



Context Paper: **Laws Approved Via the Enabling Law**

On January 31, 2007, the National Assembly approved an Enabling Law which allowed President Chávez to issue **decrees that have the rank, value and power of a law**. This Enabling Law lasted for eighteen months and was limited to eleven areas including democratization, improving government institutions, creating a more sustainable economy, modernizing Venezuela's financial system, security and defense issues, and promoting the development of infrastructure. Several **administrations in the past have been granted Enabling Laws**, which both the 1961 and 1999 constitutions permit. On July 31, 2008, **the President issued the final twenty-six laws of the enabling period**.

Executive Summary

Due to misunderstandings about the Enabling Law and the twenty-six laws approved last week, it is necessary to clarify the following:

1. **The approval of the Enabling Law and the twenty-six laws issued are all in accordance with the constitution** and were developed via democratic procedures.
2. These laws are **fundamentally different from the proposed constitutional amendments of 2007**. The new laws leave the constitution and the political and administrative structure of the government untouched.
3. **The twenty-six laws deal with, among other issues, access to food, access to credit, improving national defense and consumer rights.**

4. The approved laws are **technical in nature and seek to make government institutions stronger and more efficient**.
5. According to the constitution of the republic, these **laws can be amended, rejected or rescinded after they are issued**.

Full texts of all twenty-six laws are available at

http://www.minci.gob.ve/noticias/1/182059/consulte_el_contenido.html

Enabling Law

President Chávez was re-elected in December 2006 with 64% of the vote in a record-high turnout election. After his re-election, he requested an Enabling Law to move forward with the development of a legislative framework necessary to meet the spirit of the constitution.

The granting of an Enabling Law requires a democratic process. The executive branch presents a petition requesting the law to the legislative branch. The National Assembly then debates the law twice, reviewing each article. Public forums involving everyday citizens are then consulted. **If approved, the Enabling Law has to set an expiration date as well as specify the areas covered by the law.** After the President signs the Enabling Law, he is free to issue laws within the established limits during the approved time frame.

The twenty-six laws, as well as any other law approved via the Enabling Law, are not set in stone. The National



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Assembly can take up these laws and propose changes to be voted on. **By collecting signatures of 5% of voters listed in the Electoral Registry, a referendum can be called on any of the laws.** Finally, the Supreme Court can rule on the constitutionality of any law; if it were to declare one unconstitutional, the law would obviously be rescinded.

The Nature of the New Laws

Each law deals with regulations pertaining to specific sectors. Many of the laws are technical in nature and others amount to small changes of previous laws. **The new laws leave the constitution and the political and administrative structure of the government untouched.**

In December 2007, Venezuelan voters did not approve a list of proposed constitutional amendments, by a slim margin. The proposed reforms would have amended the constitution and changed the structure of the government. Contrary to claims by the opposition, the twenty-six laws approved on July 31st are fundamentally different from those reforms. **None of the laws require amending the constitution; in fact, they are all in full accordance with it.**

Approval Process

These laws were crafted in a deliberate manner and there was no hurry to approve them before the enabling period expired. In fact, according to Vice President Ramón Carrizalez, “a series of laws [that were not approved] were being considered, but discussions about them had not been completed.”¹ Given that the enabling period has expired, these sixteen laws will be sent to the National Assembly.

From the granting of the enabling period in 2007 to the approval of the final laws in July,

¹ Vice Presidential Press Conference, August 4, 2008.

2008, this **process was in harmony with the democratic ideals and laws of Venezuela.** For example, Elias Jaua, Minister of Agriculture and Land, noted that the agriculture laws “included more than a year of debate with specialists, functionaries, social groups, and discussions with cabinet ministers.”² Under Article 203 of the constitution, the President is not allowed to issue Organic Laws without the participation of the Supreme Court. Hence, **all of the Organic Laws approved were deemed to be constitutional by the Supreme Court.**

The Supposed Controversies

The following sections will discuss several of the laws which have been misrepresented by the opposition and some of the mainstream media.

