



CONSTITUTIONAL REFORMS IN VENEZUELA

On August 15, 2007, President Hugo Chávez proposed a number of reforms to the 1999 Constitution. Focusing on a small segment of the constitution's 350 articles, the reforms aim to speed the redistribution of the country's resources to benefit the poor and widen the base of direct citizen participation in the democratic process. They are also intended to move Venezuela towards a new model of development – known as “Socialism for the 21st Century” – in peace and democracy. This model embraces participatory democracy, a mixed economy, meeting the country's social needs and promoting a multi-polar world.

History

In 1999, the Venezuelan people overwhelmingly voted to install a constituent assembly with the express purpose of re-writing the country's constitution. As part of an attempt to break with the past and create an equitable and fully representative democratic system, citizens, community groups and civic associations actively provided input regarding necessary changes. Of the 624 proposals the Venezuelan people submitted, over 50 percent were eventually included as part of the new constitution's 350 articles.¹

The resulting 1999 Constitution **expanded the rights** of all Venezuelans, formally recognized the rights and privileges of historically marginalized groups, reorganized government institutions and powers, and highlighted the government's responsibility in working towards **participatory democracy and social justice**. In a national referendum, 71 percent of the Venezuelan people voted to adopt the new constitution.

Copies of the 1999 Constitution are widely available in Venezuela, and even more widely read. According to one journalist's account, “You can buy a plastic-bound copy of the Venezuelan Constitution for 60 cents, a leather-clad copy for \$3, a coffee-table edition for \$5. Not that you really need a copy of your own, since someone standing near you on the subway in Caracas will have one in his pocket. Or you can always listen to one of the ongoing debates at a downtown park. ‘Look at this article,’ someone will shout, and a half dozen people will flip through the constitution's 35,000 words and 350 articles to find the pertinent passage. ‘Yes,’

Purpose of the Reforms

Speed the redistribution of Venezuela's resources to benefit the poor

De-centralize political power to grant citizens more direct say in their affairs

Outline the legal foundation of a new, more equitable model of development and democracy

someone else will cry out. ‘But this one here is more to the point.’”²

Democratic Process

According to Article 342 of the constitution, the National Assembly, the president or 15 percent of registered voters – roughly 2.5 million voters – can propose reforms to the constitution. The proposals must be debated by the National Assembly in three rounds – the first round began on August 21 – and voted upon with a two-thirds majority, after which they will be put before the Venezuelan people in a national referendum.

On October 25, the National Assembly completed the third round of debates on the proposed reforms. On top of the three rounds of debates, members of the National Assembly had also traveled throughout Venezuela to discuss the proposed reforms with community groups, civic organizations, opposition activists and regular citizens. From August 16 to October 7, some **9,020 public events** – over 192 a day for 47 days – were held throughout the country to provide information and take citizen input on the constitutional reforms. Similarly, a special hotline established by the National Assembly took over **80,000 phone calls** – over 1,700 a day for 47 days – in which Venezuelan citizens were able to offer critiques of the proposed reforms or offer reforms of their own. Additionally, the National Assembly distributed 10 million copies of the proposed reforms to interested citizens. Due to those combined efforts, **77.8 percent of the Venezuelan people** reported having read and being informed about the reforms.³

Based on the national process of consultations with the Venezuelan people, 25 additional reforms were proposed and 11 smaller changes were made, for a total of **69 proposed reforms**. The proposed changes will be sent to the National Electoral Council on November 2, and a national referendum will be scheduled for early December 2007 will allow the Venezuelan to either approve or reject the reforms.

Reform of Presidential Term Limits

Article 230 of the 1999 Constitution establishes that the presidential term limit will be of six years and that any president can be re-elected once. Under the proposed reform, the presidential term would be extended to

¹ <http://www.venezuelanalysis.com/analysis/350>

² http://www.motherjones.com/news/feature/2003/01/ma_208_01.htm

³ <http://www.asambleanacional.gob.ve/uploads/biblio/Balances.ppt>



seven years and any sitting president would be allowed to seek another consecutive term.

