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**From Military Instruments of Dictatorship to
Political Instruments of Democracy:
Regimes of Exception in Bolivia
2000–2010**

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Abstract

The aim of this study is to discover the role played by regimes of exception (RoEs) in contemporary Bolivian politics. RoEs have been seldom studied by political scientists, despite constituting a key legacy of authoritarian regimes that have survived the transitions to democracy in Latin America. Focusing on the case of Bolivia, the research is based on relevant laws as well as 65 presidential decrees, which are analyzed with the method of content analysis. As a result of the analysis, we show that in Bolivia both the legal framework and political use of RoEs have moved on from a purely repressive mechanism to a more administrative one. The study has important implications for how RoEs are conceptualized from a theoretical point of view as well as for our understanding of the nature of emergency politics in fragile democracies in recent years.

Keywords: Bolivia, democracy, regimes of exception, presidents, decrees, content analysis

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From Military Instruments of Dictatorship to Political Instruments of Democracy: Regimes of Exception in Bolivia 2000–2010

Claire Wright and Ana Soliz Landivar

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1 Introduction

Regimes of exception (RoEs) can be understood as an inclusive term of those legal mechanisms that offer previously designed, special powers in emergency situations. They are often given different names at the national legal level – including “state of siege,” “state of emergency,” “state of exception,” “state of alarm,” etc. In Latin America, RoEs have become synonymous with military dictatorships and the restriction of civil rights. Nevertheless, they have

survived the third wave of democracy and still constitute part of contemporary Latin American political life. Apart from Brian Loveman's (1993) seminal, historical analysis, a few case studies,¹ and some legal analyses,² there has been little academic concern aroused by the use of these mechanisms since the inception of this democratic period.³ Political science, for its part, has largely ignored the potential impact of these mechanisms on democratic governability. With this apparent gap in the literature in mind, we thus offer a case study on Bolivia – with the aim of clarifying how RoEs have been used in the first decade of the twenty-first century.

Bolivia is an interesting case in that its recent history has followed the general trend of long-term developments regarding RoEs in Latin America, as identified by Brian Loveman (1993): first, the inclusion of mechanisms to suspend judicial guarantees, enacted in the face of social unrest during the nineteenth century; second, an abuse of these powers by military governments in the twentieth century; and third, the permanence of the “state of siege” even after the transition to democracy. Nevertheless, in Bolivia as of 2000 a key legal and political change occurred in relation to RoEs, going from a mechanism that permitted military intervention in civilian affairs to one that now offers fast-track responses to both natural and man-made disasters and emergencies. This change has been much more noticeable in the case of Bolivia than it has been in the cases of, for example, neighboring Ecuador and Peru (Wright 2012).

In this study we approach the use of RoEs in Bolivia from both a legal-normative and political-empirical perspective, with the aim of analyzing whether these mechanisms are still relevant in the country's politics and, if so, what their main features are in the present day. We believe that, bearing in mind the literature gap and the relevance of RoEs for democracy, it is necessary to update our understanding of their current role in politics. Consequently, in this study we offer a thorough empirical analysis on one particular case, which may serve as a model for future research on this mechanism in other countries throughout Latin America.

This paper is divided into four sections: first, we offer a theoretical framework for RoEs, paying particular attention to the literature on Latin America; second, we analyze the normative framework for RoEs as crafted in Bolivian legislation; third, we carry out an empirical analysis of those presidential decrees which have proclaimed an RoE in this context, using content analysis as our methodology; and fourth we offer some conclusions and establish a future research agenda.

1 On Colombia see, for example, Iturralde (2003) and Vázquez Carrizosa (1992).

2 Among others, Carbonell (2008), Delfino (2000), García Sayán (1987), Ríos (2009), and Zovatto (1990).

3 As Daniel Zovatto (1990) has stressed, regimes of exception can and should be studied from different points of view: constitutional, political, economic, and social.

2 Theoretical Framework

2.1 Regimes of Exception in the Literature

Gross and Ni Aoláin state that many constitutional democracies (including France, Germany, and several countries in Latin America) have a pre-prepared mechanism in order to be able to deal with a crisis⁴ swiftly and effectively (2006: 35). These mechanisms can be established in the constitution or in the ordinary body of legislation. According to constitutionalist theory, this type of mechanism is known as a “regime of exception” (RoE) – which offers a special normative framework that can be set in motion when a nation or constitutional order is faced with an “exceptional threat” (Friedrich 1950).

The classic model of an RoE was the institution of the dictatorship in ancient Rome, with it being proclaimed in two main circumstances:

- (1) *dictatura rei gerundae causa* (in order to get things done), implying the need for a swift implementation of political decisions
- (2) *dictatura seditionis sedandae* (to repress insurrections), boiling down to the use of force in order to put a stop to social disturbances (Rossiter 1946: 20)

The Roman dictatorship has been the subject of praise by several thinkers throughout history, including Friedrich (1950), Machiavelli (1987 edition), Rossiter (1946), and Rousseau (1990 edition). The reason for this admiration lies in the fact that the dictatorship had in place several key institutional limitations that helped to avoid abuses of power: first, a respected and well-known person (but not an active politician) was chosen to steward the dictatorship in order to avoid the concentration of power in the hands of the Consuls; second, a time limit of six months was imposed in order to avoid long-term emergency powers prevailing; third, the Senate classified the situation as an emergency while it was the Consuls who chose the dictator; fourth, no profound changes could be made to the republic during the reign of a dictatorship; and fifth, this means of ruling could only be proclaimed once per year (Rossiter 1946: 18–22).

According to constitutionalist theory, the tenets of the Roman dictatorship became the basis for modern RoEs – via the Middle Ages, the Renaissance, the absolutist states of Europe, the French Revolution – with the mechanism of the “state of siege” – and finally in the Weimar Constitution, with its Article 48 (Wright 2012b). Modern RoEs have preserved two key elements of the Roman dictatorship: on the one hand, the concentration of power; and on the other, the establishment of a time limit (Cruz Villalón 1984; de Wilde 2010). Furthermore, they have incorporated another key feature: the suspension of human rights or judicial guarantees, something that was not explicitly taken into consideration by the Roman dictatorship (Wright 2012b).

It is important to highlight that the literature on RoEs to date has focused mainly on the possibility of repressive measures – such as the suspension of human rights – being used in the face of social or political crises (Zovatto 1990). This emphasis on the *dictatura seditionis se-*

4 The literature does not specify what the nature of the crisis is, something which in itself needs addressing.

dandae has meant that the *dictadura rei gerundae*, which was a more administrative than repressive mechanism, has been largely overlooked. Therefore, it is important to remember that the RoEs proclaimed both today and in Rome may be more than just expressions of governmental violence. In this study we show that administrative measures may, in fact, be more common than repressive measures when RoEs are utilized in practice.

