

Working Paper

Overcoming the Crisis: Diversity and Human Rights in the New Bolivian Constitution

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List of Acronyms

CNE	Corte Nacional Electoral (National Electoral Court)
COB	Central Obrera Boliviana (Bolivian Labor Union)
MAS	Movimiento al Socialismo (Movement towards Socialism)
MIP	Movimiento Indígena Pachakuti (Indigenous Movement Pachakuti)

Abstract

Throughout its history Bolivia has faced many conflicts, among others related to patterns of social, cultural and ethnic discrimination and exclusion. In 2003, these conflicts experienced a violent outbreak leading to more than 60 deaths and more than 400 injured persons. The 2005 Constitutional assembly has served as a mechanism to seek solutions for these conflicts and to strengthen human rights, and has initiated a process of redefinition of Bolivia's national identity.

The 2003 conflict revealed a complex mix of social, cultural, political, and institutional conflicts that had been neglected in the past. The dynamics of these conflicts include ethnic discrimination, social and political exclusion of wide parts of Bolivia's society, particularly of indigenous people, as well as political claims for a higher degree of decentralization of the country. These latent conflicts found their climax in the violent clashes during the protests of Octubre Negro in 2003 that led to the resignation of President Gonzalo Sánchez de Lozada and initiated a process of political transition. The new political agenda included the strengthening of the rights of the indigenous population and their participation in the political process, and called, as a direct result of this conflict, for a constitutional assembly with the mandate to redesign Bolivia's social contract.

This conflict was therefore the beginning of a political process leading to the redefinition of national identity in the new constitution, and had an important impact on the understanding and importance of diversity and the rights of indigenous people in the contemporary political community. The constitution defines Bolivia now as a plurinational state, thus for the first time explicitly including in the concept of state all the ethnic and indigenous communities living in Bolivia. Also, many of the relevant legal norms and political institutions have been profoundly modified and strengthened by this reform.

Historical Introduction

1.1. A History of Exclusion and Lack of Participation

Historically, Bolivia has been characterized by its vast cultural and ethnic diversity. However, its colonial and republican history has been marked by the continuous reproduction of inequality, social, political and economic exclusion along ethnic lines and the systematic exploitation of the indigenous population. From the point of the violent colonial conquest of Bolivia (approximately 1532-1809) the 'civilization' of the indigenous people has dominated the relationship between the native population and the Spanish conquerors. Later, during the fights for independence (approximately 1809-1825) indigenous movements became significant, but were ultimately left out once again in the design of the state structures. One of the first rebellions against Spanish rule was the indigenous uprising of Tupac Katari in 1781. This uprising led to a revolutionary process that culminated in the Junta Tuitiva in 1809. However, this initial form of independent government was defeated by the counterrevolution and eliminated in the first republican Constitution under Simón Bolívar. The Junta Tuitiva had even contemplated the regulation of indigenous concerns, including the organization of indigenous authorities.¹ However, during the early stages of the Bolivian republic (approximately 1825-1882), this concept was lost and the creole² and mestizo³ elite of the country embraced the concept of a nation state.

On the one hand, in Bolivia as in many post-colonial societies, the concept of nationalism has served as an instrument for nation-building through the process of independence and the birth of the new republic. On the other hand, it has led to a politics of assimilation and the forced elimination of all references to ethnicity from the public discourse, building on the republican concept of a citizen (Aguirre/Moreno, 2009: 3). Republican forms of citizenship are underpinned by a concept born during the French Revolution, which brought together a series of elements – including “the establishment of civil equality”, “the institutionalization of political rights”, and the creation of a “link between citizenship and nationhood” (Brubaker, 1992: 35). However, in a country with such a large indigenous majority as Bolivia the assimilation implicit in such a framing of citizenship leads to the hidden discrimination of this vast demographic group. As Linera states, during the republic, “one [was] born as citizen or indio” (2005: 15). Thus, as Mariano and Aguirre argue, “nationalism has been a force for unity as well as of difference” (2009: 3) in the history of Bolivian state formation.

As a consequence, indigenous people have been marginalized and discriminated against throughout the colonial and republican era. These patterns of discrimination become even more palpable in the political sphere, where the indigenous population has suffered systematic exclusion. Only in the framework of the revolution of 1952 was there an attempt to address some of the inequalities in Bolivia's political setup: an agrarian reform tried to reduce the concentration of land in the hands of a very few and eliminated large-scale land ownership. The mining industry was also nationalized to enhance redistribution of Bolivia's wealth. Social injustice was addressed

1 For more information on this period of time, see, for example: <http://semanarioaqui.com/index.php/lectura/155-estatuto-constitucional-de-la-junta-tuitiva-de-1809>, <http://www.ucb.edu.bo/BibliotecaAymara/docsonline/pdf/156094194.pdf>, <http://www.caracol.com.co/noticias/actualidad/junta-tuitiva-y-plan-de-gobierno/20050713/nota/186813.aspx>.

2 Creole (in Spanish: Criollo), is the denomination for any person of European (mostly French or Spanish) descent born in the new colonies. Although legally Spaniards and Creoles were equal, the latter were generally excluded from high office in both church and state and discriminated against by the Spanish crown. Creole-led revolutions led to the expulsion of the colonial regime in the early 19th century.

3 Mestizo, plural mestizos, is the denomination for any person of mixed blood. In Central and South America it denotes a person of combined Indian and European extraction.

through education reform and universal suffrage for all citizens was introduced. It was only then, in 1956, that 'indios' were finally eligible to vote.⁴ However, even many years after formally gaining the right to vote, political representation has been limited to voting for representatives of the white, mestizo, and Spanish speaking elite. Representation though their own social and ethnic group has been virtually nonexistent. This is illustrated in the fact that the first indigenous vice-president only took office in 1993, and the first indigenous president was elected as late as 2005.

Only since the second half of the 20th century have the indigenous population gained more power within social and institutional spaces. Since 1990 an indigenous movement has been created that is able to create consensus between the demands of the indigenous and the non-indigenous sectors of the population. This movement also set the basis for an indigenous philosophy that found its way into the new constitution. In 1990 the first indigenous rally marked the beginning of the process of growing indigenous influence in politics that we will describe in the following pages. Thanks to this movement, important changes have been achieved through the constitutional reform of 1994. This Constitution for the first time defined Bolivia as a multi-ethnic state and recognized certain collective rights of the indigenous population.⁵ However, some scholars consider that these gains "have not had a real impact on the conditions of the people" (Aguirre/Moreno: 2009: 3), as this formal recognition did not transfer into concrete everyday improvements and did not affect the established social, political and economic patterns of discrimination. This can be seen in the example of the formal definition of Bolivia as a plurinational state⁶ which did not in fact have an effect on the political setup or on the concrete representation of indigenous people in politics by quota or other means. Also, the declaration that Bolivia was a plurilingual country was not followed up by concrete actions, such as the establishment of bilingual education or the strengthening of the use of indigenous languages in the public administration.

