

CONSTITUTIONAL REFORMS IN VENEZUELA

On August 15th, 2007, President Chavez made headlines when he proposed a set of 25 reforms to the Venezuelan Constitution during a speech in the National Assembly in Caracas. A commission to study the reforms was immediately set up by the lawmakers and was declared in permanent session. President of the National Assembly Cilia Flores stated that all issues relating to the draft reforms would be discussed, including the strategy of the National Assembly for addressing each one, as well as public consultations designed to allow for citizen participation in debates.¹



President Chavez was criticized for making the legal argument that the proposed modifications are "reforms" rather than "revisions," thus avoiding another constituent assembly and sending his proposals directly to the National Assembly for review. However, critics overlook the fact that the public must still approve the new reforms through a referendum. Miguel Tinker Salas, a Venezuelan Professor of History at Pomona College, said, "the process up to now has been rather closed, [but] from here forward we're going to be seeing a broad and ample national debate... It's not just a matter of a president proposing it and the assembly rubber stamping."²

During its review of the proposed reforms, the National Assembly carried out public consultations in all 23 states in Venezuela. The text of the reforms were distributed to an estimated 5.4 million households, particularly in rural and poor areas, which were visited by mobile units equipped with videoconference and wireless systems.³ Interest groups including students, workers, and civil society groups were also consulted, and feedback was given through local elected leaders who presented citizens' perspectives before the National Assembly. The National Plan to Debate the Constitutional Reform was designed to "activate a national political debate and the participation of the people in the process of constitutional reform aimed to strengthen revolutionary consciousness, stimulate popular mobilization, and guarantee the sovereign expression of the majority on the occasion of the referendum."⁴

Lively debates about the content of the proposed reforms ensued throughout all sectors of Venezuelan society. The media served as an important site for the expression of viewpoints by

¹ "Mixed Commission is in permanent session to deal with Constitutional Reform," ABN, August 16, 2007. http://www.abn.info.ve/go_news5.php?articulo=100668&lee=17

² Chris Kraul, "Venezuela Leader Aims to Scrap his Term Limit," *Los Angeles Times*, August 16, 2007.

³ "Congress to visit 5.4 million Venezuelan houses to discuss changes to the Constitution", *El Universal*, September 24, 2007. http://english.eluniversal.com/2007/09/24/en_pol_art_congress-to-visit-5._24A1062479.shtml

⁴ Kiraz Janicke, "Venezuela Launches Massive Plan to Debate Constitutional Reform Proposal," *Venezuelanalysis*, August 21, 2007. <http://www.venezuelanalysis.com/news.php?newsno=2393>

individuals from across the political spectrum. In open forums held at downtown public plazas, students in the nation's capital carried out their own discussions of the tenets of the reforms.⁵

On October 15th, the National Assembly began the third and final round of discussions on the reform proposal. An additional 33 provisions were presented that day by lawmakers, bringing the total number of constitutional articles affected from 25 up to 58. This third round of discussions led to the creation of 10 new provisions, increasing the final number of proposed reforms to 68. As of October 24th, 37 of those articles had already been approved for passage onto a popular referendum. Law requires that constitutional reforms be put to voters within 30 days of being drafted, and so on December 2nd, 2007, Venezuelans will choose either to accept or reject the final draft of the proposals.

CONTEXT: THE 1999 CONSTITUTION

If approved, the new package of constitutional reforms would alter Venezuela's 1999 Constitution, which was drafted by a Constituent Assembly shortly after President Chavez began his first term in office. The 1999 Constitution was ratified only after it won approval by the general public in a national referendum, in which 71.78% of Venezuelans gave the document a 'yes' vote.

With the approval of the 1999 Constitution by popular vote, significant political and institutional changes were adopted. The national legislature was changed from a bi-cameral system to the current uni-cameral one, known as the National Assembly. The lawmaking body now consists of 167 deputies elected through a system of proportional representation to serve five-year terms. Two new branches of government – a National Electoral Council and Human Rights Ombudsman – were added to the preexisting executive, legislative, and judicial branches. These changes gave the population more direct representation in national politics.