2.2 Regimes of Exception in Latin America

The processes of independence in Latin America alive at the start of the nineteenth century implied a violent struggle for power (Colomer 1990: 31; Loveman and Davies 1997: 3; Safford, 1987: 80–84). In this context, the nascent states faced the following dilemma: whether they should follow Iberian, authoritarian traditions or instead introduce the liberal constitutionalism that was being championed in France, Great Britain, and the United States at the time (Safford 1987: 57). As Roberto Gargarella explains, although conservatives and radicals had an important impact on the constitutionalism of this period, it was the political activism of liberals that led to the adoption of predominantly liberal constitutions in the region (2005: 219).

The main tenets of liberal constitutionalism were to protect individual rights, to limit state power, to restrict the president's powers, and to establish a system of checks and balances (ibid.: 197). For this reason, the first Latin American constitutions did not include emergency powers, instead following the "model of resistance"⁵ that had been proposed by thinkers such as Benjamin Constant (Aguilar Rivera 1996: 27).

Nevertheless, without constitutional responses to the crisis situations faced by these nascent states having been crafted (Loveman 1993: 62), on many occasions only two options were left at their disposal:

- (1) the removal of presidents via *golpes de estado* (coups d'état)
- (2) the violation of the constitution and of liberal principles in order to cling on to power (Aguilar Rivera 1996: 28)

Consequently, these liberal-oriented states were undermined by this deficiency in their institutional makeup and, as Gargarella explains, Latin American liberals thus often had to resort to more conservative principles – including the concentration of power and the use of violence in order to achieve stability (2005: 247). The consequence of this was that, by the end of the nineteenth century, practically all Latin American constitutions had come to include a framework for an RoE (Aguilar Rivera 1996: 244; Loveman 1993: 64; Safford 1987: 62), notwithstanding their initial reluctance to do so.

In essence, liberal thought had shown itself to be inadequate for the political reality of Latin America. On the one hand, the constitutional model did not offer instruments that could be used to confront the crises that invariably emerged during the foundation of a new

5 Gross and Ni Aoláin (2006).

State. On the other, the presence of “antipolitics”⁶ on the part of the *caudillos*, nascent military sectors, and liberals themselves undermined these fragile young republics. The systematic reply to this situation was to use RoEs as a mechanism of repression disguised beneath a minimal framework of legality (Loveman 1993: 203).

Although the military had an important role at the time of independence and towards the end of the nineteenth century, with the founding at that time of the first national armies, the armed forces in Latin America gained true political prominence after the Great Depression of 1929 (Rouquié 1997: 289). Between February and December of 1930, the governments of Argentina, Bolivia, Brazil, the Dominican Republic, Guatemala, and Peru were all ousted by military coup d'états. This became a common occurrence in Latin America during the twentieth century, in many cases up until the end of the 1980s, even despite the brief period of “democratic euphoria” that came after the end of the Second World War (ibid.). The military again gained increasing importance after the Cuban Revolution of 1959, given the Cold War circumstances and support from the United States in their fight against communism. Between 1962 and 1972 there were a series of *golpes de estado*, which were followed by the brutal repression of the opponents of these military regimes. As Alain Rouquié explains (ibid: 291), any aspiration to social change or support for left-wing parties was considered to be “revolutionary.” It was in this context that the national security doctrine was developed, with public order therein becoming the key priority (Zovatto 1990).

Although the political persuasions of the military have shown some degree of variation – from the historical authoritarian-bureaucratic model in the Southern Cone to a more progressive one in the Andean region (Rouquié 1997) – the regimes established in Latin America during the twentieth century were ultimately characterized by their common rejection of democracy (Loveman and Davies 1997: 222). Their solution to the range of problems faced was to concentrate power, and in many cases to limit civil rights in general, whether the objective was the repression of left-wing opponents or national economic development. In order to achieve a concentration of power in the executive, the military resorted to the use of decrees, which they aimed to legitimize by using the RoE clauses that were present in the different countries' constitutions (Loveman and Davies 1997: 376). Indeed, by the end of the 1970s two-thirds of Latin American countries lived under “states of exception” (Despouy 1999: 16).

In real terms, the use and abuse of RoEs was more common among the dictatorships of the Southern Cone. As Leandro Despouy (1996) explains, RoE clauses were regularly enacted in this region, leading to the perpetual abuse of human rights. In this way, RoEs acquired their modern form in Latin America under the authoritarian governments of the twentieth century, propped up by two main pillars: the intervention of the military in politics and the use of force to repress social disturbances. It is worth pointing out that there is no clear record in the literature on Latin America of more administrative-oriented RoEs, even though we

6 Loveman and Davies (1997).

suspect that the model of *dictatura rei gerundae* has been present in the past. In this sense, it is possible that the literature has overseen this important aspect of RoEs.

The so-called “third wave of democratization” in Latin America began at the end of the 1970s – with the Dominican Republic the first to turn, in 1978 – and ended with the return of democracy to Chile in 1990 (Rouquié 1997: 330).⁷ The new democracies faced two main challenges: on the one hand, the legacy of institutionalized violence, and on the other, widespread social inequality amid the economic crisis of the 1980s (Kruijt and Kroonings 2002: 24). With regard to the first challenge, as Terry Lynn Karl explains (1996), the military carried out a series of foundational pacts with the new democratic actors in order to maintain its power and influence in certain areas. Consequently, the new governments opted for a pragmatic approach, one which ultimately led to impunity and the weak rule of law (Loveman and Davies 1997: 367).

In the majority of Latin American countries, the withdrawal of the military from government coincided with new electoral legislation and new constitutional arrangements (ibid, 1997: 226). However, Bolivia, Chile, and Uruguay chose to retain preexisting constitutions that had either been drawn up by or used to support military regimes. As mentioned, foundational pacts were key for the emerging democracies to survive and succeed, with the influence of the military being reflected in these nascent entities coming to represent “protected” democracies, including such elements as criminal codes that included special clauses for political crimes or that gave autonomy to members of the armed forces. Another mechanism that was very important in maintaining the influence of the military was precisely the RoE itself, established as a particularly repressive mechanism. In fact, every new constitution adopted between 1978 and 1993 – with the exception of the one in Paraguay – reaffirmed and broadened the measures that could be employed in emergency situations (ibid.: 376).

At the beginning of this third wave of democracy, there was some concern on the part of academics over the role of RoEs and the possible human rights violations therein. In 1986, the Comisión Andina de Juristas (Andean Commission of Jurists) and the Instituto Interamericano de Derechos Humanos (Inter-American Institute of Human Rights) organized a seminar entitled “Los Estados de Emergencia en la Región Andina” (The states of emergency in the Andean region) (Figallo 1987), which gave rise to a number of texts offering case studies from within the Andean region (García Sayán 1987). In the same way, Zovatto offered an in-depth analysis of human rights and states of emergency in Latin America (1990). Finally, in 1993 Loveman published his seminal and exhaustive work on regimes of exception in the history of Latin America, *The Constitution of Tyranny*.

