



# **BOLIVIA** **INFORMATION** **FORUM**

## **Bolivia Information Forum Bulletin** **No. 7, June 2007**

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## **[1] The Constituent Assembly: conflicting visions of the future**

With little by way of consensus emerging on key points, and with its allotted time running out, it seemed increasingly likely at the end of June that more time would be needed for the Constituent Assembly to finish its work.

In Sucre, where the Constituent Assembly has been meeting since last August, deliberations at committee level were due to finish on June 21, to allow time for discussion and approval of proposals in plenary sessions. Given that deciding on voting systems and the setting of basic rules for the Assembly took some 6 months, the committees have had little time to air the main issues. The Assembly is supposed to finish its deliberations no later than August 6. With this deadline approaching, areas of agreement and differences have become much clearer.

### **Frustration and resentment**

Although La Paz is the seat of government, Sucre is the official capital of Bolivia and home to the judiciary. It is a quiet colonial city, belonging to a different time. The Constitutional Court building's balcony now hangs at an angle and its windows are missing. This was the result of a recent dynamite attack by miners belonging to cooperatives who had been protesting at one of the Court's rulings. The damaged building stands as a symbol of the polarization between the different positions in the Assembly. Achieving a consensus is probably impossible, since divergent views are well nigh irreconcilable. The Assembly is basically a struggle for power.

Resentments that go back hundreds of years are welling up, underlying for instance the words of Esperanza Huanca, an indigenous representative from the Norte Potosí, who called the opposition 'pongos' (servants) of transnational companies. Indigenous people, who make up a sizeable proportion of the Assembly, feel that they are not being listened to. They believe that people from the towns do not understand what they are saying. People not only speak different languages in Bolivia, but have very different understandings of the world.

Some of the cross-party committees which are looking at issues such as rural development, social development and land, have sought to produce a synthesis of the views collected in the consultations they have carried out at departmental level with those social groups immediately concerned. They have then summarised key themes and ideas, which have been discussed in detail by the Assembly members. These have then led to final proposals, framed in more legal language, based largely on consensus.

Some Assembly members have expressed fear of professional people influencing the content, complicating what should be fairly straightforward proposals. They say that lawyers and advisors were confusing people with their technical phraseology. Members of the Assembly have also been swamped with information, targeted by the many pressure and interest groups which have tried to get their views heard.

The Assembly is made up of more than 15 political groupings, including many minority groups. However, the biggest blocs are the ruling Movimiento al Socialismo (MAS), Podemos (the main coalition of the right) and Unidad Nacional (centre-right). In some of the committees, notably the one looking at a blueprint for the country's future (*Visión de*

*País*), two possible versions of the constitutional text have been approved, one with a 'majority' vote and the other, runner up, with a 'minority' vote. Both will be presented to the plenary sessions. Given the large number of smaller groupings in the Assembly, the text which was proposed by the main opposition groups has not always been approved as the 'minority' text. In the case of the committee looking at the *Visión de País*, this caused a rumpus when Podemos Assembly members, angry because their text had not been approved, broke into the deliberations of the committee, physically attacking committee members and police alike.

## Indigenous demands

Indigenous groups have five main issues they want the new constitution to respect:

1. recognition of the existence of a plurinational state;
2. judicial pluralism (the coexistence of formal justice systems alongside systems of community justice);
3. respect and recognition of 36 indigenous groups (indigenous 'autonomies') across the country;
4. control of all natural resources by these indigenous nations (not only land and territory, but also subsoil resources, such as gas and minerals); and
5. respect for indigenous forms of direct representation (*usos y costumbres*).

Some indigenous demands are widely seen as going too far, for example replacing the predominance of the Catholic church as the state religion with a religion based on mother earth (*pachamama*). The general tendency within the Assembly is towards embracing a lay state.

