

COUNTRY REPORT: BOLIVIA 2007

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SYNOPSIS: Bolivia is undergoing an unprecedented process of constitutional reform driven by the executive branch. President Evo Morales, elected in December of 2005, along with supporting political parties, has proposed replacing the constitution with a national constituent assembly. Bolivia's Constituent Assembly began its work on August 6, 2006, following the election of its deputies on July 2, 2006. Assembly deputies approved the new, 408-article constitution on December 9, 2007.¹ However, opposing political parties and leaders dispute the validity of the vote, arguing that the proposed constitution was not approved by the requisite two-thirds majority. They also took issue with the fact that the text was approved not in the seat of the Assembly itself, in the city of Sucre, but in the city of Oruro, and objected that no opposition deputies from the Constituent Assembly were present at the vote. While some articles in the new constitution's approved text guarantee due process rights, the Human Rights Foundation (HRF) is profoundly concerned that the new constitution grants equal standing to an alternative system of justice known as *justicia comunitaria* ("communal justice"). Enshrining this system within the Bolivian constitution would hinder individual rights otherwise guaranteed by both the existing constitution and international treaties to which Bolivia is signatory. HRF seeks to alert raise awareness about the contradictions contained within the constitutional framework. While numerous critics of the Morales government equate communal justice with lynching (a practice that has dramatically increased since 2005), HRF does not consider communal justice, as understood by the Bolivian government, to be lynching. However, the fact remains that individuals carrying out lynching often claim to be doing so under the system of communal justice.

BACKGROUND INFORMATION

Even though most Bolivians are of mixed racial background, Bolivia's population includes as many as thirty-six indigenous groups. When Evo Morales won the presidency on December 18, 2005, he declared the institutional framework inherited from previous governments to be inadequate and pledged that his government would attend to the needs of Bolivia's native populations.

Opposition to President Morales's proposed reforms has come primarily from the elected governors (prefectos) of the Santa Cruz, Beni, Pando, Tarija and Cochabamba states (departamentos). The governors, along with former president Jorge Quiroga and his Podemos party, numerous legislators, Supreme Court justices, and others have reached a stalemate that has polarized the country.

Communal justice, or *justicia comunitaria*, is an Inca practice derived from *derecho consuetudinario*, or ancient custom law. It allows local leaders to impart justice directly for crimes perpetrated by members of their indigenous communities, bypassing an official legal system that some groups perceive as slow, corrupt, and inefficient.

Communal justice does not always follow a rigorous or standard process. In theory, the practice enables local communities to address their needs in a fair and disinterested manner, affording individual rights to all parties, including the accused. In practice, communal justice allows self-appointed communal judges to issue instant verdicts and sentences—sometimes with fatal consequences for the accused.

ENSHRINING MOB RULE: COMMUNAL JUSTICE AND THE DENIAL OF HUMAN RIGHTS

In June of 2004 Bolivian media reported that a group of people in La Paz had kidnapped Benjamin Altamirano, former mayor of Ayo Ayo, a town of some 7,000 people located 90 kilometers from La Paz. According to news reports, Altamirano was then taken to Ayo Ayo, where he was beaten, stoned, hanged, and subsequently set ablaze—while still alive. Abducted, tried, and executed by the communal justice

¹ The text delivered to President Evo Morales on December 15, 2007, by the drafting committee had 411 articles, whereas the text originally approved by deputies of the Constituent Assembly in Oruro on December 9, 2007, had 408 articles. As of the writing of this report, deputies of the National Constituent Assembly have yet to meet and approve the amended version produced by the drafting committee.

system, Altamirano's brutal demise shocked the national and international press. Although accusations of corruption had been levelled against Altamirano in the Bolivian court system, no evidence of wrongdoing or misconduct had been established.

Article 188 of the proposed constitution establishes that the power to impart justice stems from Bolivia's people and is based upon judicial pluralism.² Article 199 states that the nation's thirty-six indigenous peoples will apply their customs and procedures to impart justice, provided that they respect constitutional guarantees and the right to life.³ This provision replicates Article 171 s. III of the current constitution. However, article 189 s. II of the proposed constitution establishes that ordinary judicial authority and communal judicial authority have equal status, giving communal justice parity with Bolivia's formal judicial system.⁴ Should the new constitution be approved, the dictates of self-appointed communal judges would bind all people and all institutions—be they government officials or ordinary citizens (article 201).⁵ These rulings would not be subject to judicial review by ordinary judges (article 200).⁶

