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Bolivia Ushers in New Judicial System

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Category/Department: Bolivia
Published: 2012-02-03

"Early in 2012, Bolivia introduced a new judicial system that aspires to be democratic, independent, equitable, and transparent. Above all, to be free from the history of corruption and exasperating slowness, proclivity to perks, and openness to political and economic influence peddling that, as all political and social actors agree, seems to have been characteristic of the judiciary during the republic's 185-year history." That straightforward Radio Nederland report on Jan. 4 summarized the opinion of local and international analysts consulted by the Dutch broadcaster and by the major South American media.

Availing itself of those experts' opinions, the Argentine daily Tiempo said on the same day, "All countries have exceptional characteristics that distinguish them. Yesterday Bolivia added one more to its own list: it is the only country in the world whose highest representatives in the three branches of government—the executive, the legislative, and the judicial—are directly elected by popular vote."

The new system also has other notable characteristics that make it unique. In a country in which 63% of the population are indigenous or Afro Bolivian—the later a tiny minority—it is truly revolutionary that this newly unveiled judiciary treats traditional and communitarian justice systems as equals, the former a legacy of ancient Rome, the latter traced to the first inhabitants of these American lands. And it has become absolutely free for all litigants, which, by facilitating equal access to justice, makes the system one of the most important ways of promoting democracy among those that the administration of President Evo Morales may have adopted since his inauguration in 2006.

Opposition criticizes new system

It is to be expected that an executive capable of promoting such profound changes would have powerful enemies. The Bolivian opposition, rightist and the voice of the large national and multinational business interests, does not agree with the world and, using its press outlets, says that the changes to the judiciary are anti-democratic. Joining this rightist group are some European foundations such as the German-based Friedrich Ebert Foundation.

In 2009, through a popular consultation, Bolivia changed its Constitution. Some 61.43% of voters approved the proposal of the Morales administration, ushering in the Plurinational State of Bolivia. In that consultation, the need was expressed to replace the judicial system with one that facilitates equal access to justice, one that democratizes it. That overwhelming majority also voted for the ancestral, communitarian judicial system to have the same standing as the traditional system.

The new Constitution came into force in 2010. On Oct. 16, 2011, the changes began to be implemented with the election of 56 magistrates—28 sitting judges and 28 alternates—who will lead the four sections of the judiciary: the Tribunal Supremo de Justicia (9 members); the Tribunal Agroambiental (6); the Tribunal Constitucional Plurinacional (7); and the Consejo de la Magistratura (5). Of those elected, 50% are women and 40% are indigenous, who will hold positions of power in the administration of justice for the first time in this Amazonian-Andean country. An indigenous
woman presides the Consejo de la Magistratura, and an indigenous man will fulfill the same duties in the Tribunal Constitucional Plurinacional. On Jan. 23, Morales made significant changes to his Cabinet, naming Cecilia Ayllón, an indigenous woman, as minister of justice.

Changes to process of choosing judges
The new Bolivian Constitution establishes that the judges in the four highest tribunals will have a six-year term and cannot be re-elected. In the old system, they were lifetime positions, as is the practice in most South American countries. The judges who today are elected by popular vote in the old system obtained their positions through a political mechanism in which transparency did not exist: the Congress presented a short list of candidates to the president who chose one. Now, the election system begins in Congress, which receives the applications of those seeking office (598 in this case), verifies whether they meet the legal requirements, and considers objections from the citizenry or authorized entities (social, union, cultural) to any of the aspirants, in writing and in public hearings.

For the October election, 115 candidates passed the vetting process. The president's participation is limited to swearing in the 58 elected judges. The process has other specificities: the candidates cannot campaign in academic events or by trying to win over labor, business, or intellectual collectives. For the citizenry to know the candidates, only the electoral authority can publicize their backgrounds. The candidates can only give journalistic interviews. Two essential conditions must be met: 1) the candidate cannot have been involved in any kind of partisan political activity since entering the judiciary; 2) the candidate must have a perfect, clean record of commitment to democracy and the defense of human rights.

Despite all these positive factors, the election process for judges was marred by the boycott called by the right, which succeeded in getting between 40% and 50% of voters to abstain or nullify their ballot. What can explain such a turn of events, when, two years earlier, more than 61% of Bolivians voted for the need to make profound changes in the judicial system? The explanation of various analysts is that the media—especially television and radio—managed in large part by the right, played a decisive role.

Power of the press put to work
The political opposition has neither parties nor leaders to seduce the electorate, but in its task of eroding the figure of President Morales, it has proved that it knows very well how to use the only weapon it has—the power of the press. In the three weeks before the Oct. 16 election, the country's attention was on the progress of a large march organized by a group of indigenous who were protesting against the construction of a highway that would cross their natural reserve, their ancestral habitat (NotiSur, Oct. 14, 2011). The rightist press, which does not cover environmental issues, made the march its front-page headline every day or its lead story on TV or radio news. The anti-democratic ineptness of the three ministers that Morales later removed did the rest when they ordered that the demonstrators be repressed. They provided the major element for the success of the election boycott.

The criticisms were inconsistent, but the constant repetition resulted in their taking root with the population. Defenders of the process could not count on massive media to transmit their message. The detractors insisted that the change was nothing more than a demagogic measure with which the government would ensure greater control of the judiciary.
Apparently ignoring that governments last only four years and forgetting the prior election system, Carlos Toranzo, a political analyst for the Bolivian affiliate of the Friedrich Ebert Foundation, told BBC Mundo the same thing that he said to all the national media: "This is a way to legitimize the caudillos and keep them in power." For Toranzo, "it was better before," even though the president chose the judges from a list drawn up by a Congress dominated by the party in power and obliged to negotiate with the other political parties.

Most analysts said that direct election of judges by popular vote ended the system of "political quotas" that characterized the previous system and that politicized the judiciary. "Perhaps this is not an absolute guarantee of impartiality, but it is an infinitely fairer system than the previous one," said Kathryn Ledebur, director of the Red Andina de Información (RAI), a nongovernmental organization (NGO) that defends human rights and social justice. RAI is made up of volunteers from various sectors: lay missioners, members of religious orders, service-organization volunteers, researchers, lawyers, and journalists, among others, coming primarily from the US, Canada, and European countries.

Leticia Lorenzo, a researcher at the Universidad de Buenos Aires, offered a dispassionate academic perspective. She underlined some points—such as that now legal proceedings are free and that candidates cannot have belonged to a political party and must demonstrate a clean democratic history—and focused on the innovative election of magistrates by popular vote. "At first glance, it is important to differentiate—as the Bolivian Constitution does—the election of political positions from the election of judicial positions. While the first are determined through a proselytizing campaign by the candidates, in the second case, an interesting possibility was opened in that the agency in charge of preparing and carrying out the election has had as part of its work the function of organizing separate spaces of dialogue where the candidates could participate and debate regarding their vision of the administration of justice and the role of the judiciary, getting close to the citizenry, who thus could make an informed and democratic decision."

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