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## Introduction

Since the National Revolution of 1952, Bolivia's historical pendulum has regularly moved between periods of constitutional, legal and policy reform and periods of social unrest, political mobilization and popular revolt.<sup>1</sup> In the country's very recent past, this alternation was further tested when longstanding ethnic and territorial cleavages erupted at the very moment a twenty-year long political coalition unraveled. The December 2005 landslide presidential election of Evo Morales set the stage for a protracted constitutional transition that is still playing out.

This chapter describes the historical dynamics behind the 2006-2008 constitutional transition and the political process during that period. Our focus is on territorial dynamics, in a country divided from east to west by a decades-long political, ethno-cultural and economic divide. For a relatively weak state with multiple political accommodation mechanisms, the key tension ran deep, beyond the formalities of legal, electoral and constitutional reform.

We maintain that the Bolivian transition cannot be explained merely by the inner-workings of the constitutional process itself, but by the broader political dynamics, which broadened territorial support for the *Movimiento al Socialismo* (MAS) from western enclaves to the eastern lowlands over a five-year period. The constituent process took place simultaneously in different arenas: the formal institutions of Parliament and the Assembly, popular mobilization in the streets, and electoral competition between the blocs in conflict. This political shift was buttressed by two key institutions: an impartial electoral court and a functioning constitutional tribunal. These "second-tier" institutions secured the broad legitimacy for constitutional reform. They were helped by the conciliatory support of South American heads of state (through UNASUR), during a polarizing episode of political violence in Pando in September of 2008.

The new constitution, approved in a referendum in 2009, secured long-lasting social and collective rights achievements and launched a new period of political stability in Bolivia. However, the process was highly polarizing and kept the political situation on edge. Many important issues –unresolved tensions from the past—were kicked forward, including key territorial issues such as fiscal decentralization and the legal status of indigenous, regional and departmental autonomies.

## Background

Bolivian society has been historically marked by deep-rooted class, ethnic and regional cleavages. The political salience of these divisions has shifted in response to the different waves of modernization and the shifting balance of powers between regions, ethnic groups and social classes. At critical junctures, the state and its institutions have become the focus of the struggle to establish political order, with periodic crises crystallizing in violent conflicts that acquired territorial overtones, which were addressed through constitutional changes.

The Revolution of 1952 was a struggle between the economic elites monopolizing political power and a coalition of middle classes and workers led by the miners. Out of this critical juncture ethnicity and regionalism were displaced by class as the driving force shaping the evolution of the Bolivian Constitution. The MNR (*Movimiento Nacionalista Revolucionario*), the party that led the revolution, adopted a very centralist approach to the state's bureaucracy, with a shift from territorial or clientelistic

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<sup>1</sup> John Crabtree and Laurence Whitehead (eds), *Unresolved Tensions: Bolivia Past and Present* (Pittsburgh University Press 2008); Raúl L Madrid, *The Rise of Ethnic Politics in Latin America* (Cambridge University Press 2012).

relations to functional or corporatist ones. Nevertheless, because the party wanted to promote state-led development in many hitherto neglected regions in the eastern lowlands,<sup>2</sup> the MNR invested major resources in building a road connecting the Andean regions to the city of Santa Cruz. Furthermore, the military governments that replaced the MNR after 1964 invested yet more resources in the creation of an agro-industrial hub in Santa Cruz. While in 1950 the capital of Santa Cruz department was a small town of 40,000 people living without electricity, running water or paved streets, by 1976 the departments of the eastern lowlands and the southern department of Tarija were ahead of the rest of the country in human development, with Santa Cruz progressively becoming the richest department of Bolivia (Figure 1).

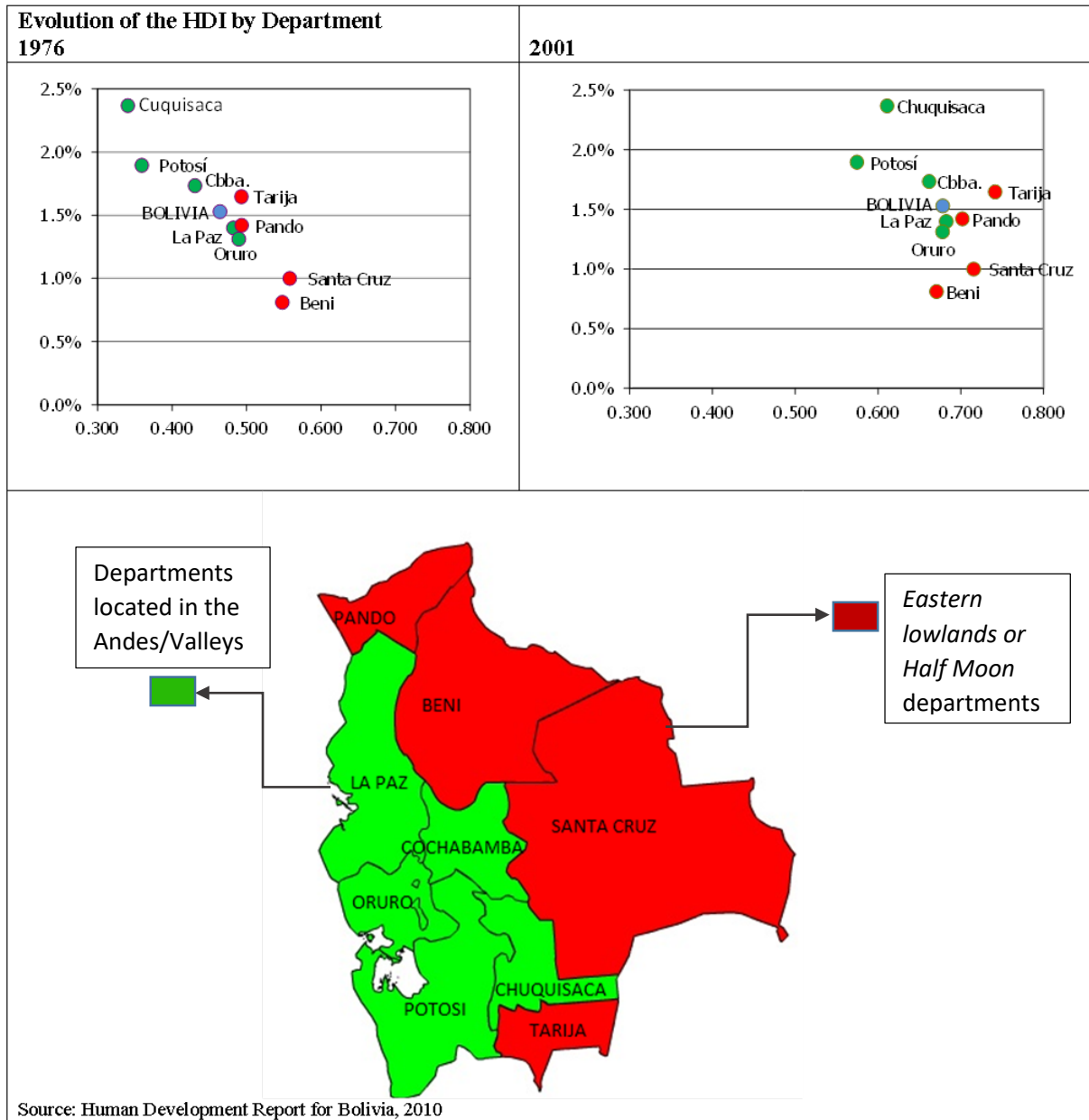
In 1996, after the Sánchez de Lozada administration approved a new market-friendly hydrocarbons law, foreign investment soon started to flow to the sector, and the dormant project of building a pipeline to Brazil, came alive in 1999. From there on, Bolivia started a transition from an economy based on mining to a gas producer. Furthermore, through the pipeline to Brazil and the re-inauguration of the pipeline to Argentina in 2004, Bolivia became an important geo-political player in the energy market of the southern cone. These waves of policy reform adopted since 1952 transformed the economic geography of the country. Santa Cruz and to a lesser extent Tarija passed from being peripheral to the country's development to be its main drivers. This process, in turn, created the conditions for the politicisation of the historical tensions between the Andes and the eastern lowlands.