The purpose of the reform is to allow the wishes and preferences of the voters to be fully respected when it comes to electing a president.

As President Dwight Eisenhower noted in 1956 in reference to debate over presidential term limits in the U.S., “The United States ought to be able to choose for its President anybody it wants, regardless of the number of terms he has served.” More recently, in 2005 Rep. Steny Hoyer (D-Md.) and Rep. James Sensenbrenner (R-Wisc.) introduced legislation to do away with presidential term limits. In reference to the legislation, H.J. Res. 24, Hoyer, who now serves as the Majority Leader in the U.S. House of Representatives, stated, “I feel there are good public policy reasons for a repeal of [term limits]...Under the Constitution as altered by the 22nd Amendment, this must be President George W. Bush's last term even if the American people should want him to continue in office. This is an undemocratic result.”⁴

While this reform has been criticized as being undemocratic, it is important to note that various mechanisms will remain in place to ensure that the country's president is legitimately elected and held to account by the Venezuelan people. **The president will still face re-election, and the recall referendum – an innovative democratic tool that allows voters to cut short an elected officials' term – will remain in the constitution.** It's worth noting that the recall referendum was successfully activated by members of the opposition in August 2004, when 60 percent of the Venezuelan people voted to allow President Chávez to finish his first full term in office.

Economic Reforms

During the last three years Venezuela has seen consistent and record economic growth and diversification. More importantly, new forms of economic activity, business and entrepreneurship have been facilitated, allowing more Venezuelans productive opportunities. A number of proposed reforms to articles 112, 113, and 115 of the constitution would expand upon these initiatives and **formalize an economic model centered on social welfare and a diverse range of enterprises.**

Article 112 currently guarantees the freedom of all Venezuelans to engage in economic activity, while mandating that the government promote private enterprises that “create and guarantee the just distribution of wealth” and direct economic activity

towards the integral development of the country. The proposed reform would mandate that the government work to secure an economic system that is “diversified and independent” and founded on the “human values of cooperation and the preponderance of the general interest.” The reform would expand the scope of economic activity to not only include private enterprise, but also socially oriented, cooperative and community-based models of activity.

Article 113 currently states that economic monopolies will not be permitted. The proposed reform would formally prohibit economic monopolies and other actions to concentrate economic power or resources. Moreover, the reform would mandate that the government protect socially oriented, cooperative and community-based models of economic activity – the number of cooperatives has increased from 800 to over 180,000 in recent years – and would formalize the government's ability to exploit the country's natural resources for the general good. Private enterprises would still be allowed to exploit natural resources, though in conjunction with government enterprises.

Article 115 currently articulates the right to private property, while stating that any property may be taken by the government if just cause – the public good – is given and adequate compensation granted. The proposed reform would leave the right to and protection of private property unchanged while adding a number of new classifications of property. According to the reform, property not held in private hands can be classified as follows:

- **Public:** Fully owned and managed by the government.
- **Social:** Owned by the Venezuelan people and either managed by the government or by communities or other institutions.
- **Collective:** Owned and managed by groups of individuals for their particular uses.
- **Mixed:** A combination of ownership and management.

It is important to stress that **private property will remain and will enjoy the same protections it enjoys in other countries.** As detailed by the constitution and similar to the U.S. and Western Europe, **private property would only be taken by the government only if the public good requires it and if full compensation is offered.** As an example, past processes of land reform have shifted over 8.8 million acres of unused lands to poor families, but in the case of private lands, only with due compensation. Similarly, when the government announced its intention to nationalize the electric and

⁴ Speech of Hon. Steny Hoyer, February 17, 2005.
<http://thomas.loc.gov/cgi-bin/query/D?r109:1:./temp/-r109LUapPX:>



telecommunications sectors, they paid the market value of the two industries.