Penalties administered in the communal justice system range from community service to death. Punishments include lashings and even crucifixion. The system discriminates against women in multiple ways; for instance, adultery is a minor offense if committed by a man, but is a grave offense if committed by a woman.⁷ Women accused of adultery have received the death penalty. Moreover, the proposed legislation regulating communal justice requires indigenous peoples and peasants to seek redress exclusively within the communal system. Article 8 s. II of the proposed Law of Communal Justice for Indigenous Peoples and Peasant Communities reads: "Communal justice is mandatory for indigenous peoples and peasant communities, and no authority from the ordinary justice system can intervene in it."⁸

President Evo Morales and representatives of his government have stated that they support lashings as a "symbolic" way of imparting justice and promoting communal justice.⁹ Mayor Altamirano's case shows that communal punishments are hardly "symbolic"—and his is hardly an isolated incident. Since 2005, Bolivia has seen a dramatic increase in lynching, lashings, and other forms of torture and corporal punishment that violate human rights guarantees in the country's current legal code. Between November 2005 and mid January 2008, forty-six such cases have been reported in the Bolivian news. Signs of brutality characterize each case, some of which have resulted in death. Cases include:

- November 23, 2005: Jorge Flores and Jose Tejada—17 and 23 years of age respectively—were thrown from a cliff after having been severely burnt in Liriuni, Cochabamba. A third man was also found dead at the scene, but local police could not establish his identity.¹⁰
- March 10, 2006: Jose Luis Lopez—26 years old—was visiting his girlfriend in La Chancadora, an area of Chapare in the northern region of Cochabamba, when a communal group mistook him for someone else. Disregarding the couple's explanations, the group lynched him on the spot. Tied to a palo santo ("holy tree") crawling with ants, Lopez was eventually rescued by the police.¹¹
- October 12, 2006: A police commission was sent from San Julian to Montero, some 50 kilometers from Santa Cruz, to arrest 16-year-old Marcelino Rojas Parra, who had been accused of stealing a motorcycle. On the way back, the five-vehicle police motorcade was intercepted by an angry mob about 5 kilometers from San Julian. The mob abducted Rojas Parra and forced him to carry a heavy cross back to San Julian while he was beaten, clubbed with a cemetery cross, and stoned. The mob

2 Article 188 establishes the source of judicial power in the original charter approved by deputies of the Constituent Assembly on December 9, 2007. Article 179 is the equivalent section in the version amended by the drafting committee and presented to President Morales on December 15, 2007.

3 Article 191 in the amended version.

4 Article 180 s. II in the amended version.

5 Article 193 s. III in the amended version.

6 Article 192 in the amended version.

7 Ermo Quisbert, *Justicia Comunitaria*, Centro De Estudios de Derecho, ed. 5^a, Oct. 2007 <<http://h1.ripway.com/ced/jc.pdf>> p. 10.

8 "Proyecto de Ley de Justicia Comunitaria de los Pueblos Indígenas—Originarios y Comunidades Campesinas," Ministerio de Justicia de Bolivia <<http://www.justicia.gov.bo/pdf/tripjusticia.pdf>> p. 2. Human Rights Foundation's translation.

9 "A propuesta de Evo Morales, darán latigazos a los delincuentes en Bolivia," *Diario Exterior.com*, Apr. 16 2007 <<http://www.eldiarioexterior.com/noticia.asp?idarticulo=13995>>.

10 "Tres jóvenes son linchados, uno de ellos murió," *La Razón*, Nov. 23 2005, <http://www.la-razon.com/versiones/20051123_005369/nota_262_223540.htm>.

11 "Lo confundieron con ladrón y lo ataron a un palo santo," *La Razón*, Mar. 14 2006, <http://www.la-razon.com/versiones/20060314_005480/nota_256_259043.htm>.