1.2. A History of Conflicts

This pattern of structural discrimination and marginalization of a large part of the population has led to a fairly conflictive social life in Bolivia ever since the colonial conquest. For many years, the so called 'pacted democracy', a tacit agreement among the major political parties to 'rotate' and share political power, has contained public discontent and maintained a certain (although superficial) calm and order. However, particularly since 2000 Bolivia has seen a series of social conflicts, beginning with the so called 'water war' in 2000, and the 'gas war' in 2003 (Lüthi, 2009: 28/29). In both conflicts the primary triggers that provoked their outbreak were related primarily to the government's economic policies rather than the described pattern of discrimination and the social and political exclusion of certain groups of the population. However, they revealed the deep frustration of wide parts of the population with the ruling elite and the lack of political participation.

⁴ Law No. 3464, of October 29, 1956.

⁵ Constitution of the Republic of Bolivia from 1994, Article 171.

⁶ In this Article we will refer to the Bolivian state as 'plurinational', as it is used in the new Constitution, acknowledging by this the existence of several 'nations' that coexist in the new concept of 'plurinational state'. However, when referring to the character of the society, we will refer to 'pluricultural' or 'pluriethnic', as used in the new Bolivian Constitution.

The 'water war' in Cochabamba was provoked by a massive and overnight increase in the price of water due to the privatization of the municipal water services.⁷ The sudden and huge increase of the water price left many households and small farmers incapable of satisfying their basic water requirements and provoked a wave of frustration and anger among the general population. The following weeks of protest brought together a wide range of social groups, united in the fight against the increase in prices for basic services. The two main sides of this conflict were the urban and rural water users on the one hand, and on the other hand the private company and the Bolivian government which had negotiated the privatization of the water services in Cochabamba.

The conflict lasted several months, and included the intervention of special police forces and the military, ending with a final 'battle' in April 2000 that left hundreds injured. After this unrest, the protesters achieved the cancellation of the leasing contract with the private company and the re-assignment of the water administration back to the municipal water service.

This conflict was interpreted as an uprising against the economic policies and reforms of the state rather than as a conflict between ethnic or cultural groups. However, at the same time, the 'water war' has been described as a turning point in that it "caused many former supporters of the traditional parties to seek alternatives" (Van Cott, 2003: 775) and marked the beginning of a severe governance crisis in Bolivia. It was after these events that the call for a constituent assembly emerged. The years following the water crisis have thus have often been described as "a cycle of social unrest and protest" (Lacroix, 2006: 84; Lavaud, 2005: 105) and as a "climate of quasi permanent social agitation" (Lacroix, 2006: 90).

7 Cochabamba is the fourth largest city in Bolivia with an urban population of approximately 700,000. It is located in a rather fructiferous valley area in the southwest of Bolivia, approximately 240km southeast of La Paz. Due to its moderate climate it is often called the "Garden City" and the "City of Eternal Spring". Agriculture and trade are the main sources of income for the area.

The Climax of the Social and Political Conflict and its Solution

2.1. The 'Octubre Negro' Conflict in 2003

In 2003 there was a repeat of the intense outbreaks of social discontent and underlying tensions within the state. Announced tax increases and protests by the police requesting better working conditions led to violent riots in February 2003. Soon after the controversial decision of President Gonzalo Sánchez de Lozada to build a gas pipeline through neighboring Chile to the port of Mejillones⁸ in order to export Bolivia's gas led to the so-called 'gas war' in September and October 2003. Again issues primarily related to the government's economic policy provoked the violent protests, but they exposed the detachment of the political elite from the population and expressed a need for ongoing reforms of the political system.

The gas war escalated in September 2003. Massive protests and road blockages paralyzed large parts of the country and led to increasingly violent confrontations with the Bolivian police and armed forces. The conflict left nearly eighty people dead and more than 400 were wounded. Among the early victims of these confrontations an eight year old girl was killed by the police, which led to further escalation of the conflict. In many places Bolivia's indigenous majority was at the front of the protests, joined by peasant farmers, coca growers, students, union workers, and ordinary citizens. On September 29th, Bolivia's Labor Union (COB) called a general strike that paralyzed the country with road closures. As the protests went on, protesters in El Alto, a sprawling indigenous city on the periphery of La Paz, proceeded to block the access routes to the capital causing severe fuel and food shortages. On Sunday, October 12th, heavily armed military and police escorting gasoline tankers tried to pass through the blockades in El Alto to get to La Paz. As the protesters in El Alto resisted the security forces circled the city in helicopters and indiscriminately fired on the protesters and into the crowds killing several people, including children. These deaths produced a turning point in the 'gas war'. At the beginning of the conflict many protesters had been mobilizing against the exportation of the nation's gas to Chile. However, after the deaths in El Alto and several other cities, the protesting sectors began to request the resignation of President Sánchez de Lozada as a condition for dialogue.⁹

The 2003 'gas war', also called the 'octubre negro', triggered a massive mobilization of different parts of the population, indigenous movements, workers' unions, peasant farmers' organizations and other civil society groups. At its peak, protesters demanded the dismissal of the president and a referendum on the gas issue, as well as the establishment of a constituent assembly.

The protests led to the disintegration of the government and the resignation of President Gonzalo Sánchez de Lozada on October 17th. Vice President Carlos Mesa was sworn in as president in the middle of the protests. He promised a binding referendum on the gas question and to generally revise government policy concerning Bolivia's natural resources and the much

⁸ However, this decision was heavily opposed by wide parts of the Bolivian society, in part because of historical animosity against Chile; Bolivia still feels resentment after the territorial losses of the War of the Pacific in the late 19th century, which deprived it of access to the sea.

⁹ For more information on the gas war, see among others, <http://upsidedownworld.org/gaswar.htm>.

criticized politics of privatization of this sector (Salazar Elena, 2008). However, soon after assuming his mandate he resigned in the middle of the ongoing crisis and, as was constitutionally required, he was replaced by Eduardo Rodríguez Veltzé, the President of Bolivia's Supreme Court. Veltzé was sworn in as interim president and he promised a quick transition including the institution of a constituent assembly in order to overcome the crisis of governance.

Although the initial motive for this conflict was the decision to build the gas pipeline through Chile and thus a question of an economic nature, the 'octubre negro' revealed a complex mixture of conflicts with social, cultural, political, and institutional dimensions which had been previously neglected. The traditional discrimination and exclusion of wide parts of Bolivia's society, particularly the indigenous population, fuelled resentment against the white, creole establishment. This led to a claim for more cultural and political recognition by the state. The multiplication of demands that the state was unable to satisfy provoked an erosion of the institutional stability of the state and a loss of its credibility (Cordero Carraffa, 2010). Additionally, the lack of participation in politics provoked a desire for more direct democracy, as well as claims for a higher degree of decentralization of the country. Therefore, a profound constitutional reform was a key point on the agenda emerging from this crisis in October 2003. The list of social and political demands that accompanied the popular uprising later formed the 'agenda de octubre'. The diversity of underlying conflicts involved during these months of the 'gas war' revealed the "variety of actors" and "multiplicity of agendas" (Crabtree, 2005: 15) that have characterized Bolivia's public protests since 2000.

