

Bolivia Returns Hydrocarbons to the Public Sector

Nationalization without Expropriation?

By Raquel Gutierrez and Dunia Mokrani | June 12, 2006

On May 1, Evo Morales announced “Supreme Decree #28701” that establishes “the nationalization of Bolivian hydrocarbons.” The decree is worth analyzing in depth to understand how the Bolivian government is carrying out the measure.

What does the nationalization consist of?

The opening fourteen considerations of the decree can be divided into two categories: political arguments and legal justifications. There are two main political arguments: a recognition of “the historic struggles (in which) the people paid in blood for the right to return our hydrocarbon wealth to the nation, for it to be used in benefit of the country,” and a statement that the measure decreed is inscribed in the contemporary struggle of people all over the world to defend national sovereignty.

The legal justifications are numerous. They begin with a reinterpretation of the results of the referendum held July 18, 2004, which opponents qualified as a trap since although it referred to “recovery of ownership of oil and gas from the mouth of the well” it did not mention *de facto* ownership of Bolivian oil and gas by transnational corporations. The referendum merely listed the privileges and obligations of the state established in the Political Constitution of the State.¹ The legal justifications of the new decree allude to the illegal character of the contracts signed between the Bolivian government and oil companies and ratified by the Constitutional Tribunal on March 7, 2005.

The question of the illegal ways that the contacts were signed between the Bolivian government and the corporations is a matter broadly debated in Bolivia since 1996. It arose again in 2005 when the Law on Hydrocarbons under the administration of Carlos Meza was approved. The law failed to satisfy anyone and eventually led to his fall as interim president.

By decision of the Constitutional Tribunal, the contracts between the transnational oil companies and the Bolivian government that currently exist are “illegal” according to national legislation and that is why they were shifted from the old “Law on Hydrocarbons” of 1996 to the “new law” of 2005—slightly less favorable to the corporations. The central point of the change between the old law and the Meza law was the amount of taxes to be paid by the transnationals.

In the section of resolutions the new decree establishes first that:



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ARTICLE 1: In exercise of national sovereignty, obeying the mandate of the Bolivian people as expressed in the binding Referendum of July 18, 2004 and in strict application of constitutional precepts, all oil and gas natural resources of the country are to be nationalized.

The state recovers ownership, possession and total and absolute control of these resources.

Immediately following this statement, the decree establishes the concrete measures to be taken:

ARTICLE 2:

- I. From May, 2006 on, oil companies that currently carry out activities of production of gas and oil in national territory are obliged to deliver ownership to Petroleum Fields Fiscal Bolivian (YPFB, by its Spanish initials) all production of hydrocarbons.
- II. YPFB, in the name of and in representation of the State in full exercise of ownership of all hydrocarbons produced in the country, assumes commercialization, defining the conditions, volumes, and prices both for the domestic market and for exportation and industrialization.

What the decree establishes then is that the nationalization will be carried out by way of delivery to the state on the part of the oil companies of “all hydrocarbon production.” It indicates furthermore, that the state-owned oil company YPFB, dismantled under the neoliberal stage headed by Sanchez de Lozada and now reconstructed, assumes the control of commercialization, and therefore of the prerogative to set prices for all hydrocarbons produced in Bolivian territory.

Nationalization without Expropriation

The question remains: Is this a nationalization that does not expropriate installations, fields, or infrastructure? The answer can be synthesized in a phrase: there can be nationalization of hydrocarbons without expropriation because these resources were privatized without ever being bought from the state-owned enterprise.

This apparent paradox can only be understood by recalling the history of the specific forms of neoliberal privatization *a la Boliviana*, both of hydrocarbons and other companies. In 1996, these mechanisms were called “capitalization.” Let’s look at how they worked:

At the height of the neoliberal era, Sanchez de Lozada dedicated his first presidency (1993-1997) to consolidate the neoliberal reforms he himself had put in place as Minister of the Economy in the administration of Paz Estenssoro (1985-1989). In 1995-1996 the Bolivian government promoted “capitalization” of state-owned enterprises. This measure consisted of converting state-owned enterprises (YPFB, Empresa Nacional de Ferrocarriles/National Train Company, Bolivian Lloyd Airlines and others) in shareholders’ societies whose shares were supposedly given out individually to every Bolivian citizen over 18 at the moment the Law of Capitalization went into effect. Once converted into shareholding societies, the former state-owned enterprises, now converted into anonymous societies, established “joint venture” contracts with businesses and transnational corporations that were bound to commit to investing in them sums up to 100% of the value of shares. That is, they sought to double the book value of the state-owned enterprises through this new productive investment.

