



BOLIVIA **INFORMATION** **FORUM**

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Bringing the Constitution to life

A series of new laws help provide the machinery with which to implement the new constitution.

When the members of the new parliament, the Plurinational Legislative Assembly (PLA), took their seats in January 2010, their first task was to pass five laws essential to the running of the new plurinational state. These are mainly linked to the judiciary, to electoral procedures, and to decentralisation and autonomies (*Ley del Organo Judicial, Ley del Tribunal Constitucional Plurinacional, Ley del Régimen Electoral, Ley del Organo Electoral Plurinacional*, and the *Ley Marco de Descentralización y Autonomías*). However, the new constitution specified that these laws had to be approved within six months of the PLA taking office. As we went to press, the last of the five laws - on decentralisation and autonomies – was still under vigorous discussion, practically day and night. It had to be approved before July 22.

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The Legislative Assembly is made up of 130 Deputies, as was the Congress that preceded it. Members are elected according to two procedures, either as local constituency representatives, or as part of a party/group 'slate' representing their departments. In the December 2009 elections for the first time, after adjusting representation within the overall 130 seats, the representatives also included seven indigenous/ AfroBolivian people, elected in their own 'special' constituencies. The Senate has 36 members, four for each of the nine departments.

Representation in the Assembly is predominantly of indigenous Aymara and Quechua representatives who are the majority population in

their areas, as well as leaders from lowland indigenous nations, and the representatives from some smaller indigenous groups. An AfroBolivian representative was elected for the first time. Women have gained 30% of the seats in the Assembly as a whole, and nearly half the Senate (47%).

Underlying the thinking here is what is sometimes called 'intercultural democracy'.

Some key issues covered in the new laws are:

- **Judicial elections.** Election of judges to the Supreme Justice Tribunal (SJT) and the Plurinational Electoral Body. The Legislative Assembly carries out a pre-selection of possible candidates for SJT judges and presents a list to the Electoral Body, which then organises a national election from those on the list on the basis of universal suffrage.
- **Indigenous representation.** The election of seven representatives of minority groups (small indigenous nations and AfroBolivians) to the Plurinational Legislative Assembly in 'special constituencies'.
- **The reorganisation of the judiciary.** The national system of justice and indigenous justice systems enjoy equal status in the new judiciary, and representatives of both systems of justice will participate in higher judicial bodies. However, an important element that is still missing is the establishment of the boundaries between the two systems. There is currently some confusion as to which system of law prevails, and this has been misinterpreted at times in cases where people (whether indigenous or not) have taken the law into their own hands.
- **Free access to the justice system.** In the past justice has often worked in favour of those with money and influence. People without such resources have spent years in prison without being brought to trial. Now, with the

administration of justice free to all, such inequalities should be a thing of the past. All stamp duties and extra charges have been abolished.

- **Purifying the judiciary.** All candidates for office in national level judicial bodies will now have to show that, apart from their learning and experience, they have not held posts of responsibility under previous dictatorships. They must also not have handed over natural resources to foreigners. Half of the candidates to these judicial bodies must be women.
- **Autonomies and decentralisation.** The new law provides the framework for decentralisation of power to different regions and peoples. There are four levels of decentralised government: departments (nine); regions (one in the Chaco area of Tarija); municipalities (currently 337), and indigenous (eleven, at the level of municipalities).
- **Centralised responsibilities.** The central government will continue to exercise a series of core functions. These include finance and monetary policy; customs; international trade; defence (armed forces and police); foreign affairs; citizenship; the establishment of strategic state enterprises; policy relating to landholding and titling; the exploitation of oil and gas, minerals and other strategic natural resources; environment policy; national taxation; national planning etc.
- **Coordination.** Discussion on the law on autonomies has centred on how different levels of decentralised government will operate, where there will be coordination with central government, and how responsibilities for certain matters - e.g. health, education, transport, electricity, development planning – will work in practice. There has also been discussion on the attributes of local assemblies.

