



AGRICULTURE AND RURAL DEVELOPMENT TECHNICAL SERVICES PROJECT
AID/LAC/DR/RD, CHEMONICS INTERNATIONAL, U.S. DEPT. OF AGRICULTURE, LAND TENURE CENTER

***PROGRESS TOWARD TENURE BENCHMARKS
UNDER THE USAID/BOLIVIA P.L. 480 PROGRAM
AND RECOMMENDATIONS FOR FUTURE ACTION***

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Executive Summary

Under the P.L. 480 Program, MACA has yet to propose any new studies which might lead to a new law rationalizing Bolivia's legal agrarian framework. Many proposed laws are on the table for consideration. And the World Bank and FAO are providing technical assistance to MACA to promote a modernization in the sector.

The following actions are recommended under the P.L. 480 Agreement:

- * **Land Markets and Tenure.** A study should provide technical, operational assistance to GOB policy-makers on land market liberalization. These include methods of land regularization, land taxation, agriculture finance, land banks, land purchase mechanisms, access to appropriate technology, agricultural extension, enforcement of land boundaries, elimination of subsidies for cattle production, and other steps. The evaluation should address the Indigenous Groups, assessing the impact of the new environmental initiative and proposed tenure legislation on indigenous groups. Clear recommendations for local community-based management of natural resources should be explored and detailed. The study should also consider the impact of new and proposed legislation on women in both rural and urban settings. Recommendations for equalizing legal standing and status should be included. The study should reexamine issues of minifundio, migration, ethnic groups, and environmental impact, among others, considering the new data. Based on the above analysis, the study should make recommendations for modernizing appropriate legislation.

- * **Tenure Workshops.** The workshops should distribute information on tenure options. They should also express the costs and benefits associated with various options, and lessons learned from other countries facing similar problems. The workshops should provide a forum for informing policy-makers of tenure policy. They should provide an opportunity for broad public participation and debate in the legislative reform process. It would also be an excellent opportunity to inform the public on results from empirical studies done in Bolivia.

Scope of Work:

To write a brief document describing the progress made by the Government of Bolivia in meeting the land tenure improvement benchmark of the 1992-1994 P.L. 480 Title III agreement, between the U.S. Government and the Government of Bolivia.

The benchmark of this agreement reads as follows:

Initiation of a process of studies and analyses together with a series of consultations with private and public sector individuals and institutions throughout the country with results in the development of a new law pertaining to land ownership (Date for initiation process--August 1993).

The stated purpose of including this benchmark in the agreement was to encourage the sustainable use of Bolivia's natural resource base, by providing incentives for investment in land improvements.

Progress to Date:

P.L. 480 and MACA:

The P.L. 480 office has advised the GOB that funds are available for studies leading to tenure reform under the P.L. 480 Agreement. However, under the P.L. 480 framework, MACA has not yet formalized any new study proposals. Nevertheless, MACA is considering the matter. The central focus has been on: (a) a new National Institute of Lands, (b) rationalization of legislation regarding property ownership and property rights, (c) strategies for a broadly-based land market, and (d) information distribution in seminars.

To provide context for policy-makers as they draft legislation, on May 21, 1993, P.L. 480 and USAID organized an in-house presentation on agricultural legislative modernization in Latin America for officials from MACA, INC, CNRA, CDF, SENMA, FONAMA, the Indigenous Parliament, Bolivian members of Congress, the FAO, the World Bank, and others. Members from these institutions learned of experiences in México, Peru, Honduras and Nicaragua. They were also able to engage each other in policy exchange on the subject.

More concretely, some new legislation has recently emerged, with many draft laws. These activities represent progress toward a modernization of Bolivia's legislative framework for agriculture and land tenure. However, without further

evaluation, it will be difficult for P.L. 480 to support some of these initiatives. Still they contribute to the public debate, and in this way are constructive contributions toward a new legal structure for land.

