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增进和保护所有人权、公民、政治、经济、
社会和文化权利、包括发展权

食物权问题特别报告员让·齐格勒的报告

增 编

对玻利维亚的访问 *

* 报告的这个内容提要以所有正式语文分发。报告本身附于内容提要之后，仅以原文和西班牙文分发。

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内 容 提 要

食物权问题特别报告员谨向人权理事会提交这份关于他 2007 年 4 月 29 日至 5 月 6 日对玻利维亚进行正式访问的报告。

尽管玻利维亚拥有天然气、石油以及包括银、金、铁、锌、锡在内的金属等丰富的矿产资源，但该国绝大多数人民尚未能获益于这些自然财富，仍然处于贫穷和营养不良状态。玻利维亚儿童的四分之一以上患有慢性营养不良。65% 以上的玻利维亚人生活在国家贫困线以下。约 35% 的人，其中多为土著人民，生活在极端贫困中，买不起保持健康生活的基本必需品，也无法保证所需的最低限度热量。

在近几届政府推行的经济模式之下，不平等状况进一步加剧，玻利维亚现已是全世界不平等程度最高的国家之一。经济和政治权力向来都掌握在主要为西班牙和混合血统的少数城市精英手中，但伴随深刻的社会危机之后这种状况正在发生变化。2000 年以来，在科恰班巴和奥尔托的“水资源之战”及针对玻利维亚天然气储存出口计划的“天然气之战”中，社会抗议达到危机程度。抗议遭到武力压制，2003 年 9 月和 10 月的“天然气之战”过程中至少造成 59 人死亡，导致贡萨洛·桑切斯·德洛萨达总统领导的政府下台。

2005 年 12 月举行的选举标志着一个新时期的开端，玻利维亚人民选举埃沃·莫拉莱斯·艾玛为总统，这是拉丁美洲的第一个土著族裔出身的总统。莫拉莱斯总统已公开承诺，将与营养不良、粮食不安全和贫困作斗争定为他的关键议程内容。自执政以来，他已成功地与天然气和石油业的外国投资者重新谈判了合同，政府预算中由此注入了大量外资。他所领导的政府还在制订一项“零营养不良方案”，以及侧重于小规模农业投资、粮食主权、土地改革、社会基础设施及保护土著人民权利的方案。制宪大会在新宪法的起草中承认所有玻利维亚人的食物权和水资源权这两项基本权利，因此也有助于巩固上述新方针。

特别报告员关注玻利维亚依然严峻的营养不良和粮食不安全状况，因此对莫拉莱斯总统所领导的政府的新方针表示欢迎。他认为，长期以来不能享受免于饥饿和贫困的自由等基本自由的绝大多数玻利维亚人，特别是土著人民，将因此而迎来根本性的变化。

报告最后列出特别报告员就实现食物权提出的一系列建议。

Annex

**REPORT OF THE SPECIAL RAPPORTEUR ON THE RIGHT TO FOOD,
JEAN ZIEGLER, ON HIS MISSION TO BOLIVIA**

(29 April to 6 May 2007)

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Introduction

1. The Special Rapporteur on the right to food visited Bolivia from 29 April to 6 May 2007. He expresses his great appreciation to the Government of Bolivia for the open and cooperative way in which his mission was received. He would like to thank Ambassador Angelica Navarro and her team at the Permanent Mission of Bolivia to the United Nations in Geneva for facilitating his mission. He welcomes the election of Bolivia to the new Human Rights Council and congratulates Bolivia on its cooperation with human rights mechanisms, including Special Rapporteurs. During his visit to Bolivia, he appreciated the help of the United Nations country team, especially Antonio Molpeceres, Resident Coordinator, Elisa Panades, representative of the Food and Agriculture Organization (FAO) and Vitoria Ginja, representative of the World Food Programme (WFP). He would also like to thank the Office of the United Nations High Commissioner for Human Rights (OHCHR) for assistance in organizing the mission. He is also grateful to Ambassador Rafael Dausà Cespedes of Cuba. Finally, he would like to thank the head of the Swiss Development Cooperation in Bolivia, Marco Rossi, and Chargé d'Affaires a.i. Jacques Gremaud of Switzerland for their warm hospitality.
2. During his visit, the Special Rapporteur was honoured to be received by the President of the Republic, Evo Morales Ayma. He greatly benefited from meetings with the Minister for Rural Development and Agriculture, Dr. Susana Rivero, the Minister of Health and Sport, Dr. Nila Heredia, and senior staff of the Ministry of Water, Ministry of Foreign Affairs and the Head of the National Institute for Agrarian Reform. He also met with the Vice-President and other members of Bolivia's Constituent Assembly and appreciated the valuable insights from his meeting with Waldo Albarracin, the *Defensor del Pueblo*, Bolivia's human rights ombudsman.
3. The Special Rapporteur also appreciated meetings with a wide range of representatives from social movements, indigenous movements and non-governmental organizations (NGOs). The Special Rapporteur and his team visited rural communities and urban areas in the departments of La Paz and Oruro, and held meetings, inter alia, with communities in the urban areas of El Alto and miners and peasant communities in Oruro. He would particularly like to thank the non-governmental organizations *Centro de Investigación y Promoción del Campesinado* (CIPCA) and Emmaus Bolivia, as well as FAO and WFP for assisting in the organization of these visits.
4. The objectives of the mission were to examine the realization of the right to food in relation to Bolivia's international and national commitments to respect, protect and fulfil the human right to adequate food. Bolivia is the second poorest country in Latin America and has one of the highest levels of child malnutrition and under-nourishment in the continent. However, today Bolivia is in an historic moment of transition under the new Government of Evo Morales, who became Bolivia's first indigenous President in January 2006. Morales has promised to make the fight against malnutrition and extreme poverty the key focus of his administration.
5. Landlocked in the middle of South America, Bolivia ranges across the high altiplano and the Andes Mountains, to the tropical hills of the Yungas, the expansive forests of the Amazon and the lowland grassy plains of Santa Cruz. Nearly half of Bolivia's territory is covered by forest, and another third is semi-desert or arid. Its climate faces extreme variations of temperatures in the high altiplano as well as the hot humid temperatures of the Amazon lowlands, and it faces frequent natural disasters, especially droughts and floods. A country

of 9.1 million people, the population is predominantly indigenous, with large populations of Quechua (30 per cent) and Aymara (25 per cent), and smaller ethnic groups, as well as mixed descent (30 per cent) and white populations (15 per cent), making Bolivia one of the most ethnically diverse countries in Latin America. Bolivia's economy has long been dependent on the export of minerals (especially silver and tin) and agricultural commodities (soya beans, sugar, wood) and more recently on natural gas and oil. However, despite the fact that Bolivia is a country rich in mineral resources, including natural gas and oil, and metals including silver, gold, iron, zinc and tin, the vast majority of its people have not benefited from this natural wealth and remain very poor. Millions still struggle to survive as subsistence farmers, agricultural labourers, informal miners and small traders or artisans in the informal sector, on incomes insufficient to meet basic food needs.

I. MALNUTRITION AND FOOD INSECURITY IN BOLIVIA

A. The current situation of malnutrition and food insecurity in Bolivia

6. Chronic malnutrition affects more than one in four Bolivian children. The highest levels of malnutrition are amongst Bolivians living in rural areas, especially in the high plains of the altiplano regions of Potosi and Chuquisaca, but also in the valleys and tropical lowland departments of Beni and Pando.