- **Funding.** This has proved a thorny issue. To date departments and municipalities have received funds from two main sources, the national Treasury and (since 2006) from taxes raised on oil and gas. Areas producing gas, like Tarija, receive much more money per head of population than other parts of the country, exacerbating unequal development. However, for now, despite protests from La Paz and Santa Cruz, the question of funding has not been finally resolved.

Underlying the thinking here is what is sometimes called 'intercultural democracy'. This is based on three kinds of democracy: direct or participatory democracy; representative democracy, and community democracy. Direct democracy includes the involvement of the people in decisions regarding policy and oversight of different levels of governmental practice. Representative democracy means participation of all in elections at different levels. Community democracy entails self-government and exercise of collective rights.

Since the rule of law has traditionally been little respected in Bolivia (not least because of corruption in the judiciary), the new judicial and administrative framework should provide some clear limits as to where the law stands and who is responsible for administering it.

Indigenous rights put to the test

A protest march by lowland indigenous groups has helped define the terms of what their autonomy will mean. However, other tricky issues remain unresolved.

In June 2010 the *Confederación de Pueblos Indígenas de Bolivia*, CIDOB, the national organisation bringing together many lowland indigenous groups/nations, began a march towards Santa Cruz to raise awareness and put pressure on the government to listen to its demands. These are related to three main issues:

- The number of special constituencies created for small indigenous nations in the Plurinational Legislative Assembly. Indigenous groups had originally sought 18 special seats but during negotiations with the opposition on the new constitution in 2009, these were reduced to just seven.

Whilst the Hydrocarbons Law and the Constitution establish the right of indigenous people to be consulted, in practice how this is done has yet to be clarified.

- The nature and attributes of indigenous decentralised government. There are a number of unresolved issues. Can autonomous indigenous governments reach over two or more departments, as do some of their territories? Where would their funding come from (national or departmental coffers)? How would their local governments approve their statutes, according to their own ways of decision-making or by referendum of the population as a whole (as established in the constitution)?
- The right to be consulted regarding measures that affect indigenous peoples. This is particularly the case where natural resources are found within their territory. Whilst, for

example, the Hydrocarbons Law and the Constitution establish the right of indigenous people to be consulted, in practice how this is done has yet to be clarified.

From the government's point of view

The Morales government's economic policy has given priority to the redistribution of wealth generated from taxes on oil, gas and mining. The Hydrocarbons Law approved in May 2005 (before Morales was elected president) established the new framework for oil and gas exploitation. It was up to the new government to put the law into practice, and a year later oil and gas were 'nationalised', contracts with the petrol companies renegotiated, and taxes increased from 18% to 50% of the gross value of production.

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Departmental and municipal governments, along with universities, benefited the most, their budgets increasing several times over. Central government funds were used to finance a series of allowances, for primary school children, pregnant mothers and their infants, and people over the age of 60, the majority of whom had no state pension at all. Though the amounts are relatively small, they are important to families living on very limited means. Still nearly 33% of the population is in extreme poverty (receiving less than \$1 a day).

Also, as of 2006, the government put much effort into the writing of the new constitution. This involved widespread participation throughout the country from different social sectors, including indigenous people. Though the final version was somewhat watered down, as a result of negotiations with the opposition, it was approved in a national referendum in January 2009, with

over 61% of the population voting in favour. The constitution therefore is seen as a key point of reference by the government.

Conflicting views?

Differences in opinion came to a head in June, after several months of deliberations between indigenous groups and members of government. The question became more urgent as the Plurinational Legislative Assembly moved fast to approve - within six months of initiating its term - five laws considered essential to the running of the new plurinational state. These included questions of electoral representation and decentralisation and autonomies, both issues that affect indigenous groups.

CIDOB and those involved in the march were asking for their rights to be respected, particularly self-determination, a key principle on which their position depends. They criticised lack of social participation in developing the new laws. CIDOB has usually maintained some distance between it and the government.

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Members of the government, meanwhile, saw the march as undermining the constitution, putting to the test the east-west alliance of social movements that supports the government (the *Pacto de Unidad*). The government questioned levels of already advantageous representation for indigenous peoples. An underlying fear appears to be that CIDOB was seen as trying to make the consultation on natural resources binding; for the government this meant putting national interests and policies at stake.

