



Enabling Environment National Assessment

Country Report: Bolivia

Elaborated by Fundacion CONSTRUIR,

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(Translated from Spanish)



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I. Introduction

Bolivia has historically had a vigorous, active, participative and mobilized civil society that is as diverse, spread out and heterogeneous as Bolivian society itself. Organized civil society in Bolivia is a broad concept that consists of various actors and varying levels of institutional complexity. It includes: social movements; indigenous, rural and community organizations; trade unions; labor unions; business chambers; producer associations; professional associations; civic committees; neighborhood groups; and community-based organizations. The concept of civil society also includes associations and foundations known as non-governmental organizations (NGOs), which are the focus of this document.

As a social phenomenon, NGOs are a product of modern democracy. Starting in the 1970s, several NGOs came about with the political motivation of offering a public voice and defending civil rights against authoritarian and dictatorial governments. In the 1980s, with the absence and withdrawal of the state, NGOs expanded supportive development assistance and initiatives for income generation. In the next decade with the premise of a stable democracy, many NGOs reoriented their efforts towards promoting economic, social and cultural rights of the most disadvantaged groups, while seeking, especially at the local level, to ease and compensate for the impact of market reforms in the country. As of late, NGOs have sought to accompany the political change in the country in various aspects, including supporting public policy implementation, providing social assistance services and disseminating reforms (some of which promote intercultural democratic dialogue and indigenous development, while others monitor the development of the process). Today, NGOs are effective fundamental players in the development process and are innovative agents and catalysts for social transformation.

To reinforce their effectiveness, a favorable working environment is necessary that enables civil society organizations to operate under conditions that ensure the respect of the rights of freedom of association, peaceful assembly, expression and access to information. In addition, civil society organizations require a broad legal framework that ensures the recognition of their legal status as private non-profit entities based on contractual freedom and autonomous operation without undue interference, as well as the right to seek and receive public and private funding from domestic and international sources that are needed to carry out their legitimate role in development.

Recently there have been changes in the enabling environment for civil society organizations in Bolivia. With the constitution of Bolivia promulgated in 2009, new regulations have been approved regarding the granting of legal personality that regulate the formation and operation of CSOs; new practices in the tax system and changes in the field of international cooperation. Furthermore, the political context questions the legitimacy of certain CSOs.

Given the current legal, political and global context, it was deemed necessary to perform an assessment on the enabling environment of CSOs in Bolivia for the current period (2013-2014). The Enabling Environment National Assessment (EENA) is a diagnostic tool, developed by CIVICUS and ICNL, that evaluates 10 dimensions of the enabling environment for CSOs. Five of these dimensions were mandatory (*formation, operation, access to resources, expression and peaceful assembly*), while the five optional dimensions were also included (*internet freedom, government-CSO relations, CSO cooperation and coalition, taxation and access to information*).

Three different research methods were used to assess the abovementioned dimensions: 1) desktop review of documentation and national laws and regulations that affect or could affect CSOs; 2) interviews of key stakeholders and 3) focus group discussions.

This report seeks to outline the results of the assessment. To this end, the information has been organized around 10 chapters, each addressing a dimension. For each dimension we provide an overview, an analysis of factual data based on a review of laws, regulations and other resources, perceptions of key stakeholders and finally we outline the weaknesses and challenges of each dimension.

II. Methodology

The study followed the Enabling Environment National Assessment methodology proposed by the Civic Space Initiative and was carried out in two phases: a desktop research phase and a qualitative empirical research phase.

The desktop research phase consisted of reviewing documentation and regulations with the aim of compiling available information regarding formal issues that affect various spheres of CSOs and their rights. This method allowed the researcher to answer most of the questions in the 10 dimensions.¹

During this phase, the constitution was reviewed as were other secondary laws relating to CSOs. In addition, certain international treaties on human rights related to the activities of CSOs were reviewed, as were news articles that report on items of interest for these organizations.

The qualitative empirical research phase consisted of two main activities: 1) interviews of interested parties and key stakeholders from various CSOs and 2) focus group discussions with key actors to discuss the various issues - both positively and negatively - affecting CSOs and to reach conclusions. The objective was to glean perceptions on the enabling environment and how the laws and regulations are implemented. Both strategies were carried out in an attempt to respond to the perception questions of the 10 dimensions.

A total of 14 interviews were conducted based on questions in the mandatory and optional dimensions. For the five mandatory dimensions, two to three persons per dimension were interviewed. For the optional dimensions, three of the five dimensions were covered through interviews: two key stakeholders for the dimension of *internet freedom*, one for *taxation*, and one for *access to information*.

The one-on-one interviews, lasting between 10 and 30 minutes, were conducted according to the number of questions per dimension. The interviews were recorded for later review and analysis.

Upon completion of the interviews, questions with weak or no responses were identified. Four focus groups were then established with each group consisting of 10 participants. Discussion questions were initially focused on areas with scant information obtained during the interviews.

Two focus groups discussed the questions with scant information in the five mandatory dimensions and the other two focus groups addressed questions in the following optional dimensions: *government-CSO relations* and *CSO cooperation and coalition*, together with questions related to the mandatory dimensions.

¹ The study consists of the analysis of the 10 dimensions related to CSOs. Five dimensions are mandatory: formation, operation, access to resources, expression and peaceful assembly. It also has five optional dimensions: internet freedom, government-CSO relations, CSO cooperation and coalition, taxes and tax system and access to information.

Eight questions were debated in each focus group and a set time was given for each question. Participants exchanged ideas and the general conclusions reached by the participants were recorded. The focus group discussions lasted approximately two hours.

III. Formation

Information for the *formation* dimension was collected through three techniques: 1) a review of the laws and regulations related to this dimension, 2) one-on-one interviews with two key actors and 3) one focus group discussion.

a) Overview

There are many laws in Bolivia regulating the formation of CSOs.² In addition, there is a bill on the regulation of non-governmental organizations that contains articles regarding the issue of formation.

These regulations establish the right of free association with the condition that the activities performed are lawful. These regulations also address CSO formation by establishing requirements that must be met when requesting legal status, in addition to a procedure that must be followed to establish an organization. This procedure is perceived as complex and bureaucratic, but also deemed necessary.

Likewise, in 2013 the Youth Law no. 342 was approved and includes rights of association of this segment of CSO's. This law will be analyzed later in this document.

The regulations divide CSOs into social organizations, non-governmental organizations, foundations and non-profit civil entities and establish the cost of obtaining legal status. Costs vary according to organization type.

The regulations also address the possibility of denying legal personality in case the mission and objectives of the organization are deemed to be detrimental to the constitution of Bolivia or applicable laws.³ Although there is a right to appeal the decision, the regulations do not clearly state how to proceed in case of an appeal. Article 59 of the civil code states that “in the case of

² Article 21 of the Bolivian constitution establishes the right of freedom of assembly and public and private association for lawful purposes. The civil code has laws regarding associations and foundations. Supreme Decree no. 22409 of 11 January 1990 regulates the National Registry of Non-Governmental Organizations. Supreme Decree no. 26140 of 6 April 2001 regulates operations of non-governmental organizations that work with rural people, indigenous peoples, original settlers and colonists. The Legal Status Authorization Law no. 351 of 19 March 2013 regulates the granting of legal personality and registration of social organizations, non-governmental organizations, foundations and non-profit civil entities that carry out activities in more than one department and whose activities are not financial in nature as well as the granting of legal personality and registration of non-profit churches and religious and spiritual groups. Supreme Decree no. 1597 of 5 June 2013 partially regulates the legal status authorization law. Ministerial resolution no. 081 of 25 June 2013 addresses costs applicable to procedures to obtain legal status and to modify bylaws and other related amounts. Youth Law no. 342 of 5 February 2013. The youth law will be discussed later in this report.

³ See article 14 of the Partial Regulation of the Legal Status Authorization Law.

denial, the interested party may contest the decision before the judge. The verdict of the judge gives rise to the remedies provided by the law.”

b) Analysis

According to the current legislation, any physical person or group of persons (a minimum number of persons is not specified) can form a CSO as long as the objectives are lawful and the group is aligned with the objectives for which it was established. Likewise, foreign nationals can be part of any organization and could be legal representatives as long as they have met all residency requirements established by relevant immigration legislation.

- Youth Law

The Youth Law, which was approved this year, includes rights of association in this sector. It establishes that young people have the capacity to make decisions and to take action. Likewise, it establishes the values and the principles of self-organization for organizations and groups of young people, within the boundaries of their structures, forms of organization, norms, procedures, identity, purposes and objectives,⁴ establishing the civil right of young people to associate and assemble freely and voluntarily with lawful purposes through organizations and groups.⁵

This law also defines an organization of young people and a group of young people. Here, an “organization” is defined as a social group of young people with legal personality that has its own identity, internal regulations and a structure to carry out its purpose and objectives, functions and common interests. Meanwhile, a “group” is described as a youth collective without legal personality that is formed around common and lawful interests.⁶

It is worth noting that the Civil Code provides that the rules are those of self-regulation, i.e., they are established by members or founders. For this reason, the purpose and objectives of any NGO, association or non-profit foundation must be defined by the members. The only limitation is that the purpose must be lawful. Therefore, legal and operational capacity is limited only by the purposes that determine its constitution, as such the bylaws define the scope.

- Legal Status Authorization Law no. 351 and Partial Regulation of Supreme Decree no. 1597 to Regulate the Legal Status Authorization Law

However, the Legal Status Authorization Law no. 351 requires that the bylaws of NGOs and foundations mention the “contribution to economic and social development”⁷. Supreme Decree no. 1597 that partially regulates the legal status law states that NGOs and foundations additionally must specify in their bylaws the scope of their activities relating to social and economic

⁴ See article 6, paragraph 13 of Youth Law no. 342.

⁵ See article 9, paragraph 7 of Youth Law no. 342.

⁶ See article 7, paragraphs 5 and 6 of Youth Law no. 342.

⁷ See article 7 of Legal Status Authorization Law no. 351 of 19 March 2013.

development, taking into account the guidelines established in the national plan, national policies and sector policies.”⁸ These requirements oblige CSOs to adhere to determined guidelines at the time of formation.

Likewise, Law 351 defines NGOs as “private law entities that possess characteristics of social service, support, charity and economic and social promotion and development, that are made up of national and/or foreign persons that, with proper recognition of the state, perform non-profit development and/or charity activities and whose activities are non-financial in nature, with funds and/or in-house financing and/or external cooperation in the territory of the state.”⁹ If this definition is interpreted literally, it could limit the permissible objectives of NGOs.

It is important to note that the draft Law on NGOs seeks to determine that right holders for forming NGOs could be national and/or foreign persons, natural or legal persons with no relationship to the state apparatus, nor political parties or groups created for the objectives of political parties.

Meanwhile, although the regulations do not stipulate minimum capital requirements nor is it necessary to have a specific amount prior to the granting of legal personality, it is a formal obligation that the bylaws of an association include the assets, sources of funds and mechanisms for administration. In other words, the type of income and how it will be administered by the association must be stated in the bylaws.

To request legal personality, foundations must present: a notarized record of a gift or donation to the foundation, original bank statements, property identification number and/or RUA (vehicle registration), opening balance with a signature by an auditor or a public accountant, and a pre-feasibility study justifying the amount allocated to administration costs for three years of operation of the foundation.¹⁰

Administrative Decentralization Law

With regard to the procedure to obtain legal personality and who may grant it, certain contradictions have been identified among the regulations in the Administrative Decentralization Law, the Constitution of Bolivia and Supreme Decree no. 802 (23 February 2011). These contradictions make the procedure to obtain legal personality difficult. With the approval of the Administrative Decentralization Law in 1995, the procedure to obtain legal personality for any non-profit association or foundation was modified. Previously, under the rules of the Civil Code, the granting of legal personality was authorized by a Supreme Resolution signed by the President of the Republic and the relevant minister relating to the organization’s area of work. For this, a long procedure was required that lasted up to one year, first by the Departmental Prefecture where

⁸ See article 11 of Supreme Decree no. 1597 of 5 June 2013. Partial Regulation of the Legal Status Authorization Law.

⁹ See article 4 of Legal Status Authorization Law no. 351 of 19 March 2013.

¹⁰ See article 10 of the Partial Regulation of the Legal Status Authorization Law.

the institution had its legal residence, then in the city of La Paz by the ministry that corresponded to the activity on which the institution was focused, and finally by the Government Palace where the procedure was finalized via a Supreme Resolution.

The Administrative Decentralization Law simplified and decentralized the above mentioned procedure by assigning the ability to “*grant legal personality with validity throughout the national territory to foundations, associations and civil societies established in the national territory or abroad, provided that they have been established in their jurisdiction*” to the Departmental Prefectures.¹¹ This led to significantly quicker procedures and reduced bureaucracy, especially in terms of the central government, as straightforward procedures such as those all over the country had previously been concentrated in La Paz and the requirement of the president’s signature led to significant delays.

However, with the new Constitution, there has been a step backwards in the administrative decentralization of the procedure of granting legal personality, Article 298 (II-15) establishes that “*it is of the exclusive competence of the central government (...) to grant legal status to non-government organizations, foundations and non-profit civil entities that carry out activities in more than one department.*”, hereby leaving for the Departmental Governments the recognition of the legal personality to these organizations within the department itself¹², thus leaving a regulatory vacuum in the recent Autonomy and Decentralization Framework Law that does not provide for the transition of this administrative procedure, particularly at the central government level.

Supreme Decree no. 0802

Supreme Decree no. 0802 (23 February 2011) establishes that the Ministry of Autonomy has the competency to *authorize and register legal personality to non-governmental organizations, foundations and non-profit civil entities that carry out activities in more than one department*. Differentiating CSOs that work in one or several departments is a contradiction in a unitary state, especially when legal personality has validity throughout the national territory. Another case in point is the opening of branches or changes in the legal address that could have a procedure similar to that of businesses.

With regard to the procedure with which CSOs must comply to obtain legal personality, L351 establishes certain requirements, and the partial Regulation of the law, approved by Supreme Decree 1597, also establishes a specific procedure.

¹¹ In accordance with Article 5, paragraph r) of Administrative Decentralization Law no. 1654 of 28 July 1995, the Departmental Prefectures have the ability to recognize legal statuses of associations, foundations, rural communities, indigenous people and neighborhood commissions. Supreme Decree no. 24776 of 31 July 1996 establishes the regulations for this procedure and establishes the offices for processing and approval.

¹² Constitution of Bolivia promulgated on 2 February 2009, article 300 (I-13).

The essential requirements established by article 6 of the Law are:

1. Public articles of association
2. Bylaws
3. Internal regulations
4. Protocol for the approval of the bylaws and internal regulations
5. Power of attorney of legal representative
6. Other documents required by the competent entity at the central government level in accordance with regulations.

