



‘Civil society works for a democracy that is not only more representative but also more participatory’

CIVICUS speaks to Ramiro Orias, a Bolivian lawyer and human rights defender. Orias is a program officer with the Due Process of Law Foundation and a member and former director of Fundación Construir, a Bolivian CSO aimed at promoting citizen participation process for the strengthening of democracy and equal access to plural, equitable, transparent and independent judicial institutions.

Q: A few days ago a national protest against the possibility of a new presidential re-election took place in Bolivia. Do you see President Evo Morales’ new re-election attempt as an example of democratic degradation?



The president’s attempt to seek another re-election is part of a broader process of erosion of democratic civic space that has resulted from the concentration of power.

The quest for a new presidential re-election requires a reform of the 2009 Constitution (which was promulgated by President Evo Morales himself). Some of the provisions introduced into the new constitutional text were very progressive; they indeed implied significant advances in terms of rights and guarantees. On the other hand, political reforms aimed at consolidating the newly acquired power were also introduced. For instance, there was a change in the composition and political balances within the Legislative Assembly that was aimed at over-representing the majority; the main authorities of the judiciary were dismissed before the end of their terms (the justices of the Supreme Court and the Constitutional Tribunal were put to trial and forced to resign) and an election system for magistrates was established. From then on, judges were elected through popular vote, without a preliminary process of merit evaluation. Arbitration institutions, such as the Prosecution, the Electoral Body and the Ombudsman, were also co-opted by the Executive to varying degrees.

Regarding the Executive, the main constitutional reform consisted in enabling re-election, but only once, that is, for a maximum of two consecutive terms. Evo Morales’ first term (2006-10) was supposed to count because a transitional clause in the new Constitution said so; however, the government later argued that his first term did not count because it had begun under the old Constitution (which in fact would have deprived the president from any re-election at all). So the President was re-elected twice, in 2010 and 2015. That is, he has served three consecutive terms —one more than the new Constitution allows — and now he is looking for some constitutional means to allow himself a fourth term.

In early 2016 the government called a [referendum](#) to consult the public on a possible constitutional reform so that Evo Morales could run for president again in 2019. By a narrow margin, the government lost the referendum; that is the reason why they have just submitted a claim of unconstitutionality to the Constitutional Court, which the tribunal has [accepted to evaluate](#).

According to the President, the prohibition that he runs again affects the principle of equality and discriminates against current elected representatives, and would therefore be contrary to the Pact of San José (the American Convention on Human Rights). This is the same argument that was used in Nicaragua by Daniel Ortega, who subsequently managed to have the Constitutional Court declare his own Constitution unconstitutional and allow him to get re-elected. It is a rather forced argument, because the rights that it invokes are not absolute, but allow for regulation on the basis of the common good and the general interest (in fact, the right to run for president does include restrictions of citizenship and age, among others) as well as for limitations in the name of the higher values of a democratic society – such as alternation in power and the strengthening of democratic institutions.

On 10 October, on the 35th anniversary of the restoration of democracy in Bolivia, a national [demonstration](#) was held against indefinite re-election and in defence of the will expressed by the citizenry in last year's referendum. The protest was summoned by various civic organisations, citizen platforms and opposition political parties. It was a massive street demonstration, with the biggest crowds in the cities of La Paz and Santa Cruz and smaller ones in Cochabamba, Potosí and Oruro. The freedom of peaceful assembly was fortunately respected, in the sense that there was no violence or attempts to suppress the protests. However, the government [recognised](#) that the Police's Intelligence Division had followed and closely monitored the protests in general, and opposition leaders in particular, to the point that they had gathered detailed recordings of their conversations. This is unacceptable in the context of a democratic society, since the use of a political police is a tool of authoritarian governments.

Q: Do you think that the struggle surrounding re-election will be channelled through the courts, or will the issue be eventually resolved in the streets? Will the government summon mobilisations to support re-election?

I believe that the claim of unconstitutionality is a legal contraption; we are not dealing with an issue of constitutional law here, let alone with a situation involving the human rights of power holders. Judicial procedures are just another tactic in the context of a strategy of political struggle aimed at concentrating power and guaranteeing the continuity in government. The solution of this controversy will need to be found in the political arena. Something very characteristic of the political attitude of this government is that when a topic is under discussion, the acceptance of an arrangement or an agreement on their part does not necessarily mean the end of it.

