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Reform, Popular Participation, and
Decentralization: Bolivia's Innovation in Legal and
Economic Reform, 1993-1997**

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**ADVANCING TOWARD PRIVATIZATION, EDUCATION REFORM,
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Steven E. Hendrix*

EXECUTIVE SUMMARY

Since 1993, President Gonzalo Sanchez de Lozada has initiated reforms designed to privatize industry, reform education, promote participation, and decentralize government. While controversial in their enactment, the reforms are revolutionary. The privatization program, actually called "capitalization," sells off a fifty percent interest in state enterprises, and invests the proceeds into retirement funds for all adult Bolivians. All new private investment is plowed back into the company to expand or upgrade service.

The education reforms are geared to providing basic education and adult education to citizens in their native language. This measure seeks to correct previous practice of teaching only in Spanish, despite the fact that the majority of Bolivians are indigenous people, speaking languages other than Spanish. The reforms also hope to address centuries of discrimination against indigenous groups and women, providing them with more equal opportunities for advancement through education.

Popular Participation promotes a decentralization of fiscal authority and responsibility from central government to the municipal level. Previously, decision making was highly centralized at the nation's capital. Budgets were allocated primarily to the big three cities: La Paz, Cochabamba, and Santa Cruz. Today, this is no longer true: many local communities now receive funds. Finally, a new decentralization law seeks to cement control of government at the local level. It provides for strong municipalities, but stops short of federalism by denying much power to the state level.

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Taken as a whole, these measures are the most exciting legislative changes in Bolivia since the agrarian reform of 1953 which immediately followed the Revolution and agrarian reform legislation in 1952. Regionally, these changes rank with the North American Free Trade Agreement, MERCOSUR, and Mexico's changes to Article 27 of the Mexican Constitution as the most important legal developments in the hemisphere this decade. In this light, the Bolivian efforts at popular participation and its related activities become a model for other countries to evaluate as they confront similar challenges.

I. INTRODUCTION

The caricature of Bolivia is a country plagued by military dictatorships and political instability.¹ Bolivia experienced 78 governments in 169 years of independence. This instability is now changing. Elected governments have been in place for twelve years.² Also, there have been years of economic stability since 1985. Previously, inflation topped twenty-three thousand percent. In 1994, inflation fell to about 7.5%. In Latin America, only Argentina had a lower rate. Once heavily protectionist, Bolivia now has a maximum tariff of ten percent and allows free entry and exit of capital.³

Still, according to Bolivian Vice President Victor Hugo Cardenas, "Bolivia has always had an exclusionary democracy, representing the paved streets of the cities while leaving rural Indians legally invisible Native peoples no longer want to be the object of anthropological studies, but participants in constructing democracies."⁴

Bolivia is Latin America's second-poorest nation. It trails only Haiti. About seventy percent of Bolivians live in poverty; life expectancy is fifty-nine years, and eighty-two of every one thousand babies die before they are one year old. Maternal mortality is the worst in the Americas and one million women are illiterate.⁵

Descendants of the Aymara and Inca peoples account for seventy percent of Bolivia's estimated seven million inhabitants. Still, most of their

1. See Richard W. Patch, *Bolivia: The Restrained Revolution*, LAND TENURE CENTER REPRINT NO. 33 (1961) (available from the Land Tenure Center Library at the University of Wisconsin).

2. See Stephen Fidler, *Survey of Bolivia (I)*, FIN. TIMES, Nov. 9, 1994, available in WESTLAW, 1994 WL 12635832.

3. See *id.*

4. Jack Epstein, *Bolivia Invites Indians to Its 'Revolution'*, S.F. CHRON., Feb. 6, 1995, at A10.

5. See *id.*

communities have received little or no government support.⁶ To get any level of assistance, Aymara leaders were often forced to make numerous trips to La Paz to meet with urban politicians.⁷ As late as the 1930s, indigenous citizens were not welcome in the white sections of La Paz, the nation's capital. Often, they were forced to bathe and change into "western" clothing before entering the city. A 1925 decree prohibiting indigenous people from areas near the main square was on the books until 1944.⁸

Definition of race in Bolivia has come about in social rather than strictly genetic terms. The peasants are the indigenous people. The urban lower and lower middle class, and the rural freehold farmers wear European dress, and are usually bilingual (Aymara or Quechua, plus Spanish). These individuals are often classified as *mestizos* (generically in Latin America) or *cholos* (as they are called in Bolivia). The upper class, or *gente decente* (as the peasants refer to them in Bolivia), comprises Spanish speakers with western dress who eat non-indigenous foods. Originally, the elites or whites were of European ancestry. But over the years as families intermarried, new groupings emerged.⁹

The most recent Constitutional framework for Bolivia dates from 1967.¹⁰ That document establishes Bolivia as a "unitary" republic.¹¹ Power is separated into three branches of government: legislative, executive, and judiciary.¹² The legislature is comprised of two houses, a Senate and a House of Deputies.¹³ The President's term of office is four years without possibility for re-election.¹⁴ The country is further divided into Departments, each headed by a Municipal Council ("*Concejo Municipal*") and a Mayor ("*Alcalde*").¹⁵

Military dictatorship ended in Bolivia in August 1982 with the election of Hernan Siles Zuazo as President, and Jaime Paz Zamora as Vice-President. Siles worked to dismantle the ferocious para-military apparatus. In earlier years, that system had been built with the aid of Argentine officials and foreign fascists like former Gestapo leader Klaus Barbie and terrorist Pier Luigi Pagliari. However, during the de-militarization, the economy was out of control. Siles began to print more money, with money in circulation increasing over one