The procedure established by the Regulations has the following steps:

- Name reservation and verification: all groups before the start of the authorization procedure must present the name reservation and verification request to the Ministry of Autonomy to prevent duplicity of the name. An existing group with a similar name or acronym shall have precedence.
- Denomination: with regard to name reservation and legal personality procedures, the denomination of the foundation or non-governmental organization shall be placed before the name of the group. In the case of non-profit civil entities and social organizations, it shall follow the name.
- Response and reservation issuance: the Ministry of Autonomy will give an official response regarding the name reservation and verification request in a period of no longer than 10 days. If it is determined that the name does not exist in the records, the corresponding name reservation certificate will be issued. On the other hand, if the name has already been reserved, the applicant must change the name within a period of five working days. If the applicant does not change the name of the group the request will be cancelled and eliminated from the system.
- Viability: once the name reservation certificate is issued, the requesting group has 60 working days to start the procedure in order to authorize the legal personality. If this procedure is not started within the stipulated timeframe, the Ministry of Autonomy will eliminate the name reservation from the system.
- Legal personality request: this must be presented to the Ministry of Autonomy by supplying the request brief and the following documentation -
 - a) Originals of:
 - Special power of attorney of the legal representative
 - Name reservation certificate provided by the Ministry of Autonomy
 - Public articles of association concordant with the contents of the founding statute

- Affidavit identifying the legal address of the group, as well as the full names, professions, addresses, identification numbers and signatures of each of the founders
 - Notarized charter on the election and composition of the board of directors, or other representative structure, with name and signature of the members, specifying their duration in office
 - Founding bylaws in printed and digital format with name and signature of board members
 - Internal regulations in printed and digital format with names and signatures of board members
 - Protocol to approve founding bylaws and internal regulations with names and signatures of directorate)
 - List of members that make up the group signed by each member
 - Proof of payment
 - Certificate of no outstanding debts with the central government of members that make up the group, issued by the corresponding institution.
- b) Photocopy of the current identification cards of each member of the group.

Foundations must present the following additional information:

- Notarized certificate of gifts or donations to the foundation (amount established in accordance with current regulations and deposited with the financial entity in the name of any member of the board of directors or in the donor's name, or registered goods). The following original documents must be presented where applicable: i) bank statements, ii) property record and/or iii) RUA (vehicle registration).
 - Opening balance with signature by qualified auditor or accountant.
 - Pre-feasibility study that explains the expenses for 3 years of operations of the foundation, detailing the purpose, mission, vision and scope.
- Bylaws: indicating the name, nature and address; purpose and objectives of the group, specifying the actions and operations; rights and obligations of members; organization, internal structure and attributes; equity and financial system, sources of internal and external financing and resource administration; system of internal member admission and exclusion and disciplinary system within the framework of the Constitution of Bolivia and its laws and statutes; procedure to modify bylaws; and system for cessation, dissolution and liquidation of the entity.

Likewise, the bylaws of non-governmental organizations and foundations must also include their contribution to economic and social development, taking into account the guidelines established in the national plan, national and sectoral policies. Foundations must also list the allocation of assets.

Social organizations, non-governmental organizations, foundations and non-profit civil entities must periodically report to the competent authority¹³ their sources of financing.¹⁴ In the contents of their bylaws, non-profit civil entities must specify the scope of their activities that are focused on achieving benefits for their members.

- Application: Proof of the application for the granting of legal status must be presented to a single window at the Ministry of Autonomy along with the aforementioned documentation. At this window, compliance with the presentation of all required documents will be verified for admission or rejection.
- Documentation review: The documents of the accepted application will be reviewed in detail within 60 working days. A preliminary report must be issued that establishes compliance with the requirements and identifies the issues to be corrected by the applicant or that states rejection of the application. The applicant then has a 20 working days from the day of notification to correct the identified issues. If they are not corrected the procedure will be archived. When the issues are corrected and prior to the assessment, the competent office at the Ministry of Autonomy will release a final report for the issuance of the Supreme Resolution or Ministerial Resolution to recognize legal personality.

Supreme Decree no. 22409

Associations and foundations that perform activities of social development, promotion and assistance are subject to **Supreme Decree no. 22409 of 11 January 1990** that regulates the registration and operations of non-governmental organizations.

This Supreme Decree also created the Single National NGO Registry managed by the Ministry of Planning for the “mandatory registration of all NGOs and the systematization of information related to them.”¹⁵ This information is of a general nature and is used for statistical purposes. It is not easily or freely accessed by the public but may be obtained through a request or petition to the ministry.

Once legal personality is granted, the NGO is obligated to register with the NGO Coordination Bureau at the Vice Ministry of Public Investment and External Financing (VIPFE), an office within the Ministry of Planning. The following requirements must be presented:

- Copy of the resolution recognizing legal personality
- Copy of the bylaws

¹³ Article 8 of law no. 351 regarding Legal Status Authorization stipulates that the competent authority is the Ministry of Autonomy to grant and register legal status to social organizations, non-governmental organizations, foundations and non-profit civil entities, whose scope of action is greater than one department.

¹⁴ See article 7 of Legal Status Authorization Law no. 351.

¹⁵ Article 2, Supreme Decree no. 22409 of 11 January 1990.

- Completed registration form (affidavit) along with a copy of the tax identification number (NIT), information regarding projects to be undertaken, funding sources, number of persons working at the institution and the beneficiaries of activities.

Foreign NGOs must also register with the national NGO registry, although they first must confirm their adherence to a framework agreement with the Ministry of Foreign Affairs and Faith that authorizes legal operations of these organizations in the country. The Ministry has a special office to handle these matters. For the adherence to and the renewal of the framework agreement, a report is requested from the ministry of the corresponding sector that must decide on the relevance of the proposed projects to the national development plan approved by the national government. Funding for cooperation and external assistance should contribute to and align with official state policy.

Likewise, the regulations require that any modification of the information presented in the above mentioned registration form must be communicated to the National NGO Registry within 60 days of the date of modification.¹⁶ Every three years, NGOs in the registry must present information on activities performed and projects scheduled for the coming three years.¹⁷

General perceptions on the CSO formation procedure are not all positive. Although it is recognized that a registry, with centralized and accessible information, is necessary and that there have been attempts in the past to improve service, interviewees and focus group participants say there is excessive bureaucracy, insufficient staffing and resources and poor organization to render proper services and to guide CSOs through the complex procedure, resulting in slower administrative processes.

Existing non-legal barriers (mentioned throughout this report) for CSO formation include the withdrawal of international technical and financial assistance which limits the ability of organizations to form or to perform activities.

Costs to form a CSO vary depending on the type of CSO that is being formed, as Law 351 categorizes civil society organizations into social organizations, non-governmental organizations, foundations and non-profit civil entities and outlines the costs involved to obtain legal personality for each category.

Procedure	Cost in Bolivianos (Bs.)
Name reservation and verification, name certification for social organizations, NGOs, foundations, non-profit civil entities and coordination entities	120
Registration of legal personality	120
Authorization and registration of legal personality for social organizations	2,400

¹⁶ Article 6, Supreme Decree no. 22409.

¹⁷ See Article 5, Supreme Decree no. 22409.

Authorization and registration of legal personality for non-governmental organizations in more than one department	7,700
Authorization and registration of legal personality for foundations in more than one department	6,000
Authorization and registration of legal personality for non-profit civil entities	3,600
Authorization and registration of legal personality for coordination entities: federations, confederations, national councils, committees, central committees and other national coordination entities	3,600
Authorization and registration of legal personality for coordination entities: non-governmental organizations and foundations that constitute institutional networks	15,000
Authorization and registration of legal personality for coordination entities: non-profit civil entities that constitute institutional networks	10,000
Certificate of the recognition of legal personality and registration of bylaws and internal regulations	120
Reopening of documents/ file	50
Official photocopies (per page)	3
Modification of bylaws and/or internal regulations	1,200
Legalization of Ministerial Resolutions	50

Source: Ministerial Resolution no. 081/2013 of 25 June 2013.

In accordance with the preceding list of costs, the total amount to obtain legal personality per category of CSO would be as follows:

Group	Total cost to obtain legal status (in Bs.)
Social organizations	2,760
Non-governmental organizations	8,060
Foundations	6,360
Non-profit entities	4,010
Social organization coordination entities such as federations, confederations, national councils, committees, central committees and other national coordination entities.	3,960
Coordination entities for non-governmental organizations and foundations that are institutional networks	15,360

Coordination entities for non-profit entities that are institutional networks	10,360
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Source: own calculations

A cost of Bs. 3 for each certified photocopy must be added to the aforementioned costs. In the case of a modification of bylaws or internal regulations, the organization must pay Bs. 1,200. The reopening of documents costs Bs. 50 and the legalization of Ministerial Resolutions costs Bs. 50.

As the table showcases, the cost to obtain legal personality is quite high. This corresponded with the perceptions of the interviewees and focus group participants. Not only is the cost high to form a CSO, but it also a barrier to establish new CSOs, which often do not have sufficient resources to afford the procedure. The cost to establish coordination entities is even higher, thus impairing and hampering the formation of coordination organizations and networks.

The legislation provides that a request to obtain legal personality may be denied when the aims and objectives of the group go against the Constitution and Laws of Bolivia.¹⁸ However, a procedure to appeal the decision has not been expressly defined in the legislation. In the case of rejection, Article 59 of the Civil Code states that “in case of denial, the interested party may contest the decision before the judge. The verdict of the judge gives rise to the remedies provided by the law.”

Key actors interviewed on this issue believe that the regulations are still too new to know if rejections of the legal personality are being appealed, because currently there is an adjustment process of all legal personalities where special attention is given to the difficulties that are arising in this matter.

As mentioned above, in the case of framework agreement subscription and renewal for foreign NGOs, a report is first requested from the ministry of the corresponding sector that must decide on the relevance of the proposed projects with regard to the national development plan approved by the national government. This is to ensure that funding for cooperation and external assistance are contributing to and aligned with official state policy.

It should be noted that in the process of forming a CSO there is no perception of favoritism or discretion in the stage of NGO registration, since they are new organizations with no prior history and therefore no need to restrict their formation.

However, currently this is the case in the process of renewal of legal personalities. This is perceived as very difficult and full of obstacles because it concerns the renewal of legal personalities of existing organizations that have a focus that may or may not perturb the government. Favoritism is perceived here, through the delay or simplification of the procedure for

¹⁸ See Article 14 of the Partial Regulation of the Legal Status Authorization Law.

different organizations. These obstacles have not been defined in the formal procedure but they occur in practice depending on the history of the organization.

Currently, there are more than 2,125 officially registered NGOs that are authorized to “*perform development or assistance activities with state funds and/or external cooperation in the national territory.*” However, there are many unregistered foundations and associations (there is no census nor register to provide accurate data) that operate freely and legally in the country because they do not receive governmental or international funding and only operate through domestic private resources. These organizations are not confronted with prohibitions or sanctions against their operation. Moreover, de facto associations are recognized (associations with unrecognized legal personality) as are committees of charity work without legal personality and “civil societies” that render non-commercial services. According to the Civil Code, these groups are governed by agreements among their members and have legal and operational capacity within the limits set by the objectives that led to their establishment.

In this regard, it is interesting to note a specific case of association that the new Bolivian Constitution recognizes. It establishes the “right of workers to organize into labor unions” (Article 51). In addition “the right of free business association is recognized and guaranteed”¹⁹ as other forms of association of artisans and small producers.

c) Challenges and weaknesses

A series of weaknesses were identified that make the formation of a CSO and the process of obtaining legal personality difficult.

With regard to the centralization of the granting of legal personality in the Ministry of Autonomy for groups that carry out activities in more than one department, Supreme Decree no. 0802 (23 February 2011) established that such granting is to the responsibility of the Ministry of Autonomy. This is a step backwards compared with the older Administrative Decentralization Law that simplified and decentralized this procedure by assigning Departmental Prefectures the ability to grant legal personality to organizations with domicile in their jurisdiction with validity throughout the national territory.

The high costs related to obtaining legal personality limit the creation of new organizations and coordination entities.

¹⁹ Constitution of Bolivia, **Article 52. I.** The right of free business association is recognized and guaranteed.

II. The state shall guarantee recognition of the legal status of business associations, as well as democratic forms of business organizations, in accordance with to their own bylaws.

III. The state recognizes the training institutions of business organizations.

IV. The tangible and intangible property of business organizations is inviolable and may not be encumbered.

Article 334. Within the framework of sector policies, the state shall protect and stimulate the following: 1. rural economic organizations and associations or organizations of small urban producers and artisans, as solidary and reciprocal alternatives.

There is ambiguity regarding the inclusion of the scope of their activities focused on contributing to social and economic development in the bylaws of NGOs and foundations, in addition to other requirements for social and non profit civil entities, hereby taking into account the guidelines set out in the national plan, national and sectoral policies, because this means these organizations must adhere to certain guidelines in order to be formed

One challenge is to improve service during registration and to better guide those who wish to obtain legal personality so that the procedure is more accessible for everyone. It is also considered very important to eliminate bureaucracy that unnecessarily delays procedures and to decentralize the process to speed it up.

Furthermore, it is important to implement mechanisms to carry out this procedure online. Much time would be saved and a large portion of the bureaucracy would be eliminated, leading to greater decentralization.

IV. Operation

Information for the *operation* dimension was collected through three techniques: 1) a review of the laws and regulations related to this dimension, 2) interviews of three key actors and 3) questions on this issue in one focus group.

a) Overview

There are two main legal regulations related to CSO operations.²⁰ Likewise, there is a bill that seeks to define and regulate the activities, operations and registration of domestic and foreign non-governmental organizations that carry out social assistance programs, projects and/or activities in Bolivia, which has not been considered yet in the legislative assembly. These regulations establish that CSOs must present tax, social security and labor information to relevant public entities. The next section presents an analysis of the perceptions on controls that are performed regarding the information that must be provided by CSOs.

These laws also establish the grounds on which a CSO can be dissolved through the revocation of its legal personality as well as the procedure to follow to appeal this type of decision (the administrative procedure is found in the Administrative Procedure Authorization Law no. 2341).

The grounds on which legal personality can be revoked contain some ambiguous points that can be subject to diverse interpretations and may weaken certain rights. These will be analyzed later in this report.

The regulations also establish the basis on which a CSO can voluntarily choose to dissolve itself.

²⁰ Article 2 of Supreme Decree no. 22409 of 11 January 1990 that regulates, establishes rules and coordinates the activities of non-governmental organizations. Supreme Decree no. 26140 of 6 April 2001 on the Regulations on the Operations of Non-Governmental Organizations that Work with Rural People, Indigenous Peoples, Original Settlers and Colonists.

b) Analysis

Current laws and regulations provide that CSOs have to communicate certain information on their operations to various entities.

