

## **BOLIVIA'S CONSTITUTIONAL REFERENDUM OF 2009 – AN ANALYSIS**

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Very probably, the constitutional referendum of 25 January 2009 is an outstanding event in the history of the domestic policy of crisis-ridden Bolivia after Evo Morales assumed the office of president. Whether and to what extent it constituted a breakthrough for Mr Morales' vision of *refundación* i.e. renewing the foundation of the country, is a question that remains to be analyzed. Bolivia's political process being as complex as it is, the referendum must be seen in the context of Morales' rule as well as against the background of the indictment proceedings initiated against the president in August 2008.

Next to nationalizing the gas industry, the first three years of the Morales government were dominated by the constitutional question. While the decision to convene a constituent assembly (*Asamblea Constituyente*, AC) the adoption of the electoral code, and the election of the assembly itself were supported by common consent, a conflict arose when the government attempted to specify election modalities that favoured the ruling party, Movimiento al Socialismo (MAS). The front between the president-friendly MAS party in the AC and the lowland provinces of Santa Cruz, Tarija, Beni, Pando, Cochabamba, and Sucre hardened, and the domestic-policy conflict grew more dramatic.

Opponents of the draft constitution criticized the government for promoting a conceptually questionable interpretation of citizenship and nationhood, planning to change the electoral code to the detriment of the opposition, eliminating a number of consensus-oriented election rules, pursuing a concept of autonomy that clashed with the wishes of four provincial governments, exaggerating the indigenous content of the constitution, and subjecting the institutions of the state to universal social control. In addition, the text of the draft contained numerous conceptual inconsistencies.

However, criticism was not confined to jurists and the opposition in the provinces. Loyola Guzmán, a former guerrilla and member of the MAS, publicly rejected the constitution because it was not the result of a 'truly social pact' and fuelled confrontation among Bolivians more than any other previous political controversy. Apparently, the hegemony project of the MAS had run into a dead end.

In view of all this, the most powerful opposition party, Podemos, initiated indictment proceedings in parliament in August 2008, hoping that the vote on the constitution might thus be delayed and Morales, if he remained in office,

might be worn out more quickly. The attempt failed, however, for Mr Morales was confirmed in office by a majority of 67 percent. It was only the subsequent outbreaks of violence in various parts of the country which forced the government to enter into negotiations with the opposition, with the result that the draft constitution was revised. The MAS climbed down: proportional representation was retained, sub-autonomies were reduced, and the judiciary was no longer subject to dismissal by referendum. Nevertheless, inconsistencies and contradictions remained, and the opposition lost none of its deeply-rooted mistrust vis-à-vis the constitutional views of the MAS and the president. While pressure had made it possible for the compromise to be accepted in parliament, the opposition still rejects the constitution itself.

At 90.26 percent, the turnout for the constitutional referendum on 25 January 2009 was greater than the historical peak attained in the elections of 2005 (84.51 percent), mainly because of the government's extraordinary mobilization effort.

In the indictment referendum of 2008, the number of voters who turned up at the polls was markedly lower than in the presidential elections of 2005, especially in the oppositional provinces. Conversely, the turnout for the constitutional referendum was much higher in all provinces, apart from Pando. In the oppositional provinces known as *media luna* the turn - out grew by 8.26 in Chuquisaca, by 7.4 percent in Tarija, by 8.24 percent in Santa Cruz, and by 8.8 percent in Beni. In the pro-government provinces of La Paz and Oruro, increases were more subdued at 3.95 and 4.9 percent, respectively.

As the entire government machine had been deployed, it was certainly not to be expected that the constitution would be rejected in the referendum. Moreover, Mr Morales and his team appeared to be floating on an updraft, having survived the indictment referendum. Yet even though a large majority accepted the constitution, the result does not give the government carte blanche.

Not least among the effects of the constitutional conflict is that it strengthened the opposition, which won four *media luna* strongholds while another four went to the government. In embattled Chuquisaca, which had given Morales a lead of 54 percent in the indictment vote, the government won only by a hair, and in Cochabamba the opposition amassed more than two thirds of the vote. One thing appears certain: the government won but was weakened, the opposition lost but was strengthened.

There are remarkable differences not only between provinces but also between town and country. In six out of nine provincial capitals, the constitution was rejected clearly, i.e. by between 53 and 70.98 percent of the vote. The difference in Nay votes between town and country was as high as 21.39

percent in Sucre. On the one hand, this reveals a structurally consolidated regional split between the *media luna* provinces and the highlands. On the other, there is an equally consolidated difference between town and country. All this clearly shows that Evo Morales has lost the backing he used to enjoy among the urban middle classes.

The constitutional referendum was accompanied by a *referendum dirimidor* to decide about the maximum size of private landholdings. As early as 2007, a draft referendum had provided for a ceiling of either 5,000 or 10,000 hectares. As the current limit is 50,000 hectares, it was decided in the negotiations not to apply the law retroactively, so that the law now says that the limits defined in the *referendum dirimidor* will apply only to landholdings acquired after the new constitution comes into force.

All this shows the deficiencies of the new constitution. Thus, for example, Art. 398 defines large landholdings as 'unproductive possessions', whereas Art. 399 prescribes that any part of a landholding that exceeded the statutory limit should be expropriated if it fulfilled a 'socio-economic function'. The question is: what will happen to a part of a holding that exceeds the statutory limit but does not fulfil the aforementioned function? As land ownership is a question that is highly charged ideologically, implementing the constitution and its moot regulations harbours much conflict potential.

That the constitution has been accepted does not mean that the polarization which Bolivia's society has experienced in recent years has been overcome. The Morales government is under great pressure, particularly as it has no majority in the senate. This means that every new project is likely to give rise to a confrontation in which the government will probably rely on its old strategy, i.e. switching back and forth between parliamentary work and extra-parliamentary pressure.

Because of the problems inherent in the constitution and the numerous particular interests involved, the legislative projects that are awaiting implementation will probably cause further and more embittered conflicts and fuel polarization in the country. The rifts within the MAS will continue to open wider, and Mr Morales will be fighting on more and more political fronts until presidential and parliamentary elections are held late in 2009, followed by local and provincial elections in the spring of 2010. Nor can the option of early elections be ruled out in view of the predictable effect of wear and tear on the ruling party and the president.

All players should appreciate that only a new form of *democracia pactada* can produce reforms that are accepted by as many citizens as possible. At the moment, however, everybody appears to be pinning their hopes on the coming presidential and parliamentary elections, in the run-up to which only the most indispensable compromises will have to be made.

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