6. See *id.*

7. See *id.*

8. See *id.*

9. HERBERT S. KLEIN, *BOLIVIA: THE EVOLUTION OF A MULTI-ETHNIC SOCIETY* X (2d ed. 1992).

10. See BOL. CONST. (Constitución Política del Estado, Feb. 2, 1967).

11. See *id.* art. 1.

12. See *id.* art. 2.

13. See *id.* art. 46.

14. See *id.* art. 87.

15. See *id.* art. 200.

thousand percent between 1980 and 1984. The government was unable to govern effectively or force through any serious stabilization policies.¹⁶

By 1985, the problems were clear. The newly elected President, Victor Paz Estensorro, began a systematic attack on the state bureaucracy and implemented a conservative economic policy. With assistance from Harvard University, the government passed its "New Economic Plan" (Decree 21060, Aug. 25, 1985) which devalued the national currency, established a free floating exchange rate, eliminated all price and wage controls, raised public sector prices substantially, restricted government expenditures, and reduced the wages of government employees. The economy went into a deep recession, but inflation was reduced overnight to a two-digit level, down from 8,170% earlier in 1985 under Siles.¹⁷

By the 1989 election, none of the three leading political parties challenged the New Economic Plan or the dismantling of the state capitalization system.¹⁸ Estensorro's successor, President Jaime Paz Zamora stated:

The new MIR-New Majority and the participative convergence have agreed that the government of national unity must direct its efforts to the following priority objectives to consolidate the Bolivian democratic process and to improve the electoral system; to preserve the monetary and financial stability of the country; to reinitiate the process of economic development; to construct a new Bolivian society centered on the social policy; to modernize and decentralize the state to allow popular participation; to fight drug trafficking; to preserve the sovereignty, well-being, and development of our people, as well as the nation's values; and to fight political and administrative corruption in our society. . . .¹⁹

To undertake these tasks we will have to modernize the state and promote political and administrative decentralization. Our national programme will not work if we do not have a true democracy, which should not be formally representative but essentially participatory and, above all, decentralized. We must

16. See KLEIN, *supra* note 9, at 269-72.

17. See *id.* at 272, 274-75.

18. See *id.* at 284.

19. President Jaime Paz Zamora, *Bolivian President's Inaugural Address: Need for Social and Economic Modernization* (Radio Illimani broadcast, La Paz, Aug. 6, 1989) (transcript available in BBC Summary of World Broadcasts, Aug. 10, 1989, available in LEXIS, NEWS Library, NON-US File).

reduce the state to make the nation grow; we must strengthen our nation to rebuild the country.²⁰

Despite these commitments, only nine percent of the national budget was allocated for the countryside when President Gonzalo Sanchez de Lozada took office in 1993.²¹ President Sanchez began to implement changes outlined in his electoral platform, the "Plan for Everyone" (*Plan de Todos*).²² As a result, in 1994 the rural portion grew to twenty percent, or \$172 million. Small towns that once received \$300 a year increased to as much as \$250,000. Within this new system, administrative salaries were capped at ten percent of total revenues.²³

President Sanchez has argued that state enterprises can no longer continue to plunder politically, or be a source of inefficiency and corruption:

We all know the sources of financing for these enterprises from multilateral institutions and foreign aid have been closed. Education can no longer continue to be the national disaster it is now. This is reflected dramatically in a rate of illiteracy of 55 percent. I would like to stop here to ponder on this figure—an illiteracy rate of 55 percent. No-one can continue to tolerate the great difference between the countryside and the cities. This caused our country to have the highest percentage of rural poverty in the continent.²⁴

The external explanation is that the time for international cooperation, on which our country lives to a great extent, is coming gradually to an end. This will force Bolivia and many other countries to rely only on their own efforts. This is the reason why we have the idea of change in our minds and a light in our hearts.²⁵

20. *Id.*

21. Epstein, *supra* note 4, at A10. See also GONZALO SANCHEZ DE LOZADA & VICTOR HUGO CARDENAS, *EL PLAN DE TODOS* 13-14 (1993) (discussing some of the reasons for the failure of the previous government to enact the legislation).

22. See generally SANCHEZ DE LOZADA & CARDENAS, *supra* note 21.

23. See Epstein, *supra* note 4, at A10.

24. President Gonzalo Sanchez de Lozada, *Excerpts from Address at Independence Hall in Sucre to Mark the Beginning of a New Congressional Term*, (Television Nacional broadcast, La Paz, Aug. 6, 1995), (transcript available in BBC Summary of World Broadcasts, *President Sanchez Reviews Structural Reform Process*, Aug. 9, 1995, available in LEXIS, NEWS Library, NON-US File).