The Partial Regulation of the Legal Status Authorization Law establishes that when requesting legal personality, the group must submit to the Ministry of Autonomy, among other documents, the notarized charter; legal address of the group; full name, profession, address, identification number and signature of each founder; notarized document stating election results and existence of board of directors or another representative entity that specifies the duration of the term; and the list of individuals that make up the group and their signatures.²¹

Although Supreme Decree no. 22409 of 1990 establishes that NGOs in the registry must submit every three years updated general information on activities performed, funding received and projects planned for the coming three years,²² the recently enacted law no. 351 states that social organizations, non-governmental organizations, foundations and non-profit civil entities must periodically report their funding sources to the competent authority (the Ministry of Autonomy).²³

Likewise, they must also report any modification of the information presented on the registration form to the National NGO Registry within 60 of the date of modification.²⁴

With regard to taxation, non-profit organizations that are declared tax exempt must annually submit a sworn declaration form following the end of the period accompanied by financial statements and an annual report of activities to the tax authority.²⁵

Article 70 of the Civil Code establishes that foundations are subject to supervision by the Public Prosecutor. Meanwhile, Supreme Decree no. 22409 on NGO registration establishes that the “Ministry of Planning and Coordination, through the Undersecretary of Social Policy and in coordination with the ministries of the corresponding sectors may assess: a) compliance with objectives and implementation of project by institutions and b) the impact of actions set out in the agreements between NGOs and ministries, where these agreements exist. The time, evaluators and terms of reference of these assessments will be agreed in each case between the Ministry of Planning and Coordination and the NGO.”²⁶

With regard to the information that CSOs must submit to the various competent authorities, interviewees and focus group participants indicated that the administrative procedures are necessary and that there would be no problems if they were performed in a rapid and well

²¹ See Article 10 of the Partial Regulation of the Legal Status Authorization Law.

²² See Article 5, Supreme Decree no. 22409.

²³ See paragraph III, article 7 of the Legal Status Authorization Law no. 351.

²⁴ See Article 6, Supreme Decree no. 22409.

²⁵ National taxes, formalization procedure for IUE exemption, resolution no. 10.0030.05, La Paz, 14 September 2005.

²⁶ See article 11, Supreme Decree no. 22409.

intentioned manner, because it would be routine.. Participants also considered the administrative procedures as obligations.

However, interviewees and focus group participants believe that due to the unfavorable political context for many CSOs, operations are hindered, as in practice these procedures are slow, bureaucratic and delay activities. Likewise, there is a perception that certain procedures (e.g., the procedure of the renewal of legal personality or registration with the Vice Ministry of Public Investment and External Financing) lasts longer than the established timeframe due to political issues and selective and arbitrary processes that harm many CSOs.

There are varying perceptions with regard to the government supervision and monitoring of CSOs. On the one hand, there is the perception that there is only a moderate level of supervision and monitoring and that this is necessary. However, on the other hand there is the perception of a high level of government oversight above all for NGOs in terms of controls and reports that must be submitted - registration, activity reports and tax reports - that hampers CSO operations.

At the same time, there is also a consensus in the perception that the level of control and supervision has a tendency to increase. These perceptions are not based on existing regulations, but rather on declarations by officials of the executive branch that accuse and threaten NGOs.²⁷

In this regard, certain articles in the Bill that seeks to define and regulate the activities, operations and registration of non-governmental organizations should be mentioned. The draft law provides that the Ministry of Development Planning, through the Vice Ministry of Public Investment and External Financing (VIPFE), will technically monitor NGOs that carry out programs and projects in the country and that are financed with their own funds, public and/or external funds in accordance with the parameters and methodologies to be established in the specific regulations of the law.²⁸

Likewise, this Bill includes the issuance of a certificate of operations for NGOs while considering their territorial base and area of work set out in their legal personality or Basic Cooperation Framework²⁹ that will be valid for two years. The presentation of this certificate will be mandatory for: entering into contracts and agreements with public entities at the various autonomous territorial levels; participating in public bids for the supply of public goods and services; opening and operating institutional bank accounts in the National Financial System; receiving external non-refundable resources and requesting tax exemptions.³⁰

²⁷ In December 2013, Evo Morales threatened to expel NGOs that conspire against the government. See: <http://www.noticias.com.bo/bolivia/evo-amenaza-con-expulsar-de-bolivia-a-ong-que-conspiren-contra-gobierno/>. Declarations against NGOs include the statement by the Minister of the Presidency Juan Ramón Quintana, who said in 2012 that there is a “imperial environmental policy” in the Bolivian Amazon implemented by NGOs to benefit transnational companies. See: <http://www.ultimasnoticiasbolivia.com/2012/03/26/quintana-denuncia-politica-imperial-ambiental-de-oeneges-en-amazonia-boliviana/>

²⁸ See Article 12 of the draft Law.

²⁹ See Article 13 of the draft Law.

³⁰ See Article 14 of the draft Law..

There are contradictions whether CSOs are obligated to have their activities follow certain guidelines since the Civil Code establishes that the purpose and objectives of any NGO, association or non-profit foundation must be defined by its members. The only limitation is that the purpose must be lawful. As such, rules are established by its members (self-regulation). Therefore, the legal and operational capacity is limited only by the purpose that is determined by its constitution. As such the bylaws define the field of action.

However, Article 11 of the Partial Regulation of the Legal Status Authorization Law states that NGOs and foundations must additionally specify in their bylaws the scope of their activities focused on contributing to social and economic development, taking into account the guidelines set out in the national plan, national and sector policies. With these regulations, CSO activities must be aligned with national and sector plans and policies.

In addition, in the case of foreign NGOs, for the framework agreement subscription and renewal, a report is first requested from the ministry of the corresponding sector that must decide on the relevance of the proposed projects to the national development plan approved by the national government, hereby ensuring that funds for cooperation and external assistance are aligned with official state policy.

It is important to mention that this trend of aligning NGO activities with the plans and policies of the government is also reflected in the draft Law on NGOs, which establishes certain principles and values, including alignment. This signals that NGOs must carry out their activities within the context of the country's priorities, which are translated into plans, policies and systems.³¹

With regard to the dissolution of CSOs by the government, Law 351 states that legal personality may be revoked from any group that does not comply with the provisions of corresponding law and regulations or if the CSO performs activities that differ from the objectives stated in its bylaws.³² The Partial Regulation of the Legal Status Authorization Law³³ establishes the following grounds for revoking legal personality:

- a) Non-compliance with the provisions of Law 351 and its regulations
- b) Due to need or public interest, declared via the Plurinational Legislative Assembly law
- c) For performing activities that are different or that focus on different areas than those listed in the bylaws (purpose, objectives and scope)
- d) Due to transfer or commercialization of the legal personality
- e) Due to a criminal verdict in which it is proven by the competent judicial authority that the members that represent the group have engaged in activities that threaten public safety or

³¹ See article 4 of the draft Law on non-governmental organizations.

³² See article 14 of Legal Status Authorization Law no. 351.

³³ See article 19 of the Partial Regulation of the Legal Status Authorization Law.

order or have committed illegal acts in the exercise of their function, using the institution to commit the illegal acts.

- f) For not performing any activities within the framework of their purpose and objectives during a period of five years
- g) For non-compliance with sector policies and/or regulations following a report from the sector Ministry.

Meanwhile, Article 20 of the partial regulation provides that the revocation of legal personality may be brought forward by any public entity when the existence of a ground set forth in Law 351 or any of the aforementioned points that have been identified.

One of the more noteworthy grounds for revoking legal personality is the performance of activities that differ from or focus on another area that is not listed in the bylaws (purpose, objectives and scope), because in general CSO activities are very dynamic and may vary. Thus, this limits the actions of CSOs to a certain degree.

Likewise there is also some danger in Article 20 of the partial regulation as it provides that any public entity may bring forward the revocation of legal personality.

It is also important to mention that currently Supreme Decree no. 26140 of 6 April 2001 is in effect. This decree includes the Regulation of Operations of Non-Governmental Organizations that work with Rural People, Indigenous Peoples, Original Settlers and Colonists and it establishes the power to investigate, monitor and sanction NGOs, including the administrative suspension or cancellation of the NGO registration as established in Article 64 of the Civil Code through a judicial decision at the request of the Public Prosecutor for the suspension or cancellation when activities are performed that go against the public order.

Meanwhile, Supreme Decree no. 22409 states that in the case where it is proven that a CSO, that already has legal personality, has irregularities in meeting its stated objectives, the Ministry of Planning and Coordination is authorized to request the application of current laws in effect regarding national NGOs and call for the Ministry of Foreign Affairs to annul the agreement and the application of current laws for foreign NGOs.³⁴

In this regard, article 21 of the Partial Regulation of the Legal Status Authorization Law establishes the procedure for the revocation of a legal personality. Here, paragraph V. states that the “Supreme Resolution or Ministerial Resolution shall be subject to the administrative procedure, in accordance with current regulations.”³⁵

³⁴ See Article 12, Supreme Decree no. 22409.

³⁵ Articles 64 through 70 of the Administrative Procedure Authorization Law no. 2341 of 23 April 2002 establishes that in order to contest an administrative resolution, the following appeals can be made. In case of revocation: notice must be given by the interested party to the administrative authority that made the resolution within ten (10) days following notification. The author of the resolution will have a period of twenty (20) days to substantiate and resolve the revocation appeal, except for that which is expressly stated in accordance with special regulations established for each administrative organization system applicable to entities

With regard to the existence of non-legal grounds that the government can use to dissolve a CSO, key actors interviewed say that they do not know of any specific cases, but they perceive that this could happen, given the current conditions. A series of statements from government officials have positioned CSOs as enemies of the administration and have implied or directly stated that many will be expelled. Examples include the international NGO IBIS and USAID. Both were accused of political interference.³⁶

Additionally, cases of obstruction and delays of administrative procedures have been pointed out, such as the renewal of the registration of certain NGOs. Another case in point are situations where legal loopholes are sought, all with the aim of harming those NGOs that the government considers as contrary to their line of action. The government not only hampers the operation of many organizations but also employs indirect tactics that could lead to the dissolution of organizations.

There are examples of the government harassing indigenous social organizations that protested against the construction of a highway through the TIPNIS territory (recognized as an indigenous territory and protected area)³⁷ and NGOs supporting the TIPNIS cause. The harassment in this

listed under Article 2 of the law. If, following the period, no resolution is emitted, the appeal is assumed to be denied. The interested party may then be able to employ the Hierarchical Appeal.

The hierarchical appeal: I. Against the original appeal decision, the interested party may only employ the Hierarchical Appeal. II. The Hierarchical Appeal will be put before the same administrative authority to decide on the revocation appeal within ten (10) days following notification, or on the day the term to resolve the revocation appeal expires. III. In period of three (3) days of having received it, the Hierarchical Appeal and its history must be sent to the competent authority for the provision of information and decision. IV. The competent authority to decide on Hierarchical Appeals shall be the highest executive authority of the entity or that which is established in accordance with the special regulation for each administrative organization system, applicable to Public Administration entities listed in Article 2 of the law. For Hierarchical Appeal decisions, the law establishes the following: I. To substantiate and decide on the Hierarchical Appeal, the competent administrative authority of the public entity shall have a period of ninety (90) days, except for that which is expressly stated in accordance with special regulations established for each administrative organization system applicable to Public Administration entities listed under Article 2 of the law. II. The term will be set based on the reception of the appeal. If the term expires and no decision has been made, the appeal shall be understood as granted and the earlier decision shall be reversed, under the responsibility of the corresponding authority. Scope of the Hierarchical Appeal: I. Hierarchical Appeal decisions shall define the scope of the issue and in no case shall they force the lower authority to issue a new resolution, except in accordance with paragraph II) of this article. II. The scope of the decisions of Hierarchical Appeals of Regulation System such as SIRESE, SIEFI and SIRENARE shall be established through regulations in accordance with the competency and characteristics of each system.

The administrative appeals process shall be exhausted in the following cases: a) for decisions of Hierarchical Appeals; b) for administrative actions against which no administrative appeal can be made in accordance with this or other laws; c) for decisions by administrative entities that lack a superior hierarchy, except when the law states otherwise; and d) for decisions different from those listed in prior points, as long as established by law.

Once the Hierarchical Appeal is decided, the interested party may seek a judicial dispute review by the Supreme Court of Justice.

³⁶ In December 2013 the government expelled the international NGO, IBIS., accusing it of political interference and stating that it financed the division of indigenous social organizations. Likewise, on 1 May 2013, the government expelled USAID (the international development agency of the United States), also accusing it of political interference and of conspiring against the government. For more information, see: <http://www.paginasiete.bo/nacional/2013/12/27/cancilleria-oficializa-expulsion-ibis-mediante-nota-escrita-9728.html> and http://www.lostiempos.com/diario/actualidad/nacional/20130501/evo-expulsa-a-usaid-de-bolivia_211346_453925.html

³⁷ The conflict over the Isiboro Sécure National Park and Indigenous Territory (TIPNIS) began in 2011 when indigenous people mainly from eastern Bolivia held a march against the construction of the second section of a coast-to-coast highway that passes through the territory, alleging that the environment and diversity of the area would be affected and the way of life of the indigenous people living there would be harmed. This protest led to intense conflicts between the indigenous population and the government,

case was in the form of statements by government officials.³⁸ On 8 January 2014, rural people, encouraged by a parliamentary deputy attached to the party in office, took over the offices of an NGO by force.³⁹

Currently there are internal divisions among indigenous social organizations as was noted in the interviews and focus group discussions. These divisions have been indirectly caused by the government. For example, both in the Confederation of Indigenous Peoples of Bolivia (CIDOB) and the National Council of Ayllus and Markas of Qullasuyu (CONAMAQ) are divided by groups in favor and against the government and are engaged in a continuous dispute.

The Civil Code states that self-dissolution of CSOs can occur due to various reasons, including:

- Reasons established in the bylaws;
- Having fulfilled the objectives for which it was established, or having determined that the objectives could not be met;
- Not being able to operate in accordance with its bylaws;
- A judicial decision requested by the Public Prosecutor when it carries out activities that go against public order and decency.⁴⁰

For the first three cases, in accordance with the agreement of the members in the bylaws, an extraordinary assembly with a qualified majority can approve the dissolution of the organization. Minutes of the decision are drafted and later formalized before the government notary and presented to the rest of the corresponding public records for removal from them.

For the last case - dissolution by a judicial decision, the law does not provide a special procedure. Therefore it is understood that it must occur as an ordinary civil proceeding subject to appeal in the Superior District Court and further appeal in the Supreme Court of Justice.

c) Challenges and weaknesses

Certain weaknesses in the regulations surrounding the operation of CSOs have been identified, especially with regard to the obligation to align CSO activities with national planning and national and sector policies.

which is in favor of the construction of the highway. The government based its position on the economic development that the project would entail for the country and for the area through which the highway would pass.