Over three decades after the third wave of democratization began, democratic regimes are still weak in the majority of Latin American countries. Some authors consider a fundamental flaw of democracy in the region to be the arbitrary use of power by state authorities

7 It is important to point out that El Salvador and Guatemala both underwent a transition to democracy in the 1990s.

(Kruijt and Koonings 2002: 44; O'Donnell 1997: 183). Moreover, as a result of the ongoing presence of terrorist cells, paramilitary groups and drug traffickers in countries such as Colombia, Mexico, and Peru, security at any cost is still a key issue; one that politicians eager to attract votes make the most of (Hagopian 2005: 319).

Taking this situation into account, the temptation for governments to resort to RoEs – which offer a concentration of power and the suspension of guarantees – has been great. The fears of jurists such as García Sayán (1987) and Zovatto (1990) at the outset of this third wave of democratization seem to have been well-founded, as this mechanism has been frequently used from then until now in various countries in Latin America. According to the reports published by the United Nations between 1985 and 2005,⁸ there has been at least one declaration of a state of exception in the vast majority of countries in the region.⁹ In the case of Bolivia, the UN has registered four such declarations during this period: in 1985, 1990, 1995, and 2000. While the reports offered by the UN are certainly very useful, it is worth pointing out that the data on certain countries is incomplete given the sources used: reports in the press and reports offered by governments. Furthermore, the topic has slipped off the UN agenda as of 2005, with no more reports having been published since that year.

3 The Normative Framework of Regimes of Exception in Bolivia

3.1 The Political Constitution of the State of Bolivia 1967

The Bolivian constitution of 1967 included the *estado de sitio* (state of siege) as an RoE. As already mentioned, this mechanism became infamous for being used in practice as a means of repression by the military.¹⁰ The social clashes and state of siege declared in April 2000, together with further social unrest in September of the same year, made it necessary to change this legal framework in Bolivia. With Law No. 2140 on the “Prevention of Risks and/or Emergencies” of October 2000, RoEs became more democratic, removing the mention of the armed forces and constituting a resource which, while still exceptional, no longer includes the restriction of fundamental human rights. This change was reinforced by the new constitution of 2009. Nevertheless, the legislation on RoEs still reveals some contradictions that will be highlighted throughout this paper.¹¹

8 United Nations: “Annual reports and lists of States which, since 1st January 1985, have proclaimed, extended or terminated a State of Emergency, submitted by Mr. Leandro Despouy, Special Rapporteur appointed pursuant to Economic and Social Council resolution 1985/37, 1993–2005,” online: <www.un.org>.

9 Namely, Argentina, Bolivia, Colombia, Ecuador, Guatemala, Honduras, Nicaragua, Paraguay, Peru, and Venezuela.

10 Personal interview with Ana María Romero carried out by Claire Wright in La Paz, Bolivia, April 2007.

11 Horacio Andaluz, an expert in Bolivian constitutional law, affirms that “Bolivian legislation in general has not been coherent [...] the exception to this lack of coherence was the jurisprudence of the Constitutional Tribunal, which always respected its own precedents or justified why it had changed them. This meant that constitu-

Although the 1967 Constitution was promulgated by the democratic government of General René Barrientos Ortuño, it was nevertheless still enacted during a period of political and social instability, with frequent *golpes de estado*. It was, in fact, General Barrientos himself who had participated in the overthrowing of Víctor Paz Estenssoro only a couple of years earlier, in 1964. Furthermore, Barrientos was to be elected president in 1966 in a problematic election which saw Víctor Paz Estenssoro vetoed because he was the only candidate other than Barrientos who had any real chance of winning.¹² Against this backdrop of dubious democracy and the latent militarism of the president, the constitution was drawn up, wherein the armed forces were made primarily responsible for the maintenance of the country's internal order. The 1967 Constitution considered the *estado de sitio* to be the only constitutional mechanism by which to restore order in times of internal strife or international war. It was created essentially as a resource to be exclusively used by the executive.

Similarly, it was expected that after a maximum of 90 days the *estado de sitio* would automatically expire – with the exception of situations of ongoing civil or international war, which would permit its extension. However, this exception made the perpetual application of the *estado de sitio* possible, given that its causes were precisely internal strife or international war. According to the constitution, it was not permitted to declare more than one *estado de sitio* in the same year unless Congress was in favor of doing so; nevertheless, in several instances Congress was dissolved by *de facto* governments and as a result this control was not actually implemented in practice.

The *estado de sitio* offered measures that could be taken against “people who have been found to be scheming against public order,”¹³ and included court summons or orders for their arrest. In theory, this mechanism respected habeas corpus, given that the constitution had established that in less than forty-eight hours the person should be placed under the jurisdiction of the relevant court. Furthermore, the proclamation of an *estado de sitio* allowed for a change of competent jurisdiction if the needs of public order required it to be so; those arrested could thus be confined to any location within the national territory. Consequently, the “competent jurisdiction” could in reality be whichever one the Executive designated as such.

Once the RoE was over, citizens could be freed, except in those cases wherein a trial had begun in the competent tribunals, which – as we have already highlighted – could be chosen directly by the executive. Exile on political grounds was not permitted and therefore anyone who was confined, sought, or arrested for political reasons would not be granted it. Nevertheless, and at the same time, the constitution emphasized the guarantee of offering a passport to any citizen who asked for one. With regard to the effects of the declaration of an es-

tional jurisprudence was always solid, not always flawless, but not self-contradictory. Here I am referring to the legislation and jurisprudence in general, which is to say not just the *estado de sitio*.” Interview carried out by Ana Soliz Landivar in Santa Cruz, Bolivia, January 2012.

12 On René Barrientos, see Mesa, Gisbert, and Gisbert (2007: 512).

13 Constitution of 1967, Article 111, Paragraph 3.

tado de sitio, they were very broad, going beyond the restriction of the rights mentioned above. For example, it was the armed forces who were in charge of putting it into effect.

In terms of civil servants' responsibilities in case of any abuses of power, it is important to highlight that reprimands were only imposed on those who were "carrying out orders," not on those who issued them. In a similar vein, it is curious to note that in the same article and paragraph in which those who violated constitutional guarantees were sanctioned, it was also stipulated that correspondence and publications could be censored in times of international war.¹⁴

The reforms of 1994, 2002, 2004 and 2005 maintained Article 111, with its regulation of the proclamation of the estado de sitio. In essence, there have been no major changes with respect to the foundations laid by the constitution of 1967. Rather, the first major normative changes with regard to RoEs in Bolivia actually occurred as a result of the promulgation of Law No. 2140 in 2000.