25. *Id.*

Capitalization is an answer to the need for more jobs. The educational reform is an answer to the need to improve our human resources, and popular participation is an answer to the unjust distribution of national income.²⁶

All these reforms seek to meet the great challenge of achieving the sustainable development of our country by ourselves.²⁷

Investments, an improvement in human resources and a reduction of poverty are part of the process of coping with the harsh reality. The next step is to promote the internal sector through pension funds and individual capitalization. Thus national investments will surpass foreign aid in order to extinguish our terrible dependence. With the shares of capitalization—that is, 50 percent of all important state companies like YPFB [Bolivian Government Oil Deposits], electrical and telephone companies, among others—we will have the basis to create the way for having pension funds from individual capitalization which will give Bolivia what every Bolivian dreams about: a dignified retirement.²⁸

But the proposed measures were not met with unanimous support. Shortly after the enactment of the new legislation, on March 28, 1995, La Paz was the stage of a battle between teachers and policemen. The confrontation also paralyzed the city, in the midst of a partially observed general nationwide strike organized by the Bolivian Labor Confederation (*Central Obrera Boliviana*, or COB). Public teachers opposed the Education Reform Law, while Labor fought the Capitalization Law and the Popular Participation Law, the current government's program to redistribute national wealth through a decentralization of the administration of national resources, as outlined in the Plan for Everyone.²⁹

On April 4, 1995, the town center of La Paz was once again a battlefield in which demonstrators and anti-riot police engaged in a cat-and-mouse game throughout the city streets, from very early in the morning until late in the

evening, beneath skies filled with the smell of tear gas.³⁰ The demonstrators were called out by the leaders of the teachers' union and by the COB. While the demonstrators and the police engaged in street clashes, COB leaders and the government walked away from the negotiations empty-handed.³¹

The COB stipulated that the government should agree to negotiate a series of demands that range from halting the privatization process of state-owned companies to salary increases beyond what is established by the national budget, and the repeal of the Educational Reform Law. The government refused to take a step backwards in its push for reform.³²

The tense atmosphere that prevailed in La Paz for those few weeks in April 1995 extended to other regions of the country. For example, in the Amazon jungle department (province) of Pando, teachers, supported by workers from other areas, staged a large protest march on April 4 that lasted ten hours and extended over thirty kilometers.³³

Faced with increasing social unrest, President Sanchez de Lozada declared a state of siege on April 18, 1995. This marked the fourth time an elected government resorted to this tactic since Bolivia's return to democracy in 1982. In contrast to the public acquiescence of previous states of siege, this time the authoritarian measure was strongly resisted. Coca leaf producers (*cocaleros*) threw dynamite at the army and blockaded roads. Teachers refused to start the school year. Miners reopened a union headquarters in La Paz. Students in Cochabamba took over the state university, and journalists declared a day of action in support of freedom of the press.³⁴

Previous states of siege (1985, 1986 and 1989) were comparatively more effective. They occurred in the days of hyperinflation. People feared the mass dismissals that came after the 1985 economic stabilization initiative. In those cases, citizens seemed to appreciate that economic stabilization required drastic measures. They were therefore willing to accept states of siege to avoid street clashes in protest of government policy. In more recent years, people have grown accustomed to stabilization. Consequently, they were unhappy with the economic model's failure to improve living standards and deliver promised jobs.³⁵

26. *Id.*

27. *Id.*

28. *Id.*

29. Alejandro Varela, *Striking Teachers and Police Clash but General Strike Only Partially Observed*, (EFE News Agency broadcast, Madrid, Mar. 28, 1995), (transcript available in BBC Summary of World Broadcasts, Mar. 29, 1995 available in LEXIS, NEWS Library, NON-US File).

30. *See Demonstrations in La Paz and Elsewhere; Various Groups Plan Further Stoppages*, (EFE News Agency broadcast, Madrid, Apr. 5, 1995), (transcript available in BBC Summary of World Broadcasts, Apr. 6, 1995, available in LEXIS, NEWS Library, NON-US File).

31. *See id.*

32. *See id.*

33. *See id.*

34. *See State of Siege Fails to Suppress Signs of Unrest*, LAGNIAPPE LETTER, Apr. 28, 1995, available in LEXIS, NEWS Library.

35. *See id.*

Another factor contributing to opposition to the siege was that the Sanchez de Lozada Administration lost strength over the second year of his presidency. Sanchez de Lozada was weakened by his tendency to micromanage and failure to devise an operational plan for his key reforms of popular participation, education reform, and capitalization.³⁶

In April 1995, President Sanchez de Lozada discussed the state of siege:

The measure had to be taken to recover the state of law and to protect the interests of all against the abuse of some who wanted to create a state of internal commotion. This state of commotion was creating a bad image and was jeopardizing the stability of the republic. The reform process for changing our society will not be stopped. As a marvelous example for our history, we made the decision to take three steps, and those steps are: education, popular participation and capitalization.³⁷

In 1996, one year later, the country was again in social gridlock. A general strike began on March 18, when state-employed teachers walked out in protest of low wages and the planned privatization of the state oil company, Yacimientos Petroliferos Fiscales Bolivianos (YPFB), as well as other state industries. The teachers were later joined by health-care workers, oil workers, public transportation workers, and students. During the strike, protests drawing crowds numbering in the tens of thousands occurred almost daily in the streets of Bolivia's capital, La Paz. At least forty thousand people marched in La Paz March 26, after police, the day before, accidentally killed a worker watching the demonstrations. The protests intensified further April 2, when approximately fifty thousand strikers rioted in the capital. The protesters shut down public transportation, threw dynamite sticks at police and looted stores. On April 4, 1996, the government ordered troops into the streets of the capital to prevent more rioting.³⁸

Nevertheless, in the government's first three years, 1993, 1994 and 1995, the three conceptual pillars of the "Plan for All"—Capitalization, Educational Reform, and Popular Participation with Decentralization—became concrete realities.³⁹ This paper examines these controversial programs and outlines their contribution to Bolivia's development. The programs have

36. See *id.*

37. *President Sanchez Justifies State of Siege in Speech to Armed Forces*, (Radio Nacional, La Paz, Apr. 24, 1995), (transcript available in BBC Summary of World Broadcasts, Apr. 26, 1995, available in LEXIS, NEWS Library).

