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## Bolivia's New Constitution: Towards Participatory Democracy and Political Pluralism?

*Almut Schilling-Vacaflor*

*Abstract:* In Bolivia, rights to increased political participation and the recognition of indigenous political systems are interrelated. The new constitution of 2009 defines Bolivia as a representative, participatory and communitarian democracy. It incorporates enhanced mechanisms and institutions for participatory democracy. Moreover, new social rights have been anchored in the constitution and a plurinational state is supposed to be constructed. The article raises the question of whether the new constitution will change the relations between state and civil society considerably and whether a new democratic model is being established in Bolivia. I argue that there are many limiting factors when it comes to putting the emancipatory elements of the constitution into practice. These include the increased strength of the executive branch, the intent of the government to co-opt civil society organizations and to exclude dissident views, the resistance of the conservative opposition to losing some of its privileges, the deep-rooted social inequality, the social conflicts and polarization, the resource dependence of the current economic model, and the authoritarian characteristics of indigenous self-governance structures. The article demonstrates that the new Bolivian constitution cannot create a new society but that the processes around the elaboration of a new basic law have contributed to considerable changes in the social, political and symbolic order. *Keywords:* Bolivia, constitution, participatory democracy, indigenous peoples, social rights, political pluralism.

The new constitutions in Latin America are part of the 'fourth wave of constitutional change', which began in the 1990s (Van Cott 2000).<sup>1</sup> Over the last two decades, almost all Latin American states have adopted new constitutions or have significantly changed the existing texts. These new constitutions are more political than their predecessors and aim to have an integrative social function. Most of the recent constitutional changes have been demanded 'from below',<sup>2</sup> and the new constitutions can be seen as reactions to the multiple crises of Latin American states: the representation deficit of traditional political parties; the increasingly criticized high levels of social inequality connected with the failure of poverty reduction strategies; and ethnic discrimination perceived as a continuity of colonization and social protests (see Wolff 2008, Van Cott 2000, Assies 2000) that in some cases have culminated in forced presidential demission (see Llanos/Marsteintredet 2009). The new constitutions have thus been adopted with the aims of reducing the gap between civil society and state and to secure state stability. In some cases (e.g. Venezuela, Bolivia, Ecuador) they were part of 'constitutional battles' against oppositional forces (see Nolte/Horn 2009).

Because of their common procedural and substantive characteristics, the new constitutions of Venezuela (1999), Ecuador (2008), and Bolivia (2009)<sup>3</sup> have been designated by some scholars as marking the beginning of a 'new Andean Constitutionalism' (Noguera 2009) or of a 'new Latin American Constitutionalism' (Noguera 2008, Martínez Dalmau 2008, Gargarella 2008). All of them were compiled by constituent assemblies and adopted in referendums, thus the degree of participation in the constitutional change processes was relatively high. At the same time, in

the three Andean countries the influence of the executive branch on these processes was significant. The new constitutional texts can be classified as ‘multicultural constitutions’ or, in the cases of Bolivia and Ecuador, as ‘plurinational constitutions’ (see Yrigoyen Fajardo 2010) that strengthen the state’s control of the economy and incorporate enhanced human rights, particularly social rights, and all of them give more importance to participatory democracy. New state powers and institutions have been incorporated – amongst them the Poder Ciudadano in Venezuela, the Función de Transparencia y Control Social in Ecuador (2008), and the ‘new spaces for participation and social control’ at all state levels in Bolivia – and new mechanisms of direct democracy, such as the citizen’s legislative initiative, the recall referendum, and obligatory referendums for constitutional changes, have been inscribed. Apparently contradictory to pushing forward participatory mechanisms, at the same time the three constitutional texts further increased the power of the executive branch (see Gargarella 2008).

Many authors highlight the positive characteristics and consequences of direct democracy. These include the improved transparency and accountability of political parties and state institutions, decision-making based on broader civil society support, and increased knowledge about political issues on the part of citizens (see Sousa Santos 2005, 2009; Schmitter 2000). Nevertheless, there are other cases that point to the negative consequences of direct democracy; for example, when citizens are manipulated by a one-sided communications media or political discourse, when certain actors instrumentalize direct democracy to gain power or when anti-democratic societal tendencies are strengthened through participatory processes. Breuer (2008) argues that direct democracy in Latin America since the 1990s has largely been a top-down affair induced by executive-legislative conflict and that it has done little to foster accountability. In the academic literature we can find many different conceptions about the ‘right balance’ between participatory and representative elements in democracies (see Hagopian 2007). But it is undisputed that more research about the complex relations between societal sectors and the state is needed in order to understand democracies in their specific social, economic and cultural contexts (Tulchin/Ruthenberg 2007, Hagopian 2007).

This article analyses the changing democratic model in Bolivia, focusing on the relevant provisions of the new constitution, which aims to establish a ‘participative, representative and communitarian’ democracy (Art. 11 of the Bolivian constitution), as well as on the challenges regarding its implementation. The supposed increase of participation and representation of civil society in Bolivian politics is connected with the inclusion of hitherto marginalized sectors of society as well as with the recognition of culturally diverse political views and systems. Thus, political participation and political pluralism are interconnected in the Bolivian case and are analysed in equal measure. I will show that processes with the potential of democratizing Bolivians democracy such as the empowerment of hitherto marginalized groups are being restricted and distorted in practice by countervailing tendencies such as authoritarian traits of the governmental party, historical power asymmetries, conservative oppositional forces and new exclusions of social actors. Empirically, this paper is based on field research and qualitative interviews conducted in Bolivia between October 2005 and April 2009, particularly with leaders of indigenous, peasant, and unionized labour organizations; politicians; and social scientists.

