not so much the approval of new legislation as the enforcement of existing legislation. It is important that the State be committed to the enforcement of the existent legal framework, even more than the creation of new regulations. Another area of work is related to training of justice sector operators as well as members of the police force, both on laws and regulations and on gender analysis and the

---

63 Montaño, Julieta: Ibid.
eradication of prejudice and stereotypes which hamper the effectiveness of the legislation. A further important component of a longer term program is adequate monitoring of state institutions that deal on a daily basis with cases of violence against women, including for such purposes, police offices, juries and prosecutors offices, *inter alia*. In the same vein, capacity building is required among persons who administer special justice in indigenous communities to raise awareness of gender rights, possibly in collaboration with indigenous and farmer women’s organizations. Attention to gender equity and non-discrimination should, finally, be applied transversally in economic, political, social and other spheres, and particularly to ensure equal opportunities for indigenous and peasant women, who are among the most vulnerable women in the population.
6. CLOSING CONSIDERATIONS

This Country Social Analysis has attempted to provide an understanding of selected key challenges facing Bolivia, looking to their roots in the history and institutional structure of the country to derive a series of findings for consideration. The CSA, in this Overview, began with a quick review of the lay of the land, the structure and location of its population, and some of the defining moments and trends in Bolivia’s history that shaped the country, and that are at the roots of the present challenges that Bolivia faces. The CSA found enormous social diversity in terms of access to assets—whether physical, financial, or social—and access to opportunities, especially human capital development. This diversity manifests itself across class, ethnic, gender, regional (western/eastern) and geographic (rural/urban) divides. The CSA briefly outlined some of the structures of governance and power that explain the persistence of extreme inequality over time, and the consequent conflict and lack of social cohesion, and highlighted recent developments towards refounding the republic on the basis of a new social contract via a Constituent Assembly.

Thereafter the CSA turned to the four main themes of the analysis, which are likely to arise in the deliberations of the Constituent Assembly, namely: indigenous rights; land and territory; decentralization, including the assignment of hydrocarbons royalties; and access to justice. At the core of these issues are basic citizenship rights and human rights, access to key assets, the distribution of the nation’s wealth, and the structure of the state. For each of the four key themes, the CSA Overview offered a diagnosis of the Bolivian context and examples of relevant international experience, with a view to distilling some key principles that might be considered by the Constituent Assembly, as well as options for a sustainable program to strengthen social inclusion and cohesion in these areas beyond the Constituent Assembly. All four themes—as well as the cultural and historical context and the socioeconomic realities of Bolivia—are explored in much greater detail in Volume II of the CSA. The Country Social Analysis leads to a range of important findings and concluding considerations:

The social exclusion and absence of social cohesion observed in present-day Bolivia have their roots in Bolivia’s colonial history, and while the country’s institutional transformation has been substantial over time, it is still incomplete. Bolivia has made significant progress over time in increasing equality of opportunity in the political transition from the colonial “Two Republics” system to the “multi-ethnic, pluricultural” republic described in the 1994 Constitution. Many of the shocks to the exclusionary system established during the colonial era—closed as it was—came not from inside but from outside factors. These shocks to the system (via, for example, changing trade patterns, wars, and global ideas and ideologies), whittled away institutions that had long promoted social exclusion, with a more defined break taking place in the 1952 revolution. Nonetheless, the transformation is incomplete, and the consequences of those exclusionary institutions are highly visible today.

