Bolivia
From Patronage to a Professional State
Bolivia Institutional and Governance Review
(In Two Volumes) Volume II: Annexes
August 25, 2000

Poverty Reduction and Economic Management
Latin America and the Caribbean Region

Document of the World Bank
CURRENCY EQUIVALENTS

(Exchange Rate Effective November 9, 2000)

Currency Unit = Bolivian Peso
   Bs. 6.33 = US$1
   US$0.15 = 1 Bolivian Peso

FISCAL YEAR
   January 1 – December 31
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Acknowledgement

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Annex 1. Historical Evolution of the Bolivian Political Economy

1. Since the 1952 Revolution Bolivia pursued a state-led capitalist model of development, in which the state actively intervened in the economy. The state has also been used extensively as a source of patronage. However, since the mid-1980s, the Bolivian state has been transforming its role into that of a regulator which concentrates at the central level on policy-making and regulation of private sector activities, and at the municipal level on delivering public goods. Contrary to the expectation that a transformation from a production state to a regulatory state would result in reduction in the size of government, available data suggests the opposite trend. Between 1989 and 1997, the employment in the Central Administration increased from 43,681 to 52,116 despite decentralization.²

2. This annex first traces the historical evolution of the Bolivian state and political system as a necessary background to understanding the contemporary political and institutional environments surrounding the public sector reform agenda.

History of Political Instability, 1952-1985

3. The Revolutionary Regime, 1952-64.³ Since its defeat in the Chaco War (1932-36), Bolivia’s traditional social fabric and its political and economic elite’s ability to maintain their authority and legitimacy progressively weakened. “Between 1935 and 1952, Bolivia experienced five successful coups (1935, 1936, 1937, 1943, 1951); two successful urban insurrections (1946 and 1952); at least three large-scale bloody encounters between the army and labor groups (1942, 1947, 1950); and a brief civil war (1947).”⁴ The disintegration of the “old order” culminated in the Movimiento Nacional Revolucionario (MNR)-led Revolution in 1952, which introduced sweeping reforms including the nationalization of the large tin mines and their reorganization into a worker-managed state-owned enterprise, the Corporación Minera de Bolivia (COMIBOL), a comprehensive agrarian reform, which legalized the peasants’ seizure of hacienda lands, and introduction of universal suffrage, which resulted in a five-fold increase in voter registrations between 1951 and 1956.⁵

4. In terms of political coalition dynamics, the MNR’s ascendance to power resulted in the incorporation of the hitherto excluded labor, peasants and indigenous groups into the

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¹ This annex was prepared by Yasuhiko Matsuda.
³ For a detailed account of the political dynamics in the early post-revolutionary period, see James M. Malloy, Bolivia: The Uncompleted Revolution (University of Pittsburgh Press, 1970).
⁵ The number of registered voters and the actual votes cast went up from 204,649 and 126,123, respectively, in 1951 to 1,119,047 and 955,349, respectively, in 1956. The abstention rate, on the other hand, lowered significantly from 38.4 percent in 1951 to 14.6 percent in 1956. The figures are from Table 12.2 in Eduardo A. Gamarra and James M. Malloy, “The Patrimonial Dynamics of Party Politics in Bolivia,” in Scott Mainwaring and Timothy R. Scully, eds. Building Democratic Institutions: Party Systems in Latin America (Stanford University Press, 1996).
broad governing coalition. The MNR also sought to alter political power relations with the military through a large-scale purge of officers, reorganization of the military institution itself, and redefinition of its missions to include “civic actions” such as school construction and food distribution. It has been argued that the MNR intended to establish a hegemonic status similar to the PRI’s in Mexico, where key institutional actors such as the military, organized labor and peasants, and private businesses were co-opted effectively as subordinate arms of the party. As part of the MNR’s co-optation strategy, the trade union confederation, the Central Obrera Boliviana (COB), was created and given a status of co-government with control over three cabinet posts. However, the party and organized labor never established a symbiotic relationship as in Mexico. Instead of becoming a co-opted, subordinated partner to the governing party, the COB asserted itself as a semi sovereign institution within government, and frustrated the MNR’s intention to become a dominant political force.

5. An important source of the difficult relationship between the MNR and the COB was ideological. While the COB and leftist segments of the MNR advocated a radical socialist path, the core of the MNR leadership preferred a state-led capitalism of a kind commonly found in other Latin American countries at the time. As the disagreement between the MNR and the COB persisted, the party-labor alliance broke. Faced with serious macroeconomic problems in 1956, the government adopted an IMF-supported stabilization program, and pushed out the COB representatives from the cabinet.6 Similarly, the Bolivian Revolutionary regime failed to achieve the level of institutional control over the armed forces as did their Mexican counterpart. Although the military was significantly weakened immediately after the Revolution, by the mid-1960s it had regained the institutional capacity to assert itself at the center of the national political scene. In the end, the military conspired with alienated factions of the MNR and with opposition parties to overthrow the regime in 1964, when the MNR’s leader and president, Victor Paz Estenssoro, managed to amend the 1961 Constitution to allow his own reelection.7

6. Thus, despite implementation of radical programs such as agrarian reform and the nationalization of tin mines, the core leadership of the Revolutionary movement was a rather conservative group of “pragmatic nationalists” who preserved many elements of institutional foundations of the old order. In fact, the MNR’s claim to power rested on their electoral victory in 1951, which the military had denied them.8 As such, legitimacy of, and support for, the MNR-led revolutionary regime was not based on its pronounced ideology and concrete policy programs of socioeconomic transformation. Some of the major revolutionary measures such as the Agrarian Reform and the Tin Mine Nationalization have been described as reactive actions by the government in the face of strong societal demand, or in the case of the Agrarian Reform, de facto actions taken by the stakeholders. Given the regime’s inability to assert hegemonic dominance over other

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6 Catherine M. Conaghan and James M. Malloy, Unsettling Statecraft: Democracy and Neoliberalism in the Central Andes (University of Pittsburgh Press, 1994, pp. 40-41).
7 Ibid.
social and political actors, its political survival came to depend more and more on its ability to satisfy demands for patronage from various political and social factions. As one political scientist observed, “distributive performance helped the MNR to legitimate its rule. Payoffs in the form of wage increases, subsidies, bonuses, rent controls, sinecures, social welfare benefits, increases in public services, and other payments established a simple basis of self-interest for inducing and maintaining support.” The regime fell apart when the president attempted to prolong his reign thereby depriving those on the sideline an awaited opportunity to gain power and share patronage with their followers.

7. The Military Regime, 1964-78: After the fall of Victor Paz Estenssoro and the MNR Revolutionary regime he led, General René Barrientos stepped in to rule by decree for five years until the dictator’s sudden death in a helicopter accident in 1969. During the next two years, coups and countercoups followed each other as different factions vied for power. Finally, in 1971, a coup led by Colonel Hugo Bánzer Suárez put an end to this episode of political instability, and reasserted the authoritarian state control over society, especially organized labor. Although Bánzer restricted electoral and other forms of political participation, he continued to use the state as a source of patronage. From 1971 to 1975, Bolivia’s public employment grew at an annual rate of 9.9 percent, which was three times faster than the growth of the labor force.

8. Patrimonial use of state resources was not limited to dispensation of public jobs. Another key mechanism for transferring public resources to the private sector was the state banking system. During the military dictatorship in the 1970s, for example, the state-owned Banco Agricola de Bolivia (BAB) provided more than half of all agricultural credit in the country. While the Bánzer regime’s economic policies (and its repression of organized labor) benefited private businesses, the private sector as such did not gain an institutionalized channel of access to the state. “With access structured through personal ties to Bánzer, businessmen without those ties or those who sought to put forth sectoral- or class-wide concerns were left without any direct avenues for influencing policy making.”

9. The Political Transition and the Economic Crisis, 1978-82: By 1977, societal pressure on the Bánzer regime to liberalize the political process overwhelmed the regime’s capacity to control political participation. In 1978, new elections were carried out, only to be hijacked by the military which found itself on the losing side. During the next four

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9 Ibid., p. 342. Essentially the same interpretation has been offered by Gamarra and Mally (1996, p. 404). Once again this was not a style of governance unique to Bolivia. The mildly-populist democratic regime in Venezuela, for example, has resorted to similar distributive tactics, which were financed mainly through extraction of rents from the foreign-owned oil industry.
10 When Paz announced his intention to seek another presidential term, two of the MNR leaders, Hernán Siles Zuazo, and the leader of the labor left Juan Lechín, both left the party in protest (Malloy, 1970, pp. 310-314).
11 Between 1970 and 1978, public sector investment and consumption as a percentage of GDP increased from about 19 percent to 26 percent.
12 Cited in Conaghan and Malloy (1994, p. 52).
years, Bolivia went through yet another episode of political turmoil, as seven military and two civilian governments replaced each other in quick succession. The political decay reached a crisis proportion during the government of General Luis García Meza, which was not only extremely repressive but was also notoriously corrupt with known ties to drug-traffickers.

10. After the fall of García Meza, the Congress elected Hernán Siles Zuazo as president. While Siles’ election enjoyed broad support from the military, party leaders, organized labor and the private sector, the magnitude of the economic problems was such that the government soon found itself unable to cope with the deteriorating economic conditions. Furthermore, the same political forces that negotiated Siles’ election, mainly the Congress, organized labor, and even Siles’ own vice president, obstructed the government’s legislative agenda, and even threatened to unseat him by way of “constitutional coups.” Devoid of congressional support, the Siles administration relied on rules by decree. While the government negotiated several IMF stand-by programs in the three-year period, all faced strong opposition especially from organized labor, which forced the government to soften the content of the stabilization measures. While the government engaged in repeated episodes of announcing new reform packages and watering them down under societal pressure, the economy deteriorated further with inflation reaching more than 20,000 percent. Given his inability to find a way out of the economic crisis, Siles was forced out of power one year early, and new elections were called in 1985.

The Maturation of the Democratic Regime, 1985-1997

11. Coalition Politics and Macroeconomic Reform, 1985-89: Bolivia’s peculiar electoral system allows Congress to elect the president when no candidate wins a majority of votes. In 1985, this system elected the MNR’s Víctor Paz Estenssoro for his fourth term as president despite his finishing second in the poll.14 Once elected, the Paz government quickly introduced a package of economic stabilization measures (Nueva Política Económica or New Economic Policy (NEP)) by presidential decree (D.S. 21060 and D.S. 21660), and declared a state of emergency to deal with resistance from opposition parties and organized labor. To ensure sufficient legislative support for the measures, Paz Estenssoro negotiated a coalition agreement with Bánzer’s ADN (Pacto por la Democracia).15 This legislative coalition was particularly critical for securing the Constitutionally-required Congressional ratification for the state of emergency. In exchange for its support for the government’s NEP policy programs, the ADN obtained control of a number of state agencies and corporations, as well as an agreement that the

14 The leading candidate was Hugo Bánzer, who obtained 28.6 percent of the votes, in contrast to Paz Estenssoro’s 26.4 percent.
15 Between them, the MNR and the ADN controlled 64.6% of the Lower House seats (i.e., 84 out of 130) and all but one of the Upper House seats (i.e., 26 out of 27). Also between them, Paz and Bánzer represented 55% of the votes in the 1985 presidential election, which conferred greater legitimacy to the government’s policy actions.
MNR would support Bánzer’s candidacy in the next presidential election in 1989. This way, the inter-party pact augmented the government’s political capacity to address one of the most serious challenges of economic governance in Bolivian history. However, according to an academic observer, it also “increased party patronage pressures on public employment despite the high-flown neoliberal rhetoric of reducing the size of the state,” and “undermined the president’s ability to assert authority over the state bureaucracy,” at least over those parts of the bureaucracy outside the MNR’s direct control.

12. The academic literature also gives significant credit to the particular style of governance adopted by Paz Estenssoro for his government’s effectiveness in restoring macroeconomic stability. In forming the government, Paz divided his cabinet between the economic cabinet of “technocrats” led by the Planning Minister, Gonzalo Sánchez de Lozada and the political cabinet of traditional party politicians led by the Foreign Minister Guillermo Bedregal. With Bedregal functioning as a de facto prime minister for political affairs, Sánchez de Lozada and his technocratic team were insulated from day-to-day partisan bickering, and was thus able to concentrate on economic management from a technocratic standpoint. The impressive achievement of this government team is quite well known. The government brought hyperinflation under control, and managed to bring about positive, though modest, economic growth within a few years. Equally important is the fact that the direction of economic policies set by the Paz Estenssoro administration was not really contested at the next election, and in fact, broadly continued by its successor governments. What allowed this team to implement such a coherent set of reform measures? James Malloy, a seasoned student of Bolivian politics, observed in the late 1980s that “the key to apparent success in economic stabilization was fundamentally political. ... What was new in Bolivia was not the neoliberal program of the NEP but the political creativity that backed it up.” According to Malloy, Paz Estenssoro’s political leadership was the determining factor that explained the impressive success of the NEP in Bolivia. Paz managed to “straddle the patrimonial dynamics of the parties and the technocratic dynamics of his economic team, and then to meld these contradictory logics into a coherent system of rule.”

13. Inter-party Conflict and the Problem of Coalition Governance, 1989-93: In the run-up to the 1989 elections, the MNR broke the agreement with the ADN to support Bánzer’s candidacy, and entered the presidential race with Sanchez de Lozada as its own candidate. Indeed Sánchez de Lozada won the plurality of the votes (23.07 percent) in contrast to Bánzer’s 22.7 percent, and the MIR’s Jaime Paz Zamora’s 19.6 percent. However, in the three-month period between the first-round ballot and the run-off in Congress, the ADN decided to throw its weight behind the MIR, and helped elect Paz.

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17 Ibid, p. 376.
19 Ibid, p. 55.
Zamora as Bolivia's new president. Controlling the majority of congressional seats (54.6%), the new MIR-ADN alliance (Acuerdo Patriótico) tried to push its legislative agenda, which was broadly in line with the content of the previous government’s programs laid out in D.S.21060 and D.S. 21660. The new government also declared a state of siege, just as the previous government had done. Due to the opposition from the MNR, however, the MIR-ADN coalition failed to obtain the necessary congressional ratification, for which a two-thirds majority was required. It is to be emphasized that the MNR’s opposition to the government’s program was not based on ideological disagreement in any fundamental sense. The economic policies pursued by the Paz Zamora government were basically a continuation of the NEP initiated by the Paz Estenssoro administration. The conflict was more political (i.e., over access to power and patronage) than economic and ideological in nature. To compensate for its inability to influence policy agenda either in the executive or the legislature, the MNR and its supporters began to use the judiciary, whose Supreme Court judges had all been appointed during the MNR’s tenure in government, as a means to challenge government decisions. Inter-party conflict was further exacerbated by the Acuerdo’s monopoly control over state patronage, despite the fact that the Paz Zamora government created three new ministries and 16 new vice ministers in the context of diminishing fiscal resources.

14. Launching Structural Reforms with a Fragile Coalition, 1993-97: In 1993, Bolivia celebrated a third round of successful elections since the transition to democracy in 1982. Sánchez de Lozada (MNR) captured 34 percent of the votes, with a 14-point lead over the Acuerdo Patriótico candidate, Bánzer, and carrying with him 40.8% of the parliamentary seats for the MNR. In the Bolivian electoral context, this amounted to a landslide victory. While the Banzeristas in the ADN tried to negotiate an alternative candidate (Carlos Palenque of Condepa) for the presidency, they were unable to unite the whole party around that proposal, and failed to persuade Palenque to run with the deal. As other parties expressed their intention to support Sánchez de Lozada’s election, the ADN also accepted the MNR’s victory. Once again, the new MNR government formed a new

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20 Condepa, with 9 seats in the Lower House and 1 in the Upper House, joined the coalition as a junior partner, and obtained a share of patronage appointments in the public bureaucracy.
21 Gamarra (1997, p. 382) goes so far as to assert that “the main political conflict had little to do with the economic logic of stabilization and everything to do with the exclusion of the MNR and other opposition parties from patronage spoils.”
22 See Gamarra (1997, pp. 378-383) for a discussion on the political battles between the Acuerdo Patriótico and the MNR, and particularly for a reference to the politicized use of the judiciary in this inter-party conflict.
23 In the Acuerdo Patriótico, sharing public posts between the two parties did not follow the same pattern as during the MNR-ADN collaboration in the Pacto por la Democracia. Instead of letting one party control one ministry and the other party another ministry, the MIR and the ADN divided the same ministries by levels (e.g., a MIR minister and an ADN vice minister of health). It is not hard to imagine how this arrangement had a negative impact on the internal management of ministries. Carol Graham, “The Politics of Protecting the Poor During Adjustment: Bolivia’s Emergency Social Fund.” World Development, Vol. 20, No. 9, (1992, 1233-1251). This practice of dividing control over a single agency among more than one party continues today.
governing coalition, this time with Movimiento Bolivia Libre (with 5.4% of the Lower House seats) and Unidad Civica Solidaridad (with 15.4% of the Lower House seats).24

15. The MNR government made its “Plan de Todos” a centerpiece of its legislative agenda, and during the first year in office managed to obtain congressional approvals of a series of important bills, including the Reform of the Executive Power Law, the Capitalization Law, the Popular Participation Law, the Education Reform Law, and the Constitutional Reform Law. The Reform of the Executive Power Law reduced the number of ministries from 17 to 12, creating a few multi-sectoral “super” ministries (i.e., Human Development, Sustainable Development and Environment, and Finance and Economic Development). The Capitalization Law opened a way for selling off 50 percent of the assets of large public enterprises.25 Arguably the most important of these in terms of their impact on governance are the Constitutional Reform and Popular Participation Laws. The most important aspects of the Constitutional Reform include introduction of a plurality voting system (sistema uninominal) to 50 percent of the lower house seats, and prolonged the terms of the president, Congress, mayors and municipal council members to five years. The Popular Participation Law created 311 municipalities, many of them new, and granted them significant fiscal and administrative responsibilities with formula-based fiscal transfers from the central government. Both the introduction of the plurality voting system and the radical fiscal and administrative devolution under the Popular Participation are likely to increase the salience of local-level political concerns. Whether this would result in the exacerbation of existing regional cleavages and thus further fragment the political parties along regional/factional lines, or instead promote local-level democracy with vibrant civil society participation, is unclear.26

24 In return for its support, the MBL was promised one ministry, key congressional posts, and at least one embassy. Later, the party’s leader Antonio Aranibar was named foreign minister. For its part, UCS secured one ministry, two undersecretary posts, two ambassadorships, the presidency of one regional development corporation, and the first vice presidency of both the Chamber of Deputies and the Senate. Gamarra (1997, p. 384-385).


26 This section draws from Eduardo A. Gamarra, Democracia, Reformas Economicas y Gobernabilidad en Bolivia, CEPAL Serie Reformas de Politicas Publicas 36. One question that comes to mind is the status of regional civic committees, which are described as becoming important in the political scene since the late 1970s. Would the reform measures that are meant to shift part of the center of political gravity localize the pressure from regionally-based interest groups such as civic committees? Would that shift then produce a situation of local capture more than democratic accountability with meaningful citizen participation?
Annex 2. History of Civil Service Reform in Bolivia

1. Over the past fifty years, Bolivian governments have undertaken various initiatives to improve public sector performance, particularly in the area of civil service. At different times in history, Bolivia's reform efforts have focused on four general areas: 1) definition of a legal framework for the civil service; 2) reorganization of posts and structures within public agencies; 3) strengthening of the public sector's human resource capacity; and 4) change in organizational culture.

2. Despite frequent reform attempts, much of Bolivia's public sector still falls short in performing even the most basic tasks of government. The public administration is internally divided: agencies distrust one another and reliable information is scarce, even about basic aspects of day-to-day functions. Many agencies suffer the consequences of factional in-fighting, as patronage appointments within the same agency may be divided between several parties. Politicization also leads to high turnover rates, thereby contributing to a variety of problems such as information asymmetries, weak oversight, and loss of institutional memory.

3. This paper consolidates the findings of several consultant reports on Bolivia's civil service reform history. It highlights milestones along the path towards the creation of a modern public administration, and tries to elucidate some of the primary reasons for the disappointing results of so many reform efforts. The paper focuses particular attention on the most recent (unsuccessful) attempt to create a corps of merit-based public employees throughout the central administration. Finally, the paper looks at the reform program currently under development.

Brief historical background (1944-1975)

4. In 1944, the government passed Supreme Decree (D.S.) 0099 which created the Department of Administrative Efficiency and Reorganization, with the objective of making a qualitative and quantitative inventory of the public sector's human resources. The mandate was never carried out. In 1956, the government created the Office of Administrative Rationalization to carry out the above-mentioned inventory, and a plan for classifying and evaluating posts was developed but never implemented. In the same year, the Civil Service Office was created, with similar results.

5. Since the 1960s, Bolivia's modernization attempts have responded faithfully to the various paradigms that have shaped mainstream approaches to public administration reform, although often the predominant paradigm of the day did not fit the reality of Bolivian government.

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1 By Suzanne Dove.
2 The information in this section draws heavily on the report “Civil Service Reform in Bolivia”, by Carmen Machicado (August 1993).
6. The 1960s witnessed a series of frustrated initiatives at legalistic administrative reform. In 1962, the government began to construct the foundation for the civil service structure that exists today. D.S. 6134 established the National Division of Civil Service within the Ministry of Finance, to plan and manage the recruitment, selection, training and evaluation of public personnel. The first Statute of the Public Official was also drafted in 1962, and a Commission for Administrative Reform was created (D.S. 6252) to draft the Administrative Organization Law and outline plans and studies for sectoral reorganization. The General Secretariat of the Presidency was given a similar task in 1963 (D.S. 6533). Training needs were to be addressed by the Instituto Superior de Administración Pública (ISAP), founded in 1964 (and closed down in 1990). In 1965, the above steps culminated with the passing of the Statute mentioned above, creating a merit-based administrative career path for public officials. Again, however, these reforms were ignored and political affiliation remained the predominant qualification required for obtaining a public sector job. A 1967 constitutional reform reiterated the guarantee of an administrative career path and stressed the need for the Statute to enforce the rights and obligations of public officials. In 1969, the Ministry of Planning was charged (D.S. 8955) with the task of formulating and executing an administrative reform plan.

7. In the 1970s, concerns about efficiency and human resources management (primarily merit-based hiring and training for public officials) came to the fore. The Executive Power Administrative Organization Law (LOAPE - D. Law 10460) and the Law of Administrative Career Path and National System for Personnel Management (D. Law 11049) were passed in the early 1970s. A court system for trying public officials was also instituted and later repealed (D.S. 18850). In 1975, the Division for Public Management and Administrative Rationalization was established (D.S. 12884), in an attempt to consolidate the functions of personnel management, training and rationalization. This division existed until 1989. In 1974, military dictator General Hugo Banzer established a Mandatory Civil Service System, whereby all citizens over the age of 21 could be required to serve the government (if appointed), under penalty of a two-year jail term or exile.

Civil service reforms in the face of economic crisis (the 1980s)

8. During the first half of the 1980s, Bolivia plunged into a quagmire of hyperinflation, administrative incapacity, and political instability. By 1987, the stabilization plan embodied in the Paz Estenssoro government’s New Economic Policy (NPE) had successfully checked the chaotic economic situation. With the economy under control, however, the severe weaknesses that plagued Bolivia’s public administration became even clearer. One weakness was related to size: public organizations were populated by a large number of politically appointed, unmotivated and underqualified public employees, at all levels of the organizational hierarchy. To address this problem, the government’s

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3 Between 1982 and 1985, public employment grew by almost 25%; by 1985, the total number of public employees was estimated at 245,000 (“Problemas y Perspectivas de la Privatizacion en Bolivia”, Flavio Machicado, IDEA, 1992).
structural adjustment program, with considerable support from the donor community, began to focus on reducing the size of the public sector.

9. At the same time, the demanding nature of the reform efforts called for the creation of highly qualified technical teams to carry out the new programs; the poorly educated, untrained staff in the vast majority of positions could not meet this need. Compounding the problem was the fact that the public sector salary scale was far too low to appeal to such people, so Bolivia's government turned to foreign aid in order to offer competitive salaries that would attract the expertise needed to build successful reform teams.

10. Finally, the rigid and antiquated administrative structures and procedures were perceived as an additional constraint to effective public sector performance. Highly detailed rules and control systems had been developed over the years to curb corruption (sometimes these systems were put into place by the perpetrators of corruption, in order to keep others from participating in illegal activities). These complexities made decision-making and program implementation cumbersome. The initial wave of economic reform resolved the problem by creating autonomous agencies or specially funded programs which were exempt from following standard procedure. Later reform efforts have tried to deal with this weakness more directly.

11. While the hiring of donor-financed "consultants" undoubtedly resolved some immediate problems posed by the reform challenge, the complications that gradually emerged were also significant. First of all, over time consultants took on line functions throughout the public sector, while their salaries continued to be paid by foreign aid programs, rather than by the National Treasury (TGN) or by the agencies' own revenues. This led to a "dual system" within the public administration. On one side were the poorly paid and often underqualified public employees, highly susceptible to political influence in order to retain their jobs. On the other side were the well-paid and generally well-trained "consultants", who also suffered job uncertainty because of their dependence on external financing. Moreover, as they did not enjoy the protection of a political "godfather", they were also vulnerable to arbitrary political decisions.

12. Other problems posed by this arrangement included high turnover and loss of institutional memory; falling morale among public employees (non-consultants); opposition from public opinion and questionable legality of the payment structures; conflicts of interest between consultants and their two employers (the government and the international cooperation agency that pays the salary); lack of government control in channeling foreign aid. By the late 1980s, it was clear that reforms needed to address Bolivia's civil service problems.

13. In 1989, the Bolivian government signed the Economic Management and Strengthening Operation (EMSO) project with the World Bank, the IDB, and the Swedish government. This project supported a wide-ranging administrative reform program, including a component to improve public personnel management. The primary objectives were to rationalize the wage structure and to stabilize public employment conditions in order to attract qualified personnel. The approach was to be incremental,
starting with core central government agencies and gradually encompassing decentralized agencies, SOEs, and the large and medium-sized municipalities.

14. After almost a half-century of erratic, insincere tinkering, it seemed that finally the idea of genuine administrative reform had found its moment under the Paz Zamora administration. The combination of economic stability, political commitment, favorable public opinion, and available funds could provide a stable foundation upon which to establish a modern public administration, including a merit-based civil service.

15. The 1990s got off to an optimistic start, with the passage of the milestone Law 1178, commonly known as the SAFCO (Sistema de Administración Financiera y Control Gubernamental) Law. This law embodied a fresh approach to public management reform, attempting to turn the tables on the existing rigid administrative structure. The designers of SAFCO diagnosed the Bolivian public sector as suffering the "sickness" of traditional, hierarchical, rule-bound bureaucracies; the medicine it prescribed was based on cutting-edge thinking about decentralizing responsibility and control systems and holding public servants accountable for their individual actions and for their agencies' performance.

The Programa de Servicio Civil (PSC): from "key posts" to labor regime to "masa crítica"

16. The SAFCO Law established eight integrated administrative and control systems: programming and operations; administrative organization; budget; personnel administration; goods and services; treasury and public credit; accounting; and government control. These systems were to be applied without exception throughout the public sector. The Law emphasizes individual and organizational responsibility for implementing the systems. It replaces Bolivian governments' traditional emphasis on ex-ante controls with a focus on ex-post controls, to be conducted by internal auditing units within each agency. The Comptroller General (CGR) is the oversight body with the mandate to undertake independent audits of compliance with SAFCO.

17. Through the Public Personnel Administration System, agencies are supposed to determine necessary posts and the requirements and mechanisms to fill them; implement systems to evaluate and remunerate occupants of these posts; develop the professional capacities and aptitudes of civil servants; and establish procedures for civil servants' retirement. The new law repealed earlier legislation that had assigned responsibility for personnel administration to the Ministry of Planning; under SAFCO, each agency is responsible for implementation of personnel policies and systems, while the Ministry of Finance is designated by the Executive Branch's to oversee compliance. After SAFCO was passed, R.M. 927/90 created the Civil Service Executing Unit (UESC) within the Ministry of Finance, to monitor implementation of the personnel management system.

18. However, a key component was missing from the SAFCO Law: it lacked the follow-up subsidiary legislation needed to operationalize the new systems. The norms specifying how to implement these systems were not passed until 1996-97. Between
1990 and 1997 (when the Normas Básicas para el Sistema de Administración de Personal were passed), the government made numerous attempts to implement the public personnel management system, but with limited success. Importantly, SAFCO does not specify the creation of a merit-based civil service system. Nevertheless, a key element of Bolivia's work in administrative reform since 1990 has focused on trying to create such an institution, in order to comply with SAFCO's emphasis on efficiency, transparency, improved performance and individual responsibility.

19. Between 1989-1992, the government (led by the Minister of Finance) undertook an initiative aimed at establishing a special labor regime that would provide job stability and competitive, donor-funded salaries for people occupying around 700 “key posts” in line agencies. The expectation behind the “key posts” strategy was that structural adjustment reforms could move forward if only the Ministry of Finance had a few good, well paid, and relatively permanent people in each ministry. This “key posts” approach was questioned by international aid agencies, as well as by some top government officials, who felt that it fell short of the larger goal of administrative reform. They criticized the use of resources to resolve the consultant problem, which was really only a small part of a much larger challenge.

20. In 1992, the Administrative Reform Program was developed (Decree 23326). Unlike the “key posts” approach, this program aimed to create a new labor regime for all public employees in the central administration by incorporating them into a civil service system. The specific objectives of this program were: 1) to reduce the size of the public workforce; 2) to install a hierarchical and competitive salary scale; 3) to design and adopt modern human resources management procedures that would eliminate political influence in hiring, paying, promoting and dismissing public employees; 4) to modernize the public administration and instill a culture of transparency and accountability for results.

21. The international donor community began to prepare administrative reform projects to support a civil service program based on this comprehensive focus. However, in 1994-95 the government began to question the financial viability of a comprehensive civil service program, as it recognized the magnitude of state revenues that would be required as donor financing for salaries was gradually phased out. The government asked the international aid agencies to construct a more modest project that could be supported in the future by Bolivia's limited financial resources.

22. After several reductions in the numbers of posts to be included in the civil service program, eventually the Civil Service and Administrative Reform (CSAR) project was born. It was considerably less ambitious than the comprehensive approach that would include all central administration employees, but was more extensive than the original “key posts” concept. The CSAR project adopted a strategy which came to be called the “masa crítica” (critical mass), consisting of 2566 posts. Various factors contributed to this shift.
23. First, financial constraints continued to present a crucial problem in Bolivia. A comprehensive civil service reform program that would raise salaries throughout the public sector would represented an enormous challenge when it came time for the government to pay the wage bill. Second, a new government came to power in 1993 (under President Gonzalo Sánchez de Lozada), bringing with it new ideas about state reform. Sánchez de Lozada’s administration focused its attention and resources on several large reforms, particularly the decentralization effort known as Popular Participation, and the capitalization program. These took precedence over the implementation of other laws, such as SAFCO.

24. A third reason for the scaling down of civil service reform to the “critical mass” idea (which at this point is only a hypothesis) is related to the issue of political patronage. It is conceivable that Sánchez de Lozada felt he needed to preserve political control over the central administration, particularly in light of the other reforms he was implementing. Both the Popular Participation and capitalization programs implied losing a considerable number of patronage appointments, through devolution of political power to municipalities in the first instance, and through privatization of state-owned enterprises in the second. It is possible that Sánchez de Lozada needed to ensure he could “pay” for support (from his own party as well as from others) for these two initiatives by maintaining control over distribution of a certain number of valuable patronage posts in the central administration.

25. Thus, although civil service reform was conceived in a favorable political and public opinion environment, with financial backing committed by donors, these pillars of support fell away with the change in administration in 1993. In a show of ongoing deference to the spoils system, some of Sánchez de Lozada’s new ministers tried to fire civil servants hired under the PSC initiated during the previous administration. One notorious case occurred at the Ministry of Agriculture. Under pressure from the dismissed civil servants, the UESC responded by withdrawing the donor funds from the Ministry of Agriculture, until eventually the civil servants were reinstated. Clearly, however, the culture of merit was far from institutionalized.

