

## Bolivia's New Constitution

*Alex van Schaick, Jan 21 2009*

On January 25, Bolivians will vote on whether to approve a new constitution, which polls indicate will be easily passed. The new constitution will introduce sweeping changes, particularly on indigenous rights and on the fundamental right of every citizen to have access to basic public services. It also calls for a more active role for the state in economic matters and natural resource control. The constitution makes important reforms in the areas of gender, environment, labor, and land tenure. But it remains unclear how many of these changes will be implemented.

In October, Bolivia's Congress approved a draft constitution that will go to a nation-wide referendum on January 25, 2008. Observers agree the constitution will likely be approved given the popularity of President Evo Morales and his left-wing Movement Toward Socialism (MAS) party.

Bolivia follows in the footsteps of Venezuela and Ecuador, which have passed substantial overhauls of their constitutions in 1999 and 2008, respectively. But what changes will Bolivia's proposed constitution put into place?

### *Indigenous Rights*

Strengthening the rights and power of Bolivia's indigenous majority, who have long lacked meaningful participation in politics, is one of the central aims of the proposed constitution. The text designates the Bolivian state as "pluri-national" (a nation composed of many nations) in recognition of the country's 36 pre-Columbian indigenous nations and Afro-Bolivians.

Article 5 requires that the state institutions cater to the linguistic traditions of indigenous people, who may be less comfortable speaking Spanish than a native language. The article stresses, "The official languages of the State are Spanish and all the languages of the indigenous peoples and nations. The pluri-national Government and the departmental governments must use at least two official languages, one of which must be Spanish and the other will be chosen taking into account the use, convenience, circumstances, necessities and preferences of the population."

The Bolivian constitution cements some of the rights outlined in the 2007 UN Declaration on the Rights of Indigenous Peoples, which supports indigenous self-government and self-determination. Article 289 in the constitution stipulates, "Rural indigenous autonomy consists of self-government and the exercise of self-determination for rural indigenous nations and native peoples who share territory, culture, history, language, and unique forms of juridical, political, social, and economic organization."

Concretely, the draft constitution gives indigenous people organized in an autonomous territory the right to write their own statutes, as long as these do not violate any laws or the constitution. Indigenous communities will decide how to manage development—economic and otherwise—

how to administer local natural resources. Local indigenous governments will also be allowed to levy some taxes and appropriate the funds.

Fulfilling a long-standing demand of Bolivia's indigenous groups, the constitution enshrines the right of autonomous indigenous territories to carry out community justice according to their traditional practices—again, as long as government laws are not violated.

### *New Responsibilities of the State*

The state has myriad new responsibilities to the Bolivian people under the draft constitution. Citizens have the right to water, food, education, health care, housing, retirement, electricity, telecommunications, and other basic services. The state will have the obligation to insure access to such basic services in an efficient and equitable manner. Education must be free and health insurance must be universal.

Article 20 establishes access to water and sewage systems as human rights and bans the privatization of these services.

The new Magna Carta guarantees access to pharmaceuticals with the state prioritizing the domestic production of generic drugs. Access to drugs "cannot be restricted by intellectual property rights or commercialization," reads article 41. And Article 42 states, "It is the responsibility of the State to promote and guarantee the respect, use, research, and practice of traditional medicine" and mandates the creation of a register of natural medicines as the cultural patrimony of Bolivia's indigenous people.

### *Sovereignty over Strategic Resources*

One of the central demands of Bolivia's popular movements during protests against the neoliberal governments between 2000 and 2005 was the nationalization of strategic natural resources. The new constitution reflects these demands, although it is unclear what its provisions will mean in terms of future state action.

Article 349 declares, "Natural resources are the inalienable and indivisible property and direct dominion of the Bolivian people and will be administrated, in the collective interest, by the State." YPF, the state oil and gas company, will be in charge of the entire productive chain (exploration, exploitation, commercialization), although it is authorized to sign contracts with private companies allowing their participation in productive activities. Both YPF and Bolivia's state mining company are legally barred from privatization.

### *Gender Rights*

The draft constitution contains provisions that strengthen women's rights although it falls short on abortion and same-sex marriage or civil unions. On the positive side, article 14 prohibits discrimination based on sex, gender identity, or sexual preference. And article 15 contains language against familial and gendered violence. Article 48 guarantees equal remuneration for men and women with the same job.

The constitution also requires equal participation of women and men in Bolivia's Congress. However, the document defines marriage and civil unions as an act between a man and woman. It also vaguely "guarantees men and women the exercise of their sexual and reproductive rights," but does not specifically tackle the issue of abortion, which remains illegal in Bolivia.

### *Workers' Rights*

With regard to workers rights, the new constitution does not fundamentally alter worker-employer relations but offers workers a few new protections. Aside from recognizing the right to strike and form unions, the constitution guarantees job stability. According to Article 49, "The State will protect job stability. Unjustified firing and all forms of labor abuse are prohibited."

Article 54 establishes that workers in businesses that are going bankrupt or are abandoned in "an unjustified way" will be able to take over such enterprises, with State support, and turn them into "community or social" business if such action is in accord with the law and the public interest.

### *Environmental Rights*

Bolivia's draft Magna Carta also has an environmentalist bent. It requires that "all forms of economic organization have the obligation to protect the environment" and that the state and population conserve, protect and sustainably exploit natural resources and biodiversity "in order to maintain equilibrium with the environment." Although such blanket statements sound nice, the real question is to what extent corporations and perhaps more importantly Bolivia's state-owned enterprises will be held accountable for their environmental impact, particularly in light of the importance of natural resource extraction for state coffers.

### *Military Issues*

Following in Ecuador's footsteps, article 10 of the new constitution explicitly prohibits foreign military bases on Bolivian soil. Notably, article 10 also flatly states, "Bolivia is a pacifist State" and the country "rejects all wars of aggression as an instrument to solve differences and conflicts between states."

While Bolivia's new constitution undoubtedly represents a major advance for the country's social movements, the real test will come when its often-vague and unclear language is actually legislated. Implementing some of the constitutions provisions will likely spark protracted legislative battles with the right-wing opposition, with each side flexing its collective muscle in the streets. If implementing legislation is passed, it will be up to the courts to interpret and enforce the laws. This raises a serious problem for the Morales administration: Bolivia's judicial system is in shambles.

It remains to be seen whether the lofty aims of the constitution will yield concrete results.

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