The socioeconomic data presented in this CSA and in countless other studies of Bolivia document highly unequal outcomes that derive from highly unequal opportunities, in terms of access to assets (including via public services) and to human capital development. Many of Bolivia’s poorest were not registered at birth and do not have the basic identity documents to participate as full citizens in society. Education quality and quantity are unevenly distributed, so that the system produces plentiful unskilled labor and limited skilled labor. Returns to education
The colonial era also gave rise to cultural perspectives in relation to the state that are still prevalent today and that complicate social inclusion and cohesion. Throughout Bolivia’s history, a consistent thread has been the notion that the state is the great provider, whether it is subsidies for business elites or jobs for the poor. The historical rent-seeking by Bolivian mining and landowner elites set an example that has been widely—although not universally—followed to this day in the country’s business community and social movements. Indeed, the state’s key historic role in distributing rents paternalistically, and at times venally, (first from silver, later from tin, now from oil and gas), has meant that interaction with the state is critical, not just as individual citizens but as corporate groups (e.g. civic committees, trade associations, workers’ unions or peasant organisations), in order to capture rents and defend interests against other groups. Political interaction with the state structure is often seen as at least as important as competitiveness in the marketplace to achieve economic gains. This sets the stage for pervasive social conflicts (e.g. over access to assets like land and hydrocarbons rents) unless delicate, temporary equilibria can be achieved through “pactos” or agreements. Clearly, democratic institutions have been put in place in a context in which the foundations of civic education, informed votes based on issues rather than personalities, and recognition of citizen responsibilities (e.g. tax-paying) in addition to citizen rights, are not deeply rooted. There is in fact a heritage of claims being made against the state through uprisings in the face of repression, and through claims for particular interests (rent-seeking) rather than actions designed to promote the general good—and in this context, justice and the guarantee of basic rights are not equally available to all. These legacies make it that much harder to achieve social inclusion and cohesion.

The challenge is to forge a truly democratic state characterized by good governance that promotes more equal opportunities and therefore greater social mobility for its people. Pressures for change and social mobility have not come without social conflict, yet such change is essential to ensure the welfare of all Bolivians. The current generation of Bolivians is earning the same real income per person as their grandparents did in the 1950s. Progress in reducing

---

**Notes:**

64 More details can be found in Hall and Patrinos (2006).

65 The country’s topography and distribution of natural resources could reinforce inter-regional inequality. The most fertile lands are in the humid valleys and in parts of the eastern lowlands, as are the country’s natural reserves of oil and gas. The Altiplano is increasingly characterized by soil exhaustion, while silver and tin mining have declined in importance. Thus a large share of the poorest population is physically located far away from the greatest economic opportunities, and the state, which has historically not been effective in redirecting the nation’s wealth towards the poor, is in a weak position to do so at this time. People from the highlands are therefore migrating east, changing the social and political demographics of the lowlands. This has the potential for economic growth and generation of opportunities if this is managed well through coordinated national and subnational policies, but it also has a potential for conflict and urban poverty if the new arrivals do not find sufficient land or jobs.

66 Qualitatively, there is a distinction to be made between those in the social movements who want to be the new elites in the system versus those who want to achieve a more democratic and just system and who are perhaps the true change agents that warrant support. International NGOs have been roundly questioned for supporting profoundly undemocratic social organizations simply because their members are poor.
inequality can accelerate growth that would benefit rich and poor alike.\textsuperscript{67} The challenge is to develop state institutions that promote equality of opportunity and greater social mobility through improved education, access to technology and services, and strengthened social accountability mechanisms that ensure the rule of law. Civic oversight and transparency could be enhanced by strengthening the channels and processes established at the municipal level and extending them up to the departmental and national levels, so as to ensure that public sector incentive mechanisms are improved and that public authorities ensure due process. Assurance of the rule of law and predictability of institutions are essential to reduce risk and encourage greater investment and growth. Failure to achieve such growth would entail significant risks for the stability and security of the country, not least because Bolivia’s population pyramid is such that in the next decade its largest generation of youth will be entering secondary education or the labour force, and if neither opportunity is available to them, the country could create a large at-risk youth population that would be fertile ground for increased crime and violence.