7. Malnutrition levels are much higher amongst the poorest families.¹ Children in the poorest households have levels of malnutrition six times that of children born into the richest 20 per cent of households.² Families of indigenous Quechua, Aymara, Guaraní and other peoples are far more affected by chronic malnutrition (28 per cent) than non-indigenous children (16 per cent).³ Many of Bolivia's minorities, such as the 38,600 *afro-bolivianos* are also particularly affected by high levels of malnutrition. More than half of Bolivian children suffer from micronutrient deficiencies, particularly of iron, iodine and Vitamin A, and 80 per cent of children between 6 and 23 months suffer from anaemia. Child mortality levels remain high, but regional disparities are severe - a baby born in the richer department of Tarija is three times more likely to live to see its first birthday than a baby born in the poorer department of Oruro.⁴

¹ See United Nations and Ministry of Health National Council for Food and Nutrition (CONAN), *Support to the implementation of the national Zero Malnutrition Programme* (2007).

² United Nations Development Programme (UNDP), *Objetivos de Desarrollo del Milenio: La Paz* (2007).

³ Unidad de Análisis de Políticas Sociales y Económicas (UDAPE), Naciones Unidas, Organización Internacional del Trabajo, *Pueblos Indígenas Originarios y Objetivos de Desarrollo del Milenio* (2006).

⁴ World Bank, *Bolivia: Towards a New Social Contract, A Country Social Analysis* (2006), volume 2 available at <http://siteresources.worldbank.org/EXTSOCIALDEV/Resources/3177394-1168615404141/BoliviaCSAVolumeTwo18jul06.pdf>.

8. Although Bolivia has vast natural wealth from mineral and energy resources, the majority of the population is still extremely poor. Nearly two thirds of Bolivians live below the national poverty line.⁵ Around 35 per cent, mostly indigenous peoples, live in extreme poverty without access to a minimum *canasta basica*. This means that they cannot afford even the minimum amount of calories every day to sustain a healthy life.⁶ Poor families spend a large proportion of their total income on food and have limited access to adequate, sufficiently nutritious food. As a result of changing trade patterns, many have become dependent on cheap, low quality imported noodles, rather than nutritionally rich Bolivian staples such as quinoa (a highly nutritious indigenous grain). Extreme poverty is concentrated amongst indigenous communities (49 per cent), rather than non-indigenous people (24 per cent) and poverty levels are much higher in rural areas. The poorest are mostly subsistence farmers who struggle to survive on small plots of land or as agricultural labourers on pitiful wages. However, there are also high levels of urban poverty, as rapidly increasing rural-urban migration over the last 30 years has pushed millions into the cities, especially to El Alto.

9. The poorest regions are the altiplano and the central and southern valleys, where indigenous populations and *campesinos* (peasant farmers) are dominant. The poorest departments are Potosi and Chuquisaca, followed by Beni, La Paz and Oruro. More than 60 per cent of the largely indigenous populations of Potosi and Chuquisaca are extremely poor and suffering from hunger, compared to fewer than 25 per cent of people living in Santa Cruz.⁷ Santa Cruz and Cochabamba have the lowest levels of poverty, but rural and indigenous people in these areas remain very poor. Overall, the situation of the poor improved during the mid-1990s, but started to deteriorate again in 1999 and poverty levels are now back to those of 1990.⁸ A sharp increase in inequality since the mid-1990s means that in Bolivia it is now amongst the greatest in the world, similar to levels seen in Brazil.⁹ Nine out of ten Bolivians feel that such great inequality is socially unjust, and is the source of rising social conflict.¹⁰

10. In Bolivia's *Occidente* (or west), the poor and hungry are mostly indigenous people, living in rural areas and struggling to survive from small-scale and subsistence farming on the cold, windy plateau of the altiplano. The lands of the altiplano are difficult to cultivate given

⁵ UDAPE et al., 2006, see footnote 3 above.

⁶ The poverty line for extreme poverty is calculated according to ability to access the *canasta basica* or basic food basket of the minimum daily requirement of calories.

⁷ Overseas Development Institute, *Productive Strategies for Poor Rural Households to Participate Successfully in Global Economic Processes: Country Report for Bolivia* (2006).

⁸ World Bank, *Bolivia: Towards a new social contract: Options for the Constituent Assembly* (2006), available at <http://go.worldbank.org/QO0BB5FXX0>.

⁹ The World Bank (2007) estimates the Gini coefficient for income at 0.58, although inequality in land distribution is even higher.

¹⁰ World Bank 2007 (see footnote 8 above).

extremely high altitudes of 3,500-4,000 metres. Agriculture is dependent on uncertain rainfall and relies on crops that can survive the harsh climate. Most people have very small landholdings, barely large enough for subsistence. Landless families in rural areas are even poorer and work as sharecroppers or wage labourers, if they cannot afford to rent land. Most agricultural work is done by hand with little access to machinery even to plough the fields, and there has been little investment in irrigation and other infrastructure that would allow increased production. Highland families grow potatoes, oca (another edible tuber), fava beans and quinoa. Many keep animals such as sheep or llamas, but many of their products are sold rather than eaten, because of the need to generate income. This has resulted in very high levels of malnutrition, especially micronutrient malnutrition, amongst altiplano families because their diet is inadequate.

11. The Special Rapporteur found that the reason why many altiplano families are so poor is because the prices they receive for their crops are often below the cost of production. Unable to afford transport to markets, most are therefore dependent on intermediary traders who come to the villages with a truck to buy their milk or crops, but pay extremely low prices, while making large profits by selling the products in the cities.¹¹ The lack of transport for many remote families, widely dispersed across the altiplano is a serious obstacle to food security, as is the lack of inputs that would allow them to better utilize the land. Altiplano farming families are also vulnerable to a very uncertain climate. Whole crops can be wiped out by one heavy frost, hailstorm or summer drought. Climate change and the El Niño phenomenon appear to be causing an increase in extreme climatic events, with less rain and higher temperatures affecting productivity.¹² The Special Rapporteur and his team spoke with Aymara families of Jintamarca near Guaqui, close to Lake Titicaca, who lost their entire potato crop after three days of heavy frost. As this is their staple food, they worried how they would survive and how they would be able to afford seeds to plant for the next harvest.

12. The harsh agricultural conditions, and past failures to invest in small-scale agriculture, account for the rapid urbanization of Bolivia, as millions have migrated to the cities, or abroad. Many also leave the land to toil in Bolivia's mineral mines - the Special Rapporteur saw at first hand the intolerable working conditions in the cooperative mines of Oruro, where both men and women miners work long shifts. Others leave in search of new lands in the tropical hills or lowlands of the Yungas and the valleys. These migrants or *colonizadores* clear small patches of forest for subsistence agriculture, growing crops adapted to the warmer climate, including yuca, rice, maize, bananas, cacao, coffee and coca. However, efforts to eradicate coca have also been accompanied by much violence and have angered many indigenous Bolivians, who see coca eradication not only as depriving them of livelihoods when the alternatives are bleak, but also as an attack on their cultural heritage.

¹¹ J. Prudencio, G. Ton, *Integración regional y producción campesina: La urgencia de políticas de soberanía alimentaria* (2005).

¹² S. Klasen, M. Gross, R. Thiele, J. Lay, J. Spatz, J. and M. Wiebelt, *Operationalising Pro-Poor Growth, A Country Case Study on Bolivia* (2004), p. 24 citing Tuchschnieder (2001).

