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الاتحاد الدولي لجمعيات الصليب الأحمر والهلال الأحمر

Legal Issues from the International Response to the 2007 Floods in Bolivia



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Primary research, interviews and report preparation

Daniel Costa, legal consultant

With support from

David Fisher, Senior Legal Research Officer, IFRC IDRL Programme

Rolando Durán, IFRC Regional Delegation for South America

Ruben Romero and Kathleen Martin, IFRC Pan-American Disaster Response Unit (PADRU)

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The International Federation's IDRL Programme seeks to reduce the vulnerability and suffering of people affected by non-armed conflict disasters by raising awareness, and promoting the implementation and strengthening of the laws, rules and principles that ensure a timely, adequate and efficient international response to disasters, where international involvement is needed.

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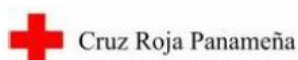
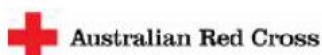


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Introduction

In early 2007, a series of storms caused severe flooding in Bolivia leading to one of the most serious natural disasters ever to occur in the country. The floods reportedly affected 116,077 families, or approximately 580,385 people, in all 9 departments of Bolivia and destroyed over 200,000 hectares of crops.¹ They also caused millions of dollars of in damage and led to outbreaks of serious illnesses such as malaria,² hemorrhagic fever, tetanus³ and water borne sicknesses like dengue fever.⁴ In Beni, the most affected department (which is approximately the size of the United Kingdom⁵), over 40 percent of the territory was submerged.⁶



The departments of Beni and Santa Cruz experienced the most severe flooding

Map source: BBC News

In addition to the efforts of Bolivian authorities and the Bolivian Red Cross, a number of international actors, including foreign governments, UN agencies, foreign National Red Cross Societies, and non-governmental organizations (NGOs) responded to the crisis by providing assistance to the many affected communities.

The purpose of this report is to examine the legal and regulatory issues related to the international response to the floods. After briefly setting out the existing domestic legal framework for disaster response in Bolivia, it will discuss some of the practical problems that international disaster response providers encountered in carrying out their operations as well as rules and systems that helped to alleviate potential barriers.

The aim is not to criticize or assign blame for any of the problems identified, but rather to make a positive contribution to efforts to improve systems for cooperation in the future, as well as identifying best practices that should be continued and perhaps emulated in other countries.

I) Background

A) Economy, Population and Geography of Bolivia

The Republic of Bolivia is a landlocked country in the central part of South America, covering a total area of approximately 1,098,580 square kilometers and featuring rough terrain that varies from mountains in the Andes that reach a height of 6,500 meters, to lowland plains of the Amazon Basin.⁷ The majority of its population of just over 9 million people⁸ is of indigenous descent: 30 percent are

¹ International Federation of Red Cross and Red Crescent Societies, Bolivia: Floods Appeal no. MDRBO002, 30 April 2007, available at: <http://www.ifrc.org/docs/appeals/07/MDRBO00203.pdf> (last visited on 5 June 2007).

² *Aid arrives in flood-hit Bolivia*, BBC NEWS, 24 February 2007, available at: <http://news.bbc.co.uk/2/hi/americas/6392847.stm> (last visited 14 May 2007).

³ *Hemorrhagic Fever Breaks Out in Flood-Ravaged Bolivia*, ENVIRONMENT NEWS SERVICE, 15 March 2007, available at: <http://www.ens-newswire.com/ens/mar2007/2007-03-15-04.asp> (last visited 14 May 2007).

⁴ See IFRC, *supra* note 1, at 1.

⁵ *Bolivia suffers worst floods for 25 years*, REUTERS, 6 March 2007, available at: <http://lite.alertnet.org/thenews/fromthefield/218275/117320237340.htm> (last visited 14 May 2007).

⁶ Carlos Alberto Quiroga, *Politics hampers flood aid efforts in Bolivia*, REUTERS, 5 March 2007, available at: <http://www.alertnet.org/thenews/newsdesk/N05205387.htm> (last visited 14 May 2007).

⁷ CIA – THE WORLD FACTBOOK – Bolivia, available at: <https://www.cia.gov/library/publications/the-world-factbook/geos/bl.html> (last visited 14 May 2007).

⁸ *Id.*

Quechua, 25 percent Aymara, 30 percent are mestizo,⁹ and 15 percent are white.¹⁰ Bolivia has three official languages: Spanish, Quechua and Aymara.¹¹ In terms of religion, it is nearly homogenous, with 95 percent of the population being Roman Catholic and the other 5 percent Protestant.¹²

The Bolivian economy is one of the poorest in Latin America. Nevertheless, its growth rate, which has been averaging 4 percent over the last 20 years, reached 4.5 percent in 2006 and was originally projected to reach 7 percent in 2007.¹³ This growth has been assisted by the G8's \$2 billion US Dollars (USD) debt forgiveness plan, and the International Monetary Fund and World Bank's 2006 debt forgiveness in the amount of \$1.8 billion USD.¹⁴

Bolivia is prone to a number of natural disasters, including droughts, landslides and earthquakes.¹⁵ However, the most devastating and frequent disasters have been related to climatic conditions, notably storms due to the El Niño phenomenon. From 1985 to the present, Bolivia has been subject to nearly annual floods, frequently serious enough to require assistance from the international community.¹⁶

B) Political and Governmental Structures

Bolivia is divided into 9 departments, each with its own prefectural (or departmental) government, which in turn have their own municipalities and municipal governments at the most local level. The country has a national government, a constitution, a president, a bicameral "National Congress" and "Chamber of Senators", and a judicial branch with a Supreme Court, District Courts (in the departments) and provincial or local courts. The legislative powers rest in the Congress and Chamber, but the president has wide authority to rule by the issuance of decrees.

Today, Bolivia is a multiparty democracy with 7 political parties. Before 2005, the departmental governors were not elected, but rather appointed by the president. This meant that serious political tensions between the national and departmental governments were rare. On December 18, 2005, the first direct elections for departmental governors took place.¹⁷ As a result, some of the Bolivian provinces are currently governed by members of political parties that are in opposition to many of the national government's policies, including on topics such as natural gas, land redistribution and local autonomy.

II) Bolivian Governmental Structure and Coordination Mechanisms for Disaster Response

A) SISRADE

SISRADE is the Bolivian government's "National System for Risk Reduction and Disaster and Emergency Response."¹⁸ It is an "articulation of structures, functional relationships, methods and

⁹ This refers to persons of mixed white and indigenous ancestry.

¹⁰ See CIA, *supra* note 7.

¹¹ *Id.*

¹² *Id.*

¹³ Eduardo Garcia, *Flood-hit Bolivia cuts economic growth outlook*, REUTERS ALERTNET website, 3 March 2007, available at: <http://www.alertnet.org/thenews/newsdesk/N03170194.htm> (last visited 14 May 2007).

¹⁴ See CIA, *supra* note 7.

¹⁵ See Country Profile for Natural Disasters: Bolivia, EM-DAT Emergency Disasters Data Base website, available at: <http://www.em-dat.net/disasters/Visualisation/profiles/natural-table-emdat.php?country=Bolivia> (last visited 5 June 2007).

¹⁶ See generally, Disaster History by Country: Bolivia, ReliefWeb website, available at: <http://www.reliefweb.int/rw/rwb.nsf/doc109?OpenForm&rc=2&cc=bol> (last visited 5 June 2007).

¹⁷ David Mercado, *Morales allies vow to step up protests in Bolivia*, REUTERS ALERTNET website, 12 Jan 2007, available at: <http://www.alertnet.org/thenews/newsdesk/N12300936.htm> (last visited 3 July 2007).

¹⁸ *Sistema Nacional para la reducción de Riesgos y Atención de Desastres y/o Emergencias.*

procedures that are established by public and private entities, and civic organizations, as well as physical, technical, scientific, financial and human resources of the entities that compose it.”¹⁹

Before 2000, the national system in place to deal with disasters and emergencies in Bolivia was named the “National System of Civil Defense”. The more recent SISRADE was authorized by Law 2140, which was passed in 2000 and it has been further elaborated in several subsequent laws and Supreme Decrees.²⁰ Law 2140 sets out the basic legal framework for natural disaster response in Bolivia and assigns responsibilities to key national governmental agencies and the departmental and municipal governments.