2.2. The Process of Conflict Transformation Through a Constituent Assembly

2.2.1 The Demands for a Constituent Assembly

The context of public dissatisfaction and widespread protest against the government and the ruling elite favored the revalorization of the indigenous population by the rest of the country. Many other groups of the population, such as workers' unions and peasant farmers' organizations, had shared the claims of the indigenous movements during the protests. Also, this conflict had strengthened their capacity for political organization and had transformed them into serious political actors with a clear agenda. Finally, this crisis reinforced the growing demand for more participation in politics and the state not only by indigenous movements, but by many other parts of the population that had been previously excluded. The most prominent example of this revalorization and newly emerged indigenous leadership is certainly the massive electoral victory of Evo Morales and his movement 'Movimiento al Socialismo' (Movement towards socialism, MAS) in the 2005 elections. Evo Morales came to power with 53.7 percent of all votes – with about 85 percent of those entitled participating.¹⁰ He is the first president to have been elected

with an absolute majority since the re-installation of democracy (CNE 2007: 8). Morales' movement prominently took up the claims for more participation and social and ethnic inclusion, the fight against corruption (of a predominantly white elite that had governed the country since the colonial conquest) and for more social justice and the redistribution of the state's resources (Cordero Carraffa, 2010). Also, he adopted as his own the people's claim for a profound reform of Bolivia's constitution (Whitelegg, 2009: 2).

There had been calls to rewrite Bolivia's social pact through a constituent assembly and to strengthen direct democracy mechanisms in Bolivia since the early 1990's, but with little desire from the ruling parties to answer. During the government of Sánchez de Lozada from 1993 to 1996 the inclusion of direct democracy mechanisms in the Constitution was discussed, but the ruling elite rejected these ideas on the basis that these mechanisms were associated with plebiscitary and authoritarian politics (Salazar Elena, 2008: 5). Even though the demand for constitutional reform was revitalized by the social movements during the 2003 protests and formed one of the key promises of the 'agenda de octubre' (Crabtree, 2008), interim president Carlos Mesa demonstrated only half-hearted support for this request. After Mesa's demission, Eduardo Rodríguez Veltzé initiated the political transition, organized the general elections and approved the law that created the constituent assembly.

The Bolivian constituent assembly served as a mechanism for finding solutions to the underlying conflicts that had almost plunged Bolivia into a civil war. Even though cultural and ethnic divisions were not the only, or even principle, dynamics driving conflicts such as Cochabamba's 'water war' in 2000 and the 'octubre negro' protests in 2003, structural discrimination and inequality within the population were certainly at the origins of the popular dissatisfaction with the state and the political elite at these times. Therefore, among the key demands emerging from the conflicts was the call for an increase in direct democracy mechanisms (Crabtree, 2007: 3).

The constituent assembly was intended to redraw the political design of Bolivia by strengthening the participation of civil society, particularly of those social groups that had been traditionally excluded from political life, and initiated a process of redefinition of Bolivia's national identity (Whitelegg, 2009: 2). Evo Morales, as Bolivia's first indigenous head of state, was particularly identified with the drive towards building a more inclusive society (Crabtree, 2008). Morales' vision of a plurinational state stood in contrast to the previously dominant concept of republican citizenship. While in the latter the condition of citizenship was based solely on the formal social affiliation to Bolivia as a modern nation state, the new concept was characterized by the vision that all the different cultural and ethnic communities together would form the state. While in the traditional, republican concept of citizenship cultural and ethnic differences were subsumed into the all-encompassing concept of 'the citizen' and therefore suppressed, this new concept of citizenship valued and encouraged difference as one of the elements that would make up this new plurinational state.

10 Actually, Morales had already participated in the previous election where, as a political newcomer, he was already placed second, with only 1.6% of difference to the winner, Sánchez de Lozada. This guaranteed him an ample opposition in Bolivia's congress during his predecessor's period and time to prepare his political program.

2.2.2 The Constituent Assembly

The constituent assembly was established by law N° 3664 of March 6th 2006 and inaugurated on August 6th of that same year. The assembly was designed as a deliberative decision-making organ, with 210 representatives elected by direct and universal vote. Aiming to overcome the deep and complex crisis of the Bolivian state the assembly was conceived as a political instrument with a democratic character.¹¹ While the element of ‘deliberation’ of this organ was important in order to create a space for political discussion, the element of ‘decision’ was crucial for responding to the population’s request to be taken into consideration in terms of national decision-making. Additionally, the strong representation of formerly excluded parts of the population was intended to create a more stable social contract between the state and its citizens for the future. This new social contract also included a more prominent role in politics for women.

Some scholars argue that the inauguration of the constituent assembly reinstalled the atmosphere of constant social agitation and ended the period of relative calm that had followed the 2005 elections (Lacroix, 2006: 80-98; Lüthi, 2009: 35). However, even if it is true that again several actors started to clash over diverse issues, for the first time in 3 years these conflicts now took place in an institutional context, and not primarily on the streets. In this sense, the establishment of a constituent assembly has been considered by many as “the most appropriate reaction to the cycle of crises” (Lüthi, 2009: 34). Its establishment invited, for the first time, social division into a legitimate public space. The intention of this was to mediate social conflicts through deliberative democratic mechanisms, assumed to be able to prevent such conflicts becoming violent and unstable.

The constituent assembly had the challenging task of engaging in a complete reform of the constitution, embracing several sensitive issues, such as the possibility of departmental autonomy,¹² the recognition and implementation of cultural, linguistic and particularly legal pluralism, the development of the collective rights of indigenous people, and the strengthening of direct democracy mechanisms. In this sense, it had a unique opportunity to design the socio-political instruments that were needed in order to initiate a process of profound and substantial transformation of the Bolivian state and society, in the manner called for by the 2003 protests.¹³ Because of the nature of this mandate, the new constitution required two different types of legitimacy: political agreement from the government and political organizations; and social acceptance by civil society actors who had been calling for change (Cordero Carraffa, 2010: 75). The MAS itself characterized the constituent assembly as “an act of democratic revolution of the people to substitute the old structures after 180 years of an oligarchic regime” and “the materialization of centuries of struggle by the people” (Aguirre/Moreno, 2009: 4).

11 Law N° 3664 of March 6th, 2006.

12 Parallel to the launch of the constitutional process, demands for autonomy had emerged in some Bolivian departments and disclosed yet another major conflict which the constituent assembly, and the country, had to deal with. In 2006, the departments of the Bolivian lowlands, the so called ‘media luna’ and particularly the department of Santa Cruz, expressed a desire for regional autonomy.

13 Unfortunately, we will not be able to analyze the before mentioned conflict concerning the regional autonomy of the department of Santa Cruz, and the entire region of the ‘media luna’ in more depth. However, it was certainly another aspect that complicated the constitutional reform and the political transformation further.

Central Elements of the New Constitution

The new Constitution¹⁴ was approved by a referendum on January 25th 2009. Among the most important – and also most contested – elements in the new constitution are the redefinition of the state as plurinational, as well as the strengthening of the collective rights of Bolivia's indigenous population, the broadening of the mechanisms of political participation, and improvements in the processes of decision-making (Whitelegg, 2009: 2).