The bold proposal of a Constituent Assembly together with the results of the referendum on autonomy, when set against Bolivia’s historical backdrop of conflict and social exclusion, represents an important if risk-laden moment in the country’s effort to achieve lasting social change.\textsuperscript{67} The objective that is being set for the Constituent Assembly in the public eye is to re-found the nation to promote social justice. This could mean addressing the need to set aside the idea of particular privileges for particular groups, which has long characterised political interaction in Bolivian society. The constituent process, with its unrivalled opportunity to promote social development in terms of increased social inclusion, cohesion and accountability, runs a number of risks that could undermine this effort. The first is the potential for deadlock over the above issue of acquired privileges, but others include potential frustration driven by unrealistically high expectations that are not met, or public concerns about private deals in the constituent process undermining the opportunity. Clearly significant information sharing, prior dialogues and full transparency in the process will be essential for success. Finally, the risks extend not only to the constituent process during the coming year but also to the later transition to a new constitutional framework after the Assembly’s work is complete—the Venezuelan experience in 1999 is illustrative in this regard.\textsuperscript{68}

The work of the Constituent Assembly could usefully maintain as a guiding principle the promotion of increasing equality of opportunity and the rule of law, even—and indeed especially—in areas in which consensus may be difficult to achieve.\textsuperscript{67} This would best be served by building consensus to the extent possible around core principles that might be expressed clearly and simply in the new Constitution, drawing on both Bolivian values and international experience. There are considerable economic opportunities for the entire country if it is successful, and important risks if an environment conducive to growth cannot be achieved. This Country Social Analysis has offered some examples of options and principles in some key areas that aim to promote social inclusion and cohesion. For example, in the case of decentralization, core principles could be set out with regard to governance rules, expenditure assignments, taxation and transfers, and sub-national borrowing, whereas in the case of indigenous rights, a core set of cultural, territorial and self-determination rights might warrant consideration. In all cases, further elaboration of details would be warranted in secondary legislation together with institutional adjustments to implement the principles agreed under the new Constitution.

\textsuperscript{67} More details can be found in the LAC Flagship Report on Reducing Poverty and Strengthening Growth, 2006.

\textsuperscript{68} As soon as the Venezuelan Constitution had been ratified by referendum, the Constituent Assembly approved a Transition Regime for Public Power to the new state structures established in the Constitution, but in doing so the Assembly ascribed undue powers to itself in terms of scope and duration, and endorsed changes in the membership of key judicial and other positions via procedures that contrasted with the provisions of the newly approved Constitution.
While the process of establishing a new social contract is a profoundly Bolivian process, there is a role for the international community to play in supporting the process and its aftermath. This role could involve providing substantive and detailed, relevant information to the authorities and to the general public in the run-up to the Constituent Assembly and during the constituent process; assisting the authorities and Assembly members upon request with analysis of proposals in terms of technical factors such as coverage and costs, as well as benchmarking information. This has, for example, been the goal of the this Country Social Analysis in relation to the four key themes of this study. Upon the approval of a new Constitution, there would be the need for significant legislative and institutional reforms whose implementation may require technical and financial assistance. Moreover, continuing support is warranted for programs in Bolivia that promote social inclusion and equality of opportunities, e.g. in areas such as human development, rural infrastructure, broader access to finance and technology, technically sound principles for decentralization that promote equitable and efficient use of public resources, access to justice, and strengthening of indigenous rights and development opportunities that respect cultural identity. Finally, support in the area of governance and social accountability so as to strengthen transparency and the rule of law, would help to set the foundations for a dignified, just and productive Bolivia.
BIBLIOGRAPHY


Catena, Marcelo; Navajas, Fernando 2006: Oil & Debt Windfalls and the Fiscal Dynamics in the Highlands: Bolivia in the roller-coaster, FIEL, IDB, processed.


Jost, Stefan; Rivera José; Molina, Gonzalo; Cajias, Huáscar 2003: La Constitución Política del Estado. Comentario crítico, 2nd. edition, La Paz, Fundación Konrad Adenauer.


Toranzo Carlos and Jose Luis Exeni 2005: *Empoderamiento, participación e instituciones en Bolivia*, Background Paper for the Bolivia CSA, September.


Valcarce, Carla 2004: Análisis de la temática indígena/campesina en el derechos constitucional comparado (Bolivia, Brasil, Colombia, Ecuador, México, Perú y Venezuela) en perspectiva de la reforma constitucional boliviana, La Paz, Apostamos por Bolivia [in press].