In the context of the recognition of (pluralist) participatory mechanisms, a central question is whether the necessary preconditions for participation exist (see Fraser 2003; Sunstein 2001, 223). In particular, the factual existence of social rights such as access to information, education, food, and health care is of primordial importance to one's ability to exercise civil and political rights. A common characteristic of Latin American states is that the 'third wave of democratization' (Huntington 1991) did not succeed in reducing social inequality and that high levels of poverty thus remained (O'Donnell et al. 2004, Wolff 2008). As poverty and political underrepresentation are generally connected in multiple ways (see Fraser 1990, Bourdieu 2001), marginalized groups face the difficult task of introducing their visions and demands into state politics. A reflection of this interdependency in the Bolivian case is the fact that, until recently, the majority indigenous population<sup>4</sup> constituted a political minority.

For my analysis of the socio-political significance of the new constitution and in order to assess the changing relationship between state and civil society in Bolivia, I refer to the concept of 'strong publics' elaborated by Nancy Fraser (1990). This concept describes an alternative, post-bourgeois conception of the public sphere. Because of existing (more or less subtle) exclusionary mechanisms in society and politics, Fraser proposes that the aim should not be the establishment of one allegedly 'universal' or 'bourgeois' public sphere; rather, many competing public spheres should coexist. Those 'competing counterpublics' comprise alternative styles of political behaviour as well as alternative norms of public speech (Fraser 1990, 61). For Fraser, the existence of 'strong publics' entails (1) social equality as a necessary condition for political democracy, (2) multiple public spheres, (3) the possibility of decision making and not just opinion forming on the part of civil society, and thus (4) the lack of a sharp distinction between state and civil society. Fraser's concepts are particularly apt to analyse changing state-civil society relations in Bolivia, as they include three central dimensions: political participation, social equality and political pluralism (multiple political public spheres).

### **A difficult history: participation and democracy in Bolivia**

Prior to the national revolution in 1952, a great majority of Bolivia's population was excluded from political participation due to discriminatory legislation that conceded the right to elect and to be elected only to literate and salaried men. According to García Linera (2005, 15), from 1880 until 1951 only approximately 2 to 3 per cent of Bolivia's population had the factual right to vote. As in other Latin American states and in many countries worldwide, the model of explicitly unequal treatment of citizens according to certain characteristics was abandoned in Bolivia in the 1960s, when a homogenizing state model under which every citizen was to be treated equally was implemented (Kuppe 2002, Albó/Barrios 2006). Human rights such as the right to vote and the right to basic education were extended (at least theoretically) to every citizen, and enhanced social welfare policies were implemented. Nevertheless, cultural diversity was not recognized, a new and restricted political elite emerged, and exclusionary mechanisms were created anew or partly remained unchallenged. The wide gap between state and civil society as well as high levels of social inequality persisted despite enhanced social policies.

Indigenous and *campesino* sectors of society were leading forces in the national revolution of 1952 and unionized *campesino* organizations were strengthened (and partly created) by the MNR (Movimiento Nacional Revolucionario) regime afterwards (Rivera Cusicanqui 2003). These organizations subsequently established alliances with political parties as well as with the later military dictatorships (Assies/Salman 2005). However, the subordination and co-option of the *campesino* representatives and their demands was a common occurrence; this led to the disruption of the alliances and to the creation of new autonomous movements and organizations such as the Kataristas in the 1960s and the Confederación Sindical Única de Trabajadores del Campo de Bolivia (CSUTCB) in 1979. These highland organizations demanded an end to the economic discrimination they experienced as *campesinos* and to the cultural discrimination they were subjected to as members of indigenous communities (Albó/Barrios 2006, 121; Rivera Cusicanqui 2003) – or, in Fraser’s words (2003), ‘redistribution and recognition’. Other unionized peasant organizations, the Cocaleros (Coca Growers) and the Colonizadores (Colonizers), originated in the Bolivian valleys and the tropical region (particularly Cochabamba, Chaco, Santa Cruz, Tarija, Alto Beni) as a consequence of internal migration movements connected with the implementation of neoliberal policies that resulted in the closure of mines and other state enterprises.<sup>5</sup> Indigenous organizations also expanded in the lowlands and the Amazon region under the umbrella of the Confederación Indígena del Oriente Boliviano (CIDOB), and in 1997 the ‘traditional’ Ayllu organizations of the highlands created the supraregional organization Consejo Nacional de Ayllus y Markas del Qullasuyu (CONAMAQ) (see García/Chávez/Costas 2004, 210). Thus, one should bear in mind that indigenous-*campesino* movements in Bolivia should not be conceived of as a monolithic bloc as ‘very different concepts of ethnic-cultural consciousness and political projects still coexist’ (Stroebele-Gregor 1994, 5; see also Lucero 2008).