We will analyze three of the most important changes, related to the cultural 'refoundation' of the Bolivian state and the subsequent reorganization of political institutions and mechanisms in the Constitution. Firstly, we will focus on the redefinition of national identity in the new Constitution, secondly, on two major changes concerning the collective rights of the indigenous people, namely the recognition of the indigenous languages as official languages and the introduction of the indigenous jurisdiction, and thirdly, on the deepening of the direct democracy mechanisms in the new system of the state of Bolivia.

As the traditional discrimination and social and political exclusion of the indigenous population had been an underlying trigger for many of the conflicts in Bolivia's recent history, the inclusion of these elements in the new Constitution was essential for the success of this process of reform. The demand for constitutional recognition of the indigenous population, for more respect for their 'way of life' and for more political participation constitute some of the most important, as well as the most thorny, aspects of this new social contract.

3.1. Redefinition of National Identity in the New Constitution

3.1.1 Transformation of the Legal Basis

On February 7th 2009 the new Bolivian Constitution entered into force. Many of its Articles still require laws and other secondary regulation in order to become fully effective, but those rules that do not require legal precision have already become effective in the political life of the country.

In the new Bolivian Constitution the vision of the multinational state that had been a center point of Evo Morales' political campaign, has been institutionalized. Unlike the previous constitution, the new constitution not only proclaims the 'multiethnic and pluricultural' character of Bolivia, but is entirely based on the vision of a 'plurinational state'. This is already reflected in the preamble:

In times immemorial mountains emerged, rivers found their ways, lakes were formed. Our Amazon, our Chaco, our Altiplano and our lowlands and valleys were covered with greenery and flowers. We populated this sacred Mother Earth with different features and we understood since then the plurality of all

¹⁴ Constitution of the Republic of Bolivia from 21 October 2008, as approved on January 25th, 2009 and proclaimed on February 7th, 2009.

things and our diversity as beings and cultures. In this way we shaped our peoples and we never understood racism until we suffered it in the fatal times of colonialism.

The Bolivian people, of plural composition since the dawn of history, inspired by past struggles, by the indigenous anti-colonial uprising, by independence, by popular liberation struggles, by the indigenous, social and syndical marches, by the water and October wars, by the struggles for land and territory, and with the memory of our martyrs, we construct a new State. [...] We leave the colonial, republican and neoliberal State behind. We take on the historic challenge of collectively constructing the Unitary Social State of Plurinational Communitarian Rights that integrates and articulates the intentions of advancing towards a democratic, productive, supportive Bolivia that inspires peace and is devoted to comprehensive development and the selfdetermination of peoples. (Translation from Lüthi, 2009: 23)

Two of the most relevant rules can be found at the beginning of the Constitution: Articles 1 to 3 outline the new character of the Bolivian state and nation. Article 1 of the Constitution defines Bolivia as a “unitary, social state, based on the rule of law of plurinational and communitarian character, free, independent, sovereign, democratic, intercultural, decentralized, and with autonomies”. It continues this exhausting list of attributes with the precision that “Bolivia is founded on the political, economic, legal, cultural and linguistic diversity and pluralism, within the context of the country’s process of integration”.

Bolivia se constituye en un Estado Unitario Social de Derecho Plurinacional Comunitario, libre, independiente, soberano, democrático, intercultural, descentralizado y con autonomías. Bolivia se funda en la pluralidad y el pluralismo político, económico, jurídico, cultural y lingüístico, dentro del proceso integrador del país.

Article 2 strengthens this new concept and understanding of the state and its pluralist reality. It outlines the basis for the development of collective rights for the indigenous population. Concretely, it guarantees indigenous native peasant nations and peoples the right to “their self-determination within the framework of the unity of the State”, consisting in “their right to autonomy, self-governance, their culture, the recognition of their institutions and the consolidation of their territorial entities, in conformity with this Constitution and the law”:

Dada la existencia precolonial de las naciones y pueblos indígena originario campesinos y su dominio ancestral sobre sus territorios, se garantiza su libre determinación en el marco de la unidad del Estado, que consiste en su derecho a la autonomía, al autogobierno, a su cultura, al reconocimiento de sus instituciones y a la consolidación de sus entidades territoriales, conforme a esta Constitución y la ley.

Article 2 underlines the special importance of the “indigenous, native and peasant nations and people”, the so-called “naciones y pueblos indígena originario campesinos”. The Constitution confers to them a special position due to “their precolonial existence and their ancestral control of their territories”. Here the constitutional text already sets an important element of positive discrimination.

Complementary to the definition of the state, Article 3 defines the Bolivian society and nation. It emphasizes the intercultural character already mentioned in Article 1 by stating that the Bolivian nation and people are formed by the totality of all Bolivians, the indigenous native peasant nations and peoples, and the intercultural and afro-bolivian communities:

La nación boliviana está conformada por la totalidad de las bolivianas y bolivianos, las naciones y pueblos indígena originario campesinos y las comunidades interculturales y afrobolivianas que en conjunto constituyen el pueblo boliviano.

3.1.2 Consequences of this Programmatic Change in the State’s Organization

The new Bolivian state is based on the idea of intercultural relations between the different communities and peoples that form the Bolivian nation. This concept of *interculturalidad* reflects the idea of relations between two or more cultures in a horizontal and synergic way. In this sense, none of the groups is superior to the other, and instead a horizontal dialogue and friendly coexistence based on respect for diversity and mutual enrichment is favored.¹⁵ Following this idea, the new Constitution declares that “cultural diversity constitutes the essential basis of the Communitarian Plurinational State” and that “*interculturalidad* is the instrument of cohesion and harmonic, well-balanced coexistence of all peoples and nations.”¹⁶ According to Xavier Albó this recognition of the preexistence of the indigenous population represents the true originality of the Bolivian constituent assembly and of this process of profound modification of the Constitution as a foundation of the social and political transformation of the state (2005).

Álvaro García Linera, vice president of the government led by Evo Morales, has identified the dilemma of the historical division between the Bolivian state and Bolivian society due to the fact that the Bolivian state has always been “monoculturally, mestizo-white and Castilian-speaking” while Bolivian society is pluricultural, and in the case of the indigenous populations of the Aymara, and perhaps also the Quechua, even multinational (Lüthi, 2009: 18). While in Latin America the state has traditionally tried to include all of these cultural and ethnic differences through policies of assimilation and the concept of ‘nation state’, the introduction of the concept of a ‘plurinational state’ finally changes this perspective (Josi, 2005).

This is reflected in the very first Article of the chapter concerning the fundamental rights of the citizen, Article 21 of the new Constitution, which guarantees the right of every citizen to “cultural self-identification”:

¹⁵ For more information on this concept see for example Servicios en Comunicación Intercultural, SERVINDI, “Interculturalidad, Desafío y Proceso en construcción”, Lima, Peru, 2005 (available at: <http://servindi.org/pdf/manual2.pdf>), p. 30.

¹⁶ Article 98.1 of the Constitution.