In this way, in the discourse back then, the companies are capitalized by becoming companies hypothetically owned by both parties in the following proportions: 49% by the “society of individual Bolivian owners,” with 51% of the shares that resulted from the above-mentioned productive investment held by the corporations. In this way, the ownership of the 51% of total shares owned by the corporations guaranteed them absolute controlling interest in the companies that had been “capitalized.” It might seem incredible to many that national resources were thus transferred from the public to the private sector without any type of sale, but this is exactly what happened. There was no sale, so now there is no expropriation. If one reviews the press and the laws passed during 1995 and 1996 in Bolivia it is clear that this was the peculiar mechanism of privatization devised in that country to transfer public wealth, national resources, and the

state investment accumulated in the thirty years prior to 1990 directly to the private sector.

To sum up, capitalization in Bolivia consisted of delivering control of formerly public companies, in particular of YPFB—conveniently converted into anonymous societies, and divided according to the necessities of the “interested partners” in exchange for nothing. That is, the “fresh money” for new investments, chronically scarce according to neoliberal governments, was the only contribution of the transnational companies. In this deal, they obtained control, management, use, and earnings of all the Bolivian patrimony converted in powerless “individual shareholders.” The Bolivian government charged 18% taxes on every operation. So a whopping 82% went directly into the pockets of the corporations. The now-minority “individual partners,” that is the Bolivian citizens, looked on with a worthless piece of paper in their hands.

For that reason, when the government of Evo Morales decides to “nationalize,” it does not need to recur to drastic actions of “expropriation.” As stated in the second clause of Article 7, all that’s needed for “nationalization” in which the state controls 50% plus one of the companies is to collectivize the shares held by Bolivian citizens and value future investments as additional shares needed. So the Bolivian model of “nationalization” consists of unraveling the questionable *ad hoc* legal framework created for looting national resources in the first place. As such, the measure is politically and legally astute since by situating the dispute in the terrain of interpreting existing national law, it avoids the possibility of a wave of lawsuits against the state in international tribunals implemented by corporations.

ARTICLE 7:

- I. The state recovers its full participation in the entire productive chain of the hydrocarbon sector.
- II. The shares necessary for YPFB to control 50% plus one in the companies Chaco SA., Andina SA., Transredes SA., Petrobras Bolivia refinacion SA., and Compania Logistica de Hidrocarburos de Bolivia SA. are hereby nationalized.

- III. YPFB will immediately name its representatives and officials in the respective directorships and will sign new partnership and administrative contracts which guarantee the state control and management of hydrocarbon activities in the country.

What the government of Bolivia has done here is reinterpret the terms of the relationship between the state and transnationals based on the legal framework it inherited, and assume the prerogatives and powers that the state had under the same laws of capitalization but giving them a different sense.

This is a major change in political terms and a solid first step. However, it still comes up short in terms of the aspirations of the men and women of Bolivia who have been fighting since 2003 to expel the companies that have been looting the nation and to bring about “the social re-appropriation of public wealth.”

ARTICLE 6 of the decree refers to the reconstruction of YPFB as a state-owned enterprise:

- I. In application of the terms disposed by Article 6 of the Law of Hydrocarbons, all shares in the capitalized oil companies Chaco SA., Andina SA., and Transredes SA. formerly held by Bolivian citizens that formed part of the Collective Capitalization Fund are transferred without charge to YPFB.
- II. So that this transference does not affect payments under BONOSOL, the State guarantees the repayment of the contributions that these companies delivered annually to the Collective Capitalization Fund, as dividends.
- III. The shares of the Collective Capitalization Fund that are in the name of the Administrators of Pension Funds in the companies Chaco SA., Andina SA., and Transredes SA. will be transferred to the name of YPFB.