26. The following section describes the CSAR/PSC programs, and discusses the results obtained between 1993-1997.

**Description and results of the CSAR project**

27. The project’s overall goal was to support implementation of a civil service and administrative reform program in a select number of public agencies (11 Ministries and 3 decentralized agencies). Specific objectives were:

- To provide the selected entities with a “critical mass” of highly qualified personnel at the top management and professional levels (Directores, Mandos Medios and Profesionales);
- To support and strengthen implementation of the PSC;
- To develop selected agencies’ institutional capacity with a view to improving their performance
28. The project had five components:

- **Incorporation of personnel to the PSC.** The goal was to fill 2,566 posts (which would cover all Director, Middle Manager, and Professional posts at the selected agencies). Every year, the UESC in the Ministry of Finance would send the Minister of each selected agency a list (Plan Anual de Incorporaciones, or PAI) of the posts to be incorporated into the PSC.

  Each selected agency signed an Institutional Agreement (AI) with the UESC, agreeing to follow the procedures for program implementation and defining the salary assigned to each post and the minimum qualifications required of the person hired to fill the post. Under the PSC, posts had to be filled through a transparent, competitive, merit-based recruitment process. The selected agencies and the UESC were equally responsible for ensuring that the AI was followed.

  Each participating agency also had to submit an Annual Operations Program (POA) to the UESC. The POA established the organization’s annual program objectives, and served as the justification for the number and type of posts to be incorporated into the PSC. In addition to the organizational POA, each entity also had to prepare an individual POA (POAI) for each post to be included in the PSC. The POAI was to specify the tasks to be carried out by each public employee incorporated into the PSC. The purpose of the POAI was two-fold: first, to determine the qualifications needed before filling the post, and second, to evaluate the performance of the person who was eventually selected. The UESC was also charged with overseeing training and performance evaluations in each agency.

- **Extension and strengthening of the PSC.** This component supported the UESC’s efforts to implement key aspects of the Normas Básicas of personnel administration in all selected agencies.

- **Support for SAFCO implementation.** The project supported implementation of the non-financial SAFCO systems: Operational Programming; Administrative Organization; Personnel Administration; and the systems for monitoring and evaluating SAFCO implementation.

- **Training.** Training programs to develop management skills for people in the PSC.

- **Project administration.**

29. The results of the CSAR project were disappointing. The targets defined as “critical mass” were not reached in any agency except the Ministry of Justice. A multitude of problems plagued project implementation from its beginnings. The UESC was overburdened and underempowered. It was overburdened in the sense that ironically, although one of the CSAR project’s objectives was to strengthen public agencies’ accountability for their own performance (in line with the SAFCO Law), project implementation was highly centralized within the UESC (particularly post analysis,
recruitment and selection). This may have been a cautionary measure, but one of the negative results was that the entities participating in the project never bought into it; most perceived it as another set of required formalities with which they complied solely in order to access donor-funded resources. At the same time, the UESC was underempowered in the sense that its place in the organizational structure was unclear, and in any case was poorly matched with its considerable oversight responsibility. Initially, the Director of the UESC had direct access to the Minister of Finance, but gradually it was moved further away from the center of power. By the time the project ended in 1997, the UESC had been discredited because of its perceived inefficiency.

30. There are several indicators of low government commitment to the CSAR project. First, the total number of posts filled was in fact so small that its impact on improved public sector performance was negligible. By 1997, 729 posts were supposed to have been filled under the PSC, but in November 1997 only 248 had been. Sometimes, recruitment processes were announced but there were not enough qualified applicants. In other cases, the selection processes were slow and by the time the chosen candidates were invited to occupy the post, they had already accepted another position elsewhere. In 1996, 290 posts were designated to be incorporated into the PSC; 232 recruitment processes were announced; 94 people entered the civil service, and 59 people left. Retention was also a problem; many people hired under PSC left in frustration, as they felt “sandwiched” between highly politicized upper and lower levels of public personnel.

31. Overall, by 1998 23 percent of Treasury (TGN)-financed posts were incorporated into the PSC. The percentage of PSC employees compared to the total number of employees in the public sector is probably even less than it appears, since many positions are still financed by the donor community (“consultants”) and may not be counted in government statistics. The lack of enthusiasm by the government was compounded by reduced donor funding for the project was less than expected (the World Bank did not lend money for this project after the PPF), which was partly a result of the government’s slow progress and perceived lack of commitment.

32. Another important problem was the lack of agency compliance with the various operational programming documents that were supposed to be submitted annually to the UESC in the Ministry of Finance. For example, in 1997 none of the selected agencies presented their internal audit of compliance with the AI, allegedly because of lack of financial resources to conduct the audit. Also in 1997, only 11 of 24 organizations submitted the POA; only 13 submitted the POAIs.

33. An important indicator of the degree to which a merit-based civil service system has been consolidated is the amount of turnover in public agencies, particularly after elections. Turnover of PSC staff in participating agencies had remained fairly steady from 1995-1997 (average of about 11 percent). Elections were held in Bolivia in June 1998. 23 percent of Treasury (TGN)-financed posts were incorporated into the PSC. The percentage of PSC employees compared to the total number of employees in the public sector is probably even less than it appears, since many positions are still financed by the donor community (“consultants”) and may not be counted in government statistics. The lack of enthusiasm by the government was compounded by reduced donor funding for the project was less than expected (the World Bank did not lend money for this project after the PPF), which was partly a result of the government’s slow progress and perceived lack of commitment.

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4 Of these, Ministries with the highest percentage of PSC posts were the Ministry of Justice (73%), the Ministry of Agriculture (59%), and the National Statistics Institute (51%). The Internal Revenue Service and the Ministry of Housing had the lowest number of PSC posts (4% and 7%, respectively). The Ministry of Finance had 24%. 

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1997, and a new government took power later that year; in 1998 PSC staff turnover more than doubled, reaching 24 percent. Moreover, the agencies which had lower levels of PSC staff by 1997 had higher levels of turnover (e.g., Ministry of Housing had 50 percent turnover after the 1997 elections), indicating possible sources of strong resistance to a merit-based system. With the change of administration in 1997, the CSAR/PSC ground to a halt. In 1998, only 30 posts were assigned to the PSC.

Civil service reform in Bolivia today

34. Over 50 years have passed since the Bolivian government first began its erratic attempts at administrative reform; over 30 years ago government leaders professed a need to create a merit-based corps of civil servants. Today, public organizations remain highly politicized at all levels. Certainly, the PSC has had some numerical impact; a certain number of posts have been filled based on merit. We can speculate that some organizations’ performance has improved because of strategic planning, management training, and better-qualified human resources. However, based on evidence gathered through observations and interviews, it is clear that the broader impact of the attempts at administrative reform in general, and particularly civil service reform, has been marginal.

35. The culture of individual responsibility, accountability for results, and transparency, all under a system of ex-post control (SAFCO), has not permeated Bolivian bureaucracy. Administrative systems, monitoring and oversight bodies, evaluation methods, and sanctioning mechanisms remain weak. Finally, Bolivia’s public administration is far from performance-oriented.

36. Still more disturbing is the pervasive informality affecting almost every area of the public sector. Formal rules are rarely respected; they are subverted by informal parallel systems that exist throughout the public sector (personnel systems; reporting systems; procurement systems; computer systems; etc.). The traditional means of getting things done (personal connections, clientelism, politics) are alive and well.

37. The Banzer administration is adopting a different approach to civil service reform, in the context of fighting corruption. To date, one of the government’s primary programs is the National Integrity Plan (PNI), aimed at boosting economic development by reducing incentives/opportunities for corruption. In the context of the PNI, the government is trying to adopt a more comprehensive approach to human resource management reform. The government’s key objectives are:

- Promote a functional analysis and reengineering of public agencies
- Establish a complete legal framework for the administrative career path
- Reduce the size of the public sector to generate savings
- Improve salaries (comprehensively) to attract and retain qualified personnel

• Create a strong Civil Service Commission (CSC) to support “normative centralization with operational decentralization”, whereby the CSC will be responsible for formulating norms, working with the personnel management units in line agencies, and overseeing the integrity of the public sector’s human resources system, while line agencies will have considerable autonomy in hiring, firing, and designing performance targets.

38. The new reform plan reflects the optimistic and ambitious personalities of the young technocrats who designed it, as well as the significant influence of the donor community. Program descriptions are replete with jargon such as results-oriented budgeting; performance-based management; accountability; subsidiarity; anti-corruption. These are the buzzwords of the New Public Management that is spreading through the industrialized world, and may respond to the fact that many of these governments will contribute money for Bolivia’s reform.

39. The sustainability of this type of reforms undertaken by the current government is questionable, particularly after the next national elections. The Banzer government is known as the “mega coalition”. Five parties are represented, and rely on patronage posts to distribute to their supporters. In other countries which have implemented merit systems (particularly in the United States), presidents first filled agencies with political appointees and then “blanketed them in” to the merit system. It is conceivable that a similar pattern could take place in Bolivia. However, the next administration may not respect the newly established merit rules and may replace current employees with their own supporters.

40. The way this will play out depends on several factors. One of the most important is the current government’s ability to establish a strong Civil Service Commission. The UESC that existed under the CSAR project was dismantled in September 1997, and later reemerged as the Servicio Nacional de Administración de Personal (SNAP). SNAP reports to the Viceministry of Budget and Accounting in the Ministry of Finance. It occupies the lowest rank in the Ministry, and did not receive any budget allocation from the Treasury until January 1999. Its position is so marginal that its staff are unable to access even the most basic data from line ministries. A strong Civil Service Commission, with direct access to top-level government officials, is essential in passing a reform such as a merit-based civil service, which is likely to generate strong partisan opposition.

41. An objective assessment of the current government’s civil service reform proposal must take issue with the apparent belief that Bolivia’s civil service reform needs boil down to a reengineering problem. Informality (absence of rule compliance) and political patronage are two key (and related) problems that will not be solved by reengineering; in fact, they may even worsen.

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6 Another important difference between Bolivia and other countries where civil service reform has succeeded is that in Bolivia public employees (with a few exceptions such as teachers, doctors, and police) are not unionized. Public sector unions have been a key force in sustaining and expanding efforts to build a merit system in several countries, including the United States and Argentina.
42. Legislative reform, administrative restructuring, training, and New Public Management initiatives have all failed to transform Bolivia's public sector over the past half century. This does not mean that change is impossible. But to come back to a point made at the beginning of this paper, administrative reform strategies must respond to the needs of the country at any given moment. In a country where the guiding maxim is "hecha la ley, hecha la trampa" ("rules are made to be broken"), the new reform program is unlikely to succeed where others have failed.
Annex 3. Formal Employment Arrangements in Central Government

1. Evidence of informality suggests that formal policies, rules and procedures that are meant to serve as institutional restraints are not effective. The SAFCO law was intended to introduce objectives-based civil service management, decentralized at the agency level. The questions are whether the current institutional arrangements for personnel management are coherent, and whether there are formal mechanisms in place to ensure actual enforcement of the rules. To assess the coherence and enforceability of these formal rules, we identify six areas of institutional arrangements that define the civil service. They represent a normative benchmark for civil service arrangements widely held by experts and implicit in much of the practitioner literature.

Table 1 - Benchmark assertions on civil service arrangements

<table>
<thead>
<tr>
<th>Civil service policy and strategy</th>
<th>Arrangements should encourage a conscious focus on managing and developing the civil service as circumstances change</th>
<th>There should be sufficient information in circulation to enable oversight on adherence to civil service policy</th>
</tr>
</thead>
<tbody>
<tr>
<td>Legislation and regulations</td>
<td>Access to civil service positions and responsibilities of civil servants should be legally defined</td>
<td>Staff should know the rules, consider them reasonable and follow them</td>
</tr>
<tr>
<td>Civil Service structure and career management</td>
<td>Staff responsibilities, promotion prospects and career paths should be credibly defined</td>
<td>The classifications systems should be maintained (they should matter sufficiently)</td>
</tr>
<tr>
<td>Pay and Employment Framework</td>
<td>Arrangements should enable government to act as a responsible employer, restraining employment costs while ensuring that remuneration arrangements do not establish perverse incentives</td>
<td>Government should have the information on which to base tradeoffs between remuneration and staff numbers. Government should use this information to provide reasonable rewards</td>
</tr>
<tr>
<td>Performance management</td>
<td>Arrangements should allow performance to be defined (whether based on compliance or objectives)</td>
<td>Individual and agency performance should be monitored</td>
</tr>
<tr>
<td>Accountability</td>
<td></td>
<td>Standards should be in place and used to constrain the actions of the executive</td>
</tr>
</tbody>
</table>

2. Civil service policy and strategy. The government’s civil service reform strategy focuses on the implementation of the new Statute of the Public Official, which would create a merit-based civil service. The role and objectives of the career civil service are defined clearly in the new Statute, although the strategy for implementing the new law is

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1 By Nick Manning and Suzanne Dove.
quite general. In line with the historical tendency in Bolivian government (formalized by SAFCO) to award considerable autonomy to individual agencies in implementing legislation, the new Statute leaves implementation issues to individual entities. For example, job analysis, definition of salary scales, writing a code of ethics for public officials, etc. are all to be defined and executed at the agency level. Enforceability of the new rules will depend largely on the ability of the newly-created Civil Service Superintendency's effectiveness as an oversight institution, beginning with its capacity to gather accurate and timely information on agencies' compliance with civil service policy, as well as on the commitment and the capacity of the Ministry of Finance, as the "órgano rector," to lead the agency-level implementation of the new rules. However, the experience so far with the implementation of the SAFCO Law casts some doubt on the MOF’s commitment to exercise political leadership to further the country’s public sector reform agenda.

3. Legislation and regulations. The primary defining legal framework of Bolivia’s civil service are the new Statute and the Basic Norms of personnel management under SAFCO. These are the legal expressions of Bolivia’s objectives-based civil service model. While the legislation and regulations themselves are reasonable, Bolivia has a history of weak enforcement of legislation, particularly in this area. To date, a glaring lack of information impedes oversight of adherence to formal rules. The collection of public employment data is a serious problem in Bolivia; information is not collected on an annual basis and there is no civil service registry. In fact, no review of the position classification system has been conducted in the past five years (although the Basic Norms of personnel management require such a review), leading to an outdated and unenforced civil service structure and nonexistent administrative career path. What little information is available is not readily accessible, even within the government.

4. Career structure and management. Consistent with the characteristics of an objectives-based civil service system, vertical progression, seniority and consistency in terms and conditions for public officials are strongly de-emphasized in Bolivia. There is no career path in Bolivia’s public administration and advancement within the same agency is extremely rare. There is no incentive for vertical progression in careers. Mobility is extreme, although to a significant degree this is the consequence of political pressures on an incoming government to dismiss existing staff. Public servants are hired for a specific position, and there are no formal, well-defined arrangements for promotion. Advancement takes place by public servants being selected for a higher position in another agency, or leaving an agency and returning at a higher level. Promotion is not seen as a fundamental instrument for developing a career path. The Basic Norms of personnel management require that all vacant posts be published, either internally (for internal competition) or publicly (the top three civil service posts must be filled by open competition). In practice, the arrangements amount to an appointment system, with minimal regard for competitive entry. Some officials report that it is not uncommon for agencies to post an announcement for a vacancy that has already been filled, in order to obtain a number of resumes that can be kept as "proof" that the recruitment process was followed. However, the intention of the arrangements is to encourage external entry, not to reward seniority or internal promotion based on merit.
5. Although all civil servants in the merit-based civil service program (Programa de Servicio Civil, or PSC, begun in 1992) are on common terms and conditions, they represent a very small percentage of total public employees (145 employees, less than .01 percent of total public employees). Some officials in the PSC have complained of the lack of internal career path as a demotivating factor in performing their official duties. Other public employees are subject to a number of different formal and informal employment conditions. The combination of diverse regulations for each agency, and the employee performance evaluation system (POAI) is intended to establish an arrangement between the agency head and the employee which is more akin to an individual contract than to a common set of terms and conditions.

6. **Pay and employment framework.** Although LOPE and the associated regulations only require the establishment of four specific positions for each Ministry (Minister, Vice Minister, Director General and, for each Servicio Nacional, Director), in practice there is a reasonably consistent post classification system across the central administration. This is de facto imposed by the Budget Office in the Ministry of Finance which slots any position into an available classification for funding purposes. There is no consistent job classification system in the decentralized agencies, territorial government (prefectures and municipalities) and public enterprises. Organizational structures are formally consistent across most public entities, but there are clear cases of large discrepancies below the surface (e.g., reporting relationships depend more on party affiliation than on formal organizational structure).

7. In the central administration, positions are broadly classified into three categories: appointees; competitive entry officials; and consultants. Appointees are divided into two groups: high-level appointees (Ministers, Vice-ministers and political advisers); and support appointees to work in the ministers’ office (specialists to cover identified skill gaps and confidential support appointees such as personal secretaries). Competitive entry public employees are divided into five groups: director level; mando medio level; profesional level; técnico/administrativo level; and auxiliar staff. At the competitive entry level, there is no position classification system, only general descriptions in the Basic Norms for personnel management. Finally, the PSC offered another hiring mechanism, whereby donors channeled funds through the UESC (later SNAP) to pay PSC salaries (donor funding was to be gradually phased out and replaced by government resources).²

8. Another important category of people working in the public sector are so-called “consultants.” In principle, these people perform temporary work on specific projects. In fact, however, they often fill line positions and may spend several years in the agency. People hired as consultants are usually well-qualified and/or well-connected, and their salaries are considerably higher than those of their colleagues. This is because consultants are paid with donor funding for development projects, or using certain line items within the agency’s budget.³ Estimates of the total number of consultants in

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² No one has been hired through the PSC since 1998.
³ Line item 252 for “studies”.

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Bolivia’s central administration range from 2,500 (SNOPE) to 4,200 (Ministry of Sustainable Development).

9. Public employees are not covered under Bolivia’s general Labor Law (Ley General de Trabajo), with the exception of municipal employees, SNC employees at the departmental level, public university employees, teachers and doctors. This makes it much easier to fire public sector workers, since agencies are not required to provide severance pay. A central component of the debate surrounding the Statute has to do with issues surrounding the creation of a common legal framework for all public employees, including those who are now covered under the general Labor Law. One important difference between the general law and the Statute is that the former allows unionization, whereas the latter is expected to prohibit or severely constrain unionization of all public sector employees.

10. Pay policy is significantly distorted. First, there is no government-wide salary scale; even within the same ministry, salaries can vary dramatically. Most public sector salaries are notoriously low (with the exception of some autonomous agencies), and discretionary salary supplements are pervasive. There is significant horizontal decompression (employees doing the same or a very similar job but earning different salaries) in actual pay practice. There are some indications that to date in Bolivia’s public administration salaries have been tied to the individual rather than to the post. Furthermore, as discussed in the main report, there appear to be rather problematic informal pay practices in the Bolivian bureaucracy.

11. Performance management. The SAFCO systems emphasize explicit corporate objectives and plans for public agencies (through the Programa Operativo Anual, or POA and Programa Operativo Anual Individual, or POAI), with annual progress reports prepared. The POA and POAI are intended to hold agencies and individuals accountable for performance, moving beyond the implicit work programs for agencies set out in the establishing legislation, and to define concrete and measurable objectives. In practice, however, most government officials report that the POA is a mere formality and that most employees (even senior officials) have no idea what indicators are outlined in the document. According to comments gathered in focus groups, individual performance appraisals are conducted sporadically (except for PSC employees) and there are no clearly defined, consistent standards of evaluation.

12. Focus group participants also expressed unanimous frustration that rewards and sanctions are based on factors unrelated to employees’ performance of job-related responsibilities. Rather, these depend primarily on political affiliation and obeying top managers’ decisions regardless of their quality or appropriateness. This view was supported by 64 percent of survey respondents from Ministries, Servicios Nacionales, and Prefecturas, who revealed that individual performance is evaluated by mechanisms other than the official annual performance evaluation. Moreover, while formally there are supposed to be links between performance appraisal and other personnel management procedures (rewards, promotion, termination, training, etc.), in practice these links do not exist.
13. **Accountability.** Considerable flexibility is provided for in both budget execution and creation of staff positions. Managers are given significant latitude to move money between line expenditure items within hard budget constraints. This move was encouraged by the passage of LOPE which determined that budgets should be defined at the ministerial level, leaving the responsibility for subsequent allocation in the hands of the Minister. Each Servicio Nacional prepares its own budget and presents it to its “umbrella” Ministry; the Minister then sends the Servicio Nacional’s budget proposal, together with its own budget proposal, to the Ministry of Finance. When the Servicio Nacional’s budget is approved, the Treasury makes monthly disbursements directly to the Servicio Nacional. The Director of the Servicio Nacional is accountable for performance to the “umbrella” Vice Minister and Minister. Similarly, position creation is delegated to individual public agencies, with the central agencies encountering severe difficulties in tracking staff numbers.
Annex 4. Contraloría General de la República

1. In 1990, SAFCO recast the General Comptroller’s Office (Contraloría General de la República or CGR) as the nation’s supreme audit institution and vested it with a significant share of responsibility for fighting corruption and creating a transparent, responsive and efficient public administration. Under SAFCO, the central mission of the CGR covers three main areas.

- to improve the state’s capacity to execute government policies, by evaluating the effectiveness, relevance, reliability and timeliness of the information generated by public management and control systems
- to improve public sector transparency by developing norms for government control (auditing) and by evaluating public investments and operations
- to hold public sector managers accountable for the use of public funds (both in terms of the process by which funds are spent as well as the results obtained) by overseeing public agencies’ expenditures and providing training on SAFCO’s administrative and control systems to all public employees

2. Nearly ten years after SAFCO’s passage, these goals remain distant. The performance problems that affect Bolivia’s public sector, as well as the reasons for them, are complex and involve multiple actors. The CGR’s primary performance problems lie in the agency’s failure to meet the challenges set out for it in SAFCO; namely, continued lack of public sector transparency, little progress in increasing individual/agency accountability, and limited advances in fighting corruption among public officials.

3. These performance limitations represent one element of larger, systemic problems to do with Bolivia’s government administration and management control mechanisms. As we have seen in earlier chapters, many SAFCO systems are not in place in many agencies (most notably the Operational Programming system, which would generate the Programa Operativo Anual or POA by which agency performance is to be measured). The government control system has been established in all public agencies, but the absence of the other systems means that auditors do not obtain all necessary information, and therefore, audits are limited in profundity, possibly interfering with the CGR’s ability to defend the state’s interests. When the CGR does detect evidence of malfeasance and emits a finding, it relies on other organs to follow up and impose sanctions. The more serious the infraction, the less power the CGR has to ensure that wrongdoers pay the consequences. The current arrangements are frustrating and appear to threaten the CGR’s credibility as a supreme audit institution.

4. SAFCO’s success depends on changes in the way information on inputs and outputs/outcomes is collected, utilized and disseminated by public agencies; it calls for cultural changes in the way public employees understand their role as government workers; it necessitates a new relationship between the CGR and other public sector agencies; and finally, SAFCO calls for a new approach to the auditing function (both in

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1 By Suzanne Dove.
conducting audits and in follow-up). To date, none of these difficult changes have taken root.

5. The CGR is a key element in the problems that affect the Bolivian government, and it necessarily constitutes a key component of potential solutions. Thus, it is important to understand where the CGR is supposed to fit in the big picture SAFCO laid out, of improved government performance and accountability. Moreover, we must try to determine exactly how and why these goals have not yet been achieved, and what part of this deficiency is related to the CGR.

6. In this chapter, we first look at how SAFCO tried to shape the process of holding public managers accountable for their decisions and the results of those decisions in order ultimately to improve public sector performance, and how the CGR was intended to fit into the larger picture. We then provide concrete information that highlights the gap between the role SAFCO defined for the CGR versus the agency’s current performance. Finally, we offer a three-pronged analysis, with particular emphasis on Bolivia’s political economy, to explain why the results-oriented management focus defined by SAFCO has not succeeded. In particular, we concentrate on the obstacles encountered by the CGR in fulfilling its role and offer recommendations that can help Bolivia move towards improved government accountability and reduced corruption.

SAFCO: what it tried to do

7. Shortly after Bolivia’s return to democracy, the government began to adopt dramatic reforms in macroeconomic policy. The massive economic crisis that struck Bolivia also provoked rethinking of the country’s approach to public management. Severe fiscal constraints forced the government to use public funds more efficiently. At the same time, there was growing concern about the results achieved with public expenditures, as opposed to merely checking to see if managers complied with formal procedures for spending the money.

8. Initially, reformers were concerned with changing the emphasis and mechanisms of the public management control function. The principle target was the CGR. Gradually, reforms broadened to include all aspects of operational programming, execution, and evaluation, which affected the entire public sector. As we will see later in this section, however, the reform strategy that led to SAFCO underestimated the opposition that would be encountered in expanding reforms beyond the CGR.

9. Even before SAFCO’s passage, internal restructuring of the CGR began in accordance with a new vision of government control. Two of the biggest changes were the elimination of the ex-ante control function (in 1985-86) and the CGR’s judiciary (“juicio coactivo”) role (in 1990 SAFCO mandated that this role be moved to the judiciary through the creation of a Coactive Fiscal Court, but in fact this court was not created until 1995. This is part of the new administrative jurisdiction and tribunals, which also hear challenges to administrative accusations (contencioso), labor cases and tax protests).
10. The first of these reforms met with strong resistance from CGR employees, since it meant the disappearance of the Ex-ante Control Division (Control Previo) and the dismissal of approximately 50 percent of CGR employees (as well as significantly limiting opportunities for corruption). After this function was eliminated, the only fiscal control function that remained in the CGR was auditing.

11. The passage of the Government Control system redefined public auditing. According to SAFCO, the objective of government control is “to improve efficiency in raising and using public resources and in the state’s operations; to improve the reliability of the information generated about these activities; to improve procedures whereby all public officials will account for the results of their management; and to improve administrative capacity to impede, or identify and prove, inappropriate use of public resources.” (SAFCO, Article 13). At the same time, ex-ante control is explicitly forbidden by SAFCO.

12. The government control reform also charged auditors inside each public entity’s Internal Audit Unit with responsibility for: reviewing compliance with and efficiency of the agency’s administrative systems; determining reliability of the agency’s files and financial statements; and analyzing the results and efficiency of the agency’s operations. All reports must be submitted to the agency head and the CGR. At any time, the CGR can also conduct an audit.

13. The new approach to auditing was based on several assumptions about the role of a supreme audit body and its interactions with public agencies. First, it was assumed that strong internal controls would reduce the need for strong external controls. At the time the new government control system was born, there was great concern with what was perceived as an overly powerful CGR which was not accountable to any other institution. By strengthening entities’ internal audit units, it was hoped that the omnipotence of the supreme audit body would be reduced.

14. Second, it was assumed that ex-ante control and ex-post audit could not be done by the same agency. Critics pointed to what they considered an unworkable arrangement, whereby one unit of the CGR approved public expenditures before they were made, while another unit of the same organization checked the procedures followed after the funds had been spent. The perceived weakness of this arrangement was that, when CGR auditors found evidence of misspent funds, agencies successfully defended themselves by alleging that the CGR had already approved their expenditure ex-ante. The remedy adopted was to remove the ex-ante control function from the CGR and give it directly to individual public managers.

15. Another related assumption had to do with bureaucrats’ behavior. SAFCO was drafted under the presumption that by vesting public managers with more individual responsibility for how they spent public funds and for the results they achieved, officials would behave more responsibly. There was a concern that the existing control system, which was supposed to scrutinize closely every spending request in every agency, condemned public officials as “guilty until proven innocent”. SAFCO specifically states
that “public servants are presumed to have behaved legally until it is proven that they have not (Article 28), and the new management control system (and other SAFCO systems) granted agencies and individual managers high levels of autonomy for decision-making.

16. Profound redefinition of the CGR’s role as a supreme audit body depended on the passage of new government-wide legislation. SAFCO seemed to provide just such a broad foundation for further reform. Ten years after SAFCO’s approval, though, the systems it outlines are far from being implemented. Ironically, one of SAFCO’s greatest strengths – its adaptability – has also emerged as its primary weakness: the need for secondary legislation to implement SAFCO has brought the reform process to an impasse by allowing opposition to sidetrack change.

17. Before we examine the reasons for SAFCO’s disappointing results, we must offer concrete evidence to show what we mean when we say, “SAFCO has not worked”.

**SAFCO: evidence of disappointing results**

18. There is general consensus, both within Bolivia and the donor community, that the CGR possesses a high level of technical competence; however, capacity does not automatically translate into good performance. In order for SAFCO to work, several agencies have to take important actions. In the following pages, we will see how the CGR’s ability to play its auditing role effectively is weakened by 1) lack of support from agencies responsible for inputs; 2) deficiencies in the CGR’s own performance. In the next annex, we will begin to look at the problems that arise from a third weakness: ineffective follow-up.

19. **Lack of inputs.** The minimum requirement for SAFCO’s implementation was the approval of the Normas Básicas and subsequent passage of internal regulations within all public agencies so that the management systems could be (at least formally) implemented. Without these systems in place, the information available for the CGR to audit is limited and unreliable. Passage of secondary legislation and agency-level application of the SAFCO systems has posed the first major problem for reformers.

20. From 1990-1997, prolonged debates were conducted in the Ministry of Finance (MoF) and later in Congress about various versions of the Normas Básicas (except the Normas Básicas for the Government Control system, which the CGR designed and secured Congressional approval in 1990). Finally, under considerable pressure from the donor community, the seven remaining Normas Básicas were passed in 1997.

21. However, even in the two years since the Normas Básicas have been in place, agencies are behind in setting up the SAFCO systems because they have not yet drafted their internal regulations. The MoF is charged with overseeing this process, but many managers we spoke to expressed frustration over the MoF’s perceived slowness in setting up its own internal guidelines, which in turn may be used as models by other agencies (since the MoF must approve all internal regulations).
22. Agency failure to implement the SAFCO systems, or deficient operation of these systems, is cause for the CGR to emit a finding of executive responsibility (discussed below). However, this deficiency is so prevalent in Bolivia’s public sector agencies that the CGR would have difficulty producing audit reports for all offenders.

23. The Sistema Integrado de Información Financiera (SIIF) is another example of the problems of setting up systems in which to introduce information for public sector management and auditing. This example is discussed in the main report (Chapter 2).

24. Without the management systems defined by SAFCO, it is difficult to move forward with the other components of reform (namely, the CGR’s new auditing role). Some officials close to the CGR complained that even in agencies where the systems are formally in place, actual practices have not changed and so the information that is introduced into the systems is inaccurate or incomplete (as in the SIIF example). The dearth of information on inputs, objectives and outputs/outcomes makes it hard to check compliance with procedures and even harder to hold managers/agencies accountable for performance.

25. Under these circumstances, the CGR imposes high costs on agencies as it tries to fulfill its mandate. The CGR has reduced the scope of its activities by giving up ex-ante control and limiting itself to ex-post auditing. However, the strong resistance encountered by the CGR makes auditing a costly endeavor. In the end, auditing requires a certain degree of buy-in or cooperation from the “auditees”, and that is not present in Bolivia’s public sector.

26. Today, most agencies at least have financial statements that can be audited. And yet, information of the sort that SAFCO stipulates (i.e., on program objectives, indicators, and results) is still extremely scarce. Hence, CGR auditors continue to focus primarily on checking compliance with formal procedures because, as an official close to the CGR pointed out, “there is nothing else to audit”. Auditors at the Internal Audit Units within public agencies encounter similar problems, often compounded by intense political pressures from others in the organization. We even heard anecdotal evidence of internal auditors being fired for producing unfavorable reports.

27. In theory, the POA is supposed to set out the agency’s annual objectives and performance indicators, so that the Internal Audit Unit and the CGR can then evaluate the results obtained with public funds spent to carry out these programs. POAs were produced for the first time in 1997, and are widely considered to be of poor quality. Moreover, there is no indication that the POAs’ quality is improving, nor is the way the POAs are used by the MoF (see Chapter 2 of main report) or the CGR.

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2 During the first phase of CGR reform, most public agencies did not even produce financial statements. According to one former CGR employee, in the early 1980s “doing an audit was more like being a detective”.

28
28. Whose responsibility is it to improve the quality of the POAs and the way they are utilized? The CGR and the MoF are engaged in an unproductive dynamic of blaming each other for the agencies’ failure to produce useful POAs. At the same time, many public managers express frustration that they have received no instruction on how to do a POA. Moreover, the MoF introduces budget cuts with little opportunity for discussion on how the cuts will impact the POA (see Chapter 2). This renders the document useless and provides agencies with a legitimate excuse before the CGR as to why program objectives are not met.