Las bolivianas y los bolivianos tienen los siguientes derechos:

1. A la autoidentificación cultural.

Bearing in mind Bolivia's history of exclusion and discrimination, it is also necessary to point out that with the introduction of individual rights in the course of the national revolution in the 19th century the "cognitive structure of a racialized or ethnicized world" (Lüthi, 2009: 20) was not overcome, and discrimination along ethnic lines remained. This republican concept of citizenship, principally based on the individual rights of political participation, had not taken into account the more collective understanding of the political life of the indigenous population. In addition, as we noted above, while Article 1 of the 2004 Constitution acknowledged Bolivia's multiethnic and pluricultural character, some scholars have argued that in practice this recognition did not involve any major change (Crabtree, 2007: 2). Article 21 and the implementation of the concept of a plurinational state in the new Constitution finally changes this. The existing multiple cultures of Bolivia have now been explicitly introduced into political governance with the main goals of overcoming the exclusion of the indigenous and peasant population, ending their suppression by the white, mestizo elite, and building an egalitarian and democratic state. Therefore, the truly innovative element of this new Constitution is that it transports this acknowledgement of Bolivia's diversity to the state structures. The definition of the state as "plurinational communitarian"¹⁷ leads to recognition on the national political level.

In this way, the government's aim was to introduce what Taylor calls a "politics of difference" (Taylor: 1991), namely a politics of positive discrimination and of "revalorization of the indigenous cultures" (García Linera, 2005: 82). This is to be achieved by "political equalization of cultures through a just, positive 'ethnicization' of State structures" and an "ethnic demonopolization" of politics (Ibid: 85).

The plurinational state, in Linera's vision of the state, is aimed at putting an end to the "simulation of political modernity and cultural homogeneity in a society that is predominantly pre-modern, multicivilizational and pluricultural" (García Linera, 2005: 55). The idea of the plurinational state originates in the social and cultural mixture of Bolivian society, and results in the new political structure of the state defined in the new Constitution. According to Romero, it thus responds to "the pluricultural character of the Bolivian society" (Romero Bonifaz, 2009: 43).

However, there are also critical voices. A concrete fear, not only of the traditionally mestizo-white, Castilian-speaking and ruling elite of the country, is that the discrimination of the past will be reversed. Margoya states that one cannot deny the importance of this constitutional recognition of cultural and ethnic diversity for integrating previously excluded sectors of the population through an affirmative action policy which compensates for prior exclusion practiced by the state. However, he warns that this recognition should not turn into a reversed policy of difference and discrimination, and the elevation of a certain category of 'we' over another (2007: 41-42). In the same way Choque Aldana warns that the new concept of people and state that has dominated

¹⁷ Article 1 of the Constitution.

the Bolivian constitutional reform and recent politics, should not lead to a definition of the people as a 'we' based on a positive discrimination of those previously excluded and an exclusion of those previously ruling (2010: 500).

Nevertheless, as a conclusion we can say that this new vision of the state has served as a mechanism for overcoming long-lasting resentment for a large, but socially and politically excluded majority of indigenous people and for building a foundation for this new pluricultural society.

3.2. Important Impacts on the Rights of the Indigenous Population

As we saw in the previous chapter, the new Bolivian Constitution finally endorses the pluricultural and plurinational character of the society and the state. In addition it has strengthened the rights of the indigenous population. Concretely, there has been an official recognition and numbering of the 36 different indigenous languages in addition to Spanish, and the introduction of the 'indigenous native peasant jurisdiction' at the same hierarchical level as the 'ordinary jurisdiction'. These two important examples will be discussed in greater detail below, as they represent two of the major aspects of the cultural identity of a group. On the one hand, language is probably the element most inextricably linked to cultural origin and identity of a person. It is fundamental to understanding values, beliefs, ideology and other intangible aspects of culture.¹⁸ On the other hand the legal system is an important aspect of the socio-cultural order in which a community lives. Social institutions, such as the legal system, determine the way in which people in a given society organize themselves in order to function as community, differentiated from others by specific rules, obligations and patterns of behavior.¹⁹

3.2.1 The Recognition of Indigenous Languages as Official Languages

One of the important novelties of the new Constitution is the recognition of 36 indigenous languages as official state languages. In this sense, Article 5.1 of the Constitution enumerates the 36 indigenous languages that are now equal to Spanish as official languages of the Bolivian state:

Son idiomas oficiales del Estado el castellano y todos los idiomas de las naciones y pueblos indígena originario campesinos, que son el aymara, araona, baure, bésiro, canichana, cavineño, cayubaba, chácobo, chimán, ese ejja, guaraní, guarasu'we, guarayu, itonama, leco, machajuyai-kallawaya, machineri, maropa, mojeñotrinitario, mojeño-ignaciano, moré, mosetén, movima, pacawara, puquina, quechua, sirionó, tacana, tapiete, toromona, uru-chipaya, weenhayek, yaminawa, yuki, yuracaré y zamuco.

18 State of World's Indigenous Peoples, UN, Chapter II: Culture, p. 57 (available at: http://www.un.org/esa/socdev/unpfii/documents/SOWIP_chapter2.pdf).

19 Id., p. 62.

By this same logic, Article 5.2 regulates the use of the official languages, strengthening the role of the indigenous languages in official communications. It states that the plurinational (central) government and the

departmental governments have to use at least two of the official languages in their administration. Of these, one has to be Spanish and the other should be chosen by duly taking into account the “convenience, circumstances, necessity, and preferences” of the local population in the relevant territory:

El Gobierno plurinacional y los gobiernos departamentales deben utilizar al menos dos idiomas oficiales. Uno de ellos debe ser el castellano, y el otro se decidirá tomando en cuenta el uso, la conveniencia, las circunstancias, las necesidades y preferencias de la población en su totalidad o del territorio en cuestión. Los demás gobiernos autónomos deben utilizar los idiomas propios de su territorio, y uno de ellos debe ser el castellano.

A corollary of this official recognition of Bolivia’s plurilingual reality is the definition of certain collective rights of the indigenous population concerning the use of their native languages. In this context it is important to note that Article 30.1 of the Constitution defines that “all collectivity sharing the same cultural identity, language, historical tradition, institutions, territory and ‘cosmovision’ that predates the Spanish colonial invasion” shall be recognized as “indigenous native and peasant people and nation”.

Es nación y pueblo indígena originario campesino toda la colectividad humana que comparte identidad cultural, idioma, tradición histórica, instituciones, territorialidad y cosmovisión, cuya existencia es anterior a la invasión colonial española.

Accordingly, these indigenous native and peasant people shall enjoy certain collective rights. Article 30.2, paragraph 12 of the Constitution states that “in the framework of the unity of the state and in accordance with the constitution” indigenous native and peasant peoples shall enjoy certain collective rights, such as, the right to an “intracultural, intercultural, and plurilingual education in the entire educational system”.

En el marco de la unidad del Estado y de acuerdo con esta Constitución las naciones y pueblos indígena originario campesinos gozan de los siguientes derechos: [...]

12. A una educación intracultural, intercultural y plurilingüe en todo el sistema educativo.

Although the constitutional recognition of this cultural and linguistic diversity and the official recognition of the 36 indigenous languages are important steps towards a genuine pluralism, this mandate requires a series of steps for its concrete implementation. For example, the aforementioned right to a plurilingual education can only be guaranteed if there are sufficient teachers able to speak these indigenous languages. This, however, is mostly not the case. Also the obligation of the central and the departmental governments to use at least two of the official languages in their administration, presents a challenge which the governments have mostly not been able to comply with.