As of the 1990s, indigenous-*campesino* organizations became the driving forces in challenging the existing social order and demanding profound state transformation (see Tapia 2007, 107). Their increasing importance was also due to favourable developments at the international and national level. These included the enhanced recognition of indigenous peoples’ rights in international human rights instruments (particularly the ILO Convention 169 and the UN Declaration on the Rights of Indigenous Peoples); support for indigenous rights on the part of international organizations such as the World Bank, the UN and a large number of NGOs; and the ‘500-year jubilee’ of Latin American colonization in 1992, which channelled international attention to the situation of the formerly colonized populations (see Sieder 2002, Andolina/Laurie/Radcliffe 2009). At the state level, Bolivia was recognized as ‘multicultural and polyethnic’ as a result of a constitutional amendment in 1994, and many rights of indigenous peoples were recognized by laws and decrees (see Barié 2003). Nevertheless, the existing and largely Western monocultural state model remained unquestioned (see Tapia 2007). Despite the growing legal recognition of cultural diversity, the indigenous and *campesino* communities, particularly the women among them, were not able to considerably improve their living conditions. Due to policies that can be characterized as ‘neoliberal multiculturalism’ (Hale 2005; Assies/Salman 2005, 272), recognition was not connected with the redistribution of wealth and social resources.

The political participation of the indigenous-*campesino* sectors of society at the municipal level was strengthened from 1994 on due to Sánchez de Lozada's decentralization policies and the Law of Popular Participation (see Laserna 2009, Van Cott 2000). Moreover, relevant electoral reforms were carried out: in 1995 programmes to provide adults with identification documents in order to obtain the factual right to vote were implemented;<sup>6</sup> in 1996 single-member districts were introduced to elect half of the members of the Chamber of Deputies; and in 1999 the Law of Political Parties made it possible for civil associations and indigenous peoples to nominate their own candidates (see Arnold 2004, Laserna 2009). These reforms – despite all their shortcomings – contributed to improving the decision-making role of civil society at different state levels and to increasing the representativeness of Bolivia's political system.

To conclude, we can recapitulate that some reforms – those made in the context of the national revolution, the decentralization programmes, the recognition of cultural diversity, and the electoral reforms undertaken as of the 1990s – improved the representativeness of state institutions and the degree of participation therein. The heterogeneous indigenous-*campesino* organizations took on a growing role in formal state politics (particularly at municipal level) and, by exerting pressure through frequent social protests, contributed to the creation of multiple public spheres. Nevertheless, great levels of social inequality and cultural discrimination persisted and the underprivileged remained underrepresented in state politics.

### **The MAS government and the Constituent Assembly**

In 1995 an alliance of unionized peasant organizations (CSUTCB, Cocaleros and Colonizadores) founded the MAS party (at that time under the name ASP), which was very successful in that year's municipal elections. In the presidential and legislative elections of 1997, parties which emphasized their indigenous identity campaigned for the first time at the national level, and since then it has been possible to observe an increasing number of indigenous-*campesino* representatives in state politics. In 2005 Evo Morales was elected president with 54 per cent of the vote. In order to explain this electoral victory, it is important to recall the great (and rather successful) social protests of 2000 ('water war') and 2003 ('gas war'), as well as the MAS party's ability to form alliances with different sectors of society, such as indigenous lowland and highland organizations, urban intellectuals and workers, trade unions, and leftist groups (see Van Cott 2005). Additional explanatory factors included the civil society's lack of trust in traditional political parties and the pressing demands of the poor, who counted on Morales to give priority to their needs and to improve their living conditions instantly.

During its first period in office (2006-2010), MAS mostly carried out a 'revolution with the ballot', but in very delicate and conflictive situations it frequently resorted to the mobilization of its basis organizations in order to press for common aims.<sup>7</sup> As the MAS party did not hold an absolute majority in the Chamber of Senators, important political changes were made by presidential decrees and through negotiations with the opposition in Congress and in the Constituent Assembly.<sup>8</sup> There was a high degree of polarization between government and oppositional forces in Bolivia, and the conflicts between them escalated in several in-

stances, leading to violent clashes. In September 2008 oppositional groups from the lowland departments even occupied state institutions and destroyed the offices of indigenous and nongovernmental organizations. In Pando, 18 government supporters were killed (UNASUR 2008). Because the Constitutional Court and the Supreme Court were disabled during long periods, the opposition forces' and the governing party's scope of sanction-free action was expanded.

The Constituent Assembly was convened some months after Morales assumed the presidency. The demand for constitutional change with the broad participation of those who had hitherto been excluded<sup>9</sup> had been expressed publicly with great repercussion by the indigenous lowland organizations in their IV protest march of 2002 (Romero 2005, 155ff). Afterwards it had been adopted by the highland indigenous-*campesino* organizations. Hence, during the 'gas war' the main demands (the 'Agenda of October') had been the nationalization of hydrocarbon resources and the drafting of a new constitution. The indigenous-*campesino* organizations had originally demanded that civil society organizations and not political parties should develop the new constitution (see Artículo Primero 2005). This demand was due to the poor reputation of political parties and the idea that the 'pure' and sovereign participation of civil society should not be 'contaminated' or co-opted by party politics. There had also been an agreement between MAS and the indigenous organizations that stipulated that indigenous representatives would be granted 16 reserved seats in the Constituent Assembly. This agreement was broken by MAS when it passed the law calling the elections for the Constituent Assembly; its strategic aim in doing so was to concentrate the votes for its own party. It was thus practically impossible for indigenous-*campesino* groups to nominate candidates for the assembly without allying with a political party (particularly the MAS party). The Constituent Assembly offered MAS the possibility to carry out profound state reforms that would not have been possible in the opposition-dominated Congress. The governing party managed to obtain a large number of assembly seats: 137 of 255 delegates were affiliated with MAS. Many of the MAS delegates (approximately 60, interview with General Secretary Isaac Ávalos 2007) stemmed from its founder organizations CSUTCB, Cocaleros and Colonizadores. The indigenous lowland organizations and CONAMAQ had far fewer representatives in the assembly (four and eight delegates respectively), largely due to their more distant relations with the government. Consequently, they were not able to introduce their demands to the same extent as the organizations closer to MAS had done, and they frequently expressed their discontent with the constitutional reform process (interviews with Nélide Faldin 2007 and Samuel Flores 2007).<sup>10</sup>