29. Financial inputs constitute another important factor affecting the CGR’s ability to do its job. Annual budget data from 1990 to 1997 shows that the CGR consistently commits less money than its approved budget allocation, and pays even less than it commits. For example, between 1990-1992 the CGR committed an average of about 27 percent less than its approved budget; salary commitments differed almost 10 percent from the approved budget. The situation improved slightly between 1994-1997, when the average deviation between amount accrued and total approved budget was around 8 percent, while deviation in salaries was around 4 percent.

30. This trend exists in most public agencies in Bolivia. The causes of this practice are not clear: they could stem from poor planning on behalf of the agencies, or from deficient cash management by the Treasury, or some combination of the two. It is unlikely, however, that an agency would spend less than it supposedly has been assigned by the Ministry of Finance, year after year. Therefore, this is likely an indication that the government, for whatever reason, has failed to honor the CGR’s financial autonomy. If so, the unpredictability and inadequacy of budgetary resources is likely to impede the CGR from fulfilling its mandate as effectively as possible.

31. Continued corruption. CGR auditors do conduct audits, and the results of these reports offer evidence that irresponsible behavior among public officials persists in Bolivia. SAFCO gave public employees a great deal of autonomy, under the assumption that the CGR would have the clout to detect malfeasance and turn cases over to the proper authority to apply sanctions. This approach was based on the premise that individuals would respond to increased responsibility by behaving more responsibly, while a credible threat of severe sanctions would be a sufficient deterrent to misbehavior.

32. In fact, in 1998 149 special audit reports were produced, 114 of which resulted in presentation of findings (dictamen de responsabilidad) by the CGR. This represents an increase from 86 findings issued in 1997 and 44 in 1996 (we do not know how many special audits were conducted in those years). Action against the officials involved was initiated by the CGR for 44 percent of the findings.

33. With annual inputs of approximately 500 person years by CGR staff, in addition to the agencies’ internal auditors and external auditors from private firms, the CGR conducts financial audits of about 20 percent of public sector agencies each year. Private auditing firms cover another 10 percent. The remaining 70 percent of the public sector, including the Central Administration, receives no financial audit; that is, the financial
statements rendered by the executive in the Informe Anual de la Administración Central which comprise approximately 52 percent of total public expenditure and around 80 percent of the state’s assets, are not audited. This reality forces Bolivia’s leaders to operate with very limited information on the correctness or reliability of these entities’ financial statements. \(^3\) Given the evidence of improper behavior by public officials, this is cause for concern.

34. CGR officials are reluctant to accept any responsibility for the on-going corruption that affects Bolivia’s public sector. One senior CGR official argued that “it is not the CGR’s responsibility to fight corruption”. While it would be inaccurate to say that the CGR holds sole responsibility for reducing government corruption, the government’s National Integrity Plan specifically counts on the CGR to play a growing role in anticorruption initiatives, for example by improving the agency’s ability to document corruption findings in profundity, and in turn strengthening the accusatory functions assumed by other government organs.

35. **CGR’s ineffectiveness in representing the state’s interests.** There is also some doubt as to how effective the CGR is in pursuing the findings it emits. However, the CGR has decided not to release information about the status of these actions, even though theoretically this information is supposed to be available to the public. This resistance indicates that in the majority of actions initiated against public officials, the evidence provided by CGR findings has not been sufficient to win cases. This could reflect upon the quality of CGR findings, and/or upon the willingness of the bodies in charge of deciding these cases to rule against public officials. There is also some indication that parties and/or individuals are able to avoid sanctions, or even unfavorable audit reports, by exercising political/personal influence.

36. Under SAFCO, the CGR must turn over its findings to other bodies which are apparently unable or unwilling to apply consistent, meaningful sanctions against public employees who break the rules. Different types of responsibility require the CGR to present the case to different institutions, and as we will show later in this section, the more serious the infraction the less power the CGR has.

37. The CGR’s reticence about the results of the actions it initiated is one indication that sanctions are rarely applied. One member of the CGR’s upper management admitted her dissatisfaction with the current situation: “the CGR can apply social pressure during the auditing process and make it unpleasant for the person being audited”, but in most cases that is as far as the process goes. Recent statistics quoted in the Bolivian media put the total “notas de cargo” issued by the CGR at $11.9 million, of which only $1 million have been collected (just over 9 percent).

38. **Lack of transparency.** The CGR’s new mandate under SAFCO included the promotion of transparency in the public sector. Ironically, the CGR is one of the most secretive and unresponsive of Bolivia’s notoriously guarded public agencies. Its reports are purportedly available to the public, but all requests must be submitted in writing and

even then the response time is extraordinarily slow, and sometimes the information is withheld. For example, a diplomat in La Paz had to wait for one month to receive a report he requested from the CGR; another international consultant was flatly denied access to “publicly available” audit reports. This attitude exacerbates the tension between the CGR and the public agencies whose performance it audits. Moreover, it contributes to the acute problem of high information costs that pervades Bolivia’s public sector.

SAFCO: why it has not worked

39. The reasons why SAFCO has not been implemented as originally intended are complex, as is the CGR’s role in these disappointing results. The obstacles the CGR has encountered as a supreme audit institution under the mandate set out by SAFCO can be usefully classified into three broad and related areas. The first area has to do with lack of capacity in Bolivia’s public sector. The second is related to the incompatibility of SAFCO’s results orientation with the operating assumptions of Bolivia’s public employees. The third area concerns the CGR’s absolute dependence upon other organizations for effective follow-up of audit findings, as defined by SAFCO.

40. Low public sector capacity. Like most poor countries, Bolivia’s public sector suffers from low capacity levels in many areas. This includes poorly trained personnel; lack of management systems; insufficient technology; and lack of coordination/communication between agencies. In support of the preparation and passage of SAFCO, Bolivia’s public sector received considerable funds from international aid agencies (the World Bank has been the largest donor for this reform). The donor community was pleased with the government’s strong commitment to macroeconomic reform. Moreover, by the mid-late 1980s donors were beginning to recognize that stabilization and structural adjustment were necessary but insufficient conditions for development, and that profound changes were also needed in the way public agencies were managed.

41. SAFCO coincided with a growing emphasis by aid agencies on financing “capacity building” projects. These projects support technical assistance for public agencies, generally delivered through some combination of development of management systems, training programs to teach public employees how to use the new systems, and purchase of computers and other office equipment.

42. During the 1980s a major training program was undertaken in the CGR, in parallel with the creation of CENCAP (a training institute located within the CGR, responsible for training all public employees in SAFCO systems). Mandatory training was provided for CGR employees, obliging them to specialize in specific types of audits. During the initial reform period (until the early 1990s), training was taken very seriously at the CGR: courses were rigorous and frequent, and high grades were required to pass (those who did not pass were dismissed from the agency).

43. According to former CGR employees, training not only helped them to upgrade their auditing skills, it also inculcated a cultural change in the agency. Public expenditure
supervision is not merely a technical decision of which control method(s) to use; there are also different philosophies of fiscal oversight. SAFCO attempted to craft a new approach to public expenditure control, both within the CGR as well as throughout the public sector. At least initially, training for CGR employees was a central and highly effective part of reform.

44. Since SAFCO’s passage, basic training in the “SAFCO systems” is required for all public employees. On the surface, training seems to be a top priority for Bolivian reformers. However, there are strong indications that the reality is quite different. First, training is supply-driven, instead of responding to the public sector’s most urgent needs. For example, CGR employees stay up to date with advances in auditing “best practice” by taking 80 hours of training per year, but the basic information they need from agencies in order to conduct audits often is not available. Public employees working in a unit directly related to any of the SAFCO systems are required to take a course that deals specifically with that system. Ironically, many officials receive training in systems which are not fully implemented in their agencies. Those working in Internal Audit Units are required to take in-depth courses on internal control, but reports by officials close to the CGR of the poor quality of work produced by internal auditors may stem in part from inappropriate or inadequate training. Since CENCAP does not conduct impact evaluations of its courses, this is difficult to discern.

45. Second, the high level and frequency of turnover in public personnel means that many resources devoted to training are wasted. Some 30,400 public employees participated in various CENCAP training programs between 1993-1996, but given the accounts of public employees’ frequent departures from the public sector it is unlikely that many of the people who received training are still in their posts, their agencies, or even working in government. Personnel turnover is a major contributor to low public sector capacity, but this cannot be resolved by training alone.

46. Third, some public officials also suggested in interviews that CENCAP’s training courses are used for political ends. The SAFCO courses are notoriously rigorous, and people who take them must obtain a high grade, otherwise they will lose their jobs. According to some anecdotes, this may offer another opportunity for dismissal of employees whose supervisors wish to vacate a post (presumably to be given out as patronage). We were told that some managers send employees to the CENCAP training while at the same time continuing to give them assignments at work. This places the employee in a no-win situation whereby she either completes work assignments but misses class and receives a poor grade (and thus loses her job), or attends class but fails to complete work assignments (which is also cause for dismissal).

47. The suspicious attitude expressed by some public officials during discussions of training implies that people will try to avoid this experience. In fact, anecdotal evidence indicated a prevalent attitude among public officials of “not wanting to admit that you don’t know how to do your job.” This fear may be justified, given the reports we heard of people being placed in posts requiring a specialized background quite different from their own. A public sector where people occupy posts for which they are not trained, and
where a request for training carries with it an implication that the employee is not prepared to do his job, is likely to exacerbate low capacity.

48. Finally, people who have received the basic SAFCO training complain that it has become “formalistic”, limited to a series of lectures that go through the articles of the law and the various Normas Básicas. There is a sense that the results-oriented philosophy of SAFCO is being lost as it is communicated to public employees. Training is a fundamental component in the “cultural change” that is required within Bolivia’s public agencies, and it appears that CENCAP is not meeting that challenge.

49. The donors’ other major technical assistance effort to support the reforms set out under SAFCO was the installation of an IFMS (see Chapter 2). However, this project encountered severe problems, one of which was related to the low levels of coordination between the CGR and the MoF. The turf battle between these two powerful agencies is characteristic of developing countries with weak public sectors. The tension was aggravated by the fact that SAFCO divides responsibility for drafting secondary legislation between the two agencies.

50. The limited success of these technical assistance efforts reminds us that, while low public sector capacity is a very real problem for developing country governments, other obstacles can render ineffective initiatives limited to “traditional” capacity building activities. In the Bolivian case, capacity building has lost prominence as a priority in recent years; even more importantly, capacity building falls short as a solution to the problems of implementing the SAFCO law in the Bolivian context.

51. **Results-oriented management in a patronage-driven environment.** Bolivia’s government structure offers strong incentives for building and maintaining a coalition of political parties, which have become the primary mechanism through which public jobs, budget allocations, etc. are traded. Herein lies one of the primary obstacles to successful implementation of public sector management reform along the lines set out by SAFCO.

52. As we saw above, SAFCO attempts to establish a set of minimally efficient public management systems, and then tries to shift public managers’ and auditors’ primary focus from compliance with formal procedures to an emphasis on the results achieved through public expenditures. But those who conceived SAFCO overlooked or underestimated an important fact: the patronage logic that drives Bolivia’s public sector does not respond to the logic of management systems, and perhaps even less to that of results-oriented management.

53. This, in turn, makes establishment of the SAFCO systems and subsequent auditing (especially results-oriented auditing) of the information produced by the systems very costly. The ambitious SAFCO reform has encountered determined resistance at all levels. CEOs, public managers and front-line employees resist the principle of individual accountability for results. The most effective path of resistance is to withhold information from the CGR. As this cannot be done openly, public agencies have thus far accomplished their objective by simply resisting the creation of well-functioning
management systems (as evidenced by slowness in drafting and implementing internal regulations for SAFCO systems, with added “support” from the MoF).

54. Public managers and front-line employees who fail to contribute to the proper functioning of the SAFCO systems usually are not sanctioned by the agency CEO. In fact, employees who do attempt to follow directives contained in SAFCO (e.g., in producing truthful internal audit reports) often are punished by their agency heads. For most ministers and other agency heads, the implementation of management systems is not a priority. Public CEOs respond to a different set of incentives, related to party directives. For the time being, agencies easily take refuge in the fact that the MoF has not yet emitted its own internal regulations detailing how it will implement the Normas Básicas.

55. As we saw above, SAFCO attempts to force agencies to define the results they aim to achieve and to develop evaluative indicators through the POA. Individual performance was to be evaluated through the POA Individual (POAI). Until 1998, no agency presented a POA. POAIs were generally only done for employees hired through the PSC.

56. Two years later, the POA is still considered a “salute to the flag” (“paying lipservice”), a formality that must be fulfilled in order to receive a budget allocation, as manifested by the cursory treatment the document receives both by the spending agency and by the ViceMinistry of Budget. POAIs are done for the 145 PSC employees, and for few others. In focus groups, public officials expressed skepticism of the value of individual evaluations as they are conducted currently. They described these evaluations as infrequent, highly subjective, and lacking any connection to other aspects of their career (e.g., promotions or training).

57. In Bolivia, results-oriented management through the POAs/POAIs has not taken root because in fact public employees and agency heads are not primarily accountable to the programs or even the agencies they are working for. By this we mean that performance is not measured by objective indicators of the outputs and/or outcomes of the programs/agencies where employees work. In general, neither employees nor their supervisors are primarily concerned with performance in this sense.

58. Instead, most public employees and agency heads are held accountable to the political parties (or faction, or “patron”) that got them the job. We talked to many public employees at all levels who expressed frustration at the high degree of political party influence to which they were subjected, even during technical decision-making processes. Telephone calls and written messages from powerful members of the administration or of political parties (or even relatives of influential people), indicating that public officials should take a certain decision, are described as common occurrences.

59. In our interviews and focus groups, we encountered several cases of people who were dismissed or chose to resign from their posts because their professional judgment was overridden by political party pressures. To avoid such pressures in most agencies,
public employees have to obtain a promise of “insulation” directly from the highest level officials. In general, staying in a public post requires responsiveness to the party.

60. To further complicate matters, most ministries are divided among several political parties, resulting in situations where different Viceministries or even General Directorates within the same agency may be following different programmatic priorities according to their political/regional affiliation. These constraints make it highly unlikely that public managers and front-line employees in an agency will work together to design a single, agency-wide results-oriented operating program consistent with the national development plan.

61. Instead, public programs are seen as a way to satisfy party priorities, which often have little to do with obtaining optimal results for the general interest. In such an environment, public managers may be under enormous pressure to focus on inputs instead of outputs/outcomes. Because inputs frequently offer opportunities for agencies to distribute rents to their supporters, they may become an end in themselves (for example, procurement processes that favor certain companies, or hiring decisions that reward political supporters and their families).

62. In some cases, there is so much emphasis on inputs that managers disregard the importance of efficiency and effectiveness in public spending. Unarguably, focusing on inputs to the exclusion of concern about results is not conducive to increased public accountability. Moreover, it leads to lower quality public services, opens the door for more corruption, and limits transparency of public agencies’ performance in serving the general interest.

63. **CGR’s dependence on other agencies for follow-up of audit findings.** SAFCO lays out in considerable detail the different types of behavior that fall under each category of infraction, and clearly defines the steps to be taken by the CGR for most types of finding. For most types of responsibility, SAFCO also authorizes the CGR to take further action if agencies do not fulfill their responsibility for following up the audit findings. However, the CGR’s recourse in this case is merely to emit another finding of responsabilidad against the offending official. In addition, SAFCO leaves enough ambiguity that public entities have considerable margin to engage in finger-pointing to avoid taking responsibility for moving investigations forward, thereby contributing to the ineffective follow-up of audit findings.

64. In the following annexes, we summarize the different types of responsibility and the procedures to be followed for each, according to SAFCO. We also discuss some of the difficulties that are encountered in practice after the CGR makes a finding.

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4 A notable exception is penal responsibility, which the law leaves rather ambiguous. In practice, this gives rise to considerable confusion resulting in inaction by authorities.
Annex 5. Judicial and Administrative Follow-up on Allegations of Administrative Malfeasance

1. A system for detecting administrative abuses is only as effective as the means for sanctioning what is encountered. Whatever the weaknesses of the CGR, a good deal of the problem in Bolivia begins after it has made its findings, or some other individual or agency has denounced an alleged problem. With the creation of the administrative courts, in 1995, the CGR's role in this follow up was eliminated, and the responsibility now lies with either the administrative agency where the action occurred or with the courts. Depending on the nature of the infraction and the status of the alleged offender, judicial actions may be handled by special judicial procedures, the ordinary criminal or civil courts, or the special administrative courts created in 1995 to exercise the *fuero coactivo* (essentially the collection of recognized debts). These latter courts exercise a number of functions inherited from pre-existing bodies -- they see contested tax cases (carried over from the former agency-annexed tribunals), labor disputes, and other contested administrative actions (as *contencioso*). Most of their current work appears to be tied up in a body of tax cases inherited from the old administrative tribunal. In all of these areas, the judges, most of whom are new to this "business," complain about lack of training, inadequate resources, a total absence of specialized experts to help them review documents and evidence, contradictory or incomplete legislation, and insufficient cooperation from other agencies, including both the CGR and the *Fiscalía* (Public Prosecution).

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<th>Box 1: &quot;Responsibilities&quot; under the SAFCO Law</th>
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<td><strong>Administrative responsibility</strong> is found by the CGR when a public official, by commission or omission, breaks an administrative rule. This type of responsibility is resolved internally, first through summary judgement by the immediate superior and then, if the &quot;defendant&quot; disagrees with the decision, an ad hoc administrative tribunal is formed within the agency to review the case (there is no external appeal). CGR findings are used as evidence.</td>
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<td><strong>Penal responsibility</strong> is found when a person (public official or not) does something in violation of the Penal Code. If the CGR auditor, or anyone else, discovers penal responsibility they must report it to the &quot;relevant legal unit&quot; (unclear whether this is the Legal Department inside the</td>
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1 By Linn Hammergren.
2 A notable exception is penal responsibility, which the law leaves rather ambiguous. In practice, this gives rise to considerable confusion resulting in inaction by authorities.
agency, or the judiciary). The “competent authority” (unclear who this is) must then submit a report to the Attorney General’s Office. It is unclear who is supposed to take the next step.

**Executive responsibility** focuses on senior officials’ responsibility for providing accurate and timely information on the results they have achieved through their agencies. This type of responsibility is found when senior officials fail to provide information accounting for the use of public funds entrusted to them, or for failing to report the results obtained with those funds. In addition, this type of finding can be emitted if senior officials fail to respect the independence of the Internal Audit Unit; if SAFCO systems have not been established or are not working properly; or if deficient management of their agency produces unacceptable results. The finding emitted by the CGR is submitted to the person or entity that oversees the accused, and the former is responsible for imposing a sanction. If the person or entity decides not to impose a sanction, they must explain why not. The finding, as well as decisions about what (if any) sanctions to apply must be communicated to the President and the Congress.

**Civil responsibility** is found when a public official commits an act (or fails to act) in such a way that the state incurs a financial loss. The accused official’s superiors may also be accused of malfeasance for permitting the infraction or for not installing the appropriate control measures to keep the infraction from occurring. For this type of responsabilidad, the CGR presents its finding to the head of the entity where the official(s) are employed. The agency head is responsible for collecting the damages from the accused. If the accused does not pay for any reason, the agency head must transfer the case to the judiciary. If the accused or the agency head disagree with the CGR’s findings, they can appeal the audit (contencioso).

2. The courts' current caseload appears light, but they also are not the only entities involved in this process. Where civil and penal damages are not found, follow-up is handled by the administrative agency, where there are also problems of lack of consistent procedures, inadequate guidance, and a resulting informality. As noted below, certain disputes (especially those involving taxes and customs) may still be settled by their respective agencies. Finally, as explained below, Bolivian law allows special procedures for a large number of higher-ranking functionaries, which allows many cases to get caught up and lost in the system before ever being submitted to the courts. Whether by intent or accident, prosecuting those accused of corruption, and especially those with political connections, is an extremely complicated proposition in Bolivia and one where the problems begin long before the judicial sector’s involvement.

**Statement of the Problem**

3. With the first instance resolution of the Fancesa Case (May 1999, seven years after its initiation), and the movement to trial of several other notorious scandals, the contention that no one has yet to go to jail for corruption is in danger of being disproved. The ex-President of the Nation, the Minister of Labor, the ex-Minister of Health, the ex-Director

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3 This provides an extraordinarily clear example of failure to sanction responsabilidad ejecutiva, since so many SAFCO systems are not in place in so many agencies and yet no penalties have been applied.

4 This involved the departmental development corporation and the privatization of a cement company. The specific issue entailed a contract with a private consulting firm for services already provided through another government entity.
of Customs, the Chief of the National Police, the head of the Senate Constitutional Commission, the former and current mayors of La Paz, the former mayor of El Alto, the mayor of Sucre, several departmental prefects, members of Congress, and two Supreme Court Justices (removed from office as a prelude to legal proceedings) are simply a few of the individuals against whom legal action has been taken or is pending.

4. If that can be taken as the “good” news, the bad news is that at least some of these cases appear to be completely politically motivated (regardless of the guilt of the accused), that several of them have already had charges dismissed, that a few others seem to be benefiting from intentional delays designed to postpone any action until they are forgotten or run up against the statute of limitations, and that others for one reason or another will probably be lost in the system. Even the decision of the Fanesca case is not final – those found guilty say they will take their case to the highest court. Their hopes for judicial recourse may not be in vain. In a surprising move, the ex-Minister of Health won an injunction from the La Paz Superior Court, temporarily preventing the CGR from passing on its findings to begin criminal actions against him. The Court’s ruling upheld the ex-Minister’s claim that he had been denied his right of defense – i.e. an opportunity to dispute the audit findings. It followed on a comedy of errors in which the Congress, current Minister of Health, and Fiscal each claimed an inability to move the case ahead until “someone” else took action.

5. Another case against La Paz officials charged with selling municipal machinery will take a step backward if the defendants’ lawyer is successful in having the mayor included in the charges. As the mayor is entitled to a special procedure (caso de corte, see below), that would require beginning the process all over. Another case of bank fraud was paralyzed when the chief defendant was elected to Congress – as a deputy he is protected against criminal action unless the Congress waives his immunity. Meanwhile, he has reportedly intervened in the Congress’ investigation of several related bank cases in which he is also implicated.

6. The effects of the system malfunction are most dramatic when the powerful are protected, but they reputedly also benefit lower level employees. One informant claimed that the state routinely collects less than 1 percent of the damages assessed in administrative audits, sometimes because the defendant cannot pay, but more often because it either loses a court case or decides to settle for dismissing the accused. Given the difficulty of bringing legal actions, many entities are more likely to dismiss an employee suspected of abuses or take lesser disciplinary action, negotiating a settlement rather than taking it to court. Besides, the superior charged with handling the case may in some instances be as likely to accept an extralegal payment or a cut of the profits as to act against the guilty party. In short, while recent press attention, changes in policies of entities like the CGR and the Bank Superintendency’s Investigative Unit, and certain inter and intra-party disputes may raise the chances of some successful prosecution, any real improvement in combating what most observers agree is a chronic condition raised to acute dimensions will be a long time in coming.

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5 Eduardo Rodriguez, Supreme Court Justice, interview, May 7, 1999.
Sources of the Problem

7. Political Dimensions: As in many other countries of the region, the high incidence of corruption has certain historical and cultural roots which have been exacerbated by contemporary political developments. Where government was run by a small elite most of whom knew or were related to each other, it was natural that certain informal patterns of behavior prevailed over strict compliance with the official rules. The neopatrimonial system has added a second layer of understandings based on clientelistic ties rather than peer connections, but perpetuating the notion that the state and its resources were not equally accessible to all comers. From this it was a short jump to the sale of such services, especially to those (foreigners or non-elites with resources) who lacked the special connections. Today, even as such practices are more openly criticized, the weight of recent history works against their elimination; everyone has a skeleton in his or her closet and too close inspection of any transaction is perceived as threatening considerable collateral damage. Expressions of sympathy, even among judges, are not uncommon when someone is finally called to task -- it was, in the words of one politician, "not a crime but an error" that was committed, and one where many others may feel vulnerable.

8. Besides a certain level of tolerance of corruption, political elites are able to exert influence in various ways to work the system to their advantage. For example, high-ranking political officials can obstruct investigations, discourage complaints, and delay the various processes needed to lift their immunity. If that doesn’t work, they can convince their court contacts to introduce new delays, decide in their favor, or dismiss cases for lack of merit. Where direct pressure fails, judges and fiscales who pursue corruption cases often pay a heavy price – because of actions filed against them for malfeasance (either in their conduct of the case or related issues) or other retaliatory measures.

9. Agency reactions to charges of administrative or executive responsibility tend to be far less formal and complete than stipulated by the SAFCO procedures. It is widely believed that an agency’s willingness to take the indicated disciplinary measures depends more on the accused’s political standing than on the strength of the case against him. Where civil or criminal responsibility is indicated, dismissal or some other disciplinary action are the preferred tactic for a number of reasons: higher authorities may fear their own involvement in any legal case; they are reluctant to take other actions because of the precedent that might be set or because of their relationship with the defendant; and last, but not least, they may choose not to pursue the case because they have little faith in the court system.

10. In all cases, aside from significantly weakening the deterrent effect intended by the official sanctions, there is a further negative effect on discouraging corruption. The limited sanctions as regards a return to public office and a poor record keeping system

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6 Greeted by derision in the press, this actually has a legal base. “Error” is a legitimate defense in Bolivian criminal procedures.

7 Currently, the fiscal involved in the case against the Customs Director has been suspended and is under investigation because of a counter suit filed by the Director accusing her of accepting bribes.
have placed many of the accused back in the public sphere in record time. Two of the recent appointees to Superior Courts have cases pending against them, and as there is no apparent limitation on private practice, many of the “talleres de auto” employ judges removed from office for dereliction of duty (this also is a problem when instead of taking legal action against employees, the agency simply dismisses them).

11. **Legal Dimensions:** Despite these disincentives, the country did develop legal means for handling cases of corruption. The immediate problem is that this framework is a composite, parts of which are over a hundred years old. While individual laws may have made sense in their time, many posit the existence of institutions and practices which no longer exist, leave large gaps for the treatment of modern forms of corruption and new agencies, and in combination present a legal labyrinth which is almost impossible to traverse.

12. Most of the legal problems are procedural, but they often begin with inadequate or inconsistent definitions (*tipificaciones*) of the illegal actions treated. Despite recent modifications, the criminal code’s definitions of crimes against the public sector are woefully outdated, as regards what is covered, how it is described, and the sentencing guidelines and statutes of limitations. Treatments in other laws (SAFCO, the Organic Law for the CGR, the Tax Code and its various revisions, and other sectoral legislation) often reflect different guiding principles raising further ambiguities as to how and by whom a specific infraction will be handled.\(^8\) One recent dramatic example is the debate over where drug court judges charged with receiving bribes will be tried. These choices are very important as they affect both the likely outcome of any action and the severity of the possible sanctions. For example, tax and customs cases are handled by their respective agencies (which one suspects may have a vested interest, both in the outcome and the extent of any investigation) and only go to court if the affected individual chooses to protest the decision (*as contencioso tributario* in the administrative tribunals) or if a jail sentence is recommended, in which case a criminal court must review it.

13. The potential for criminal action is affected not only by what was done but by the status of the alleged perpetrator. While in office, high-ranking officials may only be prosecuted for certain specified crimes, and only following special procedures to waive their immunity. Law 31 of October 1884, modified in 1944 (*Law 23*), details the *juicio de responsabilidades*, in essence impeachment proceedings. A companion law (7 of 1890) outlines procedures to be used against members of the Supreme Court. A 1981 study\(^9\) notes that despite a tendency for accusations to fly freely after every change of government, until that date the law had only been used successfully once. One reason is

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\(^{8}\) Changes to criminal legislation originate in two, somewhat incompatible lines of thought — one attempting to “humanize the code” and increase due process rights, the other striving to enhance the state’s ability to prosecute certain types of crimes (usually drug related, with the backing of the US government). SAFCO adds another vision, that of parties more interested in tightening up administrative operations, and seemingly less concerned with due process as traditionally conceived, or for that matter, with judicial operations. It remains to be seen what proposed revisions to civil legislation will add, but it will probably incorporate still another set of guiding principles.

that the law’s evident concern with preventing hasty judgments, by requiring a
convoluted passage between the two houses of Congress and their “Judicial Police
Commissions,” and its secondary concern with preventing retroactive witch hunts, by
requiring the process be completed within three legislative sessions of the alleged event,
give the advantage to any defendant who can find allies to help create delays. Should the
Congress agree to impeach the official, the trial itself goes to the Supreme Court (except
for its own members, tried by the Congress meeting in plenary), where the alleged abuses
must again be investigated (instruction) before a decision can be taken. Given the time
involved, and the frequent changes of both government and political forces, it is no
wonder that the process has so rarely reached any conclusion.

14. There is a second group of officials (mayors, prefects and high, but not highest,
ranking public sector officials) who, while not entitled to a juicio de responsabilidades,
are entitled to a special judicial procedure (a caso de corte) before either a district court
or a juzgado de partido. At the district level, the process involves two district courts, one
of which makes the charges and the final decision, the other of which (a neighboring
district) does the investigation. One problem here is determining who is entitled to this
process in any of its variations. On this point, the legislation (the Criminal Procedures
Code in force until the year 2001) refers to articles of a Constitution and Judicial
Organization Law which are no longer in effect. For those who can sort their way
through that puzzle there is still the question of the status of officials in organizations
which did not exist at the time of the writing of either. There is another twist to the caso
de corte; because of the principle of “attraction” (i.e. where there are several parties
involved in an alleged crime, all will be tried by the procedures to be used for the highest
ranking defendant), those attempting to produce more delays will sometimes try to
involve a superior who presumably is entitled to a caso de corte (or even better a juicio
de responsabilidad).

15. There is a third class of special defendants. Members of Congress, while not entitled
to either a juicio de responsabilidades or caso de corte, cannot be tried for any crimes
unless their immunity is waived. This process can be initiated by the affected individual,
by an outside complainant, or by the Congress itself, but there are no apparent criteria to
guide the Congress’ ultimate decision. The chance at immunity has led some individuals
facing corruption or other criminal charges to run for Congress in the hopes of winning
and staying in office until the statute of limitations on their alleged crime runs out. There
are several successful examples of this ploy, some of them in the current Congress.

16. Those officials (the majority) not benefiting from any of these special procedures are
tried in ordinary courts or, for administrative infractions, are subject to agency decisions
with an appeal to internal disciplinary tribunals. Absent criminal charges, civil damages
are assessed directly by the CGR and the affected agency, and are only seen by the
judiciary (judicial administrative tribunals) if the accused party contests the assessment
(contencioso) or cannot pay (coactivo whereby the court may seize assets or otherwise
force payment). Actual practices are reputedly far less formal than the legislation suggests, with agencies preferring to postpone or avoid taking any action, or at most settling for disciplinary measures and some sort of negotiated fee for damages. True administrative tribunals are apparently a rarity. One enormous additional advantage for the “accused” is the CGR’s inability to take further legal action itself and the absence of effective sanctions against those who receive and ignore its findings. Neither the inability nor the lack of sanctions finds its basis in law, but rather in actual practice, bolstered at most by certain ambiguities in the SAFCO reglamento.

17. In criminal cases, this advantage is compounded by the fact that several parties (the Fiscalía, the agency, possibly the Congress, and the CGR itself) figure as potential accusers, allowing each to claim it is someone else’s call. There is an apparent tendency for the affected agency to attempt to collect civil damages (perhaps because its leaders believe they might eventually receive the bill), but responses to findings of executive or criminal responsibility are rarely followed up. The CGR’s adoption of a plan to trace responses may alter this pattern, but at the moment it focuses only on civil responsibility – which as discussed below may indicate a new source of problems.