13. The difficult conditions of subsistence agriculture stand in strong contrast to the modern agro-industrial plantations and cattle ranches that dominate Bolivia's eastern lowlands. Whilst the vast majority of small farmers have low-quality landholdings of between less than half a hectare and five hectares, landholdings in the *Oriente* are characterized by huge extensions of over 5,000 hectares, concentrated in the hands of a few powerful families. These extensions are highly developed, often highly mechanized and are focused on export-oriented agricultural production, including soya, sugar cane, sunflower oils and cattle. Mechanization means that these extensions provide much lower employment than small-scale farming and agricultural labourers are paid very low and insecure wages.¹³ The Special Rapporteur was shocked to hear that many agricultural workers on large estates still work in feudal conditions of semi-slavery, or debt-bondage, particularly the Guaraní indigenous population of the Chaco. According to the *Defensor del Pueblo*, these workers are held in debt bondage or bound by duties to landholders and do not receive salaries for their work.

14. Although Bolivia does not suffer from a shortage of land,¹⁴ inequalities in landholdings have been a key factor in deepening social conflict across the country. The vast majority of poor small-scale farmers together own only 1.4 per cent of the cultivated land, while the wealthiest 7 per cent of Bolivian landlords own 85 per cent of the cultivated land.¹⁵ Although a 1953 agrarian reform programme broke up the traditional feudalistic *haciendas* in the highlands and the valleys, this system re-emerged in the eastern lowlands as huge tracts of land were granted to powerful political supporters of the regimes in power between the 1960s and the 1990s.¹⁶ Inequalities of land ownership are particularly high in the southern state of Tarija, where 92 per cent of land is owned by 8 per cent of agricultural producers, while 80 per cent of the region's *campesinos* have no land title.¹⁷ In the eastern lowlands, lands have been granted to indigenous peoples within the Tierra Comunitaria de Origen (TCO) framework, but this has also been complicated and has not always provided secure tenure, given overlapping claims by settlers and large landowners which have generated further conflict.

15. Bolivia is also frequently faced with natural disaster. Many people interviewed by the Special Rapporteur suggested that Bolivia is increasingly affected by unpredictable natural disasters as a result of climate change. In early 2007, Bolivia faced its worst floods in 25 years. Whilst drought, hail and freezing temperatures devastated staple crops in the highlands, torrential

¹³ UNDP La Paz, *La economía más allá del gas, informe temático sobre el desarrollo humano* (2006).

¹⁴ Out of 8 million hectares classified as productive for agriculture, only 2.5 million hectares are currently exploited, World Bank, 2007 (see footnote 8 above).

¹⁵ FAO, *Perfiles nutricionales por países: Bolivia* (2001). The overall Gini coefficient for land inequality stood at 0.768 in 1989 (Klasen et al., 2004, see footnote 12 above).

¹⁶ World Bank, 2007 (see footnote 8 above).

¹⁷ FAO, 2001 (see footnote 15 above).

rains and overflowing rivers caused serious floods in eight of Bolivia's nine departments, resulting in the deaths of 54 people and affecting the lives and livelihoods of over 450,000 people.¹⁸ In the worst affected areas in Beni and Santa Cruz, at least 71,000 hectares of crops were destroyed and more than 11,000 cattle were lost in the rising water; at least 16,000 people were displaced from their homes in Santa Cruz. The Government declared a national emergency on 18 January 2007 and requested support from the international community on 7 February 2007. At the time of the visit of the Special Rapporteur, the floods had mostly receded, but thousands of people were left to rebuild their homes and livelihoods.

16. Millions of Bolivians continue to lack access to safe drinking water, as well as water for subsistence agriculture. The situation is particularly severe in rural areas, where up to 43 per cent of the population has no access to safe drinking water and 75 per cent have no sanitation,¹⁹ the vast majority of whom are indigenous peoples.²⁰ The quality of existing drinking water is also problematic, given a continued lack of adequate water treatment. Water privatization under Bolivia's previous administrations aimed to improve the water quality and provision but gave rise to serious social conflict. In Cochabamba, water prices rose by 100-200 per cent just weeks after a private, foreign-owned company, Aguas del Tunari owned by the London-based multinational International Water Ltd took over the concession.²¹ For many families, this meant that up to half of their monthly income went on paying for water. Massive public protests broke out in February 2000, but the then President declared martial law and called for a state of emergency for 90 days. During this period, most civil rights were suspended, permitting the arrest and confinement of protesters without a warrant, restrictions on travel and political activity and a curfew, banning gatherings of more than four people and severely limiting freedom of the press. After persistent public protests, the Government was forced to back down and to break its contract with Aguas del Tunari. In a similar case of privatization in El Alto, a concession of Aguas del Illimani to the Suez des Eaux multinational company was halted in 2007, following widespread protests after communities were deprived of access to sufficient water as a result of increases in water prices and connection fees.

¹⁸ USAID, *Bolivia - Floods*, March 2007 available at http://www.usaid.gov/our_work/humanitarian_assistance/disaster_assistance/countries/Bolivia/fy2007/bolivia_fl_fs04_03-23-2007.pdf.

¹⁹ Unidad de Análisis de Políticas Sociales y Económicas (UDAPE), Naciones Unidas, Organización Internacional del Trabajo, *Pueblos Indígenas Originarios y Objetivos de Desarrollo del Milenio* (2006). UDAPE, et al., 2006.

²⁰ Unidad de Análisis de Políticas Sociales y Económicas (UDAPE), Naciones Unidas, Organización Internacional del Trabajo, *Pueblos Indígenas Originarios y Objetivos de Desarrollo del Milenio* (2006).

²¹ Report by Public Citizen, *Water Privatization Fiascos: Broken Promises and Social Turmoil* (2003).

B. Social crisis and recent developments in Bolivia

17. The recent social crisis in Bolivia has its roots in a long history of extreme poverty and social exclusion of the majority of Bolivia's population. The history of colonial exploitation is still etched in the minds of Bolivia's poor, especially the indigenous population. Much of the Spanish empire's wealth was financed by Bolivia's rich deposits of silver and tin, mined by indigenous people forced to work as slaves. Thousands of indigenous peoples were also forced to work under nearly feudal conditions on large agricultural estates, denied the right to freely chosen work, the right to education and the right to vote. Even today, the vast majority of Bolivians are still extremely poor and struggling to feed their families and they question why they do not seem to benefit from Bolivia's wealth of natural and mineral resources. Recent protests have centred on opposition to privatization which is perceived as a new form of colonialism and the appropriation of Bolivia's wealth by foreign investors.

18. Bolivia's wealth of mineral resources includes silver, tin, zinc, tungsten, antimony, iron and gold, as well as oil and natural gas. Since the discovery of vast reserves in the 1990s, natural gas now dominates the country's exports (43 per cent of total exports in 2006). Natural gas and oil production have been increasing. Bolivia produces about 355 billion cubic feet of natural gas and has the second largest reserve of natural gas in South America, after Venezuela (with reserves estimated at between 24 and 53 trillion cubic feet).²² More than 85 per cent of these natural gas reserves are located in the department of Tarija, with a further 10.6 per cent in Santa Cruz and 2.5 per cent in Cochabamba. Bolivia also has substantial oil reserves of at least 440 million barrels (proven reserves as of 2006) and produces about 64,000 barrels per day. Most of the oil is also located in south-western Bolivia, with 80 per cent in the department of Tarija. Rising international prices of natural gas and oil promise rising revenues, but the privatization of oil and gas reserves under the Sanchez de Lozada Government in the mid-1990s led to a decline in revenues accruing to the State. Following privatization, the Brazilian company, Petrobras, and Spanish Repsol-YPF became the dominant producers of both oil and natural gas in Bolivia, but the French company, Total, Exxon of the United States of America, British Petroleum and British Gas, and other consortia are also involved in Bolivia.