## Contentious points

Issues that probably merit further discussion in the plenary sessions include:

- How Bolivia defines itself. Is it to be a unitary nation, or a federation of semi-independent (indigenous) nations?
- The nature of autonomies. Are these to be departmental or indigenous (or both)? What sort of control over resources will these decentralised and autonomous bodies control?
- Land legislation. Most Assembly members accept the principle of land having to fulfil a proper economic and social usage (*función económica y social*). However, there are moves by the right to ensure that land tenure is a matter decided upon at the departmental level. Elites from lowland Bolivia want to defend their control over large extensions of land in this way.
- The right to life. The Podemos-controlled committee on rights, responsibilities and guarantees (*Derechos, Responsabilidades y Garantías*), approved the right to life from conception onwards, a move that will continue to make abortion illegal. The main voice of opposition to this was Loyola Guzmán of the MAS, but many indigenous women and men voted with Podemos.

As the work of the Assembly has progressed, Sucre has become a focus for lobbying by many different groups. In early-to-mid June university students were protesting noisily about university autonomy; miners from cooperatives were seeking recognition of their perceived rights; and indigenous leaders (*mallkus*) from Norte Potosí were poised to march on Sucre to defend the points of interest to them, particularly control of natural resources. Sucre was ringing to the sound of small explosions as people let off sticks of dynamite and loud fireworks to press for their demands.

### **Drawing the threads together**

As of late June, many national issues still had to be discussed. The attention of the Assembly was being diverted into less important matters, such as where the capital of the Republic should be, an issue perhaps given undue prominence in the media. Meanwhile important issues were not being given coverage.

Among the more coherent positions are

- Podemos, which has shown that basically it wants to preserve things much as they are, with fairly cosmetic changes to the existing constitution dating from 1967.
- The *Pacto de Unidad*, which brings together *campesino* and indigenous civil society organisations and has a fairly clear set of proposals.
- The MAS, which has an absolute majority in the Assembly, is only presenting its fuller proposal now, rather late in the process.
- The women's movement, which is one of the groups to have invested most in the development of a widely-shared platform. It has recently reduced its proposals to nine key points.

Notwithstanding these problems, the Assembly gives off a tremendous sense of popular empowerment and there is a widely shared realisation that it is now impossible to put the clock back. Although the future constitution will no doubt need tweaking in years to come, it will in fact be a watershed once it is established. Of all the changes, perhaps the most profound is the role of the country's indigenous peoples in the building of a new Bolivia, making exclusion, at least in theory, a thing of the past.

Over the next months, discussion is likely to be heated, with different sides presenting their views forcibly. The decision on whether to give more time to discussion will have to be taken soon by the executive and the parliament, though a tight limit needs to be put on the duration of the process.

## **[2] Judicial opposition to the government**

The issue of appointments to the Supreme Court emerged in May as a key area of debate, creating new tensions between the government and the opposition parties. As yet the issue remains unresolved.

The wrangle developed as a consequence of the government copying previous government practice by using a decree law to appoint four members of the Supreme Court. The constitution establishes that appointments to the Supreme Court must be ratified by at least two-thirds of the Congress. Although the MAS has a substantial majority in the Chamber of Deputies and one vote short of a majority in the Senate, it was unable to muster the votes required. The vacancies on the Supreme Court therefore went unfilled.

To remedy this situation, the government resorted last December to issuing a decree to fill the posts – along with others vacant. The four temporary appointments made were Carlos Jaime Villarroel, Wilfredo Ovando, Zacarias Valeriano and Bernardo Bernal.

According to the Constitutional Tribunal, however, decree powers can only be used in this way to make interim appointments for a maximum of three months. In early May, therefore, the Tribunal – which has the duty to interpret the constitution – ruled that the four appointments were effectively suspended. The Tribunal then rejected a move by the government to extend the interim period from three to six months, something which it had been prepared to allow on previous occasions.

President Evo Morales retorted by threatening the members of the Tribunal with a '*juicio de responsabilidades*' for exceeding their own jurisdiction by making 'political' rather than 'judicial' pronouncements. This invoked a law dating back to the 19<sup>th</sup> century. Responding to this, the legal establishment attacked Morales for failing to respect the autonomy of the judicial power. A further attempt (on May 18) to win congressional approval of the four appointments failed to muster the two-thirds majority required in Congress.