18. Organizational Dimensions: Besides the politically motivated abuse of the system and the deficiencies in the formal legal regime itself, there are certain organizational weaknesses in the accountability institutions, which make effective follow-up to the findings of financial irregularities difficult. The general problem of low human resource capacity affects this aspect of state functions as well. It is widely held that the officials responsible for investigating, prosecuting, and trying these cases lack the necessary skills and other resources. While the CGR’s skills in conducting audits seem adequate, its legal opinions have been called into question – at the very least they do not coincide with those of other officials. The Fiscalía, aside from its overall weaknesses, has no special staff for cases involving civil damages or white collar crime, and usually assigns a fiscal who otherwise handles civil, family, or conventional criminal matters. The normal legal personnel of the affected entities may have a better understanding of the technical issues but often lack litigating experience. The Superintendency of Banks, which ideally would be a source of leads or evidence in cases involving misdirected funds, has only recently moved to create the Special Investigative Unit, as per the 1994 Criminal Code Reforms. Finally, the judges assigned to the administrative courts have received little, if any, training in the relevant laws and neither they nor the criminal court judges have had any preparation in reviewing the technical evidence presented. Although the affected governmental office has been known to offer technical advisors, the judges are understandably wary of such possibly biased input.

19. Disputes within the sector often work in favor of the defendants. The most frequent basis for a legal action is the CGR’s audit findings. But judges often take them only as

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10 The CGR and agency may differ on the civil damages, necessitating more negotiations, especially if administrative or executive responsibility is also indicated. Where criminal responsibility is indicated, the civil damages are subsumed in the criminal case.

11 By the looks of it, executive responsibility might as well be eliminated as no one seems to know how to distinguish it from administrative faults.
an "opinion," and have been reluctant to accept their value as evidence. Aside from judicial prejudice, there are two factors influencing this view: first the CGR's interpretation of the law often does not accord with judicial readings (and in this sense is an opinion); and second, the judiciary, for lack of training and technical advice, may have problems understanding the audit report itself. There are also continued disputes as to who should represent the state in such cases. The Fiscalía, which by law must be present, believes it holds that role, but in civil damage cases, the court puts the responsibility with legal counsel for the affected agency. The CGR's legal department has also weighed in, but to date has only been recognized in a well-publicized case involving the sale of donated equipment in the La Paz municipality (because the nature of the case makes all municipal personnel suspect). Finally, the battling counsels also differ on legal strategy and have been accused of incompetence, and in the case of the Fiscalía, a confusion of its role of defending society with that of defending the state. Whether for this reason, or for simple turf wars, the CGR apparently feels the Fiscalía has not adequately represented its own findings, and too often favors the defendant. It bears noting that they have registered similar complaints against the judges, who, justifiably, note that they are to decide impartially without giving an edge to any party, even the state.

20. All of these uncertainties appear to have encouraged the CGR to focus on civil damages, but this emphasis itself needs revision. Identifying and collecting civil damages after the fact is a lost cause; even when they are the result of real corruption (and not just sloppy accounting or inattention to formal requirements), the most that can be expected is that the kickback or the bribe can be reclaimed, not the other 90 percent of the expenditure. A focus on civil damages is counterproductive as well; it encourages timidity in the honest bureaucrat, doesn't affect the behavior of the dishonest one, and discourages attention to real crime. Those behind the SAFCO law had hoped to deemphasize this category, but current trends suggest it is on the increase, because it is the area where the CGR's findings have most weight. The danger, as is apparent from experience in other countries (e.g. Ecuador), is that it will become a proxy for a direct attack on corruption (harder to prove in its criminal form) or a way of showing the CGR is doing its job. The real answer here is the introduction and enforcement of consistent mechanisms for improving and implementing budgeting and procurement, training of public employees in their content, and an explanation of why many current practices (the use of public funds for awards, public relations, office parties, and unanticipated emergencies) will not be permitted in the future. As one interviewee noted, one of the principal flaws of SAFCO was its design for a system where most actions followed the legal norms, not one where compliance was the exception—and often impossible.

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12 It probably doesn't help that the CGR has assessed civil damages against some courts. The president of the District Court of Santa Cruz had to pay $2,000 for costs of the traditional publication of sympathy for the death of the parent of a local notable.


14 See Hidalgo for a discussion of the uses and abuses of civil damages, called glosas in that country.
A Note on the Other Functions of the Administrative Courts

21. The weakness of the Bolivian administrative court system as an important set of accountability institutions is evident in areas other than the follow-up of the CGR's findings of financial irregularities in the public sector. Because of these weaknesses, private actors bringing cases against the government have not done badly, despite the conventional wisdom that it does not pay to go to court. The examples are few and they often are not actually won; the point is often to postpone resolution until the issue becomes moot. Either the statute of limitations expires, the parties lose interest, or the disputed value is no longer worth pursuing. Most of these are tax and customs cases which often begin with illegal actions within those agencies. There are also a minority of labor (the most important being that involving the indemnification for workers in Lloyd Airlines) and contract disputes. The largest potential category, contesting the legality of other administrative actions, is so far unrepresented inasmuch as Bolivia lacks a well recognized, easily accessible procedure for what is called *contencioso administrativo* (legal judicial review). For the moment, the law (Articles 775 to 786 of the Civil Procedural Code) still requires that disputes involving tax laws, concessions, contracts, and other executive actions be seen by the Supreme Court. Its accidental derogation by the Law for the Constitutional Tribunal required further action to ensure that disputes over the legality, but not constitutionality, of public actions have any judicial recourse.

22. Here as with corruption, the problem begins with the law. For cases seen by administrative courts (taxes, customs, other contested administrative actions, disputes over civil damages, labor, and mining\(^\text{15}\)), the legal framework is still more inconsistent, incomplete, outdated, and contradictory than in the area of corruption. The tax and customs legislation has been under almost constant revision for the last ten to fifteen years, making definitive readings (and strict compliance) difficult. The procedural framework governing the judicial handling of these cases is composed of bits and pieces of other codes, none of which has been revised for years, and parts of which have also suffered "accidental derogation." Procedures are separately outlined in the Municipal Code, the Tax Code, the SAFCO Law (copied verbatim from the earlier Law for the CGR), and the Civil Procedural Code. There are also alternative administrative appeals for tax and customs cases. As one lawyer candidly stated, the choice of a judicial or administrative track depended on where one believed he had most influence.

24. Efforts to patch up the inconsistencies have frequently made things worse. As it remains unclear whether contraband and tax evasion are crimes or administrative infractions, treatment of these cases is usually left to the administrative agencies, or if contested or involving a prison sentence, to the new administrative or criminal courts. The government has yet to initiate criminal action in these areas; only tax evasion is "tipified" in the Criminal Code, with a maximum sentence of one year of labor (a penalty eliminated by a 1997 law) and a fine of fifty daily salaries.

\(^{15}\) The mining courts, first incorporated in the ordinary judiciary, are now being removed. No one could explain why, but it is just one more source of confusion, meaning that pending cases will not be addressed for an indefinite period of time. Labor cases remain under the Administrative Chambers of the Superior Courts, but usually have their own trial courts, separate from the administrative juzgados.
25. Despite the loss of their courts, the tax and customs agencies still exercise quasi-judicial powers, having the right to make an initial determination on amounts owed and fines to be levied, seize merchandise, embargo assets, close commercial establishments, hold auctions to cover assessed fees and fines, and recommend, but not impose incarceration. A party disputing their decisions may appeal to the higher levels of the agency or go to the courts; the initial selection definitively excludes the other option. It is widely believed that disputes originating in these agencies are a sort of escalating extortion. Tax and customs agents expect to be bribed; when that doesn’t happen they set a high fee to spur the negotiation. Parties not inclined to enter the game will appeal the levy, either to the higher ranks of the agency or to the courts, depending on where they believe they have the best chance of success.

26. There are no figures available on administrative appeals, but the administrative courts are currently seeing about 1,500 contested tax cases, and a far smaller number involving customs. Here, the state is represented by the Fiscalia, once again with staff trained and often predominantly occupied in other specialties. As in the corruption cases, judges complain they have neither the legal nor technical tools required by their jobs, adding that although the workload is not onerous, the fiscales are usually outnumbered and outfunded by opposing counsels. With few exceptions (e.g. the Lloyd Airlines dispute) bribery and political pressure is usually not mentioned as a factor. Quite probably the plaintiffs already considered and rejected that option at the administrative level, and now are counting on an investment in lawyers (and the judge’s own biases against the tax and customs agents) to prevail. It bears noting that the option is available only to those who can make that investment (or are expecting a large enough payoff to entice skilled counsel).

27. Given the small number and identity of the users, it could be argued that the operations of the administrative courts currently represent a major net loss to the state. The answer is not to eliminate them, but to change the system so that it serves a larger, socially valuable need. As the courts are currently set up, that need is probably identified and addressed inappropriately. As a means of curbing corruption and administrative abuses, they come too late in the process and thus are an ineffectual last recourse. Moreover, although the problem was initially stated as the representation of state interests, there are really three parties involved: the state in the abstract, its bureaucratic agents, and a private party (who in some cases is also a public employee). Many of the conflicts originate with the misbehavior of the agents, but that issue is never directly addressed, and, as presently construed, requires a separate criminal case. At best, their actions are nullified (if the private party, whether abused taxpayer or employee unjustly assessed civil damages, wins).

28. At least in the tax and customs cases, and potentially in a wider range of alleged administrative abuses, the solution may be to return to specialized administrative courts

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16 These figures are taken from press accounts; those given by the Fiscal in his presentation to the Congress are far lower. The Ministry of Justice recently asked the administrative courts for an inventory of their cases, and they are still struggling to provide the data – hence the best bet is that no one yet knows.
(either located in the judiciary or attached to, but independent of, the relevant administrative agencies), which can review decisions and also, when necessary, make findings against individual administrative agents. The courts alone will not end corruption, but in combination with a program to simplify procedures, monitor performance, and improve personnel, they would go a long way. To afford access to all users, and not just those who can hire an army of lawyers, they will need their own simplified procedures, and a good deal of internal expertise.
Annex 6. Justice Sector

**Historical background**

1. Through the first decades of the present century, Bolivia’s justice sector developed much like that of the rest of Andean South America. Under the civil code tradition (mixture of Spanish and French influences) the judiciary was the third, but weakest branch of government, with a role confined to conflict resolution and rule enforcement (social control). Despite a 1931 constitutional amendment reconfirming judicial independence, there were sixteen massive purges of the judiciary (generally with each new government) between 1936 and 1982. This broke with the elite tradition and made courts more openly subservient to the specific interests, partisan identifications, or ideological leanings of the government in power. With the opening to democracy in 1982, the situation began to change. The multi-party system and shifting government coalitions increased competition for control of public sector employment and decreased job stability for office holders. Although judges were selected by constitutional means for the first time in decades, they were no exception, and the parties quickly developed means for dividing up the judicial positions.

2. There are some differences in the sector’s susceptibility to direct partisan control. The most important are the guaranteed terms for judges and fiscales and in the case of the former, the more complex, collegial selection mechanisms set by law. Furthermore, in both the judiciary and the Fiscalía, partisan and regional interests are mixed. A tradition, originating in the 1851 Constitution, required that each of the nine territorial departments have at least one Supreme Court Justice and that each “departmental Justice” have a role in selecting candidates to the relevant Superior Court, which until 1999 were elected by the Congress. For the Fiscalía, partisan interests appear to prevail in Congress’ selection of the smaller number of highest-level authorities (the Fiscal General and the Fiscales de Sala), but compete with regional ones in the choice (and operations) of the nine fiscales de distrito. The latter have been described as regional fiefdoms, fairly impervious to any control by their central leadership. In the March, 1999 selection of Supreme Court Justices, party, regional, and personal (intra-party) interests finally clashed, with two departments complaining that “their” Justices (and subsequent Superior Court appointments) were outsiders imposed over local preferences.

**The Legal and Institutional Framework**

3. The institutional setting of the justice sector remains among the most traditional in the region. The court structure follows the usual three-tier hierarchy. Until 1994, there were several special administrative courts (labor, fiscal, mining) located outside its direct

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1 By Linn Hammergren.
2 Most of Bolivia’s constitutions have recognized judicial independence, but in the early years judges, despite their “permanent,” tenure were paid by the Executive and replaced with some frequency. The 1880 Constitution introduced term limits, ten years for Supreme Court Justices. (Eduardo A. Gamarra, The System of Justice in Bolivia: An Institutional Analysis. Florida International University, Center for Administration of Justice, 1995, pp. 22-3.)
control. Their integration into the ordinary judiciary and the creation of new agrarian courts remain incomplete. Prior to these reforms (and effectively until 1998), the Supreme Court held responsibility for judicial governance – both in terms of administrative matters and the selection of all personnel below the level of Superior Court justices, either directly or by delegation to the lower instance courts. Until the June 1999 entrance into operation of the Constitutional Tribunal, judicial review powers were limited to the Supreme Court, but were exercised sporadically and regarded as binding only for the immediate case.

4. The courts and their personnel are concentrated in the urban centers (the district capitals) with relatively few lower instances judges in the provinces. The system retains instructional judges for both criminal and civil cases (a rarity in the region), and they often are the only judicial officials in rural areas. The new Criminal Procedures Code (which eliminates the criminal instructional judges) provides for recognition of community law to increase access for rural populations. It remains to be seen how or whether this will go into effect. A relatively small judiciary (587 members for a population of almost eight million, a ration of about seven per 100,000) has not allowed much specialization. The Supreme Court is divided into four Chambers (Salas) and most lower instance judges are assigned to criminal, civil, family, or “mixed” jurisdictions. Following the 1994 reforms, in areas where their presence is merited, there are labor, administrative, small claims, minors, or drug courts.

5. Support personnel average about three to each judge, far below the regional norm, but not necessarily an inadequate ratio. Administrative and complementary services remain underdeveloped. Except for what donors have provided there is no training program for administrative or professional staff. Budgeting and procurement are handled unsystematically; informed observers suggest that both are important centers of corruption in their own right. Planning and management information systems are virtually unknown. There is no centralized information on caseloads, and even at the district level, statistics are of dubious quality. It is only recently that the Court (and the Judicial Council) have begun to manage accurate data bases on personnel.

6. Selection of personnel is still highly dependent on personal and party contacts. Historically, there has been a substantial turnover with each change of national regime, although since 1982, the constitutional terms (four years for first instance, and six and 10 for Superior and Supreme court judges) have been respected. A study done in 1991 indicated that only 26 percent of the judges had spent more than 15 years on the bench. Turnover cannot be entirely attributed to political intervention. As indicated by the large number of vacancies, many judges leave on their own volition, most likely because of

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3 Nonetheless, the Supreme Court participated in the selection of their judges and was the last instance for appeals of their decisions.
5 One is, however, being developed under the Bank project.
6 ILANUD, Instituto Latinoamericano de las Naciones Unidas para la Prevencion del Delito y el Tratamiento del Delincuente (1991), Diagnostico del Sector Justicia, document prepared under USAID Regional Administration of Justice Project.
low salaries, poor working conditions, and the judiciary’s negative public image. A further contributing factor in recent years has been the practice of bringing legal action against judges for *prevaricato* (misapplication of laws). Since the late 1980s several justices have been successfully impeached and others have cases pending against them. Figures on lower level judges are not available but press reports indicate that the practice is widespread. Although few of these complaints result in findings of criminal or civil responsibility (and most appear to disappear in the system), their highly politicized treatment dissuades qualified personnel from joining the bench and has led others to resign so as to avoid legal action. Other negative factors include the possibility of disciplinary actions by the higher instance courts (now transferred to the Judicial Council), which are also reported to have frequent political motivations.

7. The situation in the *Fiscalía* (Public Ministry) is still more negative. It is said that a good lawyer heads first for the private sector or an executive agency, with the judiciary and finally the *Fiscalía* as a last resort. Salaries and working conditions in the *Fiscalía* are significantly worse than in the courts, and reportedly the political pressures are more overt. As an example, by law the Congress is allowed to call individual fiscales to explain their handling of cases, a practice which the judges are spared. Ironically, as the *Fiscalía* is a more hierarchical organization (with a unipersonal, not collegial leadership), the Fiscal General exercises little control over his organization and power tends to accumulate at the level of the Fiscal Distrital (head of the district *Fiscalía*).

8. Both the courts and the *Fiscalía* hold other responsibilities which they are reluctant to sacrifice because they represent additional sources of income. For the courts, this is the control of the property registries (a source of corruption as well as operating funds). For the *Fiscalía*, this is the conciliation services provided for family and other conflicts which do not merit judicial treatment. Arguably, neither organization should be involved in these areas, but absent more generous budgetary allocations, they are unlikely to surrender them voluntarily.

9. Bolivia’s legal framework is also outdated. Procedural systems for both criminal and civil law are largely written and incorporate numerous formal requirements (for example the fiscales’ nonbinding opinion on family and civil cases) which arguably serve no purpose except to create further delays. Specifically in both family and debt cases, informants volunteered that further simplification would reduce delays and free up judges for other matters. As is traditional in the region (and in the civil code system), extensive opportunities for appeals contribute to delays. Even when codes are revised, it is hard to control this factor, given a prevailing legal-cultural bias and a disinclination to leave decisions with those who have proved susceptible to extraneous pressures in the past.

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7 Actually, taking into account the cost of living in Bolivia, judicial salaries are not that bad for the region. Base salaries range from $800 for an instructional judge to $5,000 for a Supreme Court Justice.

8 The most famous recent case is that of the instructional judge, Costa Obregon, suspended for a month on what are widely regarded as trumped up charges, in response to his pursuit of several politically charged cases.

9 The basis for this power is a questionable interpretation of two articles of the constitution (125 and 126:4). Many local jurists volunteered that it deserves reexamination.
10. Substantive and organizational laws also need revision to bring them into line with modern practices. Observers generally concur that neither the definition (tipificación) of crimes nor the sentencing guidelines reflect current circumstances or values. On the civil and commercial side, most of those interviewed agreed that changes are needed although none was able to cite specific examples. Administrative law, generally underdeveloped in the region, is still less advanced in Bolivia. The 1990 law (SAFCO) reorganizing the financial and administrative controls remains poorly implemented, and the country is only now drafting an administrative procedures code while a public servants statute has only recently been passed. A further complaint, voiced by many businessmen, is the proliferation of administrative regulations (one cited some 150 separate registries affecting commercial operations), many of which serve solely to provide income for the respective agency, and increasingly for the municipal governments.

11. The legal modernization process itself contributes to juridical instability. When new laws are introduced, efforts to eliminate conflicts are notably sparse. While juridical principles give preference to the most recent law, the inconsistencies often defy such simple resolutions. Even within the same law, experts have identified inconsistencies as well as contradictions with constitutional provisions. Not only does the drafting of new laws appear to occur in a legal vacuum; it habitually shows no concern for the capabilities of the organizations which will enforce it, or for the steps needed to prepare them for their new responsibilities. The problem transcends the formal legal framework or its malicious application. It is significantly augmented by oddities of prevailing practice, the judges and fiscales’ insufficient training, and the failure of the judiciary as a whole to set common criteria. Press reports and external experts indicate that much legal ambiguity originates in disagreements over what the law really stipulates. The following are a few examples derived from interviews and formal studies:

- Debates on where drug court judges accused of corruption should be tried – drug courts, ordinary courts (with ordinary or special procedures), or Judicial Council.
- A frequent practice (with no legal basis) whereby judges recuse themselves from cases where their initial decision has been reversed on appeal

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10 Mandatory sentences appear both excessive and insufficiently stringent. Given the common practice of paying for ordinary services or giving gifts to maintain good relations, incarceration (reclusion) of two to five years and one to three years, respectively for the official involved (Criminal Code, Art. 151 and 147) seem unduly harsh, and probably account for a tendency to at most dismiss the individual for disciplinary infractions. On the other hand, malversación (diversion) of funds, used to cover a variety of actions (since it is easier to prove than peculado or theft), receives only one month of incarceration or a fine of 20 to 240 daily salaries. A recent effort, supported by the US Embassy, to improve the tipificación of conspiracy introduced a definition requiring that at least four people be involved and that they have an organization with “bylaws.” Then Minister of Justice Blattman agreed this was problematic, but necessary because of recent repressive governments and a lingering fear the law would be misused.

11 Decker Morales’ discussion of the 1993 “Ley de Organización Judicial” is a case in point. Articles 53 and 55 differ as to the number of Justices needed to select the Court President. Article 4 is in contradiction with the Constitution then in effect, as regards the Senate’s vote on the candidates to the Court.

• Jurisdictional conflicts in ordinary civil cases between instructional judges and trial judges based on an ambiguity in the judicial code.\textsuperscript{13}
• A lingering argument over whether times (\textit{dias habiles}) for meeting certain legal deadlines should include Sundays.\textsuperscript{14}
• Uncertainties as to whether the fiscal’s failure to appear or provide a \textit{dictamen} nullifies the procedure.\textsuperscript{15}
• Questions as to whether audit findings by the CGR may be accepted as judicial evidence (based on their legal definition as an “opinion.”)

12. Such uncertainties, which augment the possibility for judicial abuse, are said to originate in the poor preparation of legal professionals. Experts working with groups drafting new legislation or involved in judicial training have commented on carelessness drafting laws (and reading drafts), a tendency to fixate on the law at hand and not on the entire legal framework or on formal procedures and excessively literal interpretations as opposed to legal substance, poorly reasoned judicial resolutions, and ill substantiated legal arguments. Unfortunately, these deficiencies are most evident in the public sector, giving the advantage to private attorneys pressing for idiosyncratic legal readings which favor their clients. Consequently, although new laws may be needed, they will not have much impact until legal operators become better prepared to use them and the entire legal system develops a common understanding of what their laws mean.

Recent Changes

13. Bolivia was a regional late-comer to judicial reform. It has moved rapidly, and thus without substantial national discussion or a broad based consensus either on the need for change or the form it should take. It is no surprise that the results have been less than impressive. The reforms themselves are typical of those being implemented elsewhere: the creation of a Judicial Council, Constitutional Tribunal, Public Defense Office and Human Rights Ombudsman, and the rewriting of the substantive, organizational, and procedural codes shaping the sector’s operations. The 1993 Constitutional amendments were followed by several years of delays as the necessary enabling legislation was drafted and the selection of the new bodies was argued in Congress. Only the new Ministry of Justice and the Public Defenders Office were created immediately. In the case of the council and tribunal, opposition from the Court, which would lose the powers they gained, posed a further obstacle. Additional delays derived from the Court’s loss, through retirement or resignation, of all but five of its 12 Justices. This also impeded the selection of lower level judges to fill vacant positions (by March 1999 numbering 42 district court judges, 147 trial judges and an additional 100 judges whose period of office had expired) and delayed appointments in the \textit{Fiscalía}.

14. In March 1999 with the selection of the missing members of the Supreme Court and Constitutional Tribunal, the impending election of a new Supreme Court President, and the passage of the Criminal Procedures Code, slated to enter effect within two years, the

\textsuperscript{13} Ibid, p. 4
\textsuperscript{14} Ibid, p. 11
\textsuperscript{15} Ibid, pp. 24-26
country appeared to be moving out of the worst of its institutional crisis. However, having new organizations staffed and laws approved is no guarantee that they will work according to plans, and it is evident that the transition will not be automatic.

15. The Judicial Council, fully staffed and operational since early 1998, is plagued by internal conflicts and external criticism. Its involvement in the preselection of candidates to the Supreme Court has been criticized as too proactive (by the head of the Congressional Constitutional Committee) and not proactive enough (by a majority of observers including the Minister of Justice). Similar debates surround its selection of candidates for the nine Superior Courts and the Supreme Court’s subsequent choice of the new judges. The members of the Council are themselves divided as to what their role should be, and one of them has charged both the Council and the Court with succumbing to personal and political pressures. This kind of conflict is unprecedented in Latin America and thus indicative of the lack of consensus behind the Bolivian reforms. The further consequences are that the Council has been unable to advance such key activities as the creation of a training institute, the presentation of a career law, the rationalization of the judicial administrative structure, and the vetting of candidates for the vacant judgeships. Until the Constitutional Tribunal is fully operational, questions having to do with the Council’s powers cannot be answered authoritatively, thus encouraging the continuing battles among its members and with outside actors.

16. Despite the lesser confusion as to its powers and responsibilities, the Fiscalía faces similar problems in that the Congress has yet to select its nine District Fiscales, thus also delaying the filling of vacant or expired positions at the lower levels. Unfortunately the Fiscalía’s Organic Law has not gone far enough in empowering the Fiscal General to control his own organization, nor has he been provided with an adequate budget to begin reaccommodating the institution to the responsibilities assigned under the Constitutional reforms or the new Criminal Procedures Code. Meanwhile, the newly created Human Rights Ombudsman is still attempting to define how it will respond to a highly ambitious mandate, while the Ministry of Justice appears to be expanding its own mission into areas (most notably the creation of a Procuraduría, constitutionally assigned to the Fiscalía, and the drafting and implementation of the new laws shaping the sector) where it is likely to clash with other entities. It is also reported that the Public Defenders Office, the one institution which seemed to be performing adequately, had most of its members replaced with the entrance of the current government, and that its composition and possibly its operations have developed an unprecedented level of politicization.

17. Finally, the process of law revision and implementation brought its own problems. Drafting was overly hasty, insufficiently coordinated (as regards both the new or existing laws), and oblivious to organizational capabilities. The only exception is the new Criminal Procedures Code which, with help from donors, is being vetted for potential weaknesses. Donors are mounting an extensive training program in the new procedures

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16 As of May 1999. However, the Congress does not resume ordinary sessions until August, and the extraordinary Congress did not include this task on its agenda.

17 This assessment was initially based on my own observations. A press interview with ex-Minister Blattman expressed the same view. See Cosas, April 1999.
for judges, fiscales, defenders, police, private lawyers, and law students and are attempting to strengthen their respective institutions in areas likely to affect the code. Progress elsewhere is less impressive. Agrarian cases are either paralyzed or seen (possibly illegally) by ordinary civil judges pending the creation of new agrarian courts. A recent law once more placing mining courts outside the ordinary judiciary remains implemented. The administrative courts were not created until late 1995, and, it is felt by many, cover too many types of cases. Their staff has not received special training; one judge consults with a nephew for help in understanding the agency accounts presented as evidence. There is a remarkable absence of uniform criteria among the judges, fiscales, state lawyers, and representatives of the CGR as regards their respective powers or interpretations of the laws. This is compounded by the actions of the Customs and Tax officials who still hold quasi-judicial responsibilities and are as likely to accuse the fiscales or CGR of malfeasance as to cooperate with them.

18. In summary, although the country has begun an ambitious restructuring of its justice sector, the process is extremely conflict-ridden and impeded by institutional, partisan, and merely personal battles. These problems are not unusual in Latin America, but the Bolivian situation is especially chaotic, a product, it can be surmised, of so many conflicts, judicial and otherwise, being faced within so short a time frame.

Sector Performance

19. Complaints about sector performance (focusing on the courts, but extending to the police, fiscales, and private bar) parallel those in most of the rest of the region: inefficiency, inefficacy, a swaying of decisions by political and other biases, corruption, and inaccessibility to a large portion of the population because of costs, poor distribution of services, and public ignorance of (and thus inadequate information on) basic processes. Typically, the sector has four major functions: conflict resolution, social control, law determination, and checks on the legality of government actions. As elsewhere, its ability to perform any of them adequately is further inhibited by a high level of public distrust.

20. Traditionally, the Bolivian judiciary’s role in checking the actions of other government bodies has been minimal, in part because of legal limitations (a situation which the new Constitutional Tribunal should change), in part because of a long history of political intervention in its operations. These same factors also impede its role in law determination as have several decades of declining quality in its human resource base and organizational structures and practices. Informant interviews, formal studies, and press accounts make it clear that the judiciary is not of one mind on how to interpret and apply existing legislation, and that there are significant regional and personal variations in the handling of similar kinds of cases. It was reported, for example, that in some court districts, special procedures with no basis in law have been adopted and that judicial practice as a whole often deviates from what the law appears to dictate. Inadequate recording and dissemination of judgments, frequent turnovers in the higher level courts, and the latter’s restricted capacity to set definitive interpretations have also undermined the judiciary’s contribution to establishing a predictable legal framework.
21. This legal ambiguity obviously affects performance of the two other, most central functions: conflict resolution and social control. These are the areas where the public has most contact with the sector, where its performance has the most palpable impact on their day to day activities, where other complaints, like slowness, inefficiency, lack of adequate access, politicization, and corruption are most often directed, and where the inadequacies of output are easiest to measure. What statistical reports exist, for example, on time to resolution of cases, indicate that despite a not unreasonable workload, delays far exceed the legal deadlines in both criminal and civil cases. More anecdotal evidence taken from interviews, suggested that a normal executive case (for debt collection) might take five to seven years for resolution, while an ordinary civil matter might go on for 10 to 15 years.

22. The widespread belief that the sector should be avoided at all costs stems from more than delays.\textsuperscript{18} The greatest complaint is directed at unpredictable outcomes and the perception that most are determined by political, monetary, and personal pressures rather than the law. These perceived and possibly real injustices affect not only the poor but also better off citizens without political contacts or the foresight to hire well connected legal counsel. Entrepreneurs often prefer to negotiate settlements, legally or illegally. Conflicts with the state, and especially customs or tax disputes are often “negotiated” with the relevant administrative office; if a bribe must be paid, fewer parties are involved. When such cases go to court, it is either because administrative negotiations have broken down or because delay and the probable loss of the issue in the system have become the preferred tactic. Business representatives also claim that disputes with employees or tenants are especially problematic owing to the presence of attorneys who specialize in fixing these cases and without whose assistance a judicial victory is unlikely. Although these practices appear to favor the underdog, in most instances the poor and dispossessed find the costs of legal counsel a major disincentive to accessing judicial services. In rural areas, the sparse distribution of judicial offices, and the consequent need to travel to district capitals are additional obstacles.

23. As is common in Third World countries, debt cases represent the bulk of commercial matters,\textsuperscript{19} and there is some indication that companies pursue them “on principle” even when the outcome will not render a profit. For banks this is more than principle; they cannot write off their losses without taking legal action. However, they often use less prestigious firms to handle small debts, reserving their big guns for more substantial conflicts. Recently the government, responding to requests from creditors, has introduced a new coercive procedure intended to speed up the simplest cases of debt collection. The government has also taken measures to encourage banks to improve their loan policies by reviewing the expected return on investments. This responds to the

\textsuperscript{18} Admittedly, a reluctance to take legal action, like complaints of corruption, delays, and political and other biases, are associated with all legal systems – the difference is one of degree.

\textsuperscript{19} Flessig, Heywood W. (1994), "How Legal Restrictions on Collateral Limit Access to Credit in Bolivia," report prepared for World Bank notes that in the early 1990s, up to a quarter of the prison population was either awaiting trial or serving sentences for passing bad checks, a frequent means of posting collateral for loans. Recent amendments to the Criminal Code outlaw incarceration for debts, although one suspects that has not much helped those already there.
private banks’ increasing problem of liquidity – in collecting on loans they have amassed large quantities of real estate (given as collateral) which they are unable to sell. A service provided by the Chamber of Commerce, listing participants in legal cases since 1984, has also helped in this regard. Subscribers are able to identify problematic clients. Apparently there has been no legal resistance either to the use of this criterion or of court records (in addition to press reports) for creating the data base.

24. The Chamber offers another alternative for those wishing to avoid the courts. Since 1993, it has maintained a Center for Arbitration and Conciliation in La Paz with branches in Santa Cruz and Cochabamba. However, the caseload remains small in all of them, in part because these practices are not widely understood. For example, the Center complained that the various Superintendencies (regulatory agencies) resist including arbitration clauses in their own contracts, and that the new draft administrative procedures code appears to exclude arbitration as a means of resolving disputes over contracts with the public sector.

25. Banks and large businesses commonly retain a variety of legal firms some of whose members are simply responsible for “managing relationships” with the judiciary. According to recent press reports, there are a number of law firms known for using their personal and political ties with the sector to manipulate the outcome of cases. The system puts the state at a decided disadvantage in its own cases; lacking an operating budget for such basics as paying process servers and photocopies, it is unable to compete with the amounts (like the $200,000 reputedly paid to the Justices seeing a recent labor dispute) offered by private parties and unions. Extraofficial payments are not always explicit quid pro quo; interviewees also noted the need to provide periodic gifts to judges with whom one might be dealing. These include cases of liquor or Christmas baskets “with envelops of cash,” or in one case, when an attorney refused to pay what she thought was a bribe, a box of chocolates to reestablish a working relationship with the judge. References (sometimes by name) in the press and interviews to “talleres de autos” or law firms dedicated to fixing cases, mention of various legal clans linked to a political party, a high-ranking court member and specific private attorneys, and discussion of the same type of arrangements with Fiscalia officials make it clear that however hard it may be to establish the incidence and level of such abuses of justice, they are, as one informant said, not to be treated like tales of flying saucers and extraterrestrial visits – i.e. sheer inventions of sensationalist press or disappointed parties to legal actions.