19. However, growing public disillusionment with privatization led to protests against plans to export natural gas to the United States and Mexico via a Chilean pipeline and escalated into the "gas war" of September and October 2003. During a month of social protests and blockades, social movements, representing indigenous peoples, peasant farmers and workers, fought street battles against the authorities. These protests were forcibly repressed and at least 59 people were killed in September and October 2003.²³ President Sanchez de Lozada was forced to resign from office and his Vice-President Carlos Mesa assumed the Presidency. Social movements drew up a list of demands called the October Agenda. They demanded the establishment of a Constituent

²² See Energy Information Administration, Country Analysis Briefs: Bolivia, October 2006.

²³ Human Rights Watch, 2003, available at <http://hrw.org/english/docs/2003/12/22/bolivi6847.htm>.

Assembly to draw up a new constitution to re-establish participatory democracy as well as demanding the nationalization of Bolivia's national resources so that Bolivian wealth could finally benefit the Bolivian people.

20. Mesa acceded to these demands, including revising the constitution and holding a binding referendum on the export of natural gas. The Bolivian people voted overwhelmingly in the referendum for the development of oil and gas resources and for the imposition of a 50 per cent tax on extraction on all multinational companies. In May 2005, Congress passed the 2005 Hydrocarbons Law which introduced a direct tax on hydrocarbons of 32 per cent, adding to the 18 per cent royalty already paid and requiring a total tax contribution of 50 per cent. This led to huge increases in revenue to the Bolivian State, as the new tax was imposed across the industry. However, when more than 80,000 protestors surrounded the presidential palace to demand the full nationalization of the gas industry, Mesa was in turn forced to resign.

21. The elections of December 2005 marked a turning point as Bolivians elected Evo Morales Ayma with an absolute majority of almost 54 per cent, unprecedented in Bolivian elections.²⁴ He was sworn in on 22 January 2006, the first indigenous President in a nation with a majority indigenous population. Morales promised fundamental change for the large majority of Bolivians, especially indigenous peoples, long excluded from such simple freedoms as the freedom from hunger and poverty. He promised that 500 years of colonialism were now over and that sovereignty would be re-established over resources for the benefit of the Bolivian people. On 1 May 2006 he announced the renationalization of the oil and natural gas industries. Under the terms of this 2006 nationalization decree (Decree 28701), foreign companies are not allowed to own the reserves (ownership is reserved for the State), but will be permitted to operate the fields for the Government. This affected mainly the production of Brazil's Petrobras in the largest gas fields of San Antonio and Sabalo, Spain's Repsol which operates the Margarit field, France's Total in Itau, and Britain's British Gas which operates in the La Vertiente, Escondido and Los Suris fields. Under new operational agreements signed in November 2006, the resources will formally lie in the hands of the Bolivian State gas company, Yacimientos Petrolíferos Fiscales Bolivianos (YPFB), but the foreign companies will operate as providers of services to YPFB and will be subject to new tax arrangements. Tax and royalties of 50 per cent of the income will be paid directly to the State, as well as a further tax, taking the total tax bill up to a maximum of 82 per cent, although when this is calculated after deduction of costs and investment, it is estimated that total tax bills will not exceed 60 per cent. All the foreign corporations have agreed to these demands and will continue to operate in Bolivia.

22. Under these new agreements successfully negotiated by the Government of President Evo Morales, there has been a massive increase in State revenues, which reached US\$ 1.3 billion in 2006 and may reach US\$ 1.5 billion in 2007, an enormous increase on revenues of only US\$ 220 million in 2003.²⁵ This means that State revenues from oil and gas

²⁴ Economist Intelligence Unit (EIU), *Country Profile: Bolivia* (2007).

²⁵ Ministerio de Hidrocarburos y Energia, 2007.

amounted to 9.7 per cent of GDP in 2006, compared to only 2.8 per cent in 2003.²⁶ The massive injection of revenue into State resources has already allowed the President to reverse a spiralling public deficit, reduce public debt and will allow increased investments in fighting hunger and poverty. Despite strong opposition from the traditional white and *mestizo* elites of the *Oriente*, Morales has publicly committed to make the fight against malnutrition, food insecurity, and poverty the key element of his agenda. Morales has announced that new expenditure will give priority to the Zero Malnutrition Programme. The 2007 National Development Plan also reflects commitments to sharply increase public expenditure, up to 14 per cent of GDP for the five-year period 2007-2012, compared to 10.5 per cent in 2006.²⁷

23. Development expenditures at the local level will also increase as, under decentralization and the 2005 Hydrocarbons Law, two-thirds of the proceeds of taxes and royalties from oil and gas will be transferred directly to Bolivia's regional departments (municipalities and *prefecturas*), which will see revenues rise to US\$ 782 million in 2007 (compared to US\$ 140 million in 2004).²⁸ The 2005 Law expressly establishes that resources from the hydrocarbon tax should be directed to health, education, roads and local development for employment generation. However, so far, there has been very little concrete investment at the local level and huge resources remain in bank accounts. There is a risk that under this decentralized revenue distribution, the central Government will not be able to ensure that municipalities prioritize expenditure on the Zero Malnutrition Programme or other programmes to meet the needs of the poorest. There is also a risk that the current distribution of these resources could contribute to increasing inequalities and conflicts between the regions. At present, the La Paz region receives only US\$ 16 per capita compared to Pando which receives US\$ 407 per head.²⁹ Allocating larger revenues to the producing regions may also generate conflict, as Tarija and Santa Cruz will receive larger revenues than any other region. Distribution of the hydrocarbon tax between regions is therefore a central and hotly debated issue which can only be resolved within the Constituent Assembly. Providing for transparency of expenditures and permitting participatory budgeting processes for expenditure decisions at the municipal and *prefectura* level will be essential.

24. These massive increases in government revenue will allow Bolivia, which has traditionally been dependent on international aid for its development, to finally take charge of its destiny and offer new hope to millions of poor and indigenous Bolivians that have remained excluded from Bolivia's wealth for so long.

²⁶ IMF Public Information Notice No. 07/80, July 2007 available at <http://www.imf.org/external/np/sec/pn/2007/pn0780.htm>.

²⁷ IMF, Bolivia: Article IV Consultation, Country Report No. 07/248, July 2007 available at <http://www.imf.org/external/pubs/ft/scr/2007/cr07248.pdf>.

²⁸ World Bank, 2006, pp. 87-91 (see footnote 4 above).

²⁹ *Idem*.

II. LEGAL FRAMEWORK FOR THE RIGHT TO FOOD IN BOLIVIA

A. International obligations

25. Bolivia is party to the main international treaty that protects the right to food, the International Covenant on Economic, Social and Cultural Rights, and is therefore committed to realizing the right to food of all its people. The Special Rapporteur notes that Bolivia has not reported recently on its realization of these rights to the Committee on Economic, Social and Cultural Rights and welcomes the Government's commitment to report soon to the Committee, with the support of international technical assistance. Bolivia has also ratified all the other key international human rights treaties relevant to the right to food, including the International Covenant on Civil and Political Rights (art. 6), the Convention on the Rights of the Child (arts. 24 and 27), the Convention on the Elimination of All Forms of Discrimination against Women (arts. 12 and 14) and the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights ("Protocol of San Salvador") (art. 12). This means that the Government of Bolivia is fully committed under international law to respect, protect and fulfil the right to food of all children, women and men in its territory.