Reform of the Central Bank of Venezuela

Key to long-term growth and stability in Venezuela are the policies of the Central Bank of Venezuela, an institution charged with setting monetary policy and interest rates. Central Bank policies over the last decades, though, have limited economic growth and social development, a trend a proposed reform seeks to correct.

Article 318 details the responsibilities, rights and structure of the Central Bank of Venezuela. **The proposed reform would mandate that the Central Bank and the executive, through the Ministry of Finance and the Ministry of Planning and Development, more closely coordinate efforts to implement policies that promote economic growth and development.** The reform would also limit the bank's autonomy while putting the country's reserves under the control of both the Central Bank and the executive branch for the purpose of promoting "productive investments, development and infrastructure, financing of social programs and integral, endogenous and humanistic development." This reform will be an extension of a reform first made in 2005 that successfully allowed excess reserves – initially some \$6 billion – to be directed to social programs and infrastructure through the Fund for National Development (FONDEN in Spanish).

While Central Banks have traditionally been insulated from the governments they serve, this reform is vital to Venezuela's continued economic growth and development. As Nobel laureate Joseph Stiglitz has argued, the many tradeoffs involved in crafting monetary policy and promoting economic growth in developing countries "cannot be relegated to technocrats, particularly when those technocrats place the interests of one segment of society above others."⁵ Historically, the central banks of the region have maintained high interest rates and adopted policies that overvalued the currency, thus limiting borrowing and investing (and, as a consequence, economic growth) and making imports artificially cheap and exports too expensive on world markets. The reform intends to

⁵ Stiglitz, Joseph. "Is Central Bank Independence all it's Cracked Up To Be?" *The Daily Times*, November 11, 2005. http://www.dailytimes.com.pk/default.asp?page=2005/11/11/story_11-11-2005_pg5_23

allow better coordination between the executive and the Central Bank so as to guarantee policies that secure sustained economic growth, job creation and social development while maintaining sustainable levels of inflation.

Political-Territorial Reforms

Like every other country in the world, Venezuela's political and territorial boundaries are divided into a number of categories – nation, state, municipalities and a federal district. A number of proposed reforms would expand and clarify these political-territorial boundaries. **These reforms would further decentralize political power, thus allowing communities the ability and resources to participate in democratic processes and employ national resources to identify and resolve local problems.** They would also ensure that areas that have remained underdeveloped due to location and lack of infrastructure are better incorporated into national and regional development schemes.

Article 16 currently defines the country's political-territorial boundaries, including states, municipalities, a federal district, federal territories and federal dependencies. **Under the proposed reform, these boundaries would remain in place and be fully respected, but would also be complemented by the addition of maritime regions, insular districts and cities.** Within the latter, smaller units named "communes" would be granted formal recognition, thus allowing more active participation in municipal affairs by individuals and community organizations. **The reform would also allow certain areas – those suffering from a lack of development and poor infrastructure – to be designated federal provinces, federal cities or functional districts in which the government would be allowed to more easily direct necessary resources for development.**

Article 184 currently encourages the implementation of a law to direct municipalities to provide resources and services to those community and neighborhood organizations that request them. The proposed reform mandates that a national law be debated and passed articulating this transfer of resources and services, which include housing, sport, culture, environment, political participation, social economy and endogenous development, job creation and other resources and services currently handled by municipal bodies. The



national law would also create a fund to provide resources to projects identified by communal councils.