20 These include cases of liquor or Christmas baskets “with envelops of cash,” or in one case, when an attorney refused to pay what she thought was a bribe, a box of chocolates to reestablish a working relationship with the judge.

21 This is a play on words; a taller is a workshop and an auto is both a car and a judicial resolution. Other interviewees while not using this term, often spoke of legal offices with members exclusively dedicated to managing judicial relations, including knowing whom and how much to bribe. Another series of articles in the La Paz journal, Presencia, cited a lawyer’s explanation that 33% of winning a case was money, 33% was political contacts, and 33% was counsel’s skill in knowing how to apply both.

22 This is part of the increasing press coverage of public sector corruption (not limited to the judiciary). During March 1999, several papers covered the issue, apparently arising in events in Santa Cruz. One (Presencia, March 24, 1999, A7) even outlined the various steps in the process (starting with the police and ending with the Supreme Court) where a payment could alter the outcome of a case, or make it disappear. Both a lawyer (and former judge) and a judge (now retired) were named as involved in the networks.
26. There is another kind of lower level corruption, which, while it touches all users, is most injurious to poorer clients — this is the widespread practice of paying officials for performing normal services. One recent newspaper account described this as the “impulso procesal,” the money needed to move a case ahead.23 The amounts are often small, a few dollars for delivering a notification, processing a document, or moving it to the top of the pile. To this can be added the petty corruption perpetrated by police officers in fixing tickets or inventing violations. Increasingly these extralegal fees, and charges of major corruption within all agencies, are receiving press attention. While this can be taken as a positive sign (and a first step toward their elimination), it does not improve public perceptions and furthermore is hard to distinguish from the practice of bringing charges against any court official whose decisions, legitimate or not, have affected some private interest.

27. In terms of the sector’s effectiveness or lack thereof, special mention should be made of its role in combating public sector corruption and defending the interests of the state. Its performance here is poor. Such cases rarely get to court, and when they do the state’s win rate is conspicuously low. In cases for civil damages against public employees or contested tax levies, the state’s recovery record is poor — explanations range from the poor quality of state attorneys, to the susceptibility of courts to political and purely monetary pressures. Moreover, a lack of uniform criteria among and within the various justice sector entities involved, whatever its origin, tends to give the advantage to a defendant with access to experienced counsel.

28. A final note is merited on the sector’s poor use of its financial resources. The 1996 Chemonics report documented a number of problems in the courts, many arising in inadequate administrative systems, poorly trained and motivated administrative staff, and overcentralization of many processes. Although the courts, because of their revenues from property registries, are not poor, their choice of where they use their funds and their control over the usage are questionable. A recent building program focused on district level infrastructure, leaving the poorer provinces untouched. Despite a shortage of provincial offices and staff, one court district is preparing to buy properties to create a vacation club. Interviews conducted in the Fiscalia indicated similar patterns, aggravated by that agency’s greater poverty.24 As one District Fiscal noted, his office had one vehicle to attend to all district needs and requests for travel funds (to attend to investigations in the provinces) had to be made to the central offices, with delays of up to three days in their approval. While not a source of public complaints, since most of the public is unaware of them, these practices damage internal morale, further undermine incentive systems, and encourage comparable abuses in the services provided to the public.

23 (Presencia, March 25, 1999 p A-6). There was obviously a joke or misunderstanding involved — the term is commonly used to refer to a judge’s legal powers to move a case ahead.

24 USAID sponsored a study of the Fiscalia’s administrative systems which provides more detailed criticisms and recommendations for improvement.
29. While Bolivia’s justice sector has performed far short of ideal expectations for the better part of the current century, the nature of its shortcomings and the reasons behind them have been undergoing considerable change. Since the 1930s the courts and other sector organizations have enjoyed little independence from the desires of the government de turno, but it is arguably only with the post-1982 democratic opening that their internal operations have become so excessively permeable to and penetrated by the pressures from and conflicts within political society. As a result, whatever internal control or consensus might have shaped sector operations in the past has almost disappeared, leading to an increasing unpredictability in its actions and decisions. The situation cannot be blamed on any one factor, but rather on the unfortunate convergence of a number of events and pressures.

30. A. Organizational, legal and structural factors: In part, the problems originate in constitutional and legal changes introduced from the 1970’s onward which have formalized external control over appointments and decisions while simultaneously decreasing the organizations’ potential for self-governance. The recent constitutional reforms, new laws, and certain proposed changes (e.g. revised Organic Laws for the Public Ministry and Judiciary now being drafted) may reverse this trend, but as yet their impact has been slight. Among the legal/structural factors are the Congress’s ability to select, by two-thirds vote, the members of the Judicial Council, Constitutional Court, Supreme Court Justices, Fiscal General and Fiscales Supremos, the fiscales de distrito, and until 1994, the members of the Superior Courts; the relatively short terms accorded to first and second instance judges (four and six years) and fiscales (five years for Supremos and four years for the lower levels); and the vesting of disciplinary and criminal actions against judges and fiscales not in a separate, specialized body but in the immediately superior court or Fiscalía. For the judges, the latter process changed with the creation of the Judicial Council, but the Council’s responsibilities remain unclear and its operations subject to continued criticism. This hierarchical organization makes lower level personnel dependent on the good graces of those above them, can consolidate internal patronage networks, and, when combined with the appointment system, facilitates political intervention (although, as discussed below, such intervention is made more difficult because of other aspects of the selection system).

31. The absence of both an administrative and judicial career, or even of adequate selection criteria is a still more potent source of negative incentives, increasing the influence of personal and political relationships. The Council now provides lists for all

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25 This is believed to be an improvement over the prior majority vote in that it forces a “consensual choice.” Nonetheless the basis for the choice remains highly partisan; it just is less likely to be dominated by one party.

26 By its own count, the Council has received 1,200 complaints against judicial officials, processed 400 of them, and taken disciplinary or criminal action against 40. However, most actions resulted from two incidents – an investigation of the property registry in Sucre (17 dismissals) and charges brought by the Fiscal for Drug cases against 18 drug court judges. In a recent meeting with high-ranking judges and bar association presidents in Santa Cruz (May 6-7, 1999), one Council member admitted that the practice of suspending judges while investigating charges against them was “unconstitutional.”
judicial appointments, whether made by the Congress or the Court, but its development of a vetting system has lagged. This simplifies and improves on the preexisting system, where the Senate, Supreme Court, or Superior Court nominated, and the Chamber of Deputies, Senate, or Supreme Court, respectively, made the final choices of Justices, Superior Courts, and trial judges. However, members with partisan ties continue to introduce conflicts which the Council has so far resolved less predictably and satisfactorily. At least when the Congress did this, the stakes (however inappropriate) were comparable and so easier to negotiate. In the case of the council members, there are disagreements along party lines, as regards the importance of partisan identification versus “merit,” and as to how merit will be defined. Congress’s ability to interpellate directly individual fiscales and the extensive potential for disciplining or bringing legal charges against judges or fiscales have in the current environment added to the negative pressures. In short, the sector’s organizational framework contains a number of elements which discourage professionalism, make officials more attentive to informal relationships, and otherwise create incentives which work against efficient, effective performance in compliance with the formal rules.

32. To this should be added the fragmented and often inconsistent legal framework and the absence of any body with the ability to determine what the law is. The Constitutional Tribunal may resolve that problem at the highest level, but the Supreme Court retains some ability to issue guidance on legal interpretations. It has used this power infrequently, and in the current conflicted environment seems unlikely to improve or even equal its past performance. Legal insecurity affects system members as well as users. Absent any clear decision as to which law should prevail, insecure in their own positions, and bombarded by a variety of external pressures, they can hardly be blamed for succumbing to whatever route looks most personally, if not legally, secure. Furthermore, absent the creation of new bodies mandated by law (e.g. the agrarian courts and until 1996, the administrative ones), judges are forced to work around, if not in violation of, constitutional and legal mandates. Where judges already know they are working at the margins of the law, stepping over into the purely illegal areas is understandable if not justifiable. Constant changes in the basic legal procedures make it hard to keep abreast of what is required and so further decrease the incentives for abiding by the law — largely because even the best legal interpretation will inevitably be challenged and has no guarantee of prevailing — in fact could as well lead to a charge of prevaricato (malicious misapplication of the law).

33. B. Political factors: in Bolivia as elsewhere, the democratic opening and the increased importance of party politics had a negative, if unanticipated impact on the

27 For judges and fiscales the selection criteria have traditionally been restricted to a minimum age and years of practice and a law degree, and it is believed by many that they are not strictly enforced. The Judicial Council recently introduced a 500 point scale for evaluating candidates. It has not been officially released, is said to be subject to manipulation, and in any case is only an advance in assigning quantitative values to the usual “criteria,” making no effort at qualitative judgments. Recent press reports suggest that either by intent or oversight, such clear negative factors as pending legal actions, are often not considered.

28 At present a fiscal assigned to the La Paz customs agencies and an instructional judge, both seeing cases of official misconduct, are themselves under investigation because of counter charges brought by the principal suspects. These are clearly efforts to intimidate the two into reversing their initial findings.
sector's development. The parties, after a tenuous existence under years of de facto
governments, latched onto the distribution of public goods (whether as jobs, privileges,
concrete resources, or contracts) to attract followers and consolidate their power. The
practice quickly extended to the judiciary where the parties first sought to divvy up the
positions as political booty, but soon perceived this as a way of accumulating political
debts and thereby influencing the outcome of specific cases. While the effect is not
unique in Latin America, Bolivia's judiciary after decades of external interventions, had
little in the way of an institutional identity and its chance of developing one was thus
further set back.

34. The role recently accorded to the Judicial Council in the appointment process may
alter the form and content of political inputs, but the new directions are hardly clear. One
thing is certain: the new processes may make direct party control more difficult, but they
have not eliminated the motives behind it. Moreover, certain recent developments
-especially the increasing press attention to corruption) have raised the stakes, making
participation in the "political quota" (cuoteo politico) vital to parties which formerly
seemed willing to trade intervention in the judiciary for key positions elsewhere in the
public sector. It is rumored, for example, that MIR, whose traditional stronghold has
been Labor, has now cast its eye on the Ministry of Justice, as well as the Court, and the
Fiscalia (where some believe it is already well entrenched.). All judicial appointments
have a political element (the US can hardly afford to cast stones here), and this broader
competition may have its benefits, but only if it does not first tear the institutions apart, or
further decrease attention to the capacity to do the job.

35. As regards both the current and traditional situations, a few general points can be
made. First, the parties' involvement begins with, but is not limited to negotiations in the
Congress over the appointments it controls directly. There are two interrelated choices to
be made: the partisan division of judgeships and Fiscalias and the selection of specific
incumbents. Regional leaders as well as those within the national and local bar and other
professional associations may have input into both decisions, but are more important in
the second one. In the most recent election of Supreme Court Justices, it appears that a
strict political quota was not used; instead the various parties and factions negotiated a
consensual list, combining the two sets of decisions.

36. Second, the judicial appointment process is complicated by the extensive (and now
still greater) participation of collegial actors (Congress, Judicial Council, Supreme Court)
with their own staggered calendar of appointments and tenure. Agreements reached at a
national level are thus filtered through the internal politics of organizations. The
organization of and selection system for the Fiscalia, centering on the nine district
fiscales, does not pose this obstacle, making it more vulnerable to direct partisan control.
The same is true of Public Defense, the members of which do not have tenure and are
named by the Chief of that office (in turn named by the Minister of Justice).

37. Third, while few people get a position without a "godfather or mother," most of
those are not national party leaders, but rather friends and colleagues, national and local
"gremios," or local party leaders. Fourth, it is not at all clear what kind of "political" or
other debt is incurred by the nominee vis-à-vis his or her patron, and the nature of that
debt probably varies as does the ability to fulfill it. Many judges backed by a party do
not appear to be militants and some have sufficient professional standing to weaken any
assumed obligation. Partisan, personal, or “gremial” backing may simply imply comfort
with the nominee’s presumed views or could be indicative of some more nefarious
agenda.

38. Fifth, party quotas have been used most blatantly in the selection of administrative
staff. A recent dispute between the Mayor of Sucre and the head of the Senate
Constitutional Commission thus caused the former to produce a letter, allegedly written
by a member of the Sucre District Court in 1991, calling for provincial and parliamentary
MIR and ADN leadership to suggest names for a proposed renewal of all court
administrative staff.29 This again is subject to change with the greater role played by the
Council, but only once it emerges from its current internal conflicts and those with the
Court.

39. Finally, party intervention starts, but does not end with appointments. Judges or
fiscales who cross a political figure may be subject to disciplinary action by their more
politically sensitive superiors. Reappointments or promotions also afford opportunities
for settling scores, especially if an initial patron has suddenly disappeared.

40. In summary, the composition and operations of the key sector institutions (courts,
Fiscalía, defense, police) are shaped by a variety of political inputs into the appointment
process and related personnel matters which clearly detract from institutional unity and
individual performance. At least since 1990 (when the MNR’s domination30 of the
judiciary was successfully challenged and the resulting Court-Executive conflicts led to
the attempted impeachment of an entire Court and the successful removal of three
justices), the result has been a higher level of internal conflict, a probable lesser ability of
institutional leadership to control subordinates, and more opportunity for the operation of
internal cliques and horizontal penetration (the well-linked law firms who work through
ties with individual police, fiscales, judges and administrative staff). While the
immediate overall impact has probably been more corruption and other abuses, there is a
positive side. Benefiting from increased press attention and broader inter and intra-party
conflicts, a few judges and fiscales have been willing to act on their conscience, pursuing
cases which the party leaders or their immediate judicial superiors might prefer they let
disappear. Their ability to continue doing this rests on their leaders’ realizing the
potential for greater political independence allowed, but not guaranteed, under recent
reforms, and the construction of institutional identities based on a common understanding
of professional standards of conduct and the introduction of mechanisms permitting their
enforcement.

41. C. Societal factors: The present and future impact of structural and political factors
on Bolivian judicial behavior is mediated by a third set of elements which tend to
exaggerate trends visible elsewhere in the region. These elements include the declining

30 See Gamarra 1995 for a discussion.
quality of legal education from the 1970s, the country's relative isolation from region-wide discussions of reform needs, its own regional and ethnic divisions, the exaggerated effects of patronage appointments beginning in the 1970s, and economic problems leading to increased or continuing reliance on public sector employment. None of these is unique to Bolivia, but in combination they have weakened both the wider support for judicial reform and the capacity of the system to introduce its own improvements.

42. The declining quality of legal education and the delayed participation in regional reforms have two results. They have made incumbents less aware of the full range of sectoral failings and weaknesses, and have inhibited efforts to eliminate them. Clearly Bolivians know corruption when they see it, so except at the margins (views on nepotism, or on conflicts of interest) the problem is not some sort of peculiar cultural ethics. However, lack of exposure to alternative, possibly better models, and legal education which stresses rote memory and details over analysis and the “big picture,” or when it takes on the big picture uses simplified ideological approaches, tends to place the blame on factors (antiquated laws) which are secondary at best or unlikely to be altered (the neo-liberal economic model, the prevailing power structure) over the short run.

43. Bolivians came late to sector reform, and for the most part, they are entering it with inadequate analytic and technical tools. To reorient their institutions, the reformers will need crash courses and guidance in elementary organizational and management techniques – things like the design of human resource systems, the use of information for planning, control, and evaluation, law drafting for implementation, and the importance of testing innovations before adopting them globally. They will also need guidance in adapting legal and organizational innovations to budgetary and human resource constraints. Where one agency performs inadequately, the solution is unlikely to be the creation of a more ambitious parallel organization – as per the current proposal for the Procuraduría. Where laws are in conflict, eliminating the contradictions directly appears preferable to the traditional placing of another law on top of them. And, with a functioning Constitutional Tribunal, the legal community might ask it to resolve contradictory and overlapping organizational mandates – rather than as has been proposed, issuing further internal reglamentos. The reliance on reglamentos and other unilateral interpretations is so extreme that the Contralor General has issued circulars defining who (fiscal, agency lawyer, or his own staff) will represent cases for the state and establishing the evidentiary value of audits. It is doubtful the judges will give much weight to these documents, which truly are, as the judges like to say, “only opinions.”

44. Despite the widespread criticisms of the system’s operations, much of the public appears resigned to their persistence or still unaware that normal practices are frequently illegal. Public knowledge as to how the system ought to operate is far from perfect; skepticism as to its susceptibility to improvement is still greater. Furthermore, although press coverage of the recent judicial elections has stirred up some demand (it is hard to say how much) for a less politicized process, this has not been translated into a

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31 Several informants referenced a general decline in university education from the 1970s. Of interest here is the alleged impact on the law schools, a reputed politicization of their staff, and a resulting failure to make necessary reforms in already outdated methodology.
questioning of a variety of common judicial practices. All judicial systems are political; the real question is the quality of services provided and these will not improve unless critics are more specific as to the changes they want to see.

45. Building a justice system that works will also be difficult in Bolivia because of cultural and other divisions. Bolivia is the quintessential land of contrasts; the demands and needs of the different groups vary greatly. Foreign and domestic investors, commercial and service industries, environmental and gender activists, public employees, union members, campesinos, indigenous communities, the vast number of urban poor, the private legal community, and the various groups working in the sector—all have claims on a possible reform, but view it from different perspectives. Steps taken to serve one set of interests will not necessarily override the others, but it will be difficult to address them simultaneously. From this standpoint it is unfortunate that so many of the reforms have been managed by a very small group with minimal consultation either within the sector or with its users. This too is a cultural preference, but it threatens to increase the irrelevance of the proposed changes and limit their wider impact.

46. **D. The Effect on Judicial Behavior: Incentives, Values, and Subjective Models:**
The first rule is that whatever the combined impact of these factors in the past, it is in flux and that former survival strategies are unlikely to work in the future. Nonetheless, a second rule still holds: while the reform agenda is attracting better candidates, few enter the legal sector, and virtually none its public institutions without a good understanding that the formal norms of operation do not govern real conduct. At least in the past, those who did were soon disabused of their illusions. The enormous role of the political parties and interests connected to them in determining not only who will hold judicial office, but also what conduct will be protected, rewarded, or punished is said to dissuade many of the most qualified candidates from ever entering the judiciary. Added to that were relatively low salaries, poor working conditions, and a poor public image.

47. Perhaps even more discouraging is that several judges admired by their colleagues because of their intellectual attainments or professional reputation have come to unfortunate ends. The former Chief Justice, Edgar Oblitas, who in his day had pressed for reforms similar to those now enacted, was eventually removed from office, accused of accepting bribes. In the recent appointment process, the president of the Oruro court was denied a position on the Supreme Court and not renewed in his current post, reputedly for lack of a political godfather and conflicts with party officials from his days on the district Electoral Court. Capable lawyers are more willing to work the system from outside because until now the rewards have been greater and the risks fewer; many however claim to avoid litigation because of the compromises they believe it requires.

48. Nonetheless, the judiciary does attract candidates, some undoubtedly because of the opportunity for illegal gain, but others because they believe they have some vocation. Among the latter, several have entered recently or returned after a passage through private practice, believing that a positive change is now in sight. There is another, larger group who have stuck it out for years, and to a greater or lesser extent have made their compromises with the system while still retaining some critical capacity. Many of them
express a desire for a better system, one which will not require political godfathers, legal shortcuts, and submission to extra-legal pressures. However, until those changes come, they are well aware that professional survival requires a good dose of caution combined with a willingness to honor the wishes of well placed outsiders and insiders, and that advancement requires the right patron. Some patrons do recognize merit, but for most, the real concern is having an insider to represent their material and political interests.

49. While most of the problems originate in a perverse incentive system, their solution will require changing other values and subjective models. Whatever the nefarious ends to which it is used, substantive and procedural law does incorporate certain traditional views as to the causes and nature of crime and administrative abuses, parties’ rights, and the roles and responsibilities of judicial actors. These views influence legal outcomes, directly, and by shaping organizational mandates, roles, and interactions. As a reading of the criminal code and other laws defining illegal behaviors suggests, many of the views are outdated, contradictory, and a poor guide for action in a contemporary setting; however, these texts shape the perspectives of the majority of the legal community. Procedural rules, ranging from the century old impeachment process to SAFCO itself, also incorporate behavioral models and values which, filtered through the current legal-cultural context, distort their collective and individual impact even before they are manipulated by interested parties. In their worst aspects, this is already recognized and changing them will only require overriding the vested interests they protect. That change is not always in the direction of adding crimes and augmenting sentences; in some cases, the severity of the current provisions virtually guarantees they will not be applied. Still, as the last decade of partial reforms suggests, imposing new rules or adding agencies without addressing the more basic understandings of those who will apply or staff them is an invitation to unexpected and often undesired results. Unconsulted, unilateral change is a frequent source of inconsistencies, contradictions, and new loopholes. Possibly more damaging is its tendency to ignore both its own operating assumptions and those of its targeted audience, the two most potent determinants of its short and medium range effects.

ADDENDUM: A Discussion of Judicial Appointment Systems and the Implications of Recent and Proposed Changes

50. As discussed in brief above, the conflict over control of sector organizations has heated up in recent years, as evidenced by larger, longer, and more public disputes over appointments in which a greater number of actors now participate. Under the first two post-1982 administrations, the MNR, by imposition and then by negotiation, established its dominance of the Supreme Court and thereby of the rest of the judiciary. (The Congress at that point appointed Supreme and Superior Court judges, and the Supreme

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32 Saez’s discussion of the effects of the Banzer reforms and especially judges’ failure to respond to their potentially greater control of civil cases is relevant as is his treatment of the traditional legal views and values as obstacles to change. Saez Garcia, Felipe, “The Nature of Judicial Reform in Latin America and Some Strategic Considerations,” American University International Law Review, Vol. 13, No. 5 (1998), pp. 1267-1325.
Court selected lower level officials based on recommendations from the districts.) In the third administration (Paz Zamora, 1989-93), the MIR-ADN alliance contested this situation, leading to battles between the Court and the Executive, an effort to impeach an entire Court and eventually to the removal of three Justices. Conflicts again broke out with the constitutional revision of the appointment system (introduced in 1993 but not in effect until 1998), accounting for the two-year delay in filling Supreme Court vacancies, the especially visible battles over their ultimate selection, and additional delays in the newly installed Court’s selection of its President.

51. Nonetheless, in the case of the judiciary, and to a lesser extent in the Fiscalía, partisan control has certain idiosyncratic limits. Some are purely structural and legal: the constitutionally defined tenure for judicial appointments (thus making them less vulnerable to the frequent realignments within governing coalitions), the more complex procedures whereby selections are made, and the role accorded to collegial bodies whose selection and tenure do not coincide with those of lower level appointees. Normal public servants can expect changes in upper leadership and thus loss of their present positions every year or two. In the judiciary and Fiscalía, at a minimum appointments are for four years. In addition, all appointments in the judiciary require the intervention of two bodies. Formerly the Senate, Supreme or Superior Court nominated candidates and the Chamber of Deputies, Senate, or Supreme Court, respectively, made the final choices. At present the Judicial Council prepares all lists and either the Congress or the Court makes the final appointments. Although the new process is simpler, both its novelty and the intervention of a council whose members enjoy ten-year terms makes the impact of political identifications far less direct and far less predictable.

52. In the Fiscalía, a two-part system is also in force, with the selection of Fiscales Supremos and distritales by the Congress on the basis of lists provided by the President and Fiscalía, respectively. Lower level fiscales are appointed by the Fiscal General from lists provided by the respective district fiscal. As opposed to the judiciary, the process is simplified, and political bargaining probably facilitated by the unipersonal identity of almost all the actors. This also unfortunately is the case of the Public Defense Office, whose head is chosen by the Minister of Justice. Appointments of public defenders, who do not have fixed tenure, depend solely on the office director.

53. For the judiciary, all participating actors are collegial, and their input is thus influenced by their own political composition and history. Nominations made by the Council are subject to its internal politics (which may not correspond to the current party panorama) and have another partisan and personal go round in the body (Congress or Supreme Court) which does the final selection. As a result, current press efforts to read in partisan affiliations are usually inconsistent, suggesting that at least for the judiciary, while political ties are important, they do not acquire the one-to one correspondence seen in much of the public sector. In the March 1999 elections to the Supreme Court, the Judicial Council’s submission of a short list of 52 candidates and a long list of 125 did not impose many restraints on the Congress, but the latter’s internal negotiations also produced a fairly politically indeterminate selection. At best critics could identify four of the seven as candidates of the governing coalition (three linked to ADN and one
Mirista) and another with possible MNR ties. However, a party’s candidate is not necessarily militant – and of the four, only the Mirista and one ADN justice qualify as the latter.

54. On the other hand, the new Court, in its first official actions, appointed a district court in Oruro which was predominately MNR. Whether this was the accidental, the result of internal negotiations and alignments, or part of a prearranged pact to favor the party not getting its share of justices is anyone’s guess. Most complaints (both by the usual dissident council member and Oruro’s legal community) were directed at the inclusion or omission of individual candidates, not at the overall composition. The simultaneous election of three members of the Pando court was the target of similar criticisms, focused on one appointee said not to have figured in the Council’s initial list.

55. As the council and court still must select some 32 more district judges, fill the 147 first instance vacancies, and replace or reelect the 100 or more judges whose term has expired, the controversies have only begun, and efforts to explain or predict the impact of party politics on the eventual outcome would be hazardous. The early results suggest that while partisan politics do matter, they are not so simple as a mere division of the positions according to relative party strength. First, parties appear to differ as to the importance accorded to “controlling the judiciary,” or envision different strategies to exercise that control. As controlling the Court or the Council is no longer an option, regional representation may be more important, especially given that many corruption cases will be tried at the district level (albeit often by two district courts). Second, a party’s regional strength, in general and within the legal community, may determine the ease of capturing a district court. However, at the next level, that of the far more numerous trial and instructional judges, property registrars, and other staff, the final decision now lies with the Supreme not the District Court. This could mean a pyrrhic victory, or a more traditional division of the judicial pie. Third, these initial appointments, probably the largest such constitutionally defined effort in the nation’s history, are to be executed by two recently integrated (and one recently created) bodies, whose mutual relations are already soured (in part because one of them is also beset by internal conflicts). Conceivably this could facilitate partisan or regional/partisan intervention, but the effects will necessarily outlive the current political coalition. Also, given the complaints about the first appointments, the Court, if not the Council will have to avoid obvious party hacks, or risk further damage to its image. Finally, although the Court makes the final choices, disciplinary powers (and the ability to dismiss judges for cause) lie with the Council. At least, direct dependence of lower level judges on their district superiors has been eliminated.

56. In short, while individual judges at any level cannot afford to overlook politics (and may indeed owe their initial appointments to political godfathers), the way in which this

33 Correo del Sur (Sucre), March 20, 1999, p. 2.
34 La Prensa (La Paz), March 18, 1999, p. 9a. This view was not shared by the informant cited in the Correo del Sur article who viewed the individual as politically neutral.
35 Of the seven new vocales appointed, five were said to be MNR, one a Mirista, and one from ADN; two of the holdovers were from ADN and the other from MNR. Presencia, May 3, 1999, p. B1.
affects their subsequent actions remains to be seen, but is unlikely to be more of the same. Furthermore, given the short terms held by first and second instance judges, the process, if at somewhat diminished levels, will continue for the foreseeable future, raising among other questions that of how the Court will do its normal work. Unless the Court and Council succumb to the practical temptation of relying on political recommendations and/or quotas, they will have to resolve their dilemma by adopting a more objective means of classifying candidates and thereby reducing political input. At present it’s hard for the observer, or more to the point, the judges, to say which way the system will go, whether its various parts will follow the same logic, and thus how it will change the preexisting incentive system.
Annex 7. Regulatory Superintendencies

1. Bolivia has made one of the most sophisticated efforts seen outside the OECD countries to construct an efficient, honest, and sustainable mechanism to regulate private activity in areas of markets that are not self-regulating, such as financial markets and natural monopolies. The government did this as part of the effort since 1985 to shift from an economic model of state capitalism, strongly influenced by patrimonial politics, to a market model. This involved both financial liberalization, from 1985, and the privatization of natural monopolies through the capitalization process that got underway in 1995.

2. In constructing such a regulatory mechanism, there are well-known problems to be solved. The regulated entities almost always possess specialized information — about cost structures and production conditions — that regulators have difficulty obtaining — the so-called problem of asymmetric information. Typically, the regulated entities possess many more resources to hide information than the regulators have to discover it. Sometimes, to obtain specialized information, regulators employ people from the industry they are regulating. Often, the regulator needs to “expose” its employees to on-site visits. For all these reasons, there is a constant danger of the regulator being “captured”, through ignorance or through being suborned, by its regulatees. But beyond this classical problem of regulation, there is also a problem of political interference. Sometimes, political interference may be at the behest of regulated entities — an attempt to use politics to achieve regulatory capture. But at other times, other agencies may interfere to achieve their own objectives, which may be to maintain control of patronage or to pursue other policies (which involve influencing the price of regulated services). Bolivia is marked by weak institutions, including a politicized public administration and a court system that does not work. (In addition, Bolivia still lacks a law of administrative procedure.) In a country like this, the challenge to regulatory mechanisms is posed at least as much by political capture as it is by the direct, non-political manifestations of regulatory capture.

3. Bolivia’s formal solution proposed for the problem of political capture was to create a substantial degree of political and administrative autonomy, in effect protecting the regulators from the rest of the state. The political autonomy was to be achieved by limiting the role of the executive to nominating a Superintendent, on the basis of names proposed by the Senate, for a term that would not run concurrently with those of the President or the Congress. The Superintendent could then only be removed, prior to the expiration of his term, by the Supreme Court and only on the grounds of misconduct. In addition, the Supreme Court would be the final arbiter of any appeals against the regulatory decisions of Superintendents. Administrative autonomy was to be achieved by allowing the Superintendencies to be entirely financed through levies on regulated operators and to function within the framework of private labor law. However, the Superintendencies’ budgets would pass through the national budget, their procedures would be subject to the SAFCO law, and they would be audited by the Auditor General (CGR). In addition, the legislation creating the various regulatory systems gives the

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1 By Geoffrey Shepherd.
executive the power of “tuition” over the regulators. Tuition has a disputed meaning, being interpreted by the regulators as the executive’s power of vigilance, but by the executive as something more than this.

4. In the absence of a strong external accountability mechanism, the government sought to create a degree of self-regulation. This has entailed at the very least the creation of a second-instance appeals procedure against Superintendents’ decision (the Supreme Court being the third and final instance of appeal). For some Superintendencies this second-instance appeal procedure has been located with a General Superintendency which also has the task of overseeing the efficiency and effectiveness of the Superintendencies under it.

5. Bolivia now has three such regulatory systems.

- **Financial markets.** The Superintendency of Banks and Financial Entities (SBEF) has existed, in its present form, since 1987. A Superintendency of Pensions, Securities, and Insurance (SPVF) was created in 1996. (A Superintendency of Insurance had been established in 1975.) Each Superintendency hears appeals against its decisions, and a Superintendency of Appeal (SRJ) sits above both these Superintendencies as a second-instance of appeal (the SRJ was created in 1998 to replace a General Superintendency which, in addition to hearing appeals, supervised the two first-tier entities). A Committee for Financial-Prudential Regulation (CONFIP) coordinates financial sector regulation among the Superintendencies and relevant parts of the executive. Approaching 300 people are employed in the regulation of financial entities.

- **Natural and legal monopolies.** 1994 saw the creation of a System of Sectoral Regulation (SIRESE) to regulate the newly privatized (and some already private) natural and legal monopolies. SIRESE comprises five first-tier Superintendencies – in transport, communications (telephones and broadcasting), hydrocarbons, electricity, and water – and a second-tier General Superintendency to supervise the first tier (much like the financial sector in 1996 to 1998). The system is still in its infancy: not all the sectoral legislation is in place (transport and water are still to come) and the Superintendencies have not all completed their initial programs. Almost 300 people work in the six entities of SIRESE.

- **Renewable resources.** In 1995 a General Superintendency for Regulation of Natural Renewable Resources (SIRENARE) was created to supervise private concessions of renewable natural resources with a view to protecting the environment, promoting biodiversity, and encourage the economically rational and socially useful exploitation of renewable resources. Following the same two-tier logic as SIRESE, there are Superintendencies for agriculture and forestry. This system is still in its infancy.