³⁸ This issue is discussed more in the section on *Peaceful Assembly*.

³⁹ On 8 January 2014, the facilities of the Tomás Katari Polytechnic Institute (IPTK) were taken over by a group of political and union leaders of the Chairapata and Milluni Rural Persons and Original Settlers Sub Syndicate and led by parliamentary deputy Emiliana Aiza. Staff members were taken hostage as ransom for the institution's assets in the town of Ocurí. See: http://www.redunitas.org/boletin/01enero14/08IPTK_pronunciamiento.php

⁴⁰ See Article 64 of the Civil Code.

With regard to the information CSOs must present on their operations, the identified obstacles or weaknesses are not about formal issues, but rather the perception that in many cases these procedures are slow, bureaucratic and selective according to policy guidelines.

Another weakness is the perception of a CSO experiencing a difficult time, especially for NGOs, due to a series of statements by government officials where NGOs are branded as opponents and enemies of the Administration. There is also a perception of government harassment towards indigenous social organizations that protest the construction of a highway through the TIPNIS.

A third weakness is the ambiguity in the revocation of legal personality where subjectivity can be used to invoke certain legal grounds, such as performing activities that are different or have a focus on another area than is indicated in the bylaws. Another weakness is the fact that the revocation of legal personality can be filed by any public entity.

Therefore, one of the main challenges is to discuss those parts of the regulations that are unclear and allow for too much discretion. Another challenge is the improvement of the relations between CSOs and the government by seeking open spaces for dialogue and a relationship of mutual trust.

V. Access to resources

Information for the *access to resources* dimension was collected through three techniques: 1) a review of the laws and regulations related to this dimension, 2) interviews of three key actors and 3) questions on this dimension was asked at the four focus groups.

a) Overview

With regard to access to resources, a series of problems is presented that in practice has led to a crisis within civil society.

These problems include the withdrawal of many resources coming from international development assistance, the absence of government funding for CSOs and a lack of a culture of philanthropy. All of these factors form a challenge for CSOs in order to maintain themselves and survive.

The political, policy and regulatory context does not help the situation either, since they do not provide tax incentives for philanthropy, nor are there any opportunities for government financing. Likewise, the relationship between the government and CSOs is not optimal due to a perceived lack of willingness by the government to open more spaces for resources for these sectors.

b) Analysis

• Financing in general

The Legal Status Authorization Law does not mention anything specific regarding CSO financing. However, it does define NGOs as “private law entities that (...) perform non-profit activities of development and/or charity and whose activities are non-financial in nature, with funding and/or

own funding and/or external cooperation in the territory of the state.” This could be interpreted as a prohibition to access international resources from entities that do not have a presence in Bolivia or as prohibiting public funding of NGOs.

It is noteworthy that all donations must be reported to VIPFE.⁴¹ There is a regulation on reporting public and private donations that states that all donations in cash or in kind for a public or private entity must be reported to VIPFE through filling out a form. In addition, supporting documentation is required and donors must report quarterly to VIPFE the disbursement of all donations, including donations in kind and technical assistance of experts - which must be monetized. It also states that the closure of agreements must be accompanied by a report to VIPFE outlining the total amount that was disbursed, the date of closure and results.

The current regulations establish that income and assets of these institutions cannot be distributed among associates, not even in the case of liquidation, since in the application of the principle of patrimonial autonomy the assets of the group are different from those of the members or associates. Once the assets are allocated to the group, they may only be used for the purposes for which it was established. Tax legislation provides that the following is exempt from taxes: “profits obtained by civil associations, foundations and non-profit institutions that are legally authorized, that have signed agreements and that carry out the following activities - religious, charitable, social assistance, educational, cultural, scientific, environmental, artistic, literary, sport, political, professional, labor union or trade union. This benefit will continue as long as no financial intermediation or other commercial activities are performed and that through express provision of the bylaws, the entirety of income and assets of the aforementioned institutions are used exclusively for the stated purposes and in no case may they be directly or indirectly distributed to the members. In the case of dissolution, assets shall be distributed among entities with the same purpose or donated to public institutions with these conditions being reflected in their financial situation.”⁴²

Here, the Civil Code states that in the case of associations, the assets acquired are a common fund and as long as the association lasts, the members cannot request to divide the fund nor can they request their share in case of separation. It also establishes that the obligations taken on by representatives of the association are paid by the common fund and that there is an obligation to report those who have worked in the name of the association, not only its representatives. Assets and funds that remain after the objectives of the association are met (or after the objectives have not been met) will be assigned to the public university in the district.⁴³

In the case of dissolution of a CSO, the Civil Code establishes that once the association or foundation is dissolved, the assets shall then be liquidated. Liquidation consists of the awarding

⁴¹ NGO Coordination Bureau at the Vice Ministry of Public Investment and External Financing, an office at within the Ministry of Planning.

⁴² See Article 2 of Law 2493 of 4 August 2003: Modifications to Law 843.

⁴³ See Article 65 of the Civil Code.

of the remaining assets in accordance with the bylaws. If nothing is mentioned in the bylaws regarding assets, they shall be awarded to the public university in the district.⁴⁴

Meanwhile, the draft Law on Non-Governmental Organizations states that NGOs must have a certificate of operations to be able to receive external non-refundable funds and besides being able to open and operate institutional bank accounts in the national financial system. This draft Law also states that NGOs must report to the corresponding public entity regarding the destination, type and administration of resources and privileges granted and must annually present their duly audited financial results to the competent authority.

Today in Bolivia, the access to resources dimension is one of the most important issues for CSO sustainability. Several barriers obstruct and limit access to resources for CSOs. Interviewees and focus group participants noted that this is an underlying concern among a large majority.

The respondents perceive that currently there are non-legal barriers that have limited CSO access to resources. The global economic crisis has caused a withdrawal of a significant amount of international funding. Additionally, Bolivia's economic progress towards a middle income country has led to a shift of international technical and financial assistance to other countries and continents. There is an international image, which is promoted by the government's positions, of a Bolivia that has solved all of its problems, and that no more assistance is needed due to a supposed economic boom. This comes alongside the constant questioning of the efficiency of NGOs. It is also perceived that there used to be much more openness and that there is currently a regional trend of controlling NGOs. This makes cooperation agencies uncomfortable.

This situation is worrying precisely because CSOs depend mainly on financing from international cooperation and official cooperation of governments, although another very important resource is solidary cooperation – cooperation from civil society and NGOs in other countries that work with Bolivian NGOs through agreements.

At the same time several aspects in the legal and policy framework of Bolivia are perceived as disabling for the mobilization of local resources for various reasons. There is a feeling that this is a time of transition or even an adverse time for the legal, political and policy aspects that affect CSOs. In this sense, the political climate is creating an image of NGOs being unnecessary in society. In this adverse political climate, the stage is set for confrontation with social organizations due to the idea that government is not responsible for creating an enabling environment for CSOs to receive funding.

All of these factors that have led to changes in CSO financing are causing a crisis in the sector. Organizations are heterogeneous – ranging from small to large organizations - and this crisis is

⁴⁴ See Article 65 of the Civil Code.

causing many of them to reduce in size and others to dissolve because they cannot survive financially.

In addition, there is a perception that until very recently the financial sustainability of CSOs did not depend on the supervision and approval of the government. But within the sector, there is also a fear that governmental supervision and approval is increasing given the increased control and supervision of whether NGOs are following their plans by the government. Actions of NGOs can be restricted in case the government believes that these plans are not being followed and one of the best ways to do so is to restrict access to resources.

- **Government financing**

CSOs do not directly receive or have access to public resources or grants. The only existing example of access to a public fund is the Indigenous Fund, which unfortunately has been accused of poor management and corruption.⁴⁵

However, the government has established some state funding, mainly formed with resources from international sources, to finance small development projects. These projects can be implemented by NGOs, and some of the funding can be accessed through public bids. Upon receiving these funds, organizations are subject to governmental control as per the Government Administration and Control Law no. 1178 (SAFCO law),⁴⁶ through which the Comptroller General of the Republic is authorized to audit and monitor the management of such public funds.

In the public bidding system,⁴⁷ legally established non-profit civil associations are the proposers for public bid processes, in addition to natural persons and legal persons (commercial and business). According to Article 8 of Supreme Decree no. 29308, “to be contracted for programs financed by donated funds, NGOs must meet all requirements under Bolivian law, particularly that of having a permanent domicile in the country as well as having completed the corresponding registration in the national NGO registry administered by VIPFE.”

Nevertheless, the perception is that this way of accessing funding, through public bidding, is still only an emerging option. At the same time there are some concerns around this type of financing, because some consider it as going against the essence of the purpose for which many CSOs were

⁴⁵ The Indigenous Fund was created in 2005 when the government and organizations of indigenous peoples, original settlers and rural communities established a 5% assignment of the IDH Direct Hydrocarbons Tax (37%) for the fund. There have been accusations of corruption and embezzlement of funds. For example, only one out of the 894 projects has been completed. See: <http://www.paginasiete.bo/economia/2013/12/9/solo-proyectos-fondo-indigena-concluyo-8170.html>

⁴⁶ **Article 5.** All persons, regardless of legal nature, that receive resources from the state for their investment or operations, or that benefits from subsidies, grants, advantages or exemptions or that render public services not subject to free competition, shall report to the competent public entity regarding the destination, manner and result of the management of resources and public privileges and shall present duly audited financial statements. The qualified and independent opinion may also be required regarding the effectiveness of some or all of the administrative and control systems used.

⁴⁷ Plurinational State of Bolivia, Basic Regulations for the Administration of Goods and Services, Supreme Decree no. 181 of 28 June 2009, Article 42.

created. For example, NGOs, as contractors of the state, can be at risk because they may lose sight of their objectives of empowering civil society and become mere service providers.

In this sense, it is perceived that there is no legal framework regarding government financing. Since little is known about funding from South-South Cooperation (e.g. modalities and criteria for distribution of funds) it is thought that NGOs do not have access to this type of funding, leading to a perceived lack of transparency in these processes.

Likewise, due to the political context and the confrontational situation between some CSOs and the government, there is a belief that no political will exists (and will not exist in the short or medium term) to create government funds to finance or subsidize CSOs.

- **International financing**

There are no restrictions on international support for NGOs. The most important requirements are that activities are lawful and that the institution complies with the established public registration requirements.

Supreme Decree no. 22409 on the Regulations for the Administration and Implementation of External Resources from Donations, promulgated on 10 October 2007, and its regulations approved by resolution no. 286 of 11 December 2008 of the Ministry of Planning states the obligation to report external resources from donations received by public sector entities as well as by private persons and entities, from multilateral finance organizations, international development agencies, governments and non-governmental organizations. This registry includes official and direct donations to the Government of Bolivia, as well as non-official or unilateral donations that are transferred directly to private entities and organizations.

The regulations stipulate the obligation to report external resources from donations to VIPFE, since the regulation for reporting public and private donations establishes that all donations in cash and in kind for a public or private entity must be declared to VIPFE through a form. In addition, supporting documentation is required and donors must report all donations to VIPFE quarterly including in kind donations. Technical assistance of experts must be monetized. Likewise, the closure of agreement must include a report to VIPFE with the total amount disbursed, date of closure and results.

With regard to non-legal barriers for the access to international financing, it is considered as highly dependent on the availability of resources for Bolivia. As mentioned earlier, this has declined significantly due to the global economic crisis, the withdrawal of international cooperation and the fact that Bolivia is now considered to be a middle income country (when in reality there are major needs that have not been met).

Likewise, another obstacle mentioned by the interviewees and focus group participants is the fact that international development agencies require high quality project proposals, and as is often the

case, many CSOs have a low capacity in drafting quality project proposals, which affects their ability to access international funding.

Another factor that affects the donor contributions to CSOs is the rule of law, as official donors may require certain regulatory and political conditions in order to invest in countries, such as legal security. If the conditions are unclear, international donors may refrain from granting funds to CSOs in the country.

- **Philanthropy**

In Bolivia a culture of giving to CSOs has not taken root nationally. A culture of philanthropy does not exist either, although there is a law that recognizes voluntary action.⁴⁸ These organizations are highly dependent on international development assistance since that there is a lack of government funding.⁴⁹ Nevertheless, it also should also be noted that there are no legal restrictions meaning that CSOs are allowed to receive funds coming from corporate and personal philanthropy.

It must be emphasized that there are few philanthropic efforts from within Bolivia. One reason for this is the absence of sufficient fiscal incentives for individuals to make donations.

In terms of tax exemptions for philanthropic activities, donations and other free assignments made to tax-exempt non-profit entities are deductible from company profits for up to 10% of the taxable profits corresponding to the period.⁵⁰ In other words, it is a deduction from taxable income, not a tax credit (which would be a greater incentive).

Although the perception is that philanthropy in Bolivia is practically nonexistent, there perhaps is a new opening in terms of corporate social responsibility, but this is very incipient. It is perceived that the scant philanthropy that does exist is due to media promotions, especially through television, but these efforts are in general for emergencies, critical social cases and for some foundations that work with children.

With regards to corporate social responsibility, respondents believe there are only a few companies large enough with the resources to finance projects as most companies in Bolivia are medium or small. Additionally, there is a lack of awareness with regard to contributing or giving to social causes.

Regarding the capacity to raise funds and the extent of diversification of the financial resources of CSOs, the perception exists that it depends a lot on the size of the CSO, as CSOs are very diverse.

⁴⁸ Volunteering Law no. 3314 seeks to promote, recognize and foster voluntary actions as an expression of solidary participation, citizen service and social co-responsibility. The law regulates relations between social volunteers and organizations for which they carry out activities.

⁴⁹ Olivares, Lourdes. Informe de Investigación Pilar Sociedad Civil. SNI, Bolivia. 2009.

⁵⁰ See Supreme Decree no. 24051 of 29 June 1995, Article 18 paragraph (f) and modifications in Supreme Decree no. 27190 of 30 September 2003.

The smaller organizations have greater problems to raise funds and to diversify resources, for example because of the requirements of international development projects. The larger organizations have fewer problems. There is also a perception that there is a lack of initiative and a decision to collect and diversify funds, because there is a tendency to stay with what is familiar.

Without a doubt, the political and legal context plays a fundamental role in fundraising.

c) Challenges and weaknesses

Access to resources by CSOs currently presents a series of weaknesses and challenges.

One of the main weaknesses is that access to resources is becoming increasingly difficult for various reasons, including: the withdrawal of much official development assistance due to the global economic crisis and the categorization of Bolivia as a middle income country; a lack of governmental funds for CSOs or grants (there is only a small and incipient space for CSOs to access resources through public bids); and lastly a lack of a philanthropic culture, as well as an absence of incentives to promote giving.

Another negative aspect is that due to the political context, there is a perception of a lack of support or political will by the government with regard to CSOs.

