

Flash Report

Bolivia Between Referenda: From Recall to Ratification of a New Constitution

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Executive Summary

The incumbent President of Bolivia, Evo Morales, of the Movement Toward Socialism (MAS), was elected in 2005 on a platform of constitutional reform. After convening a constituent assembly, a new constitution was written (Asamblea Constituyente de Bolivia 2008) but the final vote was boycotted by most of the opposition (Rojas Ortuste 2008: 3). Fearing the centralization of power, leaders of sub-national governments—known as prefects—from the media luna (the four departments of eastern Bolivia, which together take on the rough shape of a half moon, and include Santa Cruz, Tarija, Beni, and Pando) held referenda on statutes of autonomy that would give them greater power vis-a-vis the central government. The stage was set for a showdown. Seeking a way out of the impasse, a recall referendum was called for both the president and the prefects.

The recall referendum was held on August 10, 2008. President Morales received the support of 67 percent of those who voted. No MAS prefects were recalled. The percentage of support Morales received, compared to the December 2005 presidential election,

increased in all but one department. In 6 of the 9 departments, Morales received a majority of support, while one department was evenly divided, and two voted to recall the president. At the same time, the opposition prefects were also reaffirmed by large margins, except Manfred Reyes Villa, the prefect of Cochabamba (a fifth opposition prefect, from the department of Chuquisaca, was recently elected and was thus not subject to recall).

Thus, on the one hand, the Morales government expanded its base, and was emboldened to push forward with its proposals for constitutional reform (Rojas Ortuste 2008: 6). On the other hand, opposition prefects dug in their heels and said they would apply the autonomy statutes. The confrontation reached a climax when government offices and oil and gas installations were taken over, road blockades erected, and on September 11, an estimated 20 pro-Morales campesinos were killed in massacres in the northern department of Pando (Mattarollo et al. 2008). The deteriorating situation in Bolivia caught the attention of its neighbors, and the Union of South American Nations (UNASUR) moved quickly to call for dialogue between the government and opposition. This opened the way to an agreement to submit a modified version of the constitutional text to referendum on January 25, 2009.

In this report, we suggest that democracy can be measured along three dimensions: (1) elections, (2) constitutions, and (3) citizenship. On each of these dimensions, the recall and its aftermath highlights important challenges facing Bolivian democracy. UNASUR has played a



EVO MORALES AT HIS INAUGURATION IN 2006
photo by Jaume d'Urgell

constructive role in defense of Bolivia's democracy. Although not a member of UNASUR, Canada can help the international community articulate a clear and consistent call for adherence to basic constitutional principles (especially respect for the rule of law by the executive at the national and subnational levels) and protection for citizenship guarantees, as a necessary part of the context within which the preservation of core institutions of electoral democracy can be achieved.

Run-Up to the Referendum

By Carlos Toranzo Roca

As of June 2008, the various departments of the media luna held referenda that revealed a strong support for statutes of autonomy. For a while, it looked as if the autonomist departments would refuse to participate in a national recall referendum called by the MAS government. This left the administration of President Morales looking weak and exhausted. Paradoxically, the opposition party PODEMOS (Democratic and Social Power), which holds a majority in the Bolivian Senate and is led by ex-President Jorge Quiroga, dusted off the MAS proposal for a recall referendum, originally submitted in January 2008, and won the approval of the text in the Parliament.

It is not clear why PODEMOS did this. One interpretation is that it sought to prevent the MAS from calling a referendum on its constitutional proposal, which was approved in Oruro in December 2007. Another interpretation is that PODEMOS's leaders may also have felt that the regions were emerging as the real opposition to MAS, and they wanted to be more visible as the effective opposition in Bolivian Congress.

The PODEMOS strategy caught the prefects off guard. In May, it appeared that most would not accept the recall referendum. Then divisions emerged. The leaders of Santa Cruz and Beni departments unilaterally changed their mind and decided to submit to

recall. In the middle of all this, the department of Chuquisaca voted for an opposition prefect, Savina Cuellar, who won largely with urban votes (rural voters tended to back MAS).

There were attempts to stop the referendum, both through the Constitutional Tribunal and departmental electoral courts. This ended when the National Electoral Court (CNE) refused to accept opposition complaints and, in concert with departmental courts, accepted the responsibility of administering the referendum.

The CNE also accepted a controversial proposal that departmental prefects would be recalled if they received less than half of the votes, while the president would be recalled if a greater percentage of people voted against him than those who voted for him in December 2005: 53.7 percent. In other words, while Morales needed to win only 46.3 percent of the vote, the prefects needed to garner 50 percent plus one. This determination by the CNE modified the previous bar for the prefects, in which case they would have been recalled if the percentage of 'no' vote exceeded the percentage by which they had been elected in 2005, which in all cases was less than 50 percent. However, because the new threshold for prefects was established so close to the referendum, and due to public debate over the validity of the CNE's decision, voters went to the polls in a atmosphere of uncertainty.