During the Constituent Assembly sessions there was considerable tension and conflict between the MAS party and unionized peasant organizations on the one side and the indigenous lowland and Ayllu organizations on the other. The reasons for these tensions were the divergent aims and strategies of these groups for the transformation of the Bolivian state: while the priority of the indigenous lowland and Ayllu organizations was to achieve the creation of strong self-governed entities (with respect to land rights and rights to natural resources) and secure direct representation in state institutions, the MAS party and the peasant organizations aspired to the construction of a new state hegemony and the strengthening of the national level. Despite frequent conflicts, the indigenous-*campesino* organizations allied to

form a 'Unity Pact' and were able to develop common documents with political-juridical demands for the new constitution that were then used as the basis of the MAS party's proposals. In addition to the criticism regarding the exclusionary and homogenizing tendencies of the MAS party, a widespread critique was that the political parties tried to influence and control the Constituent Assembly in order to achieve their own aims (see Tapia 2006b and 2007). In the end the subordination of constituent power to the constituted powers became very clear as more than 100 articles of the assembly's draft constitution were changed by Congress delegates.<sup>11</sup>

### **The new constitution: participatory and pluralist democracy**

The constitution of Bolivia can be designated a 'transformative Constitution' (see Sunstein 2001, 224) as it strives to change the existing political, economic, social, symbolic, and legal order. In the first article, it recognizes Bolivia as a plurinational state with 'political pluralism'. Article 7 establishes that the state's sovereignty is based on the Bolivian populace and is exercised in both a direct and a delegated way. New mechanisms and institutions of participatory democracy have been incorporated into the new constitution. Moreover, enhanced human rights and mechanisms to guarantee their effective implementation have been inscribed.

#### *Participatory democracy*

Bolivia's type of democracy is elucidated in Art. 11, and characterized as 'participatory, representative and communitarian'. The representative form of democracy is exercised through universal, direct, and secret elections. The mechanisms of direct and participatory democracy under the new Bolivian constitution are the referendum, the legislative initiative of citizens, the recall referendum for public servants, the assembly, the city council and the previous consultation.<sup>12</sup> Moreover, the new constitution establishes that members of the judicial branch, after pre-selection by the legislative branch, will be elected by the Bolivian populace (Art. 182, 188, 194, 198). Articles 240 and 241 stipulate that the Bolivian population, represented by the 'organized civil society', is supposed to participate in the design of public politics and to execute social control at every state level. A Law of Social Control shall be passed, and new spaces for participation and social control shall be created by state entities. The participatory rights and the codetermination of 'organized civil society' are also mentioned with regard to the health system, the educational system, the (plural) economic system, environmental protection, and other issues (Art. 40, 78-93, 309, 343).

#### *Communitarian democracy*

The recognition of 'communitarian democracy' is an innovation of the new constitution and is supposed to be exercised in self-governed indigenous-*campesino* entities such as municipalities and indigenous-*campesino* territories (TIOC). The election or designation of indigenous-*campesino* representatives in those entities should take place according to the communities' own norms and procedures. Indigenous peoples' and communities' right to self-determination has been incorpo-

rated into the new constitution and, like the provisions in international instruments (particularly the ILO Convention 169 and the UN Declaration about the Rights of Indigenous Peoples), comprises two dimensions: the right to self-government executed within the framework of indigenous autonomy, including the exercise of indigenous political, juridical, and economic systems, and the right to fully participate in state institutions and in the dominant society (Art. 30).

The new Bolivian constitution foresees the creation of indigenous-*campesino* autonomies (Art. 289-296, 304). The rights of indigenous peoples anchored in the constitution have been extended to *campesino* communities as well as to the Afro-Bolivians (Art. 32). With regard to the representation of indigenous-*campesino* peoples and communities in the legislative branch, Art. 147 stipulates ‘that the proportional participation of indigenous-*campesino* peoples and communities will be guaranteed’ and that quotas stipulating a certain number of indigenous representatives will be implemented.<sup>13</sup> Article 210 establishes that the organization and functioning of indigenous-*campesino* organizations, as well as of citizen associations and political parties, must be democratic and that the electoral organ will supervise the election of indigenous-*campesino* authorities and representatives (Art. 211). In this context, the crucial question is which criteria will be applied to define whether the ‘communitarian democracy’ is democratic enough.<sup>14</sup> Concepts such as ‘communitarian democracy’ and ‘*vivir bien*’ have also been developed by indigenous-*campesino* organizations and their allies to countervail Western concepts of democracy and of a ‘good life’. Thus, they are seen by these actors as part of an ongoing decolonization and emancipation process.