6. These Superintendencies enjoy substantial political and managerial autonomy, much like the Central Bank and UDAPE (the economic policy analysis unit in the Ministry of Finance). Thus they sit as “islands” within the Executive, in effect as an alternative approach to public service provision.
From the broader canvas of Superintendencies, this chapter will cover two areas: first, the Superintendency of Banking and Financial Entities (SBEF), which has a longer history and is relatively well (but not completely) established as a regulator; and second, the newer system to regulate natural monopolies, SIRESE, a system which is still in the business of establishing its legitimacy. Rather than looking at regulatory techniques per se, this chapter looks at how these governance arrangements are able to withstand or modify patrimonial politics, asks whether these arrangements are sustainable, and seeks any lessons for broader public-sector reform in Bolivia. To look at the overall environment in which the Superintendencies, or the systems within which they sit, function, it is useful to consider:

- The policy objectives sought in a particular sector: the objectives, the kind of products and markets, the characteristics of operators and beneficiaries may all affect the effectiveness and kind of regulation.
- The history of the Superintendencies, indicating the extent to which they have achieved legitimacy, efficacy, and efficiency and some of the defining events through which this occurred.
- The Superintendencies’ (or systems’) external environment, which set the policy objectives, facilitate or obstruct the “production” process, or require accountability;
- The internal organizational characteristics – organization, rules, resources – which determine the Superintendencies’ abilities to “produce”.

**The Superintendency of Banks (SBEF)**

8. **Policy objectives: the nature of regulation, products and markets.** Financial liberalization in Bolivia since 1985, including the encouragement of foreign investment, has removed many barriers to market competition in banking. As a result, the principal task of the SBEF in Bolivia’s liberalized banking sector has been to apply prudential standards to banking activities (related to assets and solvency) such that systemic banking-system failures are avoided and the public’s savings and deposits protected. Thus SBEF supervises each bank (through off-site studies followed by on-site inspections) and, where necessary, requires corrective actions (such as reduction in the share of certain categories of loan, increases in capitalization, or, in extreme cases, mergers or liquidations). Under the terms of its enabling legislation, SBEF has established inspection procedures and criteria, including quantitative prudential norms (such as the ratio of bad debts to total debts). The Superintendency is then faced with the task of discovering information relating to these norms (for instance about bad debts or lending to related parties) that bankers are adept at hiding. SBEF also provides information to the public on the situation of the different banks. Techniques of banking supervision are, moreover, in a state of flux, in Bolivia as elsewhere: prudential standards are being tightened as markets become more global, while supervisory practice is shifting from ex-post control of prudential standards to ex-ante assessment of banks’ prudential-management capacity.
9. The public is usually not substantially aware of the work of bank supervisors; and though the public benefits from good banking supervision, it is likely to be the banks themselves – small in number and usually well-organized for collective action – who will be able to exert more power over the regulator.

10. **The development of SBEF and the banking industry.** Banking supervision has existed since the last century. The forerunner of today’s banking supervisory agency was created in 1928 on the advice of the Kemmerer mission. In 1970, the agency was incorporated into the Central Bank. Given the then-poor performance of the Central Bank, this incorporation led to a steep decline in the quality of banking supervision.

11. Following the macroeconomic stabilization of 1985, accompanied by a number of other market-oriented reforms, there has been a steady process of financial liberalization and financial market development, punctuated by financial crisis (1995) and continuing battles over bank liquidations (1997-98). In 1987, the World Bank recommended, over the objections of Congress, that the banking superintendency be removed from the Central Bank. In effect, the superintendency was completely rebuilt in the span of a few years. The first step was a radical change in personnel through a rigorous recruitment process (in which training was supported by World Bank resources). Thereafter, SBEF developed a standardized data base through a standardized set of information requirements from banks (in an Accounting Manual), standard prudential rules (some 500 Circulars had been issued by the end of 1997), and a consolidated data base ("central de riesgos") on loans. It developed standardized procedures for a program of bank supervision whereby every bank would expect to be visited at least every one-and-a-half years. SBEF is now, again with World Bank help, seeking to change its supervisory format to one that is able to deal with the global reach of international banks and to provide more preventative supervision.

12. In 1993, advances in supervisory practice, as well as SBEF’s autonomous status, were consolidated in a new banking law. Following the liquidation of two banks in 1994, several banks entered a crisis or near-crisis in 1995 and became a systemic threat. The government’s response was quick, effective, and not too costly. In September 1995, it created an Emergency Financial Fund (FONDESIF) which successfully rescued three banks and provided preventative support to three others. In 1997, another bank, BIDESA, was liquidated. This involved SBEF in considerable political controversy, but the Superintendency emerged with strong support from the President.

13. In 1996, the two financial regulators, SBEF and SPVS, were incorporated into a single System of Financial Regulation (SIREFI), along with the creation of a second-tier General Superintendency to supervise the two first-tier entities, SBEF and SPVS. But in 1998 the new government wanted to make its mark, and this system was changed, the General Superintendency being replaced by a Superintendency of Appeal (SRJ), with the narrower task of being a second-instance of appeal against first-tier decisions. In 1998 a Committee for Financial-Prudential Regulation (CONFIP) was created, with the Ministry of Finance, Central Bank, SBEF, and SPVS as members, to coordinate financial sector regulation.
14. The SBEF has now been operating in its present form for 12 years. It is acknowledged to have weathered crises and to have improved its capacity. It has generally achieved the respect of the banking community and it has received the support of successive governments. It can be said to have progressed in institutionalizing itself.

15. **The external environment.** Formally, that is in law, the SBEF enjoys substantial autonomy. The President selects a Superintendent from three names submitted by the Senate on the basis of a two-thirds majority vote. The Superintendent serves for six years and can only be removed, for misconduct, by the Supreme Court. As part of its managerial autonomy, the SBEF is allowed to levy up to .01 percent of the banks’ assets and contingencies to pay for its running expenses. The Superintendent’s decisions are subject to a three-instance appeals process. The first level of appeal is carried out within the Superintendency. The second is carried out by a specialized body, an Appeals Superintendency (SRJ) which hears the second-instance appeals of both financial sector Superintendencies (i.e. SBEF and SPVF). The Supreme Court provides the final level of appeal.

16. In practice, these legal arrangements provide effective defenses against political interference by the three branches of government, but they by no means banish it. The SBEF’s recent history can be seen in terms of a series of milestones: the fight to re-create an autonomous agency in 1987; the creation of an effective regulatory framework from the late 1980s; the weathering of the banking crisis of 1995 and the successful bank liquidations in 1994 and 1997; the tightening of the regulatory framework since 1995; and the change of government in 1998. These events have cumulatively reinforced the legitimacy, hence de facto autonomy, of SBEF. But the process of legitimization has not finished.

17. The main opposition to the work of the SBEF has come from some of the banks – those banks whose ability to make profits has been most threatened by the application of prudential rules. These banks have often been adept at political in-fighting and effective in using different branches of government to press their cause. The most notable case concerns SBEF’s liquidation of a bank in 1997. The bank’s principal owners used their positions in Congress – one of them was elected a deputy only in 1998 – to conduct a campaign against the Superintendency. They also used other instruments. One of these was to sue a number of the senior officers of SBEF, including the Superintendent. (The law allows individuals to be sued for corporate acts; particularly as these individuals cannot then use the resources of their agency to defend themselves, this is a particularly powerful instrument of intimidation.)

18. But the Superintendency has had some powerful allies. Its allies from within the country have been those with an interest in the development of efficient financial intermediation. This has included the Central Bank and Ministry of Finance, both effective agencies dominated by technocratic staff. This alliance was recently institutionalized in the form of CONFIP, created to provide an umbrella against inappropriate financial legislation by Congress. Just as important, SBEF has received
substantial presidential support. There have been three Superintendents in the course of the four Presidencies since 1987. That these Superintendents have remained in office under new Presidents is something unprecedented for Bolivia. These Presidents have defended the SBEF at key moments through public declarations of support when the Superintendent or the banking system have been under attack.

19. All three Superintendents achieved reputations as strong leaders. The current Superintendent, appointed by President Sanchez de Lozada, has achieved a substantial reputation for independence, honesty and firmness among the banks, in government and political circles, and in the Latin American community of banking superintendencies. At the same time, the Superintendency has undergone a cumulative process of learning, technical improvement, and tightening supervisory standards. This process has gradually increased its legitimacy, especially in the eyes of the banking community.

20. The World Bank (in the form of IDA in Bolivia), the IMF, and to an extent the IDB have provided important support from outside the country. The World Bank did this through a series of adjustment and technical-assistance loans from 1986 to 1996, as well as a continuing policy dialogue. It was, for instance, instrumental in the decision to separate banking supervision from the Central Bank in 1987 and it has played an important role, behind the scenes, in supporting the current Superintendent. The IMF has also played a similar role of support, in particular through its local office in La Paz, which enjoys unusually strong influence.

21. While the focal point of opposition to the SBEF has come from within the community of regulated banks, the process of financial liberalization, by changing the structure of banks, also appears to be strengthening the array of forces supporting the Superintendency. Indeed, the process is one of transition from banks doing business by competing in political markets to doing business by competing in economic markets. Financial liberalization has brought some new foreign entrants into Bolivian banking. They have brought with them not only more conservative prudential standards (which are putting pressure on the smaller local banks), but also an influx of young banking professionals, in many cases apolitical young Bolivian financial professionals returning from banking careers abroad. In this sense, this influx of banking professionalism matches the professionalism in the Superintendency itself.

22. Internal organization: Over 12 years, SBEF has built up a strong cadre of professional bank supervisors through careful recruitment, strong salary and non-salary incentives, the enforcement of behavioral rules, and the development of a strong corporate culture. This regime, along with the design of the supervisory process, has been effective in keeping the agency free of corruption. But SBEF’s managerial autonomy has come increasingly under threat, in the recent period, from Ministry of Finance attempts to exert control over the agency’s administrative policies through the budget process.

23. Good banking supervision depends to an extent on initial training, but substantially on the cumulative experience of bank supervisors. Banking supervisors tend to join SBEF young, follow an internal career path within SBEF, and sometimes to move across to the
banking industry, selling their SBEF experience, later in their career. Effective supervision also depends on the honesty of supervisors whose job requires them to spend a substantial time – during on-site visits to banks – away from their employer and working closely with the people they are supervising. (This is a similar “principal-agent” problem to that of policemen or irrigation-canal supervisors.)

24. The Superintendency has a formal recruitment process. Candidates are chosen based on public announcements and a competitive entry system based on references and technical and psychological tests. Through these tests a recruiting committee creates a short list of candidates from which the Superintendent chooses. The initial strength of SBEF was based on a similar exercise in the late 1980s in which 30 candidates were chosen from an initial field of 800. The advantage of this system is not only to have a systematic approach to finding the right skills and aptitudes, but also to provide an easy way to turn away politically motivated requests – from members of Congress notably – to make patronage appointments.

25. To retain the best candidates and to encourage ethical behavior, the Superintendency has followed a policy of paying market wages. In addition, training of staff is a permanent program: training is frequent and generous. As one staff member put it, “we are a university”. But the Superintendency’s salary policy has recently been eroded by pressures from the Ministry of Finance.

26. SBEF is dominated by formalized, centralized procedures designed to avoid conflicts of interest and promote a high standard of ethical behavior. These rules deal with conflicts of interest inside the institution (for instance, if two staff marry, one has to leave) and in dealings with the banks (for instance, on not accepting even the smallest favors). (These rules are now being developed into a formal code of conduct.) The staff are aware that transgressions will be punished, but serious transgressions are thought to have been minimal: over the last 10 years, only two people have been dismissed for misbehavior (both for providing internal reports to banks). The staff of the Superintendency credit these rules with protecting them from the informality – the susceptibility to family and friendship ties and to corrupt acts – that they see characterizing the ministries.

27. The design of supervision procedures also, of course, deals with avoiding conflicts of interest, i.e. “capture” by bankers. Staff never visit banks alone, the supervision teams are frequently rotated, their supervisors often make surprise visits during on-site inspections, and the Superintendent’s final decisions on corrective actions are made by consulting a committee.

28. SBEF’s policies to professionalize the agency have led to the development of a strong esprit de corps. Staff are typically proud of their agency – its unique technical skills, and its achievements. They appreciate the respect they receive from the banks they supervise.
29. In recent years, the Ministry of Finance has begun to use the powers it has under the budget law to control the level of SBEF’s aggregate expenditure on salaries, while a recent Supreme Decree has placed a cap on the highest salaries by relating them to the salaries received by the President, Ministers, and Vice-Ministers. As a result of the salary cap, the average real wage in 1999 is 83 percent of what it was in 1994, according to SBEF figures. Since 1995, 104 people, 60 of them SBEF-trained professionals, have left the Superintendency. This represents two-thirds of today’s total staff. The Superintendency attributes these worrying losses to the salary cap. This “budget battle” is an expression of the ambiguity of SBEF’s autonomy given that the Superintendency is a part of the executive and subject to the budgetary supervision of the Ministry of Finance. The battle is not being fought on the issue of control of SBEF’s policies – SBEF and the Ministry are allies on this. But the battle does reflect the political problems generated by the large differences in the salary levels of the superintendencies and the ministries.

The System of Sectoral Regulation (SIRESE)

30. **Policy objectives: the nature of regulation, products and markets.** The policy objectives in regulating natural monopoly are somewhat different from those in financial markets. Bolivian regulators have promoted competition where possible, for instance by separating electricity generation and transmission. Where the monopolies are deemed to remain, the regulators have licensed entrants and established cost-plus (and productivity-minus) pricing margins. The main “product” of the five superintendencies is the provision of resolutions that establish these licensing and pricing decisions. (For instance, the Telecommunications Superintendency is currently issuing around 1,200 resolutions and the Electricity Superintendency around 200 resolutions a year.) In addition, they have other objectives, including the supervision of service quality, and the proposal of new rules. They are less involved in writing substantive regulations than SBEF: indeed, the enabling legislation (passed by Congress) and the implementing legislation (set by the corresponding ministries in the Executive) leave little discretion to the superintendencies in the nature of regulation. They have established procedures for dealing with appeals against their resolutions, as well as with the complaints of operators and the public. Like SBEF, the Superintendencies face an information problem: they need to discover the structure (actual and potential, as a result of changing technology) of production costs, which operators are adept at hiding. The public is probably more aware of the work of natural monopoly regulators than of the banking supervisor because of the direct effect of regulation on the prices they pay for utilities. But as in the banking industry, the utility operators are large, concentrated, and well organized. The typical career path of a natural-monopoly regulator may differ from that of a bank supervisor: many natural monopoly regulators are recruited from the regulated firms themselves. (The different career paths no doubt reflect the different nature of information asymmetries.)

31. **The development of the System.** After the initiation of broad economic reforms in Bolivia, many in the government came to realize that political interference in public enterprises led to unstable management and economically irrational pricing and investment decisions, which in turn resulted in public deficits and inefficiency. To improve the situation, Bolivia had access to a rich experience of reform from other
countries, including the recent experience of the UK and Chile and the longer experience of the US of separating policy-making, policy-implementation (i.e. regulation), and production. At the beginning of the 1990s numerous other Latin American countries, notably Argentina, Colombia, and Peru, began to reform, often under the tutelage of the international financial institutions.

32. Prior to 1994, a privatization law had led to some limited, small privatizations, while an investment law had liberalized foreign investment. The 1994 Capitalization Law opened the way for selling off 50 percent of the assets of the largest public enterprises. Under capitalization, the funds generated by the sale of these enterprises were injected into the firms as new investment, instead of being absorbed by the Treasury. Capitalization contracts established the obligations of the new firms in the use of these resources. Capitalization and clear, stable rules were seen as the only way to attract foreign investment, especially in oil, while restructuring the industry, for instance by separating transmission and generation, was seen as the key to making markets work in these areas.

33. The System of Sectoral Regulation (SIRESE) was created later in 1994. The World Bank was substantially involved in this law, helping the government pick from the array of regulatory models from OECD countries. For instance, the government selected the format of uni-sectoral regulation, modified by a two-tier structure and with individual superintendents. President Sánchez de Lozada was centrally involved in the conception of the capitalization process and the choice of regulatory structure. (He was said to strongly believe in the need for an individual superintendent to create leadership and accountability.) Establishing the new system required a political battle. There were many in the government who feared a loss of control of the regulatory process, arguing that it was unconstitutional for appeals against superintendents' decision not to go back to the Executive.

34. The new regulatory system was slow to get going. Little happened in 1995. By 1997, five major enterprises had been capitalized and 20 smaller enterprises sold. The first Superintendent (in telecommunications) was nominated at the end of 1995 and the last (in water) by mid-1997. But some of these were interim nominations and there also proved to be a high turnover. The change of government in 1998 proved to be a crisis for the legitimacy of the fledgling system. First, with the exception of the General Superintendent, all the Superintendents have changed, three of them departing around the time of the new Government. Second, the Government applied a lot of pressure to replace the two-tier System of SIRESE: the idea was to replace the second-tier General Superintendency by a Superintendency that would only handle second-instance appeals (much along the lines of what actually happened in the financial system). This initiative was defeated by a coalition of interests, fearful of an early, de-stabilizing change in rules, led by the new foreign companies that had taken over the public enterprises. Both the turnover in Superintendents and the attack on the regulatory structure were occasioned, not by any fundamental opposition of the new Government to the capitalization process, but by the inevitable tendency of new governments to extend their influence as far as they could. The new System continues to be in transition. Sectoral legislation in water and
transport has still not been passed, the process of registering all the operators has not been completed in some sectors, and there have been disputes in the collection of levies and information from some major operators and even disputes over the Superintendents' rights to regulate. The Superintendency of Hydrocarbons is involved in a dispute with the Government related to the conflicting needs of regulation and taxation. To the extent the public is acquainted with the Superintendencies, it is frustrated that it does not see utility prices coming down. On the other hand, there are also signs of progress. In addition to the wholesale restructuring of the regulated industries, some Superintendencies are showing success in their regulatory activities. For instance, the Telecommunications Superintendency has fined the major telephone company, ENTEL, for anti-competitive practices.

35. **The external environment.** The five Superintendencies in the SIRESE system and the General Superintendency that sits over them enjoy a legal autonomy very similar to that of SBEF. The President selects the Superintendent and General Superintendent from three names submitted by the Senate on the basis of a two-thirds majority vote. The Superintendents serve for five years -- seven for the General Superintendent -- and can only be removed, for misconduct, by the Supreme Court. The Superintendencies are funded by a statutory maximum levy on operators' turnover varying from 0.8 to three percent. Similarly, the Superintendents' decisions are subject to a two instances of appeals beyond the first level of appeal within the Superintendency. The second level is carried out by the General Superintendency of SIRESE. The Supreme Court provides the final level of appeal. The General Superintendency also has oversight of the efficiency and effectiveness of the five Superintendencies under it. (The financial system has no such similar function. Some have argued that combining general supervision and a second-instance function creates a conflict of interest; others claim that abandoning this general supervision is to encourage laxness and that the Contralor General does not fulfill this function.)

36. To address the specific issue of regulatory capture, the Bolivian legislation has taken two options in terms of the internal organization of the regulatory function. The government has in general preferred one regulator per sector, rather than a multi-sectoral regulator (the model, for instance, in UK financial regulation). SIRESE might be called a hybrid case since the superintendencies are joined within a System presided over by a General Superintendent. (Conventional wisdom is that multi-sectoral entities create economies of scale, make for more consistent decisions, and are less susceptible to pressure from operators, while single-sector entities avoid large public-sector monopolies of power, allow for competition among different entities, and allow for greater sectoral specialization.) The government chose to have its Superintendencies headed by a single Superintendent, rather than a Board, in the belief that an individual would prove more accountable than a Board.

37. The formal arrangements providing SIRESE with autonomy have provided a basis on which the system can build its legitimacy, but there is still a long way to go in this. The Superintendencies have to face an executive and legislature that are often unhappy with
its powers and privileges and regulated companies which are not all inclined to cooperate. Some parts of the System have made more progress than others.

38. The pressure on the young Superintendencies can be seen from the instability in its leadership, in some contrast to the SBEF. The first Superintendents to the five Superintendencies were named between the end of 1995 and the middle of 1997. There were several changes in the leadership before the change of government in 1998. Moreover, some of the appointments have been interim, thereby allowing the Superintendent less autonomy. Some of the appointments have been of political allies, though in general Superintendents have also been named for their technical expertise.

39. The high turnover of Superintendents around the time the new government came to power shows the fragility of the formal rules in the face of the weapons of politics. One of the Superintendents was found by the Supreme Court not to have the professional title required by the SIRESE law by virtue of the fact that his foreign degree had not been registered in Bolivia. This “guerrilla” warfare against the Superintendents may in part have reflected a lingering opposition in some political circles to the capitalization program. It probably also reflected politicians of all colors insufficiently attuned to the spirit of the new System and a new government desirous of putting its own mark on it, as a new government would do everywhere else in the executive. Yet it is clear that the rules are changing: the government has not in general tried to extend its powers of patronage to the staff of the Superintendencies or to intervene on the behalf of operators. Nonetheless, there have been some frictions between the Superintendencies and the Ministries or Vice-Ministries under whose “tuition” they fall. The issue is often one of power and the line at which the Ministries’ policy making ends and the Superintendencies’ policy implementation begins.

40. Generally, the Ministry of Finance, with its technocratic interest in market-led growth, has proven an ally of the Superintendencies (as it has of the financial-sector Superintendencies). The Ministry has, however, faced some problems with the Hydrocarbons Superintendency because the government’s fiscal policy interests have been at odds with the Superintendent’s regulatory interests.

41. Many of the regulated companies have strongly opposed the new Superintendencies, but somewhat similar to the case of SBEF, the new entrants encouraged by economic liberalization appear to be slowly changing the rules of the game. It is hardly surprising that incumbent utility companies, having learned to operate in political markets, have resisted the transition to market-based rules. Several such companies at first refused to pay the levies that financed the Superintendencies, though this problem is now largely solved. Some companies have continued to resist regulation by continuing to use their influence with ministers, members of Congress, and even foreign governments and to use the courts to challenge the Superintendencies’ decisions. (The facility with which officers of public agencies can be personally sued provides a potent weapon.) At least one new foreign entrant has also tried to adopt similar political tactics. But the Superintendencies appear to be making headway: their decisions are being subjected to fewer challenges,
and the challenges may be becoming less overtly political. The move is thus from political to economic markets.

42. Some of this progress may be the result of the outcome of the new government’s failed attempt in 1998 to eliminate the General Superintendency from SIRESE. It seems to have been the new foreign entrants who defeated this initiative. They were not prepared to see changes in the rules of the game so soon after the game had started. In this, some of the home-country governments of these firms played an important supportive role. This reaffirmation of the rules of SIRESE provided something of an antidote to the destabilizing effects of changing Superintendents.

43. The World Bank not only played a central role in promoting the System of Superintendencies and advising on its design, but has also continued to play a role in protecting the Superintendencies from politics. For instance, it supported the General Superintendency during the political transition of 1998 and it has sought the executive’s support at the highest level to resist the political attacks of one of the incumbent operating companies. The Bank is now helping promote the idea of a coordinating commission between SIRESE and its related ministries to smooth the path of—perhaps de-politicize—regulatory policy making. The World Bank is part, if not the most active, of a broader coalition of donors (and their embassies) and the IDB in support of SIRESE.

44. It might be expected that the public, aware of the quality and price of the utility services they receive, would use their voice in the new System. The SIRESE law mandates the creation of consumers’ offices in operating companies and the Superintendencies. The implementation of these offices has been slow. They are only so far properly working in the electricity sector. So far, much of the reaction of consumers has ranged from indifferent to negative. The negative view has been engendered, especially in electricity, water, and transport, because of rising prices. (The view has been more positive in telecommunications.) The negative view is perhaps an unavoidable problem in the initial stages of moving from politically motivated policies of setting tariffs to economically motivated policies. In general, the government has no made a very effective effort to publicly explain the role of the Superintendencies. As a result, some of the public may view the Superintendencies as agents of the firms they regulate.

45. **Internal organization.** SIRESE is still in the process of establishing itself. Certainly, a nascent professionalism is evident in the System. The Superintendencies are small—the largest, telecommunications, has 80 employees.

46. Personnel regimes differ from agency to agency. But they all have to deal with similar problems of asymmetric information and the capture of their employees by their operators. In this, they appear to face the common situation of having to select their employees from small, specialized labor markets where, typically, the operating companies are the largest employers. This makes competitive recruitment difficult. The Superintendencies use a mix of direct invitation or advertising to solicit candidates, then a committee-based selection process, typically on the basis of technical and psychological
selection criteria. As with the SBEF, the committee- and criteria-based process helps the
Superintendencies to deal with attempts to use political patronage to secure jobs.

47. Operating under private labor law, the Superintendencies tend to set salaries at
market rates and to emphasize non-salary elements, such as early promotion, training,
and travel, to broaden the package of incentives. The Superintendencies also tend to
cultivate a strong corporate culture of apolitical professionalism and corporate loyalty
and teamwork. An informal approach to cultivating these attitudes seems to play a larger
role than more formal approaches such as ethics rules. This approach has so far been
effective in creating a reputation for professionalism and a bulwark against outside
political or family influences in several of the Superintendencies.

48. SIRESE nonetheless faces the same challenge to its autonomy from the government
as does SBEF: the government is using its budget-setting powers to control salary levels
in the Superintendencies. Some people within the Superintendencies see the government
as stepping beyond its powers, but the conflict reflects the broader conflict in the public
sector over privileged islands of highly-paid, often donor-supported workers. The
government’s policy is undermining the competitiveness of salaries at the most senior
levels and, in some cases (notably Hydrocarbons) at technical levels.

Conclusions

49. The new regulatory systems. Bolivia’s new regulatory mechanisms, as exemplified
by the banking Superintendency and the System of Sectoral Regulation (SIRESE),
represent a remarkable achievement. These mechanisms are young and at various stages
in the incomplete process of political legitimization, but their design promises an
effective approach to avoiding regulatory capture, both by regulated entities and by the
rest of government or politicians. The implementation of this design has so far been
favored by a constellation of forces external to the Superintendencies that has, on
balance, provided them with political support and internal arrangements that secure
adequate resources and create a strongly professionalized workforce. The SBEF, with its
longer (13-year) history, provides the most advanced example of legitimization and of
formally-organized internal arrangements to promote professionalism. If the new
mechanisms represent a remarkable achievement, this reflects the central role intended
for these new mechanisms in the market-liberalizing reforms that have been implemented
since 1985.

50. The regulatory mechanisms were designed to solve the problem of asymmetric
information and the threat of operator capture on the one hand and the threat of political
capture (in the interests of the operators or of political patronage) on the other.
Essentially, these designs were the work of reformist Presidents early in their term (1985-
87 for SBEF, 1993-95 for SIRESE), working closely with donor community, especially
the World Bank. The primary intention of the design -- the creation of a quasi-self-
regulating mechanism -- was to protect the regulators from the rest of the state. More
technical objectives, namely the separation of policy-making from policy-implementation
on efficiency- and accountability-enhancing grounds and the search for arrangements to
maximize the power of the Superintendencies vis-à-vis the operators, were a secondary intention.

51. In the case of the SBEF a process of legitimization (or institutionalization) has been underway for some time, marked by a series of events in which battles have been fought and, generally, won. A similar process for SIRESE is at a much earlier stage. Several features of the observed process can be pointed out.

- First and obviously, laws are necessary but not sufficient.
- Second, foreign support has been vital in support of domestic forces. In the cases we have looked at, the World Bank happens to have been the single most important foreign player.
- Third, the process has involved a transition from political actions to actions based on formal rules. We have seen both governments and operators involved in political forms of action, governments to hold on to power or to pursue other legitimate policy interests (such as a more uniform public-sector salary policy) and operators to gain rents. But we have also seen a general transition to rules-based action by both governments and operators. The private sector’s role in this transition bears further examination. Perhaps it should not be undervalued: the interaction and interconnection of the public and private sectors in creating the conditions for may be more important than might conventionally be thought.

Remaining Challenges to Legitimizing the Regulatory Systems

52. Much of the thrust of institutional reform has been to protect the regulatory systems from the rest of the state and to replace this with some form of self-regulation. But this poses the question: to which external actors are the systems accountable? The systems have some accountability to the executive, the CGR, and the courts. These accountability mechanisms are generally limited: they may be designed to control various forms of misconduct or departure from formal procedures, but they do not address the effectiveness and efficiency of the systems. The public has so far played little role in demanding standards of performance. The most important external agent addressing effectiveness and efficiency issues is, informally, the World Bank. Without more formal accountability procedures, we may very well expect a deterioration in the performance of the system as time progresses and the initial impetus of reform wears off.

53. Autonomy may thus have short-term advantages, but pose long-term problems. In the long term, as administrative reform proceeds in the executive and judicial branches, the Superintendences and the rest of government may have to find a way of re-establishing closer accountability links. Administrative modernization may also tackle another political obstacle to legitimizing the regulatory systems: the resentment generated in large parts of the executive by “islands” of high pay (similar to the resentment generated by the Programa del Servicio Civil).

54. In the shorter term, several measures can help improve the Superintendences accountability and legitimacy. The Superintendences could seek to establish a common, published set of administrative rules (personnel rules, ethics code), in addition to the
SAFCO rules, which maintained the high professional standards that the Superintendencies (led by SBEF) have begun to demonstrate. The Superintendencies could also adopt performance benchmarking criteria designed to measure effectiveness and efficiency and to publish the results of their performance. This would provide some public safeguards against over-regulation and over-spending. (The World Bank is supporting codes of conduct and performance benchmarking in its current technical assistance project to SIRESE.) Perhaps foreign technical agencies, such as the World Bank or private consulting companies, could provide a foreign benchmarking function. Related to this same issue of performance evaluation, it could also make sense for the government to re-create for the financial Superintendencies the oversight functions that the General Superintendent provides to SIRESE. (This could be done through reviving the 1996-98 experiment of SIREFI or it could also be achieved through a new formal oversight function for the Central Bank.) The Superintendencies also need to provide better information to, and communications with, the public. In the case of SIRESE, better coordination of policy-making concerns between the Superintendencies and the executive could make the System more sustainable. (The financial Superintendencies already have this function in the form of CONFIP.) To this end, some proposals have been made for an advisory council on regulation to coordinate the different actors in SIRESE and the ministries.

55. **The implications for broader public sector reform.** What implications does the success of the Superintendencies so far have for reform in the public sector more broadly? Abstracting from the specific regulatory character of these entities, it is appropriate to be cautious about how far the formula of political and managerial autonomy could be applied to other parts of government.

56. Public services with specific, well-defined outputs and able to generate their own revenues might be candidates. These could include the tax and customs revenue-raising agencies, as well as some public services such as various registries, for real and intellectual property-rights and vehicle licenses, for instance. (The story of the creation of SBEF in 1987 may be quite a relevant one for the reform of the current tax and customs services. Reform in customs is now taking the direction of greater autonomy in institutional arrangements.) But in the end, such services will represent a limited part of what government does. In any case, there may be a fallacy of composition: the larger the sector of autonomous agencies of the Superintendency type, the greater will be the accountability problem and the likely abuse of autonomy.

57. Finally, the most important impact of the Superintendencies on more generalized administrative reform may lie in the demonstration effect: the Superintendencies are demonstrating that it is possible to have a professionalized public service as long as external (political) conditions and internal administrative incentives and rules encourage this.
Annex 8. The Popular Participation Law and the Emergence of Local Accountability

1. On April 20, 1999, as the field work for this chapter was being conducted, Bolivia celebrated the fifth anniversary of the enactment of the landmark Popular Participation Law (PPL), the state reform that established decentralized, participatory local government nationwide for the first time in the country's history. The celebratory events, which surely were not viewed favorably in all political circles, received considerable media attention. The ceremonies not only reminded Bolivians and international observers of the unique provisions of the law; they also reflected the continuing impact Popular Participation has had on Bolivian life.

2. The following pages provide an in-depth examination of the Bolivian municipal system five years after the enactment of the Popular Participation Law. The focus of our investigation is the development of municipal accountability, broadly considered. Building accountability is at the core of the Popular Participation process. We have attempted to determine the degree to which one of the prime objectives of the reform—improving the effectiveness of the local government through community participation and oversight—is being achieved.