3.2 Ley para la Reducción de Riesgos y Atención de Desastres N° 2140 of 2000 (Law No. 2140 for the Reduction of Risks and Disaster Relief)

This law was promulgated on October 25, 2000 by General Hugo Bánzer Suárez. It is important to note that behind this law was the conflict of April 2000 – known in Bolivia as "La Guerra del Agua" – over the concession of control over water supplies to a private (largely foreign-owned) company, which applied a tariff increase for drinking water. As a result, a citizen group called the Coordinadora del Agua was created to demand the immediate cancellation of the contract to privatize water supplies. In the face of escalating conflict, President Hugo Bánzer declared an estado de sitio, which would leave several people dead as a result of military intervention. At the same time as this was happening, members of the police force also rioted in order to give further momentum to their demand for a pay increase. In the same year, another governmental crisis unfolded when in September the central road network (La Paz–Cochabamba–Santa Cruz) was brought to a standstill for a period of three months as a result of the roadblocks put up by *cocaleros*.¹⁵

Thus, in the almost immediate aftermath of these social conflicts, in October 2000 Law No. 2140 was implemented in order to establish RoEs as the core mechanism by which to reduce risks in cases of disaster and/or emergency. Several key elements are worth pointing out from the first article of this law: first, the idea of prevention; second, that risks are seen not only as being social but also economic; and third, that the threats are widened so as to include risks brought about by natural, technological and/or human causes. It establishes – according to Article 3 – the key principles for a new kind of RoE, including collective interests

¹⁴ Constitution of 1967, Article 112, Paragraph 4.

¹⁵ Cocaleros are the coca-leaf growers who formed a political movement led by Evo Morales, who would come to power in 2006.

and obligations; the right to the protection of physical integrity, productive infrastructure, goods and the environment; the responsibility of both public and private institutions as well as individuals; planning and both public and private investments for sustainable development; and the principle of decentralized management, wherein the municipal governments are given primary responsibility of intervening in the case of disaster or emergency. However, in practice these municipal governments, generally speaking, do not have sufficient capacity to deal with this type of situation and therefore need to count on the prefect for the department and/or the national government. Thus in reality, and despite the principles of decentralized and subsidiary action, the lack of available resources has led to the creation of an RoE at the national level.¹⁶

The primary institution created by Law No. 2140 – as a result of Article 6 – is the Sistema Nacional para la Reducción de Riesgos y Atención de Desastres y/o Emergencias (SISRADE).¹⁷ The objectives of the SISRADE are to prevent and reduce the human, economic, physical, cultural, and environmental losses caused by disasters and/or emergencies. The SISRADE is made up of the Consejo Nacional para la Reducción de Riesgos y Atención de Desastres y/o Emergencias (CONARADE)¹⁸ as a superior organ of decision-making and coordination, whose mandate is carried out by the Ministry of National Defense and the Ministry of Sustainable Development and Planning. It is also composed of civil society institutions and organizations at the national, departmental, and municipal levels. The CONARADE is led by the president of the republic and made up of the Ministry of National Defense – whose chief minister can act as the head of the CONARADE in the absence of the president – as well as of the Ministry of Finance, Ministry of the Presidency, Ministry of Sustainable Development and Planning, and the Ministry of Government.

3.3 The Constitution of the Plurinational State of Bolivia of 2009

When Evo Morales Aima came to power in 2006, Bolivia began to enact a series of institutional transformations, the most important of which was the promulgation of the Constitution of the Plurinational State of Bolivia in 2009. Herein *estados de sitio* are no longer referred to, as the regulation of RoEs has been broadened in general. The constitution has thus established the principle that in situations that represent a danger to the security of the state, of external threats, of internal strife, and of a natural disaster the state president has the capacity to declare an *estado de excepción* (state of exception). Furthermore, and on the basis of what had already been established as a result of Law No. 2140, the constitution of 2009 introduced state security and confirmed natural disasters as possible pretexts for the declaration of an RoE.¹⁹

16 Thus, one of the main challenges faced when an RoE is declared is the coordination of the various local and national institutions, as the government official Manríquez from the Vice Ministry for Citizens' Security explained in a personal interview with Ana Soliz Landivar in La Paz, January 2012.

17 National System for the Reduction of Risks and the Relief of Disasters and/or Emergencies.

18 National Council for the Reduction of Risks and the Relief of Disasters and/or Emergencies.

19 Data from the constitutional theorist Horacio Andaluz Vegacenteno in a personal interview with Ana Soliz Landivar held in Santa Cruz during January 2012. Indeed, the promulgation of an RoE as a result of a natural

Another change that was introduced in the constitution of 2009 concerned the possible duration of an *estado de excepción*, which now depends on the prior approval of the Plurinational Legislative Assembly. It is also up to this body to decide the measures to be taken during an RoE. In this way, the *estado de excepción* is no longer the exclusive instrument of the executive, as the Legislative Assembly now also has an important role to play. Furthermore, the constitution establishes that the exceptional powers employed in such circumstances should maintain a strict and proportional relationship to each occurrence. Table 1 below summarizes the main features of the various different RoEs established within Bolivia's normative framework during the period from 2000 to 2010.

Table 1: Features of the Regimes of Exception Included in the Constitution or Law of Bolivia during the Period of 2000–2010

Law/Features	CPE 1967	Law 2140 of 2000	CPE 2009
Name	"estado de sitio"	"desastre/emergencia"	"estado de excepción"
Causes	Internal strife; international war	Prevention of and protection against: social and economic risks; threats with material, technological and/or human causes	Dangers to security of the state; external threats; internal strife; natural disasters
Authority	The president; later, Congress decides whether or not to continue	Recommendation by the CONARADE, decreed by president	President of Bolivia with prior approval of Plurinational Legislative Assembly
Institutions	Presidency	Municipal governments; prefect of department; national government; SISRADE; CONARADE	Presidency
Period	90 days then expires automatically – exception is in times of civil or international war; not possible to declare more than one in the same year	According to necessity	Plurinational Legislative Assembly establishes the duration
Measures	Against suspects, arrests, correspondences could be censored, guarantee of parliamentary immunity	Mainly economic and administrative	Plurinational Legislative Assembly establishes measures to take
Military	Main role is to enforce "estado de sitio"	Not mentioned, only addresses Servicio Nacional de Defensa Civil SENADECI ²⁰	Not mentioned
Control	Sanctions only against those who are "carrying out orders"	Responsibilities according to general laws	Executive accountable to Plurinational Legislative Assembly

Source: Authors' compilation.

disaster was a matter of interpretation, as it was not clearly stated in the definition of an *estado de sitio* included in the constitution of 1967.

20 The SENADECI is a decentralized organism of the Ministry of National Defense. It has its own structure, works at the national level and depends on the Ministry of National Defense. Its mission is to offer immediate assistance and attention to the population in cases of natural or man-made disasters, acting before, during, and after the disaster, via the organization of preventive actions, medical and food aid, saving and rehabilitating the people, populations, or regions affected (Decreto Supremo N° 25154, 4 September 1998).