26. The right to food is the right to have physical and economic access to sufficient adequate food at all times.³⁰ It is closely linked to the idea of food security, as it is primarily about the right to be able to feed oneself through access to sufficient productive resources, including land, water and seeds, or employment. By becoming party to the international human rights treaties, the Government of Bolivia has the obligations to respect, protect and fulfil the right to food without discrimination.³¹ The obligation to respect means that the Government should not take actions that arbitrarily deprive people of their right to food. The obligation to protect means that the Government should adopt and enforce appropriate laws to prevent third parties, including powerful individuals and corporations, from violating the right to food of others. Finally, the obligation to fulfil (facilitate and provide) means that the Government should take positive steps to identify vulnerable groups and implement appropriate policies/programmes to ensure their access to adequate food and water by facilitating their ability to feed themselves. As a last resort, the Government is required to provide adequate food and water to those who cannot feed themselves for reasons beyond their own control. To fulfil the right to food, the Government must use the maximum of its available resources and in every circumstance it must ensure the minimum essential level required to be free from hunger. Participation, accountability, transparency, empowerment and access to effective remedies must be ensured at all levels of the implementation of policies and programmes.

27. Bolivia is also party to the International Labour Organization (ILO) Convention No. 169 on Indigenous and Tribal Peoples (1989) which specifically protects the rights of indigenous peoples. Under this Convention, the Government is required to respect the rights of indigenous

³⁰ Committee on Economic, Social and Cultural Rights, general comment No. 12 (1999) on the right to adequate food (art. 11).

³¹ *Idem*. See also FAO Voluntary Guidelines to support the progressive realization of the right to adequate food in the context of national food security, 2004.

peoples to land and territories (arts. 13 to 17), including their collective aspects. These articles also require that indigenous peoples are not displaced from their lands, and that their rights to natural resources on their lands are safeguarded, including their right to participate in the use, management and conservation of these resources, and their right to be consulted and to assess any exploitation of resources on the land they own or possess. In Bolivia, Convention No. 169 has been adopted as part of domestic legislation (law 1257, 1991), like other international instruments. At the end of 2007, Bolivia was the first country to recognize as part of its domestic law the United Nations Declaration on the Rights of Indigenous Peoples, adopted by the General Assembly in resolution 61/295.

B. Domestic constitutional and legislative framework

28. A Constituent Assembly was elected in July 2006, composed of 255 members, including 88 women, with the mandate to elaborate a new constitution. The new constitution was adopted by the Constitutional Assembly on 14 December 2007 and a referendum will be organized in 2008, allowing the people to accept or reject it. The drafting of this new constitution represented a unique opportunity for Bolivia to reaffirm the rights of those who have been historically excluded and oppressed. As the Vice-President Álvaro García Linera stated: “this is the best moment to recreate and reinvent a new legal community in which all Bolivians will feel included”.³² It also represented a unique opportunity for the right to food to be recognized as a fundamental human right of all Bolivians.

29. The new constitution recognizes the right to food and the right to water as fundamental human rights of all Bolivians, with the correlative obligation of the State to guarantee food security, through safe, sufficient and adequate food for the whole population (art. 16). It also recognizes the direct applicability of all human rights, including the rights to health, housing, labour, basic services and social security, the specific rights of the most vulnerable, including children and the elderly, and the rights of the original indigenous and peasant people and nations, including their collective rights to land and territories. It also states that public expenses and national investments will be allocated, through participatory mechanisms, on a priority basis to social issues including food policies (art. 321); that genetically modified organisms are prohibited (art. 256); and that international human rights instruments proclaiming more favourable rights than the constitution shall take precedence (art. 257).

30. Bolivia’s existing constitution also sets out very important principles that have been reaffirmed in the new constitution. It recognizes the diversity of the population of Bolivia, its multi-ethnicity and multiculturalism (art. 1). It prohibits any form of discrimination and guarantees equality between men and women (art. 6). It also recognizes that the rights to life, health and security, the right to a fair remuneration, sufficient to ensure a dignified existence for the worker and his/her family, and the right to a healthy environment are fundamental human rights (art. 7). It also provides that the State must recognize, respect and protect the economic,

³² Álvaro García Linera, *La Ley de Convocatoria a la Asamblea Constituyente en la Coyuntura Nacional*, in Defensor del Pueblo, *Ley de Convocatoria a la Asamblea Constituyente, Derechos Humanos y Defensor del Pueblo*, 2005.

social and cultural rights of indigenous people living in Bolivia, in particular their rights to lands of origin (under the Tierra Comunitaria de Origen framework), to the sustainable use of natural resources, to identity, values, customs and institutions (art. 171).

31. Bolivia's legislative framework does not include a national law on the right to food or on food security, which would be important in determining the objectives and responsibilities of the relevant ministries and ensuring their coordinated activities. However, there are a large number of other laws, decrees and regulations that are of particular relevance for the realization of the right to food. This includes the *Ley de Reconducción Comunitaria de la Reforma Agraria* (2006) which outlines the system for regulating collective land titles for indigenous territories and indigenous communities, land for small farmers, and land for industrial farming (*empresa agropecuaria*). The law also established the National Institute for Agrarian Reform (INRA), charged with identifying and reclaiming unproductive or illegally obtained landholdings for redistribution to the landless. The *Ley del Medio Ambiente* (1992) protecting natural resources and the rights of indigenous people and farming communities against the negative activities of industrial and extractive companies and the *Ley de Fomento de la Lactancia Materna y Comercialización de sus Sucedáneos* (2006) promoting exclusive maternal breastfeeding for children under six months and prohibiting marketing of substitutes, in accordance with the International Code of Marketing of Breastmilk Substitutes, are also of particular relevance for the protection of right to food.

32. On the issue of water, the Government promulgated the *Ley de Promoción y Apoyo al Sector de Riego para la Producción Agropecuaria y Forestal* in October 2004, better known as the *Ley de Riego*. This law recognizes traditional water rights and uses and guarantees the right to water for irrigation for indigenous and farming communities. In February 2006, the new Government created a Ministry of Water to coordinate and oversee water issues through Law No. 3351. The Ministry is in the process of drafting framework legislation on drinking water and sanitation systems which would expressly recognize access to water and water services for human consumption as basic human rights.

C. Access to justice and human rights institutions

33. Bolivia has a complex legal system, which includes State law and courts at the municipal, departmental and national levels, as well as customary law and traditional justice in areas of indigenous peoples. The Constitutional Tribunal has a special mandate to protect and enforce the constitution. The existing constitution, as well as the new constitution, guarantees free access to justice for the poor (art. 16) and victims of a violation of a fundamental right can use the procedure of *amparo* (right to request a review of the constitutionality of a judgement or act) to claim their rights before the superior courts at the departmental level and the Constitutional Tribunal (art. 19). In practice, however, access to justice for victims of violations of human rights, including the right to food, is limited.³³ Problems include the non-application of international human rights treaties and conventions by judges, corruption and the lack of

³³ Defensor del Pueblo, *Informe IX del Defensor del Pueblo al Congreso Nacional*, 2006. See also Inter-American Commission on Human Rights, *Access to Justice and Social Inclusion: the Road towards Strengthening Democracy in Bolivia*, 2007.

independence of the judiciary. Indigenous peoples have particular difficulties in obtaining access to justice, given discrimination, the lack of legal interpreters, and the non-recognition of customary law and indigenous legal authorities. The compatibility and complementarity of modern and customary laws and systems of justice could be improved by the adoption of the draft law on the administration of justice of the original indigenous people and peasants community, in discussion at the national Congress, and by the adoption of the new constitution, which is very progressive in terms of access to justice in cases of violations of human rights.