1) Organic Law of the Bolivarian National Armed Force

The Organic Law of the Bolivarian National Armed Force (LOFANB) will make the armed force undergo significant changes.³ However, **the Bolivarian National Armed Force (FANB) will remain an apolitical entity.** This point is crucial to understand, given the scare tactics being used to discredit these laws.

The most obvious change is the addition of the word “Bolivarian” to the name of the Armed Force. **The military is being renamed to better reflect the spirit of the constitution and the country’s name.** The word “Bolivarian” signifies a commitment to an independent Venezuela

² James Suggett “Chávez Signs 26 Law-Decrees on Final Day of Enabling Law Power,” August 5, 2008, VenezuelaAnalysis.com,

<http://www.venezuelanalysis.com/news/3691>

³ Gaceta Oficial Extraordinaria 5.891 (Federal Registry)

<http://www.tsj.gov.ve/gaceta/gacetaoficial.asp>



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dedicated to equality, peace and social justice, the values of founder and liberator, Simon Bolivar.

Technical changes to the Armed Force include new ranks to strengthen the chain of command. A **strict pyramidal hierarchy is maintained.**

Under the new law, the FANB will experience two important conceptual changes. The first relates to education, which will be given a greater emphasis in order to improve the military's performance as well as lead to the personal development of its members. The second is the creation of a National Militia to complement the military's other four branches. Additionally, this law emphasizes the military's long-standing commitment to human rights.

Education in the Military

All branches of the military will offer education and training programs. **Education within the military is now a priority not only to improve performance, but also for the personal development of its members.** The law's statement of motives asserts the following: "Military education should be committed to the national project, whose goal is social, political and economic justice, and **equality without discrimination or subordination, that promotes peaceful cooperation between countries,** and promotes and strengthens integration with Latin America and the Caribbean in accordance with the principles of non-intervention and self-determination, universal and indivisible human rights, the democratization of international society, ecological equilibrium and environmental rights, as common goods that cannot be renounced."⁴ Education will be value-laden.

⁴ Statement of Motives, Organic Law of the Bolivarian National Armed Force

However, **the values are universal and not political.**

Bolivarian National Militia

The Bolivarian National Militia (MNB) takes over for the now defunct National Reserve, and as such it is not a completely new institution. The law's statement of motives is clear: "the model of social, participatory and protagonist democracy outlined by the constitution . . . brings forth a principle of co-responsibility, which means that it is not only the Bolivarian National Armed Force that is responsible for defense and territorial integrity, but society as a whole."⁵

The term "National Militia" in the new LOFANB simply means a group of civilians organized and trained by the FANB for active participation in national defense and the integral defense of the nation. **It is a complement to the other four military branches.**

The militia's objectives are clearly listed and include: training, preparing and organizing the public for the defense of the country; contributing to maintaining public order, and the safety, defense and development of the nation; establishing links between the public and the FANB; and assisting Community Councils when its expertise is needed. Furthermore, the MNB can be mobilized in situations such as training periods and states of exception as noted in the constitution (including social, economic, political, natural or ecological emergencies, in which the security of the nation, institution or its citizens are seriously affected).⁶

According to the law, the overarching **goal of the MNB is to contribute to sustaining**

⁵ Statement of Motives, Organic Law of the Bolivarian National Armed Force

⁶ Article 337, Constitution of the Bolivarian Republic of Venezuela, 1999.



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the independence, sovereignty and territorial integrity of the nation. The Bolivarian National Militia threatens no one; it is a **purely defensive institution whose role is quite specific.** The law specifies that citizens are free to choose whether they will participate in defense training. **The MNB will act in full accordance with the letter and spirit of Venezuela's constitution and laws.** Finally, with the creation of the MNB, **the executive branch's control over the military essentially remains the same.** As in the vast majority of democratic countries, branches of the military answer to the executive. One of the constitutional duties of the President is to direct the military in his "capacity as Commander in Chief."⁷ This aspect of the FANB law is equivalent to the 1947 creation of the U.S. Air Force, which named President Harry Truman the Commander in Chief of that institution.

Human Rights and the Military

A chapter of the new law is dedicated to human and international humanitarian rights. This emphasis is indicative of the institution's commitment to peace and the protection of people. Rather than analyzing this section, we will let the articles speak for themselves:

Article 134. Respecting International Humanitarian Rights. Members of the Bolivarian National Armed Force should know, respect, carry out and enforce national laws as well as international agreements, treaties and accords ratified by the Venezuelan state, regarding international humanitarian rights.