By 2010, Bolivian exports reached 7 billion dollars, of which 77% came from the mining and hydrocarbons sectors. Bolivia's new wealth led to redistributive struggles, notably between the elites of the producing departments of Santa Cruz and Tarija and a popular-indigenous bloc of social movements, which sought a bigger share for the state for redistribution amongst the most vulnerable populations especially in the highlands.

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<sup>2</sup> The notion of eastern lowlands is a geographic reference to the departments of Pando, Santa Cruz and Beni, which are located in a tropical zone outside the Andes. On the other hand, the notion of the half moon is a political reference to the eastern lowlands plus the department of Tarija, located in the southern valleys of the country. Civil society in the half moon has been historically associated with the demand for departmental decentralization.

Figure 1: The Geography of Development 1976-2001



It was thus amongst the elites and civil society organizations of Santa Cruz that the demand for a territorial decentralization of power re-emerged, politicizing the east-west territorial cleavage. When democracy returned in the early 1980s, these groups, gathered around the *Civic Committee of Santa Cruz*, demanded political decentralization and the democratic election of departmental governments. Soon after, Civic Committees raising similar demands emerged in all departments.

After 1952, relations between the state and indigenous communities had been rendered in class terms, with the indigenous re-labelled as peasants and the key issue regarding their betterment being the distribution of land. However, with the return to multiparty democracy during the 1980s and 1990s, ethnicity re-emerged as a relevant cleavage for the constitutional debate. Furthermore, ethnicity acquired territorial overtones because the newly created indigenous organizations demanded the transition towards a plurinational state, in which their collective rights to land and ancestral territories should be reconstituted.

The main parties that led the transition to democracy in the 1980s, as well as the constitution, were products of the ideological framework of the revolution of 1952. Hence, the demands for decentralization and a plurinational state were at odds with the leading parties and spirit of the constitution. Suddenly, in a radical departure from its post-revolutionary tradition, Bolivia adopted, in April 1994, one of the most ambitious decentralization policies in the region<sup>3</sup> when Congress passed the Popular Participation Law (PPL) that territorialized Bolivia into 311 municipalities, embracing both urban and rural areas, many of which had barely experienced the presence of the state. Henceforth, councilors would be directly elected and in turn they would elect the mayors.<sup>4</sup> The law created oversight committees (*Comites de Vigilancia*), which represented the grass roots organizations from urban neighborhoods, rural indigenous communities and peasant trade unions. It also allocated 20% of the national budget to municipalities, according to their population.

The MNR's switch from its centralist outlook was in response to demands for a radical decentralization of the state that were affecting the party's legitimacy in rural Bolivia and the eastern lowlands. Thus, President Gonzalo Sánchez de Lozada decided to decentralize Bolivia, but not under the terms demanded by elites of the *half moon* or by the indigenous peasantry of the western highlands. Consequently, the actors pushing for devolution were not entirely satisfied by the PPL, though they used the institutional and electoral power of the new autonomous municipalities as platforms to advance their demands. Paradoxically, their demands were propelled by the very success of the PPL in terms of the provision of public goods, especially in the poorer rural areas.<sup>5</sup>

While trust in Congress and political parties increased nationally and in the Andean region during the first years of devolution, the Asian financial crisis of the late 1990s hit Bolivia hard and brought on a legitimacy crisis of the traditional political parties, whose support in the Andean region collapsed between 1997 and 2002. Between the national elections of 1997 and 2002, the traditional parties (the MNR; MIR and ADN<sup>6</sup>) lost support in the highlands while still dominating in the eastern lowlands and Tarija. The traditional parties were more resilient in the eastern lowlands because they benefitted more from neo-liberalism. This disjuncture would be important for the explanation of the further development of the crisis. In the national elections of 1997, the ADN and MIR, obtained the majority of the votes nation-wide but in 2002 two parties, the ADN and CONDEPA (Conciencia de Patria), disappeared as the system became polarized. At one extreme were the MAS, supported by a network of peasant organisations and urban popular sectors, and the indigenous Aymara nationalist MIP (*Movimiento Indígena Pachakuti*), which won surprising victories in the Aymara regions surrounding

<sup>3</sup> Jean-Paul Faguet, *Decentralization and Popular Democracy: Governance from Below in Bolivia* (University of Michigan Press 2012); Kathleen M O'Neill, 'Decentralization in Bolivia: Electoral Incentives Outcomes' in Alfred P Montero and David Samuels (eds), *Decentralization and Democracy in Latin America* (University of Michigan Press 2004).

<sup>4</sup> René A Mayorga, 'Procesos electorales, reforma política y sistema político en Bolivia (1992-1996)' [1996] *Elecciones Y Democracia*, UNAM, 327.

<sup>5</sup> Faguet (n 3).

<sup>6</sup> MIR: *Movimiento de Izquierda Revolucionaria* [*The Revolutionary Movement of the Left*]; ADN: *Acción Democrática Nacionalista* [*Democratic Nationalist Action*].

Titicaca Lake; these two parties captured one third of Congress and formed an anti-systemic alliance. Their strongholds were the rural western highlands and the poorer urban outskirts, and they were far from classic political parties, having been founded by networks of urban and rural trade-unions, grass roots organisations and social movements that practiced the politics of mobilisation in the streets with the aim of opposing neo-liberal policies and pushing for the collective rights of indigenous groups. They demanded that the state be central in the appropriation and redistribution of revenues from the export of natural resources, particularly natural gas. They wanted to re-found Bolivia under the principles of plurinationalism, by which the indigenous peoples would gain territorial and cultural autonomy as well as political voice inside government. They called for a constitutional assembly (CA) to achieve this.

In 2003, a massive protest inspired by these demands triggered a violent state response by the coalition in government. This event prompted further mobilisation, with new protests from different areas moving towards La Paz. The middle classes, furthermore, turned their back to President Sánchez de Lozada, by organising hunger strikes demanding his resignation. Finally, the President resigned in October of 2003, giving way to the succession of the Vice-President, Carlos Mesa, who, in his first address to the Congress, committed to paving the way for a CA and a binding referendum on the country's hydrocarbons policy. His proposals became known as the *October Agenda*.

The cycle of instability and mobilisation to this point was mostly located in the western highlands. Civil society in the eastern lowlands, particularly in the city of Santa Cruz, had followed the events in the Andes with suspicious indifference. However, after the upheavals of 2003, the elites of Santa Cruz started to feel threatened by the rise of the socio-political bloc that toppled the Sánchez de Lozada regime. In October, the *Civic Committee of Santa Cruz* issued a communiqué, *Enough!*, which identified the roots of the crisis in “the frustration produced by the existence of a centralist, corrupt and inefficient system of government that could be traced back to the foundation of the Republic”<sup>7</sup>, while shorter term causes lay in the closed character of the political system, which needed to “open to the demands of civil society for the re-foundation of the country based on a new economic, political and administrative structure.”<sup>8</sup> Ominously, the Civic Committee warned:

If [the above mentioned changes do not take place] we put in doubt the permanence of Santa Cruz in the current structure of the country... we just recognise the **legality and legitimacy** of a political system to the extent that we can exercise the right to decide on our own destiny under the inalienable principle of self-determination, to which all peoples of the world are entitled.<sup>9</sup>

In the days that followed, the Committee met with other institutions and organisations under the umbrella of the Assembly of Santa Cruz and with the Civic Committees of the southern Department of Tarija and the northern Pando. The Assembly of Santa Cruz reaffirmed its “unwavering will for the re-foundation of Bolivia on the basis of regional autonomies to be incorporated in the Constitution”<sup>10</sup> and it “ratified the decision to export natural gas to new markets, without any type of

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<sup>7</sup> Press release from the Civic Committee of Santa Cruz, October 17 2003, downloaded from PIEB, Virtual archives, *Programa de Investigación Estratégica en Bolivia* (PIEB), *Periódico digital de investigación sobre Bolivia*, available at: <[www.pieb.com.bo/index.php](http://www.pieb.com.bo/index.php)>.

<sup>8</sup> *ibid.*

<sup>9</sup> *ibid.*, emphasis added.