To restore the public company YPFB all that was needed was the political will. The strategy was to endorse the shares of Bolivian citizens, since these were technically held as property but systematically ignored during the administrations of Sanchez de Lozada, Banzer, Sanchez de Lozada and Meza.

Thus the Bolivian nationalization is in reality the state's recovery of "apparent and disperse property"—the so-called individual shares—and in this way new relations are established with foreign partners, by taking advantage of the weak points of the neoliberal legal structure. In particular, by clearing the smoke from the legal smokescreen established when the control, management, and use of hydrocarbon resources were delivered free of charge to transnational corporations for their exclusive benefit, the new law regains control of the companies, while the private sector interests retain nominal property of their shareholder packages.

Dispute on the Meaning of the Nationalization

The political decisions made by Morales last May have raised a chorus of voices, expressing both support and dissent. On the one hand, are the reactions of neighboring presidents, particularly Lula and Kirchner, whose economies depend to a certain degree on Bolivian gas to provide energy to industry. After the first signals of surprise and repudiation emitted by the director of the Brazilian oil company Petrobras and Spanish partners of REPSOL who have significant investments in YPF-REPSOL of Argentina, it looks like the waters have calmed a bit. President Morales explained to everyone that Bolivia is simply recovering its property and assuming its prerogatives of ownership—now once again centralized in the state through YPFB and no longer camouflaged as isolated and impotent "individual property"—of 49% of shares of all the oil and gas industry in Bolivia, fragmented in 95-96. It also nationalized an amount corresponding to 2% of total shares to reach a total of 51% under its control.

Instead of an obsolete "residual YPFB," which is what the company had become during the 90s, now the transnational corporations and governments of other countries with interests in Bolivian gas are obliged to discuss, negotiate, and reach agreements with a reinforced state-owned enterprise that is a full partner in all petroleum deals and with a government that has stated firmly that it does not want "bosses"

but "treatment between equals." The argument is impeccable, and the actions carried out by the Morales government are without doubt accordant with its pre-electoral discourse and with what has been manifested by Evo Morales as president over the first three months.

The actions taken in Bolivia then reinforce the national state, strengthen the Morales government, and modify the terms of relationship between the Bolivian state, its neighboring governments, and transnational corporations. Analyzing things from the point of view of the relations between governments, and between these and transnational corporations, the "statization-nationalization" is a move that strengthens and protects national sovereignty, understood as the recuperation of a certain decision-making autonomy of the Bolivian state, which in the previous administrations was completely subordinated to outside interests and designs.

However there is another level of analysis that is worth including—one that puts the emphasis on the relations between the government and the governed. This perspective focuses on what can be called "social sovereignty" or the capacity of the population to intervene in the political and public affairs that concern it. The following are some considerations on that point.

First, many voices have expressed inconformity with the way in which the action of national dignity was staged within Bolivia. The "nationalization" was presented as a "gift" from Evo to the population on International Workers Day, when the measure is really no more than cautious compliance with the first step of the citizen mandate that has been repeatedly the subject of public discussion by the organized population since at least Sept.-Oct. of 2003. These voices insist that the decree is a major step forward but it is not a "present" or "something given" to the people; rather it is the minimum achievement that could be expected after the intense indigenous and popular struggle sustained over the past five years.

In this sense, the Bolivian worker population whose sacrifice and strength have been what built the public wealth, formerly delivered to foreign control and now recuperated in part, does not have to "thank" Evo.

This population voted overwhelmingly for Evo Morales last December so that he would begin the necessary steps toward complying with promises to recover all hydrocarbon resources. And Evo and his government have taken the first important step, which should be recognized as a willingness to comply with the popular mandate. But it is only this—a leader’s first step toward full compliance with the popular mandate. The road ahead will be strewn with obstacles and in the end the solution cannot be found at the tables of discussion among experts but in the strength of the Bolivian people.