### *Human rights and the ‘good life’*

In comparison to the former constitution, Bolivia’s new constitution supports enhanced human rights, particularly economic, social, and cultural rights and the rights of underprivileged groups such as women, children, persons with disabilities, and elderly persons. For example, women’s right to equal political participation (Art. 8, 11, 26, 147 and 210)<sup>15</sup> and other women’s human rights are now included. New mechanisms have been introduced to complement the already existing legal procedures<sup>16</sup> for guaranteeing the implementation of human rights: the ‘Action of Unconstitutionality’, meant to work against unconstitutional legal norms (Art. 132-133); the ‘Action of Compliance’, to penalize public servants who do not fulfil constitutional provisions (Art. 134); and the ‘Popular Action’, intended to address the violation of collective rights and interests (Art. 135-136). The new constitution proclaims that its primary aim is to achieve the ‘good life’ (*vivir bien*). This concept incorporates elements of indigenous philosophies, but as it remains very vague, it is apt to be used in a strategic way depending on the context. Nevertheless, we can find certain consensus that a ‘good life’ contains human rights (with a greater priority on second and third generation rights than in traditional interpretations), political participation and pluralism, a low degree of social inequality and a shift from an anthropocentric to a holistic worldview (Acosta 2009).

## Tensions between legal norms and socio-political realities

Constitutions are powerful instruments that shape political and social orders, partly due to their formalization and homologation effects: 'By ordaining the patterns that govern behaviour in practice, prior to any legal discourse, through the objectivity of a written rule or of an explicitly expressed regulation, formalization establishes the operation of what might be a homologation effect' (Bourdieu 1987, 840-849). According to Beau Breslin (2009, 4), constitutions are 'documents that use words to create worlds'. Nevertheless, the implementation of constitutions relies on many context-specific factors, such as political will, power relations, social acceptance of legal norms, and the legitimacy of the constitutional change process (Ginsberg et al. 2009, Van Cott 2000, Habermas 1992). As examples like Colombia show, a new constitution that foresees important reforms will not necessarily have the desired impact, for example, when the particular socio-political context is obstructive to social change. Moreover, mechanisms of participatory democracy are not positive per se, but should be assessed according to their meaning in a specific context. In the last months in Bolivia, several laws were passed in order to institutionalize and implement those provisions of the new constitution regarding a participatory and pluralist democracy (amongst them the law of autonomy and decentralization, the laws of the judicial branch and the constitutional court, the law for the electoral branch and the electoral regime), and further laws and decrees are still supposed to be passed. The constitution and the new laws are to be transformed from legal norms into legal realities, but there are many challenges on the way. I argue that the question of whether current developments in Bolivia are contributing to the establishment of a participatory and pluralist democracy needs to be examined in a nuanced manner.

### *The MAS party and civil society organizations*

The MAS party most certainly has strong connections with civil society organizations, and in its first term it frequently mobilized this support base in order to press for political-judicial reforms. It used to present itself as the 'government of *the* social movements' and of *the* indigenous-*campesino* sectors of society, as if these groups made up a homogeneous block of society with MAS at the top. This self-representation obscured the fact that it has much closer relations to some social organizations than to others (see Escarzaga 2009, Schilling-Vacaflor 2010). Using Fraser's (1990, 67) words, we could say that the MAS 'masks domination by absorbing the less powerful into a false "we" that reflects the more powerful'. Hence, the inclusion of hitherto underrepresented sectors of society has also produced new exclusions, as not all of these sectors have been represented equally. Examples such as the Constituent Assembly, described in Section 2 of this article, the adoption of the new electoral law in 2009 and the new laws of 2010, as well as other current developments show that MAS favours political forces close to it while marginalizing the representation and demands of other sectors of society (Zegada 2008, 14; Tapia 2006a).<sup>17</sup> Van Cott (2008, 208) describes similar dynamics in the monopolization of power and the exclusion of dissidents in MAS-dominated municipalities. For these reasons, indigenous lowland organizations, Ayllu organiza-

tions, and feminist groups have published several resolutions and statements that have expressed their discontent with MAS's exclusionary activities (CIDOB/CONAMAQ 2007, CONAMAQ 2008 and 2009, CIDOB 2010, Mujeres Creando 2007). In this context, the question of who will represent 'organized civil society' for political participation when it comes to putting the new constitution into practice will be of crucial importance.

During the MAS government's first term one could observe that when conflicts escalated, many different social forces supported the governing party in order to fight against the conservative opposition; after the conflicts had subsided, however, some of these groups again became rather distant from and critical of MAS. MAS has tended to co-opt civil society organizations, and in many cases, the positions and activities of MAS-related organizations are directed 'from above'. Representatives from diverse social organizations and movements are forced to make agreements with MAS in order to increase their chances of achieving their political-juridical objectives (see Escarzaga 2009, 90; Tapia 2006b). The fact that many leading representatives of indigenous-*campesino* organizations are part of the government further contributes to this co-option.<sup>18</sup> In this context, Fraser's (1990) assumption that there should not be a wide gap between civil society and the state can be questioned, as closeness between the two spheres could also point to the co-option of the former – thus, some kind of autonomy for civil society might be necessary.

One of the MAS party's frequent challenges is to balance the need to mediate between different sectors of society (as well as to negotiate with international actors) and take divergent interests into account, and the need to retain as much power as possible. If we adopt Fraser's perspective, we can argue that civil society participation in Bolivia has been strengthened under Morales since representatives of hitherto marginalized groups now play an important role in Bolivian politics. Nevertheless, certain sectors of society have been included to a far greater extent than others. Moreover, the decision-making power of society is being limited by the homogenizing and partly authoritarian tendencies of the current government.