<sup>10</sup> *ibid.*



subordination to a national referendum and the right of producing departments to promote their own development... [through an increase in departmental royalties]”.<sup>11</sup>

President Mesa followed his commitment to the October Agenda by rallying his popular support and a loose alliance with anti-systemic forces within parliament, to pass a constitutional amendment in February 2004 that created the possibility of calling a CA. This would be able to pass a new constitution with the approval of two thirds of its members; it also provided for participatory institutions, notably a referendum on the country’s hydrocarbons policy, demanded by those who protested against Sánchez de Lozada. Furthermore, the reform also opened the space for citizen organizations and indigenous peoples to participate in local and national elections. Until then, candidates had had to belong to a legally recognised political party even for municipal elections, and such parties had to meet a minimum threshold of national voter support. The 2004 reform liberalized the minimum thresholds by differentiating between the territorial scales of electoral contests, so that a political party, *citizen organisation* or *indigenous people* could participate exclusively at the local level. This led to the emergence of differentiated and semi-autonomous sub-national party systems.

While Sánchez de Lozada had suffered bitter opposition concentrated in the western highlands, Mesa now faced similar opposition from the civic movements of the eastern lowlands. By June 2004, the demand for departmental autonomy, endorsed by the civic committees of Beni, Tarija and Pando, was ratified by hundreds of thousands of people gathered in a summit known as *cabildo*, in the city of Santa Cruz. In January of 2005, hundreds of thousands gathered again in Santa Cruz to demand autonomy and direct election of departmental governors. The demands coming from these popular demonstrations became known as the January Agenda. The Mesa administration felt compelled to respond and by June of 2005 it called for the direct *selection*<sup>12</sup> of Prefects, by popular vote; however, the radicalisation of the civic movement also led Mesa to resign and new elections were called.

While the traditional parties had held on to their hegemony in the eastern lowlands in 2002, the 2005 elections led to the complete collapse of the party system installed in 1985. Evo Morales was elected president in a political system that had become highly polarised along territorial lines. While the MAS-IPSP became the most important political organisation of the entire country, in the eastern lowlands a new political movement called PODEMOS (*Poder Democrático y Social*) emerged in opposition to MAS; it was decentralised and worked more as a confederation of local and departmental organisations than as a classic political party. Some of its members came from the collapsed traditional parties, while others emerged from a new generation of businessmen and regionalist activists, endorsing the pro-autonomist agenda.<sup>13</sup> In sum, between 2002 and 2005 the political system imploded, a collapse only resisted by the flexible structure of the MAS.<sup>14</sup> The elections of 2005 saw a major realignment in which the previous fragmentation gave way to a political system polarized along territorial lines: MAS won 53.7 per cent of the vote nationally and dominated in the western highlands, while PODEMOS won 28.6 per cent nationally, but swept the eastern lowlands.

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<sup>11</sup> *ibid.*

<sup>12</sup> For the first time, Prefects, namely the main executive authorities in the Departments would be elected by the popular vote. To maintain a sense of legality, though, this exercise was named selection of prefects, because the President should endorse the outcome of the electoral process. He would appoint as Prefects those who won the election in each Department.

<sup>13</sup> Such as Oscar Ortiz, former President of the Chamber of Commerce and Industry of Santa Cruz.

<sup>14</sup> Santiago Anria, ‘Social Movements, Party Organization and Populism: Insights from the Bolivian MAS’ (2013) 55 (3) *Latin American Politics and Society* 19.

These two forces were highly polarised in regard to their decentralization proposals. The *January Agenda* called for a highly decentralized—and probably asymmetric—regime built upon the foundations of departments. The October agenda, on the other hand, called for a plurinational state that would be quite centralized in terms of economic policy but built upon the reconstitution of many of the pre-colonial territories inhabited by the indigenous peoples.

### **The Period of Constitutional Engagement**

December 18, 2005 was doubly important historically, both because of Evo Morales's victory and because departmental prefects were democratically elected for the first time. The institutional reforms of 2004 broke the monopoly of representation of traditional political parties, with important effects in these newly departmental political systems and their relationships with the centre. While the MAS won 54 per cent of the vote nationally and led in 5 departments, it got only 33 per cent in the prefectural elections and led in only three. PODEMOS, for its part, won 29 per cent of the vote nationally and led in 4 departments, but dropped to 20 per cent in the prefectural elections and led in only three. Different local political organisations, some with clear pro-autonomy agendas, successfully challenged the hegemony of the MAS-IPSP. In sum, forces with increasingly contradictory agendas for reforming the state and the territorial distribution of power prevailed in the national and departmental elections.

Six of the nine newly elected prefects opposed the central government of Morales. At the same time, the reform providing for the election of prefects was not matched by any changes in the distribution of powers or for the resolution of conflicts between the president and a prefect. Whereas before 2005, the president could remove a prefect with whom he was in conflict, the prefects were now secure in office so in the event of conflict with the president they could try to mobilize support in the streets and at the ballot box.

Nationally, Morales and the MAS controlled 55 per cent of the lower chamber of Congress, but just 44 per cent of the Senate, where PODEMOS held the presidency. Thus, it became very difficult for the MAS to pass the laws promised in its *agenda for change*. In this context of divided government, Congress faced competing proposals for calling a Constituent Assembly (CA) and for a referendum on departmental autonomy. Calling for the CA was the first concern of both the MAS and PODEMOS. The latter had presented a complete project for a new Constitution in its 2005 campaign, whereas the MAS envisaged the CA “as a plural, peaceful and inclusive scenario for the construction of a multinational and pluricultural state”.<sup>15</sup> Soon after Morales assumed the presidency, he made his priority to call for a CA under the most favourable conditions for the new majority in the lower house and the social forces backing it. These forces had come together in November 2003 under the umbrella of the *Unity Pact (UP)*, which was a coalition of social and indigenous movements formed in the wake of the violent suppression of demonstrations; it was closely connected to the MAS-IPSP, and it supported a platform for popular constitutional reforms. However, the MAS-IPSP was weakened in not having the two-thirds majority in both houses required for constitutional amendments. Nevertheless, in February of 2006 Morales sent to Congress a proposed Law Calling for a Constituent Assembly (LCCA), which would have 210 members, with three members elected in each of the 70 districts, with a political organisation obtaining a simple majority getting all three seats.

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<sup>15</sup> Gustavo Rodríguez Ostría, ‘Historical Framework of the Constituent Assembly’, in: Historical and documented encyclopaedia of the Bolivian Constituent Process, Vice-Presidency of the Plurinational State of Bolivia, La Paz-Bolivia (2011), quoting the MAS-IPSP 2005 electoral programme.

This was immediately rejected by PODEMOS, but it was divided internally and could not agree on a counter-proposal. The civic committees of Santa Cruz and Tarija took the initiative to propose a CA of five members per department, plus one each from the seventy districts, and this idea was later refined and adopted by PODEMOS. Furthermore, the civic committees of the *half moon* pressured their opposition congressmen to condition their approval of the law calling for a CA on a law calling for a binding referendum on departmental autonomy.<sup>16</sup> The opposition also demanded that the CA require a two-thirds majority to approve a new Constitution.

Morales objected to a binding referendum on departmental autonomies. This led the civic committees of the *half moon* and its Prefects to declare a state of alert and call for mobilisation in their regions, while the Unity Pact declared they would besiege Congress to ensure approval of a favourable law on a CA. Thus, determining the rules of the CA and around a referendum accentuated the process of polarisation. Neither the MAS-IPSP nor PODEMOS could achieve the two-thirds majority needed to approve a new constitution or even to call for a CA. Therefore, the MAS-IPSP resorted to a strategy of trying to craft an electoral formula that would permit it to win the two-thirds of the CA—or, failing that, to reduce the requirement for a two-thirds majority. PODEMOS considered it vital to resist both possibilities, while the civic committees and the newly elected prefects of the *half moon* focused on getting a referendum on departmental autonomies, whose results would be determined on a departmental, not an aggregated level, and would bind the CA.

After months of conflict, Congress managed to agree, unanimously, on a framework stable enough to channel the *October* and *January* agendas towards the creation of a CA. First, Congress approved a law that provided for a CA of 255 members; 210 would be elected in the 70 districts on the basis of two members going to the party or organization with the largest vote and one to that with the second largest vote. The other 45 members would be elected in the 9 departments, with five per department; two would go to the party or organization with the largest vote and one each to those with next three largest votes (so long as at least five per cent of the vote and if not, the balance would be assigned amongst the first and second on a proportional basis). This agreement was a successful postponement strategy on the larger issue of the new constitution, which avoided violence. The CA was to meet in Sucre, Capital of the Republic, and would work for six to twelve months beginning in August of 2006. The proposed new constitution was to be approved by a two thirds majority in the CA and then submitted to a national referendum, where a simple majority could approve.