Supreme Decree 26739 is one of the main implementing regulations for Law 2140.²¹ It more specifically sets out the functions, roles and responsibilities of the different organs of SISRADE within this framework.²² Nevertheless, several government officials consulted for this study expressed the view that the responsibilities of parts of SISRADE are not yet delineated clearly enough. The SISRADE is a fairly new system, and during its short history it has encountered a number of political and practical challenges in its development and formation, despite strong support from international institutions such as the Inter-American Development Bank.²³

B) CONARADE

Under Law 2140, CONARADE is the “National Council for Risk Reduction and Disaster and Emergency Response”, and functions as SISRADE’s supreme decision making and coordinating body.²⁴ The president (as the “head authority”) presides over the council, which is composed of ministers, and convened by the Ministry of National Defense,²⁵ while VIDEICODI is the technical secretariat.²⁶ Law 2140 also provides that CONARADE, as well as the head departmental and municipal authorities, may solicit assistance for SISRADE from natural or legal persons.²⁷ CONARADE has convened regularly in the recent past, meeting to discuss and issue resolutions on disaster response related topics. During the floods of 2007, members of CONARADE met a number of times to discuss the declarations and decrees concerning the states of emergency and national disaster. Some of these meetings were led by the president himself.

C) VIDEICODI

VIDEICODI is the official acronym for the Viceministry of Civil Defense and Integral Development Cooperation, which is part of the Ministry of National Defense.²⁸ Under Bolivian law, VIDEICODI is primarily responsible for natural disaster response. It manages alerts, coordinates response and initial recovery operations, and provides technical assistance to all levels of government during a

¹⁹ Ley 2140, *Ley Para la Reducciones de Riesgos y Atención de Desastres*, de 25 de Octubre de 2000, art. 5.

²⁰ Especialmente Ley 2335, de 5 de Marzo de 2002.

²¹ Although there are provisions in additional laws and regulations which implement other aspects of Law 2140, including Ley 2446, de 19 de marzo de 2003; and Decreto Supremo 26973 de 27 de marzo de 2003.

²² Decreto Supremo 26739 de 4 de agosto de 2002, *Reglamento General de Reducción de Riesgos y Atención de Desastres*.

²³ See, Bolivia: some lessons learned for the implementation of a risk management approach. ISDR website, available at: http://www.eird.org/eng/revista/no_12_2006/art16.htm (last visited 14 May 2007).

²⁴ Ley 2140, art. 7(I).

²⁵ *Id.*, at art. 8(I).

²⁶ VIDEICODI has two related roles with regard to CONARADE: acting as the technical secretariat of CONARADE, which plans and/or implements CONARADE’s resolutions, and as the leader of the COEN (mentioned in the previous section), where the implementation of CONARADE’s resolutions are coordinated with other actors if necessary.

²⁷ Ley 2140, art. 15(II). This is significant for the purposes of this study because a “legal person” could be an organization with legal personality, such as an NGO or international organization.

²⁸ See generally, VIDEICODI website, available at: www.mindef.gov.bo/10000/12000/PRINCIPAL.htm (last visited 14 May 2007).

disaster or an emergency. It also conducts rehabilitation and reconstruction efforts.²⁹ VIDEICODI is responsible for leading the National Operational Center for Emergencies (COEN), which is a grouping of disaster responders from the national government, international relief organizations and NGOs. The COEN meets regularly after a natural disaster that causes damage on a national scale, in order to discuss coordination for an emergency response.

In 2004 VIDEICODI and the other offices and departments of the Ministry of National Defense developed a “National Plan of Action”,³⁰ which contains operational emergency plans and stresses the need for developing response capacity at the departmental and municipal level, while allowing the national authorities to lead and coordinate the activities at the local level.³¹ This plan has not been implemented or activated by the Bolivian government, because it has not been adopted by CONARADE or passed into law by the Bolivian Congress.

D) FORADE

FORADE is the Trust Fund for Risk Reduction and Disaster Response, which is created by Law 2335³² in order to fund projects and research for disaster risk reduction, early warning, response and rehabilitation.³³ It is foreseen that the resources for this fund would come from donations from foreign governments, international organizations and NGOs, as well as 0.15% of the annual Bolivian national budget, beginning in 2003.³⁴ A portion of the fund is also set up to finance projects proposed and executed by the departments and municipalities of Bolivia.³⁵ Unfortunately, this fund currently only exists on paper; it has yet to be put into practice, in part because of a lack of start-up funds, despite the legal mandate that it receive a percentage of the national budget.³⁶

E) The Roles and Responsibilities of the Departments

The Bolivian departments each have their own system of government, with varying resources and capabilities for disaster response. When an emergency strikes, the Department convenes its own Departmental Operational Center for Emergencies (COED), which includes representatives of the relevant actors for disaster response on the departmental level, including from the Citizen Security Forces (Seguridad Ciudadana de la Prefectura), the Early Warning and Risk Prevention agency, and the departmental Health Service. The COEDs meet regularly (often daily) in crisis settings and they constitute the forum where coordination and planning for the departmental response operation will take place. According to some of the persons interviewed for this study, one of the other main functions of the department is to conduct damage assessments and compile statistics on the estimated numbers of affected persons and families in the department, and to then share this information and statistics with the members of the COED.

F) The Roles and Responsibilities of the Municipalities

The roles and responsibilities of the municipalities are similar to those of the departments. Where there is an emergency, the Municipal Operational Center for Emergencies (COEM) is convened in

²⁹ Ley 2140 art. 10(II); art. 22.

³⁰ *Plan Nacional de Reducción de Riesgos y Atención a Desastres y/o Emergencias*, Ministerio de Defensa Nacional, Viceministerio de Defensa Civil y Cooperación al Desarrollo Integral, Dirección General de Prevención y Reconstrucción, 2004.

³¹ Marco Rodríguez, *Lecciones Aprendidas y Recomendaciones Sobre la Respuesta a Inundaciones y Granizada en Bolivia*, 2006, UNDP, at 16-17.

³² Ley 2335 de 5 de Marzo de 2002, art. 1.

³³ *Id.*, at art. 1(I-II).

³⁴ *Id.*, at art. 2(I).

³⁵ *Id.*, at art. 6.

³⁶ *Informe Nacional Sobre Reducción de Desastres en Bolivia*, published by ISDR, section 4.2, at 23; and section 5.2, at 25, available at: <http://www.unisdr.org/eng/country-inform/reports/Bolivia-report.pdf> (last visited 14 May 2007).

order to coordinate and plan for the local response. According to interviewees for this study, the municipal government is also responsible for damage assessments and the compilation of statistics on the estimated number of persons and families affected by the disaster in the municipality, and for sharing that information with the COEM.

G) Declaration and Classification of a State of Emergency and/or Disaster

The classification of a disaster is important under Bolivian law because it may govern which type of response is proper, and which level of government shall respond. There are three classifications for emergencies and disasters, which are distinguished by the amount of affected national territory: national, departmental and municipal. A municipal emergency or disaster affects only one municipality; a departmental emergency or disaster affects more than one municipality within a single department, and a national emergency or disaster affects more than one department.³⁷ With prior advice and recommendation from CONARADE, the president may classify and declare an emergency or disaster through a Supreme Decree.³⁸ The difference between an emergency and a disaster is that the term “disaster” is used when an event is so severe that it affects a large percentage of the population and causes a great amount of damage throughout the national, departmental or municipal territory. In the case of a “national disaster”, all responders at the national, departmental and municipal levels are activated (including the police, military, health officials and volunteers) for emergency aid, response and rescue. The “emergency” label is used when an event occasions the need for some form of aid, but is of a lesser magnitude than a “disaster”. An emergency only affects a few smaller parts of the national, departmental or municipal territory, but has the potential to become a disaster if it continues (e.g., if the rains causing severe flooding do not abate).

In his capacity as the head of SISRADE and the CONARADE, President Morales issued Supreme Decree No. 29013 of 18 January 2007, which declared that the floods caused by the El Niño phenomenon had put Bolivia in a “State of National Emergency”. On the 7th of February, support from the international community was requested. A few weeks later, the president subsequently issued Supreme Decree No. 29040 of 28 February 2007, declaring a “State of National Disaster”. The specific terms of the latter “State of National Disaster” Decree allowed the Ministry of Finance to make available and manage extraordinary funds for disaster response in coordination with other Ministries, allowing the use and distribution of one percent of the total National Budget to be used for flood relief, reconstruction and rehabilitation. Special priority was given for the urgent needs in the department of Beni. Additionally the Declaration gave the Ministry of Development Planning 30 days to come up with a national plan for implementation.

H) The Bolivian Armed Forces and the Commando Único Transitorio

The Commando Único Transitorio (CUT) is the joint transitional command of the Armed Forces of Bolivia which was created on a temporary basis to deal with the severe disaster conditions in the department of Beni, and was specifically assigned to conduct and coordinate rescue, relief and distribution activities in Beni. Its specific legal authority comes from Supreme Decree Number 29056, issued on 5 March 2007.³⁹ The CUT’s general mandate from the decree is to “unify coordination” and to “execute” the necessary measures in order to “defend the lives, health and integrity of the residents” of the department of Beni from the natural disaster caused by the “El Niño” phenomenon.⁴⁰

Although some interviewees for this study questioned the authority of the Bolivian president to use military forces, personnel and equipment for humanitarian rescue missions instead of allowing VIDEICODI to manage the operation, the authority of the president to deploy the armed forces

³⁷ Ley 2140, art. 24.