4 An Empirical Approach to Regimes of Exception in Bolivian Politics During the Period 2000–2010²¹

In order to understand how these RoEs have been enacted in Bolivia, we looked for those presidential decrees that referred to these mechanisms either explicitly or implicitly during an eleven-year period: 2000–2010. It is important to highlight that by explicit we mean those decrees that included an actual reference to the RoE as established by the constitution or law; by implicit we mean those decrees that employed the nomenclature of an RoE as established by the constitution or law and followed the format of the explicit decrees of RoEs, but did not directly refer to the legal mechanism.²² A total of 65 decrees were found, reflecting that RoEs have been of deep relevance in recent Bolivian political life. Nevertheless, in order to establish the purpose that has been ascribed to these mechanisms it is necessary to understand their actual content. For this reason, we elaborated a system of variables and mutually exclusive categories and then assigned values to each one of these variables for each decree. In this way, it was possible to convert the text of the decree into a relevant database with information for this study.

4.1 Content Analysis

For this study we carried out a content analysis, which offers an inductive approach that nevertheless respects key principles of the scientific method – including reliability, validity, replicability, and generalization (Neuendorf 2002: 50–51; Buttolph Johnson and Joslyn 1995: 245–253). Reliability has been achieved by two coders checking to ensure that the coding system produces the same results in different tests. In the same way, validity has been achieved by the various variables and categories being obtained as a result of a process of trial and error, which thus ensured that we were measuring what it was that we actually wanted to measure. Furthermore, the study is replicable because the variables and categories are sufficiently broad for it to be used in different countries. Finally, it aims to be generalizable given that the entire population of relevant decrees was studied and therefore there was no concern over sampling (Neuendorf 200: 12).

We believe that content analysis is a very powerful tool for approaching our corpus of data: 65 presidential decrees that in essence are texts. As Buttolph Johnson and Joslyn (1995: 252) explain, content analysis offers a means of approaching complex issues and groups of texts across time. For this reason, we chose it as the main tool by which to analyze the decrees considered here.

21 The content of this section is adapted from Wright (2012).

22 We believe that it is important to include all of these cases, given that the decrees are presidential acts of government that may not be of “loose legality” – in the sense that there may have been an inadvertent oversight or omission of information by the civil servant in charge of drawing up the decree.

The variables and indicators identified as the foundations for this paper are organized according to four key dimensions: first, general elements of identification; second, formal elements; third, the situations referred to as emergencies; and fourth, the measures employed. In order to find suitable variables and indicators, we carried out a qualitative immersion in the decrees. At this stage, we counted on the support of various researchers and carried out a dialogue between text and theory, according to the recommendations of grounded theory.²³ Below, we identify the key findings and different variables established for each dimension as a result of this qualitative immersion.

Dimension 1: General Elements of Identification

In order to link the decrees to their context, it seemed important to establish some simple variables including the

- reference number of the decree,
- date when it was signed,
- date when it was published,
- president who signed the decree, and
- nomenclature (“estado de sitio,” “desastre,” “emergencia,” “estado de excepción”) used in the declaration.

Dimension 2: Formal Elements

As a result of the qualitative immersion and the dialogue with existing theory on RoEs,²⁴ the following five variables were created for this dimension:

- RoE – a nominal variable with three values: constitutional, legal, no explicit reference
- other laws – a dichotomous, nominal variable with two values: yes (if there is a reference to other laws), no (if there is no reference to other laws)
- time limit – a dichotomous, nominal variable with two values: yes (if there is an explicit time limit), no (if there is no explicit time limit)
- area of application – a nominal variable with seven values: national territory; subnational territory; sector or service at the national level; sector or service at the subnational level; social group; political process; cannot be determined

²³ For more information on grounded theory, see Glasser and Strauss (1967).

²⁴ As was pointed out in the outlining of our theoretical framework, the literature on emergency powers has shown a tendency to focus on the formal elements, rather than material contents, of these measures. As Gross and Ni Aoláin (2006) highlight, there are various ways to classify the emergency responses from a more procedural perspective. Furthermore, in the case of constitutional models of accommodation – or RoEs – studies have centered on issues such as time limits, oversight, and the area of their application. Therefore, we decided to take these variables into account in the analysis so as to offer a small contribution to the existing discussion in the literature. Nevertheless, as will already be clear, the focus of this study is both on material and formal elements.

- oversight – a nominal variable with eight values: Congress; the Constitutional Tribunal; the Executive; the organ in charge of disaster relief; subnational authority; civil organizations; combinations of the previous; none

Dimension 3: Situations

The third dimension is related to the situations in whose name the measures were decreed. In the classic literature on RoEs, there are four main such circumstances: war (civil or international); natural disaster; threat to internal order; or economic crisis. According to Bolivia's constitutional law, any of these could represent an "exceptional threat" to the life of a nation and its normal way of functioning. Undoubtedly, in the qualitative immersion there were references to natural disasters, threats to internal order, and socioeconomic problems; in reality, however, the situation was more complex than singular causalities, and as such several points are worth making.

First, it is worth highlighting that we found a tendency to refer to a mixture of different circumstances within a single emergency situation. Therefore, it is necessary to acknowledge that these circumstances are not mutually exclusive and to think of the "exceptional threat" in a different way. For example, it is possible to find references to a situation of protest and natural disaster in the same decree. In the same way, it is necessary to point out that although emergencies as understood by the literature are seen as being "socioeconomic" in nature, we found that the difficulties are rather in the administration or management of certain sectors or services than in the macro-economy or social situation as such. Furthermore, in those cases in which there is a social problem such as unemployment, the difficulty is actually the presence of social tensions or potential conflict rather than economic problems per se. Therefore, in this analysis we have reconstructed the classification of emergencies as socioeconomic ones in order to speak of administrative problems on the one hand and social tensions on the other.

From this more nuanced perspective, it is possible to establish different variables and to offer some indicators that come directly from the decrees themselves:

- internal disorder – protest, violent clashes, *coups d'état*, subversion, police abandoning their tasks
- insecurity – drug trafficking, money laundering, theft, human trafficking
- latent social tensions – poverty, unemployment, inhuman living conditions²⁵
- poor management of a sector or service – corruption, speculation, informal economic activities, poor condition of infrastructure, smuggling

25 In some decrees, references were found to "conmoción interior" (internal strife), which in some instances could be similar to social tension. Fundamentally, the concept lacks a specific meaning and thus appears to be more of a justifying element than a situation in itself.