Venezuelan President Hugo Chavez visited Bolivia twice during the campaign, ostensibly to support Morales; Brazilian President Luiz Inacio "Lula" da Silva visited once. One visit by Chavez and another by Argentina President Cristina Fernández had to be cancelled due to protests. Brazil and Argentina, though members of the dialogue-centered "Friends of Bolivia," appeared to be supporting the president.

In the run-up to August 10, tensions flared. President Morales was unable to visit five departmental capitals due to protests. A confrontation with miners in Huanuni cost four lives. Some groups used the campaign to advance their interests. A hunger strike by people with disabilities won them government vouchers; the Bolivian Workers Central, the principal trade union confederation, secured a pension law modification.

Prior to the referendum it seemed that the conflict could not be resolved by effective leadership or elections, and that it would only reinforce the entrenched power of two irreconcilable positions. What is more, the conflict would be exacerbated by violence, rural-urban cleavage, a weak state, and the lack of institutional checks and balances.

For the full text of this analysis, see Toranzo (2008), available at: <http://blogs.ubc.ca/andemandemocracy/>

Election Results and Aftermath

According to the CNE's final count, President Morales received support from roughly 2 of every 3 voters. His greatest support came from the departments of Potosí (85%), Oruro (83%) and La Paz (83%), and his lowest is from Santa Cruz (41%), Beni (44%) and Tarija (50%). The level of support for Morales increased as compared to the 2005 election (see Table 1).

Morales' increased support is qualified by the fact that in 2005 there was a crowded political field in which 8 parties competed in the national elections. By contrast, the referendum question simply asked: "Are you in agreement with the continuation of the process of change led by President Evo Morales Ayma and Vice President Álvaro García Linera?"

Table 1:
Support for President Morales, nationally and by department (percentages)

	2005 ELECTION	2008 RECALL	CHANGE
CHUQUISACA	54%	54	0%
LA PAZ	66	83	+17
COCHABAMBA	65	71	+6
ORURO	63	83	+20
POTOSI	58	85	+27
TARIJA	31	50	+19
SANTA CRUZ	33	41	+8
BENI	16	44	+28
PANDO	21	53	+32
NATIONAL	54%	67%	+13%

Source: Bolivia's Corte Nacional Electoral.

Election Results and Aftermath Cont'd.

On a departmental level, two prefects lost their seats. Cochabamba Prefect Manfred Reyes Villa, an opponent of Morales, garnered only 35 percent of his department's votes. In La Paz, the non-MAS, but more conciliatory Jose Luis Paredes, similarly received 35 percent. No pro-MAS prefects were recalled. President Morales interpreted the referendum victory as a mandate to move forward with constitutional change. On August 28, Morales scheduled a referendum on the new constitution to take place on December 7, 2008, along with the election of prefects to replace Reyes Villa and Paredes.

Opposition prefects rejected the planned referendum, declaring they would block polling in the media luna. The president of the Electoral Court, José Luis Exeni, declared the December referendum illegal, since it was called by executive decree, rather than by a law of Congress. The Electoral Court also declared illegal a referendum on autonomy in Chuquisaca, and plans by Santa Cruz to implement its autonomy statute and hold departmental elections independently of the federal government. Morales responded by taking the question of the constitutional referendum to the Congress for approval, and issuing a new executive decree that scheduled the La Paz and Cochabamba prefect elections for January 25, 2009.

The opposition escalated protests

against the proposed constitution with work stoppages, road blockades, and the seizure of governmental offices, oil and gas installations and airports. This led to street fights, looting, and arson. The violence reached its zenith on September 11 in the department of Pando. An estimated 20 pro-Morales peasants were killed and dozens injured, with many more reported missing. On September 15, President Morales declared a state of siege in Pando, sent armed forces into the department, and accused the prefect, Leopoldo Fernández, of provoking the violence. Fernández, who denied any involvement with the killings, was arrested and replaced by an interim prefect, naval admiral Landelino Bandeira Arze. The opposition called for the release of Fernández and others arrested in relation to the recent confrontations.

On September 15, nine South American presidents, Morales included, attended an emergency meeting of the Union of South American Nations (UNASUR) convened by Chilean President Michelle Bachelet in Santiago, Chile. In the Declaration of La Moneda (Mattarollo 2008: 5-6), the presidents expressed support for Morales and called for "all political and social actors involved to take the necessary measures so that acts of violence, intimidation, attacks on the democratic institutionality and established judicial order cease immediately."