In a second stage, Congress approved a law for a referendum on departmental autonomy that would be:

“...a direct and sovereign manifestation of the popular will, [and] shall constitute a binding mandate for the members of the Constituent Assembly. Those Departments which, through the present Referendum, adopt the decision, by a simple majority of votes, will access to the regime of departmental autonomy immediately after the approval of the new Constitution.”<sup>17</sup>

The referendum would be held on the same day as the election of the constituent members of the CA. Voters would be asked:

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<sup>16</sup> *ibid.*

<sup>17</sup> Law 3365 *ley de convocatoria a referendum nacional vinculante a la asamblea constituyente para las autonomias departamentales* 2006 (Bolivia).

“Do you agree, within the framework of national unity, to give the Constituent Assembly the binding mandate to establish a regime of departmental autonomy, immediately applicable after the approval of the new Constitution in the departments in which this Referendum obtains a majority, so that the citizens of these departments can directly elect their authorities and receive executive powers, normative and administrative attributions and economic and financial resources from the central Government, assigned to them by the new Constitution and the Law?”<sup>18</sup>

On 2 July 2006, Bolivians voted to elect the CA and decide if they wanted to advance towards a regime of departmental autonomy. The balance of powers resulting from the 2005 general elections held relatively stable for the election of members of the CA, with the MAS remaining the most important political force nationally, with PODEMOS in second place. However, PODEMOS lost some momentum because of conflict between its national leadership and the emerging pro-autonomy forces; in Santa Cruz, for example, the recently elected prefect, Ruben Costas, with his former civic committee, presented their own candidates under the banner *Autonomia para Bolivia (APB)*, which advocated a more extreme version of departmental autonomy. Thus, the CA ended up with 54 per cent of its members from the MAS, 24 per cent from PODEMOS, and the remainder divided amongst fourteen formations, with one to eight members each, none of which had more than four per cent of the vote.

The design for its election produced gridlock within the CA. The MAS-IPSP got the majority of seats but less than the two-thirds needed to approve its own project. The gridlock was reinforced by the outcome of the referendum on autonomies, in which the four half-moon departments of the eastern lowlands opted for departmental autonomies. This pitted them both against President Morales, who had stated that he would vote NO in the referendum because he “didn’t want autonomies for the oligarchies”<sup>19</sup> and against voters in the highland regions who voted no by large majorities. The law governing this referendum had established that the results would bind the CA to implement this change in the departments favouring autonomy, but the CA was deeply polarized on the issue.

From the outset, the CA faced procedural paradoxes. Congress had approved unanimously the Law Calling for a Constituent Assembly (LCCA), which had reaffirmed the two-thirds majority rule for the approval of the constitution by the CA. Nevertheless, there was an unresolved issue related to the proper nature of the CA as the source of the new legal order: could a law approved by the legislature have paramountcy over a CA charged with drafting a new Constitution? Or, could the CA, drawing on its popular mandate, establish its own internal rules for approving a draft Constitution and thus override article 25 of the LCCA. The MAS-IPSP argued that the CA was plenipotentiary, so that their majority within the CA had the legitimacy to approve a draft by simple majority. The opposition fiercely resisted this as illegal and contrary to the LCCA. To complicate things even further, the representatives of the *half moon* argued that the agenda for autonomy for their departments had superior legitimacy and legality because of the popular mandate expressed in the referendum, which followed the legal procedures embedded in the law on referendums on departmental autonomy. After intense internal debates within the coalition of the MAS-IPSP and the UP, the majority in the coalition decided that a draft Constitution should be approved by absolute majority. This was forced through, mostly by members of the MAS, and the opposition forces reacted by abandoning the CA and returning to the streets.

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<sup>18</sup> *ibid.*

<sup>19</sup> Rodriguez Ostria (n 15).

PODEMOS, along with the prefects, the civic committees and the parliamentary brigades of *the half moon* organised protests in early September 2006. The UP responded with a massive gathering in which they hardened their position, declaring the CA as foundational and plenipotentiary. The *half moon* forces responded by calling for departmental strikes. After a couple of weeks, the MAS and the UP stepped back a little with a revised proposal for approving each article by majority, while the text as a whole would be approved by two-thirds. Once again, the opposition rejected the offer. Finally, the MAS used its majority to impose its proposal, whereupon 89 members of the opposition started a hunger strike in early December of 2006. In Santa Cruz, the prefect, other authorities and the civic committee called for a third massive demonstration or *Cabildo*, in which allegedly a million people gave the departmental government a mandate to draft an autonomous charter or *Estatuto Autonomico*, which had to be approved in a future departmental referendum.

These events led to a growing sense of uncertainty within the general population. A study of public opinion by UNDP during December of 2006, based on a survey in the cities of Santa Cruz, Cochabamba, La Paz, Tarija and El Alto, (see table 3), showed high levels of uncertainty and fear about the conflict within the country, its territorial integrity and the future of democracy amongst the urban population, especially in Santa Cruz and Tarija; this would prove important for the final outcome of the crisis.<sup>20</sup> With the CA in gridlock, the issue of autonomy became more polemic and contentious. According to the interviewees, departmental autonomies were mostly imagined as a potential trigger for further “disunion, separatism...conflict and confrontation in the Eastern highlands. Highlanders held this negative view of autonomies because of the unfairness and inequality that (the autonomous departments) would generate between them and the poorest departments of the country.”<sup>21</sup> For lowlanders; on the contrary, autonomy basically meant “to own what we produce.”<sup>22</sup>

Following the developments in the *half moon*, in early December of 2006, Manfred Reyes Villa, the prefect of Cochabamba, a largely indigenous department in the highlands, decided his department should reverse the 63 per cent vote it had delivered against autonomy in the referendum, so he called for a new departmental referendum. A month later, in January of 2007 thousands of coca growers, peasants and groups from the city’s outskirts marched on its centre, where they burned the prefectural building and called for a stop to the referendum and the resignation of Reyes Villa. In response, parts of the urban population confronted the peasantry with sticks and stones. The police were overwhelmed, and the confrontation resulted in three dead and 450 injured.<sup>23</sup>

This episode was a turning point in which the conflict shifted from a state-society dynamic towards a direct confrontation amongst social groups. Since 2000, social protest and conflict had increased in a sustained manner, largely directed towards the central or the departmental governments. The conflict in January 2007 was the first in which peasant sectors, initially mobilised against the prefect, soon clashed directly with the urban population. After years of being concentrated in the political centre of La Paz, social conflicts and protests progressively spread in a decentralised pattern.

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<sup>20</sup> The UNDP study took place when the CA was in a stalemate related to the 2/3 issue.

<sup>21</sup> United Nations Development Program, ‘Informe Nacional sobre Desarrollo Humano 2007: El estado del Estado en Bolivia’ (UNDP 2007) <[www.bo.undp.org/content/bolivia/es/home/library/mdg/informe-de-desarrollo-humano-2007.html](http://www.bo.undp.org/content/bolivia/es/home/library/mdg/informe-de-desarrollo-humano-2007.html)>.

<sup>22</sup> *ibid.*

<sup>23</sup> See Maria Lohman and José Luis Gareca, ‘¿Como entender los conflictos del 11 de Enero?’ (Somos Sur March 2006) <[www.somossur.net/documentos/11\\_de\\_enero.pdf](http://www.somossur.net/documentos/11_de_enero.pdf)>; *BBC Mundo: Enfrentamientos en Bolivia*, January 12, 2007, [http://news.bbc.co.uk/1/hi/spanish/latin\\_america/newsid\\_6254000/6254243.stm](http://news.bbc.co.uk/1/hi/spanish/latin_america/newsid_6254000/6254243.stm)



After the violence in Cochabamba, the MAS-IPSP proposed a new formula to solve the impasse surrounding the two-thirds issue. This led to an agreement that the thematic commissions of the CA would approve their final drafts by majority, as would the plenary for a draft Constitution; however, each article, would be passed by a two-thirds majority of the plenary and, in the event of an impasse, the disputed articles should be subject to a national referendum where they would be decided by absolute majority. However, the shifting positions of the MAS had made the opposition sceptical about achieving a credible commitment with the majority, and so it started to behave less as a party upholding a veto power within the CA, and more as a pressure group interested in boycotting the CA. One final blow to the CA would polarise Bolivian society even further, namely the status of Sucre.