34. In 1997, reforms to improve the efficiency and accountability of the judiciary and to broaden access to justice led to the establishment of three new institutions: the Constitutional Tribunal, the Judicial Council and the Office of the Ombudsman (*Defensor del Pueblo*). The Office of the Ombudsman is independent and is currently headed by the courageous and outspoken Ombudsman, Waldo Albarracín Sánchez. The Ombudsman has improved protection for vulnerable groups and individuals through mediation, conciliation, quasi-judicial decisions and legal assistance, as well as monitoring violations. His office has also put a special emphasis on many issues related to the right to food, including the right to land, labour rights, the right to a healthy environment, the rights of indigenous people, the rights of children and the rights of women. In view of the prospect of a new constitution that recognizes the right to food and the right to water as fundamental human rights, the Special Rapporteur hopes that this focus will continue and that the office will be provided with adequate human and financial resources.

III. POLICY FRAMEWORK FOR THE RIGHT TO FOOD

A. Government policies and institutions

35. The Special Rapporteur was impressed by the personal commitment of President Evo Morales to the realization of the right to food. Fighting malnutrition has been made a key priority of his Government, through its Zero Malnutrition Programme, as well as other initiatives to promote food security and food sovereignty, land reform and the rights of indigenous peoples that should contribute to the realization of the right to food for all Bolivians.

36. The Zero Malnutrition Programme focuses on eradicating malnutrition amongst children under the age of five (with special emphasis on children up to the age of two, as well as pregnant women in poor areas), aiming to arrest the vicious cycle of malnutrition that limits their physical and intellectual development. The Ministry of Health is charged with implementing the programme, using a multisectoral approach which recognizes the multiple causes of malnutrition and food insecurity. This will address all the factors that limit physical and economic access to food - including lack of nutritional information, the high prevalence of diarrhoeal diseases given the lack of access to safe drinking water, discrimination and the lack of access to land and other productive resources. In April 2006, the institutional framework for fighting hunger was strengthened through the establishment of an intersectoral coordinating technical body of the National Council for Food and Nutrition (CONAN), which brings together all the relevant Ministries. CONAN's technical committee has made the promotion of the right to food one of its key priorities, elaborating new projects, such as the new draft *Ley del Desayuno Escolar*, to be implemented by departmental and municipal authorities.

37. The Special Rapporteur welcomes the efforts of the Government to attempt to redistribute revenues in favour of the poorest groups of society, including children and the

elderly. The Government's Supreme Decree No. 28899 of October 2006 set up a social programme called *Bono Juancito Pinto* which grants 200 bolivianos per school year to schoolchildren so that they can buy school materials. This programme aims to support poor families, allowing them to supplement their meagre budget to buy additional foodstuffs. It is reported that in 2007 this programme benefited more than 1 million children from over 13,000 schools. In addition, the Government recently approved the establishment of a social programme for the elderly, called *Renta Vitalicia Dignidad*, to be financed from the income tax from hydrocarbons. This programme aims to grant 200 bolivianos to each person over the age of 60 not currently receiving any type of pension. It is envisaged that the programme will reach approximately 800,000 persons.

38. The Special Rapporteur found that there was no comprehensive food security policy yet in place, but the Ministry of Agriculture has been charged with developing policies and regulatory legislation on food security and food sovereignty. The Minister of Agriculture informed the Special Rapporteur that there will be a new focus on food sovereignty. This will prioritize local production and will invest in small-scale family agriculture. The Minister believes that this will be the first time in Bolivia's history that the Government's efforts will focus primarily on small-scale agriculture, rather than on measures to support large-scale agro-industry. The Special Rapporteur believes that, given the importance of agricultural livelihoods to millions of Bolivia's poor, this new focus will have a positive impact on the realization of the right to food for Bolivia's small farmers.

39. In May 2006, the Government also launched a programme to revitalize land reform in Bolivia under the responsibility of INRA (*Instituto Nacional de Reforma Agraria* or National Agrarian Reform Institute). This will improve access to land for *campesinos*, communities and rural families. It will also give priority to eliminating the feudal practices of bonded labour (which still exist in the *Oriente*), as well as recognizing traditional forms of land tenure and restituting the lands of indigenous communities. The programme aims to speed up the process of land regularization to clarify existing land titles. In addition, INRA has been granted new powers to allocate existing public lands to landless *campesinos*, and to expropriate land for redistribution if this is unproductive and held for no productive economic or social use.

40. In June 2006, the Government also presented a new National Development Plan that is focused on reducing extreme poverty and inequality and redressing centuries of social exclusion and discrimination against indigenous peoples. The Plan sets concrete objectives, including reducing the percentage of the population living in poverty, from 58.9 per cent to 49.7 per cent and those living in extreme poverty from 34.5 per cent to 27.2 per cent by 2011, as well as reducing inequality. The minimum wage was also increased by 18.6 per cent to address extremely low salaries, although this is very difficult to enforce as 66 per cent of Bolivia's workers are engaged in the informal sector.

41. The institutional and policy framework for access to water has also been substantially strengthened with the creation of the new Ministry of Water. Given widespread social protests against privatization, the establishment of this Ministry is seen as key for elaborating a coherent national water strategy, even though municipalities will retain responsibilities in their regions. A new National Water Plan has been elaborated and the Government has announced concrete objectives to ensure access to drinking water for 1.9 million people and sanitation for 2 million people by 2010. The framework legislation governing access to drinking water and sanitation

currently being developed will explicitly recognize access to water and water services for human consumption as a human right. The new law will also set out mechanisms to regulate the quality of water and sanctions for water pollution caused by industry or mining.

B. United Nations specialized agencies and bilateral assistance

42. The United Nations country team has also agreed in its development assistance framework (UNDAF) to support the Government's Zero Malnutrition Programme and other programmes that promote the right to food within the framework of its support to food sovereignty.³⁴ A joint programme on malnutrition brings together WFP, FAO, UNICEF (the United Nations Children's Fund), the Pan American Health Organization (PAHO), the United Nations Population Fund (UNFPA) and the United Nations Industrial Development Organization (UNIDO) and emphasizes nutritional education, supplementary feeding with fortified food and access to water, as well as promoting food security and food sovereignty. FAO is developing a specific programme to support the right to food. WFP is also providing emergency food assistance to victims of the recent floods and other emergencies and, in accordance with Government guidelines, 80 per cent of WFP's food aid is purchased locally. The Special Rapporteur visited one impressive WFP and FAO programme which works with the municipality of El Alto on nutritional security, constructing family vegetable greenhouses, and promoting appropriate technologies that allow plants to flourish at an altitude of 4,000 metres, even in freezing winters.

43. Bolivia also receives important assistance from bilateral development agencies. Switzerland's bilateral assistance programme for example, through the Swiss Development Cooperation, has made working with Bolivia a key priority and has dedicated CHF 26 million to a variety of programmes, including projects on food security and malnutrition. Cuba assists Bolivia through financing the building of 26 hospitals in the poorest regions. Cuban doctors have also been sent to assist thousands of poor Bolivian families who have not previously had access to medical treatment.

C. Social movements and non-governmental organizations

44. Social movements, indigenous movements, women's movements, trade unions and civil society organizations are a powerful force in Bolivia and have been the driving force behind public protests for greater social justice and equal rights for all Bolivians. Civil society movements and organizations have pushed for more direct forms of participation in government where the people have a greater voice and role in policymaking. This has become possible with the election of President Evo Morales who has committed to opening up policymaking to participation and focusing on eradicating extreme poverty and malnutrition.

