

# Chapter 7

## Right to Justice and Diversity of the Indigenous Peoples of Bolivia

**Fabiola Vidaurre Belmonte**

**Abstract** This chapter reviews the political upheavals in Bolivia and the responses of the Indigenous people to political change from the 1950s agrarian reforms to the current period. Since the fundamental transformation in the form of citizen participation, redistribution of the land, the control of the State over the natural resources and the economy, universal suffrage and agrarian reform, the Indigenous peoples have been making themselves ‘visible’ to the government and mobilising for their rights. However, their expectations have seldom been met. The chapter reviews this experience. It also presents an account of the principles of Indigenous conflict resolution pursued in Bolivia, focussing in particular on the Aymara people, as an alternative approach to engaging with the State. The chapter concludes with a discussion about multiculturalism and interculturalism for the Bolivian state.

**Keywords** Indigenous Peoples · Bolivia · Conflict resolution · Multiculturalism · Justice · Diversity

### 7.1 The Indigenous Peoples and Political Change in Bolivia

The 1952 agrarian reforms that were anticipated to provide property rights over land to Indigenous peoples ended up giving more rights and control to the non-indigenous established land-owners. As a consequence, Indigenous Peoples from all around Bolivia initiated demonstrations asking the government to follow the law and provide those groups with the land they deserved.

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Fabiola Stephanie Vidaurre Belmonte studied law at the Universidad Mayor de San Andres, La Paz. She is working as Academic Responsible at the Postgraduate International Relations Department, Universidad Mayor de San Andres, Bolivia; Email: fabita1586@gmail.com. In 2014 she was invited to the 25th IPRA General Conference on “Uniting for Peace: Building Sustainable Peace through Universal Values” held in Istanbul, Turkey, to present her paper on Indigenous Conflict Resolution: Right to Justice and Diversity of the Indigenous peoples in Bolivia.

When General Banzer seized power in a military coup in 1972, one of the most significant changes was the introduction of a new Criminal Code, in which discrimination against Indigenous peoples was 'legalised'. The law created two new categories of citizens that applied to Indigenous people: the class of 'sylvatic Indigenous' (*Indio Selvático*) and the class of 'cultural misfits' (*Inadaptado Cultural*). In the first case, a sylvatic Indigenous person—someone who lived in a traditional Indigenous natural state—was considered as a kind of primitive subject without mental development, regardless of the person's cultural identity, values customs and habits. They were considered un-indictable, that is outside the applications of the normal legal process. In the second case, the category was applied to Indigenous people who lived within the mainstream society but who, because of their cultural dispositions, lack of education or their personal conditions, had not adapted or integrated to the general cultural environment of the country. These 'cultural misfits' were considered semi-indictable, that is subject to law in respect to obligations, but also liable to be excluded from legal protections (Choque 2005).

In 1990, the lowland Indigenous movement began demonstrations requesting recognition of Indigenous peoples, its authorities and territory as part of the State. Additionally, they asked for more inclusive participation in the decision-making over the natural resources in their territory (Gutierrez 2008). They also sought for the establishment of a Constituent Assembly where they could participate to ensure their recognition and guarantee their participation in all the spheres: economic, political, social, cultural and environmental (Rojas 2007).

The presence of Victor Hugo Cardenas, as an Indigenous person and Vice-President of Bolivia, opened the hope of a better crystallisation in the recognition and participation of Indigenous peoples in the political life of the country. However, the presence of Cárdenas became merely symbolic recognition. A new constitution was approved, which incorporated and recognised the Indigenous Peoples. However, this recognition was only in a socio-cultural sense, not in a political sense (Rojas 2007). The administrations of Gonzalo Sanchez de Lozada as President and Cardenas as Vice-President (1994–1998) introduced neoliberal policies with the promise that this system would improve and boost the economy of the country and reduce inequality. The most significant policy was the privatisation of strategic companies such as the national airline, the water companies, the electricity companies, telecommunications, and hydrocarbons. This allowed private companies to greatly increase their impact and exploitation of Indigenous peoples. Support for Indigenous people was side-lined in the rush to economic growth. In this context, Indigenous groups began a new campaign to achieve integral recognition.