Article 135. Respecting Human Rights. Members of the Bolivarian

National Armed Force should know, respect, carry out and enforce national and international human rights laws in times of peace and state exception, acting within these laws.

Members of the military will receive training and education relating to human rights and the various national and international laws which govern them.

2) Organic Law for Food Security and Sovereignty

During the final months of 2007, Venezuela experienced food shortages. Though relatively mild, these shortages led to worry and unrest among the public. Global increases in food prices, hoarding, smuggling, production adjustments (e.g. milk producers switching to yogurt production), and outright sabotage are among the factors which led to food shortages in 2007. Though this situation has been overcome due to measures the government has taken, the need to have a **legislative framework that promotes food independence** was made clear. Furthermore, though land redistribution has been one of President Chávez's platforms for some time, the democratization of access to land alone cannot lead to food justice—legal tools are also necessary. This is the motivation behind the Organic Law for Food Security and Sovereignty (LOSA).⁸

This law "is **not meant to suppress the free market**; it is a legal tool to be used jointly by the state and society to allow for legal, strategic, democratic, participatory and land-use planning for agricultural production, and for the development and management of areas for the production and distribution of goods, services and wealth, in

⁷ Article 236, Constitution of the Bolivarian Republic of Venezuela, 1999.

⁸ Gaceta Oficial Extraordinaria 5.889 (Federal Registry) <http://www.tsj.gov.ve/gaceta/gacetaoficial.asp>



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conjunction with our societal goals as stated in the constitution, all while guaranteeing supply, equitable distribution and food justice for the entire population.”⁹ LOSA is designed to work in conjunction with the market to **guarantee supply, equitable distribution and food justice for the entire population; private property will be respected, as it has always been.**

In bringing about food justice the law sets a legal template for reducing rural-urban inequality, which is part of a holistic plan for rural development. It also improves access to credit, especially for small and medium sized producers who often do not have banks close to them or cannot qualify for loans.

Another of the law’s goals is to reduce speculation and price gouging in agricultural products. Speaking about this, Richard Canán, Vice Minister of Agricultural Economics for the Ministry of People’s Power for Agriculture and Land, noted: “After [many meetings with actors in this sector] we reflected. In general, the industry has to strike a balance with prices. The State now has industrial plants and it knows the cost of production.”¹⁰

Although the media campaign to discredit this law focuses almost exclusively on the issue of punishments, it distorts the truth and fails to put the issue in its proper context. As noted above, Venezuela has experienced a period of sabotage, smuggling and hoarding which has put economic pressure on ordinary people who had to work harder to afford food (2002, 2003, and 2007). To ensure that this does not happen again and that there is food

security, this law specifies certain felonies to be accompanied by their respective punishments.

As with all legal sanctions in Venezuela, these punishments would be the result of legal findings that **respect and allow for due process and any other civil rights which may be applicable.** The punishments can include fines (up to a maximum 3,000 tax units, which amounts to approximately \$64,000), seizures, temporary closing of establishments, or, in extreme cases, prison sentences from six months to a maximum of three years. Prison can only be applied to those found guilty of the following: premeditated disruption of food production; actions leading to the obstruction, destruction or deterioration of strategic food reserves; or theft of strategic food reserves. A government cannot let its people starve, which makes this **a national security issue.**

Finally, this law is yet another example of the government’s commitment to deepen and strengthen democracy. LOSA calls for the creation of Agrarian Assemblies which will plan and reach agreements relating to social production, trading, and distribution of agricultural goods. These Assemblies will work on three levels: the National Assembly, the Regional Assembly, and locally as Rural Councils or Production Councils.