Organisations supporting the government, such as the coca growers (*cocaleros*) and peasant organisations (CSUTCB, *Interculturales-Colonizadores*) criticised the CIDOB, and accused them of breaking with the *Pacto de Unidad*.

In an attempt to discredit and weaken the march, some members of government pointed to USAID funding being used to support NGOs with links to the CIDOB. Accusations against the NGOs, including CEJIS – a prestigious NGO that has worked for three decades on human rights in

eastern Bolivia - were unfounded.

Some criticised the government for not pushing harder for change, particularly since the MAS has a 2/3 majority in the Assembly, and could therefore revise laws in favour of the indigenous peoples. The issue, they say, showed up a lack of will (or capacity) to transform the 'colonial' state inherited from successive governments that ruled for a small elite.

Compromise and concrete solutions have thus prevailed, showing that issues like this can be solved by fairly simple agreements.

Agreement

Three MAS Senators from Santa Cruz, Cochabamba and Beni -- Gabriela Montaña, Adolfo Mendoza and Freddy Bersatti -- played an important role in breaking the deadlock. The agreement, reached on July 4, specifies that:

- The national treasury (and not departmental governments) will fund indigenous decentralised government (initially 12 municipalities), thus avoiding the danger of political intervention by departmental governments. Moreover, special funds are to be made available to indigenous local governments.
- Indigenous autonomies will not transgress departmental boundaries.
- Statutes will be approved by indigenous people locally according to their own practices, and then are to be ratified by a referendum involving all people (indigenous and non-indigenous) who live in the area concerned. One of the conditions to having an indigenous autonomous government is that the population must be at least 1,000 in number.

Compromise and concrete solutions have thus prevailed, showing that issues like this can be solved by fairly simple agreements. This dialogue represents a test-case for what is likely to be a key area of future discussion: the participation of indigenous people in consultations (and benefits) relating to natural resource exploitation. Some useful lessons may have been learnt.

UN figures point to stable output of coca

The latest figures from the United Nations Office on Drugs and Crime (UNODC) point to only a very slight increase in Bolivia's coca output in the year to 2009. This contrasts with rather more alarmist figures from US government sources.

According to UNODC, the main multilateral agency that measures trends in drug supply and demand worldwide, the number of hectares planted with coca in 2009 was 30,900, a 1% increase on the 2008 figure. By comparison, coca acreages in Peru were up 7% at just under 60,000 hectares, double that of Bolivia. The increase in Peru appears to have been the consequence of the squeeze on production in Colombia. The total number of hectares under coca in Colombia is put at 68,000, down 16% on 2008. Based on these trends, Peru is now widely expected to recover its position as the world's largest supplier of coca in the next couple of years.

The latest figures therefore challenge the idea that under Morales, coca growing is running amok.

Under Evo Morales, Bolivia's policy towards coca cultivation has been to beef up controls over the areas that individual farmers cultivate, limiting these but avoiding the wholesale eradication policies adopted under his predecessors. The government has negotiated production limits with the various federations of coca farmers in the main growing areas, the Yungas of La Paz and the Chapare in Cochabamba. It is also seeking to develop alternative uses for coca.

The latest figures therefore challenge the idea that under Morales, coca growing is running amok. Of course, acreages are a very imperfect way of measuring production – they take no account of yields or the variable alkaloid content of leaves – but they provide a rough guide to what is going on. The UN figures are widely considered more trustworthy than those produced

by US authorities. According to the 2010 International Narcotics Control Strategy report, acreages in Bolivia increased from 32,000 hectares in 2008 to 35,000 in 2010.

The UNODC is upfront in its report in underscoring the inadequacies of the methodology used to calculate the amounts of cocaine being produced from the estimated coca crop. It makes no estimates for cocaine manufacture in either Bolivia or Peru in 2009, although it notes that cocaine supply on to the world market has remained fairly stable. Estimates of dry coca leaf production reckoned on a small increase in the case of Bolivia, and a rather larger one in that of Peru.

The Bolivian authorities have put emphasis on clamping down on cocaine manufacture and trafficking.