By 2000, the Indigenous groups re-organised and demonstrations began again, demanding changes for the benefit of the Indigenous peoples. The first demand concerned water services that had been privatised. Water rates had been increased in the rural areas, without any improvement in the quality or extension of the service. Demonstrations, led by Indigenous man Felipe Quispe who was head of the Pachakuti Indigenous Movement and General Secretary of the United Union Confederation of Working Peasants of Bolivia, surrounded the city of La Paz,

leaving it without food for around fifteen days. At the same time, in Cochabamba, the Indigenous peoples were demanding that the water company “*Aguas del Tunari*” reduce the rates or leave the country (Rojas 2007).

On April 7, 2000 the then President Hugo Banzer Suárez decreed a State of Emergency in the region and the confinement of the peasant and Indigenous leaders that the authorities accused of causing the conflict. The next day the cities were militarised with the arrival of soldiers and many groups included Indigenous, peasants, and other social organisations fought in the streets against the military for the recovery of the companies that had been privatised. The new demand was to nationalise the strategic companies and the reconstitution of a new socialist state. In July of that year, the President and Felipe Quispe, known as “*El Mallku*” (“The Leader”) decided to start a dialogue to end the conflict, but the President and the Ministers arrived late to the meeting and the conflicts continued (Rojas 2007).

Finally, in October the government and Felipe Quispe negotiated an agreement, with input from Evo Morales (who was to become President of Bolivia in 2006); at that time also one of the protesters. This agreement covered:

- Replacing the INRA law (Instituto Nacional de Reforma Agrarian—National Institute of Agrarian Reform)
- Filing no water use and water export laws
- Modification of forestry laws, environment and mining
- Shared management in protected areas
- Government intervention in fulfilment of the agreement with Transredes affected by oil spill
- Promoting integrated rural development plan
- No coca eradication in the Yungas traditional areas
- No installation barracks in areas used for farming coca
- Permission to cultivate a ‘cato’ of coca per family (the equivalent of a quarter of a hectare)
- Creating an agricultural university and markets for development alternative

However, despite the agreement and in the light of delays to its implementation, instability continued (Romero 1980).

Gonzalo Sanchez de Lozada was elected President, for the second time, in 2002, as Bolivia was going through a deep economic and social crisis. The new economic policies recommended by the International Monetary Fund (IMF) to increase the tax rate on salaries to reduce the fiscal deficit did not receive sufficient support in the Assembly and in February 2003 the community also demonstrated its objection by more protests throughout the country. Some days later, the President’s initiative was reversed (Costas 2005).

The announcement of a gas project later in 2003 by President de Lozada, sparked more protests. The proposal was for the enterprise Pacific LNG to invest \$US.5.000 million in Margarita camp (Tarija) to export gas to the United States and Mexico via a Chilean port. The project consisted of: a pipeline from Margarita to the Chilean port (700 km away), a liquefaction plant to be built in the Chilean port,

ships and a regasification plant to be built in California, United States (Observatori Del Deute En La Globalitzacio).

The announcement produced a spate of demonstrations all around Bolivia: Indigenous groups blocked the roads, conducted marches, engaged in strikes, and destroyed public offices. The measure was supposed to have been debated before its implementation, and due to the nationalist feeling against Chile because of the history of the Pacific War, the maritime claims, and the broken relations with Chile, Chilean ports were not considered an option by the social organisations.

Weak institutions, poor governance, an authoritarian leader and a misunderstanding of the civil reality inflamed the opposition and social groups. At this point, they (opposition and social organisations) were asking for a new system to control the gas: “Gas in exchange of access to the Sea”, and the resignation of the President, that finally came in October 17th, after two months of violent conflict. Gonzalo Sanchez de Lozada sent his resignation letter to the General Assembly and, the Vice-President, Carlos D. Mesa became the new President of Bolivia.

President Mesa, in consultation with social organisations, established a new political agenda based on rejecting the export of natural gas through a Chilean port, which would include a referendum about the gas export, new legislation regarding hydrocarbons, and a Constituent Assembly with a new way of including the participation of the people. In 2004, the new constitution was passed (Rojas 2007).

In 2005 President Eduardo Rodriguez Veltze, who had taken over from Mesa, passed the Law convoking for the Constituent Assembly. The subsequent Presidential elections were won by Evo Morales, backed by the Movimiento al Socialismo (MAS) party, making him the first Indigenous president of Bolivia. Morales set in place the new Socialist State that Indigenous peoples had been seeking since 2000. The first action of Morales as president was the establishment of the Constituent Assembly that came with a new Constitution in 2009.