3.2.2 The Introduction of the 'Indigenous Native Peasant Jurisdiction'

Another crucial modification in the new legal order is certainly the introduction of 'indigenous native peasant jurisdiction' at the same hierarchical level as 'ordinary jurisdiction'.

As we have already seen, Article 1 defines Bolivia as founded on its "political, economic, legal, cultural and linguistic diversity and pluralism". On the one hand, this phrase touches upon *diversity* as a matter of fact (in Spanish *pluralidad*), and on the other hand on *pluralism* as a political mandate (in Spanish *pluralismo*) requiring concrete policies for its implementation (Rodríguez Veltzé, 2010: 47). The different elements of Bolivia's diversity and pluralism that are enumerated in Article 1 are referred to again in other constitutional Articles, embedding the rights that correlate to this list.

Article 2 seems to translate this recognition of the (factual) diversity and (programmatic) pluralism to a more institutional level of state organization concerning the rights of the indigenous population. It recognizes the right of the indigenous native peasant nations and peoples to "their self-determination within the framework of the unity of the State", including "their right to autonomy, self-governance, their culture, the recognition of their institutions" (Rodríguez Veltzé, 2010: 50).

Article 30.2 enumerates the concrete corollaries of these collective rights and recognizes in an extensive list of rights, among others, the right of the indigenous people to "have their own institutions be recognized as part of the general state structure" and to have "the application of their own political, legal and economic systems, according to their '*cosmovisión*'":

II. En el marco de la unidad del Estado y de acuerdo con esta Constitución las naciones y pueblos indígena originario campesinos gozan de los siguientes derechos:

[...]

5. A que sus instituciones sean parte de la estructura general del Estado.

[...]

14. Al ejercicio de sus sistemas políticos, jurídicos y económicos acorde a su cosmovisión.

Also, in relation to the organization of the state institutions, and more concretely the judiciary, the Constitution develops the diversity and pluralism stated in Article 1. Concretely concerning the faculty to administer their own jurisdiction, Article 178.1 underlines the relevance of legal pluralism in the new Bolivian Constitution by stating that the state's faculty to adjudicate emanates of the Bolivian people and is based on certain principles, among others, "legal pluralism, interculturality [...] and social harmony":

La potestad de impartir justicia emana del pueblo boliviano y se sustenta en los principios de independencia, imparcialidad, seguridad jurídica, publicidad,

probidad, celeridad, gratuidad, pluralismo jurídico, interculturalidad, equidad, servicio a la sociedad, participación ciudadana, armonía social y respeto a los derechos.

If we proceed to a historical analysis of the phenomenon of “legal pluralism” we can make the observation that since colonialism legal pluralism has been a reality in many countries of Latin America (Steiner, 2010: 8). In many cases, colonial and early republican authorities have accepted the existence of indigenous and native jurisdictions parallel to the ordinary state authorities. Often, this was due to the (at least implicit) acknowledgement that the indigenous jurisdiction was more efficient and more capable of resolving legal disputes between the members of a certain community, particularly in rural areas where the official state institutions and its ‘ordinary jurisdiction’ were absent. However, this ‘indigenous jurisdiction’ was recognized only in a secondary role to the ‘ordinary jurisdiction’. Indigenous and native authorities and their jurisdiction were tolerated only concerning ‘smaller’ cases and were hierarchically inferior to the ordinary jurisdiction.

The official recognition of legal pluralism is therefore a recent phenomenon that reflects the increasing constitutional recognition of the social and cultural diversity of many of the Latin American countries (Josi, 2005). However, the Bolivian vision of a fully-fledged recognition of indigenous jurisdiction on the same hierarchical level as ordinary jurisdiction is a novelty even in this Latin American context and certainly one of the most important innovations of this Constitution.

The official recognition of legal pluralism represents a true translation of the social and cultural pluralism of the society into the political and legal sphere. The consequences of this revolutionary step are both of theoretical and practical nature. As Veltzé states, on the one hand, it relates to a rupture with the traditional, monist concept of state, as the only authority competent to define legal norms and administer justice. On the other hand, this modification has important consequences on a practical level, concerning the institutional re-designing of the state apparatus and the coordination and harmonization of the different levels of norms and authorities (2010: 11).

However, the Constitution unfortunately fails to clarify key issues, such as the definition and delimitation of the indigenous jurisdiction concerning its competence *ratione loci*, *ratione personae* and *ratione materiae*, as well as its coordination with the ‘ordinary jurisdiction’. In this sense it is, for example, not yet clear under which rule non-indigenous people would be adjudicated in cases where a law is broken within an indigenous territory. In addition, which jurisdiction would be competent to adjudicate in cases where indigenous people commit crimes outside of their indigenous community or territory?

Other crucial aspects relate to respect for universal human rights standards. Some of the practices that exist in the context of the indigenous jurisdiction have been criticized for violating certain human rights, and

particularly women's rights standards (Käss/Bleese, 2010: 4). These are important aspects that have not been clarified by the Constitution.

Another challenge has been a misunderstanding of this indigenous jurisdiction in a sense that it would allow people to take matters into their own hands. Since the principle of legal pluralism has been recognized in the Constitution, but details have not yet been clarified, there have been several incidents of 'self-justice' such as lynching. This has occurred when the new Constitution has been wrongly interpreted as allowing such acts.

Some of these critical aspects have been clarified in the long awaited coordinating law, the "Ley de Deslinde Jurisdiccional".²⁰ While the first four Articles repeat the basic principles under which legal pluralism in Bolivia should be organized, Article 5 clarifies important questions, such as the respect for fundamental human rights, women's rights and the guarantee of the right to life.²¹

It states that "all constitutionally recognized jurisdictions respect, promote and guarantee the right to life, and the other fundamental rights and guarantees recognized by the constitution",²² as well as "the enjoyment of the rights of women, their participation, decision and presence [...] both for the equal and just access to positions, as well as for the control, decision and participation in the administration of justice".²³ It furthermore establishes that "all constitutionally recognized jurisdictions prohibit and sanction any form of violence against children, adolescents and women" and declares illegal "any conciliation in this matter".²⁴ Finally, it defines clearly that "lynching is a human rights violation that is prohibited in any jurisdiction and will be prevented and sanctioned by the state".²⁵ Also Articles 7 through to 11 attempt to delimit the scope and competence of the indigenous jurisdiction. However, in some aspects, the Articles fall short of defining the cases on the limits of its competence.

Even if the Coordinating Law is a crucial step for a better understanding and functioning of the indigenous jurisdiction, its application in practice has still to be proven. Some studies have shown that the importance of this law is more symbolic, as many controversial aspects cannot be truly reconciled.²⁶ According to Velasco²⁷ the Coordinating Law has, in practice, confirmed the supremacy of the ordinary over the indigenous jurisdiction and has made the contradictions of the constitutional text even more apparent.