All of these factors point to a critical time for CSOs, which are faced with several significant challenges, such as finding other sources of financing, improving capabilities for diversification and surviving with dwindling international technical and financial assistance (the source on which they have been dependent for many years).

Another significant challenge is to have a dialogue with the government to find other avenues of resources. However, there is a concern that the government will continue to react negatively and reactionary to any action by CSOs that the government considers too critical. This has a huge impact on CSOs, and will perhaps lead to CSOs disappearing due to political and financial issues. No improvements are expected on the horizon either, only a complicated and negative environment for CSOs.

In this sense it is very important to consider tax incentives to improve the culture of philanthropy and to create efficient systems for social control and accountability for the funds received from the little philanthropy that does exist.

Finally, a major challenge concerns the need for the state to create spaces of dialogue and thus the inclusion of CSOs. This way it will also improve the relation between CSOs and the Government.

VI. Expression

Information for the dimension of *Expression* was collected through three techniques: 1) a review of the laws and regulations related to this dimension, 2) interviews with three key actors and 3) one focus group discussion.

a) Overview

The right to freedom of expression is sufficiently guaranteed legally, both in the Constitution as well as in international treaties ratified by Bolivia.

Nevertheless, in practice there are certain infringements on this right with regard to CSOs in the communication and journalism sectors⁵¹ as well in the case of those CSOs that have openly expressed themselves to be in favor of indigenous rights and against the TIPNIS highway. Although it is difficult to provide evidence of direct actions against these organizations for voicing certain opinions, government officials have made statements that can be considered as harassing and threatening sectors that are critical of government policies. For example, officials have threatened to throw out NGOs that conspire against the government.⁵²

Likewise, although the law against racism and all forms of discrimination is considered very positive, it contains certain articles that impinge on the freedom of expression.

b) Analysis

The Constitution of Bolivia guarantees the freedom of expression. Paragraph 5, Article 21 of Section I (Civil Rights) of Chapter three (Civil and Political Rights) establishes the right of all Bolivians to freely express themselves and disseminate thoughts and opinions by any means of communication, whether orally, in writing or visually, as well as individually or collectively. Likewise, civil rights guaranteed by the Constitution include, among others: the freedom of assembly and association, publicly and privately, with lawful purposes; the freedom to express and disseminate thoughts and opinions by any means of communication, whether orally, in writing or visually, as well as individually or collectively; and the freedom to access information and the interpretation, analysis and communication of it, either individually or collectively.

The Constitution does not expressly establish any right regarding access to internet. However, Article 20 does recognize the universal and equitable right of all people to access basic services of potable water, sewage, electricity, natural gas, postal services and telecommunications. It may be understood that telecommunications services include internet access.

The right of expression is not only guaranteed by internal regulations, but also by international law, as Bolivia has ratified several international treaties that protect this right.

⁵¹ Fundación Construir together with the Association of Journalists of La Paz published a book on the freedom of expression in Bolivia where they show the tension between what is established by law and what occurs in practice. See: Fundación Construir, Asociación de Periodistas de La Paz (APLP), *Libertad de expresión en tiempos de cambio. Pensando la transición constitucional*. Konrad Adenauer Stiftung Foundation, 2013.

⁵² In December 2013, Evo Morales threatened to expel NGOs that conspire against the government. See: <http://www.noticias.com.bo/bolivia/evo-amenaza-con-expulsar-de-bolivia-a-ong-que-conspiren-contra-gobierno/>.

- American Convention on Human Rights / Pact of San Jose of 1969. Ratified by Bolivia through Supreme Decree no. 16575 of 13 June 1979. Elevated to law no. 1430 on 11 February 1993 (article 13).
- International Covenant on Civil and Political Rights of 1966. Ratified by Bolivia through Supreme Decree no. 18950 of 17 May 1982. Elevated to law no. 2119 on 11 September 2000 (article 19).
- Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families of 1990. Ratified by Bolivia through law 1976 of 30 April 1999 (article 13).

Bolivia has not ratified any international treaties regarding the freedom to access internet. However, certain articles of treaties that have been ratified address this issue. For example, Article 19 of the International Covenant on Civil and Political Rights establishes that “everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.” The phrase “any other media of his choice” can be interpreted as internet. However, no specific regulations have been ratified regarding the issue.

There is no specific law to regulate the content of public expression. The only law that in a certain way regulates this type of content is the Law against Racism and All Forms of Discrimination no. 045 of 2010. It seeks to establish mechanisms and procedures to prevent acts of racism and all forms of discrimination and is applicable to all Bolivians, public employees, diplomatic missions, private legal persons, non-governmental institutions, foreign institutions, social organizations, etc.⁵³ It states that the dissemination by any means of racist or discriminatory ideas and/or those that incite racism and discrimination are considered crimes against human dignity. In this regard, insults and other verbal aggressions due to racist or discriminatory reasons are also considered crimes against human dignity.⁵⁴ The latter are considered personal injury claims.

As mentioned earlier, there are no specific legal restrictions on the freedom of expression. However, in several instances government representatives have accused some CSOs of having specific political interests, defending the interests of imperialism and threatening the Bolivian government. These accusations have been directed at CSOs working in communication and the environment, especially with regard to the TIPNIS conflict.

With regard to CSOs that work in the field of communication, one recent example occurred last year when the National Press Association was accused of receiving funding from the National Endowment for Democracy (NED) for political and non-informational purposes.⁵⁵ Accusations against other private media outlets do not entirely restrict the operations of the organizations, but

⁵³ See article 3 of the Law against Racism and All Forms of Discrimination.

⁵⁴ See article 23 of the Law against Racism and All Forms of Discrimination.

⁵⁵ See: <http://lapatriaenlinea.com/?nota=94221>

serve to disqualify and intimidate them in a way that limits and infringes on their right to expression.

Likewise, over the last few years various organizations working in the field of communication such as the National Press Association (ANP), the Association of Journalists of La Paz (APLP), etc., besides several other media outlets, have participated in various demonstrations to defend the freedom of expression when they felt it was being violated. One example was in 2012 when the above mentioned Law against Racism was being discussed.⁵⁶ Certain CSOs and journalists believed the draft Law violated the freedom of expression in two of its articles. One article revolved around the closure of media outlets and another stated that journalists could be tried in ordinary courts and could possibly be jailed if they published content of a racist or discriminatory nature. The CSOs sustained that these articles could become a tool to silence the media and limit the freedom of expression.

With regard to this issue, interviewees and focus group participants confirmed the perception of intimidation by political power at all levels that limits the capacity of CSOs (especially those working in the fields of communication and journalism) to freely express their opinions. Participants believe that this has become a non-legal barrier that has led to and leads to self-censorship by CSOs due to a fear of expressing opinions that go against the government, since there is the threat of lawsuits, for example.

Perceptions regarding open criticism of government practices and policies vary. Some believe the government does not accept any type of criticism since it immediately reacts by attacking or intimidating those who criticize them. Others sustain that the government does tolerate open criticism, since there are many critiques of government positions that are expressed through the media. There is a risk though as there are situations of intimidation and disqualification of media outlets that have an opinion that is critical of the government.

As stated previously, there are no specific regulations that limit the freedom of expression. On the contrary, the constitution and international treaties ratified by Bolivia provide significant legal protections. However, in practice the story is different. It is perceived that following the passing of the Constitution that guarantees this right, certain laws were passed that limit the freedom of expression, such as the Law against Racism and all Forms of Discrimination.

Participants also believe that individuals and organizations are aware of their right to freedom of expression, but often do not exercise this freedom as they should. In other cases, self-censorship occurs.

c) Challenges and weaknesses

There are many weaknesses and challenges in the sphere of freedom of expression.

⁵⁶ See: http://www.bbc.co.uk/mundo/america_latina/2010/09/100912_bolivia_ley_racismo_periodistas_fp.shtml

Although legislation protects this right, the practice is different, especially with regard to civil society organizations that are critical of the government. This is a major weakness and also presents a challenge to work towards freedom of expression by CSOs and the citizenry in general so that not only they are aware of this right, but that they exercise it as well.

Likewise, a challenge for the government is to not disqualify those who criticize official government policy.

VII. Peaceful Assembly

Information for the dimension of *peaceful assembly* was collected through three techniques: 1) a review of the laws and regulations related to this dimension, 2) interviews with two key actors and 3) one focus group discussion.

a) Overview

Peaceful assembly is a right guaranteed by the Bolivian Constitution and by international laws that have been ratified by the Bolivian government.

This right is practiced by Bolivian society and there are no legal restrictions.

There have been certain cases of violent repression against peaceful protestors. Protesting occurs frequently in Bolivian society and is used as a way to be heard by officials.

b) Analysis

Bolivian law guarantees the right of freedom of assembly and association, both publicly and privately, with lawful purposes. Paragraph 4 of Article 21 of the Constitution guarantees this right.

Bolivia has also ratified international treaties that guarantee the right to peaceful assembly:

- American Convention on Human Rights / Pact of San Jose. Ratified by Bolivia through Supreme Decree no. 16575 of 13 June 1979. Elevated to law no. 1430 on 11 February 1993. Articles 15 and 16 on the right to assembly and association.
- International Covenant on Civil and Political Rights. Ratified by Bolivia through Supreme Decree no. 18950 of 17 May 1982. Elevated to law no. 2119 on 11 September 2000. Articles 21 and 22 on the right to peaceful assembly and association, respectively.

The right to peaceful social protests is guaranteed by Supreme Decree no. 1359 of 26 September 2012. This regulation also prohibits the possession and/or use of bombs or explosives and/or flammable, asphyxiating, poisonous and other related materials during protests and social demonstrations as they pose a threat to health, bodily integrity and public and private property. It establishes that non-compliance with this prohibition will lead to criminal charges.

For notifications on strikes,⁵⁷ the General Labor Law establishes that:

Workers or business owners may declare a strike as long as the following conditions are met: a) a decision is issued by the Conciliation Board and the Arbitration Tribunal with regard to the issue; and b) the resolution is made by three-quarters of all active workers.

The original minutes of the session declaring the strike must be sent to the departmental or provincial political authority with five days' notice, along with a list of the workers in charge and their addresses. A copy of the minutes shall also be sent to the Labor Inspector of the area.

Employers who decide to close their establishment shall communicate this to the aforementioned officials in writing, stating the reasons and length of the closure and attaching a list of the workers who will be without work.

The concept of a strike only relates to the peaceful suspension of work. Any act or manifestation of hostility against people or property is subject to criminal law.

Although there are no groups with a specific agenda that are prohibited from assembling (assembly is only permitted for lawful purposes) it should be noted that following the TIPNIS conflict, the government issued a series of statements against NGOs working in the environmental sector that supported the indigenous protest. The NGOs were accused of being imperialists, encouraging conflict,⁵⁸ manipulating indigenous people to impede the construction of the highway,⁵⁹ etc.

For example, the Minister of the Presidency said there is an “imperialist environmental policy” in the Bolivian Amazon implemented by NGOs to benefit transnational companies,⁶⁰ accusing several NGOs of being financed by major powers. He also said that NGOs supposedly finance environmental struggles, when in reality (according to the Minister) they obstruct the work of the government to bring about development for the region.⁶¹

All of these statements by the government against NGOs imply limitations against the freedom of association and the free operations of environmental CSOs. Even during the start of the TIPNIS conflict the legislative assembly created a commission to investigate NGOs that would presumably be financing the protest of the people in the Sécure Isiboro Indigenous Territory and National Park (TIPNIS).⁶²

⁵⁷ See Articles 114-117 of the General Labor Law.

⁵⁸ See http://www.lostiempos.com/diario/actualidad/nacional/20121015/gobierno-acusa-a-dos-ong-de-alentar-conflictos_188890_401492.html

⁵⁹ See http://www.la-razon.com/economia/Presidente-carretera-Moxos-construira-quieran_0_1421857842.html

⁶⁰ See <http://www.iberamerica.net/bolivia/prensa-generalista/jornadanet.com/20120326/noticia.html?id=87813gN>

⁶¹ See http://www.la-razon.com/nacional/Ministro-Quintana-Ministerio-Publico-TIPNIS_0_1708029248.html

⁶² See http://marcha.ftierra.org/index.php?option=com_content&task=view&id=464

It should be noted that the regulations and procedures for the police and armed forces are within the International Human Rights framework. However, in practice there sometimes are violent confrontations between protesters and law enforcement.⁶³

There have been recent cases of governmental violence against peaceful protesters. The most worrisome case and one with major repercussions was the protest over TIPNIS, where police officers violently suppressed protesters.

In Bolivia there is a perception of continuous protest. People take the streets for various reasons to make demands and to be heard. In this context we can say there are no restrictions on this type of protest. However, it is important to note that many of these collective actions lead to the use of tear gas, pushing and shoving and acts of violence, often between the citizenry and police officers. However, there are also processes of dialogue and peaceful mediation.

With regard to the tolerance of the government towards groups that criticize it, some interviewees and focus group participants believe there is no tolerance and they give examples related to the persecution of indigenous groups that are against the construction of the highway through the TIPNIS. However, some say that indeed there is freedom to criticize the government, although there is a type of self-censorship due to intimidation that occurs more in a subjective rather than objective way, as those who openly criticize the government are branded as opponents or right wingers.

c) Challenges and weaknesses

Peaceful assembly is a right guaranteed by Bolivian law and by international treaties that have been ratified by the Bolivian government.

Nevertheless, there are weaknesses in this regard. There are certain perceptions that the government is increasingly less tolerant of groups that criticize it or that are against its stances and policies, such as TIPNIS.

Bolivians are continuously protesting and although there are no legal restrictions on these types of actions, sometimes there are traces of violence. For example, there have been very violent repressions as is the case with the TIPNIS protest.

Therefore, one of the main challenges is to continue to train law enforcement officials so that violence is not used. At the same time there is need for political will in order for the state to refrain from resorting to violent repressions of peaceful assemblies, but to seek dialogue and reconciliation before taking any other action.

⁶³ There are examples of the use of tear gas and violent confrontations between protesters and law enforcement officers. In 2012, when doctors and medical students held a protest lasting several days over a decree establishing an eight hour work day for doctors, there were confrontations that led to wounded people on both sides. See: <http://www.opinion.com.bo/opinion/articulos/2012/0503/noticias.php?id=54574> and <http://www.fmbolivia.net/noticia47958-disturbios-protagonizados-por-universitarios-y-mdicos-se-saldan-con-seis-heridos-y-detenidos.html>

It is also important for the government to be tolerant of criticism and of an open and permanent dialogue with CSOs so that they can build relationships based on mutual trust.

VIII. Internet Freedom

Information for the *internet freedom* dimension was collected through two techniques: 1) a review of the laws and regulations related to this dimension and 2) interviews of two key actors.

a) Overview

There are no specific regulations that address the right to internet in Bolivia. However, the Constitution recognizes the right of all to have universal and equal access to telecommunications services. The internet can be considered to be included in this regard.