This Constitution spelt out traditional individual citizen rights and also explicitly acknowledged Indigenous worldviews and endorsed their application in such matters as the definition of the Bolivian nation-state as pluri-national. He also implemented Indigenous peoples’ demands for territorial autonomies for Indigenous peoples and the complementary administration of justice through communitarian justice (*justicia comunitaria*). Other reforms included a revision of the educational curriculum, changes in the economic sphere, such as fostering the idea of *buen vivir* (living well) instead of values of Western greed and expansion, and respect for Mother Earth. Other reforms extended to healthcare, including rehabilitation for traditional Indigenous practices and intellectual property rights on knowledge of medicinal plants (Salmon 2011).

Initially there were great expectations from the Indigenous peoples and Morales’ New Agrarian Reform Law was seen as a major step forward, but there has since been disappointment expressed by many of the landless regarding the policies of Morales (Fabricant 2012).

## 7.2 Indigenous Conflict Resolution in Bolivia

Indigenous groups have their own way of managing and solving their conflicts, which has traditionally been transmitted from generation to generation orally (Guaman Poma de Ayala 1990). In Bolivia, Indigenous groups share a common process of resolving conflicts and applying justice; however, the processes for each group have in addition its own particular characteristics. In this study, the author is going to focus on the Aymara group, located in the Andean region of Bolivia.

It is important to know that Indigenous groups make a distinction in their conflicts according to the seriousness of the act: minor and major (In Aymara: *jisk'a* and *jach'a*). Major conflicts are considered crimes, so for these the community itself goes before a judge (Guaman Poma de Ayala 1990). In case of those conflicts designated as minor, the communities work to resolve the conflict themselves. There are several basic concepts used in the traditional conflict resolution process of Indigenous communities in Bolivia, as follows:

- (a) *Akullico*. In the Indigenous communities of Bolivia, especially those communities located in the Andean regions like Aymaras and Quechuas, chewing coca leaves (*akulliko*) is an important tradition. When the members of the community gather to solve the conflict, the “Holy Coca” has to be ‘invited’ to help them. According to Vicent et al. (2007) the coca leaves are ‘holy’ because it is a gift of Mother Earth and it helps the community to speak calmly, think deeply about the words, temper language and listen to others. There is a very simple, but crucial protocol to follow for receiving the coca leaves that the indigenous group adheres to strictly.
- (b) *Pachamama* is the Aymara word that means “Mother Earth”. The Indigenous Peoples believe that *Pachamama* and the people are one, therefore, in any discussion about a conflict, first they ask for forgiveness from the *Pachamama* because “She” is the one affected by the conflict.
- (c) *Chikayaña* is an Aymara word representing the re-uniting of two or more things to be divided into portions. This is one of the most common ways of solving a dispute, and is based on the *chikat chikat* principle, that means ‘half-half’, but within a greater unity. It is important that, the authority leading the mediation should be neutral to build up a new and better relation between the parties to help make this division.
- (d) *Aruskipasipxañani* is an Aymara word that means ‘dialogue among people and parallel worlds’. The parallel world refers to the cosmos, *Pachamama*, death ancestors and everything that is alive, e.g., animals, plants, water and so on. When the community is discussing a conflict, everybody should participate and all these aspects should be considered.
- (e) *Pasarus* and *Apus*. The *Pasarus* are the former authorities of the community while the *Apus* are the oldest members of the community. Therefore, their presence and advice during the sessions is crucial, because they have more experience, and their wisdom could be helpful for solving the conflict.

- (f) **The Agreement.** In some communities, when they establish an agreement, they are able to have a written memorandum of understanding or an agreement. However, in communities where many of the members are illiterate, they just shake hands. Although, from a legal perspective, a handshake is not binding, within these communities the action involves the honour of the people in conflict, their families and the community.
- (g) **Witnesses and Documents.** The attendance of witnesses and production of documents fulfils a triple function: Proof, guarantee and assurance of the truth of the facts. Personal witnesses guarantee that the parties will fulfil the agreement the best way possible. People who are named as witnesses are known for their unblemished reputation. Documents are required as proof, especially when it comes to land conflicts. They serve to avoid manipulation by any party, including state officials or literate people who want to take advantage of possibly uneducated participants in the conflict. When conflicts are related to land boundaries, maps are the main exhibits. However, the best forms of evidence are the rivers or hills, because they are considered to be “natural proof” (Fernandez et al. 2007).