³⁸ *Id.*, at art. 23.

³⁹ Decreto Supremo No. 29056, de 5 Marzo 2007.

⁴⁰ *Id.*

seems clearly permissible on a plain reading of Bolivian law. The authority to do this, and to issue this particular Decree, is derived from the Bolivian Constitution, which states that the Armed Forces may be used to protect the security and stability of the country⁴¹ and that they may also be used to protect the civilian population during national disaster situations declared as a result of natural disaster;⁴² and also for “special emergency operations” under Article 14 of Law 1405 of 30 December 1992,⁴³ as long as additional specific legal authorization is provided for the operation.

III) Regional and International Coordination and Response Mechanisms

A) CAPRADE

The Comunidad Andina,⁴⁴ or Andean Community, is a regional organization generally dedicated to mutual assistance in economic development.⁴⁵ Its members are Bolivia, Peru, Colombia and Ecuador. In 2002, the Andean Community formed a subsidiary body known as the Andean Committee for Disaster Prevention and Relief (CAPRADE)⁴⁶ to serve as “an institutional mechanism for coordinating and organizing, in a systematic manner, both the cooperation and joint actions taken by all Member States to prevent and cope with the effects of natural or anthropogenic disasters”⁴⁷ CAPRADE is constituted by the Andean Community’s representatives from Civil Defense, Ministries of Foreign Affairs, Planning, as well as other relevant ministries.⁴⁸ As of the time of writing, Bolivia held CAPRADE’s rotating presidency.⁴⁹

CAPRADE’s main tasks include developing regional strategies, coordinating Member States’ efforts in risk prevention and management, harmonizing agreements between them on disaster assistance, exchanging information, coordinating joint actions and promoting capacity building among the Member States for dealing with natural disasters.⁵⁰ However, persons consulted for this report indicated that during the floods of 2007, CAPRADE did not have any role during the emergency response and relief operations. Governmental aid from any CAPRADE member States was received, administered and/or executed through either the Bolivian government or the United Nations.

B) United Nations

A number of UN agencies are operating in Bolivia on a permanent basis,⁵¹ coordinated by the Resident Coordinator, the head representative of UNDP in the country. The UN’s Office for the Coordination of Humanitarian Affairs (OCHA) does not have its own permanent office in Bolivia, but sent both a UN Disaster and Assessment team (UNDAC) and a UN Emergency Technical Team (UNETT) to assist in the response effort to the 2007 floods.

C) Red Cross and Red Crescent Movement

⁴¹ CONSTITUCIÓN POLÍTICA DE LA REPÚBLICA DE BOLIVIA art. 208.

⁴² *Id.*, at art. 210.

⁴³ Ley 1405 de 30 de diciembre de 1992 – *Ley Orgánica de las Fuerzas Armadas de la Nación*.

⁴⁴ CARTAGENA AGREEMENT, consolidated version, *available at*:

http://www.comunidadandina.org/ingles/normativa/ande_trie1.htm (last visited 14 May 2007).

⁴⁵ *See*, Andean Community website, “Brief History”, *available at*:

<http://comunidadandina.org/ingles/quienes/brief/htm> (last visited 14 May 2007); and “Who Are We”, *available at*: <http://www.comunidadandina.org/ingles/who.htm> (last visited 14 May 2007).

⁴⁶ DECISION 529, CREATION OF THE ANDEAN COMMITTEE FOR DISASTER PREVENTION AND CARE, signed on 7 July 2002, *available at*: <http://www.comunidadandina.org/INGLES/normativa/D529e.htm> (last visited 14 May 2007).

⁴⁷ *Id.*

⁴⁸ *Id.*, at art. 4.

⁴⁹ As of July 2007.

⁵⁰ *Id.*, at art. 2(a-m).

⁵¹ Including the World Food Programme, the World Health Organization, and the United Nations International Children’s Education Fund and the United Nations Development Programme.

1) International Federation of Red Cross and Red Crescent Societies

The International Federation of Red Cross and Red Crescent Societies (IFRC) does not have a permanent office in Bolivia. Pursuant to its statutory role, it acts in the country only in support of the Bolivian Red Cross (BRC). In consultation with BRC, on 15 February, 2007, the IFRC launched a Global Appeal for funds to assist families affected by the floods.

The IFRC deployed a disaster management delegate from the Pan-American Disaster Response Unit (PADRU) and a Regional Intervention Team (RIT) (composed of two representatives from National Societies and two representatives from PADRU) to Bolivia in order to provide technical, logistical and coordination support to the Bolivian Red Cross. They supported the operation for more than two months in the field. All Red Cross actors from the PADRU and the RIT attended and participated in both the COENs and the COEDs in Beni and Santa Cruz.

2) Bolivian Red Cross

Almost all persons consulted for this study agreed that the BRC has an effective and useful network for information gathering and for responding to emergencies. UN agencies reported good coordination with the BRC during their flood operations, both in terms of sharing information and dividing up regions to be served.

3) Participating National Societies

A number of participating National Societies (PNS), including the German, Italian and Spanish Red Cross were involved in supporting and assisting the BRC in its operations. No coordination problems were reported in the context of this study.

D) Bilateral Cooperation

A number of governments including Argentina, Brazil, China, Colombia, France, Japan, Mexico, Spain, and the United States of America contributed to the relief effort with goods, equipment, logistical, technical or medical assistance, and/or cash.⁵²

E) International NGOs

During an emergency, the designated fora in Bolivia for coordination between international NGOs are the COEN and the COEDs (both of which are discussed more in depth in section V-B-2 and 3). According to the NGOs consulted, there were few examples of international NGOs working together themselves on a bilateral or multilateral basis. Some limited amount of coordination took place during the COEN and the COED meetings, depending upon attendance and participation. In Trinidad in particular, an increased amount of coordination was facilitated amongst international NGOs by the UN. One positive example of this coordination was the cooperation of two major international NGOs in the management of a major campground which provided shelter to hundreds of families in Trinidad.

IV) Specific Procedures and Legal Issues Relevant to International Disaster Response in Bolivia

When the storms struck in January 2007, there were a number of international organizations and international NGOs already established and legally operating in Bolivia. These organizations played

⁵² See OCHA, BOLIVIA - Floods - January 2007, Table A: List of all commitments/contributions and pledges as of 27-May-2007, available at: http://ocha.unog.ch/fts/reports/daily/ocha_R10_E15248___07052707.pdf (last visited 27 May 2007).

a key role in the relief operations, along with the other major providers of foreign aid: foreign governments and members of the International Red Cross/Red Crescent Movement.

Unlike the experience in some other countries, those interviewed for this study reported no problems associated with their organization's registration or attainment of domestic legal personality. The government's standard Framework Agreement for NGOs appeared to work satisfactorily for all parties involved. Moreover, no problems were reported concerning the entry of outside personnel (which was admittedly minimal in response to this particular disaster). Unfortunately, some problems did arise with regard to the entry of relief goods and equipment through customs.

This section will discuss some of the available details regarding pertinent legal procedures and those specific problems which were reported.

A) Legal Recognition of Relief Actors and the Registration Process in Bolivia

1) UN Agencies

There are a number of UN agencies with permanent offices in Bolivia that were involved in the response to the floods of 2006 and 2007. Such agencies included UNDP, the UN Children's Fund (UNICEF) and the UN World Food Programme (WFP). UN agencies with offices in Bolivia each have agreements with the national government, which refer to the UN Convention on the Privileges and Immunities of the United Nations, to which Bolivia acceded on 23 December 1949.⁵³ Such agreements afford the agencies a number of privileges and immunities, such as duty free importation and tax exemptions for humanitarian goods.

2) USAID

The United States Agency for International Development (USAID) is currently working under its "Country Strategic Plan" for Bolivia for the years of 2005 – 2009, which will fund projects worth \$559 million USD.⁵⁴ USAID operates by means of, and has derived its legal personality from, a bilateral agreement with the government of Bolivia. Bilateral agreement is typical fashion with which the government of the United States acquires authorization for USAID field offices in most countries.

3) ECHO

The European Commission's Humanitarian Aid Department (ECHO) does not have a permanent office in Bolivia, nor does it conduct aid missions in the country. The office responsible for monitoring Bolivian affairs and developments is located in Quito, Ecuador. In order to contribute to the flood relief effort, ECHO donated 1 million Euro (1.65m CHF, 1.33m USD) to UN agencies and international NGOs already providing aid in Bolivia.⁵⁵

4) International Federation of Red Cross and Red Crescent Societies

Because it does not currently have a permanent office in the country, the IFRC has not, to date, sought to conclude a legal status agreement with the Government of Bolivia. As a result, it does not have its

⁵³ UN CONVENTION ON THE PRIVILEGES AND IMMUNITIES OF THE UNITED NATIONS, 13 February 1946, United Nations, Treaty Series, vol. 1, p. 15, and vol. 90, p. 327 (corrigendum to vol. 1), UN, 2000.