45. Human rights organizations have also had an important impact, with the *Capítulo Boliviano de Derechos Humanos, Democracia y Desarrollo* and the *Asamblea Permanente de Derechos Humanos de Bolivia* (APDHB) monitoring human rights in Bolivia. Until recently most human rights organizations have not traditionally worked on economic, social and cultural

³⁴ United Nations, *Marco de Asistencia de las Naciones Unidas para el Desarrollo 2008-2012*, February 2007.

rights, but this is now changing as human rights and development organizations have come together in putting forward proposals to the Constituent Assembly. For example, a network of 125 organizations under the umbrella of the *Asociación de Instituciones de Promoción y Educación* (AIPE) has drawn up a proposal to include the right to adequate food in the new constitution, after conducting awareness-raising and consultations across the country. Organizations working with *Agua Sustentable* have also advocated national laws on water issues and the inclusion of the right to water in the constitution.³⁵

46. There are also many social and development non-governmental organizations contributing to the realization of the right to food in Bolivia. The Special Rapporteur had the opportunity to visit two schools in Oruro which provide 280 children aged between 5 and 12 from extremely poor families with access to daily food and basic education. The schools are directed by Julia and Fernando Sandalio who receive financial support from Emmaus France and Emmaus Switzerland. The French NGO *Voix Libre* finances daily food and basic education for more than 15,000 children from poor mining families so that they are not forced into child labour in the mines.

IV. MAIN FINDINGS AND CONCERNS

A. Progressive realization of the right to food

47. Given its commitments under international and domestic law to the right to food, the Government of Bolivia has a legal obligation to ensure the progressive realization of the right to food over time, to the maximum of its available resources.

48. The Special Rapporteur welcomes the positive progress made in reducing malnutrition and poverty, but is concerned that the situation of malnutrition and food insecurity in Bolivia remains grave. Chronic malnutrition of a large proportion of Bolivia's infant children is of most concern, as they may be permanently affected by stunted physical and intellectual development. Malnutrition levels fell from 28.3 per cent to 24.2 per cent between 1994 and 2003, but there have been recent signs of regression, particularly in the departments of Potosi, Beni and Pando.³⁶ Although infant mortality rates have fallen, Bolivia still has the second-highest infant mortality rate in Latin America.³⁷ High levels of extreme poverty affecting about 35 per cent of the

³⁵ AIPE, *Constitucionalización del derecho humano a una alimentación adecuada*, 2007, www.aipe.org.bo; Agua Sustentable, *Propuestas constitucionales del agua*, www.aguasustentable.org.

³⁶ Stunting measured by height for age, Unidad de Análisis de Políticas Sociales y Económicas (UDAPE), Naciones Unidas, Organización Internacional del Trabajo, *Pueblos Indígenas Originarios y Objetivos de Desarrollo del Milenio* (2006), p. 21.

³⁷ Some progress is due to demographic changes and urbanization. See Espinoza, Yañez and Gray Molina, *¿Demografía o políticas públicas?: La paradoja del avance en necesidades básicas insatisfechas en Bolivia*, Working Paper 01/05, UNDP La Paz 2005.

population (and more than two thirds of people living in some regions) means that millions of Bolivians remain so poor that they cannot afford sufficient food to meet daily calorific requirements. Although there has been some progress over the last 10 years, it has been very slow. In some regions the situation is far worse, such as in Potosi and Chuquisaca, where the number of people living in extreme poverty remains well above 60 per cent.

49. The Special Rapporteur was also concerned to find that before 2006, the maximum of available resources had not been invested in guaranteeing the right to food for all Bolivians. Expenditure has not focused on effective nutritional programmes or improving the productivity of small-scale agriculture. Therefore the Special Rapporteur particularly welcomes the commitment of this Government to devoting greater resources to fighting malnutrition, food insecurity and poverty. The Special Rapporteur is very encouraged by the new tax arrangements under the Hydrocarbon Law in 2005 and the 2006 Presidential Decree, given the massive increases in revenue that have swelled the Government budget and the fact that the Zero Malnutrition programme, along with other similar programmes, will be a priority for expenditure. Given decentralization and the fact that local municipalities and *prefecturas* receive 60 per cent of this tax directly, the Special Rapporteur would encourage a coherent strategy across the different regions to encourage all municipalities to ensure that priority for expenditure is given to addressing malnutrition and food insecurity.

B. Violations of the right to food

50. Given its commitments to the right to food, Bolivia has the obligation to respect, protect and fulfil the right to food, without discrimination. The Special Rapporteur was concerned to receive verbal reports from a number of organizations on violations of the right to food, particularly related to the displacement and eviction of families from their lands, the persistence of bonded labour and failure to pay minimum wages, and the pollution of water resources and contamination of fish stocks. However the Special Rapporteur was surprised that he received information on very few documented cases of specific violations during his visit. He believes that this may be due not so much to the lack of cases, but rather because most cases are not recorded as there are still very few organizations working from a right to food perspective in Bolivia. This suggests an urgent need for training to develop a better understanding of the right to food within the broader context of economic, social and cultural rights. The Special Rapporteur did receive details of a number of documented cases from the Office of the Ombudsman and civil society organizations relating to specific cases of violations, as detailed below.

1. Failure to prevent contamination of water sources and agricultural lands

51. In the departments of Potosi and Oruro, several communities are reported to have complained officially since 2002 of the water contamination affecting their land and livestock, as a result of the activities of the Inti Raymi company and its mining project Kori Kollo. Acid drainage and heavy metals deriving from mining operations have severely contaminated water resources. High levels of cyanide have been recorded in the soil, reportedly contributing to high levels of mortality and malformation in sheep and the contamination of soil, reducing the

productivity of the land.³⁸ This has reportedly resulted in the loss of 50 per cent of livestock, affecting the livelihoods of farming communities dependent on selling milk and cheese products. Although local state authorities ordered an environmental impact assessment to be carried out, this order was still to be implemented when the Special Rapporteur visited Bolivia.³⁹ This may amount to a violation if the Government has failed in its duty to protect communities against the activities of third parties that have negatively affected the rights of these communities to adequate food.

52. Approximately 100 indigenous communities in the departments of Potosí, Chuquisaca and Tarija are also reportedly affected by the contamination of the basin of the Pilcomayo River by the extractive industry. Affected communities have reported that the impact of such water contamination over the years has caused 80 per cent loss of agricultural production, 60 per cent loss of livestock and 90 per cent loss of fish, greatly affecting people's access to sufficient and adequate food and means for its procurement.⁴⁰ The Special Rapporteur has been informed that the Office of the Ombudsman will conduct an inquiry into the contamination of the basin of the Pilcomayo River and recommend the appropriate remedial measures to be taken by the Government.

2. Failure to eliminate conditions of bonded labour

53. The Special Rapporteur received reports that forced labour, including situations of debt bondage, is still practised in some sectors in Bolivia, including the sugar cane industry, the Brazil nut industry and on private ranches (*haciendas*) in the region of the Chaco. The majority of labourers are held in some form of debt bondage. Estimates indicate that in 2003 there were approximately 21,000 forced labourers, including women and children, in the sugar cane industry in the Santa Cruz area and between 5,000 and 6,000 people became forced labourers on a permanent or semi-permanent basis in the Brazil nut industry in the Pando and Beni (province of Vaca Díez) regions.⁴¹ Of particular concern is the situation of forced labour that the Guaraní people have to endure on some private ranches in the provinces of Santa Cruz, Chuquisaca and Tarija in the Chaco region. The ILO estimates that 7,000 people from the Guaraní indigenous group are held in forced labour although the Government's figures in 1999 referred to 3,179 people (578 families living on 106 ranches). They are held in debt bondage and in some cases threats and violence are common to prevent them from leaving the ranches. As

³⁸ Inter-American Commission on Human Rights (IACHR) - Organization of American States (OAS), *Informe de derechos humanos de los pueblos indígenas afectados por las industrias de la minería, gas y petróleo, y el caso de las familias cautivas en el Chaco boliviano*, 2005.