Political parties and social movements operate according to different logics (see Bourdieu 2001). These divergences can be observed in the case of the representatives of social organizations that have assumed posts inside MAS; they are then in the difficult position of needing to simultaneously be loyal to their support base and to the party they represent. Indigenous-*campesino* organizations generally expect their representatives to, first of all, press for their particular interests; this contributes to clientelistic and corporatist structures and is accompanied by the risk that the representatives will be designated as 'betrayers' if the demands of the support base are not given highest priority. In this context the newly introduced recall referendum, which was introduced into the constitution in order to increase the accountability of political actors, is apt to place additional pressure on the representatives of civil society organizations and to reinforce clientelism. The expectation from social organizations that their former members should primarily represent their particular interests on the one hand and the fact that members of the governing party should not privilege certain groups excessively on the other often create delicate situations for representatives of civil society organizations who assume political positions.

*Participatory democracy and the concentration of power*

The MAS party's strategy of concentrating power and thereby excluding pluralism was quite obvious during the constitutional change process and it is even getting clearer in the second mandate of Evo Morales. The electoral designs favoured by MAS in its first term (and those anchored in the new constitution) tended to produce bipartisan rather than pluralist political compositions. The new constitutional text strengthened the presidential democratic system, governmental representatives tried to influence the Constituent Assembly, and polarizing discourses villainizing the 'enemies of the change process' were frequent. The governing party (such as the oppositional forces) in many cases overrode legal regulations and marginalized minority views (see Asbún Rojas 2008). In the second term – characterized by increased power of the executive branch, a two-third majority in the legislative branch and intents to dominate the judicial branch and to use it as a tool against opposition<sup>19</sup> – exclusionary and authoritarian tendencies of MAS' government are becoming more pronounced and more frequently directed against 'internal enemies' and former allies.<sup>20</sup>

In a recent article, Bolivia's vice president García Linera quotes Robespierre's description of a 'revolutionary government' in order to describe his own government:

The objective of a constitutional government is to conserve the Republic; the objective of a revolutionary government is to found it. [...] The revolutionary government needs extraordinary activities, precisely because it is in a situation of war. Therefore it is subject to less uniform and less rigorous rules [...] The constitutional government is principally occupied with civil liberty; the revolutionary government with public liberty. In situations of a constitutional regime it is practically sufficient to protect the individuals from the abuse of public power; under a revolutionary regime the public power must defend itself from all of the social forces by whom it is attacked (Robespierre as cited in García Linera 2010; translated by the author).

The quotation's main argument as applied in the Bolivian context is that the goal of profound change and state transformation (as well as that of securing governmental power) legitimizes procedural irregularities or authoritarian postures. From the perspective of the Bolivian government, a certain degree of authoritarianism may be necessary in order to secure governability and carry out profound transformations against the will of a powerful opposition, as well as in the face of limiting factors connected with Bolivia's existence as a peripheral state. But it seems to also have an intrinsic origin based on authoritarian tendencies inside MAS and its founding unionized campesino organizations. From the perspective of indigenous-campesino organizations, the flouting of certain democratic and legal rules can also be justified with the argument that until recently democracy represented an exclusive and discriminatory pact of the ruling elite and that many times the rule of law primarily served the interests of the rich (see Gray Molina 2007). Many members of indigenous-campesino sectors of society may now be unwilling to fully respect governance models which in the past served to repress their aims of emancipation, and which were perceived as externally imposed (neo)colonial or imperialist power structures.

Roberto Laserna (2009, 141) states that under the MAS government, too much emphasis on participation has caused institutional erosion and a lack of checks and balances. According to my point of view, this critique is accurate, but perhaps the debilitation of the existing order and the corresponding institutions was a necessary precondition to constructing a new social and institutional order. Thus, the creation of new checks and balances will depend on the construction of a new institutional and social order. A crucial question is whether this new order will be characterized by authoritarian and centralized structures under MAS or by openness to divergent (internal and external) views and the existence of new checks and balances.

During MAS's first term, the political participation of civil society in state politics was certainly much greater than under former governments, but in some cases this participation was used primarily to override the resistance of the conservative opposition. García Linera (2010) distinguishes between different periods of state crisis since 2000. According to his analysis, in 2008 the 'moment of bifurcation' took place, leading to the current phase: the consolidation of a new political and symbolic state order. The question which thus arises is whether a relatively high level of political participation is only of particular importance during crisis periods and whether it declines afterwards. Furthermore, now that the MAS party has a two-thirds majority in the legislative branch and Evo Morales has assigned important functionaries to the judicial branch (which could be seen as the politicization of the judicial branch), participatory mechanisms could lose importance.<sup>21</sup>

### *Political pluralism*

The official implementation of self-government for indigenous peoples and communities and the creation of plurinational and intercultural institutions according to the new constitution will be important tasks in Morales' second term. It is probable that at the local and regional levels contests over political and economic power between different social forces will take place and will shape state politics and the correlation of power. One unresolved question regarding the implementation of self-governed and autonomous entities is how to ensure that the collective right to self-determination will not restrict internal participation. To what extent will the self-governed spaces reflect different and heterogeneous views, for example, those of minorities and of women? Abuses and repressive mechanisms in the name of self-governance should be prevented, but at the same time the regulations should not be imposed externally 'from above'. This topic is exceptionally relevant as indigenous-*campesino* communities are frequently criticized for authoritarian, sexist, and homogenizing tendencies. Stroebele-Gregor (2008) states that the political systems of indigenous-*campesino* communities in Bolivia that strive to reach a consensus usually exclude divergent views; in the event that opposing views are expressed, separatist processes or strong social conflicts can occur. In addition to those of the indigenous-*campesino* autonomies and communities, democratic structures at the departmental level should also be strengthened – something which will be especially challenging in those departments where conservative elites with extensive economic resources retain power and are not willing to give up their privileged positions.