left his dead body at the entrance to the police station.¹²

- March 10, 2007: Llallagua Potosí's district attorney offices had to be closed after a mob threatened to lynch prosecutors assigned to investigate the death of Javier Charque Choque, who had been stoned, beaten, tied, and buried alive upon communal judges' sentencing in Villa Arbolitos, near Llallagua, on December 29, 2006. Cirilo Gaspar Cruz, the communal leader responsible for the sentence and a participant in the events that led to Charque Choque's death, was freed by the mob and the charges were dropped. Charque Choque had been accused of rape; however, according to Gustavo Calvo, Potosí's district attorney, the victim was not presumed innocent, and did not receive due process.¹³
- April 14, 2007: El Alto councilman Roberto de la Cruz was filmed participating in a lynching. The victim was half naked next to a fire begging for his life, while de la Cruz was asking the mob what to do to him. Despite mob resistance, police finally managed to free the victim.¹⁴
- January 11, 2008: Members of Carrasco, a moto-taxi union in Ivirgarzama, Chapare area in Cochabamba, captured Reynaldo Castro Salvatierra (23 years old) and Jesus Mendoza (18 years old) in the town's peasant's center ("Central de Campesinos de Ivirgarzama"). Castro Salvatierra and Mendoza were thought to belong to a group of thieves that had targeted union members. Local media reported that the pair was beaten and taken to a place some two kilometers from the center to be executed. Castro Salvatierra died after having been beaten, stoned, hanged and set ablaze. Mendoza managed to escape and was taken to Viedma Hospital in Cochabamba, where he died the following day. Bolivia's vice minister of justice, Wilfredo Chávez, determined that communal justice was not applied in this case, arguing that since the ordinary system does not work people take justice into their own hands.¹⁵
- January 14, 2008: Rolando Gira Meruvia lost his life after having been tortured and asphyxiated, presumably with a plastic bag. The lynching took place in Senda 6, Chapare area, and is reportedly the fourth case since the year started.¹⁶ Local residents mistook Gira Meruvia for a thief and decided to exercise communal justice. Police officers from the Special Force Against Crime ("Fuerza Especial de Lucha Contra el Crimen" or "FELCC") could not confront the mob to save Gira Meruvia and admitted they can do nothing in such instances. Their frustration was shared by prosecutor Blanca Nogales.¹⁷
- February 25, 2008: police officers Willy Álvarez Cuevas, Eloy Yupanqui Flores and Carlos Ávila Fernández were tied, beaten, stoned, burnt—with boiling water—and killed by residents of Epizana, in Cochabamba.¹⁸

The forty-six reported cases include instances of women buried alive for adultery and additional episodes of angry mobs raiding town halls and police headquarters to take justice into their own hands. Because the authorities fear confronting those who carry out such barbaric practices, the perpetrators of communal justice are neither prosecuted under ordinary law nor made accountable for their crimes. Certain areas, such as

12 "Silencio protege a linchadores San Julián," *El Deber*, Nov. 3 2006,

<http://www.eldeber.com.bo/2006/20061103/seguridad_4.html>.

13 "La historia de una ejecución," *La Razón*, Mar. 10 2007,

<http://www.la-razon.com/versiones/20070310_005841/nota_256_400473.htm>. "Fuga un acusado de linchamiento," *lostiempos.com*, Mar. 7 2007, <http://www.lostiempos.com/noticias/07-03-07/07_03_07_nac6.php>.

14 "De la Cruz participa en un intento de linchamiento," *La Razón*, Apr. 18 2007,

<http://www.la-razon.com/versiones/20070418_005880/nota_256_415934.htm>.

15 "En el Chapare linchan a dos ciudadanos," Jan. 11 2008,

<http://www.la-razon.com/versiones/20080111_006148/nota_262_531681.htm>. "Linchan a dos presuntos ladrones en Ivirgarzama, uno muere y otro huye," *redbolivia.com*, Jan. 11 2008,

<<http://www.redbolivia.com/noticias/Seguridad%20y%20Justicia/61057.html>>.

16 "Cuarto linchamiento en menos de dos semanas," *Los Tiempos*, Jan. 16 2008,

<http://www.lostiempos.com/noticias/16-01-08/16_01_08_loc6.php>.

17 "La policia no tiene pisada en el sitio del linchamiento," *eldeber.com.bo*, Jan. 18 2008,

<<http://www.eldeber.com.bo/2008/2008-01-18/vernotaseguridad.php?id=080117230853>>.

18 "Una turba tortura y asesina a tres policías en Cochabamba," *La Razón*, February 27 2008,

<http://www.la-razon.com/versiones/20080227_006195/nota_256_555145.htm>.

Chapare in Cochabamba, are considered off limits to Bolivian police forces and prosecutors.