³⁹ Ibid. Also Defensor del Pueblo, *Informe IX del Defensor del Pueblo al Congreso Nacional*, 2006.

⁴⁰ IACHR - OAS, *Informe de derechos humanos de los pueblos indígenas afectados por las industrias de la minería, gas y petróleo, y el caso de las familias cautivas en el Chaco boliviano*, 2005.

⁴¹ Anti-Slavery International, *Contemporary Forms of Slavery in Bolivia*, 2006.

they are paid extremely low wages which do not cover their basic living costs, they are forced to rely on credit from their employers. In addition, women and children are expected to work but are not paid at all. The Guaraní families on these ranches are rarely given any land to cultivate their own crops.

3. Failure to regulate advertising of milk formulas

54. While national law and policy promote breastfeeding to fight under-nutrition of babies and infants, this is reportedly being undermined by aggressive marketing by corporations (including Nestlé) promoting milk formulas that suggests that these formulas are more nutritious than breast milk. The Special Rapporteur received documented information of the persistence of aggressive marketing which contravened the national *Ley de Fomento a la Lactancia Materna y Comercialización de sus Sucedáneos* as well as the international standards encoded in the International Code of Marketing of Breast-milk Substitutes. The Special Rapporteur was informed that much of the obvious publicity by corporations would be banned after the adoption of the new regulation concretizing the national law.

4. Failure to provide adequate food and nutrition in prisons

55. The Special Rapporteur visited the prison of San Pedro in La Paz. He was alarmed by the nutritional status of many detainees in the prison, as the nutritional quality of the food does not meet international standards. The Government reached the same conclusion after a report was issued recognizing that many people in the prisons of San Pedro, Miraflores, Chonchocoro and Obrajes are underweight. Recently, the Government increased the daily payment for food per prisoner from 3.5 to 4.5 Bolivianos per day. This should improve the situation, but it is still essential to improve the nutritional value of the food distributed to prisoners.

C. Obstacles to the realization of the right to food

56. Clear obstacles to realizing the right to food of all Bolivians include discrimination, social exclusion and high levels of inequality, as well as the legacies of a colonial social structure. Previous administrations have prioritized an exclusionary economic model that has marginalized the poor and indigenous and failed to challenge the structures of clientelism and patronage of the traditional ruling elite. Bolivia has undertaken more economic reforms in line with the Washington Consensus than almost all developing countries.⁴² However, the economic reforms and shock therapy policies imposed since 1985 have focused on generating export-led economic growth, rather than on poverty reduction. Liberalization, privatization and fiscal reform have been successful in controlling inflation, but have not delivered on the promises of trickle down to the majority of Bolivians. Most economic growth and foreign investment has occurred in export sectors such as oil, gas, mining and agro-industry, but these provide little employment in the economy and therefore have not contributed sufficiently to poverty reduction. Oil and gas now

⁴² S. Klasen, M. Gross, R. Thiele, J. Lay, J. Spatz, J. and M. Wiebelt, *Operationalising Pro-Poor Growth, A Country Case Study on Bolivia* (2004), p. 4, citing Rodrik 2003; EIU *Country Profile: Bolivia*, 2007, p. 20.

account for over 50 per cent of Bolivia's export earnings, but employ only 1 per cent of the population.⁴³ The approval of the hydrocarbons tax will therefore allow for greater equity in the distribution of Bolivia's natural wealth.

57. The promotion of investment in the export-oriented agro-industry has also failed to benefit the vast majority of small subsistence farmers. Despite the importance of small-scale agriculture in generating employment, there has been little investment in this kind of agriculture, particularly in the altiplano. Trade liberalization has also left small farmers facing unfair competition from the dumping of highly subsidized imports, including wheat, driving rapid urbanization over the last 30 years.⁴⁴ The lack of a human rights culture that recognizes the economic, social and cultural rights of all Bolivians appears to be behind the demands of social movements for a new constitution. The adoption of a new constitution that protects the human right to adequate food and all human rights for all will therefore mark a new start.

V. CONCLUSIONS AND RECOMMENDATIONS

58. The Special Rapporteur found that Bolivia was in a dramatic moment of transition. Concrete change is essential to resolve serious social crisis and past failures to eradicate malnutrition and extreme poverty. He was impressed by the efforts of the current Government to focus attention on the tragedy of malnutrition and extreme poverty that affects such a large proportion of the population. He welcomes the President's success in increasing the budget of the Government to ensure that all Bolivians benefit from its oil and gas exports. Redistribution of some of the benefits of Bolivia's natural wealth should enable the Government to begin to redress expanding inequalities and help to realize the right to food for all Bolivians. The adoption of the new constitution that recognizes the right to food of all Bolivians would be an important step towards this change.

59. Finally, the Special Rapporteur would like to offer some recommendations:

(a) **The new constitution, recognizing the right to food and the right to water as fundamental rights, should be adopted. It would provide a useful framework for the right to food in Bolivia. The practical implications of its main principles, such as the recognition of the direct applicability of all human rights, including the rights to food and water, and of the international human rights treaties, should be explained through a national campaign.**

(b) **Framework laws on the right to food and the right to water should be adopted to fully entrench these rights, and allow for the identification of concrete goals, monitoring mechanisms and the allocation of responsibilities across all relevant ministries. Due consideration should be given to the Committee on Economic, Social and Cultural Rights general comment No. 12 (1999) on the right to adequate food (art. 11) and the FAO Voluntary Guidelines to support the progressive realization of the right to adequate food in**

⁴³ Klasen et al., p. 15.

⁴⁴ Ibid.

the context of national food security. All relevant actors should participate in this process, including the Government, the Office of the Ombudsman, civil society, including social movements, and all the United Nations agencies.

(c) Mechanisms of empowerment and accountability, and the possibility for victims to have access to effective remedies in case of violations of the right to food should be strengthened. The administration of justice should be more transparent and available for victims, including indigenous communities. The Office of the Ombudsman should create a special unit working on the right to food and the right to water, provided with adequate human and financial resources. The Government should take due account of all the recommendations of the Ombudsman.

(d) A comprehensive national development strategy for food security and food sovereignty, framed around the right to food, should be elaborated and implemented. The strategy should reflect the obligations of the State to respect, protect, and fulfil the right to food without discrimination. The strategy should focus on eradicating malnutrition and on reversing the extreme inequality that has resulted from export-orientated trade in agriculture, by investing in small-scale peasant agriculture, implementing effective agrarian reform and protecting the rights of peasants and indigenous peoples over their land, water and own seeds.

(e) The Government should accord the maximum of available resources to ensure that constant progress is made in combating the tragedy of malnutrition and extreme poverty. This must include directing new resources from the hydrocarbon tax directly to the Zero Malnutrition Programme and the programme *Renta Vitalicia Dignidad*, both at the national level and at the municipal level. As 60 per cent of the increased State revenues from the direct hydrocarbon tax is allocated directly to municipalities and *prefecturas*, these regional administrations must be encouraged to direct these funds towards these programme priorities. The progressive realization of the right to food should be monitored as part of the Government's national policy. Indicators should include not only statistics on malnutrition, but also statistics on under-nourishment, poverty and inequality.

(f) The eradication of slave-like conditions of bonded labour must be a priority and all labourers should be freed from their debt or other forms of bondage. The programme of agrarian reform should also be speeded up to regularize land titles, improve protection of the lands of indigenous communities and improve access to land for *campesinos*, communities and rural families.
