

Fundamental Rights and Indefinite Rule:

The Case of Electoral Rights in Bolivia and Nicaragua

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The current human rights system owes a debt to Latin America. The region was one of the first to address the lack of protections for human rights, and in doing so, set the agenda both regionally and internationally for human rights norms we take for granted today. Sadly, the continent that has championed human rights has also had to endure leaders that have sought to undo these advances. In this paper, I will counter the arguments posed by Nicaraguan and Bolivian governments stating that the limitation of presidential terms disregards their fundamental human rights as outlined in the American Convention on Human Rights, the International Pact on Civil and Political Rights, and the Universal Declaration on Human Rights, and instead argue that this is a misuse of the fundamental principles of human rights to undermine democratic restraints on political power.

Collective human rights agreements in Latin America date back as far as the early twentieth century; however, the most significant discussion on human rights in the Americas took place in Chapultepec, Mexico, in 1945 to formulate a regional consensus on human rights in the post war inter-American system. These talks led to the formation of an Inter-American judicial committee that would draft the American Declaration of the Rights and Duties of Man. This declaration was one of the first human rights instruments in the international system, outlining that human rights “are not derived from the fact that he is a national of a certain state but are based upon attributes of his human personality” (Goldman, 2009, p. 859) even before the Universal Declaration of Human Rights adopted by the United Nations General Assembly. It is this history that demands special attention be given to the application of human rights codes in Latin America. Furthermore, the Organization of American States, the region’s primary multilateral organization, - contained sections dedicated to human rights in its very charter.

Fundamental Rights and Indefinite Rule

These examples illustrate the extensive work done to advance human rights in the region, and as a result of its early adoption of human rights norms, a figurehead for the international fight for human rights.

In a twisted interpretation of this history, the Bolivian government under Evo Morales and Nicaraguan government under Daniel Ortega have claimed that the political rights of themselves and their electorate are threatened by the term limits enshrined under their own constitutions. Daniel Ortega has lead Nicaragua since 2007, however, his current presidency according to the country's own electoral system should have ended in 2011. After the conclusion of his second mandate as Nicaragua's leader, Ortega petitioned the Supreme Electoral Council to review its laws to allow him to run in the following election. The following day the court refused this request. After receiving this news, Ortega proclaimed that this resolution harmed his fundamental rights and returned to the Council to demand a second review. That same day, after a record breaking 90-minute hearing, the court ruled that the articles that limited election terms were unconstitutional (Barahona, 2012).

A similar set of events occurred in Bolivia in 2016, when after having served his second term as president, Evo Morales rejected the notion that he was no longer legally able to run for another term in office. Instead, he attempted to amend the constitution created under his own administration through a referendum. After this failed by a slim margin, and with a lack of further recourse, he convened the Plurinational Constitutional Tribunal using the same arguments as Ortega. This court, with a membership of judges loyal to his political party, deemed that the political right to stand for elections should be considered a fundamental human right which

Fundamental Rights and Indefinite Rule

supersedes the constitution. These arguments are based primarily around three articles of international law, as follows:

Article 23 of the American Convention on Human Rights

1. Every citizen shall enjoy the following rights and opportunities:
 - a. to take part in the conduct of public affairs, directly or through freely chosen representatives;
 - b. to vote and to be elected in genuine periodic elections, which shall be by universal and equal suffrage and by secret ballot that guarantees the free expression of the will of the voters; and
 - c. to have access, under general conditions of equality, to the public service of his country.
2. The law may regulate the exercise of the rights and opportunities referred to in the preceding paragraph only on the basis of age, nationality, residence, language, education, civil and mental capacity, or sentencing by a competent court in criminal proceedings.

Article 25 of the International Pact on Civil and Political Rights

Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:

- (a) To take part in the conduct of public affairs, directly or through freely chosen representatives;
- (b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;
- (c) To have access, on general terms of equality, to public service in his country.

Article 21 of the UN's Universal Declaration on Human Rights.

- (1) Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.
- (2) Everyone has the right of equal access to public service in his country (Venice Commission, 2018, p. 15)

Fundamental Rights and Indefinite Rule

In reviewing the report completed by the European Commission of Democracy through Law, otherwise known as the Venice Commission, one can clearly see that the argument which links the constraint on presidential terms to a breach of human rights is one that not only escapes reason but also lacks legal ground. According to this body, removing limitations on election terms from the constitution can undermine the confidence necessary for the political system to function well” (Venice Commission, 2018, p 22). Existing agreements and rulings in the international human rights system further exemplify the problematic nature of these claims. For example, the African Charter of Human Rights and Peoples demonstrates that the need for free access to elections should be bound by the provisions of local law or “Principles Governing Democratic Elections in Africa” (Venice Commission, 2018, p 15). Similarly, as found by the European Tribunal, the right to free election cannot be considered an absolute one and thus, should be subjugated by one’s constitution. Thus, the cases brought forward by both Morales and Ortega would be subject to their local constitutions, both of which have clearly stated limits on presidential terms.

Whilst the articles presented above specify that individuals have the right to stand for elections, they do not specify that this principle is then applicable to re-election. However, the restrictions outlined in agreements such as Article 1 of the American Convention of Rights are limited only to social reasons for which one may not be discriminated against (reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition) (Venice Commission, 2018, p. 13). As there is no social form of discrimination present by barring an individual from re-election, this article similarly demonstrates that the right to re-election is unsubstantiated by international law.

Fundamental Rights and Indefinite Rule

Finally, the argument claiming that the political rights of the people are violated by eliminating a candidate is invalidated as society collectively agrees to abide by its constitution and the laws that govern it. However, if the rights of individuals were believed to be infringed upon by the constitution then an amendment would be initiated. In the case of Bolivia, a referendum was put into place to modify the constitution and extend term limits. However, as this referendum failed to gain support from the majority of the country, it was clear that Bolivians did not feel that their rights had been infringed upon. Secondly, the government regularly exercises its power to implement the criteria for which candidates are able to run for office through conditions such as mandating that candidates be citizens or of a certain age, among other qualifications. These conditions are up to the discretion of one's government, and while they cannot be discriminatory, the right to re-election should be subject to these same parameters.

The Venice Commission has cited numerous agreements on human rights in their report and their conclusion is clear: it is evident that the cases of Nicaragua and Bolivia have formed arguments that do not accord with any major international decisions on human rights. These arguments have attempted to utilize human rights to reaffirm their illegitimate presidencies and weaken the strength of their own democratic institutions. Failing to acknowledge these farcical trials can have deleterious effects on a country, as is already acutely visible in the current state of Nicaragua which has recently been responsible for a government crackdown that left 300 dead in 2018, and in the fraudulent elections of October 20, 2019 in Bolivia which led to widespread chaos in the country. In this article, I have sought to illustrate that human rights are enshrined both in the constitutions of states, and in numerous conventions and charters internationally, to

Fundamental Rights and Indefinite Rule

protect the most essential and irrevocable civil liberties. However, if leaders continue manipulate these rights to best suit their political endeavours, a precedent will be set that will weaken its moral and normative legitimacy both locally and internationally.

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