The 1999 Constitution was groundbreaking in that it guaranteed citizens a new and impressive set of human rights, including free education, universal health care, and increased civil rights. Minorities like Afro-Venezuelans and Indigenous peoples were recognized, and the work of housewives was considered a productive contribution to society meriting compensation. The 1999 Constitution is considered today to be one of the most comprehensive and progressive in the world.

OVERVIEW: THE 2007 REFORMS

In Venezuela, constitutional reforms may be proposed by either the President of the Republic, the National Assembly, or 15% of registered voters organized through petitioning. Constitutional Articles 342, 343, 344, and 345 stipulate that reform proposals must be debated three times in the National Assembly, modified if needed, and then each reform must be approved by two-thirds of

⁵ "Students discuss changes to the Constitution", El Universal, September 20, 2007, http://english.eluniversal.com/2007/09/20/en_pol_art_students-discuss-cha_20A1047277.shtml

the members in order to move forward. Those approved must then be voted on no more than thirty days later by the public in a national referendum. In this final stage, reforms can only be ratified if supported by a majority of the voting population. As of this writing, the third round of debates was being carried out (October, 2007).

If the entire package of 2007 reform proposals is passed by the National Assembly, changes would affect 68 of the 350 articles comprising the 1999 Constitution, or slightly less than twenty percent of the legislation. New proposed constitutional reforms would make changes to laws regarding politics, the economy, property law, the military, the national territory, and culture and society. They would not however, have a significant impact on the political structure of the government, as did the 1999 Constitution. Their most important aim, according to President Chavez, is to create a "new geometry of power" that increases citizen power and government accountability.

POLITICS

In an effort to increase voter participation in Venezuela, where an estimated 60 to 70 percent of the population is under the age of 30, **Article 64** would reduce the age at which citizens may legally vote from 18 to 16 years of age.

Campaign financing is addressed through **Article 67**, which would prohibit political parties and candidates from accepting funds or resources from foreign governments, and foreign organizations whether public or private. The State would be permitted to finance electoral activities.

One of the most talked about reforms in the international press is **Article 230**, a proposal to add one year to the current six-year presidential term and allow for continual reelection. Currently, the executive office is subject to a two-term limit. Despite claims that the change is a bid by President Chavez to remain in office, the removal of term limits would not affect the basic system of electoral competition in Venezuela. It would not restrict the right of citizens to run candidates against Chavez or his party. Nor would it do away with the ability of voters to petition for a national recall referendum to oust the sitting president mid-term. This provision, part of the 1999 Constitution, was invoked in 2004.

Among the more controversial of the reforms put forth by the National Assembly on October 15th, **Article 337** calls for the suspension of some political liberties during a national emergency, including due process and the right to information. Similar limitations on civil and political rights were in force in Venezuela in the past, most recently in the 1961 Constitution. This reform has been hotly debated by lawmakers and across Venezuelan society. Progressives and supporters of President Chavez have also raised concerns, hoping to elevate the debate.⁶ However, it is fully consistent with international law, which recognizes the right of governments to limit certain rights in extreme circumstances. Article 4 of the UN International Covenant on Civil and Political Rights, ratified by Venezuela on August 10, 1978, notes, "In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant."⁷ Certain rights however, would still be guaranteed such as the right to life, freedom from torture, disappearances, and going incommunicado.

⁶ "Changes to Venezuelan Constitutional Reform Proposal Provoke Strong Criticism," By Chris Carlson, Venezuelanalysis, October 17, 2007. <http://www.venezuelanalysis.com/news/2739>

⁷ United Nations International Covenant on Civil and Political Rights, http://www.unhchr.ch/html/menu3/b/a_ccpr.htm

Similar laws outlining the imposition of a state of exception or a state of emergency are in place in many of the world's prominent democracies, including Australia, Canada, France, Ireland, Spain and the UK. In the U.S., the 1976 National Emergencies Act allows the president to invoke a state of emergency and limit certain rights – including the right of *habeas corpus* – for up to two years. There were 32 declared national emergencies between 1976 and 2001 in the United States.