38. See *Month-Long General Strike Ends*, FACTS ON FILE WORLD NEWS DIG., May 9, 1996, at 328 D2, available in LEXIS, NEWS Library.

39. See Sanchez de Lozada, *supra* note 24.

advanced local empowerment in the context of a general downsizing of government.

II. STRUCTURAL REFORM UNDER PRESIDENT SANCHEZ DE LOZADA

A. Capitalization and Privatization Reform.

According to Carlos Janada, an economist with Morgan Stanley, privatization was initially implemented in Bolivia for the smaller companies, particularly in the hotel sector. That process, however, quickly became associated with corruption.⁴⁰ However, the government carried out opinion polls and found it could promote an idea of capitalization.⁴¹ The capitalization program in Bolivia is really an adaptation of existing privatization trends across South America.⁴² However, the program has been adapted to Bolivia's special needs. Instead of selling off state-owned monopolies completely, like Brazil, Argentina, and a host of other countries, Bolivia plans to sell only half its shares in these enterprises. Private investors would control the companies, but the state still would share in profit.⁴³

The capitalization program is the cornerstone of Bolivia's attempt to increase private investment. The program will transfer six state companies, responsible for one-eighth of the country's economic activity, to the private sector. President Sanchez de Lozada hopes privatization will increase productivity of these industries, so they will one day represent twenty percent of gross domestic product, compared with about fourteen percent in 1994.⁴⁴

Capitalization differs from classic privatization programs. Interested companies or "strategic investors" are asked to contribute up to half the equity in the company being capitalized for a fifty percent controlling stake. The capital generated by that contribution is then used to provide technological improvements or expansion in services. The remaining equity in the company is

40. See Lisa Sedelnik, *A Capital Plan; Bolivia's Economic Policy*, 68 *LATIN FIN.* 38 (1995), available in LEXIS, NEWS Library.

41. See *id.*

42. See Kerry Luft, *Political Odd Couple Shake Up the Old Order in Bolivia*, *CHI. TRIB.*, Mar. 4, 1995, available in LEXIS, NEWS Library; Ley de Capitalizacion, No. 1544 (1994); see generally Jose Antonio de Chazal P., *Ley de Capitalizacion*, 4 *CONGRESO NAC. EXTRAORDINARIO DE COLEGIOS DE ABOGADOS DE BOLIVIA* 23 (1995).

43. See Luft, *supra* note 42.

44. See Fidler, *supra* note 2.

then distributed among the 3.2 million adult Bolivians through private pension funds.⁴⁵

Under capitalization, employees at a company being capitalized also have the chance to become shareholders or partners (on a voluntary basis) by purchasing shares. To become a partner or shareholder, the employee must buy at least one share and sign an option contract.⁴⁶

Begun in March 1994, about nine months after Sanchez de Lozada took office, the capitalization program was part of the President's broad economic stabilization plan.⁴⁷ In August 1994, the U.S. government began assistance to Bolivia to prepare five feasibility studies to carry out the program.⁴⁸ Called "The Year of Capitalization," the government hoped that 1995 would be the year all of sectoral legislation would be in place for capitalization.⁴⁹

One attractive field for capitalization was telecommunications. Passage of a telecommunications law was required to capitalize ENTEL (the state-run telecommunications company) to establish procedures and rules of the game.⁵⁰

Also attracting foreign investors were specific sectors with a tremendous amount of growth potential. For example, the demand for electricity is growing at a rate of about eight or nine percent per year. That growth rate will require doubling the current capacity over the next six to seven years.⁵¹

In the telecommunications sector, a field associated with high returns, investors have identified unsatisfied demand of roughly eighty to ninety percent beyond the number of existing telephone lines. In other words, demand requires nearly doubling the number of telephone lines over the next five to six years.⁵²

Based on this perceived demand, the government opened up six large, state-run businesses (accounting for approximately 12.5% of GDP) for investment in 1995.⁵³ Those companies are the electricity company (*Empresa Nacional de Electricidad*, or ENDE); the telecommunications company (*Empresa Nacional de Telecomunicaciones* or ENTEL); the railroad (*Empresa Nacional de Ferrocarriles* or ENFE); the smelting and metal refinery (*Empresa Metalurgica*

Vinto or EMV); the oil and gas company (*Yacimientos Petroliferos Fiscales Bolivianos* or YPF); and the air-line (*Lloyd Aereo Boliviano* or LAB).⁵⁴

Investor response has been impressive. Workers have also opted to participate in the employee stock option programs connected to the capitalization legislation.⁵⁵ In ENDE's case, the government has an almost ninety-one percent participation rate by workers. In ENTEL's case that participation is closer to ninety-five percent.⁵⁶

Revenue from capitalization goes to privately managed pension funds instead of the government treasury. It is hoped that the process will enable the government to greatly increase the national savings rate. It should also give Bolivians added security.⁵⁷ "[T]he capitalization program in Bolivia provides a safety net for the workers, instant wealth and gratification in a sense," reports Norberto Ellemberger, Latin America Regional Director for Coopers & Lybrand.⁵⁸