There are no restrictions on internet usage. However, access to internet is still limited and has not reached all sectors of society due to technical and economic reasons.

b) Analysis

The Constitution does not establish any specific right regarding access to internet. However, article 20 does recognize the universal and equitable right of all people to access potable water, sewage, electricity, natural gas, postal and telecommunications services. It can be implied that telecommunications services include the access to internet.

The Telecommunications, Information Technologies and Communication Law no. 164 of 8 August 2011 seeks to ensure universal and equitable access to telecommunications, information technologies and communication services.

Currently there is no law to regulate internet freedom or to restrict its use.

There are no legal restrictions to access the World Wide Web, nor are there technical barriers such as a centralized infrastructure, state monopolies or state control of fiber optic cables for internet access or mobile telephones.

There are no objective limitations on content transmitted over internet. However, the vice president of Bolivia has said that he would note all the names of people who insult the president on social networks. This statement was highly criticized and did not lead to anything as far as we can tell.

As such it can be said that there are no restrictions on internet freedom. However, many sections of the population in Bolivia still do not have access to internet, thus limiting the exercise of this right.

It is perceived that although there are initiatives by the state to promote internet access, access to internet is limited to cities, leaving out the rural areas. The costs for internet access in Bolivia are

among the world's most expensive while internet speed is among the slowest.⁶⁴ This shows that there is still much to be done in this area and initiatives to date have been insufficient to guarantee access to internet for all.

Nevertheless, despite limited access to internet, interviewees stated that internet usage has been beneficial for many vulnerable sectors of society such as indigenous people and women (e.g. for issues relating to gender-based violence). Another example is the use of internet by indigenous people to express their ideas and to connect with similar groups in other places around the world.

There is a perception that the use of internet and social networks by CSOs has increased as of late, but also that there is still much work to be done to realize the internet's infinite opportunities for CSOs.

c) Challenges and weaknesses

The main weakness in the dimension of internet freedom in Bolivia is that access is not yet widespread. Many sectors still do not have access to this powerful information tool, although it is not restricted at all. Additionally, the internet service available in Bolivia is not of high quality; costs are high and speeds are slow.

In this regard, the main challenges are: 1) to improve the quality of internet service in Bolivia and 2) to facilitate access to the entire population given that certain parts of the population are left out, which limits their ability to exercise this right.

IX. Government-CSO relations

Information for the dimension of *Government-CSO relations* was collected through two techniques: 1) a review of the laws and regulations related to this dimension, and 2) two focus group discussions.

a) Overview

With regard to Government-CSO relations, it first should be noted that the Constitution establishes certain conditions in order for civil society to participate and exercise control over various public activities. The articles addressing participation and social control are considered a breakthrough in this area, because of the power it gives to organized civil society to participate in public policy proposals, decision making and the development of legislation.

There are many criticisms of the recently passed Law no. 351 (the Legal Status Authorization Law), as it is seen as a factor that negatively affects government-CSO relations. These issues will be addressed later.

⁶⁴ See <http://www.bolpress.com/art.php?Cod=2012051804>

Many CSOs believe that relations with the government are at a critical stage. They say that there must be a differentiation between CSOs, as they believe certain CSOs that follow the government line enjoy good relations and receive more opportunities for participation. However, other CSOs, such as indigenous social organizations and several NGOs and associations related to communication and journalism, have relations with the government that vary from harmonious to confrontational, given the statements that government officials have made, lately accusing them of opposing and conspiring against the government. This clearly impedes the existence of a harmonious relationship, given that the government classifies many CSOs as threats.

b) Analysis

We cannot generalize government-CSO relations since some CSOs have good relations with the government and others (such as indigenous social organizations and various NGOs) do not.

However, there are no legal limitations for CSOs to participate in different processes, whether political and electoral processes, decision making processes, participation in public policy, advocacy campaigns or lobbying for new legislation. Article 241 of the Constitution establishes that the sovereign people, through organized civil society, will participate in public policy design and exercise social control over public administration on all levels of the state as well as public, mixed and private companies and institutions that administer fiscal resources. Article 242 of the Constitution states that participation and social management implies (among other aspects) participation in the formulation of state policies and to support the legislative branch in the collective construction of laws.

These two articles are innovations in the new Constitution, as they define a system for participation and social management at all state levels. Their scope is a breakthrough in terms of strengthening the responsible participation of organized civil society and for opening institutionalized spaces in the state to ensure and channel this participation of vibrant forces of society.

The Constitution establishes that organized civil society will participate in public policy design, planning and formulation and exercise social control on public administration and the quality of public services provided to citizens. It also defines that this participation implies the creation of transparent and open management of information, as well as collaboration in public observation proceedings for the designation of officials, in addition to supporting transparency in nominations of corresponding candidates for public office.

This is step forward, as for the first time the Constitution provides mechanisms for citizens to exercise their political rights to participate in the control of political power and to monitor the actions of public officials.

The recently passed Participation and Social Management Law no. 341 states that the intended actors are organized civil society groups with no discrimination based on gender, color, age, sexual orientation, gender identity, origin, culture, nationality, citizenship, language, religious creed,

ideology, political or philosophical affiliation, marital status, economic or social status, level of education or ability. The rights, powers and obligations⁶⁵ of these actors are recognized within the Law.

The Participation and Social Management Law no. 341 establishes several rights for organized civil society, including: participating in the formulation of policies, plans, programs, projects and decision making in planning processes; monitoring of implementation and evaluation of public administration at all levels of government; performing social management of the execution of plans, programs and projects at all state levels and/or private entities that administer fiscal and/or natural resources; and presenting legislative or other regulatory initiatives.⁶⁶

The Law also establishes that organized civil society may: propose bills and support the legislative branch in the construction of laws; promote national, departmental, regional, municipal and indigenous public policies aimed at preventing and combating corruption; and propose, promote and disseminate policies, plans, programs and projects at various state levels focused on strengthening the development of intercultural citizenship and co-responsibility in public administration.⁶⁷

Organized civil society may access these rights as actors of participation and social management. Law 341 grants this to civil society with no type of discrimination of gender, color, age, sexual orientation, gender identity, origin, culture, nationality, citizenship, language, religious creed, ideology, political or philosophical affiliation, marital status, economic or social status, level of education or ability.⁶⁸

Regulations establish that there are various types of actors of participation and social management that are categorized as organized civil society for this purpose:

1. **Organic.** Legally recognized social sectors, neighborhood commissions and/or organized labor.
2. **Community.** Indigenous nations and peoples, original settlers, rural people, intercultural people, afro-Bolivian communities and all those recognized by the Constitution that have their own organization.
3. **Temporary.** Organized for a specific purpose and when their objective has been reached, they cease to exist.⁶⁹

⁶⁵ Participation and Social Management Law no. 341 of 5 February 2013, chapter I, Articles 6 through 10.

⁶⁶ Participation and Social Management Law no. 341 of 5 February 2013.

⁶⁷ Participation and Social Management Law no. 341 of 5 February 2013, Article 9.

⁶⁸ Participation and Social Control Law no. 341 of 5 February 2013, Article 6.

⁶⁹ Participation and Social Control Law no. 341 of 5 February 2013, Article 7.

Despite the fact that regulations consider organized civil society with no discrimination as actors of participation and social management, it does not specifically address foundations, associations or non-profit entities.

Regarding CSO participation in political and electoral processes, there is a CSO platform called the “Citizens Initiative for Election Observation and Citizen Participation - Transparent Bolivia” that has observed various elections in Bolivia.

There are no limits on the participation of individuals that are part of CSOs in public office. In fact in the current administration, many officials previously worked at NGOs.

On the other hand, although CSOs are permitted to nominate candidates, an example cited in one of the focus groups was the election of magistrates for the judicial branch. The process was perceived as a bad experience because it showed broad discretion and favoritism in the selection of candidates.

Meanwhile, it should be noted that one of the conditions for CSOs to receive foreign funding is that they do not support political parties or candidates, but they may promote leadership and political agendas.

There are two aspects of one article in the Non-Governmental Organizations Law that may influence government-CSO relations. One could appear negative and the other positive.

Here, the principle of “alignment” states that “NGOs must carry out their actions in the framework of the country’s priorities established in plans, policies and systems.”⁷⁰ As mentioned above, this could lead to priorities becoming of a political nature and thus undermining the right to free association.

One positive aspect is that the principle of “coordination” establishes that “with the objective of optimizing resources and efforts, it is necessary to build inclusive and effective collaboration and coordination relations among donors, governments, the private sector and non-governmental organizations.”⁷¹ As such, this could facilitate the improvement of relations between the government and CSOs.

As evidenced, the Law establishes spheres of participation for CSOs in decision making, public policy creation and lobbying for new legislation. However, and despite the existence of formal mechanisms, interviewees and focus group participants said that round table discussions, etc. to address various issues promoted by the public sector do not change the situation nor take into account the proposals made by civil society. For example, participants said that round table discussions by VIPFE were held to discuss the law that regulates NGOs. Likewise, meetings were

⁷⁰ See Article 4 of the Law to regulate Non-Governmental Organizations.

⁷¹ See Article 4 of the Law to regulate Non-Governmental Organizations.

held to give feedback on Law 351 and its regulations. However in both cases there was neither feedback on nor consideration of the proposals made by CSOs.

Another issue at hand is that CSOs are not consulted in law creating processes. The spaces that exist for CSO participation are social spaces, where the laws have already been created. The perception is that the CSOs that are consulted are ones that support government positions, for other CSOs there is no space for consultation that is neutral, impartial and effective.

Although the law establishes spaces for accountability, the interviewed participants believe this could be improved so that the participation of CSOs and exchange between government and CSOs can exist, which according to participants is currently lacking.

Therefore, as mentioned earlier, no generalizations can be made regarding government-CSO relations as much depends on the specific situation, e.g., whether the CSO is close to the government or not, as well as on specific actions by the government. Likewise, it is important to differentiate government relations with CSOs in different areas.

For example, there have been times of great tension and poor relations with the organizations in the field of media and communication due to statements by government officials against these CSOs. Relations between the government and NGOs have lately been quite tense, as there have been several statements by government officials against NGOs leading to conflicts at times.

Also in the case of social organizations, relations with the government differ. For example, relations are very good between the government and like-minded social organizations such as Bartolinas, the Rural Workers Union of Bolivia (Confederación Sindical Única de Trabajadores Campesinos de Bolivia - CSUTCB), Colonizers (los Colonizadores) and the Cooperatives (las Cooperativistas). In contrast, relations are quite tense with social organizations that are critical of the government, such as the Ayllus Confederation of Indigenous Peoples of Bolivia (Consejo de Ayllus y Markas del Qullasuyu - CIDOB) and the National Council of Ayllus and Markas of Qullasuyu (la Confederación de Pueblos Indígenas de Bolivia - CONAMAQ). Therefore, government-CSO relations are perceived as depending on whether the organization is in line with the government stance or not.

Here, the perception is that the government sees CSOs as allies or threats depending on whether or not they toe the government line. If a CSO is in agreement with the government it is seen as an ally and partner, but if it is not it is seen as a threat.

In view of the above, and considering the perceptions of interviewees and focus group participants, there have been changes in the relations between the government and civil society. This is especially the case for NGOs, which previously had enjoyed more openness and accessibility with the government. Currently there is a more restrictive environment towards NGOs, unlike the significant support and efforts that certain social organizations enjoy due to their positions being

in line with those of the government. This is undesirable as it shows selectivity in the treatment of CSOs by the government.

Law 351 is considered to be an important factor that will change the relations between CSOs and the government, mainly in the negative sense. It is perceived that the Law has changed the sanction regime for NGOs – with the only sanction being the revocation of legal personality. Participants and interviewees see rights such as the right of due process and the right to free association becoming weaker. Instead of proving guilt, innocence must be proven. Another negative facet of the law with regard to relations with the government is that the Ministry of Autonomy is both judge and jury - the institution that is charged with granting and revoking legal personality.

c) Challenges and weaknesses

Many weaknesses and challenges were identified in this dimension of government-CSO relations.

Perhaps the greatest weakness is the existence of selectivity in the relations that the government has with CSOs. This is a bad sign as the CSOs that enjoy harmonious relations with the government are those that are in agreement with its policies and are not critical towards the government's actions.

It is considered a weakness that what is found in regulations, such as the possibility for civil society to participate in decision making on social management, public policy and drafting of laws, is different from what occurs in practice. There are round table discussions and consultations, but only to fulfill formalities and not to listen and take into account the opinions of civil society.

Another important weakness is that Law 351 on the granting of legal personality is perceived as a factor that negatively influences government-CSO relations due to ambiguous points that is prone to different interpretations and could have a negative impact on CSOs.

The challenges are also numerous. Conditions that are considered necessary for good and effective relations between the state and civil society include: a clear regulatory framework that protects and guarantees human rights, a government that creates favorable and enabling conditions and CSOs with clear objectives that are developed prudently.

The government should also be willing to open spaces for dialogue and discussion without favoritism and where critiques are heard and taken into account.

X. CSO cooperation and coalition

Information for the dimension of *CSO Cooperation and Coalition* dimension was collected through two techniques: 1) a review of the laws and regulations related to this dimension and 2) one focus group discussion.

a) Overview

The laws and regulations allow for groups and coalitions of CSOs. Known as coordination entities, they are guided by the same laws as for individual CSOs. However, the procedure for obtaining legal personality is more expensive.

Likewise, laws and regulations allow for associations between domestic and foreign CSOs. In Bolivia there are several networks that have common agendas on certain issues.

As we will touch upon later, there are various initiatives on self-regulation by CSOs themselves, such as a code of ethics and an initiative on transparency and accountability.

b) Analysis

With regard to *CSO Cooperation and Coalition*, the current legislation allows for CSO groups and coalitions, known as coordination entities. The laws that regulate the operation of these groups and coalitions are:

- Legal Status Authorization Law no. 351 of 19 March 2013 that regulates the granting and registry of the legal personality of social organizations, non-governmental organizations, foundations and non-profit civil entities that carry out activities in more than one department and whose activities are not financial in nature.
- Supreme Decree no. 1597 of 5 June 2013: Partial Regulation of the Legal Status Authorization Law.
- Ministerial Resolution no. 081 of 25 June 2013 on the expenses applicable to obtain legal personality, modification of bylaws and other related expenses.

These types of groups and coalitions must comply with the same requirements and standards of operation as other CSOs. However, obtaining legal personality is much more expensive, thus hindering and limiting their formation.

Bolivian CSOs may associate with foreign CSOs.