3) Organic Law for Public Sector Finances

The Organic Law for Public Sector Finances (LOAFSP) is actually a reform to article 90 of existing law.¹¹ This change amounts to an inclusion of the Economic and Social Development Bank of Venezuela (BANDES)

⁹ Statement of Motives, Organic Law for Food Security and Sovereignty

¹⁰ “Richard Canan: Nueva Ley de Seguridad Agroalimentaria multará a contrabandistas,” August 6, 2008, http://www.minci.gob.ve/noticias/1/182056/richard_cannueva_ley.html

¹¹ Gaceta Oficial Extraordinaria 5.890 (Federal Registry) <http://www.tsj.gov.ve/gaceta/gacetaoficial.asp>



under the law in order to limit the amount of debt it can issue. Changes to other finance laws (including the General Law for Banks and Other Financial Institutions) were minor and generally dealt with issues relating to streamlining and maximizing efficiency.

Many of the complaints relating to the finance laws attempt to tie in the issue of the state buying the Banco de Venezuela from the Grupo Santander. This is an unrelated topic.

However, it is worth clarifying Venezuela's intent to buy this bank. The bank was put on the market by Grupo Santander, after which the government of Venezuela announced its intention to purchase it. This action is being taken in **full accordance with Venezuelan laws and with due respect towards Banco de Venezuela shareholders.**¹²

4) Law for the Promotion and Development of a People's Economy

For years many different forms of social production have been developed and implemented in Venezuela, both via government action and independently. Within the country there was a great demand for determining the exact legal definitions of terms such as: social production firms, collective work, barter, etc. This law is a necessary **measure designed to regulate each of these forms of production**, in part by specifying their meanings.¹³ **Furthermore, this law will not affect private property.**

¹² Presidential Press Office Statement, July 31, 2008, <http://venezuela-us.org/2008/07/31/venezuela%E2%80%99s-government-has-decided-to-buy-the-banco-de-venezuela-bank-of-venezuela/#more-11030>

¹³ Gaceta Oficial Extraordinaria 5.890 (Federal Registry) <http://www.tsj.gov.ve/gaceta/gacetaoficial.asp>

5) Law for the Defense of Persons in Access to Goods and Services

In the past, Venezuela has lagged behind in offering consumers the protection they deserve. Venezuelans are often the victims of price gouging and manipulation, identity theft and scams. **The Law for the Defense of Persons in Access to Goods and Services is primarily a consumer rights law.**¹⁴ It expands legal protection for consumers and guarantees both access to goods and services and legal protection for transactions. Among other things, **it protects against price gouging and offers protection for transactions based on credit.** The law makes it easier for consumers to file class action lawsuits, as well as to lodge complaints against false or misleading advertising.

The section generating the most controversy in the media seems to not have been fully read. This law allows for the appropriation of businesses which produce or supply basic, essential goods, but only **under strict conditions during states of exception.** The opposition-led shutdown of 2002-2003 left many Venezuelans with inadequate access to food, medicine and daily necessities such as soap or toilet paper. Besides temporarily crippling the economy, the strike sharply reduced people's standard of living. **Parts of this law were designed to ensure that people can maintain their well-being during times of crisis.**¹⁵

¹⁴ Gaceta Oficial Extraordinaria 5.889 (Federal Registry) <http://www.tsj.gov.ve/gaceta/gacetaoficial.asp>

¹⁵ "Ministers Jaua and Osorio: Law for Food Security and Sovereignty seeks to ensure access for entire population," August 7 2008, <http://www.embavenez-us.org/news.php?nid=4407>



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Conclusion

The Enabling Law was granted by the National Assembly following the **constitution and all democratic procedures required by law**. The twenty-six laws issued on July 31st, 2008, were the product of discussions in which many sectors of the population participated and were consulted. These laws were thought out and designed so carefully that another sixteen laws failed to be finished before the deadline. Those sixteen laws, which are undergoing debate and discussion, will instead be sent to the National Assembly, further evidence that the government respects and abides by the constitution, laws and institutions of Venezuela.

Many of the approved laws are technical in nature and seek to make government institutions stronger and more efficient. Others address pressing needs which existing law had either failed to anticipate or inadequately deal with. Some of the **laws are progressive and should be commended for expanding the rights of Venezuelans, deepening democracy, furthering personal development and promoting social inclusion.**

Finally, those in disagreement with the laws should seek democratic means, such as the National Assembly, Supreme Court, or even a referendum, for changing or rescinding these laws.

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