While financial insecurity still affects Latin America, Bolivia may be creating the foundation for ensuring future economic growth by increasing its savings rate. Assuming all goes well, Bolivia may end up being a model.⁵⁹ Many other countries have indicated interest in Bolivia's unique program and are watching to see what happens.⁶⁰

So far, three electrical companies which belonged to the National Electricity Enterprise have been "capitalized." Despite the criticism, there have been no dismissals or evidence of corruption. Workers have kept their jobs, become shareholders, and seen their shares grow in value. The process was open: the enterprises received a contribution of almost 140 million dollars, and fifty percent of the shares are for the benefit of the Bolivian people.⁶¹ The new investment capital should generate employment.⁶²

Many critics have probably overlooked the fact that a plan of this nature takes a great deal of effort to prepare.⁶³ Innovative processes such as this one, by their nature, produce problems that have to be addressed as they occur. According to Francisco Munoz, a managing partner with Price Waterhouse in La Paz, the Bolivian government does not have the experience to advance

45. See Sedelnik, *supra* note 40.

46. See *id.*

47. See *id.*

48. This U.S. \$1.25 million program was financed by the U.S. Trade Development Agency. See Marianne Scholte, *US TDA Funds Five Capitalization Studies*, BOL. TIMES, Aug. 19, 1994 at 1.

49. See Sedelnik, *supra* note 40.

50. See *id.*

51. See *id.*

52. See *id.*

53. See REPUBLICA DE BOLIVIA, PLAN GENERAL DE DESARROLLO ECONOMICO Y SOCIAL DE LA REPUBLICA: EL CAMBIO PARA TODOS, 28-29 (Oct. 1994); Sedelnik, *supra* note 40.

54. See Sedelnik, *supra* note 40.

55. See *id.*

56. See *id.*

57. See *id.*

58. See *id.*

59. See *id.*

60. See *id.*

61. See Sanchez de Lozada, *supra* note 24.

62. See *id.*

63. See Sedelnik, *supra* note 40.

capitalization more quickly because of the uniqueness of the process in the world.⁶⁴

Many delays, for instance, are associated with passage of new legislation.⁶⁵ Edgar Saravia, Secretary of the Ministry of Capitalization, notes that "[t]here have been some small delays mostly linked to the fact that most of these processes require new legislation and in some cases that has been a bit more complicated to prepare, from a technical and legal point of view."⁶⁶

Delays slowed passage of the hydrocarbons law and the private pension funds law. A law to modernize tax laws has come into effect, together with legislation to create the new regulatory agency SIRESE (the Sectoral Regulatory System).⁶⁷ Another contributing factor to delay was the need for the President to focus on more pressing issues during his first year in office, including reorganizing the executive branch, and securing passage of the education reform law and popular participation laws.⁶⁸

Despite these delays, some portions of the "Plan for All" continue to progress. For example, fifty percent of shares in the Bolivian airline LAB have already been sold to Brazil's VASP. Similarly, the telecommunications conglomerate ENTEL has been sold in part to Italy's STET. Further, half of the electric power companies have been sold to American interests. In addition, all of the totally decrepit government-owned railways have been sold to Chilean interests. Still ahead is the capitalization of Bolivia's oil and natural gas company and the metal smelters at Vinto. Many Bolivians regard the oil company as something close to a national shrine which should under no circumstances pass into foreign hands. In a war with Paraguay back in the 1930s, Bolivians shed blood for the oilfields of the Chaco region.⁶⁹

The reasons for the delays associated with the privatization of YPFB (*Yacimientos Petroliferos Fiscales Bolivianos*—the state held oil and gas company) include: the reorganization of YPFB and the redistribution of personnel; the failure of the government to gain Congressional approval of a hydrocarbons profits tax before the sale; and the government's inability to complete work on regulations associated with the hydrocarbons law approved at the end of April 1996. The government originally planned to privatize YPFB at the end of 1995. The process was put back at the beginning of 1996 when the hydrocarbons law bogged down in Congress. The bidding date was extended until July 25, then to September 26, and then again to October 31, 1996. Further

delays, caused by political opposition to the sale and the government's problems finalizing the sale process, are likely.⁷⁰

The new hydrocarbons law, signed by President Gonzalo Sanchez de Lozada on April 30, 1996, provides for the capitalization-fifty percent partial privatization-of the upstream and transport divisions YPFB, leaving the refining, wholesale distribution of products, and several service companies in the hands of the state. YPFB will also administer all new joint venture contracts, existing operations, and contracts with international oil companies.⁷¹

The approval of this law, which provoked widespread popular opposition, will help secure the financial arrangements needed to start construction on the natural gas export pipeline to Brazil. Challenges faced by the government in drafting the new law included: (a) striking a balance between attracting foreign investment, needed to develop Bolivia's hydrocarbon reserves in order to supply the Brazil gas sale contract, and (b) maintaining tax revenues given that YPFB is the national treasury's biggest single contributor. The new hydrocarbons law balanced the thirst for investment with the need to maintain fiscal equilibrium through a profits tax—known as the surtax—which rises as hydrocarbon production increases. The new law distinguishes between the taxes levied on old production and new. Old production will continue to pay a fifty percent tax on production. The new tax regime will be introduced for new operations which will start paying an eighteen percent tax on production. Around twelve percent of income from the tax will be set aside for regional governments. Eleven percent will go to hydrocarbons producing departments and one percent to the underdeveloped departments of Beni and Pando. Six percent will be earmarked for the National Treasury.⁷²