The creation of intercultural state institutions is another challenging task related to the implementation of the new constitution. Despite the fact that the provisions of the new constitution (and of the electoral law) foresee the increased participation of members of indigenous-*campesino* communities and women in state institutions (something which is already taking place), the concrete design of those institutions is still not fixed. One obstacle to creating intercultural and inclusive institutions is that the participation of members of different cultures or those from underprivileged sectors of society in the institutions created by dominant sectors of society alone does not necessarily make these structures egalitarian. Or, in the words of Fraser (1990, 64): ‘Subordinated groups sometimes cannot find the right voice or words to express their thoughts, and when they do, they discover they are not heard. [...] They alert us to the ways in which social inequalities can infect deliberation, even in the absence of any formal exclusions’. At the institutional level subtle mechanisms of exclusion and discrimination will still persist and should be debated and confronted explicitly.

### *Social rights and social inequality*

The new constitution and the current government declare the ‘good life’ of all citizens to be their primary aim. Even though there may be a great distance between the promising and utopian character of the new constitution on the one hand and social reality (see Nolte/Horn 2009) on the other, the extended recognition of human rights is of importance. This restricts governments’ room to manoeuvre, can aid in criticizing deficient implementation processes, and establishes long-term goals. Accordingly, Bolivia’s new constitution could turn out to be the ‘law of the weaker’ and reduce social inequality and poverty. The nationalization of the country’s hydrocarbon resources under Morales has increased the state budget significantly and strengthened the state’s role in the economy. At the same time, new social welfare policies have been implemented: the raising of the minimum wage, the creation of several aid funds (for children, women, and elderly people), the execution of literacy programmes, and increased support for Bolivia’s health and education systems. Still, the economic impact of the reforms undertaken since 1994 and of the social welfare policies implemented under Morales has been far more modest than their political impact (see Laserna 2009, 134).

The challenge in the MAS government’s current term will be to rapidly and significantly improve the living conditions of the poor (see MAS-IPSP 2009). However, it appears that the government’s actions will not affect the rich considerably: last year’s experiences, particularly with respect to the intended redistribution of land, demonstrated that the scope of action for redistribution processes that do not risk generating political instability is quite narrow. The priority of the governmental plan for 2010-2015 is to obtain great benefits from natural resource exploitation in order to finance ambitious social welfare policies. In the context of MAS’s resource-dependent economic policy we can observe strong tensions, for example, between resource exploitation and environmental protection (see Gudyas 2009) as well as between long-term economic strategies such as the diversification of economy and the demands of the poor to rapidly improve their living conditions.

## Conclusions

In some Andean-Amazonian countries we can observe the beginning of a specific ‘new constitutionalism’ which involves many innovative elements. The new constitutions of Ecuador, Venezuela, and Bolivia represent the intent to overcome the deficiencies of the previous democratic models, which were characterized by a wide gap between state and civil society, high levels of social inequality, and deficient recognition of cultural diversity. Similar to the new constitutions of Ecuador and Venezuela, the new Bolivian constitution strengthens the mechanisms of participatory democracy, recognizes enhanced social rights, and aims to establish a plurinational and intercultural state. One of its primary objectives is to redefine relations between the state and an ethnically pluralist civil society, giving civil society a greater say in state politics. Thus, Bolivia’s basic law can be characterized as a transformative and emancipatory constitution. Nevertheless, the actual significance of a legal norm can only be assessed in its concrete socio-political context.

In Bolivia, the constitutional change process against the will of the powerful elite has served to bring about profound transformations, which would not have been possible using ordinary political channels. The MAS party used the development of the new constitution to consolidate its hegemony. The influence of the political parties on the Constituent Assembly was great, and a majority of the assembly deputies belonged to the MAS party. This fact partly explains the apparently paradoxical outcome that the new constitution strengthens participatory democracy on the one hand and the executive branch on the other. There has been a tendency on the part of the MAS party and its affiliates at the national and subnational levels to exclude divergent views and to co-opt diverse social forces. The article’s findings suggest that there are tensions between the MAS party’s goal of concentrating power and the strengthening of a new pluralist and participatory model of democracy in Bolivia. Thus, the decision-making role of civil society and the construction of multiple public spheres – according to Fraser, central characteristics of ‘strong publics’ – are restrained by the aspirations of the government as well as by the conservative opposition, which strives to maintain its own privileges.

The recognition of indigenous-*campesino* self-governing entities and their participation in state politics has the potential to contribute to the building of multiple public spheres. However, many indigenous-*campesino* systems have authoritarian and sexist characteristics that should not be overlooked. The creation of intercultural institutions is another challenging task for the future that remains largely unresolved. Many social programmes have been implemented, but the degree to which they will bring about long-term structural change is unclear. A difficulty in this context is the immense social pressure to obtain fast, visible results and the MAS party’s opportunity to obtain voter support through assistentialist, short-term policies on the one hand and environmental criteria and long-term policies, such as economic diversification, on the other.

We have been able to observe many considerable improvements regarding the participation of civil society in state politics and the representativeness of state institutions in Bolivia, but there are still many obstacles to the development of an increasingly participatory and pluralist democracy. Despite the adoption of a new

constitution which contains many emancipatory elements, the findings of this article demonstrate that diverse social and political factors may restrain its impact in practice. Similar to the experiences of the other countries of the ‘new Andean constitutionalism’, the Bolivian example shows that a new legal norm cannot create a new society; however, it can help to transform it.