The various initiatives are summarized below:

(a) *Ley 1257 del 11 de julio, 1991*

This law ratified Convention 169 (of the *Organización Internacional de Trabajo*), legally recognizing indigenous communities descendants from the original populations that lived on the land at the time of the Spanish conquest.

The law accepts the notion of indigenous territories, covering the area in which the groups occupy and use the land, giving those groups property rights.

(b) *Ley General del Medio Ambiente*

This law, passed April 27, 1992, provides rules to regulate the conservation, preservation and improvement of the environment, and man's interaction with that environment. It attempts to control and improve soil, water, air and natural resource use. To accomplish this goal, the law created a new Secretary of the Environment (*Secretario Nacional del Medio Ambiente* or *SENMA*).

(c) Draft: *Ley de los Pueblos Indígenas del Oriente, el Chaco y la Amazonía*.

Lic. Wigberto Riverto Pinto, Executive Director of the *Instituto Indigenista Boliviano* has proposed draft *Ley de los Pueblos Indígenas del Oriente, el Chaco y la Amazonía*. It was first presented in August 1991, and was the result of a long discussion between indigenous communities, the government and MACA. The draft itself was produced by an Interinstitutional Commission, itself created by presidential decree, to create the draft.¹

This bill applies to traditional indigenous lands, their natural habitat and their socioeconomic status. It makes the lands unmarketable, indivisible, and exempt from adverse possession and foreclosure.² Despite Constitutional provisions allocating subsoil to the government, this bill would allow the indigenous communities to take advantage of renewable natural resources (ex. trees) for their own use. They also would receive preference in the exploitation of nonrenewable resources (ex. petroleum, tin). The Bill would also recognize traditional and

¹ Decreto Supremo 22612, September 24, 1990.

² Article 10 of the draft law.

customary authorities, elected by the members of the indigenous communities, along with traditional customs.³

The bill would apply to all property not yet distributed in the east by the CNRA. It will meet resistance in this regard from cattle ranchers and lumber companies.

(d) Draft: *Ley de Comunidades Campesinas e Indígenas*.

Congressman Miguel Urioste F. de C. is the main drafter of this bill.⁴ Urioste says that the Agrarian Reform Law must be updated, and that the agrarian reform should enter a new phase. The law would provide recognition for the idea of territoriality for indigenous and campesino groups, of which there are more than 10,000. The indigenous and campesino groups would be afforded "legal personality" (*personalidad jurídica*). Community leadership and rule would be acknowledged.

Community titles would be issued to the group for the entire territory, along with family titles that could be given to each family. The community would be the owner of all collective lands, the territorial space inside the community, the flora and fauna, and real estate and personal property within the boundaries of the territory.

The law would include original communities and ex-haciendas. The main proponent of this law, Congressman Miguel Urioste, is a member of the *Centro de Estudios Para El Desarrollo Laboral y Agrario (CEDLA)*. Urioste's proposal has been discussed over the past year through the *Partido de Bolivia Libre*.

(e) Draft: *Ley de Naciones y Comunidades*.

According to the *Movimiento Katarista de Liberación*, authors of this 1992 draft, under traditional land systems in the highlands before the agrarian reform, the community leader used to allocate land according to need to members of the community. If need expanded, perhaps due to an increase in family membership, the leader would reallocate resources so that the family's needs would be met. As land became scarce in the altiplano, the leader would assign the member additional land in the valleys or low lands. This meant that many community members had two lots to farm, one in the altiplano and another in the lowland. Indigenous community members migrated back and forth between their lots.

³ See, for example, Articles 7 and 8 of the draft law.

⁴ Club de Economía Agrícola y Sociología Rural, Legislación agraria y tenencia de la tierra (1992).