Another important aspect of the new hydrocarbons law concerns the system of area concessions. Investors are not so much asked to detail investment amounts, but are invited to make commitments, set targets, and complete work they promised to do. The new law adopts open access with regard to the transport of hydrocarbons. This is important since Bolivia is seeking to become a gas distribution hub for the Southern Cone. The law also grants the hydrocarbons superintendency and the Sectoral Regulatory System (SIRESE) a role in regulating activities in the hydrocarbons sector to ensure fair competition. SIRESE will be funded by a one percent levy on transportation fees and refining receipts. In addition, the law has provisions to declare oil reserves as property of

64. *See id.*

65. *See id.*

66. *Id.*

67. *See id.*

68. *See id.*

69. *A Strong Dose of Reform for Bolivia*, SWISS REV. WORLD AFF., Sept. 2, 1996, available in LEXIS, NEWS Library.

70. *See Bolivia Delays YPFB Privatization Yet Again as it Releases Valuation*, LATIN AM. ENERGY ALERT, Sept. 20, 1996, available in LEXIS, NEWS Library.

71. *See Bolivia Approves Major Overhaul of Hydrocarbons Law*, LATIN AM. ENERGY ALERT, May 17, 1996, available in LEXIS, NEWS Library.

72. *See id.*

the state and to bar foreign companies from drilling within fifty kilometers of Bolivia's international borders.⁷³

On August 23, 1996, the Bolivian Supreme Court agreed to study the constitutional legality of the capitalization and hydrocarbons laws. Applications to declare the measures unconstitutional were submitted by organizations of pensioners and civic action groups, who contend that President Sanchez de Lozada exceeded his authority by attempting to end state control of basic industries and services, including the pensions system. The day the applications were filed, Pensions Secretary Alfonso Pena Rueda stated that the scheme to use proceeds from capitalizations to provide all Bolivians with a basic retirement pension would not be affected by the applications.⁷⁴

From the development perspective, the capitalization program has advantages and disadvantages. The capitalization approach to privatization may mitigate some of the popular doubts about traditional trade-sale privatizations. Leaving the proceeds with the company helps to solve the shortage of cash for working capital and investment that commonly afflicts popular participation schemes in Eastern Europe.⁷⁵ The Bolivian approach might work best where the government can afford to give up the direct revenue from the sale. The approach is improved where popular participation may help avoid political fallout. It also works best in sectors needing significant new investment. Still, the government receives no revenue from sales, something governments often cannot afford.⁷⁶ Further, privatization in strategic resources, particularly natural ones, have always been sensitive in Latin America. For example, few countries have privatized their oil industries. Even Chile maintains its nationally-owned mining company.⁷⁷

B. Capitalization and the Pension Fund System

Unlike traditional privatizations, Sanchez de Lozada's "capitalization" scheme was intended from the outset to benefit all the Bolivian people, not just the business community or those who can afford to buy into former state owned companies. In mid-August 1996, Bolivia's Capitalization Ministry called for

73. *See id.*

74. *See Legal Challenge to Capitalizations; Supreme Court to Rule on Application by Pensioners*, LATIN AM, WKLY REP., Sept. 5, 1996, available in LEXIS, NEWS Library, File No. WR-96-34.

75. *See Yvette Collymore, Haiti Economy: Bolivia Model Worries Haitian Groups*, INTER PRESS SERVICE, Apr. 19, 1996, available in LEXIS, NEWS Library.

76. *See id.*

77. *See Sally Bowen, The Americas: Sell-off Initiative Heading for Trouble*, FIN. TIMES, Apr. 16, 1996, at 3, available in LEXIS, NEWS Library.

international competitive bidding to select two private pension fund administrators (AFPs) to manage the "collective capitalization fund" produced by the privatization process.⁷⁸ Officially, the fund is expected to contain some \$1.4 billion and when the capitalization of YPFB goes forward, there could be substantially more. The Ministry's competitive bidding arrangement presupposes favorable passage of the new pension fund law. However, there is opposition already forming. For example, the Confederation of Bolivian Workers (COB) refused to join in discussions that led to the drafting of the bill.⁷⁹

The AFPs will be charged with managing an annual "old-age relief" payment. This is estimated at around two hundred dollars per person-per year to each adult Bolivian sixty-five or older. A similar amount is payable upon death. The AFP program is unique in Latin America. Some three hundred thousand Bolivians who meet the age requirement are eligible to collect in 1997. In total, the "collective capitalization fund" benefited 3.4 million Bolivians over 21 by December 31, 1995. A program is in progress to identify undocumented potential beneficiaries. With fourteen million U.S. dollars from the Inter-American Development Bank, Unified National Registry (RUN) teams are signing up Bolivians across the country.⁸⁰

A similar opportunity for AFPs will be the more traditional "individual capitalization" funds. These are based on the successful Chilean model. AFPs can sign up perhaps a million Bolivians between "informal" workers and formal employees (those listed on company payrolls) not currently enrolled in formal pensions or making pension contributions.⁸¹ It is assumed that the AFPs will jump-start Bolivia's nascent capital market, as happened in Chile.⁸² According to Sanchez de Lozada, the secret of growth and the "boom" in Chile was the individual capitalization pension funds. The private pension funds in Chile accumulated twenty-seven billion dollars in fourteen years, and this money is invested until the people retire.⁸³ However, to be fair, the Chilean privatized pension funds are offering decreasing yields to contributors. According to a

78. *Bidders Sought to Launch Private Pension Fund System*, LAGNIAPPE LETTER, Aug. 16, 1996, available in LEXIS, NEWS Library.