As a result of the civil war of 1899 between La Paz and Sucre, La Paz became the permanent site of the executive and legislative branches of government even though Sucre remained technically the capital. Because the CA of 2006 took place in Sucre, many groups within civil society and Sucre's mayor organised an *Interinstitutional Comitee* to lobby the CA on the possible return of the legislature and executive to Sucre. This committee crafted an alliance with the leadership of the *half moon*, including its civic committees, mayors, MP's and supporters of PODEMOS. In March 2007, a representative from Santa Cruz, Ruben Dario Cuellar of PODEMOS, introduced a demand in the CA for the return of the legislative and executive branches to Sucre, and this quickly mobilized the populations of both La Paz and Sucre, where demonstrators took to the streets. By July, the mayors of La Paz and El Alto, along with the representatives of La Paz in the CA, including many from PODEMOS, and different civic organisations of both cities called for a massive demonstration or *cabildo*, aimed at dwarfing the *Cabildo del Millon*, that had taken place in Santa Cruz. Its motto was "*La Sede no se Mueve*" or the site [of government] shall not move. Two million people gathered in the city of El Alto to call for the withdrawal of the issue of the capital from the CA debates. In response, Sucre held its own *cabildo* days later, attended by the prefects and civic committees of the *half moon*. It was clear that under such conditions, a new Constitution would not be ready in August, the deadline established by the LCCA, so Congress extended the deadline to December 2007.

Caught between the conflicting forces of La Paz and Sucre on the issue of the capital, the MAS came down on the side of its territorial power base, namely La Paz and El Alto. In August, using its majority, the MAS struck the issue of the capital from the agenda of the CA. Soon after, the CA was literally besieged by the local population in Sucre. Vice President Garcia Linera made a final attempt to gather consensus within the CA and called for the formation of a supra party commission to save it. But in a meeting between Garcia Linera and the President of the Civic Committee of Santa Cruz, Branko Marinkovic, the latter expressed "his rejection of the [continuation] of the CA [or] the idea of calling for a new one...according to him because the road would be *too complicated*, with *too many changes and uncertainties*."<sup>24</sup>

Given the impasse, the executive intervened and, in coordination with the UP, prepared its own draft constitution outside the CA, which it expected to get fast approval by the MAS' majority in the CA. Garcia Linera called for the social movements to defend the CA; "Let's not leave it [the CA] to be kidnapped by a political minority...It is the people with their mobilisation who shall defend this democratic conquest, the most important in the last fifty years".<sup>25</sup> Leaders of the *half moon* announced that if the CA did not deliver a full regime of autonomies, they would start to apply it *de facto*. The population of Sucre, for its part, gathered outside the building where the CA was meeting to stop the proceedings until the issue of the capital was reinstalled in the debate. The MAS-IPSP and executive

<sup>24</sup> Rodriguez Ostria (n 15)

<sup>25</sup> Garcia Linera quoted in a report from *Los Tiempos* (Cochabamba 9 November, 2007)).

branch then instructed their constituent members to reinstall the CA in the *Glorieta Palace*, which was a military precinct. The members of PODEMOS, the MNR and part of UN boycotted the session.

Thousands gathered outside *La Glorieta* trying to block the plenary session, military units blocked their way and three protesters died. Under these conditions the CA, by now mostly made up of representatives of the MAS, approved a draft constitution without debating a single article. And on November 27 the Congress, in the absence of the opposition and surrounded by social movements, approved the possibility for the CA to meet anywhere in the country, after which it moved to Oruro, one of the strongholds of the MAS. Finally, on December 9, 164 members out of 255, which are less than two-thirds, approved a new draft constitution of 411 articles. The opposition withdrew to the *half moon*. Five days later President Morales signed the draft Constitution to be approved in a future referendum and there was a massive celebration in La Paz. On the same day, the so-called provisional autonomous commission of Santa Cruz stated that its draft *Autonomous Charter* was ready for approval in a future referendum, a move that was followed by the other three departments of the *half moon*, during the following weeks.

By January 2008, the blocs in conflict had broadened their organizational bases. The UP and the MAS-IPSP gathered around an organisation called the National Council for Change (CONALCAM),<sup>26</sup> which pushed for an immediate approval of the so-called Oruro Constitution. On the other side, the civic-committees of the *half moon* and its prefects formed an organisation called the Democratic National Council (CONALDE),<sup>27</sup> advocating a regime of departmental autonomies. The relation of CONALDE and PODEMOS was not clear and became competitive over time. Later on, the *Interinstitutional Comitee* of Sucre and its prefect,<sup>28</sup> as well as the prefect of Cochabamba and its mainly urban-based civic committee, joined CONALDE.

Each department of the *half moon* called for a referendum to approve its constitutive statute between May and June 2008. The MAS-IPSP called for the population of these departments to de-legitimise them by mobilising in the streets and boycotting them.<sup>29</sup> The referendums in the four departments (Beni, Pando, Santa Cruz and Tarija) represented a victory for CONALDE, which won from 79 to 86 per cent for the yes. Despite some important pockets of resistance within the *half moon*, CONALDE was emboldened by these results and felt strong enough to send a letter to President Morales calling for a dialogue on the basis of the autonomic statutes. They claimed: “with [our] victory in Tarija, we are four departments that have consolidated their autonomy...and soon we will be five, six and later nine....”<sup>30</sup> If Morales didn’t agree on these terms, they proposed to call early elections in order for “the people to settle this contradiction”<sup>31</sup>.

The national leadership of PODEMOS, which had been absent in the struggle for the autonomous statutes, began to see the rise of CONALDE as a threat to its claim of representing the opposition.

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<sup>26</sup> *Consejo Nacional para el Cambio* [National Coordinator for Change].

<sup>27</sup> *Consejo Nacional Democrático* [National Democratic Council].

<sup>28</sup> Savina Cuellar, a peasant leader who was former member of the MAS-IPSP and switched sides after the conflict over the capital.

<sup>29</sup> International Crisis Group, ‘Bolivia: Rescuing the New Constitution and Democratic Stability’ (Latin America Briefing No 18, International Crisis Group 19 June 2008) <[www.crisisgroup.org/latin-america-caribbean/andes/bolivia/bolivia-rescuing-new-constitution-and-democratic-stability](http://www.crisisgroup.org/latin-america-caribbean/andes/bolivia/bolivia-rescuing-new-constitution-and-democratic-stability)>.

<sup>30</sup> Boris Miranda, *La Mañana después de la guerra* (El Cuervo Editorial 2012) 114, quoting the letter from CONALDE to President Morales (June 2008), after the referendum on the autonomous statute of Tarija.

<sup>31</sup> *ibid.*

In a tactic designed to reassert its leadership, the top ranks opted to refloat a draft law that had been presented by the MAS in December 2007, by which the President and prefects would measure their popular support in a recall referendum. At the time, PODEMOS had blocked the project because a recall referendum was not a legally recognized instrument. But in the new circumstances, PODEMOS assumed that a weakened government would reject the idea. However, after a moment of hesitation, Morales decided to take the challenge.

The recall referendum of August 10 delivered a 67 per cent vote for Morales nationally, though he lost in three of the *half moon* departments. Many people voted to ratify both Morales and their respective prefects, including key opposition prefects<sup>32</sup> such as Ruben Costas from Santa Cruz, who was ratified with a 66 per cent vote. Nevertheless, it was clear that Morales was the most legitimate political actor at the national level. Morales addressed the nation in a conciliatory tone offering to harmonize the constitution and the statutes. In contrast, the tone of Costas's speech was highly confrontational, accusing Morales of the main responsibility for the political crisis.<sup>33</sup> Costas did not attend the meeting then held by Morales in La Paz, and soon after it started, the other prefects of the *half moon* abandoned it. Thus, instead of settling the crisis, the recall referendum intensified tensions between the contending forces.