3. By examining where decisionmaking power resides at the local level and how it is exercised on behalf of the community, we hope to explain why local institutions do or do not operate as effectively as they should under the new, participatory municipal system. Moreover, we make an effort to look at the subnational system as a whole, particularly the role of the departmental prefectures—which themselves are newly created and ostensibly accorded considerable authority—and the nature and impact of their relations with local government.

4. The following pages are based on a field study on the impact of the PPL in four municipalities. For the field studies, we visited four municipalities of various size located in four of the country's diverse departments. Each municipal government presented a distinct set of political and socioeconomic circumstances. We examined the functioning of local government by speaking with mayors, council members, and members of the vigilance committees. We also spoke with OTB representatives, campesino union leaders, and average community residents in an effort to receive as clear a picture as possible of the functioning of the key accountability mechanisms of the PPL. To this, we added a variety of documentation collected at each locality.

5. Short visits to four municipalities are not, of course, sufficient to draw firm conclusions about the state of Bolivian local government generally. We considerably

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1 By Gary Bland.
2 Our appreciation is extended to Pablo César Groux, Humberto Vargas, Fabian II Yaksic, Leonardo Buitenndijk, ?? NAME in Santa Cruz, Jacqueline Garrido Cortés, and René Rivera for conducting the municipal and departmental surveys. A special thanks is accorded Gonzalo Rojas Ortuste for participating in the field studies, managing and helping conduct the surveys, and providing his insights.
broadened the investigation to an additional 38 municipalities, in each of which, with the help of our Bolivian counterparts, we conducted surveys with local officials about their municipal government. Likewise, we extended the study to the departmental level with the completion of surveys in six of the seven prefectures in which the sample of municipalities is located (the exception was Beni). The surveys were devised to collect, through interviews with various elected officials or functionaries, critical information on a variety of local and departmental operations and institutional concerns. We also draw on the insights provided in the excellent work of a number of Bolivian specialists who have closely examined these issues in recent years.

The Impetus for Popular Participation

6. The PPL represents a dramatic effort on the part of the government of Gonzalo Sánchez de Lozada, who won the presidency in 1993, to address several of the adverse political, socioeconomic, and developmental legacies of the Bolivian state. First, by 1985, Bolivia's state-centered, protectionist, and highly centralized economic model, which was once common to the continent, collapsed into massive debt, hyperinflation, and political stalemate. The crisis not only brought about the restoration of democracy, it also set Bolivia on the difficult, unprecedented path of macroeconomic adjustment, public sector restructuring, and market-based economic transition. President Paz Estenssoro (1985-1989) instituted stabilization and began the free market reforms under his New Political Economy plan, while his successor, Jaime Paz Zamora (1989-1993), deepened the program, particularly through privatization. Sánchez de Lozada (1993-1997) subsequently campaigned on his Plan de Todos (Everyone's Plan), a promise of a more socially conscious stage of economic change that accorded high priority to decentralization and fighting corruption. In transferring important governmental authority from La Paz and the department capitals to hundreds of newly created municipalities, Popular Participation was firmly fixed within the context of this extended process of state reform.3

7. One of Sánchez de Lozada's primary goals was to strengthen a notoriously weak state by reducing its size and making it more efficient. Supported by his group of technocratic advisors, the president was concerned with making it more difficult for central government officials to take political and personal advantage of the public employment and investment opportunities available in La Paz. The PPL accomplished this by moving to the local level considerable resources and public investment decisionmaking and by establishing a process through which the local community could monitor local government spending and hold their elected officials accountable for their spending decisions. The PPL, then, was explicitly linked to state modernization.

8. The Western liberal tradition of representative government was also central to the promulgation of the PPL. The law was closely associated with the restoration of democratic government that began in the 1980s. Municipalization was to bring government closer to the people, allow greater community participation in local decisionmaking, help improve local responsiveness and accountability to the community as a whole, and help incorporate traditionally marginalized sectors of society (women, indigenous groups, etc.) into political life. By bringing society and the state closer together, Sánchez de Lozada, U.S.-educated and reportedly impressed with the New England town hall, believed municipal government would become more effective. Local governments would become engines for community development, and with progress, the legitimacy of the political system would consequently increase.

9. The PPL was rooted in the history of the weak Bolivian state and its inability to generate a nationalist identity. Divided geographically, ethnically, by economic status, and along urban-rural lines, many Bolivians have traditionally felt more allegiance to regions, indigenous groups, or local interests than to a nation-state that usually had little positive impact on or concern for their well-being. From the perspective of Sánchez de Lozada and his team of reformers, the lack of state presence and identity throughout the national territory posed a political threat to Bolivian sovereignty. The PPL was to address this concern by extending the state—that is, municipal government—to all corners of the country. To help ease longstanding resentments over the use of scarce public resources, the PPL would ensure a more equitable distribution of public investment.

10. A related point is that reform was driven by the existing marginalization of some 42 percent of the rural population of campesino and indigenous Bolivians. Campesino and ethnic groups had long sought to achieve recognition of their local and cultural identities through state reform. The desire was to determine how to best incorporate this large segment of the population into a new municipal system on its own terms. As the PPL was being drafted, joining the team of technocrats, a group of reform-minded intellectuals who had been engaged in a debate on indigenous and rural forms of local governance made their ideas known. In addition, two political parties, one comprised of democratizing leftist intellectuals (MBL) and the other representing the katarista peasant union movement (MRTKL), contributed their knowledge of indigenous organization and demands for autonomy to the discussion of the reform. After all, the MRKTL leader, Víctor Hugo Cardenas, a well-educated Aymara, was vice-president, elected on the

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4 The Western liberal tradition, and the PPL, do not necessarily fit well with the indigenous peoples and their own traditions of local governance. For an excellent presentation of these issues, see Esteban Ticona A., Gonzalo Rojas O., Xavier Albó C., Votos y Wiphala: Campesinos y Pueblos Originarios en Democracia, Fundación Milenio, CIPCA Cuadernos de Investigación 43, La Paz, 1995; and David Booth, et. al., “Popular Participation: Democratising the State in Rural Bolivia,” Report to SIDA, Department of Social Anthropology, Stockholm University, 1997.

5 Merilee S. Grindle, Audacious Reforms: Institutional Invention and Democracy in Latin America, draft manuscript, October 1998, forthcoming, 125.

6 Programa de las Naciones Unidas para el Desarrollo (PNUD), Desarrollo Humano en Bolivia, Naciones Unidas, La Paz, 1998, 120; and Grindle 124-125.

Sánchez de Lozada-MNR ticket. In the end, the PPL opened the door to other forms of “ethnic democratic” organization. It provided legal recognition and a significant municipal oversight role to grassroots territorial organizations (OTBs), the generic term developed specifically to encompass officially registered indigenous communities, indigenous peoples, farming communities, and urban neighborhood committees.

11. Finally, Sánchez de Lozada and his team were motivated by the desire to counteract the two-decade-old movement toward decentralization at the departmental level. Civic committees and other economic elites in regional capitals across the country, especially in Santa Cruz, had long been pushing for their own solutions to the problem of a weak state. They were advocating the transfer of political power—the holding of elections—and financial resources to newly autonomous departmental governments. Such a course, according to Sánchez de Lozada’s administration, was a federalist trap that would increase the power of regional elites and ultimately lead to the dissolution of the country. Regional inequality would be exacerbated as well. A new centralism would develop in departmental capitals and the traditional bias against rural development would continue. Hence the municipalization plan would have to be deep, irreversible, and work to preclude the emergence of autonomous departments. Sánchez de Lozada was well aware that he was strengthening his base of power locally against the traditional centralists in La Paz and the so-called federalist tendencies in the interior cities.

12. When the law was complete, there could be no doubt about its objectives. They were clearly stated in paragraph one, article one, of Ley 1551, as follows:

This law acknowledges, promotes, and consolidates the process of Popular Participation, inserting indigenous communities, indigenous peoples, peasant communities, and urban neighborhood committees into the juridical, political, and economic life of the country. It attempts to improve the quality of life of both Bolivian women and men through a more equitable distribution and better administration of public resources. It strengthens the necessary political and economic tools to perfect representative democracy, incorporating citizen participation into a participative democratic process and guaranteeing equality of opportunities at the representative level to both women and men.

The Major Provisions of the Popular Participation Law

13. The Popular Participation Law has often been called a “radical” or “revolutionary” reform, and the dramatic nature of several of its provisions is undeniable. The major items of the law (and related norms and regulations) include:

- Extension of local government across the entire national territory through the conversion of provincial sections into 311 municipalities. Previously, municipal government was found only in department and provincial capitals. Now, with the exception of large cities, municipalities consisted of towns or urban zones surrounded by a rural area;
• Regular election of town councils, separate from national elections, for
five-year terms of office (the length of the first term under the new system
is four years, 1996-2000). The lead candidate of a party receiving an
absolute majority of the vote is automatically elected mayor; otherwise,
the town council selects one of the two top vote-getters as mayor;

• An increase from 10 to 20 percent in the amount of national income
(“coparticipation funds”) transferred to local governments each year. The
funds are provided to municipalities on a per capita basis;

• Extension of municipal jurisdiction into a wide variety of areas. These
include providing and maintaining infrastructure, which was now
transferred to the local level, for health services, basic sanitation,
education, culture, sports, access roads, and micro-irrigation. Other new
responsibilities include supervising and proposing changes in education
and public health authorities and attending to school breakfast programs;

• Establishment of a series of rights and duties of OTBs, including the
ability to propose, request, and control the performance of public works
and provision of services. Each community organization could, under the
law, receive legal standing after meeting basic registration requirements.
Each organization’s traditional practices and customs are duly recognized
in the process;

• Introduction of a participatory investment planning process. The PPL
requires that local governments develop an annual operative plan (POA),
prepare the budget accordingly, and the render accounts pertaining to its
transactions for the preceding year. Failure to respect budget management
regulations is grounds for the suspension of coparticipation funds (this
holds for funding of all public institutions). In accordance with their five-
year terms, local administrations are also called on to develop five-year
municipal development plans (PDMs);

• Institution of a process of public participation and social control over the
municipal investment decisions through the establishment of “vigilance
committees.” The OTBs within each canton or district would select one
representative to serve on the vigilance committee. Vigilance committees
would ensure that coparticipation funds are invested equitably between
urban and rural areas; ensure that no more than 15 percent of
coparticipation funds are allocated to operating costs; and report on the
budget for and actual expenditure of those funds; and

• Establishment of procedures to be initiated by the vigilance committee
for suspending the disbursement of coparticipation funds. If the
committee finds that the funds are not expended according to the PPL, a
formal complaint can be made to the national government. The national government may in turn insist that the municipal government take corrective action. If this fails to remedy the situation, the national government can file a complaint with the Bolivian Senate. The Senate can then decide to suspend all revenue disbursements pending resolution of the matter.

14. The most impressive provision of the law is the creation of institutional mechanisms and an explicit process for community participation in and oversight of municipal government decisionmaking. No other country in Latin America has been as insistent in its efforts to create participatory local government. The effort to incorporate traditionally marginalized segments of civil society, the indigenous in particular, is no less significant.

15. The creation of municipalities nationwide, local electoral reform, a doubling of the amount of the resources transferred from the center to municipal governments, the transfer of new responsibilities, and the local government planning requirements are unprecedented steps for the development of Bolivia’s local system. It should be noted, however, that they can hardly be considered radical when compared with the rest of Latin America. Other countries on the continent long ago instituted similar reforms. The establishment of municipalities throughout the national territory, for example, is much more a reflection of the extent to which Bolivia lagged behind the rest of Latin American than an indication of the far-reaching nature of the PPL.

The Administrative Decentralization Law

16. Slightly over a year after the passage of the PPL, the Sánchez de Lozada administration secured the enactment of the Administrative Decentralization Law. The law, which took effect in January 1996, represents the government’s response to longstanding calls for decentralization to the department level and, in many ways, is also a watershed state reform. On paper at least, the law provides for the transfer of considerable public investment responsibility and resources to the departmental level. It promises to have a major impact on the newly designed local system.

17. The new law reorganized the departments—it dissolved the nine departmental development corporations and replaced them with prefectures—in an effort to make them stronger and more efficient providers of public services. The prefectures are to manage human resources and administer health, education, and social assistance with resources to cover wages provided by the central government. They are also required to provide public services in a number of other areas, such as sports, agriculture, and tourism, and roads not belonging to the municipalities. All of this is to be done in closer coordination with the departmental populace, and with the municipalities, than in the past.

18. Departmental “decentralization” is a bit of a misnomer, however. The changes wrought constitute a deconcentration of administrative capacity and resources to carry out new functions. They do not entail providing of any measure of political autonomy; that is, departmental officials are not popularly elected. Departmental administrations
ultimately respond to their bosses in La Paz: the prefectures are actually administrative arms of the central government.

19. The chief executive is the prefect, who is appointed by and serves at the behest of the Bolivian president. The prefect is charged with developing and executing the budget, development plans, and public investment projects. Prefects are, moreover, responsible for overseeing the administration of personnel, services, and resources assigned by the national government. The departmental executive is also supposed to serve an intermediary role between municipal governments and the central government. As such, the prefect can promote Popular Participation and serve as a channel for the concerns of municipal officials and community organization vis-à-vis La Paz. In particular, OTBs must register with and be accorded legal status through the prefecture.

20. The deliberative and oversight functions of the department are carried out by the departmental council. Council members are elected from each province by a vote of the province’s town councilors. Under the law, their functions are significant. They must approve the departmental budget and a report on how those resources are expended; approve development projects and public investments and oversee their execution; and they are required to authorize contracts for investment projects and public services. Generally, however, the councils are viewed as weak entities with little real power to take initiative. Among their difficulties is that the prefect presides over the council presidency. The council does not have a budget of its own, and members have no way to hire technical support.

21. Although dependent on La Paz for resources to fund projects and provide services, the prefectures do have three sources of income to support the departmental administration. They receive forestry and mineral royalties and they collectively receive 25 percent of collections from a special tax on hydrocarbons. Finally, the PPL created a Departmental Equalization Fund, which ensures that all prefectures receive at least the national average in per capita revenue from royalties.

22. When one considers the prefectures in practice and the context within which they operate, they provide significant insight into municipal government operations. First, although personal and local circumstances can be important, party links are critical in departmental-municipal relations. Mayors know having a politically ally in the departmental executive’s seat can be crucial to the success of their administrations. The prefect, who can be a direct line to ministries and resources in La Paz, if not the president, and a good relationship signifies benefits in the form of project financing and technical assistance to the municipality. On the other hand, opposition mayors tend to be isolated from the departmental administration or to receive minimal support. Similarly, departmental councilors who have good relations with the prefect—i.e., they, too, are party or alliance allies—can work on behalf of local elected officials; opposition councilors have little recourse. When assessing the local system as a whole, then, it becomes clear that party division in the Bolivian system negatively affects municipal performance.
23. We found the politicization of intergovernmental relations in both of our surveys. Most of the six prefectures examined—all of which are ADN or ADN allies (in one case)—reported having close contact only with municipalities led by the ADN or alliance parties. On the municipal side, 13 of 17 mayors who were reported to have “good” relations with the prefect represented the ADN or parties allied in the national coalition. Virtually all of the seven mayors who reported “poor” relations with the prefect indicated that party divisions explained the nature of the relationship.

24. These findings are all the more understandable when one considers the degree to which, in the Bolivian system, the party or governing coalition controls the institution on the party’s behalf. Our survey results found, for example, strong political party clientelism in the hiring of departmental personnel—5 of 6 prefectures reported that the governing parties play a major—equal or secondary, and in one instance, greater—role in deciding who is to be hired and fired. Job stability and merit-based promotion do not exist: clientelism is the formal mechanism of the system. Hence efficiency-related and management improvement cannot occur, and the attendant effects reverberate at the local level.

25. Despite their influence at the local level, the institutional weakness of the departmental administrations and their lack of autonomy means their impact is much less than it could easily be. Not only is the prefect appointed, but the most important investment-related resources, those which have the greatest impact in the local communities, come from La Paz. Departmental administrations continually complained of the lack of will on the part of the central government to deliver financial resources to the department and of the failure of La Paz to work through the prefecture in reaching project agreements with international donors and municipalities. Departments also lack the technical capacity of most departments to execute their budgets—reportedly in the best of cases, which is Santa Cruz, the departments execute only half. The weakness of departmental institutions therefore limits their value to local governments in critical support areas, such as the provision of public works and improvement of services. Manipulated by the parties, prefectures can be of no assistance to a number of municipalities in the department.

26. Citizen participation at the departmental level is weak as well. To be sure, the new prefectures were not created along the lines seen at the municipal level with the Popular Participation Law. But, as noted above, the departments are expected to be a part of the new participatory process, consolidating the municipal planning process for the establishment of a regional development plan, registering OTBs, and serving as an intermediary for municipal governments and community residents. This does not appear to be occurring to a significant extent. In our surveys, 4 of 6 prefectures reported that they had not taken steps to promote participatory governments. Only 2 had been engaged in participatory workshops for the creation of development plans. In Santa Cruz, where nongovernmental organization is the strongest in the country, the influential civic committee was closely involved in designing and executing the planning strategy.
Existing Mechanisms for Providing Municipal Accountability

27. Popular Participation is, of course, about ensuring active community input into the decisionmaking of municipal government leaders. In great measure, however, the participatory process is about improving local accountability. Indeed, the act of participating is merely one stage in a larger process of making sure that mayors and councilors act in accord with the implicit and explicit commitments they have made to the community. The promulgation of the PPL produced a municipal system laden with mechanisms for providing municipal government accountability.

28. First, the election of local government officials alone reflects a commitment by the mayor and council to act collectively on behalf of the community. Should local officials fail to perform as expected, they can be voted out of office; where they do well, they can be reelected. The development of electoral accountability is at the heart of the PPL’s extension of elected local government across the entire Bolivian territory.

29. Second, municipal government is structured to provide accountability. The mayor, the chief executive, is to be held accountable to the town council, which can be viewed as the representative body of the municipality. The mayor’s budgets, participatory development plans, and projects, among a variety of other matters, must receive council approval before moving ahead. The councilors also oversee the operation of the local administration and are expected to bring the problems of the municipality before the council for possible solution.

30. Third, the Bolivian constitution (article 201) provides for a council “constructive vote of censure” (voto constructivo) to remove any mayor (with the exception of those elected directly by majority vote) after at least one year in office. A mere three-fifths vote of the council is required for removal and the chief executive’s subsequent replacement by another councilor (as long as the vote does not occur in the last year of the current term). The censure can be viewed as a tool for good, accountable governance, as it is the duty of the council to remove a poorly performing or corrupt mayor. In addition, under Bolivia’s parliamentary-like council system, the mayor can be viewed as the “first among equals” on the council and ultimately subordinate to the deliberative body.

31. Fourth, the creation of the OTBs is the cornerstone of the participatory planning and oversight processes established under the PPL. The OTBs are accorded a series of rights and duties under the law that, if used as intended, give them significant power in municipal affairs. They have the right “to propose, request, control, and supervise the performance of public works and the provision of services, in accordance with community needs...” and to challenge and seek modification of the decisions of public agencies when these are contrary to community interest.” OTB duties include “to identify, prioritize, participate, and cooperate in the execution and administration of works for the collective welfare...” Interestingly, the OTBs themselves are legally

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8 The Popular Participation Law, Law No. 1551, article 7a.
9 Ibid, article 8a.
required to render account to the community of all actions taken on its behalf. Finally, the OTBs are responsible for electing leaders to represent them on the vigilance committee.

32. Fifth, the PPL provides for the creation of a vigilance committee in each municipality. The committee is comprised of one member from each submunicipal canton or district, who is elected by the OTBs of the canton or district, and is to take the lead in overseeing local government expenditure of coparticipation funds. The vigilance committees are required to ensure that those funds are invested equitably in urban and rural areas. They are charged with making sure that no more than 15 percent of coparticipation funds are used to cover operating costs, and they must publicly issue a statement, which is to be published in the media and transmitted to the national government, on how those resources are budgeted and invested. As noted above, if the vigilance committee finds a problem with the investment of those resources, it may file a complaint to the national executive, which is to investigate and attempt to resolve the issue. If the executive fails to secure a remedy, it may petition the national Senate to consider the case and suspend further disbursement of coparticipation funds.

33. Sixth, the law's requirement that coparticipation funds be distributed to municipalities on a per capita basis and then invested equitably in urban and rural areas makes equity in resource distribution a major local issue. It provides local communities with the motivation and a means, albeit general and subjective, to assess municipal performance. Although the PPL accords the vigilance committee the responsibility of ensuring that this is carried out, any local resident can make his or her own judgement based on physical inspection, conversations with neighbors and party allies, or in some other fashion. In a country where the urban-rural divide is strong, one can be sure that this issue resonates among municipal residents.

34. Finally, the PPL establishes a process of participatory planning for municipal investment. The process allows ample opportunity for residents to actively participate in plans for development of their community. As they participate, residents are accorded another set of criteria against which official performance can be judged. Virtually all community organizations are expected to join together in preparing--by attending workshops, offering proposals, negotiating accords, and otherwise joining in the process--a five-year PDM. This plan is to be followed by the POA developed each year by the municipal administration in an effort to implement the longer-term PDM. The municipal government should engage in "intense consultations and consensus-building with the spectrum of entities (public and private) that undertake activities in the municipality." Once the POA is complete, local officials can appropriately prepare their budget for the year.

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Popular Participation's Ideal Municipality

35. There is hardly any local system in the world, Bolivia included, that operates strictly in accord with the letter of the law. Many of the provisions noted above can only be considered ideal scenarios—objectives to be reached over the long run as the new system of local government develops, benefits from experience, and is improved. Yet it bears considering how the ideal system would operate because we can then compare the ideal against reality and perhaps provide insight into the operation of the system today.

36. The ideal municipal government would begin in large measure with the leadership emanating from the mayor and town council with respect to their relationship with one another and with the community at large. The mayor would be an individual capable of bringing people together and achieving consensus. The mayor and councilors would have a professional working relationship in which decisions based on the collective good of the locality can predominate and, despite the conflict that may occur on particular issues, the council carries out its financial oversight role. Personalities and professional skills are critical factors in this regard, as is the degree of stability in the office of the chief executive and council. Turnover would be minimal to ensure continuity of relationships and maximize performance. High turnover also makes the job of ensuring accountable government, the community's ability to assess performance, more difficult.

37. Relations between the mayor and vigilance committee would be based on a mutual recognition of the legitimate role of each, and the committee would defend its oversight prerogatives without being either conflictive, submissive, or unreasonable with regard to the need to equitably distribute investment resources. The mayor and vigilance committee members would tend to meet and discuss issues informally, rather than communicate strictly through official correspondence. Both sides would view the committee as an important vehicle, perhaps the only one in some rural areas, for representing the demands of the OTBs and the general public. In addition, the committee would function as a committee, usually with all members participating in regular meetings. Of course, the key spending limitations of the PPL would be met. Resources would be equitably distributed in rural and urban areas over the course of the mayor's term, if not in one particular year, as reflected in the PDMs and POAs. No more than 15 percent of the coparticipation funds would be obligated to benefits and personnel.

38. The OTBs, moreover, would be meeting on a regular basis, and the degree to which they are politicized would be minimal. They would be able to channel community demands to the vigilance committee and municipal government itself. They would also routinely participate in the selection of the members of the vigilance committee and work with them to ensure that those demands are addressed. Citizen participation, in all its forms, would be highly valued throughout the municipality.

39. The PPL planning process would be carried out and the results utilized as a scheme for development of the community. The PDMs and POAs would be prepared in a participatory fashion—a real effort to incorporate all segments of society would be made—even if the ideal number of residents fails to attend the planning meetings. Information
on this process and other municipal activities, with few exceptions, would be readily accessible to the public.

40. In the end, the municipality would show demonstrable improvements in public works and services. And the general public would be showing greater confidence and interest in the local institutions of government.

The Four Municipalities and their Governments

41. The centerpiece of our investigation are the four case studies of local governments in operation. In deciding to conduct the studies, we wanted to ensure we had a strong sense of what was happening on the ground and as well as collect primary documentation to support our analysis. As we can see below, the municipalities were chosen for their diversity in various respects. We attempted to account in some small measure for the wide-ranging mix of local government experiences in Bolivia. It is perhaps best to provide first a brief statistical overview of the four municipalities visited for this study. To begin, table 1 contains some key demographic data for each locality:

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Luribay</td>
<td>9,144</td>
<td>9,092</td>
<td>26.7</td>
<td>73.2</td>
</tr>
<tr>
<td>Oruro</td>
<td>196,025</td>
<td>238,913</td>
<td>9.1</td>
<td>86.3</td>
</tr>
<tr>
<td>Pacdaya</td>
<td>17,341</td>
<td>21,255</td>
<td>32.0</td>
<td>57.5</td>
</tr>
<tr>
<td>La Guardia</td>
<td>22,250</td>
<td>29,847</td>
<td>15.3</td>
<td>71.2</td>
</tr>
</tbody>
</table>

Note: Rate of illiteracy applies to residents greater than 15 years of age. School attendance refers to regular students age 6-19 years.

42. The table illustrates that we chose one small municipality (Luribay), two of medium size (Pacdaya and La Guardia), and one capital city (Oruro). The table also shows the diversity of the sample socioeconomically as well as demographically. With the exception of small Luribay, moreover, all of the municipalities have grown considerably in population this decade. The following table provides another set of data that will help complete the general picture of the four localities.
Table 2: Geographic and Political Data for Sample Municipalities, April 1999

<table>
<thead>
<tr>
<th>Municipality</th>
<th>Department</th>
<th>No. of Districts</th>
<th>No. of Cantons</th>
<th>No. of Community Organs</th>
<th>Mayor’s Political Affiliation</th>
<th>Political Affiliations of Councilors</th>
</tr>
</thead>
<tbody>
<tr>
<td>Luribay</td>
<td>La Paz</td>
<td>0</td>
<td>6</td>
<td>70</td>
<td>MNR</td>
<td>MNR (2), CON, UCS, MRTKL</td>
</tr>
<tr>
<td>Oruro</td>
<td>Oruro</td>
<td>6</td>
<td>0</td>
<td>255</td>
<td>MIR*</td>
<td>MIR (3), UCS (3), CON, MKN, ADN-PDC, MNR (2)</td>
</tr>
<tr>
<td>Padcoya</td>
<td>Tarija</td>
<td>0</td>
<td>13</td>
<td>74</td>
<td>ADN-PDC*</td>
<td>ADN-PDC*, MNR, EJE, ADN-PDC, FRI, UCS/I</td>
</tr>
<tr>
<td>La Guardia</td>
<td>Santa Cruz</td>
<td>6</td>
<td>0</td>
<td>23</td>
<td>ADN-PDC*</td>
<td>ADN-PDC*, UCS, MNR, ADN-PDC, MIR, UCS</td>
</tr>
</tbody>
</table>


43. As Table 2 demonstrates, the municipalities were drawn from four distinct regions of the country, and their community organization varies considerably as well. Politically, the sample of councilors is also diverse. Three of the four mayors, moreover, took office following a council censure vote to remove the mayor elected in 1995.

44. **Luribay.** The long, winding road down into the town of Luribay was ample evidence of the geographic isolation of this rural municipality and of the difficulty of communication and travel within the locality. As Luribay is almost entirely comprised of farming communities, the municipality is socioeconomically homogeneous. The municipality is organized into twelve active union subcentrales, or subunits, comprising the central union office, which is located in the town of Luribay.

45. Led by an MNR mayor, who was reelected in 1995, the municipal staff appeared efficient in carrying out duties—the entire staff consisted of fourteen people, including two consultants—and the town council, having lost only one member to resignation, showed a lack of serious turnover. The participatory process was working fairly well. The PAO was developed with input from many of the municipality’s seventy communities, approved by the council and vigilance committee, and submitted, along with the approved municipal budget, to budget authorities in La Paz and the prefectura. With the aid of an outside consulting organization, the municipal government was convening diagnostic meetings with community leaders to develop the PDM.

46. Conflict on the town council was minimal. Despite a failed effort in 1996 to remove the mayor for his party’s failure to recognize a pre-electoral agreement with the MRTKL-
-which would have made the *katarista* councilor mayor for two years of the four-year term—the five councilors were now working reasonably well together. Much of the conflict that existed was generated by tension with the ADN president of the vigilance committee, who was believed to be seeking the mayor’s office. The president was the only active member of the committee, which was no longer meeting, in part because members had difficulty making the trip to Luribay to attend. The president resided in Luribay, and reportedly received a quota of financial support from each of the OTBs, but was spending much of his time in La Paz. He protested the mayor’s refusal to share requested information with the committee (this seemed to be the case, whatever the reason), the council’s continued decisionmaking behind closed doors, and the mayor’s favoring communities affiliated with the MNR party and its allies.

47. The major municipal public works project—potable water—was being installed in some thirty-six of Luribay’s communities. This major investment of resources, at least, appears not to be heavily favoring the central canton of Luribay. Table 3 provides the cantonal distribution of investment of Luribay’s coparticipation resources for 1998. While 40.6 percent of the funds were dedicated to Luribay, the municipal center, is slightly below, but roughly matches, the town’s population size relative to the rural cantons. The oddity is the large amount of resources accorded the small canton of Colli, which received 31.2 percent of the coparticipation budget, apparently at the expense of Porvenir and Anchallani.
Table 3: Distribution of Investment of Coparticipation Funds, Executed 1998 Budget, Municipality of Luribay

<table>
<thead>
<tr>
<th>Municipal Canton</th>
<th>Percent of Municipality’s Population</th>
<th>Percent of Municipal Budget Invested</th>
</tr>
</thead>
<tbody>
<tr>
<td>Luribay</td>
<td>47.4</td>
<td>40.6</td>
</tr>
<tr>
<td>Porvenir</td>
<td>16.1</td>
<td>10.8</td>
</tr>
<tr>
<td>Colliri</td>
<td>6.0</td>
<td>31.2</td>
</tr>
<tr>
<td>Poroma</td>
<td>8.2</td>
<td>5.0</td>
</tr>
<tr>
<td>Anchallani</td>
<td>16.5</td>
<td>4.8</td>
</tr>
<tr>
<td>Taucarasi</td>
<td>5.8</td>
<td>7.6</td>
</tr>
<tr>
<td>Total</td>
<td>100.0</td>
<td>100.0</td>
</tr>
</tbody>
</table>

Note: Investments do not include funds dedicated to projects of municipality-wide benefit.

Source: Luribay municipal budget documents.

48. The rural unions were reportedly quite active and successful in ensuring that their communities received financial support when problems arose. A major difficulty, however, was the lack of support from the Banzer administration in La Paz and from the ADN prefect. Whereas in the previous administration the municipal government received project financing through the investment funds (FIS, etc.), now—since Luribay was an opposition MNR municipality—they could count on nothing. Nor was the prefect any more responsive to their petitions for assistance in resolving problems.

49. Oruro. The municipal government of the departmental capital of Oruro, a low income, economically declining city with a rapidly increasing population, was characterized by a high level of political conflict. Divided over the distribution of resources and the competition for power, little related to the new, participatory system of government was operating smoothly.

50. A major point of conflict was the issue of equity in the allocation of coparticipation funds for investment. No one disagreed on the central point: a little more than one-third of municipal funds in 1998 were dedicated to the pavement and installation of drainage in the eastern and southern, previously neglected section of the city. The mayor and his supporters argued that it was impossible to divide municipal funds, Popular Participation monies in particular, which represented 62 percent of the total budget, evenly among the city’s six districts. A bunch of small projects would not address the major problems of the city, they argued; over time, the distribution of resources would be evened out. The mayor did not have, however, a five-year PDM and could not demonstrate how his administration planned to invest in other parts of the Oruro in the coming years.
51. Oruro is highly politicized. The major division was between the mayor and his MIR party and the UCS, which controlled the vigilance committee, the federation of *juntas vecinales* (FEDJUVE), and the civic committee, the three of which were allied against the municipal executive. In late 1997, the mayor had not only maneuvered within the council to remove the UCS mayor, he also subsequently replaced about 200 pro-UCS municipal employees with about the same number of pro-MIR employees, which comes as no surprise to anyone familiar with the clientelistic, patron-based nature of Bolivia’s local system. Such turnover is costly as well, since the fired employees must be paid separation benefits.