The Declaration created a commission of "support and assistance" to "accompany the tasks of this dialogue table conducted by the legitimate government of Bolivia."

Monitored by UNASUR, and under pressure in the streets from supporters of the MAS, the Bolivian government and opposition PODEMOS agreed to a dialogue in the nation's Congress where the MAS has a majority in the lower house while PODEMOS and its allies hold the balance in the Senate. By late October a deal was reached to submit a modified text of the constitution to a referendum in January 2009. The agreement was announced by Morales on October 21 before throngs of supporters, some of whom had marched 200 kilometers to demand a referendum.

As part of the agreement between the government and the opposition, over one hundred articles of the constitutional proposal were modified. Some changes were symbolic (such as the inclusion of a reference to the Bolivian nation), while others were more substantial (like the size and method of election of members of the legislature and the recognition of departmental autonomy). Morales conceded that he could only run for re-elected once in presidential elections to occur at the end of 2009.

Whither Bolivian Democracy?

The crisis in Bolivia reinforces a key generalization that can be made about democracy in Latin America: regime crises, when they occur, are not generally due to the forceful overthrow of electoral regimes, nor the failure to hold free and fair elections, but are typically the consequence of the actions of democratically elected politicians operating in constitutional systems that cannot adequately regulate societies characterized by high levels of exclusion. One of the premises of research conducted by participants of the Andean Democracy Research Network is that democracy can be measured along three dimensions: (1)

elections, (2) constitutions, and (3) citizenship. In an electoral democracy, elections are based on universal suffrage, they are clean and free, and any citizen can run for office. In Bolivia, free election based on universal suffrage has been achieved, but elections are often flashpoints for conflict, and elected officials do not always complete their mandates in office. The recall election, despite turbulence and voter registration problems, faithfully reflected public opinion.

In a constitutional democracy, the executive abides by the law and constitution and respects the competence and jurisdiction of the other branches

of government; the legislature legislates in the public interest and holds other branches accountable; and the judiciary is independent and impartial. In Bolivia, there is no consensus on the legality of the draft constitution or the autonomy statutes, nor on the rules governing constitutional change; uncertainty about what percent of the vote is necessary for recall; and little confidence in the impartiality of the courts or electoral authorities. At the same time, both the government and the prefects accuse each other of exceeding their powers and breaching due process.

There are signs that both sides are committed to the preservation of

constitutional democracy. To take a minor example, the use of presidential decree to schedule a vote on a new constitution – in no sense a minor administrative issue – was troubling, but it was also reassuring that Morales accepted the Electoral Court's ruling that his decree was illegal, and submitted the question to Congress.

In a citizens' democracy, basic civil rights (to a fair trial, for example), political rights (to engage in normal political activity without harassment and intimidation), as well as socio-economic rights (the basic necessities for a life of dignity and autonomy) are guaranteed and protected by the state. Bolivia's courts will decide the fate of Fernández, who is currently incarcerated in the

wretched and dangerous San Pedro prison. His replacement by a military leader, as well as the prolonged state of siege imposed on Pando, constitute a worrisome albeit temporary suspension of democratic rights and freedoms at the sub-national level (Rojas Ortuste, Veneros and Zuazo Oblitas 2008: 11).

These dimensions of democracy may be isolated analytically, but in practice the performance on one dimension affects outcomes on the other. Declarations by prefects of the media luna that they will not allow the constitutional referendum to proceed in their departments offers an example of how a disagreement over constitutional rights can undermine a core feature of electoral democracy: the right to vote.



MORALES SUPPORTERS RALLY IN MARCH 2008
photo by flickr user GafferBee

Canada's Role

The crisis in Bolivia poses dilemmas for the international community. It is important that the crisis not spread outside Bolivia's borders, and that the pressures for autonomy not divide Bolivian territory. Interference by other countries in Bolivian affairs is counterproductive. One of the surprises of the Bolivian crisis has been the active role of UNASUR. Although Canada is not a member of UNASUR, it can, nevertheless, support dialogue among all legitimate actors—dialogue based on respect for human rights and the right of

all citizens to determine their own future collectively, within the rule of law. As Carlos Toranzo puts it, "Canada should support multilateral efforts by UNASUR and the OAS which are seeking to create dialogue between the government and the opposition."

As Bolivia prepares for the referendum on the new constitution in January 2009, Canada can help the international community, particularly through the OAS, to articulate a clear and consistent voice on fundamental principles underpinning

respect for human rights, the rule of law, and constitutional democracy. This is all the more important given that constitutional change is rarely achieved by strictly constitutional means, as the crisis in Bolivia illustrates. Canada should encourage adherence to basic rights and freedoms and protection for citizenship guarantees, as a necessary condition for the preservation of core institutions of representative democracy, as articulated in the Inter-American Democratic Charter.

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