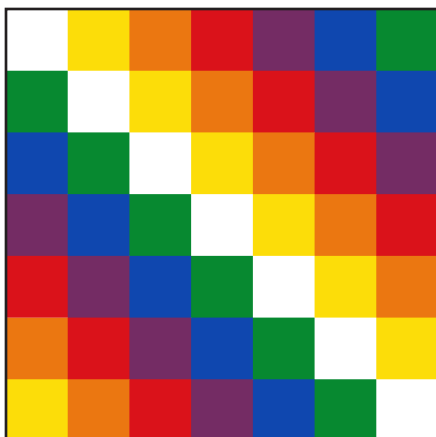


INDIGENOUS BOLIVIAN COMMUNITY JUSTICE

Nearly 62% of Bolivians are indigenous, the largest proportion of any Latin American country. Since Bolivian independence in 1825, the country has had 17 constitutions, each with varying degrees of recognition and inclusion of indigenous communities. In 2006 Evo Morales, the first indigenous president of Bolivia, was elected with 54% of the vote, the first time in recent history that any candidate won an outright majority. One of his first acts as president was to submit a bill calling for the election of a Constituent Assembly that would write a new constitution. The new constitution, passed in 2009, signals a clear break with the past, calling the new state the “Pluri-National State of Bolivia.” The preamble of the constitution states:

We, the Bolivian people, of plural composition, from the depths of history, inspired by the struggles of the past, by the anti-colonial indigenous uprising, and in independence, by the popular struggles of liberation, by the indigenous, social and labor marches, by the water and October wars, by the struggles for land and territory, construct a new State in memory of our martyrs ... We have left the colonial, republican and neo-liberal State in the past. We take on the historic challenge of collectively constructing a Unified Social State of Pluri-National Communitarian Law, which includes and articulates the goal of advancing toward a democratic, productive, peace-loving and peaceful Bolivia, committed to the full development and free determination of the peoples.



The Wiphala is a flag used to represent some indigenous communities in the Andes. Since 2009, it is also the dual flag of Bolivia.

19th and 20th Centuries

Latin America's independence from Spain began as small, localized civil wars in the 19th century, which grew to calls for political independence across the continent. The Battle of Ayacucho in December 1824 was decisive in the eventual independence of Bolivia, which was declared on August 6, 1825. In 1826, Simón Bolívar wrote Bolivia's first constitution, which restricted citizenship to people literate in Spanish and employed in a profession or trade deemed sufficiently remunerative. People employed as domestic servants were explicitly excluded from citizenship. This first constitution was short-lived. Six years later, in 1831, President Andrés de Santa Cruz y Calahumana promulgated a new constitution that was similarly short lived; it lasted eight years and was replaced in 1839.

Between 1830 and 1880 there were six constitutions in Bolivia, with some incoming presidents using a new constitution as an opportunity to expand and consolidate executive power. Throughout this period, the main source of revenue for the state was tributes from indigenous communities. By 1877, it is believed that these tributes accounted for 75% of tax revenue for the state. Despite the outsized role indigenous communities played in keeping the state afloat, indigenous Bolivians had few rights and were largely unable to vote. The 1880 constitution distinguished between Bolivian nationality and citizenship, restricting citizenship to "any Bolivian who is 21 years old if celibate, and 18 years old if married, who knows how to read and write, who owns property or an annual income of 200 duros that does not come from domestic service and who is on the civic register."

Only in 1938 did the State recognize the legal existence of native communities in Section 19 of the 1938 Constitution, "The Rural Population." Citizenship, however, was still restricted to literate Bolivian nationals. It wasn't until the 1961 constitution that all income or literacy requirements for citizenship were removed. Yet, only six years later, Article 172 of the 1967 Constitution added, "The State shall promote colonization plans in order to achieve a rational distribution of people and better exploitation of the land and the natural resources of the country, primarily in

frontier areas.” This article, which signaled the intent to colonize primarily indigenous parts of the country, remained part of the Bolivian constitution until 2009.

2009 Constitution

The 2009 Constitution grants many rights indigenous Bolivians had been demanding for decades. Article 2 affirms the status of the indigenous majority, referring to the “pre-colonial existence of the indigenous originary peasant nations and peoples” and guarantees recognition of their institutions. The constitution also officially identifies 37 official languages, which includes all of the languages of the indigenous communities and Spanish.