The constitution proposed by the Morales government contains glaring contradictions. For instance, it provides for a Plurinational Tribunal that can hear and resolve *only* conflicts of competence between ordinary and communal justice jurisdictions. The Plurinational Tribunal cannot revise rulings or sentences, but it can determine whether particular rulings or sentences were issued by the proper legal authorities (ordinary or communal judges).¹⁹ This tribunal will seat equal numbers of representatives from the ordinary and the communal justice systems—but where representatives of the ordinary justice system must be lawyers with at least eight years of working experience and a proven track record, communal justice representatives need only to have practiced as authorities within their system. No other qualifications are required.²⁰ As noted, Article 192 of the proposed constitution establishes that communal justice decisions will be directly executed and will not be subject to review by any other judicial authorities.

HRF believes these conflicting articles do not enhance the transparency of Bolivia's justice system, and that, in their present form, they introduce unnecessary complications. The proposed Law of Communal Justice for Indigenous Peoples and Peasant Communities²¹ is discriminatory and violates Bolivians' constitutionally guaranteed rights. "Indigenous communities" and "peasants" should not be forced to seek redress *exclusively* before communal judges, but must allow Bolivian citizens to freely choose which justice system they want to use to settle disputes, regardless of ethnic origin.

Communal justice suffers from a complete lack of procedural and substantive due process, entirely disregarding an individual's right to be adequately notified of charges or proceedings, to be heard at these proceedings, to be represented by adequate legal counsel, to retain a transcript of proceedings, and to appeal judgments in ordinary courts. When communal judges announce rulings, victims can expect to be punished immediately. As noted above, it is not unusual under such circumstances for a group of otherwise peaceful citizens to be whipped into a frenzy, sometimes with deadly results for those suspected of crimes.

HRF does not consider communal justice, as understood by the Bolivian government, to be lynching. However, it remains a fact that individuals carrying out lynching often claim to be doing so under communal justice. The lack of legislation regulating communal justice has resulted in distorted interpretations with fatal consequences. The official position of the Morales administration is unambiguous: Assembly deputies supporting the government have introduced communal justice into the proposed new constitution, which will effectively place it on the same footing as the regulated ordinary justice system, should the new text be approved by referendum. Notably, the new constitution's provisions for communal justice violate human rights guarantees in the same document; they also violate multiple international treaties to which Bolivia is signatory.²² Regretfully, President Morales has said that disenfranchised groups should employ communal justice; his government supports lashing as a "symbolic" means of imparting communal justice; President Morales has also remarked that communal and ordinary justice systems are incompatible, even though its communal verdicts can be produced after communal leaders engage in rituals such as consulting coca leaves.²³

The Human Rights Foundation makes the following recommendations to the government of Bolivia:

- ◆ **After consulting with representatives of indigenous groups, the government must draft and introduce legislation regulating the administration of communal justice and limiting its scope. Due process, presumption of innocence, the right to defence counsel, the right to an impartial jury, the right to appeal, and other basic guarantees of rule of law must be incorporated into the communal justice process if it is to exist at all.**

19 Art. 203, s. 11, in the amended version.

20 Art. 200 in the amended version.

21 "Proyecto de Ley de Justicia Comunitaria de los Pueblos Indígenas—Originarios y Comunidades Campesinas," *Ministerio de Justicia de Bolivia*, <<http://www.justicia.gov.bo/pdf/tripjusticia.pdf>> p. 2. Human Rights Foundation's translation.

22 International Bill of Human Rights; Protection from Torture, Ill-Treatment and Disappearance; War Crimes and Crimes Against Humanity, Genocide, and Terrorism; Moratorium on the Use of the Death Penalty.

23 "Morales anuncia una Asamblea Constituyente plenipotenciaria," *lostiempos.com*, Jun. 2 2006, <http://www.lostiempos.com/noticias/02-06-06/02_06_06_nac7.php>. "Morales realiza la justicia comunitaria," *lostiempos.com*, 8 Apr. 2006 <http://www.lostiempos.com/noticias/08-04-06/08_04_06_nac9.php>. "Evo no cree en la convivencia de justicias formal y comunal," *La Razón*, Jan. 23 2007, <http://www.la-razon.com/Versiones/20070123_005795/nota_244_381763.htm>.

- ◆ **The government must ensure that ordinary justice takes precedence over any communal justice system in the country. There should be an established procedure whereby ordinary judges and authorities may review communal justice cases on behalf of victims seeking redress.**
- ◆ **The government must ensure that communal justice does not have equal standing with the ordinary judicial system of Bolivia. Communal justice rulings should be subject to review by ordinary courts.**
- ◆ **The government must ban any and all forms of corporal punishment, regardless of traditional practices. Individuals responsible for such acts must be made accountable before ordinary courts.**