⁵⁴ USAID - Bolivia website, *available at*: <http://www.usaidbolivia.org.bo> (last visited 14 May 2007).

⁵⁵ EMERGENCY HUMANITARIAN AID IN FAVOUR OF THE POPULATION OF BOLIVIA AFFECTED BY THE EL NIÑO PHENOMENON, Emergency Humanitarian Aid Decision 23 02 01; ECHO/BOL/BUD/2007/01000. European Commission Directorate-General for Humanitarian Aid – ECHO. *Available at*: http://ec.europa.eu/echo/pdf_files/decisions/2007/bolivia_01000.pdf (last visited 5 June 2007).

own specific legal personality to operate in Bolivia. The IFRC instead acts only in a supporting role for the Bolivian Red Cross, in terms of donations, logistics and technical support.

5) NGOs

(a) Registration Process Via the Foreign Ministry and the “Acuerdo Marco”

There are two types of legal registration for NGOs in Bolivia – a person or an entity wishing to found an NGO may either register as an “international NGO with a Bolivian office”, or a “national/Bolivian NGO”. International NGOs sign an “Acuerdo Marco”⁵⁶ or “Framework Agreement” with the Bolivian government’s “Ministerio de Relaciones Exteriores y Culto”, i.e. the Ministry of Foreign Affairs and Worship (MFAW), which provides certain facilities for the NGO.⁵⁷ According to one NGO interviewed for this study, domestic Bolivian NGOs must register with the Ministry of Finance.

(b) Which Facilities Are Granted

Generally, the facilities which are granted to a properly registered international NGO are:⁵⁸

- they are able to receive donations and contributions from abroad and from their foreign headquarters;
- the previously solicited list of foreign personnel working for the international NGO will be granted a visa for themselves and their families, along with identification cards and national recognition of his/her currently held foreign drivers license;
- donations are exempt from customs fees;⁵⁹
- tax exemption from the Consolidated Customs Tax (GAC), the Value Added Tax (IVA) and the Tax on Specific Consumables (ICE)⁶⁰ which are applied to imports, so long as the imports are not for commercial uses or re-sale;
- exemption from public income taxes on wages paid to personnel working for the NGO, with regard to services rendered in accordance with the NGOs previously approved projects;
- exemption from import taxes on personal effects imported by the NGOs personnel that will remain in Bolivia for more than 12 months. The exemption can be used once, within a period of 180 days after the arrival of the personnel, and for personal effects imported with a maximum value of 15,000 US dollars; and
- the right to maintain bank accounts in local and/or foreign currency in Bolivia and abroad.

One NGO reported that although it has been registered for a number of years as a national NGO in Bolivia, it recently registered as an international NGO (with the MFAW via the Framework Agreement) in order to obtain the legal status and legal personality of an international NGO. It found

⁵⁶ ACUERDO MARCO DE COOPERACIÓN BÁSICA, Ministerio de Relaciones Exteriores y Culto website, available at: <http://www.rree.gov.bo/docsistema/acuerdocb.htm> (last visited 17 May 2007).

⁵⁷ For a brief description of the steps required in order to register an international NGO in Bolivia, see Annex II.

⁵⁸ See, ACUERDO MARCO, *supra* note 56.

⁵⁹ In accordance with, Articles 49-59, Decreto Supremo 22225, *Reglamento de Exenciones Tributarias Para Importaciones*. 1602 Gaceta Oficial de Bolivia, 16 de Junio de 1989.

⁶⁰ The *Gravamen Aduanero Consolidado*, the *Impuesto al Valor Agregado*, and the *Impuesto a los Consumos Específicos*, respectively.

that as an international NGO, it would have more protections for its foreign personnel and its properties on Bolivian territory. Nevertheless, the NGO did not report any problems with the exercise of either legal status.

6) Churches

The Catholic Church is recognized by the Bolivian government as the official religion of Bolivia.⁶¹ As a result, the Catholic Church has an officially recognized legal personality, and it may enter into agreements with the Bolivian government via the Holy See.⁶² Non-Catholic, but religiously based/oriented NGOs must register with the MFAW in order to obtain legal personality, and must also enter into the same Framework Agreement as secular NGOs if they wish to receive and use foreign funds and obtain the same legal status and facilities as an NGO.⁶³

B) Responsibility and Accountability of Organizations with Legal Personality

1) Responsibilities and Measures to Ensure Accountability on the Part of International NGOs Arising Out of the Framework Agreement

The bilateral Framework Agreements between the government of Bolivia and international NGOs list the objectives of the organization and the scope of activities in which the NGO may engage and require that they be performed according to the general dispositions of the agreement and in conformity with the laws of Bolivia. Such agreements further state that the organization may not engage in operations that are outside the scope of these objectives, otherwise it risks having its legal personality cancelled and its authorization to operate in Bolivia revoked. The specific provisions concern:

- Annual reports: After every year of its operations, the NGO must present a report about the development of its activities and achievements of its projects to the MFAW, the Viceministry of Public Investment and External Finance (within the Ministry of Development and Planning), and/or any other public or private institutions which are involved by virtue of the applicable subject matter, so that these entities can evaluate and recommend measures which they may consider necessary in order to ensure adequate implementation of cooperation mechanisms for relevant projects. The MFAW, as well as the other relevant ministries, may periodically supervise the organization's activities in order to prove that the organization is comporting with its stated and listed objectives.⁶⁴
- Renewal: NGOs must renew their registration as NGOs every 3 years with the MFAW as discussed above.
- National Sources of Funds: The solicitation or receipt of funds from public or private Bolivian entities or persons must be authorized by the MFAW.
- If an NGO conducts activities outside the scope of the Framework Agreement, the agreement will be cancelled and its legal status will be revoked.

⁶¹ See, CONSTITUCIÓN, *supra* note 41, at art. 3.

⁶² *Id.*

⁶³ *International Religious Freedom Report 2006 – Bolivia, Section 2.* Published by the United States Department of State. Bureau of Democracy, Human Rights, and Labor, available at: <http://www.state.gov/g/drl/rls/irf/2006/71450.htm> (last visited 14 May 2007).

⁶⁴ See, ACUERDO MARCO, *supra* note 56, at art. V.

- Agreement by the NGO that any foreign personnel assigned to Bolivia will carry out his or her functions in conformity with the applicable national or local Bolivian legal order, and that such personnel will not interfere in internal Bolivian political affairs.
 - If there is any claim, or information showing that a member of the organization has not complied with this requirement, the NGO must investigate the situation and issue a decision on how it will resolve the matter.
 - In proven cases of extreme gravity, the government will retain the right to dismiss the member of the NGO that has violated this rule.

These responsibilities and accountability measures are generally found in all Framework Agreements entered into between an international NGO and the government of Bolivia.⁶⁵

The Bolivian government officials interviewed for this study did not complain about the inability of NGOs operating in Bolivia to comply with their responsibilities, nor was there a need for the government to utilize any of these types of accountability measures against the NGOs during the 2007 floods. NGO officials consulted for the study likewise did not complain of any difficulties in fulfilling their obligations under the agreement.

C) Local Bank Accounts

As mentioned above, under the Framework Agreements, international NGOs have the right to maintain local bank accounts in Bolivia in either local or foreign currency. Foreign Red Cross and Red Crescent National Societies follow a specific procedure carried out in cooperation with the Bolivian Red Cross.

D) Taxation on Local Purchases

For the response to both the 2006 and 2007 floods, some NGOs and UN agencies purchased all of their necessary relief goods locally. According to many NGOs and UN agencies, locally acquired goods are subject to the standard Bolivian tax regime.

E) Importation of Humanitarian Relief Goods and Equipment

1) Customs Procedures, Duties, Fees and Taxation

International organizations (IO) and recognized international NGOs have the right to import humanitarian relief goods without paying any customs duties, fees or taxes, whether they are donations or purchased for importation. This right is derived from either the UN Convention on the Privileges and Immunities of the United Nations (for IOs) or from the individual Framework Agreement (for NGOs) between the Bolivian government and the international NGO. In order to qualify for the exemption, the particular imported item need not be designated for emergency use; it need only fit within the context of the agreed goals and activities of the organization as set out in its Framework Agreement. Generally, any donated goods that are imported from abroad and which are donated to any *for-profit* corporation or organization, are subject to all normally applicable customs duties, fees and taxes.⁶⁶

There is no special expedited process for the importation of goods during an emergency. IOs and NGOs are expected to abide by the same process and rules for customs clearance applicable during non-emergency situations. The importation process seems simple enough as it is described on the

⁶⁵ See generally, ACUERDO MARCO, *supra* note 56.

⁶⁶ Decreto Supremo 22225, *Reglamento de Exenciones Tributarias Para Importaciones*. 1602 Gaceta Oficial de Bolivia, 16 de Junio de 1989, art. 53,

website by the Bolivian MFAW,⁶⁷ but some NGOs complained that, in practice, it is cumbersome, involving multiple ministries and layers of bureaucracy.