The creation of the 2009 Constitution was a contentious process. Bolivian politics are organized around ethnic and geographic divisions. The Quechua and Aymara indigenous groups constitute over half of Bolivia’s population and are concentrated in the highlands. In contrast, the lowland departments have a much lower proportion of indigenous people and a concentration of wealthier, non-indigenous elite. The non-indigenous population organized protests against the Constituent Assembly which was writing the constitution and eventually boycotted the process. While the Legislative Assembly was amending the draft text, the lowland opposition parties launched a referendum to recall Morales, which was defeated. The opposition-controlled Senate also refused to schedule a vote on the constitutional referendum until public pressure and protest forced them to do so.

Despite the sweeping changes introduced in the new constitution, many of the legal codes in Bolivia are from the late 20th century and are not derived from the 2009 Constitution. However, some codes have been amended or updated to take into account the new constitution. For example, the Criminal Code is from 1972, but has been amended with individual laws relating to human rights and criminal law, including a law against racism and discrimination, a law against political violence and harassment towards women, and a law guaranteeing legal defense to people without economic resources. The Labor Law of 1939 still regulates labor relations, but since 2009 many pro-worker changes have been made, including a guarantee of adequate work clothing and personal protective equipment, as well as the protections for

organizing labor. The Commercial Code was also updated as many industries were nationalized beginning in 2009, including a state dairy company, a state paper company, a state sugar company, a state textile company, and others. The newest code, created in 2014, is the “Boys, Girls and Adolescent Code,” which guarantees children’s rights and protects them from economic exploitation or any work activities which could interfere with their education.

The constitution also guaranteed the right to a “Rural Native Indigenous Jurisdiction,” which grants rural indigenous peoples a right to their own customary law, local jurisdiction, and community justice systems.



Portrait of Simón Bolívar (1783–1830). Bolívar wrote Bolivia’s first constitution and was the country’s first president.

Community Justice in Bolivia and the Andes

Community justice has been a long-standing practice in Andean communities. The 2009 Constitution formalized it in Bolivia on the grounds that the “ordinary justice” (the legal system derived from Europe) does not reach the most remote areas of the country. For example, there are judges in just over half of Bolivia’s municipalities and prosecutors in only 23%. This gap in the ordinary justice system has been filled by locally created and managed institutions. While Bolivia did incorporate indigenous customary law into its legal system in the 1990s, community judicial proceedings remained subordinate to the ordinary justice system. State prosecutors sometimes initiated criminal proceedings against community authorities for carrying out their judgements. These earlier reforms and changes were largely symbolic and had little effect on the practice of community justice. During the drafting of the new constitution, community justice became a contentious subject, with the elites strenuously defending the ordinary justice system. The final draft of the 2009 Constitution restricts the jurisdiction of community justice to matters affecting indigenous communities. It also removed language from the draft that prevented the ordinary justice system from reviewing community justice decisions.



The Supreme Tribunal of Justice, the highest court of ordinary jurisdiction in Sucre, Bolivia.

Indigenous community justice is governed by principles radically different from the ordinary justice system, both in classification of crimes, procedural aspects, and punishment. According to scholar Marcelo Fernández Osco, “It unites moral values, social norms, and legal rules in a holistic process which seeks to preserve the peace and harmony of the community.” There are several oral codes that guide indigenous community justice proceedings: *iwxas* (legal adages), *sawis* (determinations or agreements), *sara* (law), and *qamachi* (administration of justice), among others.

While the cultures and characteristics of Bolivia’s many indigenous groups vary, they share some common features. Bolivian indigenous movements are rooted in communities, and community organizations that mobilize for political activity have important functions in every-day life as well. Community justice is oral, and authorities are free to make decisions based on the circumstances of any particular case. Judicial roles are filled by community leaders who tend to be elected in popular assemblies. The oral proceedings are more responsive, quicker, and cheaper than the ordinary justice system, since they use the native language and do not involve lawyers. The offenses most often dealt with in community justice reflect the nature of the communities in which they live: conflicts over land, destruction of crops, robbery, marital conflicts, and interpersonal conflicts. More serious offenses, like murder, are usually turned over to the ordinary justice system. The goal of community justice is different than that of the ordinary justice system. The emphasis is on reconciliation and reintegration of the offender into the community. Sanctions are broad and under community control and can include fines, physical punishment, or expulsion from the community in rare cases. Because the goal is rehabilitation, not punishment, many believe that monetary fines only reinforces people’s bad behaviors, since those who can afford to pay the fines can turn their offenses into a purchasable commodity.

In November 2019 Bolivia faced a political crisis following the disputed results of the October 2019 elections. Evo Morales resigned and an opposition senator, Jeanine Áñez, assumed the role of president. Áñez and her political cabinet were prominent members of the non-indigenous elite community. In October 2020 Bolivian's voted overwhelmingly for Luis Arce, a Morales ally, for President.