Eradication statistics suggest that the area eradicated in Bolivia was up slightly in 2009 at 6,341 hectares, roughly in line with previous years since 2004. In Peru, eradication fell slightly in 2009. In both Bolivia and Peru, all eradication is manual. Only in Colombia does the law permit aerial spraying of coca plantations with herbicides, which seriously affects all crops in the area.

Cocaine seizures have increased substantially in recent years in many Latin American countries. Seizures of cocaine (cocaine base and salts) in Bolivia were up 62% in 2008, the latest year for which data is available. The Bolivian authorities have put emphasis on clamping down on cocaine manufacture and trafficking. However, anecdotal evidence seems to suggest that an increasing amount of cocaine is now manufactured in Bolivia and Peru as drugs mafias seek alternatives to producing in Colombia; seizures of 'Peruvian' cocaine are more common. It is unclear, then, whether the higher seizure figures reflect greater production levels or increased effort on the part of government anti-drug activities (or a bit of both).

Signs of rapprochement with the United States?

A short visit by Arturo Valenzuela, the US Assistant Secretary of State for Hemispheric Affairs, to La Paz at the beginning of June was widely taken as a sign of Washington's interest in normalising diplomatic relations with La Paz. Full ambassadorial relations were broken in September 2008, following Bolivia's expulsion of the then ambassador Philip Goldberg and Washington's subsequent tit-for-tat expulsion of Bolivia's ambassador to the United States, Gustavo Guzmán.

According to David Choquehuanca, Bolivia's foreign minister, Valenzuela's visit signalled virtual agreement between the two governments on a 'framework accord'. This had been a demand from the Bolivian authorities. The agreement would specify the full range of inter-governmental relations, setting out the conditions under which diplomatic and other staff would operate. One of the obstacles to agreement on a framework deal was, apparently, the role and functions of USAID in Bolivia. Bolivia is particularly sensitive as to the activities of USAID and its staff, and wants more control over its activities.

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The circumstances of Goldberg's expulsion from Bolivia raised concerns that US personnel in Bolivia were operating in breach of rules about diplomatic behaviour. Goldberg had been seen (and photographed) in the company of Rubén Costas, the prefect of Santa Cruz, at a time when Costas had been at the forefront of moves in Bolivia's eastern departments to declare themselves 'autonomous' from La Paz. Following Goldberg's expulsion, the Bolivian government ordered the departure of officials from the Drug Enforcement Administration (DEA), as well as the expulsion of another senior diplomat at the US embassy in La Paz.

Guzmán's departure from Washington left the

Bolivian embassy there in a weak position to defend Bolivian interests. The embassy in Washington has to counter the influence wielded by Bolivian opposition figures in policy-making circles. Of these, the most influential is probably Gonzalo Sánchez de Lozada, the president who was forced to resign in October 2003 and who then took refuge in the United States. Those close to Sánchez de Lozada are in key positions in the administration. The new assistant administrator of USAID with responsibility for Latin America, Mark Feierstein, worked for Sánchez de Lozada's election campaign in 2002.

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However, skirmishes continue. Recently it was suggested that USAID was involved behind the scenes in the conflict between groups in Caranavi-Palos Blancos, over the siting of a fruit-juice project, and also in providing funds to the recent CIDOB march. On July 8 the Association of Mayors of the department of Pando declared Pando 'an Amazonian territory free of USAID', asking a large number of conservation-environmental NGOs with USAID funding to leave the area. For their part, US representatives on the Pilot Programme on Climate Resilience sub-committee voiced serious reservations about funding a Bolivian project, given Bolivia's position in opposing the Copenhagen Accord (though they did not stop the proposal being passed).

It remains unclear exactly when the ambassadorial impasse will be resolved with new appointments from both sides. While a rapprochement with Bolivia has its opponents in Washington, it remains anomalous for the United States not to have normal diplomatic relations with a country like Bolivia. Valenzuela seems to appreciate that. It reduces the capacity of the US embassy in La Paz to stand up for what are considered its 'legitimate' interests. Still, as the role of USAID shows, difficulties remain.