The recognition of indigenous jurisdiction has been an important step towards taking cultural diversity seriously on political and legal terms. However, it has also led to the creation of certain areas of the country where the ordinary jurisdiction has little or no influence. The clear definition and delimitation of indigenous jurisdiction, as well as a good coordination with ordinary jurisdiction are important outstanding challenges for a successful implementation.

20 It has been adopted as Law 073 on December 29th, 2010.

21 Ley 073 – 2010, Art. 5: "Artículo 5. Respeto a los Derechos Fundamentales y Garantías Constitucionales".

22 Id., Art. 5.1: "Todas las jurisdicciones reconocidas constitucionalmente, respetan promueven y garantizan el derecho a la vida, y los demás derechos y garantías reconocidos por la Constitución Política del Estado".

23 Id., Art. 5.2: "Todas las jurisdicciones reconocidas constitucionalmente respetan y garantizan el ejercicio de los derechos de las mujeres, su participación, decisión, presencia y permanencia, tanto en el acceso igualitario y justo a los cargos como en el control, decisión y participación en la administración de justicia".

24 Id., Art. 5.4: "Todas las jurisdicciones reconocidas constitucionalmente, prohíben y sancionan toda forma de violencia contra niñas, niños, adolescentes y mujeres. Es ilegal cualquier conciliación respecto de este tema".

25 Id., Art. 5.5: "El linchamiento es una violación a los Derechos Humanos, no está permitido en ninguna jurisdicción y debe ser prevenido y sancionado por el Estado Plurinacional".

26 See study by Pedro Velasco "Ley de Deslinde Jurisdiccional, ¿avances o retrocesos en la aplicación de la justicia indígena?" (available at: <http://www.jornadanet.com/n.php?a=87505-1>).

27 Id.

3.3. The Deepening of the Political Rights of Participation

3.3.1 The Historical Alienation of the Political Elite and the Bolivian People

Another aspect of profound change in the new Constitution has been the framework for the political participation of the population. Traditionally, the Bolivian political system has been characterized by representative or delegated forms of political participation. While in the republican concept of citizenship active participation in processes of deliberation and decision-making is crucial as it converts subjects into citizens, in Bolivia the idea of active participation historically has been reduced to mechanisms characteristic of representative democracy. Accordingly, individual political rights, such as the right to vote, have had an important place in Bolivia's political development. However, this concept has never taken into account different mechanisms of political participation which can be found in many of the indigenous communities of Bolivia.

In addition, this focus on a Western-centered concept of political participation, according to many scholars, has led to a regime of monopoly for the political parties, limiting the means of political participation in the decision making process of the citizens to the general vote every four or five years (Romero Bonifaz, 2010: 23). At the same time, Romero asserts, the circle of political power dominated by the parties has increasingly distorted the democratic institutions of the state, as the public administration of the ruling actors responded more to 'clientelistic' relations than to programmatic compromises with their electorate (Romero Bonifaz, 2010: 23). Accordingly, the political administration has been increasingly disconnected from society and electoral mandates (Salazar Elena, 2008: 4).

In particular, the area of economic policy illustrates this alienation of the population from the formal political system. Since the government of Victor Paz (1985-1989) economic policy has been seen as disconnected from the realities of people's needs and demands of wider society. We can observe that during the 80s and 90s the introduction of new economic policies was accompanied by protests and the imposition of a curfew by the respective governments (Gamarra, 2009: 363-393). In addition, as Salazar observes, ruling parties have been voted out of power by an unhappy electorate, but without provoking any substantial change in the economic policies of responsiveness of the elected representatives to the demands of the electorate (Salazar Elena, 2004: 23-56). This situation is a perversion of the ideal of representative democracy which holds that re-election is predicated on an ability to attend to the needs of the electorate (Fenichel Pitkin, 1985). The situation in Bolivia instead illustrates a profound disconnection between public policies and Bolivian society.

This disconnection became critical in a period of recession during the government of Hugo Bánzer (1997-2001), creating a space for a redefinition of the relationship between political elites and society. In April and September 2000 there was a social crisis which included unexpected protests by various social sectors against the ruling elites. According to Mayorga this crisis was a turning point and reflects the disenchantment of wide parts of society with political actors and the increasing conviction that the process of political decision making could not continue to be limited to political parties (2005: 149-178). In this context, Evo Morales and Felipe Quispe started to acquire importance as political figures and their peasant farmer's movements were increasingly seen as legitimate political actors. In the 2002 elections Morales' MAS and Quispe's 'Movimiento Indígena Pachakuti' (MIP) represented a new political force, as an alternative to the traditional political elite who were being blamed for the social and political situation of the country (Salazar Elena, 2004). The strengthening of direct democracy mechanisms and the improvement in political participation of Bolivian society formed a central part of their election promises.

3.3.2 The Shift Towards Direct Democracy

The promise and use of direct democracy mechanisms and other forms of direct participation of civil society have been practiced extensively by populist political actors in different historical contexts (Salazar Elena, 2008; Papadopoulos, 2001: 65-105; Canovan, 1999: 2-16). Often, and particularly in presidential systems, they have been used to evade the limitations of the legal and institutional framework established by the Constitution and other national legislation, with the argument of strengthening direct participation of civil society (Uggla, 2008: 5, 17). In the same way, during their campaign in 2002, both Evo Morales and Quispe promised to give a bigger voice to Bolivia's indigenous population and called for the substitution of the representative democracy system with a direct democracy inspired by traditional indigenous and communitarian structures (Mayorga, 2007). With such a promise they deepened and reinforced the antiparty tendency at this historical moment. By the time of the violent 'octubre negro' protests in 2003, the traditional political parties were also forced to abandon their objections to direct democracy and to accept the call for a referendum (on the gas issue) and for a constituent assembly. By doing this they hoped to avoid the breakdown of the government of Sánchez Lozada (Salazar Elena, 2008). However, as we now know, this optimism was unfounded and the dominance of the traditional party structure of politics in Bolivia continued to disintegrate.

The new Constitution decisively strengthens direct democracy mechanisms and shifts the concept of the state from a classical representative democracy towards a more participatory one. Articles 7 and 11 define the new foundations of the political decision making processes. In a more general way, Article 7 defines that sovereignty resides in the Bolivian people who exercise it in a direct and delegated way:

La soberanía reside en el pueblo boliviano, se ejerce de forma directa y delegada. De ella emanan, por delegación, las funciones y atribuciones de los órganos del poder público; es inalienable e imprescriptible.

Consequently, Bolivia's Constitution adopts a mixed form of government, combining elements of the participatory, representative and communitarian democracy. Concretely, Article 11 states the following:

I. La República de Bolivia adopta para su gobierno la forma democrática participativa, representativa y comunitaria, con equivalencia de condiciones entre hombres y mujeres.

II. La democracia se ejerce de las siguientes formas, que serán desarrolladas por la ley:

1. Directa y participativa, por medio del referendo, la iniciativa legislativa ciudadana, la revocatoria de mandato, la asamblea, el cabildo y la consulta previa. Las asambleas y cabildos tendrán carácter deliberativo conforme a Ley.