- interruption in the activities of a sector or service – gas shortage, roads blocked, low levels of production in the agriculture sector
- plan or procedure that is yet to be implemented in a sector or service – agrarian reform, unemployment plan, plan to move a dumping site from one location to another
- adverse natural phenomena – drought, floods, volcano, forest fires
- environmental pollution – anything that is related to pollution
- sanitation problems – influenza, dengue, wounds, lack of available water for human consumption²⁶

Dimension 4: Measures

The fourth dimension is related to the measures employed via the decrees. The constitutionalist literature refers to the suspension of human rights and the concentration of powers in the executive branch, but little else. For its part, the literature on legislative emergency powers has established that any such laws enacted tended to be economic in nature. However, in the decrees studied here we actually found rather different situations. We therefore established the following variables within this dimension, together with some indicators:

- suspension of human rights – suspension of articles from the different constitutions related to human rights, censorship of the media, prohibition of the freedom of movement
- use of the military – appointment of the armed forces to look after installations and roads, militarization of the population, military mobilization, appointment of the armed forces to maintain public order
- use of force – confiscation of goods or services, control of border areas, maintenance of public order in general
- intervention in the management of a sector – intervention in the functioning or state of a sector or service with administrative type measures, for example by changing the director, replacing administrative files, creating employment, offering credit or giving subsidies
- exoneration from ordinary administrative or budgeting procedures – not to have to openly bid for public contracts, to divert funds destined for something else in order to cover the costs of the emergency
- rehabilitation of a service or sector – return buildings, sectors, or infrastructure to their original state via works or purchases, for example by rebuilding a bridge, repairing roads, rehabilitating the agricultural sector
- humanitarian aid – offer of first aid to people affected by a situation that seriously affects their way of life in the framework of risk management, for example by giving refugees beds and food, cooperation for those affected, immediate help

²⁶ We consider the widespread outbreak of disease among livestock to be an emergency situation, given its impact on the agriculture sector (and therefore we do not consider it to be a part of the health problems scenario).

- medical attention – prevention of epidemics, medical aid
- technical measures – offer of a first response in a situation or risk of material damage or to the environment in the framework of risk management, for example by bringing a forest fire under control, undertaking specific activities to reduce damage but not to rebuild, implementing emergency actions and projects, making references to an intervention on the part of the CONARADE

4.2 Results of the Content Analysis of the Declarations of Regimes of Exception

With regard to training in the process of codification, we counted on the help of two researchers in political science from the University of Salamanca, who coded 10 percent of the units of analysis (seven presidential decrees). Global reliability – measured in terms of the percent agreement between two coders – was 87 percent, a level much higher than the usual threshold of 70 percent for this type of study. At the level of the individual variables, all of them had a percent of agreement of over 70 percent, with the exception of two cases: the variable “other laws,” with 57 percent, and the variable “oversight,” with just 14 percent agreement. There are various reasons that can explain why these variables could not be satisfactorily coded,²⁷ but they were, in any case, eliminated from the study so that they would not affect the global agreement percentage of the study.

Below, we present the results of the content analysis for the four dimensions established above.

Dimension 1: General Elements of Identification

As already highlighted, we discovered 65 decrees declaring RoEs,²⁸ enacted by the various different Bolivian presidents in the period between 2000 and 2010. With regard to the nomenclatures, in 2 cases an “estado de sitio,” in 52 cases an “emergencia” and in 11 cases a “desastre” was declared. It is worth pointing out that there were no declarations of an “estado de excepción” during the time period studied here.

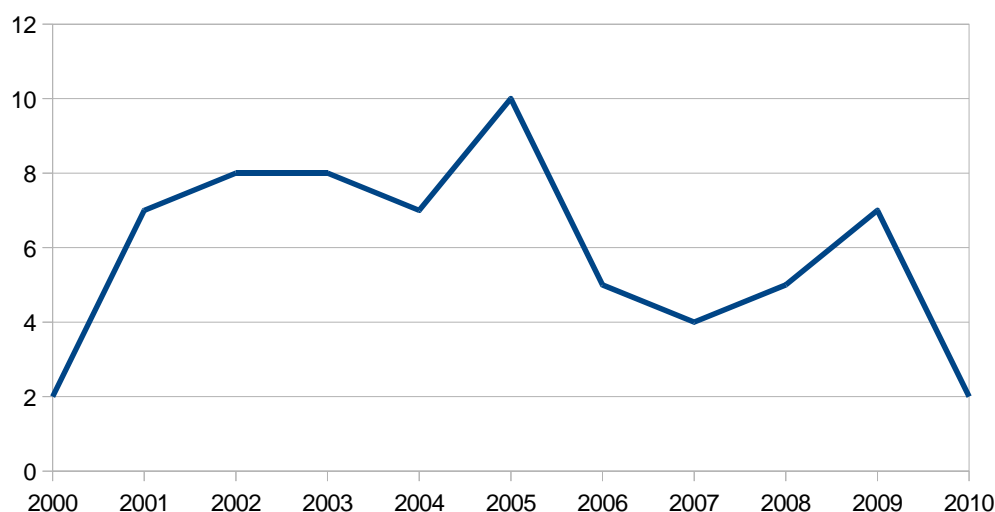
Next, it was of interest to find out how many decrees were enacted per year in the period studied to ascertain if there is a stable tendency over time or if there was a concentration of decrees in one particular period or year. In this sense, it is curious to note that there was an increase in the number of decrees during 2005, just before Evo Morales became president and

27 In the case of the variable on other legislation a good explanation would be that the researchers are political scientists rather than legal experts, whereas in the case of the variable on oversight it could be due to the lack of clarity in the decrees concerning the possibility of overseeing the RoE.

28 A search was carried out in the Gaceta Oficial of the Bolivian state using the same words and terms employed in the RoEs established in the constitution of 1967 (“estado de sitio”), in Law No. 2140 of 2000 (“emergencia” or “desastre”) and in the constitution of 2009 (“estado de excepción”). We found 53 decrees using the nomenclature “emergencia,” ten with “desastre,” and two with “estado de sitio.” None of the decrees declared an “estado de excepción,” the nomenclature of the 2009 Constitution.

at a time when the model of “pacted democracy” was in crisis.²⁹ Afterwards, during the government of Evo Morales (2006–2010), we observed a decreasing tendency to declare RoEs. The graph (Figure 1) below depicts these fluctuations.

Figure 1: Presidential Declarations of Regimes of Exception per Year in the Case of Bolivia, 2000–2010



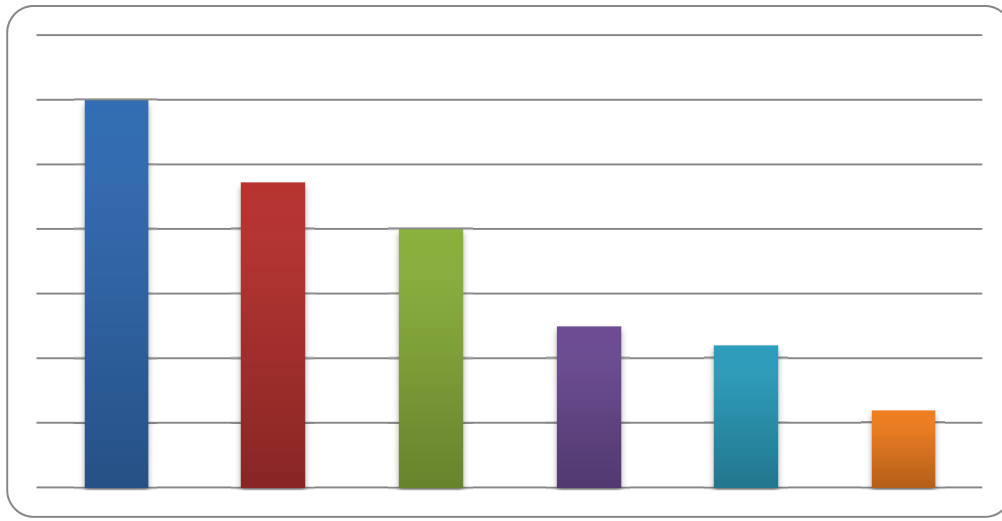
Source: Wright (2012: 107).