The following will address some additional key steps in this process, and provide some examples of problems that occurred in 2007.

- Once the basic requirements listed on the Bolivian MFAW website are fulfilled and the required documentation has been presented to the appropriate Bolivian embassy or consulate in the country of origin of the donation or import, the Bolivian MFAW and the “Aduana Nacional de Bolivia”, i.e. the Bolivian National Customs, determines whether or not the documentation and procedures are in order and have been fully complied with.
- There are additional requirements that the Bolivian National Customs imposes, which are not listed on the Ministry of Foreign Affairs’ or the Bolivian National Customs’ website, such as the official signature from the corresponding embassy or consulate in the country of origin/donating country, with the printed name of the signing official, and a document stating when and where the document was signed.
- Next, the “Ministerio de Hacienda”, i.e. the Ministry of Finance, will review the nature of the donated import and the documentation accompanying it to determine if it is in fact exempt from all national taxes. If the Ministry of Finance does not authorize the transaction, the soliciting organization will be required to pay import taxes on the goods.⁶⁸
- Furthermore, if any of the steps listed have been conducted improperly as determined by either the Ministry of Finance or the MFAW, that particular aspect of the process must be done again in order to correct it. It was reported that even if there are minor discrepancies or errors on forms, they cannot be remedied easily, as a very formalistic approach is taken by the relevant officials. It has also been reported that this can often cause lengthy delays in the processing of goods and equipment through customs. More than one organization had problems in this respect.
- Another notable issue is that all imports into the country, including humanitarian donations, must arrive at the original destination to which they are assigned, as listed in their original accompanying documentation, in order to be officially processed through Customs and allowed into the country. If there are logistical problems in transporting them to the original destination, regardless of how reasonable and unexpected those problems may have been, the imported good, equipment, etc. will not be processed at any alternative location by Customs officials. This rule exists in order to prevent fraud and the entry of illegal contraband into the country, but it can cause problems for the entry of humanitarian aid when time is of the essence.

2) Specific Problems

Every organization consulted for this study that had sought to import relief goods and/or equipment in response to the floods reported at least some degree of trouble with the process, in particular significant delays. They attributed these to bureaucratic rigidities and a lack of communication between officials in the MFAW and Bolivian National Customs. Some government officials interviewed for this report also admitted that Bolivian Customs and the MFAW often do not coordinate with each other as well as they could. Some humanitarian organizations called on

⁶⁷ See, Bolivian Ministry of Foreign Affairs and Worship website, *available at*: <http://www.rree.gov.bo/iniser.htm> (last visited 14 May 2007); and for applicable laws having to do with exemptions for importation, *see also* Decreto Supremo 22225, *supra* note 66..

⁶⁸ See, Guía de Respuestas a Preguntas Frecuentes Sobre Regímenes Aduaneros, section 9, Aduana Nacional de Bolivia website, *available at*: <http://www.aduana.gov.bo/normas/pregfrec.htm> (last visited 5 June 2007).

VIDECICODI to intercede for them with Customs, which it did on several occasions but not always with success.

These problems can be illustrated by two examples that were identified as emblematic:

(a) Importation of Equipment: Computers

In early 2007, one organization shipped a notebook computer to Bolivia from its headquarters to one of its staff members working in Bolivia in the response effort for the floods. A “Certificate of Donation” was shipped with the computer from abroad, and was signed by the donating organization, as is routinely done by NGOs and IOs when importing goods or equipment into Bolivia. The organization was told by customs officials in the capital that it was required to have an authorizing signature from the Bolivian Embassy in the sending country on the Certificate, along with an estimate of the value of the computer because it was considered to be a donation. The organization calculated the estimated value of the computer, and sent someone to acquire the signature from the Bolivian Embassy in the sending country, where the Certificate was then officially stamped and signed.

However, in response, the responsible Bolivian Customs official insisted that the signature must have the printed name of the official who had signed the certificate, along with a text that would indicate when and where the certificate was signed. This was because the official did not know who had signed the certificate, and only certain Bolivian officials are authorized to do so. The documentation was then sent back to the embassy in the sending country, to figure out exactly who had originally signed the Certificate, to see if they were authorized to do so.

After finally acquiring the name of the official who had originally signed, as well as the additional text, Customs then notified the organization that there had been a miscalculation in the original estimate of the value of the computer. As a result, Customs required all new documentation for the transaction to be concluded.

This process lasted approximately one month, and cost the organization several hundred dollars in processing and transaction fees.

(b) Importation of Goods: Mosquito Nets

Another problem with the importation of relief goods was with the importation of mosquito nets from one organization’s headquarters in a foreign country. The mosquito nets were designated for distribution to victims of the floods in the department of Beni, to protect them from serious health risks and diseases carried by mosquitoes, such as dengue fever. The entire shipment was loaded onto two cargo planes, both designated for La Paz in order to be processed and then shipped out to Santa Cruz where their cargo was to offloaded to trucks bound for Beni. Both flights were required to make a connection in Santa Cruz because of the lack of direct flights.

One of the cargo planes (carrying half of the mosquito nets) landed in Santa Cruz, and then continued on to La Paz as planned, where it was later processed and shipped back to Santa Cruz for distribution. The other plane landed in Santa Cruz but was unable to complete its journey onto La Paz because there were no longer any flights available for at least three weeks due to the bankruptcy and suspension of one of the Bolivian airlines, and a simultaneous fuel shortage. The organization’s officials attempted to persuade Customs officials to process the mosquito nets in Santa Cruz, so that they would not need to be shipped to La Paz and then back to Santa Cruz, in order to save time and expense. However, Customs declined to do so.

The organization had intended that each targeted family in the region would receive two nets for use by the entire family. Because only half of the nets were immediately available, each family received only one net per family. The other half of the mosquito nets shipment eventually arrived in La Paz weeks later and was then processed by Customs. But, by this time, it was considered too late and too

expensive to distribute them in Santa Cruz, and the nets were therefore donated to a local organization to retain as stock for their emergency needs.

F) Transport of Relief Goods and Equipment

The severe flooding made it difficult for relief workers to reach the most affected areas, because of the destruction and/or flooding of roads. This was prevalent in the most affected departments of Santa Cruz and Beni, where many roads were blocked or destroyed by mudslides.⁶⁹ This cut off access to many of the affected villages, towns and populations. Santa Cruz in particular was cut off from the interior of the country because of the destruction of large sections of highways, and from Argentina, one of Bolivia's biggest trading partners.⁷⁰ In response, some countries offered transport assistance on a bilateral basis in order to airlift goods and equipment to affected areas.

The Bolivian Armed Forces also delivered relief goods along with the BRC, the UN and international NGOs, particularly in Beni. However, it was reported that access to some transport routes were blocked by the CUT because the organizations had not received the CUT's prior authorization of their intended deliveries and transit routes. For example, multiple sources reported that, at one point, a convoy of buses carrying food donations for the affected population left the city of Sucre, destined for distribution centers in the city of Trinidad in Beni, but was stopped by troops en route and not allowed to reach its destination. The mayor of one municipality in Trinidad complained that by doing this, the armed forces were becoming involved in political battles, and that they should not have the right to block the transport of provisions destined for affected populations.⁷¹ Interviewees reported that later the convoy returned with witnesses and press officials from the area and the department of Chuquisaca, and the convoy was finally allowed to continue on to its final destination.

G) Re-exportation of Relief Goods and Equipment

According to the Framework Agreement used by the government and all international NGOs, after the conclusion of an international NGOs' activities, an international NGO is not allowed to re-export its equipment and machinery. The equipment and machinery must instead be passed to similar organizations,⁷² which the NGO may choose, but it must also receive the proper authorization from the government Ministry which is responsible for the sector involved in the work that is done by the NGO. If an appropriate and authorized donee is not found, then title to the equipment and/or machinery will pass to the Ministry or Ministries responsible for that sector. This provision in the Framework Agreement is pursuant to Law 843,⁷³ but there also exists separate applicable legislation which states that donated goods cannot be exported.⁷⁴

H) Entry of Relief Personnel

All foreigners entering Bolivia require a visa, either before arrival or upon entry into the country. Bolivia requires foreigners from certain listed countries to obtain a visa in their home country at a Bolivian consulate before entering Bolivia.⁷⁵ Foreigners from other countries are not required to

⁶⁹ *No end to deadly Bolivian floods*, BBC NEWS website, 20 February 2007, available at: <http://news.bbc.co.uk/2/hi/americas/6380331.stm> (last visited 14 May 2007).

⁷⁰ *Bolivia deploys army to aid El Nino victims*, AGENCE FRANCE-PRESSE, Reliefweb website, 16 Feb 2007, available at: <http://www.reliefweb.int/rw/rwb.nsf/db900sid/YAOI-6YK33Z?OpenDocument> (last visited 5 June 2007).