Emboldened by its nationwide electoral support, the Government, in coordination with CONALCAM, advanced the idea of a referendum on the *Oruro Constitution*, which would be done by presidential decree, contrary to the 2004 Constitution and the LCCA. Vice President Garcia Linera declared: "Bolivia has given us the mandate to continue with this process", and he declared the dialogue on a new Constitution and departmental statutes closed.<sup>34</sup> He offered "to regulate departmental autonomies through a law in a future dialogue...the day after the new Constitution was approved".<sup>35</sup> In reaction, the prefect of Tarija called for elections to form a "Departmental Parliament [as was] established in the Autonomic Statute of Tarija".<sup>36</sup> The National Electoral Court managed to temper the escalation by stating that it would not administer any electoral process called by either the government or the prefects if it was not approved by Congress.<sup>37</sup>

September 2008 marked the turning point when the crisis reached its highest peaks of violence. On September 2, CONALDE called for a region-wide mobilisation and the blockade of roads until they reach their objectives of recovering their share of the tax on hydrocarbons, achieving rejection of the referendum on the new constitution called by the MAS, and getting recognition of the departmental autonomies.<sup>38</sup> The Executive took a step back and agreed to call for a referendum through a law approved by Congress, but the next day CONALDE upped the stakes and called for the "... the application of the autonomic statutes...and the formation of a broad front of citizens, organisations

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<sup>32</sup> Though the Prefects of Cochabamba and La Paz, strongholds of the MAS, were recalled, creating a clear divide between the eastern lowlands and the western highlands of the country.

<sup>33</sup> Miranda (n 30); Rodríguez Ostría (n 15); Gustavo Bonifaz Moreno, 'Causas y consecuencias geopolíticas de la brecha entre legalidad y legitimidad en Bolivia. El caso de la violencia en Pando en septiembre de 2008' (2011) 33 Friedrich Ebert Stiftung-Colombia Programa de Cooperación en Seguridad Regional Policy Paper 1.

<sup>34</sup> Rodríguez Ostría (n 15) ch 3, 17.

<sup>35</sup> *ibid* 19 (emphasis added).

<sup>36</sup> *ibid* 20.

<sup>37</sup> *ibid*.

<sup>38</sup> *ibid*.



and institutions to defend democracy.”<sup>39</sup> CONALCAM, as a response, called for a “siege to Congress until they approve, by two thirds, a law calling for a Constitutional referendum.”<sup>40</sup>

CONALDE initiated protests, hunger strikes, and road blockades in the eastern lowlands. The immediate aim was to force Morales to compromise by including key aspects of the autonomous statutes, as drafted in the regions, in the new constitution.<sup>41</sup> Soon after, all major roads in the eastern lowlands and Tarija were blocked and the major offices of the central government in the *half moon* were stormed and taken by the autonomist movement. In three days, 75 of these buildings were taken as part of a campaign, later on, to “nominate new authorities by the opposition prefects...aiming at the creation of a parallel legal order.”<sup>42</sup> By September 5, civic committee supporters in Pando had taken over the regional airport. President Morales accused the civic committees and the prefects of initiating a *civic-prefectural coup d'état*. By September 11, the situation deteriorated to the point that a gas pipeline supplying Brazil was blown up.<sup>43</sup> Over the following hours, street battles took place between supporters of CONALCAM and CONALDE in Tarija, in the south of Bolivia.

In Pando, at the other end of the country, rural peasant unions decided to start a march towards the departmental capital, Cobija, in order to re-take the land reform offices and overthrow the opposition prefect, Leopoldo Fernandez. This was part of a nation-wide initiative of counter mobilisation organized by CONALCAM, in coordination with the MAS-IPSP. On September 9, Fidel Surco, leader of CONALCAM declared that this was going to be a nation-wide siege, he added: “we will teach them [CONALDE] how to do roadblocks.”<sup>44</sup> In sum, the entire country was engulfed in a dynamic of mobilisation and counter-mobilisation, drifting towards civil war.

Peasants from Pando started the mobilisation. The mayor of a small municipality controlled by the MAS provided them with trucks<sup>45</sup> and they joined a second column of peasants before heading to Cobija. They encountered pro-autonomist activists and took six of them as hostages.<sup>46</sup> By noon, a small police unit of 50 men was the only obstacle separating the parts. The police negotiated the release of the hostages but could not disarm the factions. After the hostages were released, civic committee supporters opened fire. Over the next few minutes, at least 11 peasants and one additional civic committee supporter were killed, raising the death toll to 13. According to a UN report, 593 Bolivians crossed the border to seek refuge in Brazil.<sup>47</sup> In the following days, the Government declared a state of emergency in Pando and imprisoned the prefect, Leopoldo Fernandez. Nevertheless, violence showed no signs of ending, since thousands of members of CONALCAM, many armed, were advancing towards the city of Santa Cruz. Only after the international community offered to mediate, did the violence cease, just before the CONALCAM armed march reach Santa Cruz.

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<sup>39</sup> *ibid.*

<sup>40</sup> *ibid.*

<sup>41</sup> Raúl Peñaranda, Carlos Bohort Irahola, and Carlos Romero (eds), *Del conflicto al dialogo: Memorias de un acuerdo constitucional* (Friedrich Ebert Stiftung, Netherlands Institute for Multiparty Democracy and Bolivian Foundation for Multiparty Democracy 2009).

<sup>42</sup> Miranda (n 30) 48.

<sup>43</sup> Bonifaz Moreno (n 33); Rodriguez Ostria (n 15).

<sup>44</sup> *La Razon* (La Paz 9 September 2008).

<sup>45</sup> Bonifaz Moreno (n 33).

<sup>46</sup> *ibid.*

<sup>47</sup> *ibid.*

The intervention that stopped further violence came from outside Bolivia, from an emergency meeting of UNASUR<sup>48</sup> on September 15, 2008.<sup>49</sup> The UNASUR initiative had followed the mission led by the OAS<sup>50</sup> in April of 2008.<sup>51</sup> The OAS, through its Secretary of Political Affairs, Dante Caputto, was given the mandate to mediate between the government on the one hand and the opposition in the legislature and the prefects on the other hand. UNASUR, through its pro-tempore chair, President Michelle Bachelet, issued a communiqué expressing strong support for government: “the [UNASUR] governments emphatically reject and will not recognise any situation that attempts a civil coup or a rupture of the established institutional order, compromising the territorial unity of Bolivia”.<sup>52</sup>

The first meetings after the violent confrontations were held in the city of Cochabamba from September 18 to October 5. The negotiations bogged down, however, over a lack of compromise regarding the opposition demand to reinstate hydrocarbon revenues in favour of the departments. The talks moved from open-door meetings in Cochabamba, to closed-door meetings in La Paz, between leaders of the congressional majority and minority.

Three issues sealed the compromise agreement. First, the government agreed to seek a single re-election period for president Morales under the new constitution. This meant forfeiting the possibility of a serial re-election, or at least two consecutive re-elections. Second, the opposition agreed to scale down their demands in the autonomy chapter of the constitution and to give a new Congress the authority to prepare a future law on decentralisation. Third, both sides agreed to an electoral roadmap which would see a ratification referendum on the new constitution in the following months and general elections the following year. Finally, after changing 144 Articles, Congress approved the new draft Constitution on October 20, 2008. In January 2009, the constitutional referendum saw more than 60 per cent of the electorate voting for the new constitution, though it was opposed in the four departments of the *half moon*, whose civic leaders and prefects had campaigned against it.

## Outcome

In early 2009 general elections took place, in accordance with the roadmap negotiated by the parties. Their outcome gave the MAS the upper hand in defining the future process of decentralisation. This happened because PODEMOS disappeared. The opposition became much more fragmented and volatile, whereas the MAS won two thirds of the seats in Congress. This gave the party the chance to shape the Framework Law on Autonomies and Decentralization (FLAD) that was approved in 2010.

Before the adoption of the Constitution of 2009, Bolivia was politically decentralized only at the municipal level. Thus, Bolivia was a two-tier model of decentralization. The central government was the only level in the system that had its political legitimacy provided by competitive elections and it made most major decisions up until 1994. After 1994 local governments were also elected by popular vote and they administered, with autonomy in terms of planning and budgeting, the provision of

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<sup>48</sup> *Union de Naciones Suramericanas*, is a political integration project formed by all the Spanish-speaking countries of South America.

<sup>49</sup> Peñaranda, Irahola, and Romero (n 41).

<sup>50</sup> Organisation of American States.

<sup>51</sup> Interview with Rodrigo Zubieta, 2013 (Via Skype from Washington DC). Zubieta is the former advisor to Dante Caputto, Secretary for Political Affairs of OAS in 2008. Zubieta is the current Head of Special Missions at the OAS.