Indigenous justice is conducted through a mediation process with particular cultural characteristics that include dialogue and participation. In Bolivia, because of the number of Indigenous groups and different cultural practices, this can produce difficulties. However, the fundamental principles are similar. Moreover, the regular justice system allows for the mediation of minor conflicts (Ministerio de Justicia Y Derechos Humanos 1998).

### **7.3 Multiculturalism, Interculturalism and the Bolivian State**

According to the 2009 Constitution, Bolivia has 36 cultural and ethnic groups and 36 traditional languages. I am arguing that this cultural mix should be considered an asset of the country and that the coexistence and engagement of different cultural groups should be encouraged, promoting a society that embraces cultural differences without losing their typical character. This is a key strategy for building a peaceful and sustainable society. Both multiculturalism and interculturalism address these issues. Multiculturalism reflects a cultural, linguistic and religious diversity within a single society, opening space to recognition of differences, based on the principles of equality and the right to difference. Interculturalism refers to the inter-ethnic, inter-religious and inter-language engagement of different societies; a dialogue that contributes to a peaceful and tolerant nation.

However, despite political changes, inequality, social fragmentation and disintegration, class domination, breakdown of social ties and increased poverty remain. Social exclusion characterised by the economic deprivation is obviously linked to the level of unemployment in the country. Cultural background is another source of

discrimination in Bolivia, even more pronounced than economic discrimination. People are commonly discriminated against due to their Indigenous identities.

Neutrality of the State thesis (Rudisill 2000) suggests that all cultural manifestations inside a country be part of the governance challenges. In this thesis the neutrality of the State is the only way to ensure equality for all the citizens but this implies that the State not recognise exclusive rights for cultural minorities. However, a multicultural state such as Bolivia has to recognise diversity or else social exclusion, injustice and discrimination will remain, affecting the development process of the country and giving Bolivia a reputation for a poor human rights record.

The right to access justice and diversity flows from the natural condition of the human being itself (Vidal-Beneyto 2006). These rights are individual, indivisible, and inalienable, as acknowledged in the Universal Declaration of Human Rights and the Universal Declaration of the Rights of Indigenous Peoples. The right to access to justice includes the opportunity of individuals to obtain a satisfactory response to their legal needs. This means every person ought to be able to enjoy the benefits of justice and legal advice, by all natural and legal persons, without excessive cost or discrimination. Access to justice is the core of legal certainty to ensure the possibility of a decent life for all members of society in a sustainable manner over time.

The right to cultural diversity is an ethical imperative, inseparable from respect for human dignity, ensuring the free flow of ideas by word and image. All cultures should be able to express themselves. Freedom of expression, media pluralism, multi-lingualism, equal access to art and to scientific and technological knowledge (including in digital form) and the possibility for all cultures to have access to the means of expression and dissemination are the guarantees of cultural diversity (Ministerio de Justicia Y Derechos Humanos 1998).

Incorporating Indigenous ways of solving conflicts and settling disputes as part of the legal system addresses both the rights to justice and cultural diversity. This would mean that resolutions arising from either the Indigenous justice or the ordinary courts would be equally valued, accepted and recognised. This contrasts with the current system whereby despite, all the legal changes that the Bolivian government has developed to protect and respect Indigenous' practices, the judicial system has remained the same: bureaucratic and discriminatory (Fernandez et al. 2007).

## 7.4 Conclusion

The recognition of the rights of Indigenous Peoples in Bolivia has been an on-going struggle and it is not over. This campaign has resulted in conflicts and deaths, causing instability and crisis, yet the violence and discrimination has continued. Despite all the changes that have been made in different laws, the implementation

remains complicated. Social exclusion, inequality, injustice, and human rights abuses continue.

The courts are overloaded with various cases, causing delays of justice. There is a provision for alternative approaches to conflict resolution within the Penal Code so that conflicts of lesser importance do not need to come to the courts. The Indigenous conflict resolution and justice processes as practised by communities have much that is compatible with the ordinary courts but without all the court formalities. The Indigenous justice system has worked and works within communities to maintain peace. However there is little accurate information about Indigenous conflict resolution and its approaches have not been taken up by the formal justice system.

Bolivia has a long way to go to guarantee the rights of its Indigenous peoples. The different governments need to promote peaceful relations between authorities and Indigenous groups, and among the groups themselves. So long as the mind-set of the authorities, especially in the justice administration system does not change the violent and unstable situation that has plagued Bolivia through recent decades will continue. History shows that it does not matter whether the government is socialist or capitalist, justice for Indigenous people is necessary to promote peace, stability and development in the country.

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