⁷¹ *Alcalde Lamenta que las Fuerzas Armadas se Preste al Juego Político del Gobierno*, LA MISIÓN, Trinidad, Bolivia, 13 March 2007, at 4.

⁷² In accordance with Ley 843, art. 49(b).

⁷³ *Id.*

⁷⁴ See, Decreto Supremo 22225, *supra* note 66, at art. 57.

⁷⁵ For the list of countries which do not require a visa before entering Bolivia, or which require a visa with or without authorization, see Embassy of Bolivia in the UK website, available at: <http://www.embassyofbolivia.co.uk/index.html> (last visited 7 July 2007).

obtain a visa before entering Bolivia – these persons can obtain a Tourist Visa upon entering the country (so long as they are there for tourist purposes and not for paid employment). The Tourist Visa is valid for 30 days. There is no specific visa status for humanitarian and emergency relief workers, nor is there an expedited visa available for such purposes when entering Bolivia. Nevertheless, the persons and organizations consulted for this study did not report any significant bureaucratic problems or delays with the entry of relief personnel.

For persons carrying diplomatic passports, there is a “Diplomatic and Official” visa, while for foreign governmental officials, officials of international organizations or of cultural and religious institutions, a “Courtesy” visa is used. Finally, Bolivian law provides for a “Visa with a Specific Objective”, a type of visa which requires that applicants provide official documentation which accredits them and documents their objective to be carried out in Bolivia. This type of visa is valid for 30 days and is renewable.⁷⁶

Due to the extensive paperwork associated with the “Visas with a Specific Objective,” interviewees indicated that many relief workers applied for and received Tourist Visas upon arrival, even though this does not seem technically permissible under the rules applicable to such visas.

I) Recognition of Professional Qualifications

Licensed professionals from foreign countries (e.g. doctors, architects, engineers) must apply for and be issued a license to practice in Bolivia through the corresponding national licensing agencies. During the 2007 floods, one international relief organization reported that the main type of professional foreign personnel working in Bolivia were doctors, coming to work on behalf of foreign governments.⁷⁷ The doctors did not receive any special licenses, but instead were permitted to work in Bolivia as a result of bilateral cooperation between their home government and the Bolivian government, which resulted in an ad hoc authorization by the Bolivian government. Normally, doctors and other technical medical staff wishing to practice medicine are regulated by Decree Law 15629.⁷⁸

J) Quality of Relief Goods and Donations

VIDECICODI officials mentioned that they are internally considering proposals to develop a system for certifying imported relief goods and donations which aims to ensure that all humanitarian relief goods and donations entering the country meet basic standards of quality. But during the 2007 floods, no officials consulted for this study reported any significant problems with the quality of relief goods or donations.

1) Donations from Individuals without a Particular Addressee

In the case of donated goods from private parties or individual persons that are sent to Bolivia without a particular recipient/addressee mentioned, it is VIDEICODI that is responsible for deciding whether the goods may be used, and how. According to one government official, when this occurs, VIDEICODI must inspect the quality of the shipments in order to make sure that they are appropriate for a particular use. VIDEICODI may also hire private companies to assist them with the sorting, reviewing and transportation of these goods, but the costs of hiring a private company may be too steep for the government, resulting in such goods going to waste.

⁷⁶ E.g., see, Bolivian Embassy in Germany website, available at: <http://www.bolivia.de/es/vertretungen/visa.html> (last visited 5 June 2007).

⁷⁷ Bolivia has allowed foreign doctors to work in Bolivia during emergencies in the past, including as recently as 2006, see, e.g., Daniel Schweimler, *Rains hamper Bolivia flood aid*, BBC NEWS website, available at: <http://news.bbc.co.uk/1/hi/world/americas/4719954.stm> (last visited 5 June 2007).

⁷⁸ Ley Decreto 15629, 1.003 Gaceta Oficial de Bolivia.

2) Used Clothing

Bolivia has a law which regulates the importation of used clothing in order to protect the public's health. In order to ensure the quality of imported used clothing, the imported clothing must be accompanied by a "certificate" from the sending country's health ministry, which proves that the used clothing is sanitary and has been disinfected, or the donor must acquire a certificate of disinfection from the Bolivian "Ministerio de Salud y Deportes", i.e. the Ministry of Health and Sports. Alternatively the Ministry of Health and Sports may hire an "authorized company" to disinfect the clothing.⁷⁹ No problems concerning the importation of used clothing were reported by any NGOs or government officials interviewed for this study.

V) Coordination, Cooperation and Response

A) Information Exchange, Statistics and Damage/Needs Assessment Issues

The UNDAC team in Bolivia reported that existing mechanisms for gathering information were not functioning properly during the emergency.⁸⁰ Likewise, in the interviews conducted for the present study, the absence of accurate and timely data on damage and needs was a unanimous complaint. Statistics collected locally by the municipalities and/or departmental governments were not always shared with the national government, and when they were, they were sometimes inaccurate. Some interviewees speculated that political friction between the national and departmental governments might have played a role in impeding the flow of information.

On one particular day in mid February, "official" figures reported by different levels of the government estimating the number of affected families in Beni varied widely: VIDEICODI reported that their statistics showed there to be 2,000 affected families, while the departmental government officials estimated that number to be 16,000. These discrepancies made it difficult for international actors to adequately plan their relief and distribution operations. As a result, some international actors resorted to collecting data and statistics on their own, duplicating domestic efforts.

Additionally, in its final report, the UNDAC team noted that information concerning the humanitarian response was not "centralized", because the information flowed through diverse channels and to different levels of the Bolivian government.⁸¹

B) Coordination by National and Local Government

1) Cooperation and Relationship Between the President and the Departmental Authorities and International Organizations

In early February, President Morales called for the cooperation of the international community, and asked the UN to coordinate and channel the international aid received.⁸²

It was reported in the international media that as of the 5th of March 2007, President Morales had visited the department of Beni twice without greeting or coordinating with the departmental authorities, instead directly visiting the affected communities in Beni.⁸³ This alleged lack of

⁷⁹ See, Decreto Supremo No. 27340, *Decreto-Prenderia* Agencia Boliviana de Información website, available at: <http://abi.bo/index.php?i=enlace&j=documentos/decretos/DS-27340.html> (last visited 5 June 2007).

⁸⁰ *Informe Final de Mision UNDAC: Emergencia por Inundaciones en Bolivia, Febrero-Marzo 2007*, La paz, Bolivia. United Nations Office for the Coordination of Humanitarian Affairs (OCHA), at 3.

⁸¹ *Id.*

⁸² Bolivia – Latest Updates 12th February 2007, UN Joint Logistics Centre website, available at: www.unjlc.org/highlights/bol/bolivialatestupdates070212 (last visited 14 May 2007).

⁸³ See Quiroga, *supra* note 6.

communication and coordination was presented as emblematic of how domestic institutions were failing to communicate and coordinate amongst themselves.

2) National COE (COEN)

As mentioned above, both national and departmental COEs were activated in order to coordinate and plan relief efforts. However, UNDAC reported that “many of the actions taken by these institutions were not coordinated.”⁸⁴ Some interviewees and at least one author⁸⁵ have noted that the COEN should be one of the main places where national level coordination and planning occur between both national and international relief actors, as well as the place where information exchange and the pooling of resources is discussed. The COEN is headed by VIDEICODI, but currently the COEN does not have its own permanent location, office or building.⁸⁶

It was reported that few of the relevant actors attended the meetings the COEN convened. At some of the meetings, only 3-5 people attended, and even if they were from the same organization or government agency that had participated at previous COEN meetings, they would often be different representatives, impeding a sense of continuity and cohesiveness. As a result, the UNDAC team attempted to offer direct support and assistance to help the COEN function and coordinate with the departmental COEs.

Some Bolivian government officials mentioned the existence of a very useful and detailed procedural manual (i.e., the “Manual de Procedimientos”) which provides guidance and instructions for a functioning and effective COEN. This manual was developed by the United States Southern Command,⁸⁷ but before the floods it had never been implemented or put into practice. It has never been officially ratified or adopted into the Bolivian national legal framework for disaster response. Part of the reason for this is that it is not widely known by the relevant policy makers or actors within the SISRADE. The UNDAC team was successful in activating and implementing certain parts of the manual as part of their direct support to the COEN.

3) Departmental COEs (COED)

The COEDs were activated in all of the affected departments. Persons consulted for this study gave mixed reviews concerning the effectiveness and utility of the different COEDs. Attendance and participation by various relief actors was reported to have been much more regular and effective in the COEDs than the COEN, and access to critical information was reported to have often been more reliable for the people within the COED because it came from local sources closer to the damaged areas, rather than from VIDEICODI or other national authorities in the capital of La Paz. But even within the COEDs, there was a reported serious lack of coordination at times.⁸⁸

4) Lack of Coordination Between Different COEs

The COEDs brought together relief actors from the local and departmental level (e.g., the local police and departmental agencies), along with local and international organizations and NGOs. Because the departments have access to their own local resources, goods and equipment, they were able to coordinate and distribute relief aid independently within the department without the assistance of the national government. Donations from relief agencies were often given directly to the departmental

⁸⁴ See UNDAC, *supra* note 80, at 11.