<sup>52</sup> The Union of South American Nations (USAN; Spanish: *Unión de Naciones Suramericanas*, UNASUR), ‘Informe de la Comisión de UNASUR sobre los sucesos de Pando: hacia un alba de justicia para Bolivia’ (UNASUR 2008) 1.

education and health services, infrastructure, irrigation, roads, sport and cultural programs. However, the departmental prefects were appointed by the President until 2005 and did not have political autonomy, but merely executed infrastructure projects within a decentralized administrative scheme of the central government.

After 2009, under the new Constitution and as result of the politicization of territorial cleavages that had occurred, the system and its functioning became much more complex. The central government shared many areas of responsibility with the departmental, municipal and indigenous or peasant levels. The departments, with elected governors and assemblies, administered, exclusively or jointly with other levels, the planning and provision of public services, while the municipal level kept the powers obtained after 1994. The indigenous authorities, now elected according to their customary rules and practices, obtained significant territorial autonomy through the FLAD<sup>53</sup> of 2010. Thus, the Constitutional settlement had addressed the tensions between the *half moon* and the Andes and between indigenous and non-indigenous sectors of society by creating a complex multi-layer structure of government, while leaving important issues regarding the fiscal structure and the extent of autonomy of indigenous systems of justice postponed for further legislation.

In December of 2010 Congress approved the Law of Jurisdictional Demarcation (LJD)<sup>54</sup> which decided the scope of indigenous law within the framework of the new legal system. Following the re-definition of the Bolivian state as a plurinational state, the legal system is based on the principle of legal pluralism, by which the ordinary, namely *western*, legal system is joined, in equal hierarchy, by the indigenous system of law and jurisdiction as well as a third jurisdiction for environmental and agrarian laws and regulations based on mutual cooperation and coordination. Disputes between these systems will be settled by the new Plurinational Constitutional Tribunal. Thus, a majority of Bolivia's population decided, via referendum, to recognize the collective right to self-government for the indigenous population along with their institutions and customary norms within a framework of balance with the ordinary legal system.

Despite the fact that many indigenous organizations were not satisfied with the outcome, the new framework establishes that for a matter to fully fall into the jurisdiction of the indigenous legal system, especially regarding criminal law, there must be a material, personal and territorial concurrence or identity. In other words, indigenous laws will be applied to members of a particular indigenous people, to facts, relations and conflicts originated or whose effects take place within the territory of the indigenous autonomy, and regarding facts, relations or conflicts historically regulated by the indigenous norms and procedures of the group. Indigenous norms have to respect the individual rights, the rights of women and young persons recognized in the Bolivian constitutional and in international law. As of 2016, eleven indigenous territories have decided to become indigenous autonomies though the full exercise of their normative powers awaits the approval of their autonomic charters. In June 2015 five indigenous autonomies held referendums in which three approved their charters and two rejected them. In any case, it is too early to make a thorough analysis of the workings of legal pluralism within the indigenous autonomies and the overall legal system of the country. It is foreseeable though that the implementation of such a complex legal-institutional design will lead to tensions.

Another issue that was postponed remains unresolved. The MAS won over two thirds of the seats in parliament in the elections of 2009 and 2014, and the opposition has remained divided and volatile.

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<sup>53</sup> Law 031 *Ley Marco de Autonomías y Descentralización* Andrés Ibañez 2010 (Bolivia).

<sup>54</sup> Law 073 *de Deslinde Jurisdiccional* 2010 (Bolivia).

There was to have been a *fiscal pact* to determine the allocation of tax powers to the decentralized entities, but this did not happen in the new law on decentralization (FLAD) in 2010 and was pushed into the future, because the central government did not see a pact as being in its interest. Regional opposition parties control Santa Cruz and Tarija, but in the absence of a national opposition able to counterbalance the hegemony of the MAS, they lack the political weight to force a real negotiation of a fiscal pact. This situation will probably extend well into the future, at least until the elections of 2019. The fiscal pact is important for the politics of territorial cleavages in Bolivia because both the central government and the departments rely heavily on the income obtained by the country for its exports of oil and, more importantly, natural gas

The taxation of hydrocarbons and its relationship to the funding of sub-national territorial entities has gone through several phases. From 1957 until 1996, the Bolivian state imposed a 50 per cent take of oil and gas revenues, of which 11 per cent went to the producing departments. The Popular Participation Law of 1993, analyzed in the background section, created the new municipal structure of Bolivia and established the principle of fiscal co-participation, according to which municipalities and universities respectively received shares of 20 percent and 5 percent of total national revenue<sup>55</sup>. Municipalities received these funds according to their population size., though the poorest municipalities, often with small populations, received further resources under a pro-poor formula for the distribution of funds that Bolivia received under the World Bank's HIPC II initiative<sup>56</sup> as of 2000. Hence, up until 2005 municipalities did not receive funds from royalties or taxes on hydrocarbons.

In 1996, a neo-liberal reform of the Hydrocarbons Code dropped the government's take from 50 to 18 per cent with a view to encouraging development, while maintaining the 11 per cent royalty that went to producing departments. The same year, a new Administrative Decentralization Law devolved administrative responsibilities to the intermediate level (departments), but it was less ambitious than the municipalization reform of 1993 in that it did not advance democratic legitimacy at the departmental level or provide them with further resources. These reforms were clearly aimed at weakening the regional elites of the departments of the eastern and southern lowlands, who were perceived by President Sánchez de Lozada as threatening the central authority of the state.

As discussed in the section on constitutional engagement, these elites would re-emerge as key actors demanding an ambitious territorial autonomy and more revenues for their departments. In response, in 2005, the Mesa government returned to a 50 per cent take. Out of the extra 32 percent captured under the new tax, 4 per cent went to each producing department, bringing their total share of production revenues to 16 percent. However, the 4 percent for the four producing departments allocated 2.7 per cent to municipalities and 0.3 per cent to universities, so the departmental governments got only an additional 1 per cent. Each non-producing department received 2 percent for a total of 10 percent for the five of them, with the same scheme for proportional allocation within departments to municipalities, universities and departmental governments. The remaining lion's share of the enhanced take was collected by the central government and redistributed to universities, the

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<sup>55</sup> Maria Lasa Aresti, 'Oil and Gas Revenue Sharing in Bolivia', (Natural Resource Governance Institute, Revenue Sharing Case Study, April 2016).

<sup>56</sup> The HIPC initiative was an IMF-WB joint effort launched in 1996 and reviewed in 1999 to benefit highly indebted poor countries, enabling debt relief and strengthening the links between debt relief, poverty reduction, and social policies.

<https://www.imf.org/en/About/Factsheets/Sheets/2016/08/01/16/11/Debt-Relief-Under-the-Heavily-Indebted-Poor-Countries-Initiative>

armed forces, the elderly and an indigenous development fund<sup>57</sup>. By assigning these revenues to municipal governments and indigenous sectors, the MAS-IPSP tried to counterbalance the pro-autonomy segments of the half moon notably at the departmental level while empowering its rural and indigenous constituency.

Hence, the formula by which these percentages were assigned to different territorial levels was not the result of a rational exercise in terms of efficiency or equity; rather, it was the result of a highly political conflict amongst producing and non-producing departments, municipalities, indigenous organizations and private interests over their respective shares. As the traditional party system collapsed between 2003 and 2005, Congress experienced a legitimacy crisis over the distribution of gas revenues, notably driven by the lobby of the pro-autonomist departments, particularly Santa Cruz and Tarija, as well as by the indigenous and peasant organizations that constituted the MAS. Carlos Mesa, an outsider who had come into politics as Sánchez de Lozada's Vice-Presidential Candidate in 2002, became President in 2003 following Sanchez's resignation, but he had no parliamentary support to counterbalance the centrifugal struggle over the allocation of oil and gas rents.

In 2005, Morales won the presidency and was determined to implement the MAS's view of the role of the state. He nationalized the petroleum sector in 2006 and increased the governmental take to 82 per cent of total revenues in the case of the so-called *megafields*, those with production greater than 100 million cubic feet per day<sup>58</sup>. Morales favored greater central control of revenues, notably to fund payments to the elderly, so in 2008 he reduced the share going to producing departments by 30 per cent. This led to demonstrations and violence in the producing regions and finally to the international mediation that led to the negotiations on a new constitution. Indeed, one of the key issues that led to the final agreement was a commitment by the government to abstain from further cuts in the departments' share of these revenues. So, while the opposition at the national level remains weakened and fragmented, the government has been cautious in this regard, recognizing that a change in policy could trigger renewed tensions between the central government and the departments that constituted the *half moon*.