79. *See Fair Shares for All in Bolivian Capitalization*, PRIVATIZATION INT'L, Sept. 1, 1996, available in LEXIS, NEWS Library.

80. *See id.*

81. *See id.* The word "informal" in this context refers to workers operating outside normal, regulated channels or authorities. Usually, such work implies lower wages and no nonwage benefits. *See, for example, Cynthia Truelove, The Informal Sector Revisited: The Case of the Talleres Rurales/Minimaquilas in Colombia*, in INQUIRY AT THE GRASSROOTS 201 (William Glade & Charles A. Reilly, eds., 1993).

82. *See Fair shares for All in Bolivian Capitalization*, *supra* note 79.

83. *See Juan Carlos Rocha, Bolivia: Political Surgery Gives Nation a New Face*, INTER PRESS SERVICE, May 23, 1996, available in LEXIS, NEWS Library.

recent Merrill Lynch study, pension funds are responsible for only a fraction of the savings rate increase in Chile.⁸⁴

The annual bonus for those over age sixty-five, known as *alivio de vejez* ("age relief") is seen by President Sanchez de Lozada as performing two roles. The first is to provide for one of the most vulnerable groups in Bolivian society, the elderly (the other group is children). The second, which Sanchez de Lozada describes as "philosophical," is to "compensate the sacrifice of those who have paid the price of hyperinflation and forged the existence of the state enterprises."⁸⁵

In effect, Sanchez de Lozada proposes a dual pension system. The old direct-transfer regime will remain in force for those who are already members—a mere 130,000 people in a population of 7 million. The new paid-up pension system, to be managed by private fund administrators, will be obligatory for those entering the labor force, voluntary for the rest. The rest, in this case, does not only mean those who are in formal employment, but also the self-employed: the peasants, artisans, and workers in the informal sector, who jointly account for about seventy percent of Bolivia's economically active population.⁸⁶

Earning a pension under the new paid-up system will be tougher than under the old direct transfer system. Members under the new system will have to contribute during 300 months to become entitled, versus only 180 months in the old system. As the plan stands today, the self-employed who want to join face another hurdle: they must certify earnings of about one hundred U.S. dollars a month, and set aside ten percent of that as their contribution. This provision has attracted much criticism, on the grounds that many in the informal sector will fall below the minimum earnings level. Women, who represent about forty percent of the workforce and are typically engaged either in unremunerated family work or in unstable employment, are most likely to fall through the net. Sanchez de Lozada promised to take another look at this issue.⁸⁷ Also at issue is the fact that persons must wait until age sixty-five to receive benefits, while life expectancy in Bolivia is currently only sixty-one years old.⁸⁸

84. See Jorge G. Castaneda, *A Backlash to Latin America Privatization*, SACRAMENTO BEE, Apr. 21, 1996, at METRO FINAL FO1, available in LEXIS, NEWS Library.

85. *Private Pensions with a Unique Twist; Over-65s to Get a Bonus from Proceeds of 'Capitalization'*, LATIN AM. WKLY REP., Aug. 29, 1996, available in LEXIS, NEWS Library, File No. WR-96-33.

86. See *id.*

87. See *id.*

88. See Collymore, *supra* note 75.

C. Education Reform

1. Historical Context of Education in Bolivia

International Monetary Fund Director Michel Camdessus said the Bolivian government must break a deadlock on its educational reforms. Camdessus considers this a top priority in Bolivia's fight against poverty.⁸⁹ Historically, education is perhaps the only area in which government investment has led to significant improvement for a broad range of Bolivians. In 1950, just thirty-one percent of Bolivians were literate. By 1976, the figure had jumped to sixty-seven percent, and by 1988 to seventy-four percent. Part of the problem in education has been the use of Spanish for instruction. In 1988, only forty-four percent of the population spoke exclusively Spanish. In 1950, over half the population spoke just one indigenous language, either Quechua or Aymara. After thirty-eight years of offering education only in Spanish, many native Quechua and Aymara speakers became bilingual, with only eight percent in 1988 remaining monolingual in an indigenous language.⁹⁰

The new education reform⁹¹ may well be the most important of the three pillars in the President's Plan for All. Bolivia has South America's highest concentration of indigenous people. About eighty-five percent of the 7.7 million population has at least some native ancestry. Still, classes were taught only in Spanish. However, beginning in 1995, schools began to offer classes in the Aymara, Quechua, and Guarani indigenous languages.⁹²

The new education law attempts to achieve objectives found in the Constitution. In theory, the Constitution prohibits discrimination based upon race, sex, language, religion, political or other opinion, origin, or economic or social condition. Still, even in 1994, there was significant discrimination against women and indigenous people.⁹³

The discrimination against women is quite significant. For example, women generally do not enjoy a social status equal to that of men. Many poor women do not know their legal rights; traditional prejudices and social conditions remain obstacles to advancement. Women typically earn less than men for equal work. Young girls often leave school to work at home or at a workplace. A study by the National Statistical Institute (INE) found that, as of the 1992 census,