Having multiple plots gave distinct advantages. It gave the farmer a spread of risk: if one plot suffered from a flood, a drought, a plague or other disaster, the member still had another lot. It also provided for "verticality," the risk diversification achieved by growing different crops on different plots at different altitudes. Further, as generations came and went, plots were not divided among family members and thus *minifundio* was avoided. Finally, the system appears to have had a number of advantages in terms of soil use and conservation practice.

The agrarian reform changed how the Aymaras and Quechuas farmed. First, the agrarian reform parcelized property, meaning that there was no more annual reallocation of property rights based on need. Farmers were suddenly unable to expand their farming area as need increased. Further, the indigenous were not allowed to have property in more than one location, cutting off access to valley lands. As generations passed, minifundio became apparent, and ecological damage occurred.

Starting in October 1990, Bolivia began to legally recognize several indigenous communities (most notably the Waranis from the eastern lowlands), giving those groups property rights. This would mean that these groups could exclude all others from use of their land, including other ethnic groups.

The highland indigenous community is not at odds not only with the government (whom it perceives has taken away its rights to lowland and valley land), but also with the lowland indigenous groups who, with the October 1990 legislation, have legal right to exclude the highland communities from access to the lowlands. The highland indigenous community seeks equal treatment and desires a global solution to the problem, rather than deals with select groups that prejudice other groups.

In summary, the group seeks: (1) a new political division constitutionally recognizing cultural and territorial differences between nations; (2) an arrangement where nations can govern their own use of soil and natural resources within their boundaries; (3) access to varied ecological zones (highland, valley and lowland) for the various nations; and (4) the transfer of mineral wealth to the communities and nations; (5) representation in each of the three branches of government (executive, judicial and legislative).

(f) Draft: *Ley Agraria*

Consultant José Luís Roca and Attorney Oscar Silva are the main drafters of this bill designed to facilitate land markets and commercial transactions.⁵

⁵ Club de Economía Agrícola y Sociología Rural, Legislación agraria y tenencia de la tierra (1992).

The law would allow rentals and parcelling. The spirit of the law is the private sector. Communal lands and ex-haciendas would both be parcelized into individual lots. Given that mining and petroleum laws have been reviewed this past year to allow greater private sector participation, it is now time to do the same with other land resources, Roca and Silva contend.

The draft law would also create a National Land Institute (José Luís Roca has since said that perhaps it should be at a local, departmental level instead) which would consolidate operations of the CNRA, *Centro de Desarrollo Forestal* and INC. This institute would also be in charge of the registration and titling of rural lands as well as a national cadastre. Curiously, it would not be in charge of registration and titling of urban properties, which would remain with the traditional registry.⁶ The Institute would seek the acquisition, conservation and elimination of rights to cut wood in forest areas.

Roca would remove "agrarian justice" from MACA and place it under the judicial branch of government.⁷ The agrarian inspectors would thus be maintained, but placed under the supervision of the Supreme Court. Likewise, agrarian judges and courts would fall under the Judicial Branch. Finally, the Roca law would create a agrarian court of appeals in La Paz. Formal civil code procedure often would be used.⁸

Roca feels that state paternalism under the agrarian reform and colonization is responsible for the lack of agrarian credit and an economic decline among campesinos. While the agrarian reform did break up most latifundios, its implementation has now led to *minifundio*, or *parvifundio*. Commercial rights for small producers would, in theory, turn this around.

Roca also proposes that "work" not be the primary means for obtaining land. He would allow for other ways to obtain land (ex. payment of cash), and would relax (but not eliminate) the system of reversion of land to the state in cases of disuse.⁹

⁶ This may be due to the fact that the registry is in the judiciary branch of government, while the Institute would be in the executive branch.

⁷ Draft law, art. 27.

⁸ Draft law, Title III, art. 43 and following.

⁹ Draft law, art. 15.