Glossary

Pluri-National State: the idea that there are many nationalities within an organized state. In Bolivia, the Pluri-National State is used to describe a state that is made up of equal nations of various indigenous and European-descended groups with different cultures, religions, and worldviews.

Simón Bolívar (July 1783–December 1830): A Venezuelan military and political leader who led what is today Venezuela, Bolivia, Columbia, Ecuador, Peru, and Panama to independence from the Spanish Empire. He was the first president of Gran Colombia, a country that encompassed much of northern South America, from 1819 to 1930. He was also simultaneously the president of Peru and Bolivia.

Andrés de Santa Cruz y Calahumana (December 1792–September 1865): President of Peru in 1827, 1836 to 1838, and President of Bolivia from 1829 to 1839, and was Supreme Protector of the Peru-Bolivian Confederation from 1836 to 1839. As President of Bolivia he oversaw many reforms, including issuing a new Constitution and issuing a new Civil Code based on the Napoleonic Code.

Quechua: A language group spoken by the Quechua peoples, living primarily in the Andes. It was the main language family of the Inca Empire and is the most widely spoken pre-Columbian language in the Americas today. It is the second most spoken language family in Peru, and is an official language in Peru, Bolivia, and Ecuador.

Aymara: a language spoken by the Aymara people of the Andes. It is an official language in Bolivia and Peru and has nearly 2 million native speakers. Evo Morales, the first indigenous President of Bolivia, is an Aymaru cocoa grower.

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5. Nadie está obligado á declarar contra sí mismo ni contra sus parientes, y no puede ser obligado á ello por la tortura ú otras violencias (art. 10.)

6. Queda abolida la confiscación de bienes (art. 11); é igualmente la muerte civil (art. 22.)

7. La correspondencia, el hogar y la propiedad son inviolables, salvo los casos expresamente previstos por la ley, (art. 11 á 13)

8. La igualdad es la base del impuesto y de las cargas públicas (art. 16.)

9. Todo hombre goza en Bolivia de los derechos civiles, (art. 19)

10. Es ciudadano todo boliviano de edad de 21 años, si es célibe, ó de 18 años, si es casado, que sepa leer y escribir y tenga una propiedad inmueble ó una renta anual de 200 bolivianos (200 duros), que no provengan de servicio doméstico, y que esté inscrito en el registro cívico (art. 33 y sig.)

11. La soberanía reside en la Nación, la cual delibera y gobierna por el órgano de sus representantes y de las autoridades creadas por la Constitución (art. 37 y 38.)

12. Hay en la República un Ejército permanente, cuyo número fijará cada Legislatura, y en cada Departamento, una Guardia Nacional. Para ser oficial en el Ejército, se requiere ser boliviano por nacimiento, ó naturalizado y domiciliado en el país 5 años antes.

Article 10 of the 1880 Constitution defines who is eligible to hold Bolivian citizenship. It says that the person must be 21 years old, literate, and earn at least 200 bolivianos each year, but not as a domestic servant. From *Codigo de Constituciones Vigentes de Todas las Naciones Civilizadas* by Estevan Ovalle, published in 1897.

SECCIÓN DÉCIMANOVENA

Del Campesinado

Art. 165.—El Estado reconoce y garantiza la existencia legal de las comunidades indígenas.

Art. 166.—La legislación indígena y agraria se sancionará teniendo en cuenta las características de las diferentes regiones del país.

Art. 167.—El Estado fomentará la educación del campesino, mediante núcleos escolares indígenas que tengan carácter integral abarcando los aspectos económico, social y pedagógico.

An excerpt from Section 19 of Bolivia's 1938 constitution, which addresses indigenous rights.

Art. 165.—The state recognizes and guarantees the legal existence of of the indigenous community.

Art. 166.—Indigenous and agrarian legislation shall be adopted, taking into account the dissimilarities of the various regions of the country.

Art. 167.—The state shall promote the education of the rural population by means of indigenous study groups of an integral character which shall comprise economic, social, and pedagogical elements.

ARTICULO 172.- El Estado fomentará planes de colonización para el logro de una racional distribución demográfica y mejor explotación de la tierra y los recursos naturales del país, contemplando prioritariamente las áreas fronterizas.

Title Four, Article 172 of Bolivia's 1967 constitution.

Article 172.—The state shall promote colonization plans in order to achieve a rational distribution of people and better exploitation of the land and natural resources of the country, primarily in frontier areas.