There are several CSO coalitions and platforms that have a common agenda on issues such as:

- Health: Asociación de Organizaciones No Gubernamentales en Salud (Association of Non-Governmental Organizations in Health - ASONGS) with 18 affiliates.
- Health safety: Asociación de Instituciones de Promoción y Educación (Association of Advancement and Education Institutions - AIPE) with 22 affiliates.
- Election observation, transparency, access to information, citizen participation: Iniciativa Ciudadana de Observación Electoral y Participación Ciudadana – Bolivia Transparente (Citizens Initiative for Election Observation and Citizen Participation - Transparent Bolivia), 10 affiliates.

- Human rights: Capítulo Boliviano de Derechos Humanos Democracia y Desarrollo (Bolivian Chapter for Human Rights, Democracy and Development - CBDHDD), 43 affiliates.
- Human rights of women, gender: Red Coordinadora de la Mujer (Women's Coordination Network), 26 affiliates.
- Education: Fe y Alegría Bolivia Movimiento de Educación Popular y Promoción Social (Faith and Happiness - Bolivian Movement for Popular Education and Social Advancement), 365 education centers.
- Environment: Liga de Defensa del Medio Ambiente (Environment Defense League - LIDEMA), 27 affiliates.
- Information and communication technology: Red TIC Bolivia (ICT Bolivia Network), 13 affiliates.
- Social action: Unión Nacional de Instituciones para el Trabajo de Acción Social (National Union of Institutions for Social Action Work - UNITAS), 26 affiliates.⁷²

Self-regulation activities by NGOs include the Code of Ethics by the Unión Nacional de Instituciones para el Trabajo de Acción Social (National Union of Institutions for Social Action Work - UNITAS). This entity seeks to “consolidate spheres of inter-relationships and inter-institutional coordination among members, gathering efforts and resources to carry out actions on strategic objectives in various urban and rural environments in the country.”⁷³ This code of ethics serves as a framework of self-regulation for NGOs associated with UNITAS as an ethical framework that establishes guidelines for the identity of NGOs; their fields of work; the general criteria of relations with popular organizations, relations among NGOs, with the government and state institutions and with international cooperation; general organizational criteria, regarding transparency and administration, financial resources, human resources, communication and publicity.

Another example of self-regulation also comes from UNITAS. This initiative, passed in 2011, addresses transparency and accountability of results and impact of actions in various public and private spheres with the objective of maintaining and building legitimacy for CSOs as social actors. This initiative is found in a regulation that is applied to all associations linked to UNITAS and is an example for other institutions that wish to join in the future. Affiliates and UNITAS must annually publish on their websites an annual report that summarizes the work performed and the results achieved during the period. Published information includes: institutional data; organizational charts and/or organizational structure; internal and external control mechanisms; financial information such as audited financial statements, financial resources, range of resources for each period; projects and programs or services in development; and other reports and/or

⁷² See Fundación Construir. *Documentos de Trabajo Derecho de Asociación*, p. 27.

⁷³ See UNITAS, *Código de ética*. http://www.redunitas.org/CodigodeEtica_Unitas.pdf

evaluations such as annual management reports, external assessments, NGO registration forms presented to government entities, target groups, funders or the public in general.⁷⁴

Meanwhile, there have also been various initiatives where CSOs, governments and donors from other countries participate to reach agreements related to development through these actors.

In this sense, it should be mentioned that Bolivia is a signatory of the Fourth High Level Forum on Aid Effectiveness (HLF-4) where an agreed framework was established for the first time for development cooperation by civil society organizations – as full and equal development partners, besides governments and donors.

Likewise, Bolivia was present for the Paris Declaration on Aid Effectiveness and the Busan Declaration for Effective Development Cooperation. Among the many addressed points are the promotion of practices by CSOs to strengthen accountability and contribute to development effectiveness and transparent and accountable cooperation.

The Law on Non-Governmental Organizations does not have any articles that regulate, inhibit or facilitate cooperation among CSOs or the formation of coalitions.

It should be mentioned that recently NGOs platforms have been created with the aim of influencing legislation for an enabling environment, but these are rather perceived as short term initiatives.

Likewise, there are issue-specific alliances especially in area of the women rights, children rights and sexual and reproductive health. These alliances are of a medium term nature.

In practice, there are many small NGOs that are quite heterogeneous and fragile. These are generally more concerned about their financial survival than creating alliances.

c) Challenges and weaknesses

Although there are alliances, networks, platforms and coordination entities among CSOs, one weakness is that they are often short and medium term in nature. Nevertheless, there are also networks that have been operating for years and have important initiatives for the self-regulation of their members.

Another important weakness is the high cost to establish coordination entities as this limits their formation.

One of the main challenges for CSOs is disseminating the work they perform to broader society (their objectives and practices, as well as transparency and dissemination initiatives) to strengthen these institutions and to eliminate distrust by other sectors and the state that has arisen due to their size and heterogeneity.

⁷⁴ National Union of Institutions for Social Action Work (UNITAS), *Sistema de información para la transparencia y la rendición de cuentas*, La Paz, 2011.

In the same regard, another major challenge is for CSOs to work together towards improving and disseminating their efforts.

XI. Taxation

Information for the dimension of *Taxation* was collected through two techniques: 1) a review of the laws and regulations related to this dimension and 2) interview with one expert on this issue.

a) Overview

Tax regulations for CSOs allow for certain tax exemptions. However, no exemptions are permitted when the entity performs economic activities such as the sale of services or products. Currently, there is greater control in this regard and although regulations state that if profits of a certain economic activity are reinvested (if stated in the organization's bylaws) this benefit may be disallowed in any case, thus representing a major problem for the sustainability of organizations.

Therefore, it could be argued that there are certain problems with the tax system, which does not create enough benefits to provide incentives for CSO activities, as will be seen later.

b) Analysis

The tax legislation establishes that the following is exempt from taxes: “profits obtained by civil associations, foundations and non-profit institutions that are legally authorized that have signed agreements and that carry out the following activities - religious, charitable, social assistance, educational, cultural, scientific, environmental, artistic, literary, sport, political, professional, labor union or trade union. This benefit will continue as long as no financial intermediation or other commercial activities are performed and that through express provision of the bylaws, all income and assets of the aforementioned institutions are used exclusively for the stated purposes and in no case may they be directly or indirectly distributed to the members. In the case of dissolution, assets shall be distributed among entities with the same purpose or shall be donated to public institutions with these conditions being reflected in their financial situation.”⁷⁵

Only those foreign NGOs with an agreement signed with the Minister of Foreign Affairs may receive exemptions in accordance with current regulations and in the terms of paragraph b) of Article 2 of Law 2493 that defines a non-profit entity as a beneficiary of tax exemptions.

If a NGO meets the requirement of requesting and processing its recognition as a tax exempt entity with the tax administration, it can be exempt from the following taxes:

a) Corporate Income Tax Article 39 of Tax Reform Law no. 843)⁷⁶

⁷⁵ Bolivia. Honorable National Congress. 1986. Tax Reform Law no. 843 of May 1986 with modifications to Article 49 of law 2493 of 4 August 2003. Article 2.

⁷⁶ Bolivia. Honorable National Congress. 1986. Tax Reform Law no. 843 of May 1986 with modifications to Article 49 of law 2493 of 4 August 2003.

- b) Tax on Presumed Profits of Property Owners (Article 54 of Tax Reform Law no. 843)*
- c) Urban Real Property Tax (Article 61 of Tax Reform Law no. 843)*
- d) Net Income Tax (Article 49 of Law no. 1606 that modifies Law 843)⁷⁷*
- e) Real Property Tax (Article 53 of Law no. 1606 that modifies law no. 843)*
- f) Consolidated Customs Duty (Article 45 of Supreme Decree no. 22225 - Regulation of Tax Exemptions for Imports⁷⁸)*
- g) Donations are exempt from Value Added Tax VAT (IVA) and the specific consumption tax (ICE) - (Articles 50-52 of Supreme Decree no. 22225 - Regulation of Exemptions from Custom Duties for Imports)*

In the case of the last item – donations - this exemption may be revoked if the donated goods are sold in the country under the terms of the donation agreement or for another reason.

The exemption of the Consolidated Customs Duty for imports by the non-governmental sector established by Supreme Decree no. 22225 comprises “international non-profit non-governmental entities and organizations that have signed framework agreements with the state through the Ministry of Foreign Affairs” (Article 44) and as such this benefit does not extend to national NGOs.

Donations and other free transfers made to tax exempt non-profit entities are exempt for up to 10% of the taxable profits corresponding to the activity performed.⁷⁹ Deductions must be supported by documents that confirm the receipt of the donation and the acceptance by the beneficiary institution.

Tax exemptions are for CSOs that do not perform financial intermediation activities or other commercial activities. Likewise, tax exemptions are applicable if the NGO has processed its respective administrative resolution that non-profit organizations must submit that declares it as tax exempt.

As of late, there is evidence of an increasing number of cases of rejected paperwork by the tax administration that is considered as highly discretionary and a restricted interpretation of what is considered non-profit. Organizations are denied this benefit if, for example, they pay fees and expenses for board members or assembly members without differentiating if these payments are a distribution of a surplus of members or payments for personal services of members for work that is performed and contributes to the social objectives. In this regard, the Inter-American Commission on Human Rights in its Second Report on the Situation of Human Rights Defenders

⁷⁷ Bolivia. Honorable National Congress. 1994. Law no. 1606 - Modifications to law no. 843, December 1994.

⁷⁸ Bolivia. Presidency of the Republic, Supreme Decree no. 22225: Regulation of Tax Exemptions for Imports, June 1989.

⁷⁹ Bolivia. Presidency of the Republic. Supreme Decree no. 24051 of 29 June 1995, Article 18 paragraph f) and modifications in Supreme Decree no. 27190 of 30 September 2003.

in the Americas⁸⁰ stated that this benefit should not be discriminatory and should be administered without any differences that would undermine the free exercise of this right.

With regard to the economic activities of CSOs, civil entities in general act like any other taxpayer that engages in commerce in Bolivia. They require a tax identification number (NIT) not only for purposes of commerce, but also for retentions or if there are paid employees. As mentioned earlier, once associations and foundations have their NIT, they can start the procedure for Income and Real Estate Property Tax exemptions. Regulations state that, if clearly stated in the bylaws, if any profits are obtained they shall be reinvested back into the entity itself or in the case of dissolution the same shall occur, that is if they shall go to an entity with the same non-profit objectives, they will not have to pay tax on Income for which they get exemptions.

Entities that have exemptions authorized by the National Tax Service previously could perform a series of actions to raise funds to support their objectives (e.g., a bakery or any type of entity if they earned a justifiable amount for the objective with no observations by the tax authority). However, the situation has now changed. Currently, if a foundation, association or NGO is selling something (e.g., bread or a service), the tax authority will take away the exemption.

This tax pressure impairs many NGOs and can even be considered a form of repression against the practices of these organizations. For this reason, many organizations must change their way of functioning, for example by outsourcing all services and activities so as to avoid being observed as sales of goods by the tax authority and to retain their exemptions. Although this can also be considered from a fiscal point of view. In this regard, it should be mentioned that tax regulations are being effectively implemented. The government has a high capacity to enforce tax payment obligations and greater control in all aspects is increasingly seen.

The tax burden is very high and for many, the lack of exemptions would endanger their survival.

The draft Non-Governmental Organization Law states that in order to request tax exemptions, NGOs must present the certificate of operations mentioned earlier. This certificate would be implemented following the passage of this Law.⁸¹

c) Challenges and weaknesses

Several weaknesses with regard to the taxation regime were identified. Although CSOs can receive tax exemptions, they may lose them if they sell a product or service. Previously, regulations stated that organizations could sell products and services if the bylaws clearly stated that any profits would be reinvested into the entity itself or in the case of dissolution they would go to a non-profit entity that would also obtain the tax exemption. However, this is not applicable today

⁸⁰ Comisión Interamericana de Derechos Humanos, *Second Report on the Situation of Human Rights Defenders in the Americas*, OAS/Ser.L/V/II, Doc. 66, 31 December 2011.

⁸¹Article 14 of the Law to regulate non-governmental organizations.

and the loss of the exemption could mean the closure of many organizations due to the high tax burden.

Likewise, as of late there have been selective rejections of the tax exemption request procedure, which also negatively affects CSO activities and are discriminatory in the exercise of this right.

Therefore, the main challenge is equal access to tax exemptions for all organizations, and that decisions and authorizations of tax exemptions should be based on objective, not selective, criteria.

Likewise, although tax collections and payments are considered very important, they cannot be used as tools to limit and hinder the survival of organized civil society.

XII. Access to information

Information for the dimension of *Access to Information* was collected through two techniques: 1) a review of the laws and regulations related to this dimension and 2) interview with one person on this issue.

a) Overview

Access to information is a right that is broadly guaranteed by several articles in the constitution. However, in practice there are several difficulties in exercising this right, since it is not an institutionalized practice and the access to information depends on the institution from which the information is requested and the civil servant that handles the request.

There still is no specific law regarding access to information that regulates this right at the national level. However, there is a bill that has several positive aspects, but it has also been criticized by the communication and press sectors and several other sectors of civil society because it presents many possibilities to restrict information access if said information is classified as reserved or secret.

b) Analysis

Article 21, Paragraph 6 of the Constitution establishes the right of Bolivians to access information and to interpret, analyze and communicate it freely both individually and collectively.

Likewise, Article 24 states that all persons have the right to petition individually or collectively, orally or in writing, and to obtain a formal and prompt response. The only requirement to exercise this right is the identification of the petitioner.

Article 106 of the Constitution guarantees the right to communication and the right to information.

Thus, it can be affirmed that the Constitution guarantees the right to access of information. There are no separate laws that regulate access according to the information that is being sought. However, there is a draft law on transparency and access to public information that has been

strongly criticized by the communication sector and by civil society as a whole due to the articles that list exceptions to the right to access information.

To date nothing was legally established at the national level regarding the appeal process for requests for information.

However, a study entitled “Access to Information in Departmental Legislative Assemblies of Beni, Cochabamba, La Paz and Tarija” by the CSO Bolivia Transparente investigated the degree of access to information in legislative assemblies in four departments. Using a methodology of sending several requests for information by different actors, they found that the degree of access to information is different in each institution. Of the four departments in the study, there was little response to requests in three departments. For example, in the city of La Paz, most of the requests were denied with the reason being that the information must be requested through the competent jurisdictional authority, which contradicts the constitution which states that the only requirement to access the right to information is the identification of the person.⁸²

From this, we can conclude that access to information at public entities is still limited. Good practices and a willingness to provide information can be found in certain places, but this is certainly not widespread. This is an area for improvement where public servants must be made aware of the right to access to information.

According to the aforementioned study, we could say that government employees are not very accessible to the public, especially for ordinary citizens. The study showed that in Tarija, for example, requests to information sent by citizens were not responded to, while a request by a CSO was answered, leading to the impression that the government institutions are more accessible to those with institutional coverage.⁸³

A current draft law on transparency and access to public information seeks to regulate transparency and guarantee access to public information to all citizens.