Military Reforms

Three reforms of articles related to the armed forces are aimed at further **securing Venezuela's territorial integrity, bringing all branches under a unified command structure and better allowing the fight against drug trafficking and other illegal activities.**

The proposed reform of Article 11 would include mention of Venezuela's maritime possessions (some 270,000 square miles) in the definition of its sovereign territory, while allowing the executive to declare "Special Military Regions" for the purposes of national defense or strategic activity (fighting drug trafficking and international crime) and better protection of border and/or remote areas. The proposed reform of Article 329 would list the branches of the Venezuelan armed services as the Army, the Navy, the Air Force, the Territorial Guard and the Popular Militia (formerly the National Reserves). **While the National Reserves used to be governed by a national law regulating the armed forces, the new Popular Militia will be governed by the constitution and under the same command as the other branches of the armed forces.** Finally, the armed forces would be renamed the Bolivarian Armed Forces in reference of Simon Bolivar, Venezuela's independence hero.

Limitations on Rights During Emergencies

During the second round of debates, the National Assembly proposed a reform to article 337 of the constitution that would call for the suspension of certain political liberties during what is known as a "state of exception," or national emergency. Articles 240 and 241 of the 1961 Constitution similarly included limitations on civil and political rights during times of national emergency.

While this reform has been criticized, **it is fully consistent with similar powers granted to democratic governments around the world.** Since the time of the French revolution, governments have recognized that during moments of massive disasters or extreme and imminent threats to the standing and security of the nation additional and temporary powers could be claimed by the executive to restore order. Currently a number of Western democracies have laws outlining the imposition of a

state of exception or a state of emergency, including Australia, Canada, France, Ireland, Spain and the United Kingdom. **In the United States, 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.

Other reforms include an end to discrimination based on sexual orientation, the right to adequate housing and a social fund for the unemployed.

Moreover, **international law recognizes the right of governments to limit certain rights in extreme circumstances.** Article 4 of the International Covenant on Civil and Political Rights, which Venezuela ratified 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."⁶

While the reform of Article 337 calls for the limitation of certain rights during a national emergency, a number of rights would remain, including the **right to life and personal integrity, the right to a defense, the right to a fair trial, and the right not to be tortured, disappeared or held incommunicado.** This ensures that Venezuela remains consistent – or in some cases even exceeds -- with its international obligations.

Other Reforms

When Venezuela's Constituent Assembly re-wrote the constitution in 1999, a large proportion of the articles focused on granting new rights or expanding their application to groups that had been historically marginalized. All told, 111 of the constitution's 350 articles deal with political, economic, social and cultural rights. Many of the proposed reforms seek to deepen the protection and promotion of certain rights and liberties:

- The proposed reform of Article 21 would **add sexual orientation and health** to the categories under which discrimination is prohibited.
- The proposed reform of Article 64 would **lower the voting age** to 16, following the lead of Austria, Nicaragua and Brazil.

⁶ International Covenant on Civil and Political Rights, http://www.unhcr.ch/html/menu3/b/a_ccpr.htm



- The proposed reform of Article 82 would **codify the right the adequate housing** for all Venezuelans and prohibit the state from taking any home as part of a judicial sanction.
- The proposed reform of Article 87 would **call for the creation of a social security fund** for those Venezuelans that are self-employed or in the informal sector.
- The proposed reform of Article 90 would **decrease the workweek** from 44 hours to 36 hours.
- The proposed reform of Article 98 would **protect the creation and communication of cultural goods.**
- The proposed reform of Article 100 would formally recognize and protect **Afro-Venezuelan heritage and culture.**
- The proposed reform of Article 103 would articulate **the right to education for all Venezuelans**, and mandate that all public education through university be free of charge.
- The proposed reform of Article 158 would mandate that the government take all steps to **ensure the active participation of the citizenry** in the country's democratic system.
- The proposed reform of Article 272 would establish that the Venezuelan penitentiary system direct its efforts towards the **full rehabilitation of prisoners and respect their human rights during incarceration.**

Conclusion

Just as the 1999 Constitution was written with massive and widespread participation and input from the Venezuelan people, the proposed reforms have been widely discussed and debated. Additionally, in early December, the Venezuelan people will have the opportunity to vote the reforms up or down in a national referendum. These reforms will better allow Venezuela to create a political, economic and social system that is equitable, peaceful and democratic.