89. See IMF Chief Backs Bolivian Reforms, UPI, May 31, 1996, available in LEXIS, NEWS Library.

90. See Herbert S. Klein, BOLIVIA: THE EVOLUTION OF A MULTI-ETHNIC SOCIETY 281(2d ed., 1992).

91. See Ley de Reforma Educativa, No. 1565 (1994).

92. See Luft, *supra* note 42.

93. See U.S. Dep't. of State, *Bolivia Human Rights Practices, 1994*, DEP'T ST. DISPATCH, Mar. 1995, available in LEXIS, NSAMER Library, DSTATE File.

able our community to take part actively in s.⁹⁸

the first one hundred children graduated from a pilot in Aymara, Quechua or Guarani, and Spanish. commitment to teaching all children in both their A lack of personnel qualified to teach in the expansion of this program at the present time.⁹⁹ ions outlining a new National Education System (SEN).¹⁰⁰ The purpose of the system¹⁰¹ is to:

man resource formation.

enant increases in educational quality to nging needs for education and national

quality and efficiency of education.

ollection of educational activities with omplementary options.

ual access to education for all Bolivians scrimination.

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ote child development through manual, oductive assignments.

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a note 24.

Bolivia Human Rights Practices, 1995, DEP'T ST. EXIS, NSAMER Library, DSTATE File.

cativa, *supra* note 91, arts. 3-54.

nd in article 3 of the Ley de Reforma Educativa,

Alternative education has also been established for persons who have not already concluded their studies, either because of age, or physical or mental disability. This initiative includes adult education programs, permanent education (community support and extension), and special education (to meet the special educational needs of children, adolescents, or adults).¹⁰³

Today, about forty percent of the rural poor receive primary educational services. Over the past fifteen years, the country experienced a one percent increase in enrollment annually. The new educational initiative anticipates an annual increase in participation of fifteen percent as an impact of the new legislation. It is also anticipated that participation in primary education will reach eighty percent of eligible students in rural areas by the year 2000, and ninety-five percent by the year 2006. Secondary education should reach participation levels of seventy percent by the year 2013.¹⁰⁴

D. Popular Participation and Transfer of Powers to Local Communities.

J. Brian Atwood, Administrator of the U.S. Agency for International Development, asserts there is nothing more basic to the development process than participation. American foreign assistance seeks to support broad access to a country's economy and participation in the society's decision making processes. Participation, in this light, is fundamental for development. Atwood further argues that foreign assistance is more likely to lead to development if the programs are relevant to people's needs. Consequently, there must be broad participation by people in defining development priorities and approaches.¹⁰⁵

Supporting this idea, U.S. Vice President Al Gore asserts:

If democratic institutions are to serve people properly, the government must decentralize as many functions as possible and deliver services as close to the people as possible. In our country, we are working hard to create a new relationship with state and local governments. We want to empower them to better serve their citizens. In Bolivia, the Sanchez de Lozada administration has given local communities more responsibility for administering education, health, transportation, and irrigation systems—reversing decades of government

103. See *id.* arts. 24-28.

104. See *Los Objectives de la Reforma Educativa*, 31 INFORMATION POLITICAL Y ECONOMIC 1, Aug. 17, 1994.

105. See J. Brian Atwood, Statement of Principles on Participatory Development 1 (Nov. 16, 1993) (on file with the Agency for International Development, Office of the Administrator).

centralization. Bolivia has passed a "Popular Participation" bill that will encourage the development of grassroots democracy, improve tax collection, and ensure more equitable allocation of revenues.¹⁰⁶

1. Historical Context

The objective of administrative decentralization is not new in Bolivia. While Bolivia started out a highly centralized republic, movements began to change this as early as the 1930s. A national referendum in 1931 approved the Departmental Administration Law ("Ley Organica de Administracion Departamental") which sought greater decentralization and participation.¹⁰⁷ Yet despite a revolution in 1952, the country failed to address this fundamental issue until the 1970s.¹⁰⁸

In 1972, General Hugo Banzer Suarez, a military ruler, decreed the Administrative Organisational Law for the Executive Branch.¹⁰⁹ A later government, again unelected, under the leadership of Luis Garcia Meza, passed another "decentralization" law which in fact re-centralized much authority.¹¹⁰ Then, in 1984 and the years following, a real interest in decentralization took hold in Bolivia.¹¹¹ In 1984 and again in 1986, bills were proposed in Congress to decentralize much of government.¹¹²

Work began during the administration of Jaime Paz Zamorra (1989-1993) to design some sort of decentralization or popular participation program. With funding from Germany's Society for Technical Cooperation (GTZ Gesellschaft fuer technische Zusammenarbeit), the Bolivian government organized an empirical survey of communities in Santa Cruz, Oruro, Beni, Pando, and Potosi to engage the public on the issue of decentralization. Questions such as who should elect the Prefect (akin to a Departmental Governor), the school director, health authorities, chief of police, president of the development corporation, and so on were asked. The goal of the survey was to clarify who

106. Vice President Al Gore, *A Community of Democratic Nations*, Address to the Inter-American Development Bank, Washington, DC (Sept. 16, 1994), (transcript available in 5 U.S. DEP'T OF STATE DISPATCH 40, Oct. 3, 1994, available in LEXIS, NSAMER Library, DSTATE File).

107. See GABRIEL PELAEZ GANTIER, DESCENTRALICACION . . . MITO O REALIDAD? 50-57 (1995).

108. See *id.* at 23.

109. See *id.*

110. See *id.* at 24.

111. See *id.* at 26-27.

112. See *id.* at 35-37.