He would further permit that agricultural, pastoral and forest lands to be mortgaged.¹⁰ And, sharecropping and rental would become legal.¹¹

(g) Draft: *Ley Agraria Fundamental*

This is a set of ideas put forward in 1984 by the *Confederación Sindical Unica de Trabajadores Campesinos de Bolivia*.¹² It advocates self-determination for the nations of Bolivia and the struggle against imperialism. Interestingly, while claiming that the original agrarian reform was a product of imperialism, the "ley agraria fundamental" would preserve many of the current restrictions on property ownership and land rights, products of the agrarian reform. For example, land would still belong to the person who works the land, not to prior dispossessed original communities.¹³

(h) Draft: *Ley de Ordenamiento Territorial*.

There are a number of different views on what this law should state and a number of drafts and drafters. Indeed, there is little agreement on what the term *ordenamiento territorial* itself means. In a nutshell, the law should probably state how Bolivia allocates land among competing demands, including agricultural land, indigenous communities, forest reserves, housing, and so on, and controls water, soil, subsoil and land use. There is tremendous disagreement, however, on how this should be done. For example, who should determine which lands are fragile and in need of protection, who shall protect them, and what resources are needed if this is to happen? How can soil use be controlled? Can an "ordenamiento territorial" be used for zoning? These issues are currently being debated in Bolivia.

¹⁰ Draft law, art. 18.

¹¹ Draft law, art. 24.

¹² The text of the draft appears in Instituto Latinoamericano de Investigaciones Sociales, Debate Agrario: Hacia una segunda reforma agraria (1986) at 127-149. It is discussed in Jorge Alejandro Ovando Sanz, La Ley Agraria Fundamental y el Luminoso Destino de los Pueblos Indígenas (1988).

¹³ Art. 1 of the draft law. See also comments by Fernando Untoja in Honorable Cámara de Diputados, República de Bolivia, Legislatura 1990, Seminario Comunidad Campesina y legislación agraria 1990 (May, 1990) at 94.

(i) Draft: *Ley Forestal*.

A new forestry law is under consideration, with one 1992 draft on the table from the *Comisión del Medio Ambiente y Recursos Naturales* of the Congress. It addresses the forest concession system, among other concerns. The eventual law will probably have to address allocation of forest resources between indigenous groups, the GOB, "madereros" (timber cutters) and parks.

(j) Draft: *Ley de Aguas*.

This is being discussed among a number of drafters. Presumably it would address customary concerns about rights and access to water.

(k) Draft: *Ley de Subasta de las Tierras del Oriente*.

José Luís Roca is drafting a law to auction off remaining undistributed lands in the eastern lowlands of Santa Cruz. The idea would be to sell off state-held lands to the highest bidder, giving land a market value.

The World Bank and FAO:

MACA has been working with the World Bank and the FAO, and has made important strides toward new property legislation and removal of tenure constraints. The World Bank's Lowlands Project will provide MACA with land usage maps for the Department of Santa Cruz. This in turn will provide technical data for a subsequent draft *Ordenación del Territorio*, at least for that Department. And with such data in place, it may become possible in the very near future to create an *Instituto Departmental de Tierras*, for the Santa Cruz Department.

The World Bank is also involved in evaluating the feasibility and design of a future cadastre for Bolivia. Together with the *Instituto Geográfico Militar*, the World Bank is reviewing satellite and other photography in the *Altiplano*, valleys and the *Oriente*. Technical studies of Ururo, Cochabamba and Santa Cruz have been completed by the Bank. The Bank is also evaluating, through cartography, the amount of land already distributed, land in reserves, and *baldía* land. Perhaps as important, the World Bank is playing a major role in cleaning up (*saneamiento*) the myriad of problems with the property registries in both the National Colonization Institute and the National Council for Agrarian Reform through a \$800,000 project. These steps are an immense contribution to the information needed to draft a technically-sound *Ley de Ordenación Territorial*.

Meanwhile the Food and Agriculture Organization of the United Nations (FAO) has a project with MACA to address agriculture policy concerns in MACA. The FAO has stated that tenure problems are the major constraint to broadly-based,