Similarly, we observed the number of decrees of RoEs enacted by each president because they represent an important demonstration of executive authority. Although Evo Morales is the most “exceptional” president in gross terms in the period studied here (with 22 such declarations), it is worth remembering that during this timeframe he was in the presidency for five years. In order to compare the different presidents equally, therefore, an average of the number of decrees promulgated per six-month period was calculated³⁰ – a timeframe that corresponds to the shortest presidential administration of this period, that of Eduardo Rodríguez Veltzé. According to these criteria, Rodríguez Veltzé showed the greatest tendency to resort to RoEs during his tenure, with an average of six decrees promulgated per six-month period in government. This is in stark contrast with Hugo Bánzer, an ex-dictator, who had the lowest average number (just over one). Figure 2 charts these results.

²⁹ For a detailed description and analysis of “pacted democracy” in the Bolivian case, see the collective volume edited by Pilar Domingo (2006).

³⁰ The presidents who held office during the period 2000–2010 were: Hugo Bánzer (until August 2001), Jorge Quiroga (August 2001–August 2002), Gonzalo Sánchez de Lozada (August 2002–October 2003), Carlos Mesa (October 2003–June 2005), Eduardo Rodríguez Veltzé (June 2005–January 2006) and Evo Morales (January 2006 onwards).

Figure 2: Average Number of Declarations of a Regime of Exception by each Bolivian President, Calculated per Six-Month Period between 2000–2010



Source: Adaptation from Wright (2012).

Dimension 2: Formal Elements

As already mentioned, the literature has focused almost exclusively on the formal elements of emergency powers in general and of RoEs in particular, thus passing over more material elements. The contribution of this study is to explore both aspects. We feel, therefore, that it is of interest to report our findings related to formal elements to reveal the extent to which the use of RoEs in Bolivia reflects what we think we can theoretically ascertain about them. It is worth remembering that in the intercoder reliability test two of the variables for this dimension had very low levels of agreement and therefore had to be excluded from the final analysis.

With regard to the legal framework, the declaration of a RoE was based mainly on Law No. 2140, with 49 decrees. The constitution of 1967 was the explicit legal basis for the declaration of two decrees. At the same time, 14 decrees were found in which an *emergencia* (emergency) or *desastre* (disaster) was declared (the nomenclatures of the RoEs included in Law No. 2140), a situation identified as exceptional and extraordinary measures established in response. However, in these decrees there is no explicit reference to an RoE included in the Bolivian legislation. These decrees could be deemed “paralegal,” given that they use the same terminology that appears in the legal framework of the RoEs and follow the same format as the explicit declarations but precisely lack an explicit reference to the legal basis that is part of the very concept of an RoE. According to our research criteria, it is important to include them in the analysis given the legal and political nature of the empirical analysis.³¹

31 In this sense we follow, rather than challenge, the precedent established by Ferreira Rubio and Goretti (1998) in their analysis of the decrees of necessity and urgency in the Argentinean case.

With regard to the time limit, it is striking that the vast majority of decrees did not stipulate the length of duration of the declaration. In only 14 decrees was there a reference to a specific or general time limit. On the one hand this may have been due to the fact that, within the framework of Law No. 2140, any such decree was to be later lifted by a separate decree.³² Nevertheless, the lack of explicit acknowledgement that the application of these decrees was temporary certainly makes us question the traditional conceptualization of RoEs.

Lastly, it is interesting to take into account the area of application of the declarations. The subnational territory is the most commonly referred to area (41 cases), followed by the national territory (14 cases), a sector at the national level (4 cases), a sector at the subnational level (2 cases), a social group (1 case) and a political process (1 case). In two cases it is not clear which area the declaration applies to, which in itself is rather curious. In any case, it is possible to conclude that the vast majority of declarations apply to a specific territory, whether it is national or subnational. However, it is also necessary to point out that ten cases represent an apparent innovation, given that they apply to economic sectors or services, social groups, political processes, and even to unidentifiable areas.

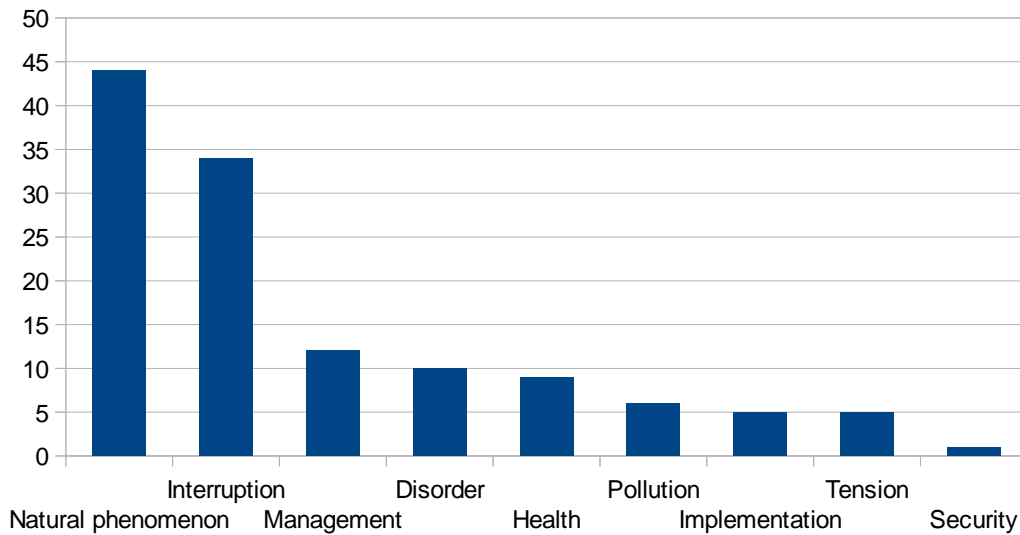
With this brief presentation of the results from the second dimension of our study we have aimed to engage with the existing literature on RoEs. This has been done to show that in practice certain elements are not always followed or adhered to, and as such it may therefore be necessary to revise the procedural type theory on these mechanisms.