One of its objectives is to guarantee the full and effective exercise of the right to all citizens to access public information generated by or that is in the possession of entities and institutions of the state. It also determines the procedures and mechanisms in the public administration for transparency and access to information that it has in its possession.

As for some principles underlying the draft law, reference is made to public interest, meaning that all information found in public entities and private entities subject to the law is of collective interest and therefore is in the public domain; speed - information requested by natural or legal persons must be provided in the least amount of time possible; accessibility - information must be provided without any restrictions, except in cases specifically established in this law; maximum publicity -

⁸² Bolivia Transparente, *Acceso a la Información en Asambleas Legislativas Departamentales Beni, Cochabamba, La Paz y Tarija*, 2013, p. 151.

⁸³ See Bolivia Transparente, *Acceso ... op.cit.*, p. 150.

information created and stored at public entities is public, and consequently will be available to the public by any medium of information and communication; free - information requested by natural or legal persons shall be provided at no cost; inclusion - citizens shall not be discriminated against in any manner and shall access all public data with the objective of actively participating in the construction of a plurinational state that enables the equality of all Bolivians.

In the draft law there is a chapter on access to information that includes a series of articles to ensure access to information by all citizens with no type of distinction or justification by the applicant for the reasons or causes to exercise this right; to establish the obligation to report, stating that information is public in the initial, processing and conclusive phases, as well as the fact that a judicial order or fiscal requirement is not needed to request and obtain information. It establishes that all offices must have a transparency unit or at least one information official in charge of attending to, processing and delivering required information.

The draft law also establishes a procedure to request information. Requests can be made in writing, verbally or through electronic means and are sent to the Transparency Unit or Information Official. The written request to information must contain:

- a. Full name of the applicant.
- b. Clear and precise description of the information requested.
- c. Contact information to receive notifications and the information.

If the request is made verbally, the Information Office must collect the requested information. The requested information must be provided within 10 working days. This period can be extended by an additional 20 working days when the information to be gathered or processed is complex, difficult or if the volume is large. The extension must be duly justified. In addition, there is no cost to the applicant.

Nevertheless, there are specific cases where requests for information are denied:

Secret information is related to the internal or external security of the state whose dissemination would put the country at risk. Information shall be classified as secret through laws promoted by the entities that require it. These laws shall contain a specific list of information that is required to be secret.

Reserved information is classified as such:

- a) through laws or supreme decrees in areas other than state security.
- b) through a classification process established by this law, only when addressing internal and external state security matters.

Confidential information is that which:

- a) refers to health or privacy of people.

- b) is protected by professional secrecy in accordance with the law.
- c) whose dissemination can put people's lives and safety at risk.
- d) refers to children and adolescents, whose dissemination would put their health, honor, integrity or safety at risk.

The draft law establishes that denials for requests must be well founded and duly justified by the corresponding entity. Likewise, it establishes that the applicant can choose to contest the denial administratively, in accordance with the law or through the appeal process found in the Constitution.

Restriction periods are established that state when secret, reserved and confidential information shall be made public, according to type:

- 1) Secret information shall be restricted for a maximum period of 20 years regarding information on external security and 10 years for information on internal security.
- 2) Reserved information shall be restricted until: i) a court order is issued by a judge during legal proceedings or ii) an equal or higher regulation than that used to restrict it is passed that cancels the restriction.
- 3) Confidential information can be accessed through a court order. The confidentiality restriction is not enforceable against the holder of the information.

Upon expiry of the established periods, restricted information shall be freely and publicly accessible and no other formalities are required to access it other than what is provided in the law.

With regard to the classification of information, the draft law states that information on internal or external security of the state may be classified as reserved in accordance with Article 237 of the Constitution. The responsible entity for the classification is the highest authority of the entity. Classifications shall be realized through express resolution which contains minimum: the date, reference to the document or the information to be classified, reason and legal basis.

The head of each agency or entity must adopt necessary measures for the proper custody and maintenance of classified documents.

Information classification cannot occur following a request for information.

Previously classified information may be declassified following the expiration of the restriction period through a well justified and reasoned decision issued by the corresponding competent authority provided that the reasons that led to the classification are no longer valid.

It should be mentioned that the draft law establishes that information regarding serious violations of basic rights or crimes against humanity cannot be classified. This information shall be accessible without any requirements other than those established by the law.

The draft law also establishes that in the first quarter of each year, the top executive authorities and heads of entities shall provide a report to the Ministry of Institutional Transparency and the Struggle against Corruption listing the requests for information, the results and their situation of the prior year, as well as denials and appeals. The consolidated information shall be published on the website of the Institutional Transparency and Struggle against Corruption. In addition, entities must publish statistical and general information regarding requests for information received and how they are handled.

The draft law stipulates that supervision of compliance with the regulations on transparency and access to information is to be the responsibility of the Ministry of Institutional Transparency and the Struggle against Corruption, through:

1. The supervision and monitoring of compliance with the regulations on transparency and public access to information and bringing forth legal actions against those who fail to comply with them.
2. The issuance of recommendations regarding compliance with active transparency regulations.
3. Promoting and encouraging best practices and innovations in the publication of public and government information.
4. Promoting a culture of transparency and participation among citizens, contributing to the effective management of public resources.
5. Promoting or sponsoring access requests by natural or legal persons, or by its own initiative, for legal actions to access public information when this has been denied.

Although the draft law has several positive aspects, there are restrictions that have been criticized by several sectors, especially by those in communication and journalism.⁸⁴ They allege that any type of information could be classified as secret, reserved or confidential, thus impeding free access. The basis on which the information is classified is problematic, given that these criteria could be used subjectively to obstruct the important right to access information.

Interviewees state that access to information and how this is carried out in practice reveals a lack of institutionalization. Currently, access to information depends on the institution and the public officials, as well as the accessibility or lack thereof by civil society to the various public officials.

Given the aforementioned and the cited examples, we can say that there is no state policy to train public officials to be more accessible. As a result, accessibility depends on the sensitivity of each individual public official. In this regard, there is a reduced level of accessibility to state employees by the public. Perhaps technology could provide increased access but this has not yet been fully developed. Likewise, strategies have not been improved in terms of accessibility to government representatives.

⁸⁴ See <http://www.opinion.com.bo/opinion/articulos/2013/0902/noticias.php?id=104875>

In practice, much difficulty is seen with regard to access to information, despite broad guarantees of this right in the Constitution. Those who request information encounter obstacles and requirements that are not found in the regulations at the time of making the requests.

c) Challenges and weaknesses

Despite the fact that the right to access to information is guaranteed in several articles of the Constitution, in practice there are many obstacles.

One weakness is a lack of institutionalization, as employees have not received training on the importance of this right. Access depends on and varies according to each institution and each public official, leading to various limitations in practice.

In this regard, a study on access to information shows that often, for an institution to provide information, requirements are requested that are not in the regulations (the Constitution states that the only requirement is the identification of the person requesting the information). This is a poor practice and is an obstacle that goes against the regulations.

Another weakness is that in the draft law on access to public information, several exceptions are established and the criteria to classify information can be subjective, thus weakening this important right.

The biggest challenge is making public officials aware of the importance of this right so they are willing to provide the information requested. Likewise, it is considered very important to pass a law that guarantees the right to access to information, but one that increases the access rather than to provide more restrictions.

XIII. Conclusion

A study of each of the 10 dimensions has enabled us to diagnose the current enabling environment for CSOs in Bolivia. Both positive and negative aspects of the current situation for CSOs and their enabling environment have been identified.

We have shown that the Bolivian Constitution guarantees and protects many rights that are very important for free and full operations of CSOs, such as the *freedom of association, peaceful assembly, freedom of expression, access to information*, and basic services such as telecommunications, including *internet freedom* and participation and social management of organized civil society. We reached the conclusion that in the legal framework, CSO activities are broadly guaranteed and supported. This is also due to the fact that Bolivia has ratified several international treaties that guarantee the exercise of these rights.

Nevertheless, certain laws have been passed that have gradually limited these rights and freedoms guaranteed by the Constitution. These laws worry key participants with whom we were able to speak during the course of this study. Certain rights could be impaired through the law on legal

personality and its corresponding regulations, the law against racism and all forms of discrimination, the law on participation and social management and draft laws on access to information and on the regulation of non-governmental organizations.

The rights guaranteed by the Constitution are not optimally exercised in practice. We were able to identify a gap between what is stated in the Constitution – for example in the case of access to information, freedom of expression and peaceful assembly. Likewise, there are many limitations on the ability to exercise internet freedom, mainly due to a lack of widespread accessibility in Bolivia.

With regard to *CSO formation*, there is a perception of a centralization problem within the Ministry of Autonomy with regard to the procedure to grant legal personality for groups that carry out activities in more than one department. There is a contradiction with the old Administrative Decentralization Law that had simplified and decentralized this procedure, assigning departmental prefectures the ability to grant legal personality throughout the entire country to organizations that had established their legal address in their jurisdiction.

With regard to Law 351 and its regulations on the granting of legal personality, weaknesses have been identified in certain ambiguous articles that could lead to subjective interpretations of the regulations, as well as weaknesses in accessibility and the possibility that certain CSOs could meet the requirements of certain procedures, such as the renewals of legal personality. In addition, problems of bureaucracy and the performance of public officials in implementing administrative procedures were identified.

One of the ambiguities mentioned is the inclusion in the bylaws of NGOs and foundations of the scope of their activities focused on contributing to social economic development taking into account guidelines established in the national plan, national policies and sector policies, because this means that these organizations must adhere to certain guidelines in order to be established.

Meanwhile, there is a perception that the costs to obtain legal personality are high and are even higher for coordination entities, thus limiting the creation of organizations and coordination entities to a certain degree.

Legal personality can be denied when the aims and objectives of the group are determined to be against the Constitution of Bolivia or against current laws. Although there is a possibility to appeal the decision, the regulations do not clearly state how to proceed.

With regard to *operations*, CSOs must present a series of tax, social security and labor information to competent public entities. A problem with regard to regulations in this dimension is the requirement of alignment of the activities of CSOs with national planning and national and sector policies.

Likewise, obstacles have been identified that are not about formal issues, but are rather found in the perception that these procedures tend to be slow, bureaucratic and selective according to political ideals.

The regulations also establish the reasons for which a CSO may be dissolved through the revocation of its legal personality. Grounds to revoke legal personality contain some ambiguous criteria that can be subject to diverse interpretations and can make certain rights vulnerable. Some of these grounds include performing activities that are different or focusing on other areas that are not indicated in the bylaws. In addition, the revocation of legal personality can be filed by any public entity.

With regard to access to resources, a series of problems were presented that in practice are leading to a crisis in CSOs. The problems include the withdrawal of many sources of international technical and financial assistance due to the world economic crisis and the classification of Bolivia as a middle income country, the absence of government funds for CSOs and a lack of a philanthropic culture and initiatives. All of these factors show the weaknesses and challenges for CSOs to maintain themselves and survive.

The political and regulatory context is also an obstacle for the access to resources, since tax incentives for philanthropy are not considered, and another problem is the lack of government financing. Likewise, the relationship between the government and several CSOs is not optimal, and it is perceived that there is a lack of political will by the government to collaborate and to open more spaces for these sectors.

All of these factors point to a critical time for CSOs, which are faced with significant challenges, such as finding other sources of financing and improving their capability for diversification of funding and surviving with little international cooperation (the source on which they have been dependent for many years).

In this sense it very important to consider tax incentives to increase philanthropic endeavors and to create efficient systems for social management and accountability for the funding from the little philanthropy that does exist.

With regard to *government-CSO relations*, there is a perception that relations depend on whether or not CSOs follow the political line of the government, since there are certain CSOs that enjoy very good relations with the government. However, CSOs that are critical of certain government actions often have poor relations. Therefore, it is important to differentiate government relations with CSOs in different areas.

It is also important to highlight that in terms of the law, the Constitution establishes certain conditions so that civil society can participate and exercise control over various public activities. Articles addressing participation and social management are considered an advance in this area, because authority is given to organized civil society to participate in public policy proposals,

decision making and law creation. However, it is considered a weakness that what is found in regulations is often different from what occurs in practice. There are certain activities for the participation of civil society, but this is rather to comply with formalities, rather than to listen effectively and take into account the opinions of civil society.

Another important weakness is that Law 351 on the granting of legal personality is perceived as a factor that negatively influences government-CSO relations due to ambiguous points that could lead to different interpretations that could be negative for CSOs.

Conditions deemed necessary for good and effective relations between the state and civil society include: a clear regulatory framework that protects and guarantees human rights, a government that creates favorable and enabling conditions, spaces for dialogue and discussion without favoritism where criticism is truly heard and taken into account, and CSOs with clear objectives that are prudently developed.

In terms of *CSO cooperation and coalition*, regulations permit groups and coalitions of CSOs. Known as coordination entities, they are guided by the same laws as CSOs. However, the procedure for obtaining legal personality is more costly. Meanwhile, although there are alliances, networks, platforms and coordination entities among CSOs, one weakness is that they are often short and medium term in nature. Nevertheless, there are also networks that have been operating for years and have important initiatives for the self-regulation of their members.

In this regard, another major challenge is for CSOs to join together to work towards improving and disseminating their efforts.

Regulations regarding *taxation* for CSOs allow for certain tax exemptions. However, no exemptions are allowed when the entity performs economic activities such as the sale of services or products. Currently, there is greater control in this regard and although regulations state that if profits of a certain economic activity are reinvested (if found in the organization's bylaws) this benefit may be disallowed, thus representing a major problem for the sustainability of organizations. Therefore, it can be affirmed that there are certain problems with the tax system that does not create enough benefits to provide incentives for CSO activities. Although tax collections and payments are considered very important, they cannot be used as tools to limit and hinder the survival of civil society organizations.

Likewise, as of late there have been selective rejections of the tax exemption request procedure, which also negatively affect CSO activities and are discriminatory measures in the exercise of a right. Therefore, it is of the utmost importance that access to tax exemptions be the same for all organizations, and that decisions and authorizations of this benefit be based on objective, not selective, criteria.

Access to information is a right that is broadly guaranteed by several articles in the Constitution. However, in practice there are several difficulties in accessing this right, since it is not an

institutionalized practice and it depends on the institution and the government employee from which the information is requested.

To conclude, recapping the results obtained from the study of the 10 dimensions, we must stress that there are both positive aspects that are found in the legal framework that enable optimal operations and development for CSOs, as well as negative aspects, mainly found in the day-to-day activities and in secondary regulations that obstruct the free operations of some CSOs.

This results in a complex environment with many challenges, especially for NGOs and certain indigenous social organizations due to a lack of space for dialogue between CSOs and the government. This is a time for organizing, working together and communicating to build a solid and favorable enabling environment so these organizations may continue with their efforts, which are so essential to Bolivian society.

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