Q: Would you say that civil society is divided depending on their position vis-à-vis the government?

Civil society is indeed divided. As it happens with any process of political change, there have been winners: sectors that have received significant benefits and therefore support continuity. For instance, some trade unions, such as the Trade Union Confederation of

Bolivia's Settlers (CSCB). On the other hand, there are sectors that initially felt represented by the Movement Towards Socialism (MAS) but ended up losing. The Bolivian government has lost support, especially among its indigenous constituencies, due to some measures that resulted in setbacks for the indigenous agenda — such as the decision to build a road across the protected area of TIPNIS (Isiboro-Secure National Park and Indigenous Territory) without following the process for a prior, free and informed consultation of the indigenous peoples that inhabit that territory. The government also authorised the exploitation of hydrocarbons in protected areas. This resulted in the alienation of some constituencies that had initially given the government a broad majority.

The fact that Evo Morales Ayma was elected to the presidency and the reforms that the new Constitution enshrined resulted in a huge political, social and cultural transformation, especially in terms of inclusion. However, as a result of its lack of institutionalisation, which is reflected in the lack of a new leadership, the process has run out of steam and it does not represent such a wide range of Bolivian society anymore. Nowadays the government is finding it increasingly difficult to act as the representative of social movements in the broad sense. Many civil society actors that at some point viewed the process of change led by Evo Morales with sympathy now see it with concern because it has become a process of accumulation of political power and does not offer guarantees for them to freely carry out their work anymore.

As cracks deepened in their basis of support, the government imposed regulations aimed at demobilising that part of civil society that does not actively support the government's project. This is seriously affecting the work capacity of many CSOs. The situation has become quite difficult for human rights defenders, and particularly for indigenous peoples' rights advocates and environmental defenders, who have been on the receiving end of various challenges and pressures.

There have also been major changes in the regulation of national CSOs. The main normative change, which has left CSOs in a position of great vulnerability, is Law No. 351 on Legal Personalities (2013). This law requires CSOs to align their objectives and activities with government policy, and replaced the principle of recognition of the legal existence of an organisation, which is derived from a constitutive act of civil law, with the granting of legal statues by the state, an administrative act that puts a great deal of discretionary power in the hands of federal authorities. Legal personality can be revoked through an administrative procedure, without any due process guarantee. At the same time, CSOs that are not aligned with the government are publically stigmatised.

Q: What would it take today to fulfil the democratic promise once embodied by Evo Morales?

Contrary to the dominant tendency to give more power to a single person, one of the main pending issues in the Bolivian democratic agenda is the re-channelling of political representation through a pluralistic, institutionalised party system with internal democratic practices. If the issue of presidential re-election is on the agenda at all, it is precisely because of lack of institutionalisation: the fact that the ruling party does not have a replacement leadership. In fact, more than a political party, the ruling group is a coalition of heterogeneous interests that only President Morales could manage to keep together.

Sustained on institutions, representative democracy is a system that brings some certainties into political life, as rules are regularly implemented and actors submit to them

in good faith. What we are witnessing today is that the government uses democratic mechanisms when they find them useful, but when they don't, they move away from them and try to modify them for their own benefit.

In the context of a weak party system, civil society takes on particular relevance. It fulfils a role as the watchdog of the freedoms of association, expression and peaceful assembly through which it is able to promote its ideals of social change. Civil society works for a democracy that is not only more representative but also more participatory.

Q: What support does Bolivian civil society need to overcome the obstacles it faces and move towards a more participatory democracy?

The most important thing that civil society needs in order to be able to continue its advocacy work for human rights is an independent justice system. The Executive has pursued the weakening of judicial institutions, and this is a process that we will hardly be able to revert in the short term in the absence of cooperation from other actors both at a national and at an international level.

We therefore need international solidarity. In fact, we have intense political dialogue with accredited ambassadors in Bolivia, who recognise the need to create an enabling environment for civil society and realise that it is urgent to promote an independent justice system. We also need support for CSOs to be empowered, improve their own internal accountability processes and guarantee the transparency of their own institutional governance. But the truth is that as long as there isn't an independent judiciary capable of protecting fundamental rights, the situation of civil society will remain one of extreme defencelessness.

- **Civic space in Bolivia is rated as “narrowed” by the [CIVICUS Monitor](#).**
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