Dimension 3: Situations

The third dimension refers to the circumstances defined as “exceptional” and in the name of which extraordinary measures were taken. It is worth reiterating that we discovered references to a mixture of different situations within the same decree. The results of the analysis that are presented in this section are given in gross terms, and reflect the total number of references made to the different situations in the corpus of the 65 decrees scrutinized.

32 Interview with the government official Lic Manriquez, La Paz, January 2012.

Figure 3: Situations Referred to in the Decrees Proclaiming Regimes of Exception in Bolivia between 2000–2010



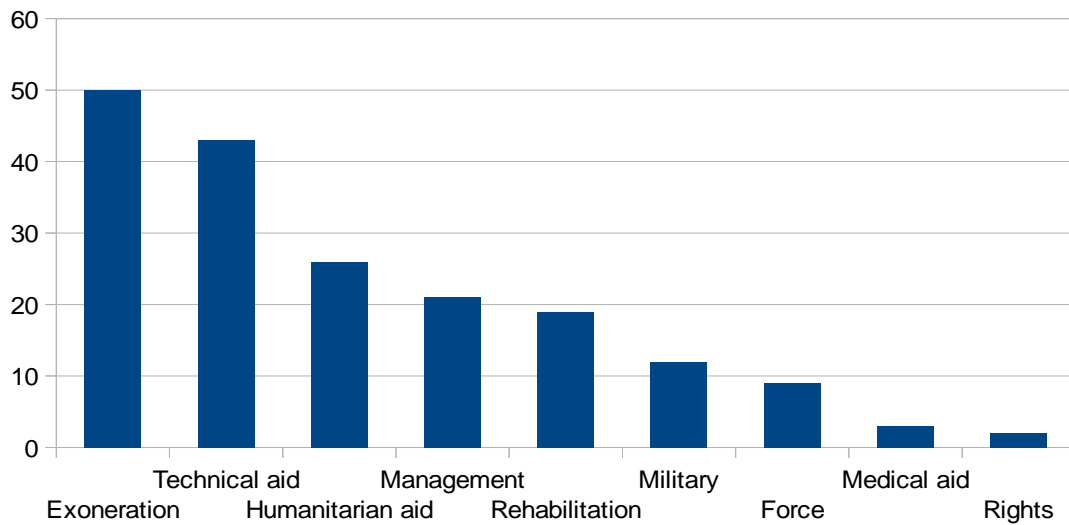
Source: Adaptation from Wright (2012: 110).

One of the most striking results is the considerable presence of adverse natural phenomena (44 cases), as well as of the interruption of economic activities or public services (34 cases). Furthermore, the relatively low levels of public disorder (10 cases) challenge the classic conceptualization of RoEs in Latin America, which posit internal strife as being the key cause of this type of decree. Finally, it is striking to note that in only one case were problems of insecurity referred to as being the motive for the declaration of an RoE.

Dimension 4: Measures

Having presented the results regarding the various situations referred to in the decrees, it is now logical to turn to the measures employed in their name. It is worth pointing out that there was herein a similar tendency to refer to a mixture of different measures within the same decree. The results of the analysis that are presented in this section are given in gross terms, and reflect the total number of references made to the different measures in the corpus of the 65 decrees scrutinized.

Figure 4: The Measures Established in the Decrees Proclaiming Regimes of Exception in Bolivia between 2000–2010



Source: Adaptation from Wright (2012: 112).

The results of this exploratory analysis of the measures employed via these decrees are also very revealing. On the one hand, we observed a considerable tendency to permit exemptions from normal public bidding and budget procedures as well as to give increased technical aid in the context of risk prevention. On the other, human rights were suspended in only two cases, a fact that reflects a marked avoidance of the *estado de sitio* mechanism being declared and that challenges the classic conceptualization of RoEs as synonymous with the suspension of human rights (particularly when employed in practice). Nevertheless, in 12 cases the armed forces were called upon, which in itself constitutes a potential threat to democratic governability.

5 Conclusion

The aim of this paper has been to discover what the role of regimes of exception (RoE) has been in Bolivian politics between 2000–2010. This has been investigated via the empirical analysis of both legal norms and presidential decrees. We feel that the paper is particularly relevant given the lack of systematic studies conducted to date on this type of mechanism in Latin America, despite the latter's ample use by both authoritarian and democratic governments in the region.

On the one hand, we discovered that the normative framework underpinning RoE underwent a number of important changes. The initial mechanism was the *estado de sitio* established by the constitution of 1967, which facilitated military intervention and the suspension of human rights so as to repress internal strife. In 2000, with Law No. 2140 for the prevention of risks and disaster relief and the figures of *desastre* and *emergencia*, RoEs in Bolivia became much more democratic as the military has now been excluded from disaster management

and the pretexts were broadened to include natural, economic, and man-made disasters. Finally, the new constitution of 2009, with its *estado de excepción* appears to mix elements of both mechanisms: on the one hand it emphasizes the need to respect human rights and broadens the pretexts to include natural disaster, while on the other it keeps alive the traditional issues of state security and external as well as internal threats. Undoubtedly, these legal developments are highly significant for Bolivia.

Having carried out the legal analysis, we proceeded to conduct an empirical investigation of the various declarations of a RoE between 2000 and 2010. In general terms, we can state that during this period the presidents of Bolivia enacted a total of 65 decrees proclaiming RoEs. Law No. 2140 provided the normative framework for the vast majority of these decrees, with just two references made to the RoE included in the constitution of 1967. Furthermore, it is interesting to observe that up until the end of 2010 no decree had been enacted with reference to the *estado de excepción* that was established by the constitution of 2009, despite the fact that the legislative framework herein is much broader than it is with regard to the *estado de sitio* of the 1967 Constitution. In the same way, it is necessary to draw attention to the 14 cases in which there was no explicit reference to the constitution or to Law No. 2140, which merely followed the format and language of other decrees.

In terms of the material elements of the decrees, our analysis suggests that their main purpose was not to act as a means by which the military could repress social disorder, as the literature would have us believe. In terms of the situations referred to in the decrees, the most frequent ones were actually related to natural disasters and the disruption of economic activities and public services. Lastly, with regard to the measures employed, the high number of incidences of exoneration from public contract bidding and budget procedures as well as the increased use of technical aid in the context of risk management were very striking.

As a result of our analysis, we have been able to demonstrate how RoEs in Bolivia have evolved from being military instruments of dictatorship to more political instruments of democracy, used predominantly now as a way to deal with the risks presented by natural disasters. While this is undoubtedly good news for democratic consolidation in the country, it does also yield a new and important question that is of tremendous importance in the context of democratic governability: What impact is the exoneration from normal public bidding procedures for contracts having on the use and transparency of public resources in Bolivia? The answer to this crucial question lies, however, beyond the scope of this paper and thus necessitates further research in order to be adequately answered.

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