52. Seven municipal councilors provided the mayor with his governing coalition. The UCS party, naturally, including the former mayor, and an MNR councilor (the party was split) were in opposition. The vigilance committee strongly opposed the mayor because, in the committee’s view, he refused to allow the members to exercise control over the coparticipation budget, refused to provide documents and other necessary information so that they could carry out their duties, prepared the budget “autocratically” without consulting the members, ignored their observations, and refused to hold community meetings in the city’s districts when elaborating the PAO. Whereas the previous mayor had provided the vigilance committee with an office in the town hall, unlimited telephone use, and travel funds, the new mayor, according to the president of the committee, had failed in his attempt to shut the office down. In mid-1998, the committee presented its grievances to the national Senate, only to be disappointed that it would take the senator with jurisdiction over the matter ten months to respond (because she was, like the mayor, from the MIR party, the members agreed). The mayor, senator, and committee members reached agreement on the key matters in a La Paz meeting, but the accord collapsed immediately upon return to Oruro. The municipal administration, in addition, had recently filed a suit against one member of the committee.

53. As a result of the divisiveness, the mayor established relations with the OTBs directly, each of which appeared to have its own political affiliation. Of the nearly 200 neighborhood committees in the five urban districts, the president of FEDJUVE remarked, 80 percent were linked to the IJCS party and less than 10 percent to MIR, while the old center of Oruro was MNR-dominated.

54. Neither of Oruro’s two mayors convened PAO planning meetings in the city districts with OTB representatives. The first mayor attempted to do so under the label of “Oruro 2000.” The process quickly dissolved under the surge of demands and the inability to accommodate the many interests involved. The second mayor undoubtedly considered the political dangers involved in such activity. The local government’s budget was too limited to meet the needs of the communities and threatened to create a backlash. Table 4 provides the 1998 budget figures for all the municipalities visited in this study and gives us an idea of the limits local leaders face. As the municipality’s own-source income was shrinking with increasing tax evasion, Oruro officials were making an effort to develop an accurate property registry and more effectively collect the income that was owed.
Table 4: Executed Budgets of Sample Municipal Governments, U.S. Dollars, 1998.

<table>
<thead>
<tr>
<th>Municipality</th>
<th>Total Budget</th>
<th>Coparticipation Funds</th>
<th>Percent Coparticipation Funds/Total</th>
<th>Budget Resources Per Capita</th>
</tr>
</thead>
<tbody>
<tr>
<td>Luribay</td>
<td>305,264</td>
<td>280,668</td>
<td>91.9</td>
<td>33.6</td>
</tr>
<tr>
<td>Oruro</td>
<td>10,199,633</td>
<td>6,317,589</td>
<td>61.9</td>
<td>42.7</td>
</tr>
<tr>
<td>Padcaya</td>
<td>650,914</td>
<td>529,229</td>
<td>81.3</td>
<td>30.6</td>
</tr>
<tr>
<td>La Guardia</td>
<td>1,413,957</td>
<td>696,871</td>
<td>49.3</td>
<td>47.4</td>
</tr>
</tbody>
</table>

Note: Figures calculated at exchange rate of 5.74 bolivianos/U.S. dollar. Per capita figures are based on 1998 population estimates.
Source: Documents obtained from each municipality.

55. **Padcaya.** Padcaya, a rural municipality on the southern point of Bolivia, not far from the border of Argentina, suffered from some of the politicization and other problems found in Oruro. But this case also reveals the potential of Popular Participation. In a municipality traditionally dominated by a group of economically powerful families—and this was in part because the leading families, and their representatives on the council, were divided personally and politically—a local campesino leader from a small regional party won the mayor’s office. Despite the expectations of the councilors who thought they could easily control an inexperienced campesino, the new mayor, with good personnel and the support of the campesino union federation, performed well. In late 1997, however, after the Banzer government took the reins of power in La Paz, ADN took the offensive in Padcaya. The party’s councilor was able to secure a voto constructivo, remove the campesino mayor, and take office himself (the mayor essentially bought the determining council vote, giving the campesino councilor who supported him the lead post in his administration in exchange). Yet the former mayor had performed well enough, and with support of the union organization, was nominated to run for election again in December 1999.

56. The vigilance committee was not operating any better than we have seen in other municipalities, but for a different reason. The president, who regularly attended council meetings, was again the only active member. He was, however, completely co-opted. He was “100 percent with the mayor,” as one departmental councilor explained, apparently receiving projects or other support for himself or his community. As an oversight mechanism, then, the vigilance committee did not function. For his part, the mayor was, like the predecessor he conspired against, quite active in developing and executing important public works and services in various parts of the municipality. He proudly distributed an annual report complete with photographs of thirty-two projects inaugurated during his time in office (although many had been planned or begun under the previous mayor). The largest and most highly visible projects—a sports complex valued at some $83,625, for example, and decoration of the town square—were done in Padcaya, the municipal center, not in the rural outskirts. The following table provides a breakdown of municipal investments in 1998. The data further support the contention that investment was inequitably concentrated in the town center of Padcaya, where 45.6
percent of the funds were expended, a level well above what would be expected given the estimated population of the canton relative to the others.¹¹

Table 5: Distribution of Investment of Coparticipation Funds, Executed 1998 Budget, Municipality of Padcaya

<table>
<thead>
<tr>
<th>Municipal Canton</th>
<th>Estimated Percent of Municipality’s Population*</th>
<th>Percent of Municipal Budget Invested</th>
</tr>
</thead>
<tbody>
<tr>
<td>Camacho</td>
<td>8.0</td>
<td>7.1</td>
</tr>
<tr>
<td>Rejara</td>
<td>3.3</td>
<td>3.6</td>
</tr>
<tr>
<td>Tacuara</td>
<td>2.1</td>
<td>1.7</td>
</tr>
<tr>
<td>Chaguaya</td>
<td>4.6</td>
<td>3.2</td>
</tr>
<tr>
<td>Cañas</td>
<td>9.0</td>
<td>3.3</td>
</tr>
<tr>
<td>Mecoya</td>
<td>3.3</td>
<td>0.5</td>
</tr>
<tr>
<td>Rosillas</td>
<td>4.5</td>
<td>4.1</td>
</tr>
<tr>
<td>San Francisco</td>
<td>3.1</td>
<td>0.1</td>
</tr>
<tr>
<td>Padcaya</td>
<td>18.9</td>
<td>45.6</td>
</tr>
<tr>
<td>Orosas</td>
<td>8.0</td>
<td>5.7</td>
</tr>
<tr>
<td>La Merced</td>
<td>13.9</td>
<td>2.4</td>
</tr>
<tr>
<td>Tariquía</td>
<td>21.3</td>
<td>22.7</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>100.0</strong></td>
<td><strong>100.0</strong></td>
</tr>
</tbody>
</table>

* These estimates are actually the percentage of the municipality’s registered voters in each canton. Population figures were not available.

Note: Investments do not include funds dedicated to projects of municipality-wide benefit. Also, three projects (representing 2.3% of the budget) could not be identified with a canton and were thus excluded.

Source: Padcaya municipal budget documents.

57. The Padcaya council was divided, but the only strong opposition came from the council president. As the four-year mayoral term was in its last year, the mayor could not realistically be removed from office again. The former mayor—now a councilor—had resolved to work for the benefit of the community and resume the fight later, during the electoral campaign.

58. The issue of equity and respect for previously determined investment priorities was a heated issue in Padcaya as well. The campesino communities launched a major protest against the mayor’s administration, objecting to his failure to implement the PAO, which

¹¹ The population figures for each canton are not provided in the table because they were not available. The estimates are the ratio of registered voters in each canton relative to the municipality’s total number of registered voters.
had been prepared with input from many of the rural OTBs. The PDM had been developed as well, with the support of outside expertise.

59. Padcaya appears, finally, to be a municipality the ADN party wants to ensure is successful. The mayor certainly had party backing to remove the first mayor. The party’s prefect was strongly supporting the mayor, providing resources for projects that the mayor could claim as his own. In fact, 1998 financial transfers from the prefecture reached about $58,800—or 9 percent of the municipal government’s entire budget—which allowed the mayor to complete improvements in irrigation and drinking water systems, the expansion of a school, and work on a hospital. The town’s subprefect, moreover, was working closely with the mayor’s administration. Relations with the mayor were, the subprefect noted, excellent; with the previous MNR administration they were poor. The ADN subprefect was working with the prefect to execute rural electrification projects and in La Paz to secure additional resources for the municipality.

60. La Guardia. La Guardia, a largely rural, growing suburb of the expanding city of Santa Cruz, is politically akin to Padcaya in that an ADN mayor took over the mayor’s office months after the election of President Banzer. The same dispute over the distribution of municipal resources also predominates in local politics.

61. Relations between the president of the vigilance committee (who also serves as president of the civic committee) and the mayor and his supporters were bitter and increasingly confrontational. The committee president, who is young and trained in law and was not affiliated with any political party, insisted that the mayor failed to comply with the budget plan and had hired excess personnel, resulting in the expenditure of more than 15 percent of coparticipation funds on operating costs. The mayor did not disagree that he had exceeded the 15 percent maximum, but believed he was justified in doing so as a result of a court ruling on personnel benefits. The president, for his part, had recently denounced the mayor on the local radio. Any communication between the two was carried out through formal correspondence.

62. As a result, the mayor completely bypassed the vigilance committee in the participatory planning process and worked directly with the OTBs. The mayor had earlier convened many of the OTBs in a day-long meeting to prioritize projects and develop the PAO—using all municipal resources, according to the mayor, not just coparticipation funds. Some OTB leaders, however, were convinced that municipal funds were largely devoted to the heavily populated areas, particularly the town center of La Guardia, at the expense of the rural areas. Part of the problem, they argued, is that large meetings did not allow all participants to present their views, because whoever spoke loudest tended to speak for everyone present. The preparation of the PDM was being done by a consulting firm from Santa Cruz, which had sent questionnaires to all of the communities to determine their needs and priorities, and the vice-president of the vigilance committee was taking part in the process (interest in the document, however, appeared weak).
63. La Guardia’s former mayor was a woman who had formed an alliance of councilors that included the mayor. She is convinced that political pressure from the national level, a UCS-AND agreement resulting from the election of President Banzer, led to her removal. Attacks against her for misuse of funds, incomplete projects, the failure to work with NGOs, etc. were a ruse, she added, still resentful. Both members of her party voted to censure her, but she volunteered that she was unaware of what they received in return for signing. Following her removal, the former mayor estimated, about 20 percent of the employees affiliated with her UCS party left the municipal government. The number of current employees totaled fifty-eight.

64. The new mayor, who was engaged in (or at least taking full credit for) a number of projects, including a hospital (despite lacking equipment), a micro-hospital, and a new market, was well connected with the prefect, the ministries in La Paz, and the investment funds. Relations with and project support from the prefect were friendly, but the departmental executive had provided only half of a $17,500 commitment to support the local hospital. With resources from the FIS and FNDR, the administration was able to build a school and pave streets, respectively. Although La Guardia is the least dependent on coparticipation funds of the four sample municipalities, the government was working to develop a property registry and thereby increase tax collection.

65. As with the preceding three municipalities, assessing the level of equity in of La Guardia’s investment may give us some idea of the level of accountability in the municipality in this particular area. The following table provides the investment data from the 1998 budget.

Table 6: Distribution of Investment of Coparticipation Funds, Executed 1998 Budget, Municipality of La Guardia.

<table>
<thead>
<tr>
<th>Municipal District</th>
<th>Percent of Municipality’s Population</th>
<th>Percent of Municipal Budget Invested</th>
</tr>
</thead>
<tbody>
<tr>
<td>La Guardia</td>
<td>35.3</td>
<td>64.1</td>
</tr>
<tr>
<td>San Jose</td>
<td>9.9</td>
<td>3.4</td>
</tr>
<tr>
<td>Nueva Esperanza</td>
<td>11.7</td>
<td>7.1</td>
</tr>
<tr>
<td>El Carmen</td>
<td>22.8</td>
<td>7.5</td>
</tr>
<tr>
<td>Pedro Lorenzo</td>
<td>3.0</td>
<td>4.7</td>
</tr>
<tr>
<td>Villa Arrien</td>
<td>17.3</td>
<td>13.2</td>
</tr>
<tr>
<td>Total</td>
<td>100.0</td>
<td>100.0</td>
</tr>
</tbody>
</table>

Note: Investments include projects executed in 1998 only. Population figures are drawn from 1992 census. Source: La Guardia municipal budget documents.

66. Clearly, as some OTB leaders indicated, the municipal administration has heavily favored La Guardia, the largest urban district in the municipality (Nueva Esperanza and El Carmen are the other two), in its investment of resources. As the table shows, 64.1 percent of investment was dedicated to the district, which holds only 35.3 percent of the
Two of three rural districts—San Jose and Villa Arrien, the exception being Pedro Lorenzo—received less in percentage terms than their levels of population would appear to require. On the other hand, the municipal government is not too far off, depending on your perspective, with respect to the law’s requirement that coparticipation funds be invested equitably between urban and rural areas. The table shows that 78.7 percent of the invested resources (which totaled $462,530) were dedicated to the three urban districts, which represent 69.8 percent of the population. In the rural zones, which represent 30.2 percent of the population, the mayor invested 21.3 percent of the funds. One must emphasize that these figures represent one year. Future investments could ease or exacerbate these distinctions as new projects are begun or existing projects are completed.

A Broader View of the Municipal System

67. To obtain a broader perspective of the municipal system, we conducted semi-structured surveys in thirty-eight additional municipalities. We viewed these as an important supplement to the field studies. The surveys included issues we addressed in the field and also explicit questions concerning local institutional development, such as the strength of community organizations and the nature of intergovernmental ties. This sample included local governments, again of varying size, in seven departments: La Paz (six municipalities), Santa Cruz (six), Beni (six), Chuquisaca (three), Oruro (four), Cochabamba (six), and Tarija (seven). The surveys were aimed at gathering additional information that might affect our initial findings and at providing further insight into the progress of Popular Participation and the performance of local government (see table 7, below, for selected survey results).

68. As noted in Table 2, only in Luribay was the mayor serving for the full four-year term; in each of the other three cases, the original mayor had been replaced. What appears to be shaky institutional continuity in these three instances becomes a serious concern when we take a broader look at the problem. The 38 municipalities included this survey have had an extraordinary total of 92 mayors in the first 3.5 years of the 1996-2000 term. That amounts to an average of 2.4 mayors per municipality, which is extraordinary, even if one allows for some turnover due to removal for incompetence. More than a quarter of our municipal sample had had a new mayor every year of the four-year term.

69. The council’s ability to remove the mayor through a censure vote helps produce extraordinary turnover in the mayor’s office (although other factors, such as death or resignations, are also occasionally responsible). Our sample indicates that a new mayor has been in office every year in a large number of Bolivia’s 311 municipalities. When one considers that each new mayor must become acquainted with the administration and

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12 For both the municipal and prefectural surveys, which were conducted in July and August 1999, some of the questions involved simply collecting factual information from the municipal governments. Others were open-ended questions, the answers to which required, after interviewing at least two individuals (usually many more), some subjective assessment on the part of the researcher.
usually fires much of the preceding mayor’s staff to replace them with his/her own party loyalists—at considerable public cost in separation benefits, etc.—the censure vote exacts a considerable toll on municipal performance. When one considers the political conflict that is almost invariably involved—rarely is removal truly a question of mayoral incompetence—the legitimacy of the PPL system suffers as well. A few of the municipalities in our sample have had complete continuity: only one mayor and the same council since the start of the current term. On the opposite extreme, however, is Yacuiba, a municipality that has had 5 mayors in 4 years, in including one who served twice. All four of these individuals had judicial cases pending against them at the time of the survey.

70. Municipal councilors come and go fairly often as well, to be replaced by alternates, etc. Some 269 councilors served in 37 of the 38 municipal governments surveyed (we do not have clear response from one municipality because turnover has been so extremely haphazard). Had there been no turnover, only 198 councilors would have served; that is, 198 were elected originally. An additional 71 councilors—or 36 percent more—served on the local councils in our sample. The reasons for this high level of turnover are varied, although many councilors move in and out of the mayor’s office. This lack of continuity also erodes institutional legitimacy.

71. Although difficult to capture in surveys, social organization appears to be a critical variable in the operation of the participatory mechanisms of the PPL. Strong local organizational life, we found, tends to be associated with, but certainly does not guarantee, the organizations’ influence in the municipal investment decisionmaking process. And a considerable portion of all Bolivian localities have well-organized, local campesinos unions and other groups, such as the coca farmers. Some 13 of 38 of the municipalities we surveyed were characterized by such organizations, and, generally, they were considered quite involved with the municipal government to ensure their interests are protected under the terms of the PPL. In Yunchará, for example, we found that if the union central exerts pressure, it has considerable influence.

72. We also discovered that where local organization life is nonexistent to moderately active, organizations tend to have little or no interaction with the municipal government. They tend to be minimally involved in the planning and oversight activities accompanying the PPL; their influence is limited. However, even strong organizations can have little contact with municipal authorities, reducing their impact considerably. Eight of our surveyed municipalities were characterized by few or no organizations; some 17 of 38 evidenced moderately organized communities. In this “moderate” category, for example, we can place the municipality of Anzaldo, where we found that the [union] central and subcentral structure has been the foundation for the conformation of the OTBs. Yet, although there is strong community organization involving numerous groups, those groups are hardly active with respect to municipal policies. Their involvement consisted of participating in workshops to present demands that allow the development of the POAs, with very little discussion of the possibilities and strategies for realizing those demands.
73. Local civic committees appear to have little impact at the municipal level. Our surveys found that only 3 of 38 municipalities had civic committees that were rated strong and influential in municipal affairs (and only one of these was a civic committee in the traditional sense; two others were a women's civic committee and a civic action group linked to the mayor). Twenty-one of the 38 municipalities had civic committees that were rated active, but with no influence on decisionmaking in municipal affairs. The remaining 14 municipalities--more than one-third--either had civic committees that were weak (in 8 municipalities), in some cases barely existing, or their committee was nonexistent (in 6 municipalities).

74. Except in rare cases, then, local civic committees are not centers of municipal influence. Power resides in the mayor and, as we have seen, in other organized groups in the community. Civic committees often have been politicized, they face competition from legally mandated vigilance committees, and important members, such as the private sector, may no longer participate in them. This contrasts sharply with departmental civic committees, which are considerably stronger and more influential.

75. One of the major pro-accountability provisions of the PPL was the ability of newly created vigilance committees to petition the national government and ultimately the Bolivian Senate to freeze the delivery of coparticipation funds to their local governments. From 1996 to date, 12 vigilance committees of the 38 in our sample--roughly one-third--attempted to freeze the transfer of coparticipation funds under the provisions of the PPL. Two of the 12 made two attempts, so a total of 14 attempts were made. Only three were successful and one case was pending.¹³

76. This 37 percent (14 of 38 cases) is a large percentage of petitions, tending to confirm what we have seen in our field cases. Elected officials and committee members have difficulty reaching a consensus on budget issues. Mayors resent the intrusion in their administrations and committees react strongly when they feel they are not given due consideration. There is considerable tension--the petition process is often politicized and never conflict-free--between local governments and the vigilance committees over investment priorities. In our sample, relations between the mayor and vigilance committee were considered good in 37 percent (14 of 38) of the municipalities. Yet, there was at least some tension or cooptation of the committee in 61 percent of them (23 of 38). In 29 percent (11 of 38), mayor-committee relations were reportedly poor.

77. In some departments, putting a freeze on funds appears to be much less an issue than in others, perhaps reflecting regional differences in political culture. For example, in our sample of 13 Santa Cruz and Tarija municipalities, there were no attempts to freeze funding. Yet, in the Oruro and Cochabamba municipalities, 8 of 10 had petitioned.

78. When a mayor has problems working with the vigilance committee, he or she will attempt to plan investments without it. Mayors will bypass the committee members, who

¹³ The Ministry of Finance, a bank, and a deputy (unsuccessfully) were involved in freezing funds in two municipalities (3 occasions) in our sample.
are chosen representatives of the OTBs in each local canton or district; and instead work
directly with OTBs. In our sample, most municipal governments (23 of 38) were
reported to be working with both the vigilance committees and OTBs. But when a mayor
was working more closely with one or the other (in 11 cases), it was almost invariably
(with one exception) with the OTBs. In short, the response to the failure of the
community oversight mechanism of the PPL is, if necessary, usually to discard it
altogether.

Box 1: Selected Municipal Survey Results

**Mayoral Turnover.** Question: Since the last elections in 1995, how many times has the
mayorality changed hands? In 13 of the 38 sample municipalities, the mayorality had not
changed hands at all; the same mayor had governed for the entire period. Eight of the 38
local governments were on their second mayor, while 7 of 38 had had three mayors.
Seven of the 38 municipalities were on their fourth mayor since 1995, while 3 of 38 had
had five mayors.

**Council Turnover.** Question: Since the last elections in 1995, how many councilors
have served on the town council, including the councilors serving at present? Some 269
councilors had served in the 37 municipalities in which this question was answered (the
council composition in one municipality could not be determined). In only 8 of 37 had
there been no change in the council’s composition. Most of the councils had witnessed
the replacement of from one to three of the original councilors.

**Mayor-Vigilance Committee President Relations.** Question: How would you describe
relations between the mayor and the president of the vigilance committee (Choose all that
apply)? In our sample, 14 of 37 municipalities reported that relations between the mayor
and vigilance committee were good (one vigilance committee was too new to report).
Twelve of 38 reported that relations were fair with some tension. Eleven of 38 reported
that relations were poor.

**Suspension of Municipal Coparticipation Funds.** Question: Has the vigilance
committee attempted to have the municipal government’s coparticipation funds
suspended by petitioning the Senate? From 1996 to the date of the survey, 12 vigilance
committees of a total of 38 in our sample attempted to suspend the central government’s
transfer of coparticipation funds as provided under the PPL. Two of the 12 committees
made two attempts, so a total of 14 attempts were made. Of those 14 attempts, 3 were
successful and one was pending.

**Developing Annual Operative Plans.** Question: In developing the annual operative
plan (POA), how would you describe mayor-council relations vis-à-vis the vigilance
committee and grassroots territorial organizations (OTBs)? In our sample, 23 of 38
municipal governments were reported to work with both the vigilance committee and the
territorial base organizations (OTBs) in preparing the POA. Ten of 38 reported working
more closely with the OTBs than the vigilance committee. Only one was reported to
work more closely with the vigilance committee than the OTBs. Four of the 38 were reported to work with neither or to have been unable to develop the POA.

**Mayor-Prefect Relations.** Question: How would you describe relations between the mayor and the departmental prefect? Seventeen of the sampled 38 mayors were reported to have good relations with the prefect. Fourteen of 38 were reported to have fair relations with the prefect, while 7 of 38 reported that they were poor or non-existent.

**Distribution of Investment of Coparticipation Funds.** Question: One of the sources of considerable tension at the municipal level (among the mayor, council, vigilance committee, and community organizations) is the local government’s inequitable distribution of coparticipation funds. On a scale ranging from non-existent to high, what is the level of tension created your municipality by such distribution? This issue was reported to have created low levels of tension in 18 of 38 of our sample municipalities. It had created moderate tension in 16 of the 38 municipalities and high tension in 4 of them.

**Local Civic Committee Presence.** Question: On a scale ranging from non-existent to strong, how is the presence of the local civic committee in municipal affairs best described? Only 3 of 38 sampled municipalities reported having civic committees that were a strong influence in municipal affairs (and only one of them was a traditional civic committee). Twenty-one of the 38 had civic committees that were active, but not decisive in municipal decisionmaking. The remaining 14 municipalities reported having civic committees that were either weak (8 municipalities) or non-existent (6).

**Strength of Local Community Organization.** Question: On a scale ranging from non-existent to strong, how is the social organization of the municipality best described? A total of 13 of 38 sampled municipalities were reported to have strong social organizations, with considerable influence in local elections and municipal affairs. Seventeen localities were considered moderately organized, with some organizations and activity and little influence or involvement in municipal decisionmaking. Eight of the 38 municipalities reportedly had weak community organization, with few or no organizations and little activity.

**Nature of Municipal Investment.** Question: How is the nature of municipal government investment in the community best described? Thirty of the 37 municipal governments sampled (we received no response from one municipality) reported spending most of their resources on providing new or improving public services, including: education in particular, health, sanitation, and sports. Twenty-nine of the 38 municipal governments reported focusing investment in infrastructure, especially roads, but also urban infrastructure. Three municipalities reported investments in agricultural production, including irrigation. One mentioned investment in “institutional development.”

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**Conclusions on the Performance of the New Local System**

79. To date, it appears that the results of municipalization under the Popular Participation framework are mixed. The same can be said for the specific objective of building local accountability: clear progress can be found alongside serious limitations in the system.
The following identifies some of the factors responsible for the relative successes and failures of the PPL.

80. **The glass half empty.** The system created by the PPL reforms contains several weaknesses. Our investigation makes it clear that Popular Participation is less likely to reach its potential, and sometimes breaks down completely, where the political parties, as opposed to rural unions and other organizations, have a strong presence. In communities politicized along political party lines, especially where nonparty organizational life is weak, loyalties to the parties tend to take precedence over the broader interests of the municipal institution and the community as a whole. In largely urban municipalities, and in the large department capitals like Oruro, vigilance committees must fight to exist and carry out their functions against the party militants who have taken control of many of the societal organizations.14

81. As we have seen, many Bolivian municipalities are dominated by political parties engaged in a battle over control of resources that now flow to the local level under the PPL. Those who control the resources dole out patronage, projects, and particularistic favors that translate into sustained political support. Elected by national party list, local officials are more loyal to their party leaders in La Paz than to their communities. Municipal staffs are stocked with party loyalists, and there is no incentive to create the institutional stability that comes with career civil service. Almost by rote, by virtue of the alliance it strikes with the mayor, the council majority does not exercise oversight of the executive, and the minority can only object. Moreover, with the passage of the PPL, the oversight role is conceded to weak vigilance committees. Of course, the parties represented on the council, often reacting to national party developments (i.e., a change of administrations) or the party hierarchy, may see it in their personal and party interests to shift alliances and remove the mayor.

82. Mayor and councilor turnover, especially the former, and the party politics that generate it are obstacles to achieving greater public accountability and better municipal performance. In practice, the censure procedure for removing “incompetent” or “corrupt” mayors is little more than a political tool used by local officials to win power for themselves and their parties. The procedure breeds corruption (payoffs to councilors, etc.) and disillusionment with the democratic process. The four cases discussed above—including the unsuccessful attempt to remove the mayor of Luribay and our sample of 38 municipalities with 93 mayors over 3.5 years--make this patently clear.15

83. In such a system, the Popular Participation measures often prove to be of little consequence. Oruro is the obvious example. In Oruro, seemingly every issue—from who held the mayor’s seat and how coparticipation funds were spent to how the vigilance

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committee was operating—was determined along party lines. The multitude of interests in the city appeared largely captured by the parties. In such an environment, the mayor was accountable, in a sense, primarily to his political clients, providing support to them—favors, jobs, projects, etc.—in return for their support on election day.

84. Party-based political conflict affects the PPL system in other ways as well. Vigilance committees may attempt to exercise serious oversight but when they do they are condemned to the political opposition, bypassed in favor of the OTBs, or co-opted. The committees’ only leverage is their ability to petition for the freezing of municipal transfer, an often lengthy, conflict-laden process that may fail to produce a positive result and that can be blocked by partisan intervention within the national administration or Senate.

85. Generally, the vigilance committee is highly suspect in serving as a mechanism for municipal accountability. In each of the four cases assessed here, the vigilance committees functioned poorly or not at all. In only one instance, La Guardia, was the “committee” functioning with a member other than the president. Committee members frequently do not participate because they receive no pay; they receive no reimbursement for travel and food costs incurred; they often lack the technical training to assess municipal budgets; and they often, as we have seen, are refused the information they need to carry out their responsibilities. Members who are on the best terms with the mayor, meanwhile, are likely to have been co-opted. Although OTBs have considerable authority under the Popular Participation law, they, too, are subject to politicization and manipulation. In the Bolivian context of informal rule compliance, they, like the vigilance committees, are often effectively ignored.

86. Popular Participation’s planning process is not working well as an accountability mechanism, although municipalities are developing their annual and five-year plans. It is difficult to get people to participate, and the outcome of community planning meetings is usually much more a listing of projects than any type of planning strategy. Local officials manipulate the process and do not follow the plans, and so far there is little institutionalization of municipal planning capacity. The five-year POAs were developed or are being developed by outside consulting agencies in three of the four municipalities studied here. Nongovernmental organizations and international donors are, however, providing strong, important support for the development of municipal planning and management capacity.

87. The glass half full. Despite the difficulties, the PPL has produced a municipal system in Bolivia with the resources to have a development impact. Local institutions are often colonized by the political parties and clientelistic to the detriment of the system. But clientelism is not new to Bolivia and will remain for some time. What is new is that across the country, local governments are investing in health and educational infrastructure, repaired roads, and improved public services for their communities. The

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18 Bolivian analysts of the local system well recognize the need for reform of the committees. See, for example, Ardaya Salinas, “El comité de vigilancia.”
fact that the participatory process is not working as planned cannot detract from the progress these investments signify.

88. In theirlocalities, Bolivians recognize that the decisionmaking power in the hands of municipal officials is real and have pressed their demands through OTBs and vigilance committees, despite the problems. There is a degree of community representation that was weak or nonexistent in the past. "To the extent that one of the principal concerns of the [community] leaders is responding to and obeying the grassroots," one analyst writes, "this concern is communicated to and produces demands on municipal authorities." We saw clear evidence of this in the sample of localities with moderate-to-strong organizational life.

89. Some of the conflict between mayors, vigilance committees, and grassroots organizations is an expression of the right to be taken seriously. Local demands to the mayor that he or she execute certain projects is a pressure mechanism, and it works to a degree. Every mayor faces pressure to distribute resources equitably. Mayors list investment projects in their budgets according to their location in the municipality for good reason: communities view these resources as their property and they look to see how they are spent. A new, obviously imperfect type of constituent-representative relationship, one characterized by some measure of accountability, may be emerging.

90. It should be noted, however, that the development of the collective civic consciousness that pushes people to want to have their say in the municipal decisionmaking affecting their communities appears virtually nonexistent. Unless they take place within the Popular Participation framework (that is, unless they are events involving the distribution of resources organized by the municipal government), town meetings on local issues do not take place. The ideas of local issue referenda or attendance at council meetings, for example, draw no interest at all. It is striking that in the several council meetings attended while carrying out this investigation, not one citizen was seen attending the sessions, with the exception of the capital city of Oruro, which attracted three or four individuals (including the press). Local officials confirmed, moreover, that no one attends their public sessions. Popular Participation, so far, has done little to effect a local civic sense.

91. Electoral accountability has obviously improved. Local officials are now elected throughout the country, providing opportunities for traditionally marginalized groups to take part in municipal government. We saw evidence of progress in the rise of power of a campesino mayor in Padcaya and a female mayor (before her removal) in La Guardia. Much remains to be accomplished in this regard, however. The Bolivian constitution retains its barrier to the establishment of local parties and the electoral system is fashioned such that parties—not individuals—can run for office. Both provisions help preserve the monopoly of traditional national parties over the political system at the expense of the emergence of new, dynamic local leaders.

17 Ibid, 46.
18 Ibid., 47.
92. We have seen in these four examples a variety of results with respect to equity in the distribution of investment resources. In Oruro, opposition parties are clashing over municipal spending priorities because a large portion of resources has been dedicated to one part of the city; whereas in La Guardia, the distribution, if less than entirely equitable between urban and rural areas, was fairly close in 1998. Luribay showed, if any tendency, a bias toward the rural cantons, and Padcaya appeared to be a clear case of inequitable investment. The results show a tendency toward equity, or accountability, in the smaller, more homogeneous rural municipalities where the competition of party interests is weaker and rural organization is stronger. Again, mayors and councilors know the law’s requirements and feel the pressure of community leaders to comply, even if compliance is weak.

93. Popular Participation, municipalization, and decentralization are failing in some respects and producing gains in others. There can be no doubt that Bolivian municipal governments are alive. They are developing plans, investing resources in major public works, improving public services or providing them for the first time in many areas, mobilizing resources from funds, departmental capitals, and La Paz, and often feeling pressure from or being forced to answer to community demands and protests. New electoral forces are emerging, and OTBs, vigilance committees, and council members are pressing for their political space. In short, the process can be sloppy and some problems are severe, but progress is clearly evident.