THE ECONOMY

Many of the reforms currently under review are markedly economic in nature, for, according to the *Los Angeles Times*, the changes aim to “redistribute power and resources to the poor and disadvantaged.”⁸ Venezuela has experienced record growth rates in recent years, and an attempt is being made by the government to use oil revenues in a manner that is truly equitable.

On a recent visit to Venezuela, Nobel Prize-winning economist Joseph Stiglitz commented that Venezuela has stood out in recent years for its remarkable progress in making oil revenues directly benefit citizens. Stiglitz also stated that “The key to success is finding the right balance between the private sector and the government, which is different for each country.”⁹

Article 112 of the current constitution would be altered to allow a “social economy” to replace existing economic policies, which have for decades favored privatization and state non-intervention based on a neo-liberal conception of economics. Instead of fostering primarily private initiatives, the state would become responsible for promoting development “based on humanistic values such as the cooperation and the preponderance of common interests that guarantee the fulfillment of the social needs of the people, social and political stability and happiness.” Consideration would also be given to companies and economic units of social production – both “direct” or communal economic units, and “indirect” state-run economic units.¹⁰

Additionally, **Article 113** would officially prohibit monopolies and the unjust consolidation of economic resources.

Another important change affects Venezuela's Central Bank, which would no longer be entirely independent of the government. **Article 318** would hand over the Bank’s primary task to elected officials: the control of monetary policy, largely through short-term interest rates. Neo-liberal economists frown upon this method because it relegates the market and elite interests to a less powerful position. However, interest rates are an essential part of the national economy because they have a direct effect on growth rates as well as employment, wages, and inflation. Currently, the government makes decisions on economic development and tax and spending policy. This proposed reform would increase the government’s ability to effectively coordinate economic policies by requiring the Executive and the Central Bank to work together to increase economic growth and development.

New provisions regarding workers rights would build on important guarantees put forth in the 1999 Constitution. Under **Article 90**, the work week would be shortened from 44 hours to 36

⁸ Chris Kraul, “Venezuela Leader Aims to Scrap his Term Limit,” *Los Angeles Times*, August 16, 2007.

⁹ “Stiglitz, in Venezuela, Pushes Public-Private Balance,” By Matthew Walter, *Bloomberg*, October 10, 2007. <http://www.bloomberg.com/apps/news?pid=newsarchive&sid=aqop3ptj2ktg>

¹⁰ “Chavez proposes social economy for the nation in the constitutional reform,” *Agencia Bolivariana de Noticias*, August 16, 2007 http://www.abn.info.ve/go_news5.php?articulo=100605&lee=17

hours. **Article 87** would extend benefits to independent contractors by creating a "Social Stability Fund" for workers including housewives, domestic workers, taxi drivers, and informal vendors.

PROPERTY LAW

The 2007 reforms mark the first time that the phrase "private property" has ever been mentioned in the Venezuelan Constitution.¹¹ Under them, **Article 115** would expand the definition of property to include five specific categories: public (that which belongs to state entities), social (belonging to citizens), collective (belonging to people or social groups either in social or private form), mixed (both public and private), and private (belonging to individuals and private entities).

Property law in Venezuela would continue to guarantee that, "Only for reasons of public benefit or social interest by final judgment, with timely payment of fair compensation, may the expropriation of any kind of property be declared."¹² As in the past, private property would only be retrieved by the state in the interest of the public good and fair compensation would accompany it.

Further guarantees for private property are seen in a reform to **Article 82**, which would guarantee housing protection to families by making it illegal for homes to be expropriated or repossessed.

THE MILITARY

The reform proposal would also affect Venezuela's military structure. A proposed change to **Article 320** would make the National Guard a branch of the armed forces called "Bolivarian Popular Militias." Under Chavez, the National Guard has assumed important roles in disaster relief and development projects. Changes would give the National Guard a role in national defense, in addition to maintaining internal order. Venezuela's armed forces would also be renamed the Bolivarian Armed Forces.