2. Representativa, por medio de la elección de representantes por voto universal, directo y secreto, conforme a Ley.

3. Comunitaria, por medio de la elección, designación o nominación de autoridades y representantes por normas y procedimientos propios de las naciones y pueblos indígena originario campesinos, entre otros, conforme a Ley.

Article 11 therefore develops a system of government with “four dimensions” or “levels” (Cordero Carraffa, 2010: 79/80) of direct, participatory, communitarian, but also representative elements. The traditional representative element is maintained in so far as general and free elections are used to elect political representatives. The development of direct and participatory mechanisms in the new Constitution improves the instruments of the referendum and the legislative initiative (which had already existed in a limited form in the previous Constitution) and creates the possibility for recall referenda (similar to impeachment), as well as different types of consultative mechanisms (Ibid). Finally, the new text includes for the first time communitarian mechanisms that allow the indigenous population to elect, design and nominate certain authorities according to the norms and procedures of indigenous native and peasant farming communities. According to Romero, these communitarian mechanisms of political participation are characterized by wide-ranging and inclusive deliberations leading to the adoption of more consensus based decisions, the direct participation of the members of the community and the rotation of authorities (Romero Bonifaz, 2009: 23). Both the direct and participatory, as well as the communitarian mechanisms constitute a novelty in the Bolivian legal system (Cordero Carraffa, 2010: 79/80).

The novelty of this constitution is that it elevates for the first time ‘customs and traditions’ (in Spanish *usos y costumbres*) of political participation and decision making of the indigenous and peasant farming communities to an equal constitutional rank (Cordero Carraffa, 2010: 79/80). On the

one hand, the constitutional recognition of the equality of those forms of political participation represents an important step for a true acknowledgment and acceptance of the traditionally marginalized and politically excluded indigenous communities. It thus constitutes an important element for a political reformulation of the state structure and democratic understanding of the Bolivian nation. On the other hand, these new political rights for indigenous and native communities also present a challenge for the new Bolivian state. As Carraffa states, while in traditional democratic mechanisms such as universal elections and referenda all citizens are subject to certain, previously defined and generally applicable conditions without any discrimination and limitation, this is not the case in indigenous mechanisms. These mechanisms are exclusively applicable to certain indigenous or native communities, not to all citizens in a general manner. Considering that the Constitution recognizes 36 nationalities, distributed in the whole territory of the state, Carraffa argues that the recognition of their own communitarian mechanism might provoke the creation of 36 micro states within the state and thus carries the risk of fragmentation of an already fragile state structure (2010: 79/80).

However, the positive outcome of the constitutional reform might override the risks. As Romero puts it, the governmental system is formed by the totality of political institutions that link the citizens with the government, including the direct or delegated forms of political participation in the processes of decision making as exercise of sovereignty of the people (Romero Bonifaz, 2009: 23). By combining liberal institutions of political participation with indigenous and native ones, the new Constitution widens its scope of representation to all groups of citizens and deepens the meaning of democracy:

There are important improvements in the quality of democracy as measured in terms of representation and participation (inclusion and vertical accountability) [...]. (Wolff, 2012: 5)

In addition, one must not to forget that in Bolivia the shift towards direct democracy was not prompted by abstracted debate, but rather provoked by a concrete social demand by the Bolivian people in the 2003 protests. The demand for more participation reflected a deep crisis of representative democracy and an increasing division between the ruling elites and the Bolivian people. Although this crisis and the discourse calling for more direct democracy were cleverly used by political outsiders that emerged as new leaders during this 'crisis of representation', they took up a real concern of the people and a long neglected stage in the development of Bolivian democracy.

4

Conclusion

The 2003 conflicts revealed profound resentment and frustration in wide parts of Bolivian society due to the historical discrimination and marginalization of the indigenous native and peasant population. The redefinition of national identity and the attendant constitutional recognition of cultural, ethnic, linguistic and legal pluralism as well as the deepening of the rights of political participation have been important aspects in overcoming this frustration and alienation of Bolivia's population from its political decision making elite.

The fact that the new Constitution recognizes defined collective rights for the indigenous, native and peasant population is a concrete step towards overcoming their historical discrimination in a state that was not able, nor willing, to adapt its structures and mechanisms to the plural reality of the country. However, as we have mentioned, this recognition has important implications. Particularly, the recognition of legal pluralism means that Bolivia is now a 'plurinational state' with a multiplicity of different nations, each with their own legislative and jurisdictional competence. The equal ranking of these two jurisdictions is, while reflecting the wish of a genuine recognition of Bolivia's plural reality, an immense challenge of coordination and cohesion for the state. Different authorities, based on different legislation will now be able to adjudicate over social, political and economic conflicts. This could affect the unity of the state, if no clear and objective criteria for competence and mechanisms of coordination are established. Former President Eduardo Rodríguez Veltzé asserts that the concurrence of multiple 'cosmovisions', different cultures and various uses and practices represents an enormous challenge for an effective and harmonious coexistence of the cultural and legal diversity of the country. According to him, this coexistence has to be based on a genuine pluralism, aimed at enhancing the communication, exchange and coordination of the different systems on the basis of common or shared principles and standards (2009: 12).

In this context the development of mechanisms for civil society participation in the new Constitution is a modification that will undoubtedly change the life of Bolivia's people, and particularly previously excluded parts of the society. As we have mentioned, one of the key aspects of this constitutional and institutional state reform was an intention to make the state more responsive to the people's needs and mandates in the face of popular unrest, violence and fear of escalated conflict. The introduction of direct democracy mechanisms will certainly lead to an improved representation of the people's mandate in daily politics and gives the Bolivian people the possibility of influencing and even directly taking part in the process of decision making. These are certainly important elements in this process of deepening democracy:

There can be no doubt that both Bolivia's government and the parliament are considerably more representative today than ever before, and political participation – measurable in, but not limited to electoral events – has clearly grown. (Wolff, 2012: 5)

As a conclusion it is possible to claim that the revalorization of the indigenous character of parts of the population and its translation into the state's structures has been an important aspect in Bolivia's social and political transformation. However, one must caution against a view which sees such a transformation as complete. A prominent feature of current political discourses is what one could call 'the quest for a better life.' As Schaefer puts it, people's everyday struggles are mostly not driven by questions of cultural or ethnic identity, but by ordinary issues, such as access to education, health and work:

Over the past century indigenous peoples in Bolivia [...] who have fought for inclusion in projects of national modernity have above all desired tangible things, concrete opportunities to improve their social and material standing: access to schools, healthcare facilities, land, irrigation works, electricity, credit, perhaps even decently paid jobs in the urban centers. They have defined themselves not so much through their culture as through their visions for a national future into which they might fit their hopes... (Schaefer, 2009: 411)

Indeed, the specific conflicts discussed in this paper reflect these concerns, focused as they are on material conditions of life such as access to water. In this sense, Morlino indicates that a quality democracy requires a stable institutional structure that enables the liberty and the equality of all citizens through the legitimate and correct functioning of its institutions and mechanisms (2007: 2-22). After centuries of discrimination and marginalization, the restructuring of the Bolivian state and nation required a genuine recognition of the pluricultural and pluriethnic character of the nation and the implementation of concrete policies for putting it into practice.

The new Constitution of Bolivia does exactly this.

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