⁸⁵ See Rodríguez, *supra* note 31, at 58, 68.

⁸⁶ Although it was reported that this may be in the preliminary discussion and planning stages by the national government.

⁸⁷ A division of the United States military; also known as USSOUTHCOM. For more information, see USSOUTHCOM website, available at: <http://www.southcom.mil> (last visited 5 June 2007).

⁸⁸ See UNDAC, *supra* note 80, at 11.

governments, neglecting the COEN, thus keeping a genuine national level of coordination from developing.

Reuters reported that the Governor of Beni had admitted that his department had not coordinated with the national government.⁸⁹ The Governor of Beni also “admitted [that] the power struggle between his government and the Morales administration has hurt relief efforts in the Beni region.”⁹⁰ It is likely that the “power struggle” to which the Governor was referring related to the dispute between the president and his administration and the departmental governments of the eastern Bolivian lowlands, over the president’s plan to redistribute 20 million hectares (50 million acres) of the eastern Bolivian lowlands (which include Santa Cruz and Beni) to Bolivian indigenous groups. This plan is opposed by the departmental governments of the eastern lowlands and the commercial farmers who own much of the land in these regions.⁹¹

5) VIDEICODI

As previously mentioned, by law⁹² VIDEICODI should play a lead role in the planning and execution of relief and rescue operations and coordination. In the early stages of the emergency in 2007, it was reported that VIDEICODI was responding well in a variety of sectors. However, according to a number of interviewees, as the floods increased and the emergency became more severe, some concerns arose about VIDEICODI’s capacity, resources and links with departmental governments. Thus, during both the 2006 and 2007 floods, President Morales eventually allowed the UN to manage a significant proportion of the funds and the coordination activities for the relief and response effort through the UNDP and OCHA⁹³

Normally, VIDEICODI has a representative or representatives in the COEDs, who should serve as the link between the COED and the COEN. But, this representative does not have the right to direct and command the actors and manage the resources available in the COED because the latter are part of, and belong to the department. Thus, the members and actors within the COED may ignore the VIDEICODI member in some respects, especially if they are not counting on Civil Defense for assistance in terms of resources or logistics. There were some real challenges which arose: according to UNDAC, in Beni there were severe coordination problems between the Departmental COE and VIDEICODI, which required constant monitoring in order to facilitate coordination and information exchanges.⁹⁴

On the other hand, one organization with an office in Bolivia reported normally having a excellent working relationship with VIDEICODI in terms of cooperation, coordination and distribution (including during the early weeks of the floods), and mentioned that they had held joint workshops to explore how to better work with the government. Nevertheless, even this organization complained about some aspects of VIDEICODI’s performance, pointing out that when VIDEICODI would decide to enter an affected area, they would often take much too long to notify others of where they would go and what they would do.⁹⁵

⁸⁹ See Quiroga, *supra* note 6.

⁹⁰ *Id.*

⁹¹ *Land battles: Evo Morales collides with the commercial farmers*, THE ECONOMIST, Sep 21st 2006, available at: http://www.economist.com/background/displaystory.cfm?story_id=7945821 (last visited 6 July 2007).

⁹² See, Ley 2140.

⁹³ OCHA Situation Report No.2, Bolivia - Floods, 1 Feb 2006, OCHA/GVA – 2006/0009, ReliefWeb website, available at: <http://www.reliefweb.int/rw/rwb.nsf/db900sid/EGUA-6LLQCY?OpenDocument> (last visited on 5 June 2007).

⁹⁴ See UNDAC, *supra* note 80, at 11.

⁹⁵ Sometimes this was due to the fact that Civil Defense was waiting for resources and supplies to arrive from other governments.

6) The Comando Único Transitorio and the Use of Bolivian Military Forces for Relief and Rescue Operations

According to various actors involved in the relief and response operations during the floods, there were a number of reasons which led to the creation of the CUT, a novelty in the Bolivian disaster response framework. Perhaps the most important was the perceived need for a high level military presence that could coordinate and command Bolivian and foreign military forces. In part, this was because of the asserted need for military equipment to access affected areas that were difficult to reach because of the floods, physical terrain and destroyed roads. The departmental government of Beni, in the most affected department in the country, did not have these types of resources or the authority or ability to direct them and the foreign military presence. Also, coordination between the Beni COED and VIDEICODI (and by extension, the national government) was reportedly almost non-existent.⁹⁶ The national government responded to this impasse by creating the CUT, composed of a few hundred military personnel, with a powerful mandate that legally provided them with ultimate control over all relief goods and operations.

Many representatives from the international organizations and NGOs reported feeling great apprehension about certain provisions in the Supreme Decree when it was issued, in particular:

- Article 2, which states that the CUT will “formulate, direct, participate and execute rescue operations”, as well as those for the “attention and transport of victims”, and the “provision, transport, and distribution of food supplies, and of *all* of the operational activities necessary and required during the stages of emergency response and rehabilitation;”⁹⁷
- Article 3, which states that the “Ministry of Defence will *receive and administrate all of the donations* from national and international cooperation”, which will “be channelled by the CUT;”⁹⁸ and
- Article 4, which states that that the CUT “can dispose of military and civil personnel” and “equipment” that it deems necessary.

The representatives feared that these provisions might lead to the nationalization of their relief goods and equipment, which would then be distributed to victims by the CUT. Many were prepared to cease operations and withdraw rather than see their roles changed in this way.

Soon after the decree was promulgated, some representatives of the various relief providers in Beni met with the leadership of the CUT to express these concerns. This led to an informal verbal agreement by the CUT not to exercise the full extent of its powers. The CUT distributed government aid and conducted rescue and relief operations, but did not require any organizations to hand over their donations to the CUT for distribution.

However, while concerns of excessive intervention were eased, problems soon arose due to a lack of communication between the CUT and international relief actors (both IOs and NGOs) in Beni. The COED of Beni continued to function as a forum for relief agencies to coordinate their activities, but the COED and the CUT reportedly did not coordinate effectively with each other. As a result, it was reported that some regions in Beni received distributions of goods and provisions twice and even three times, while some affected areas did not receive any assistance at all.

In order to remedy this situation, the UN tried to establish up a neutral space for cooperation and coordination between the CUT and international NGOs. Thanks to this initiative, in a few reported cases at least, agreements were reached for the CUT to transport the relief goods of some organizations to the most affected parts of Beni, allowing a representative or representatives from the

⁹⁶ As a result, UNDAC attempted to facilitate coordination between the two.

⁹⁷ Emphasis added.

⁹⁸ Emphasis added.

partnering organization to accompany the military during the distribution in order to verify that the distribution had gone according to plan and had reached the appropriate victims in the designated affected area.

Nevertheless there were complaints about the manner in which the CUT operated, including:

- reports that CUT officials required NGOs to inform it of their operational plans and distribution times and locations, but the CUT would not reciprocate because such information was deemed to be overly sensitive.
- reports that the CUT did not always abide its agreements, or would demand that the organization pay for transport costs (such as fuel) before it would embark on the distribution.

A few international organizations and NGOs did report effective coordination with the CUT. This was most likely if the organization had a well developed and specific distribution plan, and notified the CUT 48 hours to a week before planning to execute it. In these cases, the CUT not only granted the necessary authorization but often offered to provide transport, if needed. However, it was also alleged that these positive experiences depended on pre-existing personal relationships with members of the armed forces.

C) UN System

The UN took action in a number of ways. The Resident Coordinator called upon the assistance of OCHA by requesting that an UNDAC team be sent to the region. The UN Emergency Technical Team (UNETT) was also in the region conducting assessments (UNDAC's work, coordination and support efforts are documented in its published report, which has been previously cited in this study). On the 22nd of February, OCHA announced a Flash Appeal for Bolivia for \$9,215,000 USD.⁹⁹

Representatives of the different UN agencies in Bolivia, as well as the UNDAC team (when they were not in affected areas) met at UNDP headquarters in order to coordinate and plan response and relief activities. The agencies divided up tasks based on their competence: for example, UNICEF worked on water sanitation and purification, while the WFP was concerned with acquiring and distributing food.

No problems were reported in terms of coordination between the UN agencies and NGOs. One UN agency reported having a well-functioning relationship with some local and international NGOs during the floods, especially in terms of information exchange for monitoring and distribution purposes.