This stand-off reflects deep distrust between the Morales administration and the senior levels of the judiciary. The judiciary is essentially conservative in its orientation, and keen to act as a restraining influence over the actions of the MAS government. Members of both the Supreme Court and the Constitutional Tribunal were appointed before Morales came to power. For its part, the government has claimed that not only does the judiciary stand in the way of much-needed reforms, but that it is riddled with corruption. This is a view that is shared by most of the population.

One of the issues which the Supreme Court would be called upon to decide would be the '*juicio de responsabilidades*' that the government wishes to pursue against former president Gonzalo Sánchez de Lozada, currently in exile in the United States. The government argues that Sánchez de Lozada was personally responsible for the deaths of 68 people from El Alto during the 2003 'gas war'.

Unless the issue of appointments to the Supreme Court can be amicably resolved, the work of the judiciary may be curtailed. Parallel to this, it is quite possible that the Constituent Assembly – currently sitting in Sucre, the official seat of the judiciary – will

take steps to reform the methods by which judicial appointments are made. The legal community is therefore apprehensive about what could come out of the Assembly which, in declaring itself *originario* last year, upholds that its status is superior to the already constituted branches of the state, whether executive, legislative or judicial. For its part, the Constitutional Tribunal, an institution which only came into being in the last years of the 1990s following earlier constitutional changes, claims that it has the last word in deciding what is constitutional or not.

Currently Congress is involved in a process, led by vice-president Alvaro García Linera, of the naming of the judicial authorities on the basis of merit for the job. Some 160 candidates are having to pass through a series of ever-tighter selection criteria. In this way, it is hoped to avoid the usual political bidding and negotiation (known in Bolivia as *cuoteo*) that have accompanied senior judicial appointments in the past.

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### **[3] Tarija Summit**

The 17<sup>th</sup> annual meeting of presidents of the Andean Community (CAN) took place on June 13-14 in Tarija. The meeting, which marked the transfer of the presidency of the CAN from Bolivia to Colombia, narrowly avoided an open rift between Bolivia and Ecuador (on the one hand) and Peru and Colombia (on the other) over negotiations to enter an association agreement with the European Union. It also led to a joint statement to the US Congress to renew the trade preferences enjoyed by CAN members in the US market. These are of particular importance for Bolivia which (unlike Peru and Colombia) has made clear its unwillingness to negotiate a Free Trade Agreement (FTA) with the United States. Finally, the Tarija summit also saw the reincorporation of Chile into the CAN fold.

European Union. The negotiation of an Association Agreement with the EU has been pending for some years. Since taking office last year, the Bolivian government has shown itself opposed to trade liberalisation, arguing that FTAs tend to favour the stronger rather than the weaker countries in any such negotiation. The Peruvian and Colombian governments, more liberal in their economic policies, are keen to sign up to an association agreement with the EU. The Ecuadorean position has been ambiguous.

Prior to the Tarija meeting, the trade ministers of Peru and Colombia made clear their increasing impatience with Bolivia over the EU issue. Discussions between the Bolivian and EU authorities had failed to resolve differences between the two countries on four important issues: intellectual property rights, investment conditions, services and state procurement.

Bolivia has run into difficulties with firms from EU countries over its policy to increase state control over formerly capitalised companies. From the EU angle, one of the main purposes of association agreements is to improve conditions for foreign investment. Bolivia has also announced its withdrawal from the World Bank's investment dispute arbitration procedures, arguing that these disadvantage countries vis-à-vis investors.

In the end, a formula was adopted that ratified a joint CAN position for negotiations with the EU. These will have three central pillars: political dialogue, cooperation and a trade agreement. EU officials have said that, in negotiations over the Association Agreement, account will be taken of the four points that had been raised by Bolivia.

ATPDEA. ATPDEA (the US Andean Trade Preferences and Drug Eradication Act) provides Andean countries with trade preferences in the US market, tied to progress in eradicating coca. ATPDEA had been due to expire in December 2006, but US congressmen extended it for a further six months, pending further progress in free trade talks between the United States and both Peru and Colombia. Unless extended for a further period, ATPDEA was therefore due to expire on June 30. Many Bolivian producers of manufactured goods (chiefly textiles, clothing, leather and wood) therefore face the threat of losing that privileged access to one of their main markets. Many of such firms are located in El Alto, and some in Santa Cruz

However, with ATPDEA on the point of expiring but without an FTA in the bag for Peru and Colombia, the extension of ATPDEA became a matter of vital interest, not just for Bolivia but also other CAN members. Speaking at Tarija, Colombian President Alvaro Uribe made clear that extension of ATPDEA was not only a key priority for the CAN as a group but that it should be renewed for a reasonably lengthy period of time.