Second, it is worth mentioning the concern expressed by some social sectors about how Evo Morales and his government are developing the relationship with social movements. Morales has managed two central ideas in his speeches since he took office: that his is a “government headed by an indigenous person”—sustained above all in the symbolism exhibited in public ceremonies—and that his is a government “of social movements,” as seen in the participation in the ministerial cabinet of some representatives of union and neighborhood organizations.

There are, however, worrying signs perceived and expressed still *sotto voce* by many leaders within social movements in the sense that Evo is not listening to the multifaceted and broad-based Bolivian working society. This can be seen in the Law to Convoke the Constituent Assembly, which did not recognize the many political and organizational forms of social movements as subjects of political rights in themselves and therefore did not give them autonomous political representation.² Another worrisome example is the way the government has handled some social conflicts; in particular, the struggle by Lloyd Airlines of Bolivia (LAB) workers to recover the company, which was formerly state-owned and later privatized.

One of the virtues of Bolivia’s social movements has been their in-depth, critical knowledge of their opponents’ legal framework. This has enabled them to not only register documented grievances but also to establish immediate and viable objectives to advance step by step. In this sense, the path laid out in D.S. 28701 of “nationalization” consists to a certain point in

repeating a strategy that has been discussed and implemented many times before over the past years: in the “water war” of Cochabamba to establish the terms for “recovering” drinking water from the private company, and in the second water war in El Alto to build a “public social company for distribution of drinking water.”

In Bolivia, “overcoming neoliberalism” has happened in an impromptu way by answering the question: what has neoliberalism done to us and to our common, collective, and public goods? From that question, grassroots movements have moved forward by concentrating on undoing what neoliberalism had done, modifying along the way old forms of government management of common goods that could be typified as partisan and biased. The workers of LAB, supported by the Coordinating Committee in Defense of Water and Life in Cochabamba proposed last March an interesting project of “social recuperation” or “nationalization” of LAB that consisted in, above all, reinterpreting legal modifications of the past decade and in the possibility of utilizing certain “collective use” resources that are currently more a legal fiction than real assets—similar to the “individual shares” possessed by Bolivian citizens under the gas capitalization scheme. This autonomous civil initiative was not supported by Evo’s government, which refused to seriously negotiate with organized workers and in fact repressed the movement using the army and police.

However, in this type of relationship between government and very active social movements, what’s at play is the reach that the energetic efforts of the full Bolivian society can attain in transforming the neoliberal “order” through mobilization and in terms of concrete achievements and conquests. If the goal is to recuperate certain autonomy of the state *vis a vis* transnational capital, that is, to put the emphasis on public governmental action in the steady recovery of “national sovereignty,” without a doubt Evo Morales is taking effective steps.

But if the goal is also to change the terms of the relationship of *rule-obedience* between those who govern and the governed by propitiating new means of participation of the poor and working population in the

most important public decisions, which is in some ways what social protests have done during the past years, Evo and his government seem to be trying to close off the possibility by consolidating themselves as the only source of political action, like the only “Subjects,” writ large, of political activity, dressed in the discourse of “change.” It’s as if the government were called on to unilaterally interpret a long and polyphonic process of grassroots struggles that seeks to end these cycles, in particular, the cycle of overt struggles since 2000. They seem to be doing this by choosing a dynamic that seeks above all the adhesion to a “national consensus” to channel, under this slogan, the wide range of social energy released over the past years toward reinforcing a personal leadership instead of strengthening and supporting those forms of politics that made the present political situation possible.

In any case, in Bolivia social and political life appears as something that has not crystallized, as a fluid material that is susceptible to transformation through the participation of the population. For this, one must take

seriously Evo’s invitation to the Bolivian people: “Push me where you think is necessary.” And hopefully, some of Evo’s actions and “grandstanding” that seem to insinuate “applaud me because I am the one and only leader of political action” can be set aside for now. One thing is clear from history—that will never be true.

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END NOTES

- ¹ The situation began to be remedied in February 2006 when Bolivia accused Repsol of having declared state-owned gas fields as its own. The accusation produced an abrupt drop in Repsol stock prices.
- ² For a complete explanation see Gutiérrez Raquel/Gómez Luis, Bolivia, Las complejidades de un proceso abierto, at <http://www.sinpermiso.info/articulos/index.php>.

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