D) Coordination Amongst and With NGOs During the Emergency

It was reported that many NGOs were not informing the COEN about their activities because they were working directly with the departmental governments and the COEDs. According to the UNDAC team, one of their main tasks as a result was to facilitate cooperation between NGOs and the COEN.¹⁰⁰

Government officials also complained that NGOs were acting independently without adequately consulting or coordinating with VIDEICODI or other national entities, and as such were disrespecting the primary role of the state during a humanitarian relief mission. Some NGOs expressed the feeling that attempting to share information and coordinate with the national

⁹⁹ Bolivia Phenomenon El Niño Flash Appeal 2007, 22 February 2007, OCHA, *available at*: <http://ochaonline.un.org/cap/webpage.asp?Page=1552>

¹⁰⁰ See UNDAC, *supra* note 80, at 23.

government and/or the COEN would add another layer of bureaucracy to manage, and were worried that could ultimately keep them from assisting affected populations as soon as possible.

A few NGOs did work effectively with the national and local governments. One NGO in particular, which previously had established a good working relationship with both the national and departmental government, went well beyond its usual mandate because of the lack of other capable organizations or agencies in Beni. This international NGO set up and ran a campground that could house up to 1200 families for 4-6 months. An agreement for this arrangement was reached between the NGO and the national and departmental governments.

In terms of cooperation and coordination amongst the NGOs themselves, there were no complaints reported during the consultations for this study. Some international NGOs coordinated with local Bolivian NGO networks in order to conduct operations or to channel funds for operations.

VI) Conclusion

International relief operations are always complex and challenges inevitably exist with regard to regulatory and administrative issues – particularly with regard to information exchange and coordination. No country has a perfect system in this regard. The findings of this study should be read in that light.

There were a number of positive aspects of the regulation of the international response to the Bolivia floods that are worth highlighting. These included the following:

- the government showed flexibility in a number of areas, including with regard to the use of Tourist Visas, the toleration of the practice of foreign governmental medical personnel without official domestic licensing and the forbearance of the CUT in exercising some of its powers;
- the prior registration of international organizations and NGOs provided them with sufficient legal personality to conduct effective operations and the Framework Agreements appeared to function satisfactorily;
- locally acquired goods and equipment were purchased without any restrictions or delays (although taxes were applied);
- cooperation and the complementarity of response activities with the BRC was effective; and
- with adequate preparation, planning and communication, joint planning for distributions in hard to reach areas with the armed forces was often achievable.

Additional best practices were identified by the UNDAC report.¹⁰¹

There were also some important problem areas, mostly having to do with ambiguities about the roles of the various governmental actors, failures of communication and coordination issues.

¹⁰¹ For a number of lists of best practices and recommendations in different topic areas based on the 2006 floods in Bolivia, *see also*, Rodríguez, *supra* note 31.

A) Ways Forward

1) Strengthening Civil Defense and the SISRADE

As noted above, the SISRADE system has not been in place for very long. In the course of this study, both Bolivian relief personnel and government officials have expressed the view that SISRADE as an idea is a modern and useful system with an ambitious legal framework which comes out of Law 2140 and its modifying laws and implementing regulations. The suggestions for improvement which were put forward by the various actors focused on the same aspects of the system: first, plainly and exactly defining the roles, responsibilities and tasks of every organ and institution in the SISRADE – from the president's office, all the way down to the municipal and most local level; and second, clearly and explicitly mandating coordination and cooperation procedures, as well as information exchange between all actors in the SISRADE. In order to support and enhance international assistance provided for disaster response in Bolivia, a strengthened SISRADE would be one that fully takes into account the role that IOs and NGOs can play in coordination and cooperation with domestic actors and authorities during emergencies – such a system could facilitate and expedite the receipt of humanitarian relief aid by beneficiaries.

VIDECICODI plays an important leadership role within the SISRADE. However, some persons consulted for this study, including officials within the government itself, expressed concerns that VIDEICODI often lacks sufficient goods, equipment and trained permanent personnel to respond to disasters completely on its own. Greater pooling of information and resources with international actors might be one possible solution to help remedy this dilemma. Increased cooperation with departmental and municipal actors could also be beneficial, because in terms of their role as a first responder, it was also mentioned by some interviewees that the departmental and municipal authorities may be better equipped to act as first responders because of their proximity to affected regions, allowing them to assess needs and mobilize quicker and with less bureaucratic hurdles.

Interviewees suggested that a fundamental decision needs to be made as to whether the primary role of VIDEICODI will be one of providing logistical support, coordinating the work of other actors or of conducting direct relief efforts in the field. Moreover, if VIDEICODI is to have a leading role during reconstruction projects after disasters or emergencies, there is a need to supplement the training and capacity of its personnel.

2) Other Ways to Improve the Framework for Disaster Response

- The government's adequate and accurate collection of official information, such as risk and damage assessments could be improved, as well as its centralization, rapid dissemination and the sharing of such information with all levels of government, international organizations and NGOs. IOs and NGOs could also make stronger efforts to share any accurate and useful information they have gathered with the national government if it relates to the government's relief and response operations.
- Municipal and departmental police, firemen and other local safety personnel could be better equipped and trained to enhance their role as first responders in an emergency.
- In order to avoid delays: the particular rules, procedures and regulations for the importation of goods should be made widely available, in a clear and concise manner, to all of the international relief workers and agencies operating in Bolivia, as well as to the Bolivian embassies and consulates located in donor countries around the world, where IOs, international NGOs and private donors must necessarily go to process and send donated goods and/or equipment. Additionally, customs procedures could be simplified in order to facilitate the rapid entry of humanitarian relief goods and equipment, and a focal point could

be appointed by the government in order to coordinate between all of the Bolivian agencies with authority over the import process.

- Although the entry of international relief personnel did not cause a problem during the 2007 floods, more than one person interviewed for this study suggested that the Bolivian government should consider the introduction of an emergency humanitarian visa which can be expedited when there is an urgent need for international relief personnel during or in the wake of a disaster. The reason for this would be to promote legal preparedness, by having an established legal regime with clear standards, rules, and time limits in order to keep track of international personnel entering the country, in case there is ever a need for a large influx of international personnel to assist domestic actors with disaster response or initial recovery assistance.
- Particularly when military forces are involved in delivering and coordinating aid, special attention should be paid to keeping open the channels of communication and ensuring that humanitarian actors can act effectively according to the principles of humanity, independence, impartiality and neutrality.

ANNEX I Organizations Interviewed and/or Consulted

- Bolivian National Red Cross Society
- European Commission Humanitarian Office
- International Committee of the Red Cross
- Bolivian Ministry of Foreign Affairs and Worship (Treaty Office)
- Bolivian Ministry of Foreign Affairs and Worship (International NGO Section)
- IFRC Regional Intervention Team
- IFRC Pan-American Disaster Response Unit
- IFRC Regional Delegation for South America
- IFRC Regional Delegation for Mexico, Central America and the Caribbean
- OXFAM
- Save the Children
- United Nations Disaster Assessment and Coordination team
- United Nations Development Program
- United Nations International Children's Education Fund
- United States Agency for International Development
- VIDEICODI (Bolivian Viceministry of Civil Defense)
- United Nations World Food Program
- World Vision - Bolivia
- World Vision International in Bolivia

ANNEX II Registration Process for NGOs

- The headquarters or principal office of the NGO must present a letter of application to the Ministry of Foreign Affairs and Worship (MFAW).
- Then the NGO must present the projects which it proposes to undertake in Bolivia. Without this list of projects, the MFAW cannot evaluate the application.
- The NGO must inform the MFAW as to whom it will name to be the legal representative/head of the organization. Such person should at the time be a resident of Bolivia.
- The NGO must present some formal credential designating such person as the legal representative. A detailed CV of the person must also be presented.
- A list of the foreign personnel which will be working in Bolivia on behalf of the NGO must be presented.
- A list of other NGOs that the organization has been in touch with, and with which it plans to work and/or coordinate must be presented.
- All of these materials go to the Legal Department of the MFAW, who have the authority to approve or deny the application.
- The entire transaction is then memorialized in a specific agreement between the Government and the organization. The Bolivian Government uses an “Acuerdo Marco”, or “Framework Agreement”, which sets out the rights, responsibilities and privileges of the NGO. The content and specific provisions of the agreement remain largely similar for all organizations which enter into this agreement.
- Entering into the Framework Agreement provides authorization for the next step: all of the project proposals will then be submitted to the relevant Government Ministries with the appropriate responsibility (based on subject matter) for the type of project involved (e.g. a project dealing with public health would go to the Ministry of Health).
- Once this process has been completed and the NGO and its projects/proposals have been approved, the NGO is given a registration number, which also serves as its tax identification number. This information goes into the “Registro Unico Nacional de ONGs”,¹⁰² or the “Single National Registry of NGOs”, which is maintained by the Viceministerio de Planificación del Desarrollo (the Viceministry of Development Planning).
- All NGOs, whether international or domestic, are documented in this National Registry.
- NGOs must renew their registration every three years.

¹⁰² Decreto Supremo 22409, art. Segundo.