Return of Chile. The Tarija summit, attended by Michelle Bachelet, also marked the reincorporation of Chile into the CAN. Chile left the CAN in the years following the Pinochet coup d'etat in 1973, arguing that the bloc's trade and investment policies were too restrictive. Chile's rejoining of the CAN gives the regional group greater standing, since many believed that Venezuela's decision to leave the CAN (over the decision of Colombia and Peru to negotiate bilateral trade deals with the United States) was a mortal blow to it. Venezuela has since joined Mercosur.

The Tarija summit provided an opportunity for talks between Presidents Bachelet, Peruvian President Alan García and Evo Morales. However, quick progress on resolving Bolivia's *salida al mar* seemed unlikely, not least given the disputes between Peru and Chile over their maritime frontier. Still, Bachelet's presence in Bolivia is a further sign of the improvement in bilateral relations between Bolivia and Chile.

Astute move. This was the first time Tarija has been used as a venue for an international meeting of this kind. Holding the meeting in this lowland gas-producing area, which is part of the *media luna* or 'half moon' region where the opposition is strong, was in itself an astute move that brought together people from across the political spectrum.

## **[5] Coca figures**

The latest figures for coca and cocaine production for the Andean region were published by the **UN Office on Drugs and Crime** towards the end of June. Along with the figures produced by the White House Office of National Drug Control Policy (ONDCP) in Washington, the Vienna-based UNODC provides the most comprehensive and comparable sets of figures for coca and cocaine across the Andean region.

So far as **Bolivia** is concerned, they suggest that:

- **Coca acreages** were up 8% in 2006 on 2005. The 2006 figure was 27,500 hectares, of which roughly two-thirds pertain to the Yungas region and one-third to the Chapare. Cultivation figures were up more in the case of the Chapare than the Yungas. Acreages were also up by a similar amount (7%) in Peru, but down 9% in Colombia. Overall, for the region, coca acreages were down 2%.
- The **farm-gate value of coca leaf** cultivation was unchanged in 2006 (US\$180 million).
- The average monthly **farm-gate price** of sun-dried coca leaf fell sharply to around US\$3.90 per kilo, compared with over US\$5 for much of the previous five years.
- **As a percentage of Bolivia's GDP**, farm-gate coca cultivation was worth 2.1% of the country's GDP.
- At 94 metric tonnes, **cocaine production** (mostly paste) was up 18% in 2006 on 2005, but roughly the same as in 2004. Cocaine production is just a small fraction of that of Peru (280 metric tonnes) and Colombia (610 metric tonnes).
- Reported **eradication of coca** cultivation in Bolivia in 2006 (5,070 hectares) was 17% down on 2005 figures.
- Reported **seizures of cocaine** increased in 2006 by 27%, from 11 metric tonnes to 14 metric tonnes.

While these figures suggest that coca cultivation has increased, the Morales government's claim that it is acting more vigorously to stem cocaine trafficking seems to warrant some credit. The figures for coca and cocaine production are just estimates and need to be observed critically. The full report can be seen at [unodc.org/pdf/andean/Andean\\_report\\_2007.pdf](http://unodc.org/pdf/andean/Andean_report_2007.pdf)

However, it is important to stress that the business of calculating coca acreages is far from scientific, and fails completely to pick up on things like variable yields. As is often the case, the UN figures differ from those of the ONDCP. The latter, which has abandoned giving specific figures in favour of a range of possibilities, suggested at the beginning of June that coca acreages were almost unchanged on 2005. It quoted an upper range figure of 32,500 hectares for Bolivia, and a lower range figure of 21,000 hectares. So the reality is somewhere in between. Hardly very precise!