Also affected would be **Article 329**, which currently establishes that "The Army, Navy and Air Force have as their essential responsibility, the planning, execution and control of military operations as required to ensure the defense of the Nation." **Article 11** would incorporate Venezuela's maritime regions into its sovereign territory and would allow military regions to be designated to carry out specific activities ranging from counter narcotics operations to national defense.

TERRITORIAL REDEFINITION

As is true in many countries, Venezuela's internal boundaries have largely served the interests of economic and political elites. Reforms to **Article 16** aim to rectify this imbalance. To begin, resources will be made more accessible to communities that have historically suffered from poor economic development and infrastructure by designating these areas as federal districts on state, city and local levels.

¹¹ "Revised Venezuelan Constitutional Reform Proposal Presented to Legislatura," By Michael Fox, Venezuelanalysis, October 16, 2007. <http://www.venezuelanalysis.com/news/2732>

¹² "Propuesta de reforma constitucional plantea cambio de 33 articulos," Agencia Bolivariana de Noticias, August 16, 2007 http://www.abn.info.ve/go_news5.php?articulo=100540&lee=1

To compliment Venezuela's existing political and territorial categories, new ones will be created, including insular districts, cities, and maritime regions. Neighborhood activists and community organizations will likely benefit from these proposed changes, and from the official recognition of "communes." The hope is that this will encourage more formal participation by the community in local public affairs. Under **Article 184**, national law would be drafted to make municipalities responsible for providing the resources and services requested by community organizations.

CULTURE AND SOCIETY

In general, the reform proposal being put forth builds on provisions in the 1999 Constitution that recognize the social and cultural diversity of Venezuela. Discrimination on the basis of sexual orientation would be banned by **Article 21**. A step toward undoing centuries-old racial prejudices is evidenced in **Article 100**, which is slated to recognize Afro-Venezulean heritage alongside the Indigenous and European influences as part of the nation's historical and cultural foundation. Additionally, progress on women's rights is seen in provisions that would extend social benefits to informal workers and require that political parties promote both female and male candidates.¹³

CONCLUSION

Venezuela has had 26 different constitutions since gaining independence from Spain in 1811. It was not until 1999, though, that the Venezuelan people were ever consulted during the process of rewriting the constitution. That year, Venezuelans were given a historical opportunity to vote on the final draft of the constitution in a national referendum. In nearly a decade since the 1999 Constitution has been in force, the government has invested an enormous amount of resources in empowering citizens and fostering their participation in democratic politics. Through initiatives like voter registration campaigns and the mass issuance of national ID cards, voter turnout and citizen involvement in local and national politics have increased significantly.

Of the 68 articles of the 1999 Constitution now subject to modifications, the most discussed have been those relating to presidential terms, property rights, and civil liberties. There has been no shortage of debate on these issues in society, as exposure to any domestic media in Venezuela will indicate. Citizens from all different walks of life have been encouraged to learn about the reforms and to vote in the national referendum on December 2nd. In the end, the public will be given the final say about whether they are signed into law.

The high degree of consensus within the National Assembly is often cited as preventing a thorough review and discussion of the articles slated for reform, but in fact, there have been dissenting voices from different political parties within that lawmaking body.¹⁴

As Venezuela goes about redefining its political path and developing a form of socialist democracy that challenges the dominance of classical Western models of government, it is important to take a thoughtful look at what is happening in that country today. In a process of rapid and dynamic change, mistakes may come with the territory. However, observers of Venezuela will also find impressive experiences in citizen government collaboration, active political engagement, and anti-poverty efforts that are waiting to be discovered.

¹³ "Venezuelan Legislature Approves 30 Articles for Constitutional Reform," By Gregory Wilpert, Venezuelanalysis, October 22, 2007. <http://www.venezuelanalysis.com/news/2750>

¹⁴ "Changes to Venezuelan Constitutional Reform Proposal Provoke Strong Criticism," By Chris Carlson, Venezuelanalysis, October 17, 2007. <http://www.venezuelanalysis.com/news/2739>