\* \* \*

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## Notes

1. All waves of constitutional change occurred after profound crises, the first one in the period 1789-1799, the second one in the period 1914-1926 and the third one in the period 1945-1965 (Van Cott 2000, 11).
2. In the case of Venezuela the demand for a new constitution gained importance during the ‘Caracazo’ in 1989; soon after this, a commission elaborated a draft proposal of a new constitution. Due to the lack of political will of the following ruling parties, it was not until Hugo Chávez assumed the presidency that the constitution was actually renewed (see Combellas 2005). In Ecuador before 1998, the demand for a new constitution was particularly pushed forward by the indigenous movements and grew in a context of discontent with the ruling elites and presidential breakdowns. The Bolivian case will be described more in detail in this article.
3. The constitution of Colombia (1991) already incorporated extended mechanisms of participatory democracy and social rights. It can be seen as a forerunner for the ‘new Latin American constitutionalism’. The 1991 constitution of Colombia as well as the Ecuadorean constitution of 1998 contained the apparently contradictory characteristics to improve human rights on the one side and neoliberalism on the other side (Rodríguez Garavito 2009, Andolina 2003). The new constitution of Perú (1993) was passed during the Fujimori dictatorship and contains many repressive elements such as very restrictive anti-terrorist provisions as well as a neoliberal economic orientation. Thus, it is not considered as part of the ‘new Latin American constitutionalism’.
4. Sixty-two per cent of the Bolivian population identified themselves as indigenous in the national census of 2001 (see [www.cne.org.bo](http://www.cne.org.bo)).
5. The Colonizadores organization was, until recently, known as CSCB (Confederación Sindical de Colonizadores de Bolivia – Confederation of Colonizer Unions of Bolivia). As the term ‘colonizers’ has many negative associations in the Bolivian context, the name has now been changed to Confederación Sindical de Comunidades Interculturales de Bolivia (CSCIB; Confederation of Intercultural Communities of Bolivia) (see [www.cscbbol.org](http://www.cscbbol.org)).

6. Even in the 1997 elections, 81.2 per cent of lowland indigenous citizens did not have an identity card and were thus excluded from exercising their right to vote (Van Cott 2005, 76).
7. According to Van Cott (2005, 213), political parties that emphasize their indigenous identity are not a substitute for social movements and indigenous organizations; however, the parliamentary channel is complementary to mobilization.
8. For example, in order to obtain the necessary support in the legislative branch for the law to elect the members of the Constituent Assembly, the demand from the opposition to hold a referendum about departmental autonomies was accepted and the Assembly elections and the referendum finally both took place 2 July 2006.
9. This is in contrast to the last constitutional reforms, which were carried out by a small number of experts and politicians in a rather non-transparent way (see Van Cott 2000 on the constitutional reform of 1994).
10. Of the Constituent Assembly delegates, 55.7 per cent (142 *Asambleístas*) expressed that they identified themselves as indigenous, 124 with an indigenous highland population and 18 with an indigenous lowland group. 69.9 per cent of MAS representatives declared themselves as belonging to an indigenous highland group and 3.7 per cent to a lowland population (see Schilling-Vacaflor 2010).
11. Amongst the concessions were restrictions of participatory mechanisms and the role of civil society organizations in state politics; a strengthening of the competences of the departmental autonomies; the application of the new limits of land property (5,000 or 10,000 hectares) only to future land titles and not to already existing ones; and restrictions of the indigenous jurisdictions.
12. The recall referendum (for every state functionary except those in the judicial branch, Art. 240), the city council, and the previous consultation were not part of the former constitutional text.
13. Transitional Electoral Law No. 4021 incorporates the election of seven indigenous representatives, which is a much smaller number than the indigenous lowland and Ayllu organizations originally demanded (CIDOB 2001; CONAMAQ 2006).
14. Without dealing with the differences between the (heterogeneous and dynamic) political systems of indigenous-*campesino* communities and Western-liberal models of democracy in detail, it is worth considering that political decisions in indigenous-*campesino* communities in the Bolivian Andes and valleys are taken in community assemblies. The aim is to reach a consensus, positions are filled on a rotating basis, and in many cases a position is assumed by a couple (a practice called *Chacha-Warmi* or *Qhari-Warmi*) (see Albó 2002).
15. But this was without a guaranteed quota for female representatives, something which was demanded by several women's organizations during the constitutional change process.
16. This was the 'Action of Liberty' (Habeas corpus, Art. 125-127), 'Constitutional Complaint' for cases of human rights violations (Art. 128-129); and 'Action of Privacy Protection' (Habeas data, Art. 130-131)
17. Examples for these dynamics are abundant: in many circumscriptions in the municipal and departmental elections of April 2010, MAS did not respect candidates who were elected by *usos y costumbres* and imposed its own candidates; social organizations such as CONAMAQ complained that they were not consulted regarding the new laws (see [www.conamaq.org.bo](http://www.conamaq.org.bo), accessed 3 March 2010); the number of indigenous representatives in the legislative branch elected in indigenous circumscriptions remains lower than it had been promised (Albó 2010); and the CIDOB march in June 2010 for land rights, rights regarding the exploitation of natural resources and indigenous autonomies with broad competences was discredited by MAS, who publicly alleged that the protest march was contrived by USAID.
18. For example, the former general secretary of CSUTCB, Isaac Avalos, and the general secretary of the CSCIB, Fidel Surco, assumed positions as senators in 2010.
19. See Human Rights Council (2010).
20. See Espinoza (2010).
21. For example, the MAS government programme from 2010 to 2015 (MAS-IPSP 2009) does not highlight political participation as a primary aim.

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