The distributive struggle surrounding the gas rents was particularly sensitive in the last decade because, propelled by the high commodity prices registered in those years; Bolivia has been experiencing its highest ratios of economic growth ever. By 2010, the revenues obtained by the Bolivian state due to its exports of hydrocarbons constituted 6 per cent of its GDP.<sup>59</sup> In sum, the struggle over sharing petroleum revenues has been a key driver of the country's territorial cleavages. However, because the political struggle over revenue allocation was essentially cast in territorial terms—the shares for departments, municipalities, indigenous territories, provinces—the outcome has been an extremely unequal allocation of resources in per-capita terms. For example, by 2012, when governmental revenues from oil and gas averaged \$93 per capita across the whole country, the department of Tarija—which contains less than 5 percent of the population—received \$953 per capita while the department La Paz—containing almost a third of the Bolivian population—received less than \$10 per capita<sup>60</sup>. Decades of pressure exercised by the highly organized and politicized regional movements, and re-

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<sup>57</sup> Maria Lasa Aresti (n. 56)

<sup>58</sup> Currently, there are two megafields operating in Bolivia, San Alberto and Sábalo, both located in the department of Tarija.

<sup>59</sup> Gonzalo Chavez, 'Ingresos fiscales por la explotación de hidrocarburos en Bolivia' (Inter-American Development Bank Policy Briefing 2013).

<sup>60</sup> Maria Lisa Aresti (n. 56).



activated during the period of constitutional engagement explains this outcome, which Morales, despite his political victories, was not able to overturn.

The dramatic decrease in the international prices of oil and gas since 2014 have affected the shares going to different governments in Bolivia and create further pressure for negotiation of a new fiscal pact. During the negotiations to approve the new constitution, and on decentralization in the FLAD of 2010, the producing departments obtained tax powers whose implementation was postponed, because with their fiscal share and high revenues at the time, they didn't see the need to use these powers. However, the prospect of much lower petroleum revenues could lead the gas producing departments to become much more assertive on petroleum revenue sharing. Probably as a preemptive mechanism, the government has adopted new centralizing strategies. The president controls the Ministry of Autonomies and Decentralization, created under the 2009 constitution, and later demoted and absorbed into the Ministry of the Presidency in 2017. Since 2009, the central government has resorted to judicial prosecutions in its conflict with the prefects of the Half Moon. After a trial lasting eight years, the Prefect of Pando was sentenced to 15 years in prison for the violence of 2008. The prefect of Tarija was granted political asylum in Paraguay in 2011. The former Prefect of Beni is now in jail awaiting trial on charges of corruption. Finally, the only Prefect still in charge, namely Ruben Costas of Santa Cruz, is also accused of corruption but is free on bail while awaiting trial.

Another important issue for reaching a constitutional deal in 2008 was the MAS's commitment to limit President Morales to two consecutive terms. However, since the opposition has lost ground in the subsequent elections of 2009 and 2014, leaving the MAS in full control of the legislative agenda and the selection of the members of the Constitutional Tribunal, the MAS has been trying to undo the constitutional agreement of 2008 in regard to the issue of the reelection of Morales. In 2014 the Constitutional Tribunal ruled that Morales's terms in office should be counted from the approval of the new Constitution and not from when he was first elected president. Furthermore, the MAS used its two thirds majority in parliament to approve a draft amendment to the Constitution that would permit Morales to be reelected in 2019.<sup>61</sup> However, the majority of voters surprisingly rejected the amendment in a referendum in February 2016. This result was probably influenced by the economic effects of the fall in commodity prices and by corruption allegations against important indigenous leaders in charge of the indigenous fund, but especially by a scandal implicating the former domestic partner of Morales in influence peddling to facilitate contracts between the government and a Chinese construction company.

Morales and the MAS did not accept the results and the issue of his re-election was refloated in November 2017. The Constitutional Tribunal, answering to a constitutional consultation by parliamentarians from the MAS, agreed to allow Morales for a new reelection, based on the argument that the prohibition to elect the President for consecutive terms violates his political rights and the rights rest of the authorities elected by popular vote in Bolivia, allegedly contradicting Interamerican Convention on Human Rights. According to the Bolivian Constitution, international treaties on human rights must be applied with preference to the constitution. After ten years of relative calm, Santa Cruz, massive protests have taken place in Santa Cruz against this decision in December 2018.

## Lessons Learned

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<sup>61</sup> *La Razón* (La Paz 7 November 2016) 7.

Was the Bolivian constitutional transition mostly a story of enlightened institutional design or deft political accommodation? Structure or agency? As the constituent assembly met, most academic attention focused on the inner-workings of the assembly and the contents of the constitutional text itself. Years after the approval of the new Bolivian constitution, a new appreciation for the politics of approval comes into clearer focus. We believe the Constitution approved in 2009 reflects the balance of powers crystallized at the moment. The MAS successfully imposed the general framework of the Constitution but at the same time it had to accept the inclusion of significant departmental autonomies, to a large extent as proposed by the *Half Moon* early on. The Constitution and other legislation have actually adopted many parts of the institutional design envisaged in the autonomic charters approved in 2008. This is why the Constitution defines Bolivia as a pluri-national state with autonomies.

A central question is why so much political energy was focused on constitutional reform, given Bolivia's historically weak state and very strong societal dynamic. Political dividends would appear to have been higher for incremental changes that sustained the reigning political coalition. We suggest three general conclusions.

- Bolivia's constitutional agreement was possible in a weak state-strong society context because of two contextual factors. First, Bolivia had key procedural rules—institutions such as the Bolivian electoral court and the constitutional tribunal—to guide its turbulent and polarized constitutional process. Without a strong electoral court, in particular, the process and substance of constitutional reform would have been tainted by a polarized political environment. The electoral court was very important in redirecting the approval of the new constitution towards Congress when it declared that it would not administer any referendum on the Constitution or departmental autonomy if it was not sanctioned by law. Secondly, agreement was helped by the permeable and shifting political coalitions and re-alignments, in which neither ethnic nor territorial cleavages were fixed or absolute. The political gains of the MAS in the eastern lowlands and southern gas-producing departments set the stage for a national accommodation that had not been seen since the early political momentum of the 1952 National Revolution itself.
- The constitutional reform process followed a unique window of opportunity—the collapse of an historic political party alignment and the emergence of strong, alternative political coalitions, with one party becoming dominant. The MAS geared its political messaging and coalition-building towards the urban middle and popular classes as well as the informal sector of small businesses. This deliberate strategy of broadening its political tent—beyond its traditional ethnic and territorial reach in the Andes—paid off very well. The lesson is that in critical junctures competitive and open electoral politics can create incentives for bridging the territorial cleavages if the system contains parties and electoral laws conducive to the formation of crosscutting coalitions. However, the success of electoral competition—rather than mobilization in the streets—requires an impartial electoral authority respected by all the contending forces.
- Finally, the Bolivian constitutional transition set a floor for further social and political reforms—the beginning rather than the end of an ongoing political process. Although the rhetoric behind the constitutional reform was of comprehensive and systemic change, the new constitution is a negotiated and incremental text. It combines republican, liberal and democratic features along with newer collective indigenous rights and a more robust treatment of social and economic rights. It has by no means achieved closure. Many issues not included in the constitutional reform continue to define the policy agenda in Bolivia today—from fiscal

redistribution and justice sector reform to term limits on the presidency, the judicialization of the relations between the central government and sub-national governments controlled by the opposition, and the implementation, in practice, of the principle of plurinationalism. Despite the political dominance of Morales in national politics and his attempts to re-centralize political power, he has had to reach some degree of accommodation on fiscal matters with the *Half Moon*, which continues to derive significant advantage from its natural gas resources.

The Bolivian case shows both the potential scope and limitations of democratic constitutional transitions in weak states. The territorial dimensions of this process continue to play out today. Fragile and contingent agreements create the basis for robust institution-building over time. They also put more pressure on key political actors and institutions. As with many challenges in Bolivian democracy, constitutional change continues to be an open and evolving challenge.



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